

# CHAPTER 73

## SPECIAL DISTRICTS

### ARTICLE 1

#### ARTESIAN CONSERVANCY DISTRICTS

##### 73-1-1. [Purpose of districts.]

The purpose of this act [73-1-1 to 73-1-13, 73-1-16 to 73-1-23 NMSA 1978] is to provide for the organization of artesian conservancy districts to conserve, where necessary, the waters in any artesian basin or basins within the state, the boundaries of which have been scientifically determined by investigations, and where such waters have been beneficially appropriated for private, public, domestic, commercial or irrigation purposes, or otherwise.

**History:** Laws 1931, ch. 97, § 1; 1941 Comp., § 77-1301; 1953 Comp., § 75-13-1.

**Cross-references.** - As to supervision of artesian waters generally, see 72-13-2 NMSA 1978.

**"Conserve" connotes** a saving or preserving from loss. Pecos Valley Artesian Conservancy Dist. v. Peters, 50 N.M. 165, 173 P.2d 490 (1945).

**Excessive water use by individual landowner would constitute wasteful practice** in derogation of the best interests of the entire conservancy district, presenting a proper subject for action by the board of directors of the district. 1951-52 Op. Att'y Gen. No. 5487.

**District has standing and duty to sue.** - When a vested water right of the owners of the district is in question, the district has not only standing but a duty to participate in litigation affecting those rights. As conservancy district is the owner of water rights, it is incumbent upon it to assert any position it feels affects those rights, and it may sue and defend for its water users in a representative capacity where such water users have a common or general interest in the subject matter of the suit. State ex rel. Reynolds v. Lewis, 84 N.M. 768, 508 P.2d 577 (1973).

**To enjoin unauthorized water use.** - Though an artesian conservancy district owned no land serviced by waters of an artesian basin and no water rights, it constituted a proper party plaintiff for maintaining a suit to enjoin the use of water from an unauthorized well. Pecos Valley Artesian Conservancy Dist. v. Peters, 50 N.M. 165, 173 P.2d 490 (1945).

**And decree binding on district users.** - Action to enjoin use of water from an unauthorized well is of the nature of suit to quiet title, and the decree is binding on all

water users within the conservancy district, notwithstanding none as individuals were parties to suit; district is authorized agent of all its water users. Pecos Valley Artesian Conservancy Dist. v. Peters, 52 N.M. 148, 193 P.2d 418 (1948).

**Law reviews.** - For article, "New Mexico Water Law: An Overview and Discussion of Current Issues," see 22 Nat. Resources J. 1045 (1982).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 78 Am. Jur. 2d Waters §§ 155 to 175, 319 (3); 78 Am. Jur. 2d Waterworks § 25.

Right to conduct and use artesian water out of artesian basin, 31 A.L.R. 906.

Constitutionality of provisions for conservancy districts, 70 A.L.R. 1274.

Subterranean and percolating waters; springs; wells, 109 A.L.R. 395.

Water as within term "minerals" in deed, lease, or license, 148 A.L.R. 780.

Liability for obstruction or diversion of subterranean waters in use of land, 29 A.L.R.2d 1354.

Liability for pollution of subterranean waters, 38 A.L.R.2d 1265.

93 C.J.S. Waters §§ 92, 194.

### **73-1-2. [Lands included in district; two or more artesian basins in one district.]**

Any artesian conservancy district organized pursuant to the provisions of this act [73-1-1 to 73-1-13, 73-1-16 to 73-1-23 NMSA 1978] shall include all lands overlying any such artesian basin and any land outside of the boundaries thereof upon which waters from such basin are being used, either for private, public, commercial, domestic or irrigation purposes, or otherwise.

Two or more such artesian basins or reservoirs may be embraced in the same conservancy district, where the same are so closely related, geographically or otherwise, that the waters therein can more surely and effectively be conserved by the unified control of one district, and where the improvements contemplated will tend to conserve the waters in each basin so included.

**History:** Laws 1931, ch. 97, § 2; 1941 Comp., § 77-1302; 1953 Comp., § 75-13-2.

**Land within territorial boundaries of district.** - If a well in fact taps waters of an artesian basin, then the land upon which it is drilled is of a kind expressly ordered to be included within the territorial boundaries of the district. Pecos Valley Artesian Conservancy Dist. v. Peters, 50 N.M. 165, 173 P.2d 490 (1945).

**District may seek injunction against well tapping waters of basin.** - Though an artesian conservancy district has a legal remedy provided expressly by statute for opposing an application for appropriation of waters made to the state engineer where appropriation is within the district (73-1-26 NMSA 1978), it is not precluded from seeking injunctive relief against use of water from a well which is drilled without such permit outside the territorial boundaries of the district and which taps waters of the artesian basin which underlies the district. *Pecos Valley Artesian Conservancy Dist. v. Peters*, 50 N.M. 165, 173 P.2d 490 (1945).

**Even where benefited land outside defined boundaries of basin.** - Even though a well is lawfully drilled without permit outside an artesian conservancy district, the district could maintain suit to enjoin use of water from such well which is located on land outside the territorially defined boundaries of the basin as well as outside the district boundaries. *Pecos Valley Artesian Conservancy Dist. v. Peters*, 50 N.M. 165, 173 P.2d 490 (1945).

### **73-1-3. [Petition; signers; contents of petition.]**

In order to establish an artesian conservancy district under this act [73-1-1 to 73-1-13, 73-1-16 to 73-1-23 NMSA 1978], a petition shall be filed in the district court of the county wherein the greater portion of the lands to be embraced in the district are situated, the same to be signed by the owners of more than one-third (1/3) of the real property in such proposed district, in either acreage or value as shown by the last preceding assessment roll in the county, or counties, wherein such district is proposed to be created. Such petition may be signed by any person, firm, association, corporation or the officers duly authorized of any town, village, city or municipality owning lands within the proposed district. Any city interested in some degree in the improvements or purposes for which a district is to be formed, may, upon proper action of its governing body alone, file the petition required by this section; provided, the population and businesses conducted in such city own at least one-third (1/3) of the lands within said district in either acreage or value as shown by the last preceding assessment roll of the county, or counties, wherein such district is proposed to be created.

The petition shall set forth:

A. the proposed name of the district;

B. a statement of the purpose, or purposes, for which the district is to be formed, and showing wherein the property within the proposed district will be benefited by the accomplishment of some one or more of the purposes enumerated, and giving a general description of the property to be included in the proposed district. Such description need not be given by metes and bounds, or by legal subdivisions, but it shall be sufficient if it enable a property owner to ascertain whether his property is within the territory proposed to be organized as a district, and it need not be necessary that all the property embraced within the district be contiguous;

C. said petition shall pray for the organization of the district by the name proposed.

**History:** Laws 1931, ch. 97, § 3; 1941 Comp., § 77-1303; 1953 Comp., § 75-13-3.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Formation and organization of conservancy districts, 69 A.L.R. 285.

#### **73-1-4. [Correction of errors in petition.]**

No petition with the requisite signatures shall be declared null and void on account of alleged defects, but the court may, at any time, permit the petition to be amended to conform to the facts, by correcting any errors in description or in any other particular.

**History:** Laws 1931, ch. 97, § 4; 1941 Comp., § 77-1304; 1953 Comp., § 75-13-4.

#### **73-1-5. [More than one petition for same district.]**

Several similar petitions, or duplicate copies of the same petition, for the organization of the same district may be filed, and shall together be regarded as one petition. All such petitions filed prior to the hearing on the first petition filed shall be considered by the court the same as though filed with the first petition.

**History:** Laws 1931, ch. 97, § 5; 1941 Comp., § 77-1305; 1953 Comp., § 75-13-5.

#### **73-1-6. Signing of petition.**

A guardian, conservator or personal representative of an estate, who is appointed as such under the laws of this state, and who, as such guardian, conservator or personal representative, is entitled to the possession of the lands belonging to the estate which he represents may, on behalf of his ward or the estate he represents, upon being thereunto authorized by the proper court, sign and acknowledge the petition in this act [73-1-1 to 73-1-13, 73-1-16 to 73-1-23 NMSA 1978] mentioned, and may act in respect to the said lands to the same extent, and in the same manner, as a private owner might act.

**History:** Laws 1931, ch. 97, § 6; 1941 Comp., § 77-1306; 1953 Comp., § 75-13-6; Laws 1975, ch. 257, § 8-127.

**The 1975 amendment** made this section applicable to guardians, conservators or personal representatives instead of guardians, executors or administrators.

#### **73-1-7. [Tax roll as prima facie evidence of property ownership and value.]**

In determining whether a requisite number of landowners have signed the petition, the court shall be governed by the names and the value of the property as they appear upon the tax or assessment rolls which shall be prima facie evidence of such ownership and value.

**History:** Laws 1931, ch. 97, § 7; 1941 Comp., § 77-1307; 1953 Comp., § 75-13-7.

### **73-1-8. [Bond; sufficiency; failure to execute additional bond when required.]**

At the time of filing the petition, or at any time subsequent thereto and prior to the time of hearing on said petition, a bond shall be filed, with security approved by the court sufficient to pay all the expenses connected with the proceedings in case the organization of the district be not effected. If, at any time during the proceeding, the court shall be satisfied that the bond first executed is not sufficient, it may require the execution of an additional bond within a time to be fixed, which shall not be less than ten days from the date of such order, and upon failure of the petitioners to execute the same, the petition shall be dismissed.

**History:** Laws 1931, ch. 97, § 8; 1941 Comp., § 77-1308; 1953 Comp., § 75-13-8.

### **73-1-9. [Hearing; time and place; publication of notice.]**

Immediately after the filing of such petition, the court shall, by order, fix a time and place, not less than sixty (60) days after the petition is filed, for hearing thereon, and thereupon the clerk shall cause notice by publication to be made of the pendency of the petition, and of the time and place of the hearing thereon, in each county in which there is property to be included in the proposed district. If no newspaper is published in any such county, publication shall be made in a newspaper of general circulation in the proposed district.

It shall not be necessary for the clerk to name the parties interested, nor to describe separate lots, tracts or parcels of land in giving such notice, but it shall be sufficient to give such descriptions as to enable the owner to determine whether or not his land is covered by such description. The notice shall state that all persons, corporations and municipalities, or others owning or interested in any property within the proposed district, will be given the opportunity to be heard at the time and place specified in the notice. Publication shall be made as directed by the court, but shall be for at least once each week for four consecutive weeks.

**History:** Laws 1931, ch. 97, § 9; 1941 Comp., § 77-1309; 1953 Comp., § 75-13-9.

**Cross-references.** - For general provisions as to publication of notice, see 14-11-1 to 14-11-13 NMSA 1978.

### **73-1-10. [Filing of objections; hearing as advanced cause.]**

Any owner of real property, or any public corporation in said proposed district, not having individually signed a petition for the organization and incorporation of said district may, on or before the date set for the cause to be heard, file objections to the organization and incorporation of such district. Such objections shall be heard by the court as an advanced cause without unnecessary delay.

**History:** Laws 1931, ch. 97, § 10; 1941 Comp., § 77-1310; 1953 Comp., § 75-13-10.

### **73-1-11. [District declared organized; boundaries; status; principal place of business; jurisdiction of court; costs where petition denied.]**

Upon the hearing of the petition, as provided for herein, if it shall appear that a petition, or petitions, for the organization of such district has been signed and presented as hereinbefore provided, and that the allegations of the petition, or petitions, are true and that no protesting petition, or petitions, have been filed, or, if filed have been dismissed, the court shall, by order, adjudicate all questions of jurisdiction, declare the district organized and give it a corporate name, by which, in all proceedings, it shall thereafter be known, but said decree shall not be final as to the boundaries of said district, or as to the lands to be embraced therein, until the approval of the report of the commissioners, as hereinafter provided, at which time, a final decree as to the property to be embraced in the district shall be entered, and no appeal therefrom as to any particular tracts or parcels of property shall, in any way, prevent the district from functioning, nor prevent the levy of any taxes against such property in question pending the appeal therefrom.

Upon declaring the district organized, the same shall be a political subdivision of the state of New Mexico, and a body corporate with all the powers of a public or municipal corporation; shall have power to sue and be sued, to incur debts, liabilities and obligations, to exercise the right of eminent domain and of taxation and assessment as herein provided and to do and perform all acts herein expressly authorized, and all other acts necessary and proper for carrying out to all intents and purposes the objects for which the district was created, and for exercising the powers with which it is invested.

In such decree, the court shall designate the place where the office, or principal place of business, shall be located, which shall be within the corporate limits of the district, if practical, and which may be changed by order of the court from time to time. The regular meetings of the board of directors shall be held at such office or place of business, but for cause may be adjourned to any other convenient place. The official records and files of the district shall be kept at the office so established. The district court entering the decree shall retain jurisdiction of the conservancy district so organized, and all court proceedings pertaining to the district, as herein provided, shall be filed in the original cause. Any district judge in whose court said original proceeding is had shall not be disqualified on account of owning property within the boundaries of the district.

If the court finds against the prayer of the petition, it shall dismiss said proceedings and adjudge the costs against the signers of the petition in such proportions as it shall deem just and equitable.

**History:** Laws 1931, ch. 97, § 11; 1941 Comp., § 77-1311; 1953 Comp., § 75-13-11.

**Meaning of "report of the commissioners".** - Section 73-1-13 NMSA 1978 provides for the appointment and duties of commissioners.

**District may not change name.** - In view of the lack of authority permitting the change of name and since the statute provides that the district shall thereafter be known under the name ordered by the court, the district may not, after becoming organized, change its name. 1959-60 Op. Att'y Gen. No. 60-245.

**District has standing and duty to sue.** - See same catchline in notes to 73-1-1 NMSA 1978.

**To enjoin unauthorized water use.** - See same catchline in notes to 73-1-1 NMSA 1978.

**And decree binding on district users.** - See same catchline in notes to 73-1-1 NMSA 1978.

### **73-1-12. [Recording of findings and decree; fees.]**

As soon as practical, and within thirty (30) days after the said district has been declared a corporation by the court, the clerk of said court shall transmit to the state corporation commission, and to the county clerk of each of the counties having lands in said district, certified copies of the findings and the decree of the court incorporating said district. The same shall be filed in the office of the state corporation commission, and copies shall also be filed in the office of the county clerk of each county in which a part of the district may be, where they shall become permanent records; and the said clerk in each county shall receive a fee of one (\$1.00) dollar for filing and preserving the same, and the state corporation commission shall receive a fee of five (\$5.00) dollars for filing and preserving the same.

**History:** Laws 1931, ch. 97, § 12; 1941 Comp., § 77-1312; 1953 Comp., § 75-13-12.

### **73-1-13. [Commissioners; property included in district; directors' districts; election code; compensation of commissioners; employees; expenses.]**

Within ten (10) days after entering the decree declaring the district organized, the court shall appoint three (3) owners of lands within the district, representative of all parts of the district, to determine and define the boundaries of such district and to make up a list

of the property to be embraced and included in the district, the persons so appointed to be hereinafter referred to as the "commissioners."

Said commissioners shall include all property in the district which has, within four years, received some benefit, either directly or indirectly, from the artesian waters underlying the district, or which may be benefited in some degree by the improvements to be made by the district. Property benefited by the artesian waters, and the improvements to be made by the district, shall include property upon which waters from such basin, or basins, is, or may be, used for irrigation, domestic, public or commercial purposes, and shall include any such property, whether the same be owned by an individual, corporation, village, town, city or other municipality or public corporation.

The commissioners in making up a description of the property and list of owners thereof to be embraced in, or affected by, the district, shall have access to the assessment or tax rolls of the county, or counties, wherein the lands are situated, and may hear and determine all protests concerning any particular tract or parcel of land to be included in the district, at such time, and in such manner and upon such notice, as they may prescribe, subject to the right of appeal to the district court, which appeal shall be heard and determined by said court at the time provided for the entering of the final decree respecting the boundaries of the district and property to be embraced therein, as herein provided, and after completing such list and defining the boundaries of the district and the lands to be embraced therein, said commissioners shall, with the approval of the court, divide said district into five (5) sections, or divisions, having due regard for the value and amount of acreage to be included in each, so that there will be an equitable relationship in value and acreage between the several sections, or subdivisions, of the district. Said subdivisions shall be numbered one to five, and shall be known as "directors' districts."

The commissioners shall draft an election code to govern the method and prescribe the procedure for the election of directors from each of the directors' districts. Said code shall provide for the election of a director from each of said districts by popular vote of the property owners in the same respectively, owning property affected by the district, and whether residing therein or not. Each director, so elected, at the time of his election must be a freeholder in the district from which he is elected. After being approved by the court, as hereinafter provided, the said election code may be changed only by unanimous consent of the directors elected pursuant thereto.

Said list of property, and the election code, shall be approved by the court, by entering a decree as herein provided, but said list shall be subject to the correction of errors in description of the property affected at any time upon order of the court. A copy of the election code, as approved, shall be filed in the original court proceeding, and the same ordered printed for use of those desiring copies, the cost of which shall be taxed as costs in the proceeding. The commissioners so appointed are hereby vested with full power and authority to employ, with the approval of the court, legal counsel, clerical and stenographic help necessary for carrying out their duties as herein prescribed, the compensation of such employees to be fixed by the court. The commissioners shall



each receive five (\$5.00) dollars for each day's service in performing their duties, but not to exceed one hundred and fifty (\$150.00) dollars each. The expenses incurred by said commissioners, and the salaries of their employees and their compensation, shall also be taxed as costs in the original proceeding, and said commissioners are hereby authorized to borrow, with the approval of the court, an amount sufficient to pay all costs of the proceedings so taxed, at a rate of interest not to exceed eight (8%) percent, which said loan shall be a debt, charge and valid obligation of the district, to be paid out of the proceeds from the first tax levy hereinafter provided for.

**History:** Laws 1931, ch. 97, § 13; 1941 Comp., § 77-1313; 1953 Comp., § 75-13-13.

**Land within territorial boundaries of district.** - See same catchline in notes to 73-1-2 NMSA 1978.

**Status of legal counsel employed by commissioners.** - Employment as counsel or legal adviser to commissioners under this section would not constitute such person a civil officer within meaning of constitution or be a contract with the state or a legal subdivision thereof. 1931-32 Op. Att'y Gen. 109.

### **73-1-14. [Inclusion of additional lands after extension of basin boundaries.]**

Where any artesian conservancy district has heretofore been formed, and due to the extension of the original boundaries of the artesian basin by order of the state engineer, the boundaries of the artesian conservancy district no longer include all lands overlying such artesian basin and the board of directors of such district shall determine by resolution that it is desirable that such lands, as are irrigated and within the boundaries of the said artesian basin as set by order of the state engineer effective January 31, 1950, shall be included in and subject to the district, such conservancy district may file a petition in the district court of the county wherein said district was originally formed in the same proceeding, praying that the decree providing for the formation of said district be amended so as to include such lands; provided, however, the petition shall be accompanied by a certificate of the state engineer, describing the designated boundaries of the said artesian basin.

**History:** 1953 Comp., § 75-13-13.1, enacted by Laws 1957, ch. 208, § 1.

**Cross-references.** - For authority of state engineer to measure waters of state, see 72-2-1 NMSA 1978.

**Effective dates.** - Laws 1957, ch. 208, contains no effective date provision, but was enacted at a session which adjourned on March 9, 1957. See N.M. Const., art. IV, § 23.

**Use of water rights on other lands.** - Water rights on state or federal land are appurtenant to said land; the right is initiated by lessee, and the license is issued in the name of lessee. These water rights may be transferred or moved off the land and used

on other lands upon application of the owner of the license, with consent of the owner of the land. New Mexico and the federal government have consented to moving the water right from the leased land and recognize the water right as an improvement on the land, created by lessee. 1957-58 Op. Att'y Gen. No. 58-26.

### **73-1-15. [District court procedure; notice.]**

Upon the filing of a petition as provided for in Section 1 [73-1-14 NMSA 1978] hereof, the district court having jurisdiction shall, by order, require notice to be published by the clerk of the court, at such time and places as the court may designate, giving notice to all landowners affected by the proposed change that a hearing will be had at a time and place designated in such notice, for the purpose of determining whether or not all of the lands described in the certificate of the state engineer filed with the said petition should be included in the artesian conservancy district, and the decree establishing the district amended accordingly. It shall not be necessary for the clerk to name the parties interested, nor to describe the separate lots, tracts or parcels of land affected in giving such notice, but it shall be sufficient to give such description of the lands proposed to be included as will enable the owner to determine whether or not his land is covered by such description.

The notice shall state that any person affected by the proposed inclusion of such lands shall have the right to file objections thereto, on or before the date set for hearing. If, after hearing such objections, if any, and considering any evidence introduced in support thereof, the court finds that the said lands described in the petition should be included within the said artesian conservancy district, the court shall enter an order amending said decree, as prayed for in said petition, and thereupon said lands shall be included within the said conservancy district and shall be subject to the same rights, powers and authority as given by law to such artesian conservancy district over lands located within said district.

**History:** 1953 Comp., § 75-13-13.2, enacted by Laws 1957, ch. 208, § 2.

**Effective dates.** - Laws 1957, ch. 208, contains no effective date provision, but was enacted at a session which adjourned on March 9, 1957. See N.M. Const., art. IV, § 23.

### **73-1-16. [Directors; term of office; vacancies on board.]**

The directors elected pursuant to such election code shall be elected for a term of six years each. Each director shall hold office for the term for which he was elected, and until his successor is duly appointed, or elected, and has qualified, except as hereinafter provided, being removable therefrom only for cause after a hearing upon a motion filed by any interested person in the original proceeding in which the district was organized. Unless otherwise provided by the election code, vacancies shall be filled by appointment of the district court having jurisdiction. Upon the election of the first board of directors, the directors shall draw numbers by lot; numbers one (1) and two (2) shall

serve two (2) years; numbers three (3) and four (4) shall serve four (4) years, and number five (5) six (6) years.

**History:** Laws 1931, ch. 97, § 14; 1941 Comp., § 77-1314; 1953 Comp., § 75-13-14.

**Meaning of "election code".** - The election code referred to in this section is the one provided for in 73-1-13 NMSA 1978.

### **73-1-17. [Board of directors; oath of office; officers; seal; records; bylaws.]**

As soon as practical after the election, the directors shall meet for the purpose of organizing the board of directors. Each director, before entering upon his official duties, shall take and subscribe to an oath before an officer authorized to administer oaths, that he will honestly, faithfully and impartially perform the duties of his office, and that he will not be interested, directly or indirectly, in any contract let by said district, which said oath shall be filed in the original court proceeding for the formation of the district.

Upon taking the oath, the board shall choose one of their members chairman of the board and president of the district, and shall elect some suitable person secretary and treasurer of the board, who may, or may not, be a member of the board and shall require of the said secretary and treasurer a bond conditioned for the faithful performance of his duties, in such amount as to the directors may be deemed to be adequate for the protection of the district.

Such board shall adopt a seal, and shall keep, in a well-bound book, a record of all its proceedings, minutes of all meetings, certificates, contracts, bonds given by employees and all corporate acts, which shall be open to the inspection of all owners of property in the district, as well as to all other interested parties. It shall adopt a set of bylaws not inconsistent with the provisions of this act [73-1-1 to 73-1-13, 73-1-16 to 73-1-23 NMSA 1978] for the conduct of the business and affairs of the district, and, when adopted, the same shall not be altered, amended or repealed except upon three (3) days' notice to each member of the board, service to be had by personal delivery or by mailing a copy of such notice in a sealed envelope, postage fully prepaid, to the address of the director to be served, or at a regular or called meeting at which all directors are present.

**History:** Laws 1931, ch. 97, § 15; 1941 Comp., § 77-1315; 1953 Comp., § 75-13-15.

### **73-1-18. [Majority to constitute quorum; concurrence of majority.]**

A majority of the directors shall constitute a quorum, and a concurrence of the majority in any matter within their duties shall be sufficient for its determination.

**History:** Laws 1931, ch. 97, § 16; 1941 Comp., § 77-1316; 1953 Comp., § 75-13-16.

### **73-1-19. [Secretary; duties; board of directors; powers; expenses.]**

The secretary shall be the custodian of the records of the district and of its corporate seal, and shall assist the board in such particulars as it may direct in the performance of its duties. The secretary shall attest, under the corporate seal, all certified copies of the official records and files that may be required of him by this act [73-1-1 to 73-1-13, 73-1-16 to 73-1-23 NMSA 1978], or by any person ordering the same and paying the reasonable cost of transcription, and any portion of the record so certified and attested shall prima facie import verity.

The board of directors are hereby vested with full power and authority to do and perform every act and thing necessary to carry out, to all intents and purposes, the provisions of this act, purposes and objects for which the district is created, including the power to enter into contracts with, and engage all necessary agents and employees, and to fix their compensation and to require of any such employees bonds for the faithful performance of their duties, as to the directors may seem proper. The members of the board of directors shall receive no salary or other compensation, but shall be allowed their actual expenses incurred in performing their official duties, and not to exceed five (\$5.00) dollars for each day's attendance at all regular or called meetings.

**History:** Laws 1931, ch. 97, § 17; 1941 Comp., § 77-1317; 1953 Comp., § 75-13-17.

**Proper for board to act against excessive water user.** - Excessive water use by individual landowner would constitute wasteful practice in derogation of best interests of entire conservancy district, presenting a proper subject for action by board of directors of district. 1951-52 Op. Att'y Gen. No. 5487.

**New user may not tap waters already appropriated.** - Owner of well which taps waters of artesian basin or other underground waters whose supply has already been exhausted by prior appropriation acquires no right to use such waters as against a body of prior appropriators, even though his well is located outside boundaries of any previously defined underground stream or artesian basin. Pecos Valley Artesian Conservancy Dist. v. Peters, 50 N.M. 165, 173 P.2d 490 (1945).

**Burdens of proof on new and old appropriators.** - New appropriator must prove existence of surplus from which he can extract quantity of water he desires without injury to uses and requirements of those with prior rights, but prior appropriators must first prove the amount of water required by them for reasonable beneficial purposes. Pecos Valley Artesian Conservancy Dist. v. Peters, 52 N.M. 148, 193 P.2d 418 (1948).

**Section gives board adequate authority to employ engineer** to survey lands within district. 1951-52 Op. Att'y Gen. No. 5487.

### **73-1-20. [Program of water conservation; prevention of leaking wells.]**

After the formation of any artesian conservancy district, it shall be the duty of the board of directors from year to year to outline a plan or program of water conservation and administration, and they shall make an estimate of the cost of administration, equipment and improvements necessary to carry out such program from year to year, when the cost thereof is to be paid by tax levies. In carrying out any such plan or program the board of directors shall have authority to cooperate with the state engineer and the United States geological survey, where such cooperation is offered.

The program to be carried out and the improvements to be made and the equipment to be purchased shall be designed to accomplish the objects and purposes for which the district was created, and may include the plugging of all wells within the district found by tests to be materially leaking or wasting any waters included in the district. The directors may proceed to carry out the improvements so outlined in such manner as may be deemed for the best interest of all concerned, and may enter into any contracts or do or perform any act or thing necessary or advisable to carry out to all intents and purposes the objects and purposes for which the district was formed, and shall have the right of ingress and egress at all reasonable times to all wells within the district for the purpose of making leakage tests, and otherwise determining that such wells are properly equipped and are being used so as to conserve the waters included in the conservancy district.

All wells included in the district found to be leaking or wasting such waters, are hereby declared to be a public nuisance, and the directors of the district and those under their authority shall have the right, power and authority to go upon the lands upon which any such well is located to abate such nuisance by plugging or repairing any such well.

**History:** Laws 1931, ch. 97, § 18; 1941 ch. 98, § 4; 1941 Comp., § 77-1318; 1953 Comp., § 75-13-18.

**State engineer.** - The state engineer is director of the water resources division of the natural resources department. See 72-2-1 NMSA 1978.

**Proper for board to act against excessive water user.** - See same catchline in notes to 73-1-19 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 78 Am. Jur. 2d Waters § 185.

### **73-1-21. Tax roll based on needed improvements; limitation.**

After an estimate of the cost of the improvements needed in the district is made, as provided in Section 73-1-20 NMSA 1978, the directors shall make up a tax roll, which shall include all property as shown by the decree of the court, as herein provided, and shall thereupon determine the value of the same, using the valuations as shown by the most recent tax schedules for property taxation purposes of the county or counties wherein the property is situated. The directors shall determine the tax levy to be made against the net taxable value, as that term is defined in the Property Tax Code [Articles

35 to 38 of Chapter 7 NMSA 1978], of all property on the tax roll to produce the necessary revenue to make the improvements needed in the district. The tax shall not exceed, in any year, five dollars (\$5.00), or any lower maximum amount required by operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978, on each one thousand dollars (\$1,000) of net taxable value and shall be uniformly levied against all the property on such conservancy district tax roll, as hereinafter provided. The levy may be made annually, so long as necessary to finance the improvements from time to time determined by the directors to be needed in the district.

**History:** Laws 1931, ch. 97, § 19; 1941 Comp., § 77-1319; 1953 Comp., § 75-13-19; Laws 1986, ch. 32, § 35.

**The 1986 amendment** added the catchline; substituted "Section 73-1-20 NMSA 1978" for "Section 18 hereof" and "most recent tax schedules for property taxation purposes" for "last tax rolls" in the first sentence, deleted "From the value of such property" preceding "The directors", substituted "net taxable value, as that term is defined in the Property Tax Code, of all property on the tax roll" for "same" in the second sentence, substituted "five dollars (\$5.00) or any lower maximum amount required by operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978, on each one thousand dollars (\$1,000) of net taxable value" for "five (5) mills" in the third sentence, substituted "The levy may be made annually" for "The directors may cause such a levy of not to exceed five (5) mills, to be made annually" in the last sentence, and made minor stylistic changes.

**Effective dates.** - Laws 1986, ch. 32 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 21, 1986.

**Lands leased from state not taxable.** - Water rights on lands leased from state or United States are not subject to conservancy district tax; that assessment is levied against the land rather than the particular water right. 1957-58 Op. Att'y Gen. No. 58-26.

**Steam production equipment of utility was real estate.** - Steam production equipment consisting of turbines, boilers, pumps and fans was real estate for taxation purposes where the utility company installed and maintained such equipment on special foundations and could not foresee moving it because of its huge size and weight, and such equipment was the very heart of the company's business. *Southwestern Pub. Serv. Co. v. Chaves County*, 85 N.M. 313, 512 P.2d 73 (1973).

**But not substation equipment.** - Electric transmission and distribution substation equipment consisting of transformers, switches and circuit breakers was not real estate for taxation purposes since it was readily portable and had very little, if any, annexation or adaptation. *Southwestern Pub. Serv. Co. v. Chaves County*, 85 N.M. 313, 512 P.2d 73 (1973).

**Nor lines, poles, meters and like equipment.** - Electric transmission lines, poles, line transformers, meters and such equipment frequently located on easements and public

rights-of-way were not real estate for taxation purposes since they were changed or relocated frequently and were located on unowned land. *Southwestern Pub. Serv. Co. v. Chaves County*, 85 N.M. 313, 512 P.2d 73 (1973).

### **73-1-22. Assessment and collection; levy to be property lien; time of payment.**

The levies herein provided for shall be made by resolution of the board of directors, and the amount thereof, together with the tax roll showing the property which the assessment and levy is to be made against, shall be certified by July 15 of each year to the board of county commissioners of the county or counties in which the district is situated and included in the next annual levy for state and county purposes. The amount shall be extended on the tax schedules for property taxation purposes and be collected for the use of such district in the same manner as are taxes for county purposes, and the revenue laws of the state, for the levy and collection of taxes for county purposes, except as herein modified, shall be applicable for the levy and collection of the amount certified by the board of such district, including the penalties and enforcement thereof, and forfeiture for delinquent taxes. Taxes levied against the property in the district, as herein provided, shall be a lien upon the same from the time of such levy, subject only to levies made for state and county purposes. All collections made by the county treasurers pursuant to such levies shall be paid to the treasurer of the district on or before the tenth day of the next succeeding calendar month, and a list of the payers, the amount paid by each and the property covered thereby shall accompany such remittance. Such statement of the list of the payers shall be made upon forms furnished to the treasurer by the directors of the district.

**History:** Laws 1931, ch. 97, § 20; 1941 Comp., § 77-1320; 1953 Comp., § 75-13-20; Laws 1986, ch. 32, § 36.

**Cross-references.** - For laws regarding imposition, administration and enforcement of taxes, see 7-37-1 to 7-37-7 and 7-38-1 to 7-38-93 NMSA 1978.

**The 1986 amendment** added the catchline, inserted "by July 15 of each year" in the first sentence, substituted "tax schedules for property taxation purposes" for "tax rolls" in the second sentence and made minor stylistic changes.

**Effective dates.** - Laws 1986, ch. 32 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 21, 1986.

**Lands leased from state not taxable.** - See same catchline in notes to 73-1-21 NMSA 1978.

**Extent of tax exemption.** - Exemption from taxation is not applicable to an earthen dam for an irrigation system owned by a nonprofit corporation engaged in distributing water to its various shareholders. *Storrie Project Water Users Ass'n v. Gonzales*, 53 N.M. 421, 209 P.2d 530 (1949).

### **73-1-23. [Loans in anticipation of taxes; repayment.]**

The directors are hereby authorized to borrow money in anticipation of the proceeds from the collection of taxes to be derived from any uniform annual levy, and in such case the proceeds of all such taxes collected shall be applied to the repayment of such loan and to no other purpose, until the same be paid in full. The directors shall cause adequate annual tax levies to be made, as herein provided, until all obligations of the district are fully satisfied.

**History:** Laws 1931, ch. 97, § 21; 1941 Comp., § 77-1321; 1953 Comp., § 75-13-21.

### **73-1-24. [Underground waters.]**

Wherever any artesian conservancy district has heretofore been organized or may hereafter be organized, under and pursuant to Chapter 97 of the New Mexico Session Laws of 1931 [73-1-1 to 73-1-13, 73-1-16 to 73-1-23 NMSA 1978], or amendments thereto, such conservancy district may be given the same rights, power and authority as to all underground waters within the boundaries of such conservancy district as have been or may hereafter be conferred upon such district by said legislative act, and amendments thereto, as to artesian waters; provided, however, the boundaries of such underground waters have been reasonably ascertained and the same, or a substantial portion thereof, have been beneficially appropriated for private, public, domestic or irrigation purposes and are subject to appropriation, as provided by Chapter 131 of the New Mexico Session Laws of 1931 [72-12-1 to 72-12-10 NMSA 1978], or amendments thereto, and provided further it is determined that said underground waters, or a substantial portion thereof, are derived from the artesian basin, or basins, included, or to be included in such district, and that the same are so closely related to such artesian waters that they can be effectively conserved by said district.

**History:** Laws 1941, ch. 98, § 1; 1941 Comp., § 77-1322; 1953 Comp., § 75-13-22.

**Emergency clauses.** - Laws 1941, ch. 98, § 5, makes the act effective immediately. Approved April 14, 1941.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 78 Am. Jur. 2d Waters §§ 89, 92, 151.

93 C.J.S. Waters §§ 89, 92.

### **73-1-25. [Petition to include underground waters; filing objections; hearing; amended decree.]**

Where underground waters, other than artesian waters, as provided for in Section 1 [73-1-24 NMSA 1978] hereof, are to be included in any artesian conservancy district which may hereafter be formed, the petition required to be filed and all notices required to be given and published, as provided by law in connection with the formation of such



district, shall specifically state that such waters are to be included in the district, and that the district shall have the same power, right and authority with respect thereto as may be given to it by law over artesian waters.

Where any conservancy district has heretofore been formed, and the board of directors of such district shall determine by resolution that it is desirable that underground waters, other than artesian waters, shall be included in and subject to, the district, such conservancy district may file a petition in the district court of the county wherein said district was originally formed in the same proceeding, praying that the decree providing for the formation of said district be amended so as to include such waters; provided, however, the petition shall be accompanied by a certificate of the state engineer, describing with reasonable accuracy the boundaries of all underground waters, except artesian waters, within the boundaries of the conservancy district which are subject to appropriation by law, and which, in the opinion of the state engineer, should be included in the district, and certifying that to the best of his knowledge and belief such waters, or a substantial portion thereof, are derived from the artesian basin, or basins, included in such district, and that the same are so closely related to such artesian waters that they can be most effectively conserved by said district. Upon the filing of such petition, the district court having jurisdiction shall, by order, require notice to be published by the clerk of the court, at such time and places as the court may designate, giving notice to all underground water users affected by the proposed change that a hearing will be had at a time and place designated in such notice, for the purpose of determining whether or not all of the underground waters described in the certificate of the state engineer filed with the said petition should be included in the artesian conservancy district, and the decree establishing the district amended accordingly. It shall not be necessary for the clerk to name the parties interested, nor to describe the separate lots, tracts or parcels of land affected in giving such notice, but it shall be sufficient to give such descriptions of the boundaries of the underground waters proposed to be included as will enable the owner to determine whether or not his rights will be affected. The notice shall state that any person affected by the proposed inclusion of such waters shall have the right to file objections thereto, on or before the date set for hearing. If, after hearing such objections, if any, and considering any evidence introduced in support thereof, the court finds that it is reasonably certain that a substantial portion of said waters are derived from the artesian basin, or basins, included in such district, and that the same are so closely related to such artesian waters that they can be effectively conserved by said district, the court shall enter an order amending said decree, as prayed for in said petition, and thereupon said waters shall be subject to the same rights, powers and authority as given by law to such conservancy district over artesian waters.

**History:** Laws 1941, ch. 98, § 2; 1941 Comp., § 77-1323; 1953 Comp., § 75-13-23.

**Cross-references.** - For authority of state engineer to measure waters of state, see 72-2-1 NMSA 1978.

As to law relating to underground waters, see 72-12-1 to 72-12-28 NMSA 1978.

**Emergency clauses.** - Laws 1941, ch. 98, § 5, makes the act effective immediately. Approved April 14, 1941.

### **73-1-26. [Right of conservancy district to protest interference; appeal to district court.]**

That any artesian conservancy district which has heretofore been organized, or may be hereafter organized, as provided by law, shall in addition to the powers granted to such districts have the right, power and authority to protest or object to any application made to the state engineer to appropriate any waters included within the boundaries of such conservancy district which may be subject to appropriation as provided by law, and to protest or object to any application to the state engineer to change the location of any well or to change the use of waters for any purpose other than that for which originally granted, where it is determined by resolution of the board of directors of such district that the granting of such proposed application would interfere with any existing water rights or program of such conservancy district for the conservation of the waters sought to be appropriated, and such district shall have the right to appeal to the district court from the decision of the state engineer within the time and manner provided by law for appeals from such decisions.

**History:** Laws 1941, ch. 98, § 3; 1941 Comp., § 77-1324; 1953 Comp., § 75-13-24.

**Cross-references.** - As to appropriation and changes in use of waters upon application to state engineer, see 72-5-1 NMSA 1978 et seq.

As to appeals to district court, see 72-7-1 to 72-7-3 NMSA 1978.

**Emergency clauses.** - Laws 1941, ch. 98, § 5, makes the act effective immediately. Approved April 14, 1941.

**District has duty to participate in litigation affecting owners' rights.** - When vested water rights of owners of the district is in question, the district certainly has not only standing but a duty to participate in litigation affecting those rights. State ex rel. Reynolds v. Lewis, 84 N.M. 768, 508 P.2d 577 (1973).

**Section does not exclude suit regarding well drilled outside district.** - Though an artesian conservancy district has a legal remedy provided expressly by statute for opposing application for appropriation of waters made to the state engineer where appropriation is within the district, it is not precluded from seeking injunctive relief against use of water from a well which is drilled without such permit outside territorial boundaries of the district and which taps waters of the artesian basin that underlies the district. Pecos Valley Artesian Conservancy Dist. v. Peters, 50 N.M. 165, 173 P.2d 490 (1945).

### **73-1-27. Carriage loss allowance established.**

In addition to the duty of water for irrigation within any artesian conservancy district established under the provisions of Sections 73-1-1 through 73-1-26 NMSA 1978, there shall be, as a matter of right, an additional two acre-inches of water per year per acre-foot of an established water right to compensate for carriage loss between the point of appropriation and the point of beneficial use.

**History:** 1953 Comp., § 75-13-25, enacted by Laws 1971, ch. 53, § 1.

## **ARTICLE 2 DITCHES OR ACEQUIAS**

### **73-2-1. [Right to construct; private or common use; compensation.]**

All the inhabitants of the state of New Mexico shall have the right to construct, either private or common acequias, and to take water for said acequias from wherever they can; with the distinct understanding, to pay the owner through whose land said acequias have to pass a just compensation taxed for the land used.

**History:** Laws 1874, ch. 10, § 1; C.L. 1884, § 17; C.L. 1897, § 23; Code 1915, § 5737; C.S. 1929, § 151-407; 1941 Comp., § 77-1401; 1953 Comp., § 75-14-1.

- I. General Consideration.
- II. Community Acequias.

### **ANNOTATIONS**

#### **I. GENERAL CONSIDERATION.**

**Cross-references.** - For special provisions governing acequias in certain counties, see 73-3-1 to 73-3-11 NMSA 1978.

For exercise of eminent domain to acquire ditches, see 72-1-5 NMSA 1978.

As to application for appropriation of water, see 72-5-1 NMSA 1978.

**Acequias and community ditch associations** subject to this article are subject to audit under the Audit Act (12-6-1 NMSA 1978 et seq.). 1990 Op. Att'y Gen. No. 90-30.

**Used ditch is dedicated as such.** - Irrigation ditch used for conducting water for irrigation of lands, when in actual use as such, is so dedicated. *City of Albuquerque v. Garcia*, 17 N.M. 445, 130 P. 118 (1913).

**And city may not condemn for another use.** - City has no power to condemn community acequia in actual use for conducting water for irrigation of lands and to

appropriate same to the use of the public for a street. *City of Albuquerque v. Garcia*, 17 N.M. 445, 130 P. 118 (1913).

**State legislation may not destroy United States' riparian rights.** - In the absence of specific authority from congress, a state cannot by legislation destroy the right of the United States, as owner of lands bordering on a stream, to the continued flow of its waters. *United States v. Rio Grande Dam & Irrigation Co.*, 174 U.S. 690, 19 S. Ct. 770, 43 L. Ed. 1136 (1899).

**Ditch commissioners must prove public necessity for taking.** - In taking land for public use when either building a new ditch or enlarging or extending a ditch, burden would be on ditch commissioners (see 73-2-11 NMSA 1978) to prove public necessity for the taking. 1969 Op. Att'y Gen. No. 69-96.

**Permissive use vests no property rights.** - Where use by a party of a ditch classified for irrigation by the irrigation district was permissive only, use for such purpose is subject to termination at will and vests in such party no property right as against the public. *Board of County Comm'rs v. Sykes*, 74 N.M. 435, 394 P.2d 278 (1964).

**Nor may such user claim right of eminent domain.** - Relocation of borrowed ditch, use of which for purpose of irrigation was permissive only and subject to termination at will, was not a matter of public interest or concern, and the taking of private property of defendant upon which to relocate a ditch, where there was no obligation, duty or right to relocate, is not a public use. *Board of County Comm'rs v. Sykes*, 74 N.M. 435, 394 P.2d 278 (1964).

**Specific provisions on condemnation of ditch control** over more general condemnation statute found in 72-1-5 NMSA 1978. 1969 Op. Att'y Gen. No. 69-96.

**Inverse condemnation suit proper.** - In event that ditch commissioners were to take land without initiating condemnation proceedings, landowner may institute his own suit for inverse condemnation and receive just compensation for the taking. 1969 Op. Att'y Gen. No. 69-96.

**Law reviews.** - For article, "Water Rights Problems in the Upper Rio Grande Watershed and Adjoining Areas," see 11 *Nat. Resources J.* 48 (1971).

For article, "New Mexico Water Law: An Overview and Discussion of Current Issues," see 22 *Nat. Resources J.* 1045 (1982).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 25 *Am. Jur. 2d Drains and Drainage Districts* §§ 2, 3, 5, 10; 45 *Am. Jur. 2d Irrigation* §§ 44, 57, 76; 78 *Am. Jur. 2d Waters* §§ 135, 195, 199.

Power of state to exact fee or require license for taking water from stream, 19 *A.L.R.* 649, 29 *A.L.R.* 1478.

Canal as attractive nuisance, 36 A.L.R. 162, 39 A.L.R. 486, 45 A.L.R. 982, 53 A.L.R. 1344, 60 A.L.R. 1444.

Easement for irrigation canal as breach of covenant against encumbrances, 64 A.L.R. 1499.

Irrigation ditch as charging purchaser of servient estate with notice of easement, 74 A.L.R. 1250.

Constitutionality of statutes relating to surface water, 85 A.L.R. 465.

Railroad company's right to permit construction of irrigation ditch over part of its right-of-way, 94 A.L.R. 530, 149 A.L.R. 378.

Liability for overflow or escape of water from reservoir, ditch or artificial pond, 169 A.L.R. 517.

Right of riparian owner to construct dikes, embankments or other structures necessary to maintain or restore bank of stream, 23 A.L.R.2d 750.

Liability of abutting landowner for injury to municipal employee engaged in constructing or repairing sewers or drains, 58 A.L.R.3d 1085.

Extinguishment by prescription of natural servitude for drainage of surface waters,.

28 C.J.S. Drains §§ 1, 4, 43, 81; 93 C.J.S. Waters §§ 129, 210.

## II. COMMUNITY ACEQUIAS.

**Purpose in formation of community acequias.** - Community acequias were formed or maintained for the more effectual or convenient exercise of political power within certain boundaries or localities, to whom the electors residing therein are, to some extent, granted power to locally self-govern themselves. 1963-64 Op. Att'y Gen. No. 63-112.

**Community acequias fall within definition of political subdivision.** - The term political subdivision is comprehensive and denotes any division of a state made by proper authorities thereof, acting within their constitutional powers, for purposes of carrying out a portion of those functions of state which by long usage and inherent necessities of government have always been regarded as public, and community acequias fall within this definition. 1963-64 Op. Att'y Gen. No. 63-112.

**Community acequias have power of eminent domain.** 1963-64 Op. Att'y Gen. No. 63-112.

**But municipality has no power of eminent domain over community acequias** since that property is already devoted to a public use. 1963-64 Op. Att'y Gen. No. 63-112.

### **73-2-2. [Compensation for land taken; appraisers.]**

If the owner or owners of lands, where a new ditch for an acequia is to be made, should ask an exorbitant price as a compensation therefor, which shall not be satisfactory to the owner or owners of such acequia, it shall be the duty of the probate judge of the county in which it may occur, to appoint three skillful men of well-known honesty, to make an appraisalment thereof and fix the compensation.

**History:** Laws 1874, ch. 10, § 2; C.L. 1884, § 18; C.L. 1897, § 24; Laws 1903, ch. 44, § 3; Code 1915, § 5738; C.S. 1929, § 151-408; 1941 Comp., § 77-1402; 1953 Comp., § 75-14-2.

**Cross-references.** - As to appraisal of land taken upon reconstruction of ditch, see 73-2-57 to 73-2-62 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 26 Am. Jur. 2d Eminent Domain §§ 66, 189, 193.

Exercise of eminent domain by private owner for purpose of irrigating land, 9 A.L.R. 583, 27 A.L.R. 519.

Eminent domain for irrigation, combination of public and private uses or purposes, 53 A.L.R. 19.

28 C.J.S. Drains §§ 55 to 87; 30 C.J.S. Eminent Domain § 276.

### **73-2-3. [Community of people constructing ditch on own land; land not to be paid for.]**

In case a community of people desire to construct a ditch or acequia in any part of the state, and the constructors are the owners of all the land upon which said ditch or acequia is constructed, in such case no one shall be bound to pay for said land, as all the persons interested in the construction of said ditch or acequia are to be benefited by it.

**History:** Laws 1851-1852, p. 189, § 7; C.L. 1865, ch. 1, § 7; C.L. 1884, § 4; C.L. 1897, § 4; Code 1915, § 5736; C.S. 1929, § 151-406; 1941 Comp., § 77-1403; 1953 Comp., § 75-14-3.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 94 C.J.S. Waters § 339.

### **73-2-4. [Buildings obstructing irrigation prohibited.]**

No inhabitant of this state shall have the right to construct any building of the impediment of the irrigation of lands or fields, such as mills or any other property that

may obstruct the course of the water; as the irrigation of the fields should be preferable to all others.

**History:** Laws 1851-1852, p. 189, § 2; C.L. 1865, ch. 1, § 2; C.L. 1884, § 1; C.L. 1897, § 1; Code 1915, § 5734; C.S. 1929, § 151-404; 1941 Comp., § 77-1404; 1953 Comp., § 75-14-4.

**Cross-references.** - As to penalty for obstructing use of water, see 72-8-3 NMSA 1978.

**City may not condemn community acequia for use as street.** - City may not condemn community acequia in actual use for conducting water for irrigation of lands, for use as a street or for widening a street. *City of Albuquerque v. Garcia*, 17 N.M. 445, 130 P. 118 (1913).

**Equitable relief not always warranted.** - Unlawful diversion of water from community acequia or naked trespass unaccompanied with great or irreparable damage or mischief will not warrant equitable relief. *La Mesa Community Ditch v. Appelzoeller*, 19 N.M. 75, 140 P. 1051 (1914).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 25 Am. Jur. 2d Drains and Drainage Districts § 37.

28 C.J.S. Drains §§ 52, 54.

### **73-2-5. [Ditch over land of another; easement by continuous use; right of servient estate owner.]**

Hereafter in all cases where there has been a continuous use of a ditch for the purposes of irrigation, for five years, it shall be conclusively presumed as between the parties, that a grant has been made by the owners of the land, upon which such ditch is located, for the use of the same; provided, that nothing herein contained shall be construed to prevent the owner of a servient estate from making any alterations, or changes in the location, of any ditch upon his land, so long as such alteration or change of location shall not interfere with the use of such ditch by the owner, or owners, of the dominant estate or estates.

**History:** Laws 1933, ch. 65, § 1; 1941, ch. 155, § 1; 1941 Comp., § 77-1405; 1953 Comp., § 75-14-5.

**Effective dates.** - Laws 1933, ch. 65, contains no effective date provision, but was enacted at a session which adjourned on March 11, 1933. See N.M. Const., art. IV, § 23.

**Dominant owner entitled to use land water flows over.** - Dominant owner is not entitled only to beneficial use of the water; this section plainly defines the right acquired

as a grant by the dominant owner to use the land over which the right is claimed. Archibeck v. Mongiello, 58 N.M. 749, 276 P.2d 736 (1954).

**Alterations of dominant owner must alter subject of easement.** - Alterations that dominant estate owner may make to meet changed conditions of surrounding property must be alterations of the subject of the easement itself, for it is the changed condition of the surrounding property which has diminished enjoyment of the easement, and it is alteration of that easement which can render easement effectual. Posey v. Dove, 57 N.M. 200, 257 P.2d 541 (1953).

**And may not burden servient tenement nor change character of servitude.** - As the right to the ditch or other artificial watercourse is an easement, no change can be made against landowner over whose land the ditch passes that is burdensome to the servient tenement or that changes the character of the servitude; even if enlargement or change would benefit servient estate, the owner thereof has a right to be his own judge of whether he will permit it. Posey v. Dove, 57 N.M. 200, 257 P.2d 541 (1953).

**Section is not applicable to ditches used solely for drainage purposes.** Archuleta v. Jacquez, 103 N.M. 254, 704 P.2d 1130 (Ct. App. 1985).

**Proviso does not control prior easement.** - The 1941 amendment to this section, which added the proviso, was not controlling where easement was established prior to its enactment. Archibeck v. Mongiello, 58 N.M. 749, 276 P.2d 736 (1954).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 25 Am. Jur. 2d Drains and Drainage Districts §§ 34, 35; 45 Am. Jur. 2d Irrigation §§ 77, 78, 101.

Character of easement in respect of water as one in gross or appurtenant, 89 A.L.R. 1187.

Agreement in respect of water rights in stream as creating a mere personal obligation, covenant running with the land or an easement, 127 A.L.R. 835.

Assignability and divisibility of easement in gross or license in respect of land or water, 130 A.L.R. 1253.

Rights and duties of owners inter se with respect to upkeep and repair of water easement, 169 A.L.R. 1147.

28 C.J.S. Drains § 40; 94 C.J.S. Waters §§ 349, 350.

### **73-2-6. [Disturbing course of ancient acequia prohibited.]**

The course of ditches or acequias established prior to July 20, 1851, shall not be disturbed.



**History:** Laws 1851-1852, p. 189, § 8; C.L. 1865, ch. 1, § 8; C.L. 1884, § 5; C.L. 1897, § 5; Code 1915, § 5732; C.S. 1929, § 151-402; 1941 Comp., § 77-1406; 1953 Comp., § 75-14-6.

**Intent of section.** - Section was enacted primarily for protection of ditches from outside trespassers, it was intended as a guarantee against destruction or disturbance of ditches then in existence. *Candelaria v. Vallejos*, 13 N.M. 146, 81 P. 589 (1905).

**Section prohibits changing course or combining ditches.** - Commissioners (see 73-2-12 NMSA 1978) have no power to change the course of a ditch, or combine two, if the ditches were established prior to 1851. 1929-30 Op. Att'y Gen. 261. But see 73-2-56 NMSA 1978.

**Section has no application to ditches constructed after its enactment.** *Candelaria v. Vallejos*, 13 N.M. 146, 81 P. 589 (1905).

**Law reviews.** - For article, "Water Rights Problems in the Upper Rio Grande Watershed and Adjoining Areas," see 11 Nat. Resources J. 48 (1971).

### **73-2-7. [Ownership of ditches; use of water; payment.]**

All acequias, public or private, when completed, shall be the property of the persons who may have completed such acequias or ditches, and no person or persons who may desire to use the waters of such acequias or ditches shall be allowed so to do without the consent of a majority of the owners of such acequias or ditches, and upon payment of a share proportionate to the primary cost of such acequia or ditch to the amount of the land proposed to be irrigated, or the quantity of water proposed to be used: provided, that the provisions of this section shall not apply to any acequias or ditches, public or private, that may pass from the limits of any one county to within the lines of any other county.

**History:** Laws 1882, ch. 30, § 1; C.L. 1884, § 15; C.L. 1897, § 21; Code 1915, § 5733; C.S. 1929, § 151-403; 1941 Comp., § 77-1407; 1953 Comp., § 75-14-7.

**Section recognizes only two methods of acquiring right in ditch:** first, by initial joinder of landowners in construction of the ditch and contributing cash or labor, or both; and second, by consent of owners of said ditch and payment for carrier space in the ditch. *Holmberg v. Bradford*, 56 N.M. 401, 244 P.2d 785 (1952).

**Second method required where landowner has additional acreage to irrigate.** - New landowner or one who has additional acreage that could be irrigated from community ditch has no right to additional interest in the ditch until he has secured consent of majority of the owners of said ditch and has arranged to pay for additional carrier space in the ditch. *Holmberg v. Bradford*, 56 N.M. 401, 244 P.2d 785 (1952).

**Ownership of ditch and water separate rights.** - Rights of ownership of the ditch are rights separate and apart from rights of ownership of water that the ditch conveys. *Holmberg v. Bradford*, 56 N.M. 401, 244 P.2d 785 (1952).

**Owners may not hold rights to surplus waters.** - If ditch carried double the amount of water claimed by original appropriators, or which they intended to use, such surplus waters could not be divided into water rights and parceled out to members, to be held by them for sale or speculation. *State ex rel. Community Ditches v. Tularosa Community Ditch*, 19 N.M. 352, 143 P. 207 (1914).

**Owner of community ditch has in effect an easement** for purpose of transporting water. *Holmberg v. Bradford*, 56 N.M. 401, 244 P.2d 785 (1952).

**Courts cannot readjust shares in interest in community ditch corporation** in proportion to water rights of the landowners using the ditch, or in proportion to number of acres irrigated by each, as that would in effect destroy vested property rights and create new property rights. *Holmberg v. Bradford*, 56 N.M. 401, 244 P.2d 785 (1952).

**Property rights recognized by section secure.** - While this section and 73-2-14 NMSA 1978 contain some language which might appear conflicting, the latter section merely provides two alternative methods of voting, and does not destroy any property rights which this section recognized. *Holmberg v. Bradford*, 56 N.M. 401, 244 P.2d 785 (1952).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 25 Am. Jur. 2d Drains and Drainage Districts § 536; 45 Am. Jur. 2d Irrigation §§ 52, 55.

28 C.J.S. Drains §§ 49, 54; 93 C.J.S. Waters §§ 1, 129.

### **73-2-8. [Control and management of ditches crossing county line.]**

Where any acequia or ditch, public or private, passes from within the limits of any one county, to within the lines of any other county, such acequias or ditches within the proper precincts of their respective counties shall be under the exclusive control and management of the officers of such precincts and counties.

**History:** Laws 1882, ch. 30, § 2; C.L. 1884, § 16; C.L. 1897, § 22; Code 1915, § 5752; C.S. 1929, § 151-422; 1941 Comp., § 77-1408; 1953 Comp., § 75-14-8.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 77 Am. Jur. 2d Venue § 18.

28 C.J.S. Drains § 7.

### **73-2-9. [Public ditches or acequias; declaration.]**

All rivers and streams of water in this state, known prior to January 7, 1852, as public ditches or acequias, are established and declared to be public ditches or acequias.

**History:** Laws 1851-1852, p. 277, § 1; C.L. 1865, ch. 1, § 9; C.L. 1884, § 6; C.L. 1897, § 6; Code 1915, § 5731; C.S. 1929, § 151-401; 1941 Comp., § 77-1409; 1953 Comp., § 75-14-9.

**Cross-references.** - For provision that natural waters are public waters, see 72-1-1 NMSA 1978.

**Section has no application to stream like the Rio Grande,** but refers to ditches or natural watercourses used as acequias that have become subjected to ownership, and upon which labor is expended for appropriation and irrigation. *Albuquerque Land & Irrigation Co. v. Gutierrez*, 10 N.M. 177, 61 P. 357 (1900), *aff'd*, 188 U.S. 545, 23 S. Ct. 338, 47 L. Ed. 588 (1903).

**State legislation may not destroy United States' riparian rights.** - See same catchline in notes to 73-2-1 NMSA 1978.

**Community acequias are public acequias** within the meaning of this section. State ex rel. *Black v. Aztec Ditch Co.*, 25 N.M. 590, 185 P. 549 (1919).

**And community bylaw cannot contravene section.** - Members of a community ditch system cannot adopt a bylaw in contravention of statute. State ex rel. *Black v. Aztec Ditch Co.*, 25 N.M. 590, 185 P. 549 (1919).

**Law reviews.** - For article, "Water Rights Problems in the Upper Rio Grande Watershed and Adjoining Areas," see 11 *Nat. Resources J.* 48 (1971).

### **73-2-10. [Plants on banks of public ditches; ownership.]**

All plants of any description growing on the banks of said ditches, or acequias, shall belong to the owners of the land through which said ditches or acequias run.

**History:** Laws 1851-1852, p. 277, § 16; C.L. 1865, ch. 1, § 24; C.L. 1884, § 11; C.L. 1897, § 17; Code 1915, § 5745; C.S. 1929, § 151-415; 1941 Comp., § 77-1410; 1953 Comp., § 75-14-10.

**Acequia as boundary.** - Description in a written instrument calling for acequia as a boundary carries title to the center of the acequia. *Tagliaferri v. Grande*, 16 N.M. 486, 120 P. 730 (1911).

### **73-2-11. [Community ditches constituted bodies corporate; entire ditch considered one; separate ditches.]**

All community ditches or acequias shall for the purposes of this article be considered as corporations or bodies corporate, with power to sue or to be sued as such. And every one of said community ditches beginning at the dam or entrance of the water, in continued course to the end of the same, shall be considered as one ditch or acequia only, to be superintended by three commissioners and one mayordomo as now provided by law, except that where two community ditches or more take water from a common ditch or head, they shall be and remain separate and under separate management.

**History:** Laws 1895, ch. 1, § 1; C.L. 1897, § 8; Laws 1903, ch. 98, § 1; Code 1915, § 5744; C.S. 1929, § 151-414; 1941 Comp., § 77-1411; 1953 Comp., § 75-14-11.

**Cross-references.** - For meaning of "community ditch," see 73-2-27 NMSA 1978.

For status of community ditch associations as political subdivisions of state, see 73-2-28 NMSA 1978.

As to apportionment of water where two ditches obtain water from same source, see 73-2-47 NMSA 1978.

**Meaning of "this article".** - The term "this article" refers to 73-2-1 to 73-2-4, 73-2-6 to 73-2-12, 73-2-14, 73-2-16 to 73-2-21, 73-2-25, 73-2-27, 73-2-30 to 73-2-55 and 73-2-63 NMSA 1978.

**Community ditches are domestic corporations.** - Community ditches or acequias are as much domestic corporations as are drainage districts organized under the provisions of 73-6-1 NMSA 1978 et seq. In re Dexter-Greenfield Drainage Dist., 21 N.M. 286, 154 P. 382 (1915).

**And political subdivisions.** - Acequia is a form of public corporation and qualifies as a political subdivision of the state. 1964 Op. Att'y Gen. No. 64-95.

**With powers expressly delegated or necessarily implied.** - Like all other political subdivisions, an acequia is competent to exercise whatever powers the legislature has delegated to it, expressly, or by necessary implication. 1964 Op. Att'y Gen. No. 64-95.

**Ditch corporations are involuntary public quasi-corporations,** with no powers except those expressly conferred by statute or such as are impliedly necessary to the performance of those statutory powers. Candelaria v. Vallejos, 13 N.M. 146, 81 P. 589 (1905).

Community ditches belong to a class of corporations known as public involuntary quasi corporations that exist under general laws of the state, which apportion its territory into local subdivisions for the purpose of civil and governmental administration, and impose on the people residing in said several subdivisions precise and limited public duties and

clothe them with restricted corporate functions, coextensive with the duties devolved upon them. 1963-64 Op. Att'y Gen. No. 63-112.

**Community ditch corporations exist for administrative purposes only** and have the power to tax the holders of water rights for services and improvements. 1963-64 Op. Att'y Gen. No. 63-112.

**Words "for the purposes of this act [article]" are words of limitation**, and such corporations so created have and possess no powers not thereby either expressly or impliedly granted them. *Snow v. Abalos*, 18 N.M. 681, 140 P. 1044 (1914).

**Acequia has no power to acquire or hold title to water rights.** *Snow v. Abalos*, 18 N.M. 681, 140 P. 1044 (1914).

**Nor to litigate them in lieu of individual owner.** - Section for administrative convenience gave legal status to community ditches in order to facilitate distribution of waters and maintenance of ditches and laterals. It did not attempt to interfere with rights theretofore owned by the individual, and the individual is a proper and necessary party in an action for adjudication of water rights, where such rights are exercised through a community ditch. *Snow v. Abalos*, 18 N.M. 681, 140 P. 1044 (1914).

**And thereby bind owner to judgment.** - While a community acequia does not own water rights of individual consumers, where community acequia enjoins another such acequia from diverting water, such judgment is not subject to attack, although erroneous, but individual consumers under the acequia, not parties to the suit, are not bound by the injunction. *Acequia Del Llano v. Acequia De Las Joyas Del Llano Frio*, 25 N.M. 134, 179 P. 235 (1919).

**But community may represent members in other common-interest situations.** - Community ditch may represent its members before court where parties represented have common interest with community body, interests of body are not antagonistic to those of members and no issue is raised as to respective water rights of individual users. *La Luz Community Ditch Co. v. Town of Alamogordo*, 34 N.M. 127, 279 P. 72 (1929).

**Community acequia has right to condemn right-of-way** for a ditch. *City of Albuquerque v. Garcia*, 17 N.M. 445, 130 P. 118 (1913).

**And to borrow funds.** - Borrowing of funds by community ditch to improve, rehabilitate or extend its facilities for irrigation is necessarily implied from powers granted to it. 1964 Op. Att'y Gen. No. 64-95 (opinion rendered prior to adoption of 73-2-22 NMSA 1978).

Since an acequia is a political subdivision of the state, 72-14-29 NMSA 1978 expressly approves lending of funds to it provided that the acequia conforms in all necessary respects with the statutory scheme governing it and that the purpose of the loan is one permitted by 72-14-29 NMSA 1978. 1964 Op. Att'y Gen. No. 64-95.

**But not to change course of ditch.** - Section does not confer upon officer or majority interested in ditches thereby incorporated, any powers as to changing ancient course of the same against consent of owners to be injuriously affected by such change. *Candelaria v. Vallejos*, 13 N.M. 146, 81 P. 589 (1905) But see 73-2-56 NMSA 1978.

**There can be but one community corporation for each acequia**, which may sue or be sued only when officers are elected according to law. *State ex rel. Community Ditches v. Tularosa Community Ditch*, 19 N.M. 352, 143 P. 207 (1914).

**Situation where ditch held as tenancy in common.** - Where a community ditch at the lower end of another ditch has either by contract or condemnation enlarged the upper ditch, ownership along the line of the common ditch must be that of tenancy in common, which would entitle the lower ditch to work, repair and maintain the common ditch to same extent as the owners of the upper ditch. *Halford Ditch Co. v. Independent Ditch Co.*, 22 N.M. 169, 159 P. 860 (1916).

**Description in a written instrument calling for acequia as boundary** carries title, in absence of words importing a different intention, to the center of the acequia. *Tagliaferri v. Grande*, 16 N.M. 486, 120 P. 730 (1911).

**Law reviews.** - For article, "Water Rights Problems in the Upper Rio Grande Watershed and Adjoining Areas," see 11 *Nat. Resources J.* 48 (1971).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 94 C.J.S. *Waters* § 339.

## **73-2-12. Officers, election, bonds and vacancies in certain counties.**

The officers of such community ditches or acequias shall consist of three commissioners and one mayordomo or superintendent, each of whom shall be the owner of an interest in the ditch or the water therein. The officers shall be elected biennially on the first Monday of December of the odd numbered years and shall assume the duties of their office not later than the first Monday of the following January. On or before the first Monday of January, the commissioners shall organize by election of one of their number as chairman, another as secretary and another as treasurer. The treasurer shall be required to give a bond to the state in a sum to be fixed by the commissioners. The mayordomo shall also be required to give a bond to the state in a sum to be fixed by the commissioners. The condition of the bonds [is] to be for the accounting of all money coming into their hands by virtue of their offices and for the faithful performance of their respective duties. In the event of a vacancy in the office of mayordomo, the commissioners shall have power to appoint a mayordomo or superintendent to hold office until his successor is elected and qualified.

**History:** Laws 1895, ch. 1, § 2; C.L. 1897, § 9; Code 1915, § 5746; C.S. 1929, § 151-416; 1941 Comp., § 77-1412; 1953 Comp., § 75-14-12; Laws 1987, ch. 64, § 1.

**Cross-references.** - For special provisions governing acequias in certain counties, see 73-3-1 to 73-3-11 NMSA 1978.

**The 1987 amendment,** effective June 19, 1987, added the present catchline; divided the former first sentence into two sentences; in the present second sentence, substituted "biennially" for "annually" and inserted "of the odd numbered years" following "December"; deleted "as herein before provided" from the end of the last sentence; and made minor stylistic changes.

**Officers not elected according to law not de jure.** - Officers of community ditches or acequias become such only by strict compliance by members of the community with the law which provides for election of such officers. If pretended officers are elected in a way or manner not authorized by law, such officers do not become de jure officers of the statutory corporation. State ex rel. Community Ditches v. Tularosa Community Ditch, 19 N.M. 352, 143 P. 207 (1914).

**Mayordomo officer of political subdivision for social security purposes.** - Mayordomo of a community ditch association is considered an officer of a political subdivision of the state for social security coverage purposes. 1970 Op. Att'y Gen. No. 70-46.

**Mayordomo's official capacity should not be questioned for lack of bond.** 1915-16 Op. Att'y Gen. 359.

### **73-2-13. [Vacancies in office of commissioner.]**

In case a vacancy shall occur among the commissioners of any community ditch or acequia, by death, resignation or otherwise, the remaining commissioners or commissioner shall fill such vacancy by appointment, and those appointed shall hold their offices until their successors are regularly elected and qualified.

**History:** Laws 1919, ch. 116, § 1; C.S. 1929, § 151-502; 1941 Comp., § 77-1413; 1953 Comp., § 75-14-13.

**Cross-references.** - For vacancies in certain counties, see 73-3-1 NMSA 1978.

### **73-2-14. Ditch elections; votes.**

The election for acequia or community ditch officers under this article shall be held by the outgoing commissioners under rules and regulations to be prescribed by them. Only those having water rights in the acequia or ditch and who are not delinquent in the payment of their assessments, and fail to [sic] proffer such delinquent assessment at the time they offer to vote, shall be allowed to vote; but votes may be cast by written proxy and shall be in proportion to the interest of the voter in the ditch or water, or in proportion to the number or amount of his water rights.

**History:** Laws 1895, ch. 1, § 3; C.L. 1897, § 10; Code 1915, § 5753; Laws 1921, ch. 129, § 1; C.S. 1929, § 151-423; 1941 Comp., § 77-1414; 1953 Comp., § 75-14-14.

**Cross-references.** - For elections in certain counties, see 73-3-3 NMSA 1978.

**Compiler's note.** - The 1915 Code compilers omitted a proviso which read: "Provided, That the owners of any community ditch, which is not now under the direction of commissioners, shall select persons (not more than three) to hold the first election under the provisions hereof."

The bracketed word "[sic]" was inserted following "and fail to" because the sentence as it reads seems to allow those who "fail to proffer" their assessments to vote.

**Meaning of "this article".** - See same catchline in notes to 73-2-11 NMSA 1978.

**Voting power proportional to voter's interest.** - In election of acequia commissioners, voting power is in proportion to voter's interest. 1915-16 Op. Att'y Gen. 323.

**Interest is amount of water owned and used.** - Each water user shall vote at these elections in proportion to amount of water he owns and which he has used during the preceding year. If he owns more water than he used upon his land, he is restricted in his voting to water rights actually used by him. 1921-22 Op. Att'y Gen. 105.

**Amount of work done has nothing to do with the right to vote,** which is determined by writ of measurement by which interests are established. 1921-22 Op. Att'y Gen. 105.

**Domestic use might not be considered.** - Domestic use is so small, when compared to the other use to which water is applied by appropriator, that legislature possibly did not take such use into consideration in regulating right to vote. State ex rel. Community Ditches v. Tularosa Community Ditch, 19 N.M. 352, 143 P. 207 (1914).

**Section does not destroy recognized property rights.** - This section merely provides two alternative methods of voting; it does not destroy any property rights which 73-2-7 NMSA 1978 recognizes. Holmberg v. Bradford, 56 N.M. 401, 244 P.2d 785 (1952).

**Corporation nonentity where election provisions not followed.** - Where pretended community corporation was not the community corporation created by statute and authorized to administer the affairs of the community acequia by reason of noncompliance with statutory provisions for election of officers, such pretended corporation was a nonentity, without interest in suit to oust another from control of acequia. State ex rel. Community Ditches v. Tularosa Community Ditch, 19 N.M. 352, 143 P. 207 (1914).

**73-2-15. [Failure to hold election; calling of special election.]**



In case no election shall be held of commissioners of any community ditch or acequia on the first Monday of December as provided by law, the commissioners holding office during the preceding year shall call and hold an election as soon as practicable thereafter, and give at least five days notice thereof by posting not less than six notices on the line of said ditch or acequia, stating the place and time of the election; said election to be conducted in the manner provided for the regular annual elections, and under existing provisions of law relative to such elections and the votes thereat. In case the commissioners shall refuse or neglect to call and hold said elections within a reasonable time, any three or more of those entitled to vote thereat may call such election and hold the same in the manner and under the provisions aforesaid, and the three persons receiving the highest number of votes at such election shall be the commissioners of the said ditch or acequia until their successors are regularly elected and qualified.

**History:** Laws 1919, ch. 116, § 2; C.S. 1929, § 151-503; 1941 Comp., § 77-1415; 1953 Comp., § 75-14-15.

**Cross-references.** - As to publication in lieu of posting, see 14-11-12 NMSA 1978.

### **73-2-16. [Mayordomo; disqualifications.]**

It shall be prohibited to elect or appoint as mayordomo of acequias or public road supervisor all persons of ill-health, of a notable malady, or who are demented or of unsound mind or who are lame either in one leg or both or one arm or both, and furthermore all persons who are exempted by law from paying road taxes.

**History:** Laws 1891, ch. 90, § 1; C.L. 1897, § 50; Code 1915, § 5747; C.S. 1929, § 151-417; 1941 Comp., § 77-1416; 1953 Comp., § 75-14-16.

**Public road supervisor.** - The office of road supervisor was abolished by Laws 1912, ch. 54, § 9, and the latest law levying a road tax was repealed by Laws 1927, ch. 44, § 1. The present position of road supervisor, provided for in 67-4-5 NMSA 1978, was created by Laws 1921, ch. 135, § 3.

### **73-2-17. [Appointment of disqualified persons void.]**

All appointments made in conflict with the preceding section [73-2-16 NMSA 1978] are hereby declared void and of no effect.

**History:** Laws 1891, ch. 90, § 2; C.L. 1897, § 51; Code 1915, § 5748; C.S. 1929, § 151-418; 1941 Comp., § 77-1417; 1953 Comp., § 75-14-17.

### **73-2-18. [Pay of mayordomo; determination.]**

The pay and other perquisites of the mayordomos shall be determined by a majority of the owners of the land irrigated by said ditch or acequia.

**History:** Laws 1851-1852, p. 277, § 4; C.L. 1865, ch. 1, § 12; C.L. 1884, § 29; C.L. 1897, § 31; Code 1915, § 5749; C.S. 1929, § 151-419; 1941 Comp., § 77-1418; 1953 Comp., § 75-14-18.

**Cross-references.** - For compensation of mayordomo in certain counties, see 73-3-2 NMSA 1978.

**Compiler's note.** - The word "mayordomos" was substituted for "overseers" in the Compiled Laws of 1897 to conform to 73-2-12 NMSA 1978, providing for election of commissioners and a mayordomo.

### **73-2-19. [Mayordomo may not lease land irrigated by ditch.]**

It shall be unlawful for any mayordomo or mayordomos of acequias, to take on shares, care for, or rent or lease any lands, lots or alfalfa fields under irrigation within the ditches for which they are mayordomos, during the time that they are said mayordomos, besides those lands actually belonging to them as their own property or that of their wives.

**History:** Laws 1899, ch. 73, § 1; Code 1915, § 5750; C.S. 1929, § 151-420; 1941 Comp., § 77-1419; 1953 Comp., § 75-14-19.

### **73-2-20. [Mayordomo leasing lands; penalty.]**

Any violation of the preceding section [73-2-19 NMSA 1978] shall be considered a misdemeanor, and be punishable upon conviction by imprisonment in the county jail for not less than thirty days nor more than six months, or by a fine of not less than \$25.00 nor more than \$100 or both, at the discretion of the court.

**History:** Laws 1899, ch. 73, § 2; Code 1915, § 5751; C.S. 1929, § 151-421; 1941 Comp., § 77-1420; 1953 Comp., § 75-14-20.

### **73-2-21. Commissioners' powers and duties; mayordomo's duties.**

The commissioners shall assess fatigue work or tasks of all parties owning water rights in said community ditches or acequias, and shall have power to contract and be contracted with and also to make all necessary assessments to provide funds for the payment of the salary of the mayordomo and other legitimate expenses incident to the proper conduct and maintenance of the acequias under their charge, and also to make contracts for obtaining water for irrigation purposes in connection with their ditches, such contracts to be ratified by a vote of a majority of the owners of water rights in said ditches, and shall have general charge and control of all affairs pertaining to the same, together with the power to receive money in lieu of said fatigue or task work at a price to be fixed by them, and shall, immediately upon taking office, provide bylaws, rules and regulations not in conflict with the laws of the state for the government of said ditch or acequia, and a printed copy thereof shall be furnished to each owner of a water right in

said ditch. The mayordomo or superintendent shall, under the direction of said commissioners, be the executive officer of said ditch, and have the superintendence of all work thereon and the distribution of the waters thereof, with the collection of fines, if any, and of amounts to be paid in lieu of fatigue or task work, and shall perform such other duties in connection with said ditch as may be prescribed by the rules and regulations of the same, or as may be directed by the commissioners; said mayordomo shall make full written reports of all money received, expended and how expended, and of all his doings as such officer, to the commissioners of said ditch, semiannually, on the first Monday in June and the last Monday of September; provided, further, that the mayordomo shall make such further reports as may be required by said ditch commissioners. The treasurer of said ditch commissioners shall make such reports to the ditch commissioners of the money received, expended and how expended, and kept in his custody of [as] such treasurer, and of all his doings as such officer as are herein required of the mayordomo. The commissioners shall receive and pass upon the reports of the mayordomo and the treasurer herein provided for before their term of office expires, and if the same are found to be true and correct, they shall approve them, otherwise they shall reject them, respectively. All proceedings of the commissioners relating to all subjects whatsoever shall be reduced to writing in a book or books kept for that purpose, and all books and papers so kept by said commissioners and all reports made, filed or kept as herein required shall always be and remain public property, and shall be subject to the inspection of all persons therein concerned.

**History:** Laws 1895, ch. 1, § 4; 1897, ch. 44, § 1; C.L. 1897, § 11; Laws 1903, ch. 44, § 1; Code 1915, § 5754; C.S. 1929, § 151-424; 1941 Comp., § 77-1421; Laws 1945, ch. 47, § 1; 1953 Comp., § 75-14-21; Laws 1977, ch. 247, § 198; 1981, ch. 337, § 1.

**Cross-references.** - For penalties against delinquent owners, see 73-2-25 NMSA 1978.

As to commissioners' duties in connection with apportionment of waters supplying two or more ditches, see 73-2-47 to 73-2-51 NMSA 1978.

For duties of ditch officers in certain counties, see 73-3-4 NMSA 1978.

As to creation, duties and general powers of secretary of finance and administration, see 9-6-4 and 9-6-5 NMSA 1978.

**The 1977 amendment** rewrote the catchline, which formerly read "Commissioners; powers and duties; expenses; contracts; fatigue work; rules and regulations; duties of mayordomo," and substituted "secretary of finance and administration" for "state comptroller" near the end of the last sentence.

**The 1981 amendment** deleted the former second paragraph which read "The books, records and accounts of both the mayordomo and commissioners shall be audited by an auditor approved by the secretary of finance and administration at least once each year" and, in the third sentence in the remaining language, substituted "money" for "moneys" and "of" for "as" following "custody."

**Effective dates.** - Laws 1981, ch. 337, contains no effective date provision, but was enacted at the session which adjourned on March 21, 1981. See N.M. Const., art. IV, § 23.

**Ditch corporations are involuntary public quasi-corporations.** - See same catchline in notes to 73-2-11 NMSA 1978.

**Legal expenses of controversy between commissioners proper expense.** - Expense incurred, consisting of attorney's fees and costs in controversy between certain commissioners of a community ditch corporation, is a proper expense to be paid by water users in proportion to their interests in the ditch. State ex rel. Sanchez v. Casados, 27 N.M. 555, 202 P. 987 (1921).

**Likewise proper to make assessment to repay certain loan.** - This section and 73-2-56 NMSA 1978, taken together, entitle commissioners to make an assessment for repayment of a loan directed to the change of location, expansion or reconstruction of a community ditch. 1964 Op. Att'y Gen. No. 64-95 (opinion rendered before enactment of 73-2-22 NMSA 1978).

**Bylaw allocating repair payments invalid.** - Bylaw of a ditch company which provides that those farther from the inlet contribute a greater portion for repairs than those nearer the inlet is invalid. State ex rel. Black v. Aztec Ditch Co., 25 N.M. 590, 185 P. 549 (1919).

**Commissioners possess power to make new regulations without consulting the voters** who have elected them. 1915-16 Op. Att'y Gen. 323.

**Standard for water distribution is beneficial use.** - Mayordomo must distribute acequia water according to beneficial use by ditch owners. Acreage of land with water rights is controlling factor in apportioning water to members of acequia association, but other matters may also be considered. 1974 Op. Att'y Gen. No. 74-23.

### **73-2-22. [Acequia and community ditch associations; borrowing money; contracting indebtedness; security for payment.]**

All acequia and community ditch associations are authorized to borrow money and otherwise contract indebtedness for the purposes of the district and, without limitation of the generality of the foregoing, to borrow money and accept grants from the United States, or from any corporation or agency created or designated by the United States, and, in connection with any such loan or grant, to enter into agreements as the United States or such corporation or agency may require, and to issue its notes or obligations therefor, and to secure the payment thereof by mortgage, pledge or deed of trust covering any of its property, assets, rights, privileges, licenses, rights-of-way, easements, revenues, income and assessments.

**History:** 1953 Comp., § 75-14-21.1, enacted by Laws 1965, ch. 183, § 1.

**Appropriations.** - Laws 1984, ch. 87, § 1, appropriates \$500,000 from the irrigation works construction fund to the state engineer for expenditure in the seventy-third and seventy-fourth fiscal years for the purpose of making grants to community ditch associations to assist in covering the cost of projects for the reconstruction and rehabilitation of acequias and provides that any unexpended or unencumbered balance remaining at the end of the seventy-fourth fiscal year shall revert to the irrigation works construction fund.

**Borrowing power necessarily implied.** - Borrowing of funds by a community ditch to improve, rehabilitate or extend its facilities for irrigation is necessarily implied from the powers granted to it. 1964 Op. Att'y Gen. No. 64-95 (opinion rendered before enactment of this section).

**Law reviews.** - For article, "New Mexico Water Law: An Overview and Discussion of Current Issues," see 22 Nat. Resources J. 1045 (1982).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 53 Am. Jur. 2d Mechanics' Liens §§ 59, 91.

28 C.J.S. Drains §§ 15, 55; 94 C.J.S. Waters § 339.

### **73-2-22.1. Acequia and community ditch associations; additional powers; water rights acquisition; nonforfeiture.**

A. Any acequia or community ditch association has the power to acquire and hold property and water rights and transfer and use the property and water rights so acquired pursuant to law.

B. The rights of an acequia or community ditch association to the waters of the acequia or association or their use or the lands and property owned by the acequia or association shall not be lost by the acequia or community ditch association by prescription or adverse possession or for nonuse of waters except as provided in Section 72-5-28 NMSA 1978.

**History:** 1978 Comp., § 73-2-22.1, enacted by Laws 1987, ch. 352, § 1.

**Effective dates.** - Laws 1987, ch. 352 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 19, 1987.

### **73-2-23. [Reimbursement of commissioner's expenses.]**

The commissioner of each acequia shall be entitled to actual expenses incurred while in the performance of their [his] duties. Provided that the maximum rates which may be allowed for travel by privately owned conveyances shall be eight (8) cents per mile and provided further that if more than one commissioner shall travel in the same privately owned conveyances such mileage shall be charged but once.

**History:** 1941 Comp., § 77-1421a, enacted by Laws 1945, ch. 46, § 1; 1953 Comp., § 75-14-22.

### **73-2-24. [Maximum charge in lieu of fatigue work; excepted counties.]**

That hereafter in this state the commissioners of community ditches when receiving money in lieu of fatigue work or tasks, shall not fix the price of such work or task at a greater rate than one dollar and fifty cents (\$1.50) per day, for one person's labor, nor at a greater rate than three dollars (\$3.00) per wagon, scraper or plow with team of horses and man per day, when that sort of work is called for. This act [this section] shall not apply to the counties of San Miguel, Torrance, Lincoln, Otero, Taos, Rio Arriba and Quay.

**History:** Laws 1921, ch. 111, § 1; C.S. 1929, § 151-464; 1941 Comp., § 77-1422; 1953 Comp., § 75-14-23.

**Emergency clauses.** - Laws 1921, ch. 111, § 3, makes the act effective immediately. Approved March 11, 1921.

**Meaning of "this act [this section]".** - Laws 1921, ch. 111, contains only three sections: Section 1 is the substantive provision (this section), Section 2 repeals all conflicting provisions and Section 3 declares an emergency.

### **73-2-25. Persons delinquent not to use water; penalty.**

No person who has, after due notice, failed or refused to do his work, or pay the amount assessed against him in lieu of the work upon the acequia or ditch, shall be allowed to take or use any water from the same or any contra acequia or lateral thereof, while default on the payment of failure to do work continues. Any person who continues to take or use any water after having been given notice of failure or refusal to do his work, or pay the amount assessed against him in lieu of the work shall pay a civil penalty for the benefit of the ditch or acequia of not less than one hundred dollars (\$100) nor more than two hundred dollars (\$200). The penalty may be recovered in an action by the ditch officials before the magistrate court in the county where the ditch is located.

**History:** Laws 1895, ch. 1, § 5; C.L. 1897, § 12; Code 1915, § 5755; C.S. 1929, § 151-425; 1941 Comp., § 77-1423; 1953 Comp., § 75-14-24; Laws 1977, ch. 184, § 1.

**Cross-references.** - As to penalty for failure to furnish laborers required by mayordomo, see 73-2-31 NMSA 1978.

For disposition of fines and forfeitures, see 73-2-32 NMSA 1978.

For provisions governing certain counties, see 73-3-5 and 73-3-6 NMSA 1978.

**The 1977 amendment** substituted the present catchline for "Default in work or payments - Use of water denied," added the last two sentences and made minor changes in phraseology in the first sentence.

**Generally as to remedy provided by section.** - No remedy is provided for collection of assessments levied by acequia commissioners except the deprivation of delinquent party of the right to the use of water until payment is made. If party, after default and notice to quit takes and uses water, he is guilty of a misdemeanor. *La Mesa Community Ditch v. Appelzoeller*, 19 N.M. 75, 140 P. 1051 (1914)(decided before 1977 amendment of this section and the enactment of 73-2-26 NMSA 1978).

Community officers are necessarily confined to remedy given. *La Acequia de San Rafael del Guique v. Lopez*, 72 N.M. 349, 383 P.2d 826 (1963)(decided before 1977 amendment).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 28 C.J.S. Drains § 65.

### **73-2-26. Actions for collection of assessments.**

Whenever any person, after due notice, has failed to do his work or has failed to pay any amount assessed against him on any acequia or ditch, the mayordomo or superintendent of the acequia or ditch may bring a civil action for collection of the amount assessed. The magistrate courts and the district courts have concurrent jurisdiction in these actions and the actions may be brought in either forum at the election of the ditch officials. If the ditch officials engage the services of an attorney to assist in the collection of the assessments, the court shall charge the offending party with a reasonable amount for attorney fees incurred in the collection, if the ditch officials prevail in the action. Any person who continues to take or use water from the acequia or ditch without paying the assessments and attorney fees as set by a judgment under this section shall pay a civil penalty for the benefit of the ditch or acequia of not more than two hundred dollars (\$200). The penalty may be recovered in an action by the ditch officials before the court in the county where the acequia or ditch is located.

**History:** 1953 Comp., § 75-14-24.1, enacted by Laws 1963, ch. 29, § 1; 1977, ch. 184, § 2.

**The 1977 amendment** deleted "in the state" preceding "the mayordomo" and deleted "in the courts of this state" following "civil action" in the first sentence, substituted the present second sentence for the former second sentence which read: "Justices of the peace have jurisdiction in these actions whenever the amount claimed is two hundred dollars (\$200) or less, exclusive of interest and costs" and added the last three sentences.

**No action for assessment made under former law.** - An action cannot be maintained under this section for assessments made prior to its enactment. Any assessment due

prior to that time will have to be collected by refusing the use of water to the delinquent user (see 73-2-25 NMSA 1978). 1967 Op. Att'y Gen. No. 67-47.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 28 C.J.S. Drains §§ 81 to 85.

### **73-2-27. [Ditches to which applicable.]**

The provisions of these sections shall apply only to such ditches as have been heretofore and are now known and regarded as community ditches, under the laws of this state; and under the provisions of said sections, shall be construed to mean such ditches as are not private, and such as are not incorporated under the laws of this state or of some other state or territory, and are held and owned by more than two owners as tenants in common, or joint tenants.

**History:** Laws 1895, ch. 1, § 8; C.L. 1897, § 14; Code 1915, § 5756; C.S. 1929, § 151-426; 1941 Comp., § 77-1424; 1953 Comp., § 75-14-25.

**Meaning of "these sections" and "said sections".** - The words "these sections" and "said sections" were substituted by the 1915 compilers for "this act." The reference is to sections derived from Laws 1895, ch. 1, which include 73-2-11, 73-2-12, 73-2-14, 73-2-21, 73-2-25 and 73-2-27 NMSA 1978.

**Earthen dam distinguished from community ditch.** - Unlike community ditches, an earthen dam for impounding of water for irrigation system which is owned by a nonprofit corporation is subject to taxation. *Storrie Project Water Users' Ass'n v. Gonzales*, 53 N.M. 421, 209 P.2d 530 (1949).

**Law reviews.** - For article, "Water Rights Problems in the Upper Rio Grande Watershed and Adjoining Areas," see 11 Nat. Resources J. 48 (1971).

### **73-2-28. Acequia and community ditch associations.**

Acequia and community ditch associations are hereby declared to be political subdivisions of this state.

**History:** 1953 Comp., § 75-14-25.1, enacted by Laws 1965, ch. 145, § 1.

**Emergency clauses.** - Laws 1965, ch. 145, § 2, makes the act effective immediately. Approved March 19, 1965.

**Community ditches may condemn land.** - Since community ditches are political subdivisions of the state, under power of eminent domain they may condemn land for the construction of ditches. 1969 Op. Att'y Gen. No. 69-96.

**Law reviews.** - For article, "Water Rights Problems in the Upper Rio Grande Watershed and Adjoining Areas," see 11 Nat. Resources J. 48 (1971).



**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 28 C.J.S. Drains §§ 15, 55.

### **73-2-29. [Improper conduct of mayordomo or commissioner; removal from office; temporary appointment of successor.]**

If any mayordomo or commissioner of any such ditch or acequia shall neglect or refuse to perform the duties required of him, fail to or [sic] conduct himself with propriety or justice in his office or take any bribe, in money, property, or otherwise as an inducement to act improperly, or neglect the duties of his office or be guilty of misfeasance, malfeasance or nonfeasance he shall be removed from office in an action brought in the district court of the county where the public ditch or acequia or larger portion thereof is located. Such action may be brought by any water user of such public ditch or acequia provided that no cost or expenses for such action shall be assessed to the water user of such district or acequia.

If a commissioner or mayordomo is removed as above provided the district judge removing him shall appoint a commissioner or mayordomo to serve until the next election.

**History:** 1941 Comp., § 77-1425a, enacted by Laws 1945, ch. 46, § 2; 1953 Comp., § 75-14-26.

**Cross-references.** - As to failure to perform duties with respect to bridges, see 73-2-46 NMSA 1978.

As to failure to prosecute person interfering with ditch or using water unlawfully, see 73-2-64 NMSA 1978.

For penalties for misconduct by mayordomo or commissioner in certain counties, see 73-3-8 and 73-3-9 NMSA 1978.

### **73-2-30. [Laborers to be furnished.]**

It shall be the duty of the proprietors to furnish, each one, the number of laborers required by the mayordomo, at the time and place he may designate, for the purposes mentioned in the foregoing section and for the time he may deem necessary.

**History:** Laws 1851-1852, p. 277, § 6; C.L. 1865, ch. 1, § 14; C.L. 1884, § 37; C.L. 1897, § 34; Code 1915, § 5760; C.S. 1929, § 151-430; 1941 Comp., § 77-1426; 1953 Comp., § 75-14-27.

**Cross-references.** - As to owners' duty to labor and the measurement thereof, see 73-2-33 to 73-2-41 NMSA 1978.

As to laboring requirements in certain counties, see 73-3-5 NMSA 1978.

**Meaning of "in the foregoing section".** - The words "in the foregoing section" were part of the act as it appeared in 1865 C.L. and apparently referred to § 13, ch. 1, 1865 C.L. derived from the Law of January 7, 1852 (Laws 1851-1852, p. 277), which was omitted from 1897 C.L. as superseded by Laws 1895, ch. 1, § 4 (73-2-21 NMSA 1978). The present compiler deems the reference most applicable to 73-2-21 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 94 C.J.S. Waters § 343.

### **73-2-31. Failure to furnish laborers.**

If any proprietor of any land irrigated by any such ditch shall neglect or refuse to furnish the number of laborers required by the mayordomo, as prescribed in Section 73-2-30 NMSA 1978, after having been legally notified by the mayordomo, he shall pay a civil penalty for each offense in a sum not exceeding twenty dollars (\$20.00) for the benefit of the ditch, which shall be recovered by the mayordomo before any magistrate in the county, and in such cases the mayordomo may be a competent witness to prove the offense, or any fact that may serve to constitute the same. The amounts collected under this section shall be considered as an additional penalty and are not construed to amend or limit the provisions of Section 73-2-25 or 73-2-26 NMSA 1978.

**History:** Laws 1851-1852, p. 277, § 9; C.S. 1865, ch. 1, § 17; C.L. 1884, § 38; C.L. 1897, § 35; Code 1915, § 5761; C.S. 1929, § 151-431; 1941 Comp., § 77-1427; 1953 Comp., § 75-14-28; Laws 1977, ch. 184, § 3.

**Cross-references.** - For disposition of fines and forfeitures, see 73-2-32 NMSA 1978.

As to failure to assist mayordomo in stopping breaks or removing obstructions, see 73-2-34 NMSA 1978.

As to penalty for abandoning work, see 73-2-37 NMSA 1978.

For provision applicable to certain counties, see 73-3-5 NMSA 1978.

**The 1977 amendment** deleted "Penalty - Mayordomo as witness" at the end of the catchline, substituted, in the first sentence, the complete current statutory reference for "section 5760," "pay a civil penalty" for "be fined," "twenty dollars (\$20.00)" for "ten dollars," "the ditch" for "said ditch" and "magistrate" for "justice of the peace" and added the last sentence.

**"Fine" should be construed to mean a pecuniary penalty merely,** that may be sued for by the overseer (mayordomo) in his official capacity in the civil action, and when recovered, be received by him and applied to repairs of the acequia. Territory v. Baca, 2 N.M. 183 (1882); Territory v. Tafoya, 2 N.M. 191 (1882)(decided before 1977 amendment).

### **73-2-32. [Disposition of fines and forfeitures.]**

All fines and forfeitures recovered for the use and benefit of any public ditch or acequia, shall be applied by the overseer [mayordomo or superintendent] to the improvements, excavation and bridges for the same, wherever it may be crossed by any public road where bridges may be necessary.

**History:** Laws 1851-1852, p. 277, § 11; C.L. 1865, ch. 1, § 19; C.L. 1884, § 8; C.L. 1897, § 15; Code 1915, § 5757; C.S. 1929, § 151-427; 1941 Comp., § 77-1428; 1953 Comp., § 75-14-29.

**Cross-references.** - For duty to bridge acequias, see 73-2-43 NMSA 1978.

**Meaning of "overseer".** - The officers of a public ditch or acequia do not include an overseer; the mayordomo, or superintendent, is the executive officer of the acequia, to whom the section apparently refers. See 73-2-12 and 73-2-21 NMSA 1978.

This section may be superseded by N.M. Const., art. XII, § 4, which reads in part: "All fines and forfeitures collected under general laws \*\*\* shall constitute the current school fund of the state."

**"Fines" construed.** - In connection with 73-2-31 NMSA 1978, the word "fines" in this section should be construed to mean a pecuniary penalty merely, that could be sued for by the mayordomo in his official capacity in a civil action and received by him and applied to repairs of the acequia. Territory v. Baca, 2 N.M. 183 (1882).

### **73-2-33. [Labor to be furnished whether or not land cultivated.]**

All owners of tillable lands shall labor on public ditches or acequias, whether they cultivate the land or not.

**History:** Laws 1851-1852, p. 189, § 4; C.L. 1865, ch. 1, § 4; C.L. 1884, § 36; C.L. 1897, § 33; Code 1915, § 5758; C.S. 1929, § 151-428; 1941 Comp., § 77-1429; 1953 Comp., § 75-14-30.

**Cross-references.** - For provision applicable to certain counties, see 73-3-5 NMSA 1978.

### **73-2-34. Common labor; failure to work.**

All persons interested in a common ditch or acequia, be they owners or lessees, shall labor thereon in proportion to their land. It is their duty when called upon by the mayordomo to assist him in stopping breaks in, or removing obstructions from, any such common ditch or acequia, regardless of whether or not they have performed their annual labor thereupon, and failure to respond to such call is a misdemeanor, and upon conviction thereof the defendant shall be fined in a sum not less than twenty-five dollars (\$25.00) nor more than fifty dollars (\$50.00), and shall be denied the use of waters of the ditch or acequia until the fine and costs are paid.

**History:** Laws 1851-1852, p. 189, § 5; C.L. 1865, ch. 1, § 5; C.L. 1884, § 35; C.L. 1897, § 32; Laws 1903, ch. 44, § 4; Code 1915, § 5759; C.S. 1929, § 151-429; 1941 Comp., § 77-1430; 1953 Comp., § 75-14-31; Laws 1977, ch. 184, § 4.

**Cross-references.** - As to other sanctions for not working, see 73-2-25 and 73-2-26 NMSA 1978.

As to penalty for abandoning work, see 73-2-37 NMSA 1978.

For provisions applicable to certain counties, see 73-3-5 to 73-3-7 NMSA 1978.

**The 1977 amendment** substituted the present catchline for "Labor to be in proportion to land - Additional labor - Penalty for failure to respond - Use of water denied" and, in the last sentence, substituted "It is" for "And it shall be" at the beginning, substituted "is" for "shall be deemed" preceding "a misdemeanor," substituted "twenty-five dollars (\$25.00) nor more than fifty dollars (\$50.00)" for "five dollars (\$5.00) nor more than fifteen dollars (\$15.00)," inserted "or acequia" following "ditch" near the end of the sentence and made other minor changes in phraseology and punctuation.

**Domestic use may not be considered.** - The domestic use is so small, when compared to the other use to which water is applied by the appropriator, that the legislature possibly did not take such use into consideration in regulating labor to be performed upon the ditches. State ex rel. Community Ditches v. Tularosa Community Ditch, 19 N.M. 352, 143 P. 207 (1914).

**Bylaw invalid.** - Bylaw of ditch company which provides that those farther from the inlet contribute a greater portion for repairs than those nearer is invalid. State ex rel. Black v. Aztec Ditch Co., 25 N.M. 590, 185 P. 549 (1919).

### **73-2-35. [Labor to continue until completion of work.]**

Every person or persons, being tillers of irrigated lands, who shall have commenced the work on any public acequia in common labor, are and shall be obligated to continue on that work until the completion of the clearing of said acequia.

**History:** Laws 1860-1861, p. 66, § 1; C.L. 1865, ch. 1, § 27; C.L. 1884, § 43; C.L. 1897, § 40; Code 1915, § 5763; C.S. 1929, § 151-433; 1941 Comp., § 77-1431; 1953 Comp., § 75-14-32.

**Extent of duty.** - It is the duty of owners of land affected by water through a community ditch to labor on the ditch in the maintenance and repair thereof in proportion to the land affected by it. State ex rel. Black v. Aztec Ditch Co., 25 N.M. 590, 185 P. 549 (1919).

### **73-2-36. [Duty to continue work; labor furnished by owners; superintendence by mayordomo; agreements.]**

If any number of laborers, or any person thereof, having their fields above on such acequias, and having reached them, shall pretend from any cause or causes, reason or pretext, to abandon their co-laborers, he or they shall not be permitted to leave said work of the laborers in common until the completion of the cleansing of the said acequia so commenced to be worked: provided, that touching the repairs and excavations to be made to said acequias, the proportion of the people, or the number of laborers for such purpose shall be furnished by the owners, and it shall be the duty of the mayordomos to superintendent [superintend] such work, and as provided in Section 73-2-21 NMSA 1978: provided, further, that if in any acequias already constructed there shall be included any dikes or dams which may have been destroyed, and the parties interested therein shall have entered into any agreement or contract with the owners to work said acequia, then they shall so remain and fulfill their engagements.

**History:** Laws 1860-1861, p. 66, § 2; C.L. 1865, ch. 1, § 28; C.L. 1884, § 45; C.L. 1897, § 42; Code 1915, § 5765; C.S. 1929, § 151-435; 1941 Comp., § 77-1432; 1953 Comp., § 75-14-33.

### **73-2-37. [Abandonment of work; penalty.]**

If any owners of lands, or lessees thereof, shall attempt to abandon their co-laborers without complying with Sections 73-2-35 to 73-2-37 NMSA 1978, they shall pay for each of such offenses a fine of not less than five dollars [(\$5.00)] nor exceeding ten dollars [(\$10.00)].

**History:** Laws 1860-1861, p. 66, § 4; C.L. 1865, ch. 1, § 30; C.L. 1884, § 44; C.L. 1897, § 41; Code 1915, § 5764; C.S. 1929, § 151-434; 1941 Comp., § 77-1433; 1953 Comp., § 75-14-34.

**Compiler's note.** - The 1915 Code compilers substituted the reference which includes this section for prior references, which had only included the sections presently compiled as 73-2-35 and 73-2-36 NMSA 1978 (in Laws 1860-1861) or those presently compiled as 73-2-36 and 73-2-38 NMSA 1978 (in C.L. 1884 and C.L. 1897).

Compiled Laws 1884 omitted a provision at the end of this section which read: "one-half of which shall be paid into the territorial treasury, and the other half shall go to the county treasury of the county in which the offense was committed." For present provisions concerning disposition of fines and forfeitures, see N.M. Const., art. XII, § 4, and 73-2-32 NMSA 1978.

### **73-2-38. [Labor determined by amount of land tilled.]**

As the excavations of such acequias, and in the first cleansing of some of them, the work sometimes continues for thirty days, more or less, the different mayordomos shall take into consideration the small amount of land tilled by some, and not compel these to furnish an equal amount of labor in the cleansing.

**History:** Laws 1860-1861, p. 66, § 3; C.L. 1865, ch. 1, § 29; C.L. 1884, § 46; C.L. 1897, § 43; Code 1915, § 5766; C.S. 1929, § 151-436; 1941 Comp., § 77-1434; 1953 Comp., § 75-14-35.

**Cross-references.** - For other provisions relating to measurement of labor required, see 73-2-33 and 73-2-34 NMSA 1978.

**Compiler's note.** - Section 31, ch. 1, 1865 C.L. provided that the Act of January 29, 1861 (the provisions of which are presently compiled as 73-2-35 to 73-2-38 NMSA 1978), shall be considered jointly with the Act of January 7, 1852 (the provisions of which are presently compiled as 73-2-9, 73-2-10, 73-2-18 and 73-2-30 to 73-2-32 NMSA 1978).

**73-2-39. [Laborers to be held at disposal of mayordomo; substitutes during absence of landowner; failure to comply; penalty; rental lands; owner not exempt.]**

Every owner or tenant of irrigable lands, irrigated by any of such acequias in this state, shall be compelled to hold at all times during the operations of the acequias to which they belong, the number of laborers to them assigned according to the provisions of the preceding section [73-2-38 NMSA 1978], at the disposal and order of the respective mayordomo or his assistant. And it shall not be legal for any owner or tenant of irrigable lands, irrigated by any of such acequias, to absent himself for a time exceeding three days without informing the chief mayordomo of the respective acequia about the persons remaining in his stead to comply with his or their duty regarding said acequia, and he shall even present them, so that in his presence they may assume the responsibilities during the time of absence of such person or persons that are to be absent. And all the responsibilities of such absentees regarding said acequias shall fall upon the substitutes left, and no other persons but those assuming the responsibility of the person by whom they are presented shall be admitted as substitutes. And if any of such owners or tenants of irrigable lands, irrigated under any of such acequias in this state, should absent himself from the precinct during the time the acequias are in operation, without complying with the duty upon him imposed by this and the succeeding section [73-2-40 NMSA 1978], besides suffering the penalty fixed by the mayordomo, he shall be responsible to the public where he belongs for a just and common estimate, per diem, of the time he was absent, and the number of laborers that may have been assigned to him. Nor shall any proprietor, on account of having rented his lands, reserving a part for himself, be exempt from working on the acequia at any time of said work.

**History:** Laws 1880, ch. 30, § 8; C.L. 1884, § 47; C.L. 1897, § 44; Code 1915, § 5767; C.S. 1929, § 151-437; 1941 Comp., § 77-1435; 1953 Comp., § 75-14-36.

**Compiler's note.** - The 1915 Code compilers substituted the words "the preceding section" for "this act" in the first sentence. "This act" would refer to sections derived from Laws 1880, ch. 30, presently compiled as 73-2-39 and 73-2-40 NMSA 1978.

### **73-2-40. [Penalties applicable; failure to pay fine; action before magistrate court.]**

The penalties on those who shall fail to supply the amount of work due by them, according to the provisions of this and the preceding section [73-2-39 NMSA 1978], or the number of laborers on them apportioned or for any violation of existing laws on this subject; and those penalties that are applicable under existing laws to mayordomos, shall be the same that shall be applied in these cases, and they shall be executed and fines shall be disbursed in the same manner: provided, that when any chief mayordomo shall have, in person, given notice to any person who is liable and owes work to the acequia of which he is mayordomo, and such person fails, then and in such case the mayordomo shall impose on the persons so failing the penalty or fine which the law authorizes. And if it is not paid he shall sue them before the justice of the peace [magistrate court] for the same; and there it shall be finally decided and executed, if the defendant does not offer credible witnesses to disprove and combat the charge. In which case an examination of the whole subject shall be made by said justice of the peace [magistrate court], and he shall decide accordingly, or shall grant a change of venue to the nearest precinct, should the defendant so desire.

**History:** Laws 1880, ch. 30, § 4; C.L. 1884, § 48; C.L. 1897, § 45; Code 1915, § 5768; C.S. 1929, § 151-438; 1941 Comp., § 77-1436; 1953 Comp., § 75-14-37.

**Cross-references.** - For other sanctions relating to acequias, see 73-2-20, 73-2-25, 73-2-27, 73-2-29, 73-2-31, 73-2-34, 73-2-37, 73-2-45, 73-2-46, 73-2-50, 73-2-52 to 73-2-54 and 73-2-64 NMSA 1978.

**Jurisdiction, etc., of justice of the peace transferred.** - Section 35-1-38 NMSA 1978 abolishes the office of justice of the peace, transfers the jurisdiction, powers and duties of said justices to the magistrate court and provides that all statutory references to "justice of the peace" shall be construed to refer to the magistrate court.

### **73-2-41. [Indians to furnish services; rights in government of ditch; division of water.]**

The different communities of Indians residing within the state of New Mexico shall be subject to render their services in working the acequias, within the limits of their respective reservations in which they may have a common interest with the citizens who live within their respective reservations, and they shall enjoy at the same time the same benefit and rights of commercial traffic: provided, that said Indians shall have no right to participate in the nominations and election of acequia overseers [mayordomos or superintendents] or acequia or water commissioners in any ditch, whether within or without their reservations, except in acequias constructed entirely by themselves, unless they have paid their proportionate share of the whole cost of the construction of such acequia; and unless the lands sought to be voted by said Indians have been duly returned for taxation in accordance with law, and state and county taxes paid thereon. In all cases in which citizens living within the limits of such communities or pueblos of

Indians shall have acquired water rights by purchase of land from said Indians, the distribution of such water between the Indians and the said citizen shall be agreed upon, based upon the customs heretofore practiced and recognized between the said Indians and said citizens, by and between the governor of the community or pueblo and the commissioners of such acequias in which the said citizens may have acquired any such rights, and the governors of such communities or pueblos of Indians and the said river or acequia commissioners, shall also regulate the amount and manner of work to be done by the Indians and citizens in all such acequias in which all have water rights, in accordance with such customs.

**History:** Laws 1860-1861, p. 24, § 2; C.L. 1865, ch. 66, § 3 [2]; C.L. 1884, § 1305; C.L. 1897, § 1876; Laws 1901, ch. 29, § 1; 1905, ch. 36, § 1; Code 1915, § 5769; C.S. 1929, § 151-439; 1941 Comp., § 77-1437; 1953 Comp., § 75-14-38.

**Cross-references.** - For provision exempting Indian lands from taxation, see N.M. Const., art. XXI, § 2.

**Meaning of "overseer".** - See same catchline in notes to 73-2-32 NMSA 1978.

**Customs heretofore practiced and recognized.** - The last sentence of this section, in which the word "heretofore" is found, first appeared when the section was rewritten by the 1901 amendment (Laws 1901, ch. 29), which was approved March 16, 1901.

### **73-2-42. Blind persons; free irrigation.**

The commissioners of any community ditch in New Mexico, shall have power according to their discretion if they deem it proper, to allow a blind person or his surviving spouse to irrigate free of charge any portion of land not to exceed three acres. Provided, that the parties to whom the privilege may be granted as herein stated, shall have an interest and water right in the ditch, and shall be subject to the use of the water as per the orders of the mayordomo or superintendent of the ditch.

**History:** Laws 1912, ch. 36, § 1; Code 1915, § 5770; C.S. 1929, § 151-440; 1941 Comp., § 77-1438; 1953 Comp., § 75-14-39; Laws 1973, ch. 44, § 1.

### **73-2-43. [Bridges; construction at road crossings.]**

Mayordomos of public and community ditches, shall construct to the cost of the owners of said ditch, good and substantial bridges, made of lumber across all ditches that shall be under their charge, as said mayordomos in all the crossings of public road or roads.

**History:** Laws 1897, ch. 59, § 1; C.L. 1897, § 46; Code 1915, § 5772; C.S. 1929, § 151-442; 1941 Comp., § 77-1439; 1953 Comp., § 75-14-40.

**Cross-references.** - For prohibition against flooding highways, see 67-7-6 and 67-7-7 NMSA 1978.



For provision establishing duty to construct bridges over irrigation ditches crossing roads, see 67-7-8 NMSA 1978.

For duty of owners to construct bridges, see 72-8-2 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 25 Am. Jur. 2d Drains and Drainage Districts § 35; 45 Am. Jur. 2d Irrigation § 80.

28 C.J.S. Drains § 44; 93 C.J.S. Waters § 20; 94 C.J.S. Waters § 350.

### **73-2-44. [Collection of cost of construction; liability of owners of acequias.]**

For the purpose of constructing such bridges, the respective mayordomos of acequias shall collect from the owners of said ditches, the amount required for the construction of the same, after the same have been constructed, which amount so taxed against the owners of said ditches shall be in proportion of their interests on the same: provided, that neither the county nor the owners of other acequias shall pay anything for the construction of said bridges, but, the owners of each ditch respectively, shall suffer the necessary expense in the construction of said bridges that might be necessary to construct bridges over said ditches.

**History:** Laws 1897, ch. 59, § 2; C.L. 1897, § 47; Code 1915, § 5773; C.S. 1929, § 151-443; 1941 Comp., § 77-1440; 1953 Comp., § 75-14-41.

### **73-2-45. [Failure to pay share for bridge; use of water to be denied.]**

Every person failing or refusing to pay his share for such purpose after he has been notified by the mayordomo, shall forfeit his right to use the water of such ditch, or shall be deprived of the use of such water until he pays his share as provided in Section 73-2-44 NMSA 1978.

**History:** Laws 1897, ch. 59, § 3; C.L. 1897, § 48; Code 1915, § 5774; C.S. 1929, § 151-444; 1941 Comp., § 77-1441; 1953 Comp., § 75-14-42.

### **73-2-46. [Mayordomo failing to perform duties with respect to bridges; penalty.]**

Any mayordomo who through negligence or any other cause whatsoever, except sickness, shall fail to comply, with the duties imposed upon him, by the three preceding sections [73-2-43 to 73-2-45], upon conviction before the justice of the peace [magistrate court] of the precinct, shall be fined in a sum not less than twenty-five [(\$25.00)] nor more than fifty dollars [(\$50.00)].

**History:** Laws 1897, ch. 59, § 4; C.L. 1897, § 49; Code 1915, § 5775; C.S. 1929, § 151-445; 1941 Comp., § 77-1442; 1953 Comp., § 75-14-43.

**Jurisdiction, etc., of justice of the peace transferred.** - See same catchline in notes to 73-2-40 NMSA 1978.

**Mayordomo may be proceeded against for failure to perform his duty.** Before entering upon his duties, he must take an oath that he will faithfully discharge them. 1914 Op. Att'y Gen. 118.

### **73-2-47. [Ditches supplied from same source; meeting of commissioners; apportionment of waters.]**

It shall be the duty of all the ditch commissioners of the state of New Mexico, where two or more ditches are constructed from and supply waters from the same source or river and within the limits of a precinct, to have a meeting on the first Monday of April of each year for the purpose of making a true, just and equitable apportionment and distribution of the water for their respective ditches, and it shall be the duty of the superintendents of said ditches respectively to apportion and distribute the water in said ditches among the persons entitled thereto to the use of the same, in accordance with the orders of said ditch commissioners and not otherwise.

**History:** Laws 1903, ch. 15, § 1; Code 1915, § 5776; C.S. 1929, § 151-446; 1941 Comp., § 77-1443; 1953 Comp., § 75-14-44.

### **73-2-48. [Joint meeting of commissioners; officers; duties of secretary; rules and regulations.]**

In the meeting of said ditch commissioners, a majority of the persons elected as such shall constitute a quorum for the transaction of business, to carry out the purposes of the preceding section [73-2-47 NMSA 1978]. They shall elect a chairman and secretary from among their number. The chairman and secretary thus elected shall hold their positions during their term of office as ditch commissioners, and it shall be the duty of the secretary to keep in a proper book all of the proceedings of the meeting and to furnish the respective superintendents with a certified copy of the rules and regulations adopted at said meeting for the apportionment and distribution of the water free of cost.

**History:** Laws 1903, ch. 15, § 2; Code 1915, § 5777; C.S. 1929, § 151-447; 1941 Comp., § 77-1444; 1953 Comp., § 75-14-45.

### **73-2-49. [Method of apportionment of water.]**

The said apportionment and distribution of the water shall be made in accordance with the rights of each ditch, and in proportion to the lands irrigated by each ditch.

**History:** Laws 1903, ch. 15, § 3; Code 1915, § 5778; C.S. 1929, § 151-448; 1941 Comp., § 77-1445; 1953 Comp., § 75-14-46.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 22.

93 C.J.S. Waters § 192.

### **73-2-50. [Neglect of duty by water commissioner; penalty.]**

If any superintendent or water commissioner, neglects or refuses to discharge the duties required of him by the three preceding sections [73-2-47 to 73-2-49 NMSA 1978], he shall be fined for each offense in a sum not to exceed ten dollars (\$10.00) recoverable before any justice of the peace [magistrate court] in the county; and the moneys thus recovered from said fines, shall be paid to the county treasurer, to be applied to the school fund of the district where said offense is committed.

**History:** Laws 1903, ch. 15, § 4; Code 1915, § 5779; C.S. 1929, § 151-449; 1941 Comp., § 77-1446; 1953 Comp., § 75-14-47.

**Cross-references.** - For provision that all fines and forfeitures collected under general laws shall go into state current school fund, see N.M. Const., art. XII, § 4.

**Jurisdiction, etc., of justice of the peace transferred.** - See same catchline in notes to 73-2-40 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 22.

28 C.J.S. Drains § 66; 93 C.J.S. Waters § 192.

### **73-2-51. [Ditches from Rio Grande not affected.]**

Nothing in the four preceding sections [73-2-47 to 73-2-50 NMSA 1978] shall be construed as applying to the community or other ditches constructed from and conveying waters from the Rio Grande.

**History:** Laws 1903, ch. 15, § 5; Code 1915, § 5780; C.S. 1929, § 151-450; 1941 Comp., § 77-1447; 1953 Comp., § 75-14-48.

### **73-2-52. [Outlets for drainage of excess water; location; apportionment of work; failure to work or pay assessment; use of water denied.]**

Whenever 10 [ten] or more of the landowners of any main ditch or lateral, deem it necessary to open a drainage, tajo or outlet, near the main dam or away from said dam of any public ditch or lateral, with the object of drawing off the excess of water, or to

regulate the water of said ditches, with the object of protecting the dams from any floods, or the damage of lands from excess waters, the water commissioners of said ditch or lateral are authorized to determine the place where such drainage, tajo or outlet shall be opened, under the supervision of the mayordomo by the owners of the irrigable land of such ditch and the work shall be taxed in proportion of the irrigable property of each owner, and any person or persons belonging to said ditch or lateral, who shall fail or refuse to perform work, or pay the amount assessed against him in lieu of said work shall not be allowed to take or use any water from the same or any contra acequia or lateral thereof, whilst default in such payment or failure to do such work, continues.

**History:** Laws 1903, ch. 85, § 1; Code 1915, § 5781; Laws 1921, ch. 148, § 1; C.S. 1929, § 151-451; 1941 Comp., § 77-1448; 1953 Comp., § 75-14-49.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Right of appropriator of water to recapture water which has escaped or is otherwise no longer within his immediate possession, 89 A.L.R. 210.

Liability of landowner for damages caused by overflow, seepage or the like resulting from defect in artificial underground drain, conduit or pipe, 44 A.L.R.2d 960.

### **73-2-53. [Irrigation with excess water; subject to regular payment; use without consent of mayordomo; penalty.]**

The owners of irrigable land, situate in the margin of any drainage or discharges of water from any public ditch, being a member or members of said ditch, shall have to pay for the irrigation of said lands in the same manner as all other lands belonging to said ditches, whether they irrigate them for the uses of harvest, or for hay land, alfalfa or other pasture, and shall not be excused on the pretext that they only use the excess of water of said ditch. And if such owners of land use the water without the consent of the mayordomo, they shall be fined in a sum not less than ten dollars (\$10.00) nor more than twenty dollars (\$20.00).

**History:** Laws 1903, ch. 85, § 2; Code 1915, § 5782; C.S. 1929, § 151-452; 1941 Comp., § 77-1449; 1953 Comp., § 75-14-50.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 9.

### **73-2-54. [Joint drainage outlets; ownership; obstruction of drainage; damage; use of water without consent; penalty.]**

When two or more public ditches drain their excess of waters at the same drainage, the same shall be considered as joint owners of said drainage and no person or persons that may own lands on either side of said drainage shall have the right to use the water of said drainage without the consent of the mayordomos of said joint owners, and said owners of land shall not be permitted to put any impediment, encumbrances, or

sidegates or dams upon said drainage and if at any time it shall be discovered that they use the water with the object of irrigating land whether it may be for harvest, or hay land to cut hay or to purchase stock of any kind, they shall be responsible for the damages that the excess of water may cause in time of flood; furthermore if they use the water without the consent of the mayordomos of said joint owners' drainage, they shall be fined in a sum not less than five dollars (\$5.00) nor more than ten dollars (\$10.00) for each and every offense.

**History:** Laws 1903, ch. 85, § 3; Code 1915, § 5783; C.S. 1929, § 151-453; 1941 Comp., § 77-1450; 1953 Comp., § 75-14-51.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 49.

### **73-2-55. [Use of excess water from joint drainage; authority of majority of mayordomos.]**

The majority of the mayordomos of said ditches of the joint drainage, shall be authorized to make arrangements with said owners of land regarding the use of said excess waters, and the result of said arrangements shall be for the benefit of all ditches that may discharge the water upon such drainage.

**History:** Laws 1903, ch. 85, § 4; Code 1915, § 5784; C.S. 1929, § 151-454; 1941 Comp., § 77-1451; 1953 Comp., § 75-14-52.

### **73-2-56. [Change in location, extension or reconstruction of ditch; consent of water users; expense.]**

The commissioners of any community ditch may alter, change the location of, enlarge, extend, or reconstruct such ditch for the purpose of providing greater efficiency in irrigation to the water users of said ditch, or when any part thereof shall have been destroyed by rain or in any other manner or for the purpose of increasing the cultivable area, provided that such alteration, change of location, enlargement, extension or reconstruction shall be affected [effected] only upon the consent in writing of a majority of the water users of said community ditch, filed with such commissioners, such majority to be determined by the same rule as applies to the election of commissioners of the acequia, and provided that such alteration, change of location, enlargement or extension shall in no wise impair the rights of prior water users from said community ditch, and provided further that the expense incurred in any such alteration, change of location, enlargement or extension shall be borne pro rata by those beneficially interested in same.

**History:** Laws 1919, ch. 39, § 1; C.S. 1929, § 151-457; 1941 Comp., § 77-1452; 1953 Comp., § 75-14-53.

**Cross-references.** - For voting rules relating to election of commissioners, see 73-2-14 NMSA 1978.

**Compiler's note.** - The bracketed word "effected" was inserted by the 1953 compiler.

**Former provisions (Code 1915, §§ 5739 to 5743) were held unconstitutional** in that they made no provision for notice to the owner of the meeting of the appraisers for the purpose of fixing damages, nor for opportunity to be heard thereon. *Janes v. West Puerto de Luna Community Ditch*, 23 N.M. 495, 169 P. 309 (1917).

**Specific statutes on condemnation of ditch control over more general condemnation statute** for water facilities found in 72-1-5 NMSA 1978. 1969 Op. Att'y Gen. No. 69-96.

**But just compensation and proper procedures required.** - Fact that ditch commissioners are given the right to alter, change location of, enlarge, extend or reconstruct a ditch under conditions set forth in this section cannot be construed as giving them authority to take private property for these uses without just compensation (contrary to N.M. Const., art. II, § 20) and without regard to procedures required by 42A-1-17 and 72-1-5 NMSA 1978. *Marjon v. Quintana*, 82 N.M. 496, 484 P.2d 338 (1971).

**Condemnation handled by magistrate court.** - Condemnation for a ditch which involves change of location, alteration, enlargement, extension or reconstruction thereof is handled by a magistrate court. 1969 Op. Att'y Gen. No. 69-96.

**Commissioners may borrow for certain ditch purposes.** - Provisions of this section and 73-2-21 NMSA 1978, taken together, entitle commissioners to make assessment for repayment of a loan directed to the change of location, expansion or reconstruction of a community ditch. 1964 Op. Att'y Gen. No. 64-95 (opinion rendered before enactment of 73-2-22 NMSA 1978).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 25 Am. Jur. 2d Drains and Drainage Districts § 15.

28 C.J.S. Drains § 39.

### **73-2-57. [Crossing lands in reconstruction; compensation; determination; procedure.]**

Should they deem it necessary, the mayordomo may cut through the lands of any person or persons, by first obtaining their consent, by the community of such ditch offering to pay a compensation, to be agreed upon between the owner or owners of the lands through which the ditch is to be opened, and the parties interested in the said ditch. If the owner or owners, who shall be solicited to permit their lands to be ditched, in the cases mentioned in the preceding section [73-2-56 NMSA 1978], should improperly refuse [refuse] or decline to accept the compensation offered by the parties interested in

such ditch, or ask a compensation which the parties interested do not agree to on account of its exorbitance, in such case the mayordomo of said ditch shall lay the case before the justice of the peace [magistrate court] of the precinct in which such ditch may be situated, and it shall be the duty of the justice of the peace [magistrate court], to whom the case is presented, to appoint three men, experts, of known integrity, to establish a just compensation to be paid to the owner or owners solicited to permit their lands to be ditched through in the cases above mentioned.

**History:** Laws 1919, ch. 39, § 2; C.S. 1929, § 151-458; 1941 Comp., § 77-1453; 1953 Comp., § 75-14-54.

**Cross-references.** - For provisions relating to construction of ditches, see 73-2-1 to 73-2-3 NMSA 1978.

As to general provision for condemnation of land for ditches, see 72-1-5 NMSA 1978.

**Jurisdiction, etc., of justice of the peace transferred.** - See same catchline in notes to 73-2-40 NMSA 1978.

**Commissioners must prove public necessity for taking.** - In taking land for public use on either side of the ditch when either building a new ditch or enlarging or extending a ditch, the burden would be on commissioners to prove public necessity for the taking. 1969 Op. Att'y Gen. No. 69-96.

**Inverse condemnation suit proper.** - In the event that ditch commissioners were to take land without initiating condemnation proceedings, landowner may institute his own suit for inverse condemnation and receive just compensation for the taking. 1969 Op. Att'y Gen. No. 69-96.

**No experts appointed unless petition showed preconditions met.** - Justice had no jurisdiction to appoint experts to appraise property involved in relocation of ditch unless petition showed that all the conditions existed as set forth in 25, 1897 C.L. (since repealed), and that the owner had notice of the application. *Leyba v. Armijo*, 11 N.M. 437, 68 P. 939 (1902).

### **73-2-58. [Appraisers; oath.]**

Whenever the three experts shall be appointed as appraisers, before they enter upon their duties as such appraisers, they shall file in the office of the justice of the peace [magistrate], who appointed them, an oath to faithfully, legally and impartially discharge the duties for which they were appointed.

**History:** Laws 1919, ch. 39, § 3; C.S. 1929, § 151-459; 1941 Comp., § 77-1454; 1953 Comp., § 75-14-55.

**Jurisdiction, etc., of justice of the peace transferred.** - See same catchline in notes to 73-2-40 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 28 C.J.S. Drains § 61.

### **73-2-59. [Appraisement; notice to landowners; contents; service; return.]**

Before proceeding to examine the land or lands over which the new ditch should be opened, the appraisers shall give the owner or owners of such land or lands, not less than three nor more than ten days' notice in writing of the time and place they will meet to examine and appraise said land or lands; such notice shall also contain a description as near as can be ascertained, of such proposed ditch, enlargement, extension or reconstruction, the point of entry and the direction thereof, upon said land or lands, and that at such time and place the said appraisers will hear and consider any evidence the owner or owners may desire to present as to the damages he or they will sustain by reason of his or their land or lands being so ditched. The notice herein provided for shall be served upon such owner or owners, and the returns made thereon by the constable of the precinct, or the sheriff of the county, in the same manner as service is made in civil cases, in justice of the peace courts [magistrate courts]; the notice and returns showing the manner in which the same was served shall be filed by the appraisers with the justice of the peace [magistrate] who appointed them, at the time they file their report.

**History:** Laws 1919, ch. 39, § 4; C.S. 1929, § 151-460; 1941 Comp., § 77-1455; 1953 Comp., § 75-14-56.

**Cross-references.** - For service in civil cases in magistrate courts, see Rule 2-203 SCRA 1986.

**Jurisdiction, etc., of justice of the peace transferred.** - See same catchline in notes to 73-2-40 NMSA 1978.

### **73-2-60. [Report of appraisers; contents.]**

Whenever any land or lands of any person or persons are to be appraised, as in the cases above mentioned, the experts who shall make such appraisement, shall make a report which shall be filed in the office of the justice of the peace [magistrate] who appointed them, setting forth therein the name of the person whose land was appraised, and the sum to be paid him by the parties interested in the public ditch for which the opening on the land is solicited; they shall also state in said report, in the most distinct manner possible, the direction and the place and point where the opening for such ditch shall be made upon said land.

**History:** Laws 1919, ch. 39, § 5; C.S. 1929, § 151-461; 1941 Comp., § 77-1456; 1953 Comp., § 75-14-57.



**Jurisdiction, etc., of justice of the peace transferred.** - See same catchline in notes to 73-2-40 NMSA 1978.

### **73-2-61. [Payment of appraised value; right to possession; forcible entry and detainer.]**

The parties interested shall possess the right of property in the land or lands paid for under the five preceding sections [73-2-56 to 73-2-60 NMSA 1978], and in case of legal resistance being made to the possession of the land by the parties interested in a public ditch, they may compel the person or persons who interpose such resistance to desist therefrom, by an action of forcible entry and detainer, as provided by law, but the parties interested shall first pay the appraised value of such land or lands provided that said appraisers shall be impartial persons.

**History:** Laws 1919, ch. 39, § 6; C.S. 1929, § 151-462; 1941 Comp., § 77-1457; 1953 Comp., § 75-14-58.

**Cross-references.** - For action of forcible entry and detainer, see 35-10-1 to 35-10-6 NMSA 1978.

### **73-2-62. [Appeal from appraisal to district court.]**

Any person or persons aggrieved by the amount of damages assessed or allowed by any appraisers appointed as provided for in the foregoing sections, may appeal by himself, his agent or attorney to the district court of the county where the same was rendered, in the same manner as appeals are taken from judgments rendered in justice of the peace courts [magistrate courts], provided that the only issue on any such appeal shall be the amount of damages sustained by such landowner or owners.

**History:** Laws 1919, ch. 39, § 7; C.S. 1929, § 151-463; 1941 Comp., § 77-1458; 1953 Comp., § 75-14-59.

**Cross-references.** - For procedure for appeal from magistrate court to district court, see 35-13-1 to 35-13-3 NMSA 1978, and Rule 2-705 SCRA 1986.

**Jurisdiction, etc., of justice of the peace transferred.** - See same catchline in notes to 73-2-40 NMSA 1978.

**Prior remedy was petition for writ of certiorari.** - Certiorari was the proper remedy to bring up for review all the proceedings before a justice on condemnation of land for ditch purposes. *Leyba v. Armijo*, 11 N.M. 437, 68 P. 939 (1902) (decided under former law).

### **73-2-63. [Change in place of diversion; permit unnecessary.]**

It shall not be necessary for the officers of public community acequias established and in operation prior to March 19, 1907, to make any application to, or obtain any permit from, the state engineer or the board of water commissioners in order to change the place of diversion; provided that by such change no increase in the amount of water appropriated shall be made beyond the amount to which the acequia was formerly entitled.

**History:** Laws 1912, ch. 26, § 1; Code 1915, § 5771; C.S. 1929, § 151-441; 1941 Comp., § 77-1459; 1953 Comp., § 75-14-60.

**Cross-references.** - For general requirement that changing point of diversion be approved by state engineer, see 72-5-24 NMSA 1978.

**Board of water commissioners abolished.** - Laws 1923, ch. 28, § 4, compiled as 72-2-11 NMSA 1978, abolished the board of water commissioners and provided for the transfer of the board's records to the state engineer.

**Generally as to regulation by state engineer.** - Prior existing right to change place of diversion is not subject to regulation by state engineer under Laws 1907, ch. 49 (now 72-5-24 NMSA 1978). Pueblo of Isleta v. Tondre, 18 N.M. 388, 137 P. 86 (1913)(decided under law prior to enactment of this section).

**Approval of change in acequia necessary once water rights adjudicated.** - If the water rights of an acequia have been adjudicated, then the state engineer must approve any change in amount or location of diversion, regardless of whether or not it is a community acequia. Honey Boy Haven, Inc. v. Roybal, 92 N.M. 603, 592 P.2d 959 (1978).

**Change in place of diversion contemplated by section** is one in which exigencies require immediate reconstruction. Honey Boy Haven, Inc. v. Roybal, 92 N.M. 603, 592 P.2d 959 (1978).

**Law reviews.** - For comment on Mathers v. Texaco, Inc., 77 N.M. 239, 421 P.2d 771 (1966), see 7 Nat. Resources J. 433 (1967).

For article, "Water Rights Problems in the Upper Rio Grande Watershed and Adjoining Areas," see 11 Nat. Resources J. 48 (1971).

For article, "New Mexico Water Law: An Overview and Discussion of Current Issues," see 22 Nat. Resources J. 1045 (1982).

### **73-2-64. [Interference with ditch; illegal use of water; penalty; failure of mayordomo to prosecute; penalty.]**

Any person not the owner or duly authorized representative of the owner of a water right in any community ditch of this state, or any such owner or representative, who shall,

contrary to the order of the mayordomo or commissioner or other person in charge, cut, break, stop up or otherwise interfere with any community ditch or dam in this state, or any contra or lateral acequia thereof, or take or use water from the same contrary to such orders, shall be guilty of a misdemeanor, and on complaint made before the nearest justice of the peace [magistrate court], a warrant shall issue for his arrest, as in case of any other offense against the state, and on conviction, the defendant shall be fined in a sum of not less than \$10.00 nor more than \$50.00, and in default of the payment of said fine, shall be confined in the county jail for a period of not less than five nor more than thirty days. And it is hereby made the duty of the mayordomo or other person in charge of any such ditch or acequia, to prosecute in the name of the state of New Mexico any violation of this act [this section] whenever he shall obtain knowledge thereof, and his failure so to do shall be deemed a misdemeanor, and on conviction thereof shall be fined in a sum not less than \$25.00 nor more than \$50.00, or by imprisonment in the county jail for not less than ten or more than thirty days.

**History:** Laws 1923, ch. 81, § 1; C.S. 1929, § 151-465; 1941 Comp., § 77-1460; 1953 Comp., § 75-14-61.

**Cross-references.** - For general proscription of interference with use of waterworks, see 72-8-3 NMSA 1978.

**Jurisdiction, etc., of justice of the peace transferred.** - See same catchline in notes to 73-2-40 NMSA 1978.

**Civil offense created under former law.** - Section 36, 1897 C.L. (now repealed), provided for a "fine" not to exceed ten dollars and, for nonpayment thereof, for a sentence of fifteen days' labor on public works; the section did not create a criminal offense but rather a civil one, and suit should be brought by the overseer (mayordomo). Territory v. Baca, 2 N.M. 183 (1882); Territory v. Tafoya, 2 N.M. 191 (1882).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 25 Am. Jur. 2d Drains and Drainage Districts § 37.

Modern status of rules governing interference with drainage of surface waters, 59 A.L.R.2d 421.

## **ARTICLE 2A**

### **ACEQUIA AND COMMUNITY DITCH FUND**

#### **73-2A-1. Short title.**

This act [73-2A-1 to 73-2A-3 NMSA 1978] may be cited as the "Acequia and Community Ditch Fund Act".

**History:** Laws 1988, ch. 157, § 1.

**Emergency clauses.** - Laws 1988, ch. 157, § 5 makes the Acequia and Community Ditch Fund Act effective immediately. Approved March 9, 1988.

### **73-2A-2. Purpose of act.**

The purpose of the Acequia and Community Ditch Fund Act [73-2A-1 to 73-2A-3 NMSA 1978] is to provide financial assistance to acequias and community ditch systems to develop hydrological studies, acquire technical and legal research and other information and services necessary to conserve and protect water for New Mexico's future through the adjudication of water rights.

**History:** Laws 1988, ch. 157, § 2.

**Emergency clauses.** - Laws 1988, ch. 157, § 5 makes the Acequia and Community Ditch Fund Act effective immediately. Approved March 9, 1988.

### **73-2A-3. Fund created.**

A. An "acequia and community ditch fund" is created in the state treasury, to be expended upon order of the secretary of finance and administration to carry out the purposes of contracting with acequia and ditch associations constituting a majority of acequias or ditches within an adjudication suit or a separately administered portion of an adjudication suit to provide assistance to acequias and community ditch associations in the adjudication process, including historical studies, economic impact reports, expert witness fees, legal fees and other technical services related to the adjudication process.

B. Money in the acequia and community ditch fund may be used to enter into agreements for grants-in-aid to satisfy prior fiscal year costs and expenses as well as ongoing costs and expenses incurred by acequias and community ditch associations. No more than one-eighth of the money that is in the fund and available for any given fiscal year shall be used to provide assistance to any single acequia or ditch association during the first three-quarters of that fiscal year; in the fourth quarter of that fiscal year any money in the acequia and community ditch fund not yet spent, allocated or encumbered shall be made available for distribution to and expenditure by acequias and ditch associations without a restriction as to proportion. Disbursements from the fund shall be upon vouchers signed by the secretary of finance and administration or his authorized representative. Balances in the fund at the end of any fiscal year shall not revert to the general fund and may be expended to carry out the purposes of the Acequia and Community Ditch Fund Act [73-2A-1 to 73-2A-3 NMSA 1978].

**History:** Laws 1988, ch. 157, § 3; 1989, ch. 324, § 34; 1991, ch. 76, § 1.

**The 1989 amendment,** effective April 7, 1989, deleted the former last sentence, which read "Any interest accruing to the acequia and community ditch fund shall be credited to the fund".

**The 1991 amendment**, effective June 14, 1991, designated the formerly undesignated provisions as Subsections A and B; in Subsection A, inserted "or a separately administered portion of an adjudication suit" and substituted "ditch associations" for "ditches"; and added the first, second and final sentences in Subsection B.

**Emergency clauses.** - Laws 1988, ch. 157, § 5 makes the Acequia and Community Ditch Fund Act effective immediately. Approved March 9, 1988.

**Temporary provisions.** - Laws 1991, ch. 76, § 2, effective June 14, 1991, provides that, notwithstanding the provisions of Laws 1990, ch. 131, § 5, any unexpended or unencumbered balance remaining from the appropriation in that section to the department of finance and administration for deposit in the acequia and community ditch fund to carry out the provisions of the Acequia and Community Ditch Fund Act shall not revert to the general fund at the end of the seventy-ninth fiscal year and may be expended in succeeding fiscal years in accordance with that act and further provides that, notwithstanding any provision to the contrary in Laws 1988, ch. 157, § 4, any balance remaining from that appropriation in the acequia and community ditch fund may be expended to carry out the provisions of the Acequia and Community Ditch Fund Act in any fiscal year.

**Appropriations.** - Laws 1988, ch. 157, § 4, effective March 9, 1988, appropriates \$200,000 from the general fund to the acequia and community ditch fund for expenditure in the seventy-sixth and seventy-seventh fiscal years for the purpose of carrying out the provisions of the Acequia and Community Ditch Fund Act, and provides that no more than one-third of the appropriation shall be used to provide assistance to any one acequia or water ditch association, that none of the appropriation may be used against another political subdivision of the state which is also a party of a water adjudication suit covering the rivers or stream systems of New Mexico, and that any unexpended or unencumbered balance remaining at the end of the seventy-seventh fiscal year shall not revert to the general fund.

## **ARTICLE 3**

### **DITCHES OR ACEQUIAS; SPECIAL PROVISIONS GOVERNING CERTAIN COUNTIES**

#### **73-3-1. Officers; election; bonds; vacancies.**

The officers of community ditches or acequias shall consist of three commissioners and one mayordomo or superintendent, each of whom shall be the owner of an interest in the ditch or the water therein. The officers shall be elected biennially on the first Monday of October of the odd numbered years and shall assume the duties of their offices not later than the first Monday of the following November. On or before the first Monday of November, the commissioners shall organize by the election of one of their number as chairman, another as secretary and the other as treasurer. The mayordomo and the treasurer, separately, shall give a bond to the state in a sum to be fixed by the

commissioners. The condition of the bonds [is] to be for the accounting of all money coming into their hands by virtue of their respective offices and for the faithful performance of their respective duties. Two commissioners shall constitute a quorum and be a full board for the transaction of business at all times. In the event of a vacancy in the office of a mayordomo, the commissioners shall immediately appoint a mayordomo or superintendent to hold office until his successor is elected and qualified. In case of a vacancy in the office of a commissioner, the other two commissioners and the mayordomo, or any two of them, shall immediately appoint his successor who shall immediately qualify and hold his office until his successor is qualified. In case of the joint vacancy of two or more commissioners, a majority of the owners of the water rights in the ditch shall immediately appoint their successors who shall qualify and hold office as herein provided.

**History:** Laws 1903, ch. 32, § 1; Code 1915, § 5787; C.S. 1929, § 151-501; 1941 Comp., § 77-1501; 1953 Comp., § 75-15-1; Laws 1987, ch. 64, § 2.

**Cross-references.** - For counties to which this section does not apply, see 73-3-11 NMSA 1978.

**The 1987 amendment,** effective June 19, 1987, added the present catchline; in the second sentence, substituted "biennially" for "annually" and inserted "of the odd numbered years" following "October"; and made minor stylistic changes.

**Compiler's note.** - Laws 1903, ch. 32, § 1, purported to be an amendment of § 9, 1897 C.L. (now 73-2-12 NMSA 1978), but Laws 1903, ch. 32, § 12 (now 73-3-11 NMSA 1978) limits application of the act to certain counties.

That part of this section relating to appointment of commissioners to fill vacancies may be superseded by 73-2-13 NMSA 1978, which is not limited in its provisions to any particular county.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 94 C.J.S. Waters §§ 339, 344.

### **73-3-2. [Compensation of mayordomo and commissioners.]**

The mayordomo shall receive such compensation for his services as may be mutually fixed between him and a majority of the owners of said ditch. The commissioners shall receive such compensation as may be mutually fixed between them and a majority of the owners of said ditch and upon failure to so fix such compensation, then they shall receive such compensation as is provided by law.

**History:** Laws 1903, ch. 32, § 7; Code 1915, § 5788; C.S. 1929, § 151-504; 1941 Comp., § 77-1502; 1953 Comp., § 75-15-2.

**Cross-references.** - For counties to which this section does not apply, see 73-3-11 NMSA 1978.

For compensation of commissioners generally, see 73-2-23 NMSA 1978.

**Majority of owners of land irrigated must determine pay.** - Pay of mayordomos of acequias must be determined by majority of owners of land irrigated. 1915-16 Op. Att'y Gen. 62.

### **73-3-3. [Officers]; election; votes; canvass.**

The election for acequia or community ditch officers, under this article, shall, be held by the outgoing commissioners, under written rules and regulations to be prescribed by them. Only those having water rights in the acequia or ditch, and who are not delinquent in the payment of their assessments shall be allowed to vote, but votes may be cast by written proxy. All votes shall be in proportion to the interest of the voter in the ditch or water, or in proportion to the number or amount of his water rights, which for election purposes, shall never exceed the lands under irrigation the outgoing year. They shall canvass the votes cast and shall record and publicly announce the result of the election within twenty-four hours after the close of the same. Contests, if any, shall be commenced and conducted as provided by law in the case of general elections for county officers, but the notice of contest shall be filed within fifteen days after the result of the election is announced as herein required.

**History:** Laws 1903, ch. 32, § 2; Code 1915, § 5789; Laws 1921, ch. 129, § 2; C.S. 1929, § 151-505; 1941 Comp., § 77-1503; 1953 Comp., § 75-15-3.

**Cross-references.** - For counties to which this section does not apply, see 73-3-11 NMSA 1978.

**Compiler's note.** - Laws 1903, ch. 32, § 2, is purported to be an amendment of § 10, 1897 C.L. (now 73-2-14 NMSA 1978), but Laws 1903, ch. 32, § 12 (now 73-3-11 NMSA 1978), limits application of the act to certain counties.

**Meaning of "this article".** - The words "this article" were substituted for "this act" by the 1915 Code compilers; the reference is to sections presently compiled as 73-3-1 to 73-3-5 and 73-3-7 to 73-3-11 NMSA 1978.

**One owner might have two or more votes.** - Votes at an acequia election are in proportion to the interest of the voters in the ditch, and one owner might have two or more votes according to the rules of the commissioners. 1914 Op. Att'y Gen. 221.

**No party emblems unless division on party lines.** - A political party emblem is not to be used at an acequia election unless the division is on party lines. 1914 Op. Att'y Gen. 204.

**Quo warranto proceedings not affected.** - The right of one claiming election as an acequia commissioner to proceed by quo warranto under Laws 1919, ch. 28 (44-3-1

NMSA 1978 et seq.) was not affected by this section or 73-2-14 NMSA 1978. State ex rel. Besse v. District Court, 31 N.M. 82, 239 P. 452 (1925).

#### **73-3-4. [Duties of officers; work assessments; collection and disbursement of moneys; reports; records.]**

The commissioners shall assess fatigue work or tasks of all parties owning water rights in said community ditches or acequias and shall regulate the price to be paid in lieu of said fatigue work, all of which shall be uniform. They shall also be the representatives of said acequias in all civil cases for or against the same. The mayordomo or superintendent shall be the executive officer of said ditch and have the superintendence of all work thereon and of the distribution of the waters thereof, with the collection of fines, if any, and of the amounts to be paid in lieu of fatigue or task work: provided, that he shall turn over to the treasurer of said ditch all moneys thus received, taking his receipt therefor: provided, however, that with the consent and approval of the chairman of the commissioners of said ditch, he may retain of the moneys by him thus collected such sums as are necessary to pay for fatigue work as well as repairs necessary to be made upon said ditch or any bridges, flood gates, boxes or dams necessary to be constructed or repaired. He may also, with the consent and approval of a majority of the commissioners, use of the moneys in the treasury such sums as are necessary for such purposes, drawing his approval warrant against the treasurer of said ditch commissioners whose duty shall be to cash the same and mark such warrants "paid" and report them to the commissioners for cancellation and destruction. Said mayordomo shall make full written reports of all moneys received, expended and how expended and of all his doings as such officer, to the commissioners of said ditch, semiannually, on the first Monday in June and the last Monday of September: provided further, that the mayordomo shall make such further reports as may be required by said ditch commissioners. The treasurer of said ditch commissioners shall make such reports to the ditch commissioners of the moneys received, expended and how expended, and kept in his custody as such treasurer and of all his doings as such officer as are herein required of the mayordomo. The commissioners shall receive and pass upon the reports of the mayordomo and the treasurer herein provided for before their term of office expires, and if the same are found to be true and correct they shall approve them, otherwise they shall reject them, respectively. All proceedings of the commissioners relating to all subjects whatsoever shall be reduced to writing in a book or books kept for that purpose and all books and papers so kept by said commissioners and all reports made, filed or kept as herein required shall always be and remain public property, and shall be subject to the inspection of all persons therein concerned.

**History:** Laws 1903, ch. 32, § 3; Code 1915, § 5790; C.S. 1929, § 151-506; 1941 Comp., § 77-1504; 1953 Comp., § 75-15-4.

**Cross-references.** - For counties to which this section does not apply, see 73-3-11 NMSA 1978.

For maximum charge in lieu of fatigue work, see 73-2-24 NMSA 1978.



**Compiler's note.** - Laws 1903, ch. 32, § 3, purported to be an amendment of § 11, 1897 C.L. (now 73-2-21 NMSA 1978), but Laws 1903, ch. 32, § 12 (now 73-3-11 NMSA 1978) limits application of the act to certain counties.

**No further assessments by ditch acquired by conservancy district.** - Where a conservancy district has acquired a community ditch by eminent domain and compensated therefor, the commissioners and mayordomo may not levy upon a water user further assessments beyond those already paid, which were all that were due and owing. Middle Rio Grande Conservancy Dist. v. Chavez, 44 N.M. 240, 101 P.2d 190 (1940).

**And conservancy district may seek injunction.** - Where mayordomo and commissioners of a community acequia acquired by a conservancy district denied water user, who had paid all assessments due from him to the district, the right to receive water until he should first pay assessments levied by ditch officers, conservancy district could enforce by injunction its right to control the flow of water in the ditch. Middle Rio Grande Conservancy Dist. v. Chavez, 44 N.M. 240, 101 P.2d 190 (1940).

**Standard for water distribution is beneficial use.** - Mayordomo must distribute acequia water according to beneficial use by ditch owners. Acreage of land with water rights is controlling factor in apportioning water to members of acequia association, but other matters may also be considered. 1974 Op. Att'y Gen. No. 74-23.

### **73-3-5. [Labor required; fines.]**

The owners of said community ditches or their bosses or representatives shall labor therein in proportion to their lands under cultivation. It shall be their duty to furnish the number of laborers, proportionate to their lands, required by the mayordomo, at the time and place he may designate for the purposes mentioned in the foregoing section [73-3-4 NMSA 1978], and for the time he may deem necessary. If any person thus required shall wilfully neglect or refuse to comply with such requirements of the mayordomo, after having been duly notified by the mayordomo or his agent, he shall be fined, for each offense, in a sum not exceeding five dollars (\$5.00), for the benefit of said ditch or acequia, which shall be recovered by the mayordomo in a summary way, and in case of default in the payment of said fine, it may be recovered by the mayordomo before any justice of the peace [magistrate court] in the county, within fifteen days after such default, and in such cases, the mayordomo may be a competent witness to testify therein.

**History:** Laws 1903, ch. 32, § 4; Code 1915, § 5791; C.S. 1929, § 151-507; 1941 Comp., § 77-1505; 1953 Comp., § 75-15-5.

**Cross-references.** - For counties to which this section does not apply, see 73-3-11 NMSA 1978.

**Jurisdiction, etc., of justice of the peace transferred.** - Section 35-1-38 NMSA 1978 abolishes the office of justice of the peace, transfers the jurisdiction, powers and duties of said justices to the magistrate court and provides that all statutory references to "justice of the peace" shall be construed to refer to the magistrate court.

### **73-3-6. Persons in default in work or payments; right to use of water denied.**

No person, who has after written notice failed or refused to do his work or pay the amount assessed against him in lieu of such work upon the community ditch or acequia, shall be allowed to take or use any water from such community ditch or acequia or lateral thereof, while in default in such payment or failure to do such work.

**History:** 1953 Comp., § 75-15-5.1, enacted by Laws 1961, ch. 60, § 1.

**Cross-references.** - For denial of right to use water, see also 73-2-25 NMSA 1978.

### **73-3-7. [Labor exemptions authorized.]**

In cases of inevitable accidents, such as continual and prolonged droughts, tempests or floods, producing the total or very material failure of crops or expectant crops, the commissioners may, in their discretion, totally or partially exempt the person or persons thus situated from the requirements of the foregoing section [73-3-5 NMSA 1978] relative to continuous labor for lands under cultivation as the circumstances of the case may require. Such exemption or exemptions shall be consistent with the facts and circumstances of the premises and shall not extend to lands thereafter irrigated. Such action by said commissioners shall be reduced to writing and shall become a part of their records.

**History:** Laws 1903, ch. 32, § 5; Code 1915, § 5792; C.S. 1929, § 151-508; 1941 Comp., § 77-1506; 1953 Comp., § 75-15-6.

**Cross-references.** - For counties to which this section does not apply, see 73-3-11 NMSA 1978.

**Compiler's note.** - "The foregoing section" referred to in this section is Laws 1903, ch. 32, § 4, presently compiled as 73-3-5 NMSA 1978.

### **73-3-8. [Penalty for misconduct by mayordomo.]**

If any mayordomo of any community ditch or acequia, after having undertaken to serve as such, shall wilfully neglect or refuse to perform any of the duties of his office, or conduct himself with impropriety or injustice in his office as mayordomo or take any bribe in money, property or otherwise as inducement to act improperly, he shall, upon conviction before any justice of the peace [magistrate court] within the county where

such offense is committed, be punished by a fine not exceeding fifty dollars (\$50.00) or by imprisonment in the county jail not exceeding thirty days or by both such fine and imprisonment, at the discretion of the court or jury trying the case.

**History:** Laws 1903, ch. 32, § 8; Code 1915, § 5794; C.S. 1929, § 151-511; 1941 Comp., § 77-1507; 1953 Comp., § 75-15-7.

**Cross-references.** - For counties to which this section does not apply, see 73-3-11 NMSA 1978.

**Jurisdiction, etc., of justice of the peace transferred.** - See same catchline in notes to 73-3-5 NMSA 1978.

### **73-3-9. [Penalty for misconduct by commissioner.]**

Any wilful neglect of his duties or abuse of his powers by any ditch commissioner shall be deemed a misdemeanor and any such commissioner, upon conviction thereof before any justice of the peace [magistrate court] within the county where such offense is committed, shall be fined in a sum not exceeding twenty-five dollars (\$25.00) recoverable in the manner provided by law.

**History:** Laws 1903, ch. 32, § 9; Code 1915, § 5795; C.S. 1929, § 151-512; 1941 Comp., § 77-1508; 1953 Comp., § 75-15-8.

**Cross-references.** - For counties to which this section does not apply, see 73-3-11 NMSA 1978.

**Jurisdiction, etc., of justice of the peace transferred.** - See same catchline in notes to 73-3-5 NMSA 1978.

### **73-3-10. [Appeals from fines of \$3.00 or less.]**

In all cases of conviction under this article, when the fine assessed by the justice of the peace [magistrate court] is the sum of three dollars (\$3.00) or less, an appeal shall be granted to the district court only when all the accrued costs shall have been paid; which appeal shall be taken and conducted as all other appeals from the decision of justices of the peace [magistrates].

**History:** Laws 1903, ch. 32, § 10; Code 1915, § 5796; C.S. 1929, § 151-513; 1941 Comp., § 77-1509; 1953 Comp., § 75-15-9.

**Cross-references.** - For counties to which this section does not apply, see 73-3-11 NMSA 1978.

For procedure for appeal from magistrate court to district court, see 35-13-1 to 35-13-3 NMSA 1978, and Rule 2-705 SCRA 1986.

**Meaning of "this article".** - See same catchline in notes to 73-3-3 NMSA 1978.

**Jurisdiction, etc., of justice of the peace transferred.** - See same catchline in notes to 73-3-5 NMSA 1978.

### **73-3-11. Counties in which not in effect.**

None of the parts or provisions of this article or any section thereof shall apply or be construed to be in force or effect in any of the following counties, viz.: Dona Ana, Grant, Otero, Luna, Lincoln, Chaves, Eddy, Santa Fe, Guadalupe, Colfax, Union, Rio Arriba, San Juan, Quay, McKinley, Roosevelt, as the same existed on the 11th day of March, 1903.

**History:** Laws 1903, ch. 32, § 12; Code 1915, § 5797; Laws 1917, ch. 68, § 1; C.S. 1929, § 151-514; 1941 Comp., § 77-1510; 1953 Comp., § 75-15-10.

**Compiler's note.** - The 1917 amendment excluded the counties of San Miguel, Mora, Taos and Valencia from the list.

**Meaning of "this article".** - See same catchline in notes to 73-3-3 NMSA 1978.

## **ARTICLE 4 MILL DITCHES**

### **73-4-1. [Course of established mill ditch not to be changed; exception.]**

The course of any mill ditch, already constructed shall not be changed, unless it be through some irrigating ditch to the cultivated lands which shall have the preference.

**History:** Laws 1899, ch. 61, § 1; Code 1915, § 5798; C.S. 1929, § 151-601; 1941 Comp., § 77-1701; 1953 Comp., § 75-16-1.

**Mill ditch easement.** - Adverse, continuous and uninterrupted use for 21 years for milling purposes of water from an artificial ditch supplied from a nonnavigable river, with knowledge and acquiescence of owners of adjoining land over which the water flows, established an easement in the absence of permission or license, and subsequent purchaser of such lands takes subject to such easement, having only a qualified right to use of so much water as will not interfere with the mill. *Trambley v. Luterman*, 6 N.M. 15, 27 P. 312 (1891).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 78 Am. Jur. 2d Waters § 20.

Right to hasten the flow and increase the volume of water in a stream by alterations or improvements in the bed, 9 A.L.R. 1211.

93 C.J.S. Waters §§ 38, 144 to 152.

### **73-4-2. [Arbitrators; appointment in dispute as to right-of-way for mill ditch.]**

Whenever it may become necessary for the owner or owners of a mill to construct a mill ditch, when the same is to be constructed in whole or in part over the land of another owner, and the said owner does not permit the construction of said ditch, then and in that event, the owner of the mill and the owner of the land over which the ditch is to pass shall apply to the justice of the peace [magistrate], of the precinct asking him to appoint three arbitrators or assessors, each party shall name one and the justice [magistrate] shall name the third, but if the landowner refuses to name one then the justice [magistrate] shall name two and the owner of the mill one.

**History:** Laws 1899, ch. 61, § 2; Code 1915, § 5799; C.S. 1929, § 151-602; 1941 Comp., § 77-1702; 1953 Comp., § 75-16-2.

**Jurisdiction, etc., of justice of the peace transferred.** - Section 35-1-38 NMSA 1978 abolishes the office of justice of the peace, transfers the jurisdiction, powers and duties of said justices to the magistrate court and provides that all statutory references to "justice of the peace" shall be construed to refer to the magistrate court.

### **73-4-3. [Oath of arbitrators; report of assessment; payment of award.]**

The justice of the peace [magistrate court] shall make a record of the fact that the arbitrators or assessors were appointed and shall swear them to act faithfully and impartially, as such arbitrators and to report to the said justice of the peace [magistrate] the amount by them assessed in order that the same may be turned over to the justice of the peace [magistrate] and by him turned over to the owner or owners of the land over which said ditch passes, and the said amount shall be paid in cash.

**History:** Laws 1899, ch. 61, § 3; Code 1915, § 5800; C.S. 1929, § 151-603; 1941 Comp., § 77-1703; 1953 Comp., § 75-16-3.

**Jurisdiction, etc., of justice of the peace transferred.** - See same catchline in notes to 73-4-2 NMSA 1978.

### **73-4-4. [Construction of ditch after payment of assessment.]**

If the owner of the mill for which the ditch is desired pays the amount assessed against him, as above required, he may construct his ditch as the same may be designated by the arbitrators and according to the record of the justice of the peace [magistrate court] of the report of the said arbitrators.

**History:** Laws 1899, ch. 61, § 4; Code 1915, § 5801; C.S. 1929, § 151-604; 1941 Comp., § 77-1704; 1953 Comp., § 75-16-4.

**Jurisdiction, etc., of justice of the peace transferred.** - See same catchline in notes to 73-4-2 NMSA 1978.

## **ARTICLE 5**

### **WATER USERS' ASSOCIATIONS**

#### **73-5-1. [Associations authorized.]**

Whenever the owners of lands, reservoirs or irrigation ditches in any county or adjoining counties in this state may desire to enter into mutual undertaking to construct, maintain and operate storage reservoirs, diversion dams, irrigating ditches, canals or other irrigation works, or to combine their several irrigating ditches, canals or other works into one or more irrigation systems, or to improve, enlarge or add to the same, for their mutual advantage, they may organize a water users' association under the provisions of this chapter [this article].

**History:** Laws 1909, ch. 76, § 1; Code 1915, § 5645; C.S. 1929, § 150-101; 1941 Comp., § 77-1601; 1953 Comp., § 75-17-1.

**Cross-references.** - For succession of irrigation districts to rights and duties of water users' associations, see 73-10-45 NMSA 1978.

As to control of animals within territory of water users' associations, see 77-14-8 to 77-14-24 NMSA 1978.

**Meaning of "this chapter".** - The 1915 Code compilers substituted "this chapter" for "this act," presumably to refer to Code 1915, ch. 113, the provisions of which are derived from Laws 1909, ch. 76, and are compiled in the present article as 73-5-1 to 73-5-9 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 94 C.J.S. Waters §§ 340, 353, 399.

#### **73-5-2. [Certificate of association; contents.]**

They shall execute a certificate setting forth:

A. the name of the association. No name shall be assumed which is in use by another association or corporation in this state, or so nearly similar as to lead to uncertainty or confusion;

B. the names of the incorporators;

C. the location of its principal office in this state;

D. the objects and purposes of the association, the county or counties in which its operations are to be carried on, and the general description of the lands to be irrigated and the reservoirs, canals, ditches or works to be constructed, enlarged, combined or used under the management of the association;

E. the amount of capital stock and number and denomination of the shares, or if the incorporators do not desire to issue shares of stock, the plan and manner of acquiring membership and of providing funds or means for the acquisition, construction, improvement and maintenance of its works and for its necessary expenses;

F. the period if any limited for the duration of the association;

G. the number and manner of electing the board of directors, trustees or governing board of said association; and may name the persons who shall serve as such for the first three months or until their successors are elected and qualified;

H. the certificate, or any amendment thereof made as in this chapter [this article] provided may also contain any provision not inconsistent with this chapter or other law of this state, which the incorporators may choose to insert for the regulation and conduct of the business and affairs of the association, extending its membership, enlarging or changing the scope of its operations, creating and enforcing a lien upon the lands, reservoirs, canals, ditches, works and water rights of the association or its members for the cost of acquisition, construction, repair, improvement and maintenance of reservoirs, canals, ditches and other works, collecting the necessary funds for expenses and purposes of the association, defining or limiting its powers and for its dissolution and the distribution or other disposition of its property.

**History:** Laws 1909, ch. 76, § 2; Code 1915, § 5646; C.S. 1929, § 150-102; 1941 Comp., § 77-1602; 1953 Comp., § 75-17-2.

**Meaning of "this chapter".** - See same catchline in notes to 73-5-1 NMSA 1978.

### **73-5-3. [Acknowledgment of certificate; filing; recording.]**

Said certificate shall be acknowledged as required for deeds of real estate shall be filed in the office of the state corporation commission and a copy thereof duly certified by said commission shall be recorded in the office of the county clerk of the county or counties where the said lands or works are located, and such certificate or a copy thereof duly certified by the commission or county clerk shall be evidence in all courts and places.

**History:** Laws 1909, ch. 76, § 3; Code 1915, § 5647; C.S. 1929, § 150-103; 1941 Comp., § 77-1603; 1953 Comp., § 75-17-3.

**Cross-references.** - For form of acknowledgment for deeds of real estate, see 14-13-9 NMSA 1978.

**Association must pay fee.** - Water users' associations which desire to organize as nonprofit corporations must pay fee for filing the certificate of incorporation, as provided for in 53-2-1 NMSA 1978. 1943-44 Op. Att'y Gen. No. 4250.

#### **73-5-4. [Associations to be bodies corporate; rights and powers.]**

Upon the filing of such certificate and copy thereof as provided in the preceding section [73-5-3 NMSA 1978] the persons so associating, their successors and those who may thereafter become members of said association, shall constitute a body corporate by the name set forth in such certificate and by such name may sue and be sued, and shall have capacity to make contracts, acquire, hold, enjoy, dispose of and convey property real and personal and to do any other act or thing necessary or proper for carrying out the purposes of their organization.

**History:** Laws 1909, ch. 76, § 4; Code 1915, § 5648; C.S. 1929, § 150-104; 1941 Comp., § 77-1604; 1953 Comp., § 75-17-4.

**Association may operate irrigation system, borrow and issue bonds.** - Association has the capacity to maintain and operate an irrigation system to furnish water to its members and to borrow money and issue its bonds when necessary. 1935-36 Op. Att'y Gen. 77.

#### **73-5-5. [Amendments to incorporation certificate; authority; procedure.]**

Every such association may change its name, increase or decrease its capital stock or membership, change the location of its principal office in this state, extend the period of its existence and make such other amendment, change or alteration as may be desired, not inconsistent with this chapter [this article] or other law of this state, by a resolution adopted by a vote of two-thirds in interest of the shareholders or members present at any regular or special meeting duly held upon such notice as the bylaws provide or in the absence of such provision upon twenty days' notice in writing given personally or by mail; and provided that such notice shall state that the amendment or change is to be voted upon at such meeting and the nature and purpose thereof, and provided, further, that a majority in interest of the shareholders or members be present at such meeting in person or by duly authorized representative. A certified copy of such resolution with the affidavit of the president and secretary that said resolution was duly adopted by a two-thirds vote of such shareholders or members at a meeting held in accordance with the provisions of this section, shall be filed and recorded as provided for filing and recording the original certificate of incorporation and thereupon the certificate of incorporation shall be deemed to be amended accordingly and a copy of such certificate of amendment certified by the state corporation commission or the county clerk shall be accepted as evidence of such change or amendment in all courts and places.



**History:** Laws 1909, ch. 76, § 5; Code 1915, § 5649; C.S. 1929, § 150-105; 1941 Comp., § 77-1605; 1953 Comp., § 75-17-5.

**Meaning of "this chapter".** - See same catchline in notes to 73-5-1 NMSA 1978.

### **73-5-6. [First meeting; notice.]**

The first meeting of every such association shall be called by a notice signed by a majority of the incorporators, or by the directors, trustees or governing board named in the certificate of incorporation, which notice shall be served personally or by mail at least ten days prior to the date for said meeting.

**History:** Laws 1909, ch. 76, § 6; Code 1915, § 5650; C.S. 1929, § 150-106; 1941 Comp., § 77-1606; 1953 Comp., § 75-17-6.

### **73-5-7. [Power to make and alter bylaws, rules and regulations.]**

The power to make and alter bylaws or rules and regulations for the management and operation of the works of the association, the distribution of the waters thereof and the control and conduct of its business and affairs shall be in the shareholders or members, but the incorporators may, in the certificate of incorporation, confer such power upon the directors, trustees or governing board. Bylaws or rules and regulations made or altered under power so conferred may nevertheless be altered or repealed by the shareholders or members.

**History:** Laws 1909, ch. 76, § 7; Code 1915, § 5651; C.S. 1929, § 150-107; 1941 Comp., § 77-1607; 1953 Comp., § 75-17-7.

### **73-5-8. [Officers; selection; terms; vacancies.]**

Such associations may have such officers or agents chosen or appointed in such manner and for such terms as may be provided by the bylaws. Vacancies occurring among such officers or among the directors, trustees or governing board shall be filled as provided by the bylaws, or in the absence of such provision by the directors, trustees or governing board.

**History:** Laws 1909, ch. 76, § 8; Code 1915, § 5652; C.S. 1929, § 150-108; 1941 Comp., § 77-1608; 1953 Comp., § 75-17-8.

### **73-5-9. Rights-of-way; eminent domain.**

Such associations shall have the right of way over all property formerly belonging to the territory of New Mexico, for its canals, ditches or other works and shall have and exercise the same right to enter upon property to make surveys, and the same right to

take and acquire property and rights-of-way for their reservoirs, canals, ditches and works, as is provided by the Eminent Domain Code [42A-1-1 to 42A-1-33 NMSA 1978].

**History:** Laws 1909, ch. 76, § 9; Code 1915, § 5653; C.S. 1929, § 150-109; 1941 Comp., § 77-1609; 1953 Comp., § 75-17-9; Laws 1981, ch. 125, § 56.

**The 1981 amendment** added the section catchline, substituted "right of way" for "right-of-way" near the beginning of the section, substituted "property" for "lands" twice in the section and substituted "the Eminent Domain Code" for "Section 5892" at the end of the section.

**Effective dates.** - Laws 1981, ch. 125, § 64, makes the act effective on July 1, 1981.

## **ARTICLE 6 DRAINAGE DISTRICTS; FORMATION**

### **73-6-1. Drainage district; petition for; contents.**

Whenever twenty-five percent of the adult owners of lands owning one-fourth of the lands within any district of land to be reclaimed or benefited, desire to construct one or more drains or ditches, or to acquire by purchase or otherwise, drains theretofore constructed, or outlets for drains, for the promotion of agricultural interests and the drainage of said lands or desire to maintain and keep in repair any such drain or ditch theretofore constructed or to protect any such drain or ditch or the land so drained from floods, such owners may file in the district court of any county in which the lands, or any part of them shall lie, a petition setting forth:

- A. the proposed name of said drainage district;
- B. the necessity of the proposed drainage work, describing the necessity;
- C. a general description of the proposed starting points, routes and termini of the proposed drains or ditches;
- D. a general description of the drain or drains of ditch or ditches theretofore constructed, which it is intended to maintain and keep in repair, and of the land thereunder, which it is intended to protect from floods;
- E. a general description of the lands proposed to be included in said district;
- F. the names of the owners of all lands in said district, when known;
- G. if the purpose of said petitioners is the enlargement, repair and maintenance of a ditch or drain [or] other work theretofore constructed, said petition shall give a general description of the same, with such particulars as may be deemed important;

H. said petition shall pray for the organization of a drainage district by the name and with the boundaries proposed, and for the appointment of commissioners for the execution of this and the following sections.

**History:** Laws 1912, ch. 84, § 1; Code 1915, § 1877; Laws 1921, ch. 166, § 1; C.S. 1929, § 40-101; 1941 Comp., § 77-1801; 1953 Comp., § 75-19-1.

**Compiler's note.** - The bracketed word "or" in Subsection G has been inserted by the compiler, although the 1921 amendment had removed that conjunction.

**Law constitutional.** - Laws 1912, ch. 84, does not violate N.M. Const., art. II, § 20, prohibiting the taking of private property for a public use without just compensation. In re Dexter-Greenfield Drainage Dist., 21 N.M. 286, 154 P. 382 (1915).

Laws 1912, ch. 84, is not unconstitutional as violating N.M. Const., art. III, § 1, relating to the legislative power, because the duties imposed by the act are judicial in character. In re Dexter-Greenfield Drainage Dist., 21 N.M. 286, 154 P. 382 (1915).

Laws 1912, ch. 84, does not violate N.M. Const., art. V, § 5, relating to governor's appointive and removal power, because the commissioners of drainage districts are not of the contemplated class. In re Dexter-Greenfield Drainage Dist., 21 N.M. 286, 154 P. 382 (1915).

Laws 1912, ch. 84, does not violate N.M. Const., art. XI, § 6, relating to duties of corporation commission, because drainage districts are public corporations of a class not comprehended by that section of the constitution. In re Dexter-Greenfield Drainage Dist., 21 N.M. 286, 154 P. 382 (1915).

**Right to withdraw name from petition.** - Any person signing the petition has the right to withdraw his name at any time before the district court has finally acted upon the petition and determined that it is signed by the number required to create the drainage district. In re Bernalillo County Drainage Dist. No. 1, 25 N.M. 171, 179 P. 233 (1919).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 25 Am. Jur. 2d Drains and Drainage Districts §§ 2, 13, 17, 18; 45 Am. Jur. 2d Irrigation §§ 58 to 72.

Scope and import of term "owner" in statutes relating to formation of drainage districts, 2 A.L.R. 791, 95 A.L.R. 1085.

Constitutionality of statutes for formation or change of drainage districts, 69 A.L.R. 285.

Liability of irrigation district for damages, 160 A.L.R. 1165.

Discrimination between property within and that outside governmental districts as to rates, 4 A.L.R.2d 598.

Liability as regards surface waters, for raising surface level of land, 12 A.L.R.2d 1338.

28 C.J.S. Drains §§ 5 to 14, 20; 93 C.J.S. Waters § 45.

### **73-6-2. [Amendment of petition; use of several petitions.]**

The court may at any time permit the petition to be amended in form and substance to conform to the facts, if the facts justify the organization of a drainage district. Several similar petitions for the organization of the same district may be circulated, and when filed, shall together be regarded as one petition having as many signers as there are separate adult signers on the several petitions filed, who own lands within said proposed drainage district. All petitions for the organization of said district filed prior to the hearing on said petition shall be considered by the court, the same as if filed with the first petitions placed on file, and the signatures thereon contained shall be counted in determining whether sufficient landowners have signed said petition.

**History:** Laws 1912, ch. 84, § 2; Code 1915, § 1878; C.S. 1929, § 40-102; 1941 Comp., § 77-1802; 1953 Comp., § 75-19-2.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 28 C.J.S. Drains § 20.

### **73-6-3. [Noncontiguous lands may be included.]**

Said territory need not be contiguous, providing that agricultural interests will be promoted by such drainage of each part thereof, and the benefits of the proposed work in each part will exceed the damages from and cost of said proposed work in each part; and provided, further, that the court shall be satisfied that said proposed work can be more cheaply done if in a single district than otherwise.

**History:** Laws 1912, ch. 84, § 3; Code 1915, § 1879; C.S. 1929, § 40-103; 1941 Comp., § 77-1803; 1953 Comp., § 75-19-3.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 28 C.J.S. Drains § 7; 94 C.J.S. Waters § 243(3).

### **73-6-4. [Order and notice of hearing.]**

On such petition being filed the court or judge thereof shall make an order fixing a time and place of hearing thereon and ordering notice; thereupon the clerk of said court, for the county in which the proceedings are instituted, shall cause twenty days' notice of the filings of such petition to be given:

A. by posting notice thereof in at least five public places in the district in which said work is to be done;

B. by serving or causing to be served a copy of such notice on each owner or reputed owner of land within proposed district, residing in any county in which any lands in said proposed district are situated either personally or by leaving a copy thereof at his last usual place of abode, with a person of suitable age and discretion, to whom its contents shall be explained; and

C. by publishing a copy thereof at least once a week for three successive weeks in some newspaper published in each county from which any part of the district is proposed to be taken. If there be no newspaper in any such county, such notice may be published in a newspaper of general circulation in the district.

Such notice shall state:

A. in what court said petition is filed;

B. state briefly the starting points, routes and termini of said drains or ditches;

C. give a general description of the proposed work;

D. give the proposed boundaries of said district (or a general description of all the lands in said proposed district);

E. give the name proposed for said drainage district; and

F. shall also state the time and place by the court fixed when and where the petitioners will ask a hearing on said petition.

**History:** Laws 1912, ch. 84, § 4; Code 1915, § 1880; C.S. 1929, § 40-104; 1941 Comp., § 77-1804; 1953 Comp., § 75-19-4.

**Cross-references.** - As to when posting, publication and mailing of notice unnecessary, see 73-6-7 NMSA 1978.

For general provisions regarding publication of notice, see 14-11-1 to 14-11-13 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Sufficiency of statutory provision for notice and hearing, 84 A.L.R. 1098, 145 A.L.R. 1196.

28 C.J.S. Drains § 23.

### **73-6-5. [Nonresidents; affidavit; mailing notice.]**

If any of the owners or reputed owners of land in said district are nonresidents of the county or counties in which the proposed district lies, the petition shall be accompanied by an affidavit giving the names and post-office addresses of such nonresidents, if such

are known, and if such are unknown, shall state that upon diligent inquiry their names or post-office addresses (whichever may be the fact) cannot be ascertained. The clerk of the court shall mail a copy of the notice aforesaid to each of said nonresidents whose post-office address is known, within six days after the publication of the same.

**History:** Laws 1912, ch. 84, § 5; Code 1915, § 1881; C.S. 1929, § 40-105; 1941 Comp., § 77-1805; 1953 Comp., § 75-19-5.

### **73-6-6. [Proof of giving notice.]**

The certificates of the clerk of the court, or other public officer, or the affidavit of any person who knows the facts, affixed to a copy of said notice, shall be sufficient evidence of the posting, serving, mailing or publication thereof.

**History:** Laws 1912, ch. 84, § 6; Code 1915, § 1882; C.S. 1929, § 40-106; 1941 Comp., § 77-1806; 1953 Comp., § 75-19-6.

### **73-6-7. [Personal service renders posting, publication and mailing of notice unnecessary.]**

Personal service of said notice on or service by leaving at the usual place of abode of all owners or reputed owners of lands within said district shall give the court complete jurisdiction, without posting, publication or mailing of said notice.

**History:** Laws 1912, ch. 84, § 7; Code 1915, § 1883; C.S. 1929, § 40-107; 1941 Comp., § 77-1807; 1953 Comp., § 75-19-7.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 25 Am. Jur. 2d Drains and Drainage Districts § 21.

28 C.J.S. Drains § 23.

### **73-6-8. [Procedure on finding nonservice.]**

If it shall be found before the hearing on a petition for the organization of a drainage district, that one or more owners or reputed owners of land in said district have not been duly served with notice of hearing on said petition, the court, or presiding judge, shall not thereby lose jurisdiction. The court, or presiding judge in such case shall adjourn the hearings, make an order directing the serving of said notice upon said landowner and fixing the time and manner of service of such notice, which notice shall notify him to appear at said adjourned time and place and be heard on said petition.

**History:** Laws 1912, ch. 84, § 8; Code 1915, § 1884; C.S. 1929, § 40-108; 1941 Comp., § 77-1808; 1953 Comp., § 75-19-8.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 28 C.J.S. Drains § 21.

### **73-6-9. [Service or publication of notice of adjourned hearing.]**

Said notice shall be served personally or by leaving at the usual place of abode of said unserved owners, or reputed owners as in Section 73-6-4 NMSA 1978 provided not less than eight days before said hearing or published not less than fourteen days before said adjourned hearing, in some newspaper published in the county in which said owner's lands lie, or if no newspaper be published in said county, then in some newspaper of general circulation in the district.

**History:** Laws 1912, ch. 84, § 9; Code 1915, § 1885; C.S. 1929, § 40-109; 1941 Comp., § 77-1809; 1953 Comp., § 75-19-9.

### **73-6-10. [Procedure at adjourned hearing and on finding nonservice.]**

Upon the adjourned day the same proceedings, adjournments, trial, findings and orders may be had as in case of complete service of notice in the first instance. In case of failure to mail said notice as herein required, the court or judge may order the same mailed at least fourteen days before said adjourned hearing. In case of failure to publish or post notice, as in this chapter required, the court or judge may adjourn said hearing for sufficient time to permit the due posting and publication of said notice, and order said notice posted or published as in Section 73-6-4 NMSA 1978 directed. In case of adjournment to permit notice to be given the notice shall state the fact of such adjournment and the time and place of hearing pursuant to said adjournment.

**History:** Laws 1912, ch. 84, § 10; Code 1915, § 1886; C.S. 1929, § 40-110; 1941 Comp., § 77-1810; 1953 Comp., § 75-19-10.

**Meaning of "this chapter".** - The 1915 Code compilers substituted "this chapter" for "this act." The reference presumably is to the sections of Code 1915, ch. 31, art. 1, presently compiled as 73-6-1 to 73-6-17, 73-6-25 to 73-6-44, 73-7-1 to 73-7-24, 73-7-37, 73-7-38 and 73-7-40 to 73-7-56 NMSA 1978.

### **73-6-11. [Grounds of contest; evidence; notice.]**

On the day fixed for hearing on such petition all parties owning lands, or any interests or easements in land, within said proposed district, or who would be affected thereby, may appear and contest:

- A. the sufficiency of the petition;
- B. the sufficiency of the signers of the petition;

C. the sufficiency of the notice;

D. the constitutionality of the law; and

E. the jurisdiction of the court, specifying their objections to such jurisdiction; and the petitioners and contestants may, on the trial day offer any competent evidence in regard thereto. All notices of contest shall be in writing and shall clearly specify the grounds of contest.

**History:** Laws 1912, ch. 84, § 11; Code 1915, § 1887; C.S. 1929, § 40-111; 1941 Comp., § 77-1811; 1953 Comp., § 75-19-11.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 25 Am. Jur. 2d Drains and Drainage Districts § 51.

28 C.J.S. Drains § 13.

### **73-6-12. [Hearing and determination; number of signers; questions of law; adjournments.]**

The court shall hear and determine whether or not the petition contains the signatures of twenty-five percent of the adult owners of lands within the said proposed district and who represent one-fourth in area of the lands proposed to be affected by said work and shall determine all questions of law arising on said contest. The district court in which such petition shall be filed or the judge thereof may adjourn the hearing from time to time for want of sufficient notice or to give time to prepare for trial or for other good cause.

**History:** Laws 1912, ch. 84, § 12; Code 1915, § 1888; Laws 1921, ch. 166, § 2; C.S. 1929, § 40-112; 1941 Comp., § 77-1812; 1953 Comp., § 75-19-12.

**Cross-references.** - As to finality of findings and orders and appeal to supreme court, see 73-6-41 NMSA 1978.

**Right to withdraw name from petition.** - See same catchline in notes to 73-6-1 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 25 Am. Jur. 2d Drains and Drainage Districts §§ 11, 20 to 26; 45 Am. Jur. 2d Irrigation §§ 56, 58.

28 C.J.S. Drains § 20.

### **73-6-13. [Affidavits to prove ownership.]**

The affidavit of any three or more of the signers of said petition stating that they have examined it, and are acquainted with the locality of said district and that the signers of



said petition are adult owners or reputed owners of lands in said district, to satisfy Section 73-6-1 NMSA 1978 may be taken as prima facie evidence of the facts therein stated. And the affidavit of any petitioner or other landowner before such court, or represented before the court, giving the name of affiant and his or her ownerships of the lands, described therein, shall be prima facie evidence to the court of such facts.

**History:** Laws 1912, ch. 84, § 13; Code 1915, § 1889; C.S. 1929, § 40-113; 1941 Comp., § 77-1813; 1953 Comp., § 75-19-13.

### **73-6-14. [Fraudulent conveyances.]**

Any deed made for the purpose of establishing or defeating the prayer of said petition, and not made in good faith and for a valuable consideration shall be taken and held to be a fraud, and the grantee therein shall not be considered as the owner of the land described therein.

**History:** Laws 1912, ch. 84, § 14; Code 1915, § 1890; C.S. 1929, § 40-114; 1941 Comp., § 77-1814; 1953 Comp., § 75-19-14.

### **73-6-15. [Purchasers bound by previous proceedings.]**

All purchasers of land within any drainage district or proposed drainage district after notice of such petition or any other notice provided by this article, shall have been given, or after such petition as hereinbefore referred to has been filed, shall be deemed to have purchased the same with notice thereof and shall be bound thereby to the same extent as the vendor of such lands would have been bound.

**History:** Laws 1912, ch. 84, § 15; Code 1915, § 1891; C.S. 1929, § 40-115; 1941 Comp., § 77-1815; 1953 Comp., § 75-19-15.

**Meaning of "this article".** - The 1915 Code compilers substituted "this article" for "this act." Both phrases presumably refer to the sections of Laws 1912, ch. 84, codified as Code 1915, ch. 31, art. 1. For sections as presently compiled, see note catchlined "Meaning of 'this chapter'" in 73-6-10 NMSA 1978.

### **73-6-16. [Finding insufficient number of signers; dismissal; costs.]**

If the court, or presiding judge thereof, after hearing any and all competent evidence that may be offered for and against the said petition, shall find that same has not been signed as herein required, the said petition shall be dismissed at the cost of the petitioners, and judgment shall be entered against said petitioners for the amount of said costs.

**History:** Laws 1912, ch. 84, § 16; Code 1915, § 1892; C.S. 1929, § 40-116; 1941 Comp., § 77-1816; 1953 Comp., § 75-19-16.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 25 Am. Jur. 2d Drains and Drainage Districts §§ 17, 18, 24.

94 C.J.S. Waters § 324.

### **73-6-17. [Finding sufficient number of signers; certificate; calling election for drainage commissioners.]**

But if it shall appear that the petition has been so signed, the court or judge shall so find, and shall certify such fact to the board of county commissioners of the county or counties in which such district is situated, and said commissioners shall call an election for the election of commissioners of the said drainage district which said call for election shall be in the same form as proclamations for elections now provided by law, and such election shall be held within thirty days after the receipt of the certificate from the district court as provided for herein.

**History:** Laws 1912, ch. 84, § 17; Code 1915, § 1893; Laws 1919, ch. 156, § 1; C.S. 1929, § 40-117; 1941 Comp., § 77-1817; 1953 Comp., § 75-19-17.

**Cross-references.** - For law regarding proclamations for elections, see 1-11-1 to 1-11-4 NMSA 1978.

**Compiler's note.** - The 1919 amendment rewrote this section, which formerly provided for the appointment of commissioners by the court.

### **73-6-18. [Qualifications of voters; application of general election laws.]**

At such election and at all elections held under the provisions of this act [73-6-17 to 73-6-25, 73-6-33 NMSA 1978], all resident freeholders who are the owners of land within the proposed drainage district, or other evidences of title to such lands, who are qualified electors under the general election laws of the state, shall be entitled to vote, and none others. Insofar as applicable, the general [general] election laws of the state, except requirements for registration, and except as in this act otherwise provided, shall govern all elections under this act.

**History:** Laws 1919, ch. 156, § 2; C.S. 1929, § 40-118; 1941 Comp., § 77-1818; 1953 Comp., § 75-19-18.

**Cross-references.** - For definition of "resident freeholder," see 73-6-21 NMSA 1978.

For general election laws, see 1-1-1 NMSA 1978 et seq.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 94 C.J.S. Waters § 319(2).

### **73-6-19. [Elected by plurality vote.]**

At all elections held under the provisions of this act [73-6-17 to 73-6-25, 73-6-33 NMSA 1978], the commissioners or persons receiving the highest number of votes cast by the qualified electors of the district shall be declared to be elected.

**History:** Laws 1919, ch. 156, § 3; C.S. 1929, § 40-119; 1941 Comp., § 77-1819; 1953 Comp., § 75-19-19.

### **73-6-20. [Ballots.]**

For the first election to be held under the provisions of this act [73-6-17 to 73-6-25, 73-6-33 NMSA 1978], requisite ballots shall be provided under the direction of the board of county commissioners; and at all elections subsequent to the said first election, all such ballots shall be provided by the commissioners of the drainage district.

**History:** Laws 1919, ch. 156, § 4; C.S. 1929, § 40-120; 1941 Comp., § 77-1820; 1953 Comp., § 75-19-20.

### **73-6-21. ["Resident freeholder" defined.]**

Any person residing within any county in which any portion of a drainage or proposed drainage district shall lie, and who is the owner of agricultural land within the limits of the district, shall, for the purposes of this act [73-6-17 to 73-6-25, 73-6-33 NMSA 1978], be considered a resident freeholder.

**History:** Laws 1919, ch. 156, § 5; C.S. 1929, § 40-121; 1941 Comp., § 77-1821; 1953 Comp., § 75-19-21.

### **73-6-22. [Determining and declaring result of election.]**

On the second Monday next succeeding the first election provided for by this act [73-6-17 to 73-6-25, 73-6-33 NMSA 1978], the board of county commissioners shall meet and proceed to canvass the votes cast at such election and declare the result as by this act provided.

**History:** Laws 1919, ch. 156, § 6; C.S. 1929, § 40-122; 1941 Comp., § 77-1822; 1953 Comp., § 75-19-22.

### **73-6-23. [Election precincts; polling places; election judges and clerks.]**

For the purposes of the first election hereinbefore provided for, if, in the judgment of the board of county commissioners, it is necessary so to do, said board may establish election precincts and polling places in addition to the number of voting precincts

provided by law, and define the boundaries thereof, and such precincts may thereafter be changed by the commissioners of such drainage district. In the event of additional election precincts and polling places being designated as aforesaid, judges of election for each such precinct shall be appointed, one of whom shall act as clerk of election.

**History:** Laws 1919, ch. 156, § 7; C.S. 1929, § 40-123; 1941 Comp., § 77-1823; 1953 Comp., § 75-19-23.

### **73-6-24. [Time for holding second and subsequent elections; commissioners holding over.]**

Regular elections of any such district shall be held on the first Tuesday after the first Monday of December of each second calendar year following the first election hereinbefore provided for, and the commissioners so elected at each of said elections shall hold their offices until their successors are elected and have qualified in accordance with the provisions of this act [73-6-17 to 73-6-25, 73-6-33 NMSA 1978].

**History:** Laws 1919, ch. 156, § 8; C.S. 1929, § 40-124; 1941 Comp., § 77-1824; 1953 Comp., § 75-19-24.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 28 C.J.S. Drains § 11.

### **73-6-25. [Commissioners; oath; bond; quorum; concurrence of majority.]**

Before entering upon their duties, such commissioners shall take and subscribe an oath to support the constitution of the United States and the constitution of the state of New Mexico, to faithfully and impartially discharge their duties as such commissioners and to render a true account of their duties to the district court within whose district the said drainage district is located, whenever required by law or the order of the said court, and shall execute a bond running to the state of New Mexico to be filed with said clerk for the benefit of the parties interested, in an amount to be fixed by the said district court or presiding judge thereof, with sureties to be approved by the court or presiding judge, conditioned for the faithful discharge of their duties as such commissioners, and the faithful accounting for and application of all moneys which shall come into their hands as such commissioners. A majority shall constitute a quorum, and a concurrence of a majority in any matter within their duties shall be sufficient for its determination.

**History:** Laws 1912, ch. 84, § 18; Code 1915, § 1894; Laws 1919, ch. 156, § 9; C.S. 1929, § 40-125; 1941 Comp., § 77-1825; 1953 Comp., § 75-19-25.

**Cross-references.** - For annual report of commissioners, see 73-6-29 NMSA 1978.

For report on necessity benefits and boundaries (preliminary report), see 73-6-33 and 73-6-34 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 28 C.J.S. Drains §§ 11, 25; 93 C.J.S. Waters § 128; 94 C.J.S. Waters § 345.

### **73-6-26. [Appointments to fill expired terms; time; notice.]**

Appointments to fill expired terms in the office of drainage commissioners shall be made by the presiding judge of the district court of the county having jurisdiction of the drainage district at the courthouse therein, during the first ten days of September, or as soon thereafter as possible, on a day fixed by the court at least thirty days before such appointment is to be made and a written notice of the time fixed, mailed under direction of the court to each landowner of the district in each district in which such terms expire.

**History:** Laws 1912, ch. 84, § 20; Code 1915, § 1896; C.S. 1929, § 40-126; 1941 Comp., § 77-1826; 1953 Comp., § 75-19-26.

**Compiler's note.** - Laws 1919, ch. 156, provides for the election of drainage district commissioners and is presently compiled as 73-6-17 to 73-6-25 and 73-6-33 NMSA 1978. Section 73-6-24 NMSA 1978 provides for the regular election of commissioners. Laws 1919, ch. 156, § 11, repeals all provisions in conflict with that act.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 28 C.J.S. Drains § 11.

### **73-6-27. [Appointments to fill vacancies; change of residence.]**

Vacancies in the board may be filled by such judge at any time, the commissioners appointed to hold [office] for the residue of the unexpired term. The removal of any commissioner from the county or counties in which lands of such district are situated shall render his office vacant.

**History:** Laws 1912, ch. 84, § 21; Code 1915, § 1897; C.S. 1929, § 40-127; 1941 Comp., § 77-1827; 1953 Comp., § 75-19-27.

**Cross-references.** - For authority of court to remove commissioners, see 73-7-50 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 28 C.J.S. Drains § 11.

### **73-6-28. [Records kept by commissioners.]**

The commissioners shall keep an accurate record of all moneys collected on account of the work under their charge, and of all payments made by them, and shall take vouchers for such payments and shall keep full, accurate and true minutes of all their proceedings.

**History:** Laws 1912, ch. 84, § 22; Code 1915, § 1898; C.S. 1929, § 40-128; 1941 Comp., § 77-1828; 1953 Comp., § 75-19-28.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 28 C.J.S. Drains §§ 12, 30.

### **73-6-29. [Annual report of commissioners.]**

On the first Tuesday of September of each year they shall file in the office of the clerk of the court having jurisdiction in the matter an itemized statement of all their receipts and disbursements and leave said report in such office for examination by parties interested at all times.

**History:** Laws 1912, ch. 84, § 23; Code 1915, § 1899; C.S. 1929, § 40-129; 1941 Comp., § 77-1829; 1953 Comp., § 75-19-29.

### **73-6-30. [Compensation and expenses of commissioners.]**

They shall receive for their services such compensation as the court or presiding judge thereof may determine. They shall also receive their actual reasonable expenses.

**History:** Laws 1912, ch. 84, § 24; Code 1915, § 1900; C.S. 1929, § 40-130; 1941 Comp., § 77-1830; 1953 Comp., § 75-19-30.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 28 C.J.S. Drains § 12.

### **73-6-31. [Court controls commissioners.]**

They shall at all times be under the control and direction of the court or presiding judge, and shall obey its or his directions; failure [failing] so to do they shall forfeit their compensation and be dealt with summarily as for contempt.

**History:** Laws 1912, ch. 84, § 25; Code 1915, § 1901; C.S. 1929, § 40-131; 1941 Comp., § 77-1831; 1953 Comp., § 75-19-31.

**Cross-references.** - As to punishment for contempt, see 34-1-2 NMSA 1978.

### **73-6-32. [Suits on bonds of commissioners.]**

Suit may also be brought upon their bonds, in the name of the state and the amount recovered shall be applied to the construction of the work or to the party injured, as justice may require.

**History:** Laws 1912, ch. 84, § 26; Code 1915, § 1902; C.S. 1929, § 40-132; 1941 Comp., § 77-1832; 1953 Comp., § 75-19-32.

**Cross-references.** - For requirement that commissioners post bond, see 73-6-25 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 59.

28 C.J.S. Drains § 11.

**73-6-33. [President and secretary; examination of lands; report on necessity, benefits and boundaries.]**

Within ten days after said commissioner [commissioners] shall be elected and qualified they shall meet and organize by electing one of their number president and one secretary, and as soon as may be thereafter, they shall personally examine the lands in said district and make a preliminary report to the court, which report shall state:

A. whether said proposed work is necessary, or would be of utility in carrying out the purposes of the petition;

B. whether the proposed work would promote agricultural interests, and whether there are any lands described in said petition which would not be benefitted by such improvement;

C. whether the total benefits from said proposed work will exceed the cost thereof together with the damages resulting therefrom; and in arriving at this they shall include all benefits and all damages resulting therefrom both within and without said district;

D. said commissioners shall in said report fix as near as may be and report to the court the boundaries of said proposed drainage district. Said boundaries shall not be so changed from those in the petition as to deprive the court of jurisdiction by reason of not having on the petition the required number of signers owning land within said changed boundaries.

**History:** Laws 1912, ch. 84, § 27; Code 1915, § 1903; Laws 1919, ch. 156, § 10; C.S. 1929, § 40-133; 1941 Comp., § 77-1833; 1953 Comp., § 75-19-33.

**Cross-references.** - For commissioners' right of entry on lands, see 73-7-18 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Effect of incidental private benefit of eminent domain for drainage, 53 A.L.R. 21.

28 C.J.S. Drains § 25.

**73-6-34. [Report submitting another plan.]**

If said proposed work as in the petition described, is not best suited to carry out the purposes of the petition the commissioners shall consider and base their report upon some other plan best suited to carry out those purposes and propose to the court the plan by them recommended.

**History:** Laws 1912, ch. 84, § 28; Code 1915, § 1904; C.S. 1929, § 40-134; 1941 Comp., § 77-1834; 1953 Comp., § 75-19-34.

### **73-6-35. [Order and notice of hearing on commissioners' preliminary report.]**

Upon the filing of the preliminary report the court or the presiding judge thereof shall by order fix a time and place when and where the same shall be heard at some general or special term of said court, not less than thirty days from the filing of said report. Notice of the time and place of hearing upon said preliminary report shall be given to all interested persons by publishing a brief notice of the filing of said report, including a brief statement of the substance of said report in one or more newspapers published in each county in which any land in said proposed drainage district shall be situated (or if no newspaper is published in said county, in one or more newspapers of general circulation of the district) once in each week for three consecutive weeks prior to the day appointed for hearing thereon. Said notice shall describe all lands by said report included in said district, which were not included therein by the petition, and state that such lands are to be included in said district which were by the petition included therein and shall state that such lands are to be excluded from said district.

**History:** Laws 1912, ch. 84, § 29; Code 1915, § 1905; C.S. 1929, § 40-135; 1941 Comp., § 77-1835; 1953 Comp., § 75-19-35.

**Cross-references.** - For general provisions regarding publication of notice, see 14-11-1 to 14-11-13 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 25 Am. Jur. 2d Drains and Drainage Districts §§ 16, 19, 20.

28 C.J.S. Drains § 28.

### **73-6-36. [Hearing on report; adjournment.]**

Upon the day fixed for hearing upon said report, said court may adjourn said hearing for good cause or may proceed to hear, try and determine all issues arising upon said report.

**History:** Laws 1912, ch. 84, § 30; Code 1915, § 1906; C.S. 1929, § 40-136; 1941 Comp., § 77-1836; 1953 Comp., § 75-19-36.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 28 C.J.S. Drains § 28.

### **73-6-37. [Remonstrances against report.]**



Any interested party may appear and remonstrate against said report or any material part thereof. All remonstrances shall be in writing, be verified on oath, be filed at least five days before the day fixed for hearing and shall set forth the facts upon which they are based.

**History:** Laws 1912, ch. 84, § 31; Code 1915, § 1907; C.S. 1929, § 40-137; 1941 Comp., § 77-1837; 1953 Comp., § 75-19-37.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 28 C.J.S. Drains § 27.

### **73-6-38. [Notice served on owners of added lands.]**

When lands are added to the district the owners thereof shall be served with said notice as provided for serving of notice of hearing on the petition.

**History:** Laws 1912, ch. 84, § 32; Code 1915, § 1908; C.S. 1929, § 40-138; 1941 Comp., § 77-1838; 1953 Comp., § 75-19-38.

**Cross-references.** - For serving of notice of hearing on the petition, see 73-6-4 to 73-6-7 NMSA 1978.

### **73-6-39. [Hearing on report; how issues tried; causes for dismissal; costs.]**

All issues arising upon said preliminary report shall be tried by the court without a jury. If the court shall find in favor of the remonstrance, or if said report be that the proposed work will not promote the agricultural interests, or that the benefits from said proposed work will not exceed the damages and cost of construction, and no remonstrance against said report is filed, the petition shall be dismissed and the costs taxed against the petitioners, and judgment entered therefor, as in Section 73-7-12 NMSA 1978, hereinafter provided.

**History:** Laws 1912, ch. 84, § 33; Code 1915, § 1909; C.S. 1929, § 40-139; 1941 Comp., § 77-1839; 1953 Comp., § 75-19-39.

### **73-6-40. [Confirmation of report; work to proceed.]**

But if the preliminary report be that the benefits of said proposed work (or work by the commissioners proposed) will exceed the damages and the cost of construction and that the agricultural interests will be promoted thereby, and no remonstrance thereto is filed, or if on the trial of the issues made on said report the court finds that the benefits will exceed the damages and cost of construction, and that the agricultural interests will be promoted by said proposed work, the court shall make and file such findings in writing and make an order confirming said report or directing amendment of the report to conform to the findings of said court. And when so amended the court shall by order

confirm the same and direct said commissioners to proceed with said work with all convenient speed.

**History:** Laws 1912, ch. 84, § 34; Code 1915, § 1910; C.S. 1929, § 40-140; 1941 Comp., § 77-1840; 1953 Comp., § 75-19-40.

### **73-6-41. [Finality of findings and order; appeal.]**

Such findings and order shall be final and conclusive unless appealed from, to the supreme court within thirty days after filing thereof.

**History:** Laws 1912, ch. 84, § 35; Code 1915, § 1911; C.S. 1929, § 40-141; 1941 Comp., § 77-1841; 1953 Comp., § 75-19-41.

**Right of appeal from findings as to required signatures.** - This section gives the right of appeal to the supreme court from the findings of the district court in regard to the required signatures of the petition within thirty days after the same are filed, and consequently cuts off the right to further question such findings. In re Dexter-Greenfield Drainage Dist., 21 N.M. 286, 154 P. 382 (1915).

### **73-6-42. [Order of confirmation; entry; district declared organized; name; boundaries; corporate powers.]**

Upon entering of such order of confirmation of said preliminary report of record, such drainage district shall be, and is thereby declared to be organized as a drainage district by the name mentioned in said petition, or such other name as the court shall fix, with the boundaries fixed by the order confirming the report of said commissioners, to be a body corporate by said name fixed in said order, with the right to sue and be sued, to adopt and use a seal and to have perpetual succession.

**History:** Laws 1912, ch. 84, § 36; Code 1915, § 1912; C.S. 1929, § 40-142; 1941 Comp., § 77-1842; 1953 Comp., § 75-19-42.

**Court does not organize corporation,** but merely sits in judgment as a judicial tribunal to ascertain that certain required facts and conditions exist, the statute thereupon organizes the corporation. In re Dexter-Greenfield Drainage Dist., 21 N.M. 286, 154 P. 382 (1915).

**Municipal corporation may be sued at law and equity.** - Municipal corporation, having capacity to sue and be sued, may be sued both at law and in equity whenever a cause of action exists against it. Roswell Drainage Dist. v. Parker, 53 F.2d 793 (10th Cir. 1931).

**Even if satisfaction of judgment impossible.** - Fact that creditor may not be able to obtain satisfaction of his judgment against municipal corporation does not affect his right

to sue and obtain judgment. Roswell Drainage Dist. v. Parker, 53 F.2d 793 (10th Cir. 1931).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Personal injuries, liability of drainage district for, 33 A.L.R. 77.

28 C.J.S. Drains § 29.

### **73-6-43. [Powers of commissioners.]**

The commissioners appointed as aforesaid and their successors in office shall from the entry of such order of confirmation, constitute the corporate authority of said drainage district, and shall exercise the functions conferred on them by law, and do all things and perform all acts necessary to the construction and preservation of the proposed work.

**History:** Laws 1912, ch. 84, § 37; Code 1915, § 1913; C.S. 1929, § 40-143; 1941 Comp., § 77-1843; 1953 Comp., § 75-19-43.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 28 C.J.S. Drains §§ 7, 12.

### **73-6-44. [Conditions precedent to formation of drainage district.]**

All proceedings herein required, prior to the entry of such order of confirmation of record, shall be deemed to be and are hereby declared to be necessary to the formation of said body corporate.

**History:** Laws 1912, ch. 84, § 38; Code 1915, § 1914; C.S. 1929, § 40-144; 1941 Comp., § 77-1844; 1953 Comp., § 75-19-44.

## **ARTICLE 7 DRAINAGE DISTRICTS; CONSTRUCTION, OPERATION AND MAINTENANCE**

### **73-7-1. [Employment of engineer; levels, surveys, maps and plans; report to court.]**

As soon as may be after the confirmation of the said preliminary report, or within such time as the court may direct, said commissioners shall employ a competent drainage engineer and proceed to have all necessary levels taken and surveys made, and shall lay out said proposed work, make a map thereof and plans, profiles and other specifications thereof and report in writing to the court.

A. Whether the starting point, routes and termini of proposed work and the proposed location thereof, as in the petition contained, are in all respects proper and feasible, and, if not, shall report such as are most proper and feasible.

B. If it be found necessary to change the boundaries of said proposed district, as by them previously fixed, they shall report said proposed change, and, if possible, shall report the names, residence and post-office addresses of the owner or owners of all lands affected by said change in boundaries, but no such change in boundaries shall be made as to deprive the court of jurisdiction; provided, however, that if the owners of lands adjacent to the district petition to have their lands brought in to the district such may be considered the same as original petitioners in making changes of boundaries.

C. What lands within the district, as by them reported will be injured by the proposed work, if any, and they shall therein award to each tract, lot, easement of interest by whomsoever held, the amount of damages which they shall determine will be caused to the same by the proposed work.

D. What lands within the district as by them reported will be benefited by the proposed work and they shall assess against each tract, lot and easement by whomsoever held the amount of benefits which they determine will be caused to the same by the proposed work or the damages inflicted by same on the district. The benefits or damages assessed as provided in this section are hereinafter referred to as "assessment of benefits."

E. They shall also determine and report to the court the total amount, as near as they can determine, that said proposed work will cost, which amount shall include all incidental expenses, the reasonable cost of organizing said district, costs of proceeding and all probable damage to lands, both within and without the district, together with a reasonable attorney fee for the petitioners, which cost will hereinafter be referred to as "cost of construction."

F. If the cost of construction of any particular part of the work so proposed to be done should be assessed upon any particular tract or tracts, lot or lots of land, or upon any corporation or corporations, individual or individuals, company or companies not incorporated, the commissioners shall so specify, and in their report they shall fix and determine the sums which should be assessed against said tracts, lots and corporations, individuals, companies not incorporated and assess such sum against said tracts, lots, corporations, individuals, companies not incorporated.

G. And if any corporation, individual or individuals, company or companies not incorporated or public highway or highways would, in the judgment of said commissioners, derive special benefits from the whole or any part of such proposed work, the commissioners shall so report and assess those benefits and assess against the same its proportionate share of the costs of said proposed work. The word "corporation" wherever in this act contained, shall be construed to include:

- (1) railroad companies;
- (2) other private corporations of all kinds;
- (3) towns;
- (4) cities;
- (5) villages; and
- (6) other drainage districts.

H. They shall apportion and assess the part of this "cost of construction" not assessed as in Subdivision [Subsections] F and G of this section against the several benefited tracts, lots and easements in said drainage district, in proportion to the benefits which they have assessed against the same by setting down opposite each tract, lot or easement, the sum so apportioned to each. The assessments which together make up the cost of construction as above defined, are herein referred to as "assessments for construction."

I. The commissioners shall further report to the court the probable cost of keeping said proposed work in repair after it is completed.

J. They shall include in their said report said map, plans and other specifications, and file the same with their report.

**History:** Laws 1912, ch. 84, § 39; Code 1915, § 1915; C.S. 1929, § 40-145; 1941 Comp., § 77-1901; 1953 Comp., § 75-20-1.

**Cross-references.** - For commissioners' right of entry on lands, see 73-7-18 NMSA 1978.

**Meaning of "this act".** - The reference to "this act" in Subsection G means Laws 1912, ch. 84, the provisions of which are presently compiled as 73-6-1 to 73-6-17, 73-6-25 to 73-6-44, 73-7-1 to 73-7-24, 73-7-37, 73-7-38 and 73-7-40 to 73-7-56 NMSA 1978.

**Special assessments for benefits not taxes.** - Special assessments on property for improvements, on basis of benefits under this act, are not taxes within exemption of N.M. Const., art. VIII, § 3; thus, a county is not exempted and may be assessed for special benefits to its public highways. *Lake Arthur Drainage Dist. v. Board of Comm'rs*, 29 N.M. 219, 222 P. 389 (1924).

**Limit on assessments.** - Lands within district are only subject to such assessments as are expressly or impliedly authorized by statute under which the district was created, and in no event for assessments in excess of benefits received. *Roswell Drainage Dist. v. Parker*, 53 F.2d 793 (10th Cir. 1931).

**Complaining parties must avail themselves of statutory proceedings.** - Complaint to exonerate land from lien of drainage assessment on alleged ground that drain constructed was not that designated by survey was demurrable for failure to show that plaintiff availed himself of opportunities afforded by the drainage statute to protect his interests in the drainage proceeding. *Strickland v. Elliott*, 27 N.M. 238, 199 P. 1016 (1921).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 25 Am. Jur. 2d Drains and Drainage Districts §§ 7, 19, 26, 28.

Validity of rule of assessment for drainage improvement, 2 A.L.R. 625.

28 C.J.S. Drains §§ 25, 41; 93 C.J.S. Waters § 210; 94 C.J.S. Waters § 321.

### **73-7-2. [Commissioners; discretion as to plans; alteration of plan by court order.]**

The commissioners shall not be confined to the points of commencement, routes or termini of the drains or ditches, or the number, extent or size of the same or the location, plan or extent of any drain, ditch or other work, as proposed by the petitioners, but shall locate, design, lay out and plan the same in such manner as to them shall seem best, to promote the agricultural interests and to drain, or to protect the lands of the parties interested with the least damage and the greatest benefit to all lands affected thereby. And any plan proposed by the commissioners, may on the application of any person interested, on the hearing hereinafter provided for, or on the application of the commissioners, be altered by the court, by written order, in such manner as shall appear to the court to be just.

**History:** Laws 1912, ch. 84, § 40; Code 1915, § 1916; C.S. 1929, § 40-146; 1941 Comp., § 77-1902; 1953 Comp., § 75-20-2.

### **73-7-3. [Boundaries extended or contracted.]**

If the commissioners find that the proposed district as described in the petition filed, will not embrace all of the lands that will be benefited by the proposed work, or that it will include lands that will not be benefited and are not necessary to be included in said district for any purpose, they shall extend or contract the boundaries of the proposed district so as to include or exclude all such lands, as the case may be; and the boundaries adopted and reported by them, may, upon the hearing of their report, as hereinafter provided, upon their application, or that of any person interested, be altered by the court in such manner as shall appear to be just; provided, that the alteration of boundaries as aforesaid shall not have the effect of so far enlarging or contracting the proposed district as to render such petition void or dismissable. Said report shall be filed with the clerk of the court.

**History:** Laws 1912, ch. 84, § 41; Code 1915, § 1917; C.S. 1929, § 40-147; 1941 Comp., § 77-1903; 1953 Comp., § 75-20-3.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 42.

28 C.J.S. Drains § 8; 94 C.J.S. Waters § 319(2), (3).

#### **73-7-4. [Filing of report; hearing; time and place; notice.]**

Upon the filing of said report, the court shall make and enter an order fixing the time and place when and where all persons interested may appear and remonstrate against the confirmations thereof, and the clerk of said court shall cause notice of the time and place of such hearing to be given to all parties interested, which notice shall contain a brief description of the lands benefited and damaged, together with the net damage awarded to the several tracts, parcels, easements and corporations to which damages are awarded and the sum in each case assessed for construction against said several benefited parcels, tracts, easements and corporations.

**History:** Laws 1912, ch. 84, § 42; Code 1915, § 1918; C.S. 1929, § 40-148; 1941 Comp., § 77-1904; 1953 Comp., § 75-20-4.

**Not proper for delinquent landowner to change basis of assessment.** - Where a report discloses that the basis of an assessment is the benefits to be derived to each tract of land, a landowner cannot, in defending collection of interest due upon the assessment, urge that the amount assessed against a given tract exceeds the sum actually expended thereon, since that would change the basis of the assessment. State ex rel. Hagerman Drainage Dist. v. Stanley, 28 N.M. 420, 213 P. 770 (1923).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 28 C.J.S. Drains § 27.

#### **73-7-5. [Publication of notice; service.]**

Said notice shall be published for at least three successive weeks, prior to the day set for the hearing in one newspaper published in each county in which said lands, or any part thereof within said district are situated (and if no newspaper is published in said county, in some newspaper of general circulation in the district), and by serving a copy of such notice on each of the persons, or corporations, by said report recommended to be assessed, or whose lands are by said report recommended to be included in said district, and who reside in any of the counties out of which the proposed district is formed, at least 20 days before the day of hearing in the same manner that a summons is required to be served, provided, absence from the county of such person or corporation shall excuse personal service, whereupon due publication of such notice shall be sufficient service.

**History:** Laws 1912, ch. 84, § 43; Code 1915, § 1919; C.S. 1929, § 40-149; 1941 Comp., § 77-1905; 1953 Comp., § 75-20-5.

**Cross-references.** - For provisions as to publication of notice, see 14-11-1 to 14-11-13 NMSA 1978.

For manner of service of summons, see Rule 4(e), N.M.R. Civ. P.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 25 Am. Jur. 2d Drains and Drainage Districts §§ 11, 13, 20 to 22.

28 C.J.S. Drains §§ 8 to 10.

### **73-7-6. [Provisions of notice; land in more than one county.]**

In case the lands are situated in more than one county the notice published in the county wherein the court having jurisdiction is situated shall contain a description of all the lands in said proposed district, the damages awarded to the several parcels thereof and amounts assessed for construction against the several parcels thereof, but the notice published in any other county or counties may contain a description of only the lands situate in said county for which said publication is made, together with the damages awarded to and assessments for construction against the several tracts, parcels, easements and interests situate in said county for which publication is made.

**History:** Laws 1912, ch. 84, § 44; Code 1915, § 1920; C.S. 1929, § 40-150; 1941 Comp., § 77-1906; 1953 Comp., § 75-20-6.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 28 C.J.S. Drains §§ 8 to 10.

### **73-7-7. [Publication unnecessary in case of personal service or waiver of notice.]**

In case of service of said notice personally, or the acceptance and waiver thereof on all the owners of the lands within the district, said service shall be sufficient and give the court jurisdiction without said publication.

**History:** Laws 1912, ch. 84, § 45; Code 1915, § 1921; C.S. 1929, § 40-151; 1941 Comp., § 77-1907; 1953 Comp., § 75-20-7.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 25 Am. Jur. 2d Drains and Drainage Districts § 21.

### **73-7-8. [Report referred back to commissioners for modification.]**

If the court finds that the report requires modification the same may by order of the court be referred back to the commissioners, who may be required to modify it in any respect.



**History:** Laws 1912, ch. 84, § 46; Code 1915, § 1922; C.S. 1929, § 40-152; 1941 Comp., § 77-1908; 1953 Comp., § 75-20-8.

### **73-7-9. [Confirmation of report; appeal.]**

If there be no remonstrance, or if the finding be in favor of the validity of the proceedings or after the report shall have been modified to conform to the findings, the court shall confirm the report and order of confirmation shall be final and conclusive, the proposed work shall be established and authorized and the proposed assessments approved and confirmed, which approval and confirmation shall be final, unless within thirty days an appeal be taken to the supreme court.

**History:** Laws 1912, ch. 84, § 47; Code 1915, § 1923; C.S. 1929, § 40-153; 1941 Comp., § 77-1909; 1953 Comp., § 75-20-9.

**Timely appeal is sole remedy.** - Since decrees rendered under drainage district law are not subject to collateral attack, the only remedy permitted to an owner aggrieved by such decree is by appeal seasonably taken to the supreme court. *Strickland v. Elliott*, 27 N.M. 238, 199 P. 1016 (1921).

**Landowners adequately protected.** - Law regarding drainage districts furnishes a complete and comprehensive system of judicial procedure with respect to drainage, and affords adequate protection of owners of land in district. *Lake Arthur Drainage Dist. v. Board of Comm'rs*, 29 N.M. 219, 222 P. 389 (1924); *State ex rel. Hagerman Drainage Dist. v. Stanley*, 28 N.M. 420, 213 P. 770 (1923).

**Landowner cannot protest assessment on ground that lesser amount expended.** - A landowner cannot, in defense to suit to collect interest due upon assessment, defend on the ground that amount assessed against a given tract exceeds the sum actually expended. *State ex rel. Hagerman Drainage Dist. v. Stanley*, 28 N.M. 420, 213 P. 770 (1923).

### **73-7-10. [Order of confirmation; modification.]**

Said order of confirmation may, at the same or at any subsequent term of said court, be revised, modified or changed, in whole or in part, on petition of the commissioners, after such notice as the court may require, to parties adversely interested.

**History:** Laws 1912, ch. 84, § 48; Code 1915, § 1924; C.S. 1929, § 40-154; 1941 Comp., § 77-1910; 1953 Comp., § 75-20-10.

**Court's powers unaffected by stipulation on which order based.** - The fact that the order approving assessments and the findings was made upon a stipulation between remonstrants and commissioners does not change the nature of the order nor the powers of the court. *Stanley v. Wixon*, 24 N.M. 499, 174 P. 200 (1918).

### **73-7-11. [Supplemental report; notice.]**

At any time prior to making the order confirming said report or thereafter the court may permit the commissioners to present and file a supplemental report, or amend their report as to any matter which, pursuant to the provisions hereof, was or might have been included in the original report presented by them, and after reasonable notice given to all parties interested, in such manner as the court shall direct, the court may, upon the hearing in said matter make such order as the case may require.

**History:** Laws 1912, ch. 84, § 49; Code 1915, § 1925; C.S. 1929, § 40-155; 1941 Comp., § 77-1911; 1953 Comp., § 75-20-11.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 28 C.J.S. Drains § 25.

### **73-7-12. [Dismissal of petition or proceedings; judgment for costs.]**

In case the petition or proceedings are dismissed as provided in Section 73-6-39 NMSA 1978, a judgment shall be entered against the petitioners and in favor of the commissioners for the costs, expenses and liabilities incurred in said proceedings, and for the benefit of those who have rendered services or advanced money in the prosecution of said proceedings, or have recovered costs on successful contests therein.

**History:** Laws 1912, ch. 84, § 50; Code 1915, § 1926; C.S. 1929, § 40-156; 1941 Comp., § 77-1912; 1953 Comp., § 75-20-12.

### **73-7-13. [Payment of judgment by proportionate contribution of petitioners.]**

All petitioners shall, among themselves, contribute in the payment of said judgment, in proportion to the number of acres of land they have within the boundaries of the proposed district.

**History:** Laws 1912, ch. 84, § 51; Code 1915, § 1927; C.S. 1929, § 40-157; 1941 Comp., § 77-1913; 1953 Comp., § 75-20-13.

### **73-7-14. [Assessments; payment in installments.]**

At the time of confirmation of such assessments, it shall be competent for the court to order the assessments for cost of construction, to be paid in not more than fifteen installments of such amounts and at such times as will be convenient for the accomplishment of the proposed work, or for the payment of the principal and interest of such notes or bonds of said district as the court shall grant authority to issue, for the cost of construction. The court may also, by such order, fix a date on which the first installment of the assessments for cost of construction shall become due, not more than

five years after the date of the order, and each of said installments shall draw interest at the rate of not to exceed eight percent per annum from the date of said order.

**History:** Laws 1912, ch. 84, § 52; Code 1915, § 1928; C.S. 1929, § 40-158; 1941 Comp., § 77-1914; 1953 Comp., § 75-20-14.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 49.

28 C.J.S. Drains § 78; 94 C.J.S. Waters §§ 333, 343.

### **73-7-15. [Assessments; time of payment; lien on land.]**

Unless otherwise provided by said order, such assessment shall be payable at once; and from the time of the entry of said order, assessments for cost of construction and interest thereon, shall be a lien upon the lands assessed until paid. Any owner of land, or any corporation assessed for cost of construction, may at any time within thirty days after the confirmation of said report, pay into court, the amount of the assessment against his land or any tract thereof, or against any such corporation. Said payment shall relieve said lands from the lien of said assessment, and said corporation from all liability on said assessment.

**History:** Laws 1912, ch. 84, § 53; Code 1915, § 1929; C.S. 1929, § 40-159; 1941 Comp., § 77-1915; 1953 Comp., § 75-20-15.

**Complaining parties must avail themselves of statutory proceedings.** - See same catchline in notes to 73-7-1 NMSA 1978.

**No tax receipt until drainage assessment paid.** - While it is permissible to allow taxpayer to pay state and county taxes without paying water or drainage tax, treasurer may not give a tax receipt until the latter assessments have been paid. 1925-26 Op. Att'y Gen. 45.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 28 C.J.S. Drains § 77; 94 C.J.S. Waters §§ 333, 343.

### **73-7-16. [Assessments for repairs; time of payment; commissioners' report.]**

Assessments for keeping any drain, ditch, levee or other work in repair under these provisions, shall be due and payable on the first Tuesday of September annually. Commissioners having charge of any completed drain, ditch or other work shall, on the first Tuesday of June in each year, file with the clerk of the court having jurisdiction, a report in which they shall specify in detail the labor necessary to the preservation and protection of the work under their control, the places where repairs are specially needed and the sum to be assessed against each tract, lot, easement or corporation to pay all

necessary repairs. All such assessments shall be apportioned on the last assessments of benefits confirmed by the court.

**History:** Laws 1912, ch. 84, § 54; Code 1915, § 1930; C.S. 1929, § 40-160; 1941 Comp., § 77-1916; 1953 Comp., § 75-20-16.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 28 C.J.S. Drains § 78; 94 C.J.S. Waters §§ 333, 343.

### **73-7-17. [Hearing on annual report; assessments.]**

Within thirty days after filing such annual report, at a time and place to be fixed by the court, or presiding judge, the court or presiding judge shall examine said report, hear all objections to the same, fix and determine the amount of such assessments and cause such adjudication to be entered of record in said court, and a certified copy of the same to be delivered to said commissioners.

**History:** Laws 1912, ch. 84, § 55; Code 1915, § 1931; C.S. 1929, § 40-161; 1941 Comp., § 77-1917; 1953 Comp., § 75-20-17.

**Decree final.** - A decree of court confirming the report of the commissioners and the assessment is final and not open to collateral attack. *Lake Arthur Drainage Dist. v. Board of Comm'rs*, 29 N.M. 219, 222 P. 389 (1924).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 25 Am. Jur. 2d Drainage and Drainage Districts §§ 48 to 52.

### **73-7-18. [Commissioners' right of entry on lands; penalty for interference.]**

The commissioners from the time of their appointment may go upon the lands lying within said district for the purpose of examining the same, and making plans, plats and surveys, and after the organization of said district, and payment or tender of compensation allowed, may go upon said lands, with their servants, teams, tools, instruments or other equipments [equipment], for the purpose of constructing such proposed work, and may forever thereafter enter upon said lands as aforesaid, for the purpose of maintaining or repairing such proposed work, doing no more damage than the necessity of the occasion may require; and any person or persons, who shall willfully prevent or prohibit any of such persons from entering such lands for the purposes aforesaid, shall be fined any sums not exceeding \$25.00 per day for each day's hindrance to be recovered in an action of debt in favor of such drainage district, which sum shall be paid into the treasury for the use of said district.

**History:** Laws 1912, ch. 84, § 57; Code 1915, § 1933; C.S. 1929, § 40-162; 1941 Comp., § 77-1918; 1953 Comp., § 75-20-18.

**Cross-references.** - For constitutional provision regarding disposition of fines and forfeitures which may supersede this section, see N.M. Const., art. XII, § 4.

### **73-7-19. [Right to condemn right-of-way for outlet for drainage district; manner of condemnation.]**

Where a drainage district has no sufficient outlet within its borders it is hereby provided that said district shall have the right to condemn right-of-way across the necessary lands to reach an outlet, the damages, if any, to the owners of lands through which the right-of-way is procured to be agreed upon by said owner and the commissioners of such district or if they cannot agree upon damages, the said drainage commissioners, shall proceed in the name of such drainage district to condemn such right-of-way which shall be so located so as to do the least damage to private or public property consistent with the proper use and economical construction of such outlet. Such land and right-of-way shall be acquired in the manner provided by law for the condemnation and taking of private property in New Mexico, for railroad, telegraph, telephone and other public uses and purposes.

**History:** Laws 1912, ch. 84, § 58; Code 1915, § 1934; C.S. 1929, § 40-163; 1941 Comp., § 77-1919; 1953 Comp., § 75-20-19.

**Cross-references.** - For general eminent domain provision for drainage rights-of-way, see 73-7-56 NMSA 1978.

For general provisions on taking private property for public uses, see Chapter 42A NMSA 1978.

**Canal owners could not prevent diversion of ditch water from canal.** - Where drainage ditch emptied into a canal and the commissioners of the district sought by condemnation to acquire a right-of-way across the canal so that they might sell the water beyond, the owners of the canal, having no interest in the water, had no right to an injunction enjoining the commissioners from diverting the water which had been flowing into the canal from the ditch. *Hagerman Irrigation Co. v. East Grand Plains Drainage Dist.*, 25 N.M. 649, 187 P. 555 (1920).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 29A C.J.S. Eminent Domain § 53.

### **73-7-20. [Drains or ditches over railroad rights-of-way; construction by railroad or by commissioners.]**

Upon receiving a thirty days' notice from the commissioners in writing, which notice shall be accompanied by the plans and specifications, of the size and character of such ditch or drain, any railway company, over whose right-of-way or yard such drain or ditch shall be laid out, may perform the work of constructing such ditch or drain across its said right-of-way according to such plans or specifications so furnished, and such railway so

constructing such ditch or drain shall receive fair compensation therefor to be allowed by the commissioners of such drainage district and approved by the court; provided, that such railway company may be assessed for benefits derived from such drainage in the same manner and to the same extent as other landowners benefited in the immediate vicinity thereof, are assessed. If such railway company shall fail to commence and proceed with the construction of such ditch or drain as in this section provided, after the notice as herein provided, the commissioners may at any time after the expiration of said thirty days open or cause to be opened such right-of-way or yard along the line of such ditch or drain and construct the same in like manner as such ditch or drain is constructed through the property of individuals, provided, that such construction shall be carried on in such manner as will not interfere with the operation of said railway.

**History:** Laws 1912, ch. 84, § 59; Code 1915, § 1935; C.S. 1929, § 40-164; 1941 Comp., § 77-1920; 1953 Comp., § 75-20-20.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 25 Am. Jur. 2d Drains and Drainage Districts § 35; 45 Am. Jur. 2d Irrigation § 45.

Construction of statutes requiring railroads to provide for the drainage or flow of waters, 19 A.L.R.2d 967.

74 C.J.S. Railroads § 186; 94 C.J.S. Waters § 333.

### **73-7-21. [Additional assessments.]**

If in the first assessment for construction the commissioners shall have reported to the court a smaller sum than is needed to complete the work of construction, or if in any year an additional sum is necessary to pay the interest on lawful indebtedness of said drainage district, further or additional assessments on the land and corporations benefited, apportioned upon the last assessment of benefit which has been approved by the court, shall be made by the commissioners of said drainage district under the order of the court or presiding judge thereof without notice, which further or additional assessment may be made payable in installments as specified in Section 73-7-15 NMSA 1978, and shall be treated and collected in the same manner as the original assessments for construction confirmed by the court in said drainage district.

**History:** Laws 1912, ch. 84, § 60; Code 1915, § 1936; C.S. 1929, § 40-165; 1941 Comp., § 77-1921; 1953 Comp., § 75-20-21.

**Interest payable on bonds and coupons after maturity.** - Legislature intended that drainage districts should pay interest on their bonds and coupons after maturity. Roswell Drainage Dist. v. Parker, 53 F.2d 793 (10th Cir. 1931).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 25 Am. Jur. 2d Drains and Drainage Districts §§ 42, 48.

Necessity that additional assessment in proceeding to establish drain precede incurring of liability in excess of original assessment, 63 A.L.R. 1179.

28 C.J.S. Drains § 76.

### **73-7-22. [Omitted assessments; correction; report to court.]**

Omission to assess benefits, or to assess for cost of construction, or to make additional assessments, or to make assessment for repairs against, or to award damages to any one or more tracts of land or easements in a drainage district, or to assess benefits, or to assess for cost of construction, or to assess for repairs or to make additional assessments against any corporation which should have been assessed, shall neither affect the jurisdiction of the court to confirm any report nor to render the benefits assessed, or the assessments for cost of construction, or additional assessments or assessments for repairs against other lands, or assessments against any corporation voidable, but the commissioners of said drainage district shall thereafter, as soon as they discover the omission, or receive notice thereof, either agree with the omitted parties upon the proper assessments or damages or make such assessments against the omitted lands and corporations, and award such damages as shall be just, and report the fact, together with such assessments and awards, to the court.

**History:** Laws 1912, ch. 84, § 61; Code 1915, § 1937; C.S. 1929, § 40-166; 1941 Comp., § 77-1922; 1953 Comp., § 75-20-22.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 28 C.J.S. Waters §§ 61, 65.

### **73-7-23. [Protest of landowners; presumption of regularity of assessments; proof of irregularity.]**

Any owner of land, or any interest in land, within a drainage district, who claims that his land in said district is exempt from liability for, or lien of any assessment for cost of construction or repairs, or any additional assessment by said commissioners levied against the same whether said assessments be the first or any subsequent assessment or questions the legality of such assessment, may at any time within thirty days after such assessment shall have been made and on ten days' notice to such drainage commissioners appear before the court having jurisdiction and show cause why said land should not be bound by all drainage assessments in any report or reports of the commissioners of said district assessed against the same. The presumption shall be in favor of the regularity of such assessments, and they shall stand as valid assessments unless the owner of such land, or some interest therein shall show that said assessment is inequitable, or is void because the lands were not subject to assessment in the first instance.

**History:** Laws 1912, ch. 84, § 62; Code 1915, § 1938; C.S. 1929, § 40-167; 1941 Comp., § 77-1923; 1953 Comp., § 75-20-23.

**Complainant must follow statutory procedures.** - Complaint to exonerate land from lien of drainage assessment on alleged ground that drain constructed was not that designated in survey was demurrable for failure to show that plaintiff availed himself of opportunities afforded by the drainage statute to protect his interests in the drainage proceeding. Strickland v. Elliott, 27 N.M. 238, 199 P. 1016 (1921).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 25 Am. Jur. 2d Drains and Drainage Districts §§ 48 to 52.

Loss of right to contest assessment in drainage proceedings by waiver, estoppel or the like, 9 A.L.R. 842.

Exemption of religious body or society from tax as exempting it from special assessment for drain, 17 A.L.R. 1060, 168 A.L.R. 1222.

Remedy provided by statute or ordinance, failure of property owner to avail himself of, as precluding attack based on improper inclusion of property in, or exclusion of property from, assessment, 100 A.L.R. 1296.

28 C.J.S. Drains § 71.

### **73-7-24. [Assessments held void; levy of additional assessments.]**

In the case the court decides that such lands should not, at the time said assessments were made be assessed for drainage purposes, and that said assessment or assessments, are void, the commissioner may levy an additional assessment on all of the assessable land and corporations in said district based on the last assessment of benefits approved by the court, to realize the sum lost to the district by reasons of the void assessment.

**History:** Laws 1912, ch. 84, § 63; Code 1915, § 1939; C.S. 1929, § 40-168; 1941 Comp., § 77-1924; 1953 Comp., § 75-20-24.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 94 C.J.S. Waters §§ 334, 335.

### **73-7-25. [Due date of assessments fixed by court order; collection; lien on lands.]**

All drainage assessments and installments thereof with interest thereon heretofore or hereafter confirmed and made payable under and pursuant to the provisions of Sections 73-6-1 to 73-6-17, 73-6-25 to 73-6-44, 73-7-1 to 73-7-24, 73-7-37, 73-7-38, and 73-7-40 to 73-7-56 NMSA 1978, shall be paid at the time and to the official as fixed by the order of the court which confirmed such assessments, and the collection and enforcement thereof shall be made by the drainage commissioners, their officers, agents and attorneys, but subject to and in accordance with the provisions of this act [73-7-25 to 73-7-35 NMSA 1978]. If such assessments against lands, or any installments thereof, with



interest thereon, are not paid within thirty days from the date when due, such assessments shall thereafter bear interest at the rate of one percent per month on the amount then due. All drainage assessments and installments thereof with the interest thereon shall be a lien upon the lands assessed until paid or satisfied under the provisions of this act, and such lien shall not be affected by any sale of said lands for state and county taxes.

**History:** Laws 1927, ch. 131, § 1; C.S. 1929, § 40-401; 1941 Comp., § 77-1925; 1953 Comp., § 75-20-25.

**Effective dates.** - Laws 1927, ch. 131, contains no effective date provision, but was enacted at a session which adjourned on March 12, 1927. See N.M. Const., art. IV, § 23.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Superiority of special or local assessment lien for drains over earlier private lien or mortgage, where statute creating such special lien is silent as to superiority, 75 A.L.R.2d 1121.

94 C.J.S. Waters §§ 321, 343.

### **73-7-26. [Assessments certified as delinquent entered on tax roll; collection.]**

Drainage commissioners may at any time certify any such delinquent assessments, installments and/or interest to be due and unpaid, indicating the amount of each such assessment, installment and/or interest then due, as to each tract or parcel of land, to the official whose duty it is to collect general state and county taxes, of any county in which any delinquent lands are situated, and such official shall enter the same in the tax roll of such county next thereafter to be made against the lands so certified as delinquent, but in a separate column thereof, and the same shall be collected in the same manner in which state, county and town taxes are collected, except only that personal property, and all lands other than those against which the assessment shall have been made, shall not be liable to seizure and sale therefor; and except further that if any of said lands be not sold at general tax sale for the full amount of all taxes, including drainage assessments, then contained on the tax roll of the county, or if, prior to such general tax sale, the drainage commissioners shall elect to recall their certificate of delinquencies by notice to the county official receiving the same, then and in either such event such lands may be certified back to the drainage commissioners upon their demand as unsold without prejudice to any future action for the collection and enforcement and without prejudice to the lien of such assessments, installments and interest upon said lands by reason thereof.

**History:** Laws 1927, ch. 131, § 2; C.S. 1929, § 40-402; 1941 Comp., § 77-1926; 1953 Comp., § 75-20-26.

**Specific assessment not a tax.** - Specific assessment on property for improvements, based upon benefits, the cost of which is assessed against the property, is not a tax within the sense of N.M. Const., art. VIII, § 3, which exempts from taxation property of state. *Lake Arthur Drainage Dist. v. Field*, 27 N.M. 183, 199 P. 112 (1921).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 28 C.J.S. Drains §§ 65, 77, 82; 94 C.J.S. Waters § 337.

### **73-7-27. [Foreclosure proceedings for collection of delinquent assessments.]**

Drainage districts organized under the provisions of Sections 73-6-1 to 73-6-17, 73-6-25 to 73-6-44, 73-7-1 to 73-7-24, 73-7-37, 73-7-38 and 73-7-40 to 73-7-56 NMSA 1978, may enforce the collection of delinquent drainage assessments heretofore or hereafter becoming delinquent as an additional and alternative remedy by proceedings in the district court of the county where the lands upon which the assessments are delinquent, or some part thereof, are situated, for foreclosure of the lien herein referred to and a sale of the land upon which the assessments or installments thereof and/or interest thereon are delinquent in the manner hereinafter provided.

**History:** Laws 1927, ch. 131, § 3; C.S. 1929, § 40-403; 1941 Comp., § 77-1927; 1953 Comp., § 75-20-27.

**Effective dates.** - Laws 1927, ch. 131, contains no effective date provision, but was enacted at a session which adjourned on March 12, 1927. See N.M. Const., art. IV, § 23.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 25 Am. Jur. 2d Drains and Drainage Districts § 55; 45 Am. Jur. 2d Irrigation § 70.

28 C.J.S. Drains § 85; 94 C.J.S. Waters §§ 321, 336.

### **73-7-28. [Petition in foreclosure proceedings.]**

Such foreclosure proceedings shall be by petition in equity as an action in rem filed by or in the name of the drainage district, and such petition shall aver the nonpayment of assessments or installments thereof and/or interest thereon with a description of the tracts or parcels of land upon which a lien or liens is claimed, the names of the owners and the amount of the delinquencies against the respective lands, indicating the amount of each such assessment, installment and/or interest then due, as to each tract or parcel of land, and shall pray for a judgment against each of said tracts or parcels of land and the foreclosure of the lien against the same by sale thereof. Any number of tracts or parcels of land upon which assessments, installments and/or interest may be claimed as a lien, may be included in the same petition. No error or insufficiency in said petition not going to the justice of the lien sought to be foreclosed shall invalidate the

proceedings; and said petition may be amended at any time prior to entering of decree as equity shall require.

**History:** Laws 1927, ch. 131, § 4; C.S. 1929, § 40-404; 1941 Comp., § 77-1928; 1953 Comp., § 75-20-28.

**73-7-29. [Notice; publication; mailing; form.]**

Upon the filing of said petition, notice of the pendency of such suit in the name of the clerk of the court in which said petition is filed shall be given by publication once a week for four consecutive weeks and by mailing a copy of such notice by registered prepaid postage addressed to each record owner of the lands described in the petition at the last known post-office address of such owner, and the affidavit of the attorney or agent of plaintiff shall be filed in said cause indicating the addresses of the record owners to whom such notice has been so mailed, or that any such address upon diligent inquiry could not be ascertained and is unknown, which affidavit shall be prima facie evidence of the facts therein stated. The last publication shall be not less than 30 days before application for judgment shall be made and said notice shall be given in some newspaper published in the county wherein the lands are situated, and if such lands are in more than one county, then in each of such counties, and may be in substantially the following terms:

"..... Drainage District,

vs.

Delinquent Lands.

All persons having or claiming an interest in any of the following described lands are hereby notified that suit is pending in the district court of . . . . . to enforce collection of certain drainage assessments on the lands herein described, which lands together with the amounts severally due are as follows, to wit: (Then should follow a list of delinquent lands and the total amounts due thereon respectively as aforesaid, and the names of the respective owners.)

All persons or corporations interested in said lands are hereby notified that they are required by law to appear on or before the . . . . . day of . . . . . A.D . . . . . at the place fixed by law for such court to convene, and make defense to said suit or the same will be taken as confessed and final judgment will be entered directing the sale of said lands for the purpose of collecting said assessments

together with the interest and costs allowed by law.

.....  
.....

Clerk of said Court."

Such notice when published and served as aforesaid shall be equivalent to service of summons and shall confer jurisdiction upon the court to hear and determine said cause and to adjudicate the interests of all persons having any right or title in or to the land described therein.

**History:** Laws 1927, ch. 131, § 5; C.S. 1929, § 40-405; 1941 Comp., § 77-1929; 1953 Comp., § 75-20-29.

**Cross-references.** - For provisions on publication of notice, see 14-11-1 to 14-11-13 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 70.

**73-7-30. [Trial; equity procedure; costs and fees; time of payment of judgment.]**

The suit shall stand for trial at the day named in such notice or as soon thereafter as the business of the court will permit. Such proceedings shall in all respects be conducted as provided by law for suits in equity and the court shall hear the cause as in other cases and enter its decree in accordance with the law and the practice of courts of equity. In all cases where notice has been properly given as aforesaid and where no answer has been filed, or if filed and the cause shall be decided for the plaintiff upon the hearing thereof, then the court by its decree shall enter judgment against each tract or parcel of land for the amount found due, together with all costs of the proceedings, which shall include a reasonable attorney's fee to be fixed by the court and taxed as a part of the costs, and such costs shall be apportioned among the several tracts or parcels of land which may be involved in one proceeding as the court may deem just and equitable. The court shall further fix a time not less than thirty nor more than ninety days from entry of such decree wherein the amount of such judgment against any such tract or parcel of land may be paid by any party interested and said decree shall provide that upon default of such payment the lien of such assessments shall be foreclosed by a sale of all lands upon which the judgment has not been paid. The court by its decree shall appoint a special master to carry out the decree, to whom the judgments shall be paid, and who in default of such payment shall advertise and sell such lands as herein provided, and shall fix the compensation of such special master as a part of the costs. The said decree shall be a joint and several decree as to each and all the several tracts or parcels of land against which the same is entered, and shall provide for interest at the rate of one percent per month on the amount found to be due until the date of sale. Provided, however, that no tract or parcel of land included in said decree shall be held

liable for more than the amount due as assessed against that particular tract or parcel of land, including costs and interest as hereinbefore provided.

**History:** Laws 1927, ch. 131, § 6; C.S. 1929, § 40-406; 1941 Comp., § 77-1930; 1953 Comp., § 75-20-30.

**73-7-31. [Sale of lands for delinquent assessments; transfer of title; redemption; commissioners as purchasers; disposition of receipts.]**

The said special master shall sell the lands as to which the judgment entered has not been paid, at the courthouse of the county where the lands or some part thereof are situated, after having first advertised said sale weekly for four consecutive weeks in some newspaper published in such county, and if such lands are situated in more than one county such notice of sale shall be published in a newspaper in each of such counties. If all such land is not sold on the day advertised, such sale shall continue from day to day until completed. Sale shall be made at public outcry to the highest and best bidder for cash. The special master shall make a report of such sale or sales to the court and upon approval thereof, title to such lands so sold shall thereupon become vested in the purchaser, subject, however, to all other tax liens and the lien for all subsequent installments of drainage assessments and interest thereon, and the said purchaser shall thereupon become the owner in fee simple of the lands, and the special master shall execute and deliver deeds which shall have the same force and effect as deeds executed under judgments and decrees in civil actions, but the owner of such land, or anyone interested in the title thereto may redeem from such sale by paying to the purchaser or his assignee the purchase price with interest thereon at the rate of twelve (12%) percent per annum, together with all moneys subsequently paid for taxes and assessments thereon, at any time within nine months from the date of sale. The several tracts or parcels of land to be sold shall be offered separately. At such sale the commissioners of the drainage district in which the lands are situated may bid and become purchasers the same as any other purchaser and shall not be required to pay the purchase price in cash, but shall take title to such lands in the name of the drainage district and may thereafter sell or lease the said lands and all proceeds from the sale or leasing thereof shall be disposed of as herein provided. The amount received upon any bid shall be applied to the amount of the judgment against said tract or parcel of land bid upon; if the amount received is less than such judgment, nevertheless such judgment shall be deemed satisfied by such sale, but if the amount received is more than the judgment any surplus shall be applied first to the payment of any general state or county taxes outstanding and unpaid and then if a balance remains, as the court shall direct. All moneys received by the special master in payments on the judgment or for purchase of lands at the foreclosure sale over and above costs, attorney's fees and expenses of sale shall be paid to the treasurer of the district for credit pro rata to the respective funds entitled thereto.

**History:** Laws 1927, ch. 131, § 7; C.S. 1929, § 40-407; Laws 1933, ch. 26, § 1; 1941 Comp., § 77-1931; 1953 Comp., § 75-20-31.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Tax sale as freeing property from possibility of further assessments for benefits to land, 11 A.L.R.2d 1133.

28 C.J.S. Drains §§ 65, 77, 82, 85.

### **73-7-32. [Proceedings brought by bondholders; liability for costs and fees.]**

In case the drainage commissioners shall consent thereto, or shall fail to commence proceedings to foreclose as aforesaid within twelve months after any assessments [assessments], installments and/or interest shall have become delinquent, then the holder of any bond or coupon issued by the drainage district against such assessment which shall have been in default six months shall have the right to bring and thereafter control such suits for the collection of delinquent assessments, installments and/or interest in the name of the drainage district, and for such purpose may recall from the county officers having charge of the same any assessments theretofore certified by the commissioners, and the proceedings in such suit brought by the holder of any such bond or coupon shall in all respects be governed by the provisions herein contained; provided however, that the drainage district shall not be made liable by virtue of such proceedings for any costs or attorney's fees, and no action shall be commenced by the holder of any bond or coupon, without the consent of the commissioners, until thirty days after demand made upon them to institute the same and then only upon leave of the court obtained after such notice to the commissioners as the court shall prescribe.

**History:** Laws 1927, ch. 131, § 8; C.S. 1929, § 40-408; 1941 Comp., § 77-1932; 1953 Comp., § 75-20-32.

### **73-7-33. [Disposition of unsold lands.]**

In any case where the lands are offered for sale, pursuant to such foreclosure proceedings, and there is no bid upon any tract or parcel of land, such unsold lands may be disposed of by the drainage commissioners at public or private sale at such price and upon such terms as the court may direct, subject to the right of redemption as herein provided.

**History:** Laws 1927, ch. 131, § 9; C.S. 1929, § 40-409; 1941 Comp., § 77-1933; 1953 Comp., § 75-20-33.

### **73-7-34. Lands worth less than accumulated taxes and assessments; sale for best obtainable price; redemption; disposition of proceeds.**

If it shall appear at any time that any tract or parcel of land covered by a certificate of sale held by any county acquired by it at general tax sale for taxes and/or drainage assessments cannot be sold for the amount of the accumulated taxes and assessments

against the same, an action may be instituted upon petition to the district court by such district to inquire as to the value of such lands, and a copy of such petition shall be served upon the property tax division of the taxation and revenue department and upon the collector and treasurer of the county in which such lands are situated. If it shall appear upon the hearing of such petition that the lands cannot be sold for the amount of all accumulated general taxes and assessments against such lands, then the court shall order such lands sold as the court may direct at public sale after four weeks' notice by publication, for the best price obtainable, free and clear of all such taxes and assessments, but the owner or anyone interested in the title may redeem from such sale as provided in Section 73-7-31 NMSA 1978. The proceeds of such sale shall be divided pro rata between the county treasurer and the treasurer of said district in discharge of such taxes and assessments.

**History:** Laws 1927, ch. 131, § 10; C.S. 1929, § 40-410; 1941 Comp., § 77-1934; 1953 Comp., § 75-20-34; Laws 1977, ch. 249, § 65.

**Cross-references.** - For provisions on publication of notice, see 14-11-1 to 14-11-13 NMSA 1978.

**The 1977 amendment** substituted "property tax division of the taxation and revenue department" for "state tax commission" near the end of the first sentence and the specific statutory reference for "section 7 of this act" at the end of the second sentence.

**Effective dates.** - Laws 1977, ch. 249, § 69, makes the act effective on March 31, 1978.

### **73-7-35. [Lands sold at general tax sale; assignment of certificate to district for payment of taxes.]**

Where lands have been heretofore sold at general tax sale for taxes and drainage assessments and the certificate is held by the county, such lands as to drainage assessments thereon shall be certified back to the drainage commissioners upon their demand, together with all penalties and interest accrued thereon, for collection and enforcement of all drainage assessments as provided by this act [73-7-25 to 73-7-35 NMSA 1978], but such certificate shall remain intact as to general taxes; and in cases where lands have been sold to the county as above stated, the district may if it desires pay the general taxes with interest and penalties and shall thereupon be entitled to an assignment of the certificate of sale and at the expiration of the time allowed by law for redemption shall be entitled to deed therefor if unredeemed.

**History:** Laws 1927, ch. 131, § 11; C.S. 1929, § 40-411; 1941 Comp., § 77-1935; 1953 Comp., § 75-20-35.

**Effective dates.** - Laws 1927, ch. 131, contains no effective date provision, but was enacted at a session which adjourned on March 12, 1927. See N.M. Const., art. IV, § 23.

**Am. Jur. 2d, A.L.R. and C.J.S. references. - 28 C.J.S. Drains § 85.**

**73-7-36. [Lands eliminated from drainage districts; private sale for best obtainable price; disposition of proceeds.]**

In all cases where lands in such drainage districts have been sold or many [may] hereafter be sold to satisfy delinquent drainage assessments and the interest or penalties thereon as provided by Sections 73-7-25 to 73-7-35 of said statutes [NMSA 1978] and have been bought in [sic] by the drainage districts as provided by Section 73-7-31 of said statutes [NMSA 1978] as amended by Chapter 26 of the Laws of 1933 if such lands are not worth the amount of the assessments accumulated against them, together with delinquent taxes and/or future assessments thereon, and in the opinion of the commissioners cannot be sold for sufficient to satisfy such sums, upon order of the district court of the county wherein such districts or any part thereof is situated, based upon a petition of the commissioners by and with the consent of the holder or holders of any bonds issued by the district, such lands may be eliminated from the drainage district and all assessments cancelled against the same and they may be sold by the commissioners at private sale for the best price obtainable, and the proceeds derived from such sale shall be divided pro rata between the county treasurer and the treasurer of said drainage districts in discharge of all such taxes and assessments.

**History:** Laws 1934 (S.S.), ch. 3, § 2; 1941 Comp., § 77-1936; 1953 Comp., § 75-20-36.

**73-7-37. Commissioners may borrow money; notes and bonds; sale.**

The commissioners [of the drainage district] may borrow an amount necessary to meet the preliminary expenses authorized by this article, and secure the amount by notes not running beyond one year from their date, and may further borrow money, not exceeding the amount of assessment for cost of construction, additional assessment and assessments for repairs, outstanding at the time of borrowing, for the construction or repair of any work which they are authorized to construct or repair or for the payment of any indebtedness they may have lawfully incurred and may secure the same by notes or bonds not running beyond one year after the last installment of the assessment, on the account of which the money is borrowed, shall fall due. The notes or bonds shall be in such form as the commissioners may determine, and which notes or bonds shall not be held to make the commissioners personally liable, but shall constitute a lien upon the assessments for the repayment of the principal and interest of the notes or bonds. The bonds shall not be subject to taxation by the state or any subdivision thereof. All sales are to be approved by the [district] court.

In case any money derived from bonds sold to pay for the original construction of improvements, now or hereafter, remains on hand after the work is completed in original construction, and paid for, and not required to pay damages, the residue may be used for maintenance and repair.



**History:** Laws 1912, ch. 84, § 64; Code 1915, § 1940; C.S. 1929, § 40-169; 1941 Comp., § 77-1937; 1953 Comp., § 75-20-37; Laws 1983, ch. 265, § 54.

**The 1983 amendment** added the catchline, and, in the first paragraph, divided the former first sentence into the present first two sentences, deleted "as is" preceding "necessary" in the first sentence and "bearing interest at a rate not to exceed eight percent per annum, and" in two places in the first sentence, following "secure the amount by notes" and following "secure the same by notes or bonds," substituted "The notes or bonds shall be in such form as the commissioners may determine" for "which said notes or bonds shall not be sold at less than ninety percent of their face value, which said bonds shall be transferable by delivery to the same extent as negotiable papers" at the beginning of the second sentence and "The" for "No commission other than the discount hereinabove provided shall be allowed for the sale of such bonds and such" at the beginning of the third sentence and inserted "are" in the last sentence.

**Emergency clauses.** - Laws 1983, ch. 265, § 64, makes the act effective immediately. Approved April 7, 1983.

**Compiler's note.** - The reference to "commissioners" throughout this section apparently refers to the commissioners of the drainage district. See 73-6-17 NMSA 1978. The reference to "court" in the last sentence of the first paragraph apparently refers to the district court. See 73-6-1 NMSA 1978.

**Meaning of "this article".** - The 1915 Code compilers substituted "this article" for "this act." Both phrases presumably refer to the provisions of Laws 1912, ch. 84 (codified as Code 1915, ch. 31, art. 1), the operative sections of which are presently compiled as 73-6-1 to 73-6-17, 73-6-25 to 73-6-44, 73-7-1 to 73-7-24, 73-7-37, 73-7-38 and 73-7-40 to 73-7-56 NMSA 1978.

**Interest coupons bearing interest after maturity.** - Each negotiable interest coupon attached to drainage district bond constituted obligation independent from the bond and bore interest after maturity at rate determinable by law of state where contract was to be performed. *Roswell Drainage Dist. v. Parker*, 53 F.2d 793 (10th Cir. 1931).

**Drainage district may be sued in ordinary action at law** on bonds and interest coupons. *Roswell Drainage Dist. v. Parker*, 53 F.2d 793 (10th Cir. 1931).

**Action on bonds and interest coupons was within federal court jurisdiction** where there was requisite amount involved and requisite diversity of citizenship, notwithstanding pendency of drainage district proceedings. *Roswell Drainage Dist. v. Parker*, 53 F.2d 793 (10th Cir. 1931).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 28 C.J.S. Drains § 12; 94 C.J.S. Waters §§ 324, 345.

### **73-7-38. [Cancellation of bonds and notes; issuance of new bonds and notes to refund indebtedness.]**

And the court may, on the petition of the commissioners authorize them to refund any lawful indebtedness of the district by taking up and cancelling all of its outstanding notes and bonds, as fast as they become due, or before, if the holders thereof will surrender the same, and issuing in lieu thereof new notes, or bonds of such district, payable in such longer time as the court shall deem proper, not to exceed in the aggregate the amount of all notes and bonds of the district then outstanding, and the unpaid, accrued interest thereon, and bearing interest not exceeding eight percent per annum.

**History:** Laws 1912, ch. 84, § 65; Code 1915, § 1941; C.S. 1929, § 40-170; 1941 Comp., § 77-1938; 1953 Comp., § 75-20-38.

**Districts to pay interest on matured bonds and coupons.** - Legislature intended that drainage districts should pay interest on their bonds and coupons after maturity. Roswell Drainage Dist. v. Parker, 53 F.2d 793 (10th Cir. 1931).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 94 C.J.S. Waters §§ 327, 345.

### **73-7-39. [Authority to refund indebtedness of any kind; borrowing money; issuance of new bonds and notes.]**

Drainage districts organized under the provisions of Sections 73-6-1 to 73-6-44, 73-7-1 to 73-7-24, 73-7-37, 73-7-38 and 73-7-40 to 73-7-56 NMSA 1978 may refund all outstanding indebtedness whether evidenced by notes, bonds, coupons, judgments or other evidences of indebtedness in the manner provided by Section 73-7-38 NMSA 1978 of said statutes, and for such purpose may borrow the money necessary from any person or corporation willing to advance the same, or from the reconstruction finance corporation, or under the National Industrial Recovery Act or any agency authorized by acts of congress to loan money for such purpose, and may issue new notes or bonds to evidence such indebtedness.

**History:** Laws 1934 (S.S.), ch. 3, § 1; 1941 Comp., § 77-1939; 1953 Comp., § 75-20-39.

**National Industrial Recovery Act.** - The National Industrial Recovery Act comprises the Act of June 16, 1933, 48 Stat. 195, ch. 90, and the Act of June 29, 1956, 70 Stat. 384, ch. 462, title I, § 113 (d).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 94 C.J.S. Waters § 345.

### **73-7-40. [Advertising for bids; contracts over \$500.]**

In all cases where the estimated cost of the work to be done at any one time under the direction of the commissioners shall exceed five hundred dollars [(\$500)], the same shall be let to the lowest responsible bidder, and the commissioners shall advertise for sealed bids, by notice published in some newspaper published in the county in which the petition is filed, and may advertise in one or more newspapers published elsewhere. If there be no newspaper published in the county in which the petition is filed, they shall advertise in some newspaper of general circulation in the district, which said notice shall particularly set forth the time and place when and where the bids advertised for will be opened, the kind of work to be let and the terms of payment. Said commissioners may continue the letting from time to time, if in their judgment the same shall be necessary, and shall reserve the right to reject any and all bids.

**History:** Laws 1912, ch. 84, § 66; Code 1915, § 1942; C.S. 1929, § 40-171; 1941 Comp., § 77-1940; 1953 Comp., § 75-20-40.

**Cross-references.** - For provisions on publication of notice, see 14-11-1 to 14-11-13 NMSA 1978.

**Sufficient to publish notice for reasonable time.** - The notice required need not be published for four weeks; publication for a reasonable length of time is sufficient. Stanley v. Wixon, 24 N.M. 499, 174 P. 200 (1918).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 28 C.J.S. Drains §§ 42, 43; 94 C.J.S. Waters § 350.

### **73-7-41. [Interest of commissioners in drainage contracts prohibited.]**

And they shall not during their term of office, be interested directly or indirectly in any contract for the construction of any drain, ditch or other work in such drainage district, or in the sale of materials therefor or in the wages of or supplies for men or teams employed on any such work in said district.

**History:** Laws 1912, ch. 84, § 67; Code 1915, § 1943; C.S. 1929, § 40-172; 1941 Comp., § 77-1941; 1953 Comp., § 75-20-41.

### **73-7-42. [Damages paid or tendered to landowners before entry by commissioners.]**

The damages allowed to the owners of lands shall be paid or tendered before the commissioners shall be authorized to enter upon such lands, for the construction of any drains or ditches proposed thereon. If the owner is unknown or there shall be a contest in regard to the ownership of the lands, or the owner will not receive payment, or there exists a mortgage or other lien against the same or the commissioners cannot for any other reason pay him, they may deposit the said damages with the clerk of the court, for

the benefit of the owner, or parties interested, to be paid or distributed as the court shall direct and such payment shall have the same effect as the tender to and the acceptance of the damages awarded by the true owner of the land. This section shall not, however, prevent said commissioners, their agents, servants and employes going upon said lands to do any and all work found necessary prior to making their report thereof.

**History:** Laws 1912, ch. 84, § 68; Code 1915, § 1944; C.S. 1929, § 40-173; 1941 Comp., § 77-1942; 1953 Comp., § 75-20-42.

**Section provides for just compensation** for such property as may be taken or damaged in the construction of a drainage system. In re Dexter-Greenfield Drainage Dist., 21 N.M. 286, 154 P. 382 (1915).

### **73-7-43. [Outside lands benefited by or injuring district; petition to include.]**

Whenever any lands outside a drainage district are receiving the benefits of the drains of said district, by direct or indirect, natural or artificial connection therewith, or are damaging those in the district, the commissioners of said district may report said facts to the court and ask that said lands, describing them, be brought into said district and assessed for the benefit by them received from the drains or ditches of said district, or damages inflicted.

**History:** Laws 1912, ch. 84, § 69; Code 1915, § 1945; C.S. 1929, § 40-174; 1941 Comp., § 77-1943; 1953 Comp., § 75-20-43.

### **73-7-44. [Notice to owners of outside lands.]**

Upon filing of said report the court shall order the owners of such lands to be notified of the filing of said report and the contents thereof, and shall require such owners to show cause at a time and place fixed therein, not less than twenty days thereafter, why their said lands should not be brought into said district and assessed for said benefit.

**History:** Laws 1912, ch. 84, § 70; Code 1915, § 1946; C.S. 1929, § 40-175; 1941 Comp., § 77-1944; 1953 Comp., § 75-20-44.

### **73-7-45. [Hearing on petition to include outside lands; protests.]**

At the time and place fixed for hearing said report any of said landowners may appear and remonstrate against the confirmation of said report. All remonstrances shall be in writing, verified and shall set forth the facts on which they are based. All issues arising on said report shall be tried by the court without a jury.

**History:** Laws 1912, ch. 84, § 71; Code 1915, § 1947; C.S. 1929, § 40-176; 1941 Comp., § 77-1945; 1953 Comp., § 75-20-45.

### **73-7-46. [Annexation of outside lands by court order.]**

If the court shall find that said lands or any of them are receiving the benefits of any such drain or ditch, the court shall so find in writing and shall order said lands to be annexed to and made a part of said district and benefits to be assessed against the same by the commissioners of said district.

**History:** Laws 1912, ch. 84, § 72; Code 1915, § 1948; C.S. 1929, § 40-177; 1941 Comp., § 77-1946; 1953 Comp., § 75-20-46.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 25 Am. Jur. 2d Drains and Drainage Districts § 15.

28 C.J.S. Drains §§ 8, 36.

### **73-7-47. [Appeal from annexation.]**

Said order shall be final and conclusive unless appealed to the supreme court within thirty days from the date of entry thereof.

**History:** Laws 1912, ch. 84, § 73; Code 1915, § 1949; C.S. 1929, § 40-178; 1941 Comp., § 77-1947; 1953 Comp., § 75-20-47.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 28 C.J.S. Drains § 8.

### **73-7-48. [Assessments against annexed lands.]**

Said commissioners shall, after the time for appeal is passed, assess against each parcel, tract and easement of and in said annexed lands reasonable and just benefits, and shall assess against said lands for construction and repairs such sum as shall be just.

**History:** Laws 1912, ch. 84, § 74; Code 1915, § 1950; C.S. 1929, § 40-179; 1941 Comp., § 77-1948; 1953 Comp., § 75-20-48.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 25 Am. Jur. 2d Drains and Drainage Districts § 41.

### **73-7-49. [Hearings on assessments against annexed lands.]**

The commissioners shall file their report of such assessments in court. The court shall by order require said owners to show cause at a time and place therein fixed not less

than twenty days after service of said order, why said report of assessment should not be confirmed and on such hearing the court shall either amend, confirm or reject such report of assessments.

**History:** Laws 1912, ch. 84, § 75; Code 1915, § 1951; C.S. 1929, § 40-180; 1941 Comp., § 77-1949; 1953 Comp., § 75-20-49.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 28 C.J.S. Drains § 8.

### **73-7-50. [Supervision of commissioners; authority of court.]**

The court shall at all times have supervision of said commissioners, and may at any time require them to make a report on any matter or matters connected with their duties as commissioners, and after due hearing may remove from office any or all of said commissioners for neglect of duty or malfeasance in office or for other good cause. The court may at any time require the commissioners to give new bonds and may fix the amount thereof, and said bonds shall be submitted to the court or the presiding judge thereof for approval.

**History:** Laws 1912, ch. 84, § 76; Code 1915, § 1952; C.S. 1929, § 40-181; 1941 Comp., § 77-1950; 1953 Comp., § 75-20-50.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 25 Am. Jur. 2d Drains and Drainage Districts § 26.

### **73-7-51. [Bonds and obligations not to be impaired.]**

No bond or other money obligations issued by any drainage district shall be adversely affected by any subsequent change in assessments of benefits.

**History:** Laws 1912, ch. 84, § 77; Code 1915, § 1953; C.S. 1929, § 40-182; 1941 Comp., § 77-1951; 1953 Comp., § 75-20-51.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 25 Am. Jur. 2d Drains and Drainage Districts §§ 53, 54.

28 C.J.S. Drains § 12.

### **73-7-52. [Commissioners declared public officers; presumption of validity of acts; burden of proof.]**

Commissioners of drainage districts are hereby declared to be public officers. The presumption shall be in favor of the regularity and validity of all their official acts. Whenever any report of the commissioners of any drainage district or any part of said

report is contested, remonstrated against or called in question, the burden of proof shall rest upon the contestant, remonstrant or questioner.

**History:** Laws 1912, ch. 84, § 78; Code 1915, § 1954; C.S. 1929, § 40-183; 1941 Comp., § 77-1952; 1953 Comp., § 75-20-52.

### **73-7-53. [Right of landowners to use drainage ditches; right-of-way over other lands.]**

The owner of any land that has been assessed for the cost of the construction of any ditch, drain or watercourse, as herein provided, shall have the right to use the ditch, drain or watercourse as an outlet for lateral drains from said land; and if said land is separated from the ditch, drain or watercourse by the land of another or others, and the owner thereof shall be unable to agree with said other or others as to the terms and conditions on which he may enter their lands and construct said drain or ditch, and [then] he may acquire a right-of-way therefor by condemnation as hereinafter provided by the provisions of Section 73-7-56 NMSA 1978.

**History:** Laws 1912, ch. 84, § 79; Code 1915, § 1955; C.S. 1929, § 40-184; 1941 Comp., § 77-1953; 1953 Comp., § 75-20-53.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 25 Am. Jur. 2d Drains and Drainage Districts § 37.

28 C.J.S. Drains § 40; 94 C.J.S. Waters §§ 349, 350.

### **73-7-54. [Assessments confirmed by court; order conclusive on question of regularity.]**

The collection of any assessments made by the commissioners for construction and confirmed by the court, shall not be restrained or obstructed by reason of any omission, imperfection or defect in the organization of any district or in the proceedings occurring prior to the order confirming the assessments of benefits, but such order shall be conclusive as to the regularity of all proceedings relating to the assessments of benefits unless appealed from within thirty days after the entry of such order.

**History:** Laws 1912, ch. 84, § 80; Code 1915, § 1956; C.S. 1929, § 40-185; 1941 Comp., § 77-1954; 1953 Comp., § 75-20-54.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 25 Am. Jur. 2d Drains and Drainage Districts §§ 43, 51.

28 C.J.S. Drains § 71.

### **73-7-55. [Obstruction of drains or ditches prohibited; liability for damages.]**

No person, firm, county or corporation, or other municipal corporation, shall sink, set or drive any post, pillars or piling in any of the drains or ditches constructed under the provisions of this article for the purpose of erecting any bridge, trestle or covering over or across any such drain or ditch. All supports for any such bridges shall be entered or placed on the banks of such drain or watercourse so as not to obstruct the flow of water therein. No person taking water for any purpose, from any drain or ditch, constructed under the provisions of this article, shall take said water in such manner as to obstruct the flow of water in, or in any way diminish the efficiency of, said drain or ditch. Any person who shall violate any of the foregoing provisions of this section or who shall place logs, brush or any other like substances, or fell trees into them, which will obstruct the flow of water in any of the drains or watercourses constructed in whole or in part under the provisions of this article, or in any stream which will flow through such improvement, and any public officer or any employe who shall fail or refuse to perform any of the duties required by this article, shall be deemed guilty of a misdemeanor, and shall be liable for all damages caused thereby.

**History:** Laws 1912, ch. 84, § 81; Code 1915, § 1957; C.S. 1929, § 40-186; 1941 Comp., § 77-1955; 1953 Comp., § 75-20-55.

**Cross-references.** - For general prohibition of interference with use of water, see 72-8-3 NMSA 1978.

**Meaning of "this article".** - See same catchline in notes to 73-7-37 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 25 Am. Jur. 2d Drains and Drainage Districts § 37.

Obstruction or diversion of, or other interference with, flow of surface water as taking or damaging property within constitutional provision against taking or damaging without compensation, 128 A.L.R. 1195.

Liability for damages from obstruction of stream by debris or waste, 29 A.L.R.2d 447.

Municipality's liability for damage from obstruction or clogging of drain or sewer due to unusual or extraordinary rainfall, 59 A.L.R.2d 324.

28 C.J.S. Drains § 52; 93 C.J.S. Waters §§ 15, 20.

### **73-7-56. Rights-of-way; eminent domain by individuals; eminent domain for construction.**



Any person, firm, corporation or association may exercise the right of eminent domain to take and acquire property and [a] right-of-way for the construction, maintenance and operation of a drainage ditch, which shall be located as to do the least damage to private property consistent with its proper use and construction, such property and right-of-way shall be acquired in the manner provided by the Eminent Domain Code [42A-1-1 to 42A-1-33 NMSA 1978].

**History:** Laws 1912, ch. 84, § 82; Code 1915, § 1958; C.S. 1929, § 40-187; 1941 Comp., § 77-1956; 1953 Comp., § 75-20-56; Laws 1981, ch. 125, § 57.

**The 1981 amendment** added the section catchline, substituted "property and" for "land" following "acquire" near the beginning of the section, substituted "property" for "land" following "such" near the end of the section and substituted "the Eminent Domain Code" for "law for the condemnation and taking of private property in the state of New Mexico for railroads, telegraph and telephone and other public uses and purposes" at the end of the section.

**Effective dates.** - Laws 1912, ch. 84, contains no effective date provision, but was enacted at a session which adjourned on June 8, 1912. See N.M. Const., art. IV, § 23.

Laws 1981, ch. 125, § 64, makes the act effective on July 1, 1981.

**Section is limited in its application** to such persons as have been assessed for the cost of construction of works of a drainage district and does not violate N.M. Const., art. IV, § 16, which prohibits more than one subject to be embraced in a bill. In re Dexter-Greenfield Drainage Dist., 21 N.M. 286, 154 P. 382 (1915). See 73-7-53 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 25 Am. Jur. 2d Drains and Drainage Districts § 3.

Right of owner of land not originally taken or purchased as part of adjacent project to recover, on enlargement of project to include adjacent land, enhanced value of property by reason of proximity to original land, 95 A.L.R.3d 752.

28 C.J.S. Drains §§ 52, 53.

## **ARTICLE 8**

### **DRAINAGE DISTRICTS WITHIN FEDERAL RECLAMATION PROJECTS**

#### **73-8-1. [Organization of districts.]**

Whenever a majority of the resident freeholders owning one-third in area of the lands, or evidence of title to lands so owned, within the limits of any federal reclamation project in the state of New Mexico shall desire to provide for the drainage of such lands or of any

portion thereof, they may propose the organization of a drainage district under the provisions of this act [73-8-1 to 73-8-60 NMSA 1978].

Such drainage districts may be formed in order to cooperate with the United States government in effecting and carrying out the purposes of this act through the construction of drainage works necessary to maintain the irrigability of lands within any such district, or for the purchase, extension, operation or maintenance of constructed works necessary for such purposes or for the assumption as principal or guarantor of indebtedness to the United States on account of the drainage of such district lands.

Districts so organized shall be empowered to take any and all action necessary to effectuate the purposes of this act.

**History:** Laws 1917, ch. 22, § 1; C.S. 1929, § 40-201; 1941 Comp., § 77-2001; 1953 Comp., § 75-21-1.

**Federal reclamation project.** - This act (73-8-1 to 73-8-60 NMSA 1978) apparently was enacted to further New Mexico landowners' participation in federal projects authorized by 43 U.S.C. § 371 et seq.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 25 Am. Jur. 2d Drains and Drainage Districts § 38; 45 Am. Jur. 2d Irrigation §§ 90 to 96.

Right of owner of land within reclamation project in respect of which a water right was allowed upon application pursuant to Reclamation Act to a perpetual right beyond the control of the federal government for a sufficient amount beneficially to irrigate the land, 115 A.L.R. 1320, 67 A.L.R.3d 914.

28 C.J.S. Drains § 6; 94 C.J.S. Waters § 333.

## **73-8-2. [Petition; filing; contents; publication of notice.]**

For the purpose of establishing a drainage district under this act [73-8-1 to 73-8-60 NMSA 1978] a petition shall be filed with the board of county commissioners of the county wherein is embraced the largest acreage of the proposed district; such petition shall state the purposes of the proposed organization, shall contain a general description of the boundaries of the proposed drainage district, the name proposed for such district, and shall designate a committee composed of three of the petitioners to present such petition to such board of county commissioners, shall contain a prayer that said board shall define and establish the boundaries of the proposed drainage district and submit the question of the organization of same to a vote of the qualified electors resident within the proposed district; such petition shall be signed by a majority of the resident freeholders within the proposed district, who shall be the owners in the aggregate of one-third of the total area of lands within the proposed district belonging to the resident freeholders within such district.

Notice of the filing of such petition with the board of county commissioners shall be published once each week for four successive weeks in some newspaper of general circulation printed and published in each county wherein shall be situate any lands proposed to be embraced in any such district, which notice shall set forth the substance of such petition and the time and place when the same will be acted upon by said board of county commissioners, which time may be at any regular meeting or at any special meeting of such board called for such purpose.

**History:** Laws 1917, ch. 22, § 2; C.S. 1929, § 40-202; 1941 Comp., § 77-2002; 1953 Comp., § 75-21-2.

**Cross-references.** - For provisions on publication of notice, see 14-11-1 to 14-11-13 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 25 Am. Jur. 2d Drains and Drainage Districts § 41.

### **73-8-3. [Publications; language; time and manner.]**

The publication required by the preceding section [73-8-2 NMSA 1978] and all publications required by this act [73-8-1 to 73-8-60 NMSA 1978] shall be made in both English and Spanish and in every instance the last publication shall be made not less than three days before the time fixed by such publications for the taking of action therein mentioned; and all publications shall be made for the time and in the manner prescribed in said preceding section.

**History:** Laws 1917, ch. 22, § 3; C.S. 1929, § 40-203; 1941 Comp., § 77-2003; 1953 Comp., § 75-21-3.

### **73-8-4. [Hearings; boundaries; election divisions; mandamus.]**

Upon the hearing had by the board of county commissioners upon such petition pursuant to the publication of notice thereof as aforesaid, if it shall appear to the board that notice of hearing upon such petition has been published as herein required, that the petition has been signed by the requisite number of petitioners owning the prescribed acreage of lands within the district as designated by this act [73-8-1 to 73-8-60 NMSA 1978], the commissioners shall then proceed to fix, establish and define the boundaries of the proposed drainage district. The board may adjourn such hearing from time to time, not exceeding three weeks in all, and shall by final order duly entered fix, establish and define the boundaries of such proposed drainage district as finally determined: provided, the board shall not modify the boundaries proposed in the petition so as to change the objects of such petition, or so as to exempt from the operation of this act any land within the proposed boundaries susceptible of being drained by the same system of drainage applicable to other lands in such proposed drainage district; nor shall any land which will not in the judgment of the board be benefited by such proposed drainage system, be included in such drainage district if the owner thereof shall make

application at such hearing for the exemption of such land; and provided, further, that contiguous lands not included in the proposed drainage district as described in the petition may, upon application by the owner or owners thereof, be included in such district upon such hearing.

When the boundaries of any such proposed drainage district shall have been determined as aforesaid the board of county commissioners shall forthwith make and enter an order allowing the prayer of the petition, fixing, establishing and defining the boundaries of the proposed district as aforesaid, and designating the name of such proposed district; such order shall call an election of the qualified electors of said proposed district to be held for the purpose of determining whether such proposed district shall be organized under the provisions of this act and in such order shall submit the names of one or more persons from each of the divisions of said proposed district as hereinafter provided, to be voted for as directors therein; and for the purpose of such election shall divide said proposed district into divisions, in number as hereinafter designated, as nearly equal in size as may be practicable, and shall provide that one qualified elector resident within each of said divisions shall be elected as a member of the board of directors of said proposed district by the qualified electors of the whole district.

Each of such divisions shall constitute an election precinct and three judges shall be appointed for each of such precincts, one of whom shall act as clerk of said election. At the first election herein provided for such judges shall be appointed by the board of county commissioners and for all succeeding elections provided for under this act such judges shall be appointed by the board of directors of said district. All such judges shall be qualified electors under the provisions of this act.

Provided, that upon the hearing of the aforesaid petition the board of county commissioners shall disregard any informality therein, and in case they deny same or dismiss it because of noncompliance with any of the provisions of this act, which shall be the only reasons authorizing such refusal or dismissal, the board shall state in writing and in detail the reasons for such action, which shall be entered in full upon the minutes of the board; and in case such reasons are not well founded a writ of mandamus shall, upon proper application, issue out of the district court of the county where such petition is presented compelling the board to act in compliance with this act. Such writ shall be heard within not less than five nor more than twenty days from the date of its issuance.

**History:** Laws 1917, ch. 22, § 4; C.S. 1929, § 40-204; 1941 Comp., § 77-2004; 1953 Comp., § 75-21-4.

**Cross-references.** - For writ of mandamus, see 44-2-1 to 44-2-14 NMSA 1978.

### **73-8-5. [District officers.]**

The officers of any such district shall consist of the directors, a secretary and a treasurer. A member of the board of directors shall be elected by such board as president.

**History:** Laws 1917, ch. 22, § 5; C.S. 1929, § 40-205; 1941 Comp., § 77-2005; 1953 Comp., § 75-21-5.

### **73-8-6. [Number of directors and election divisions.]**

The directors and divisions of drainage districts under this act [73-8-1 to 73-8-60 NMSA 1978] shall be in number, for districts having an area of twenty-five thousand acres or less, 3; for districts having an area of more than twenty-five thousand acres and less than fifty thousand acres, 5; for districts having an area of more than fifty thousand acres and less than seventy-five thousand acres, 7; and for districts having an area of seventy-five thousand acres or more, 9.

**History:** Laws 1917, ch. 22, § 6; C.S. 1929, § 40-206; 1941 Comp., § 77-2006; 1953 Comp., § 75-21-6.

### **73-8-7. [Notice of election; publication.]**

Upon entry of the orders aforesaid the board of county commissioners shall thereupon cause to be published as by this act [73-8-1 to 73-8-60 NMSA 1978] provided, a notice embodying the substance of such orders, fixing the time and place for such election and setting forth the matters to be submitted to a vote of the electors, which notice shall be signed by the chairman of such board and attested by the county clerk.

**History:** Laws 1917, ch. 22, § 7; C.S. 1929, § 40-207; 1941 Comp., § 77-2007; 1953 Comp., § 75-21-7.

**Cross-references.** - For method of publication provided by this act, see 73-8-2 and 73-8-3 NMSA 1978.

### **73-8-8. [Conduct of elections.]**

At such election and at all elections held under the provisions of this act [73-8-1 to 73-8-60 NMSA 1978] all resident freeholders who are the owners of land within the proposed drainage district, or of evidence of title to such lands, who are qualified electors under the general election laws of the state, shall be entitled to vote and none others. Insofar as applicable the general election laws of the state, except requirements for registration, and except as in this act otherwise provided, shall govern all elections under this act.

The ballots to be used and cast at the election held for the purpose of voting upon the question of the formation of such proposed district shall be substantially in the following form:  
"Drainage District . . . . Yes" and "Drainage District . . . .

No," or words equivalent thereto; each qualified elector may vote for one director from each division, and shall indicate his vote by placing a marginal cross upon the ballot for or against any question submitted or name voted upon, and opposite thereto, at any election held under this act. At the election for the formation of any such drainage district and at any subsequent election for directors at which other questions shall be simultaneously submitted, separate ballots for the election of directors shall be used. In such event such separate ballots for the election of directors shall be substantially as follows:

"FOR DIRECTORS FOR .....  
DISTRICT"

(inserting name of district.)

"For Director from Division No. 1,  
....."

(the name of the person voted for  
to be inserted by the voter.)

"For Director from Division No. 2,  
....."

(the name of the person voted for  
to be inserted by the voter.)

and serially thereafter to the number of directors to be chosen.

**History:** Laws 1917, ch. 22, § 8; C.S. 1929, § 40-208; 1941 Comp., § 77-2008; 1953 Comp., § 75-21-8.

**Cross-references.** - For definition of "resident freeholder," see 73-8-11 NMSA 1978.

For general election laws, see 1-1-1 NMSA 1978 et seq.

### **73-8-9. [Majority and plurality.]**

At all elections held under the provisions of this act [73-8-1 to 73-8-60 NMSA 1978] if a majority of all the votes cast by the qualified electors shall be in the affirmative upon any proposition submitted to a vote, other than the election of directors, such proposition shall be declared to be carried, and at all elections for directors the persons receiving the highest number of votes cast by the qualified electors of the district shall be declared to be elected.

**History:** Laws 1917, ch. 22, § 9; C.S. 1929, § 40-209; 1941 Comp., § 77-2009; 1953 Comp., § 75-21-9.

### **73-8-10. [Providing ballots.]**

For the first election to be held under the provisions of this act [73-8-1 to 73-8-60 NMSA 1978] requisite ballots shall be provided under the direction of the board of county commissioners; and at all elections subsequent to the organization of any such district all such ballots shall be provided by the district.

**History:** Laws 1917, ch. 22, § 10; C.S. 1929, § 40-210; 1941 Comp., § 77-2010; 1953 Comp., § 75-21-10.

### **73-8-11. ["Resident freeholder" defined.]**

Any person residing within any county in which any portion of a drainage district or proposed drainage district shall lie, and who is the owner of agricultural land within the limits of the district shall, for the purposes of this act [73-8-1 to 73-8-60 NMSA 1978], be considered a resident freeholder.

**History:** Laws 1917, ch. 22, § 11; C.S. 1929, § 40-211; 1941 Comp., § 77-2011; 1953 Comp., § 75-21-11.

### **73-8-12. [Canvass of votes of first election; order.]**

On the second Monday next succeeding the first election [election] provided for by this act [73-8-1 to 73-8-60 NMSA 1978], the board of county commissioners shall meet and proceed to canvass the votes cast at such election and declare the result as by this act provided.

If it shall appear that the proposition for the formation of the proposed district has received a majority of the votes cast as hereinbefore provided, said board shall by an order entered upon its minutes declare the proposed drainage district, under the name and style theretofore designated, as having been duly created, established and organized, and in said order shall set forth the names of the persons found to have been duly elected directors as aforesaid. The board shall cause a copy of such order, together with a plat of said district, duly certified by the county clerk, to be immediately filed for record in the office of the county clerk of each county in which any portion of such lands shall be situate; and no board of county commissioners of any county wherein shall be included any portion of such district shall, after the date of the organization of such district, allow another district to be formed including any of the lands of such district without the consent of the board of directors thereof; and from and after the date of such filing the organization of such district shall be deemed to be complete, and the officers so as aforesaid elected shall immediately enter upon the discharge of the duties of their respective offices upon qualifying in accordance with law and shall hold such offices respectively until their successors are elected and qualified.

For the purpose of the first election hereinbefore provided for, if in the judgment of the board of county commissioners it is necessary so to do, such board may establish election precincts and polling places in addition to the number hereinbefore prescribed, and define the boundaries thereof, and such precincts may thereafter be changed by

the board of directors of such district. In event of additional election precincts and polling places being designated as aforesaid, judges of election for each such precinct shall be appointed, one of whom shall act as clerk of election.

**History:** Laws 1917, ch. 22, § 12; C.S. 1929, § 40-212; 1941 Comp., § 77-2012; 1953 Comp., § 75-21-12.

### **73-8-13. [Biennial election date.]**

Regular elections of any such district shall be held on the first Tuesday after the first Monday of December of each second calendar year following the first election hereinbefore provided for.

**History:** Laws 1917, ch. 22, § 13; C.S. 1929, § 40-213; 1941 Comp., § 77-2013; 1953 Comp., § 75-21-13.

### **73-8-14. [Official oaths.]**

Within ten days after receiving the certificates of election all officers shall take and subscribe the official oath and file the same in the office of the county clerk of the county wherein the organization was effected and immediately thereafter shall assume the duties of their respective offices.

**History:** Laws 1917, ch. 22, § 14; C.S. 1929, § 40-214; 1941 Comp., § 77-2014; 1953 Comp., § 75-21-14.

### **73-8-15. [Directors' offices; conduct of elections after organization.]**

The offices of the board of directors shall be located in the county where the organization is effected.

Fifteen days prior to any election held under the provisions of this act [73-8-1 to 73-8-60 NMSA 1978], subsequent to the organization of the district the secretary of such district shall cause to be posted in three public places in each precinct notices setting forth the time and place of holding the election and shall also post a general notice of the same in the office of the board. Prior to the time for the posting of such notices the board shall name from the qualified electors of each precinct three judges, one of whom shall act as clerk, who shall constitute a board of election for each such precinct. Should the board fail to name election judges as aforesaid, or should the persons appointed by the board of directors or any thereof fail to attend at the opening of the polls on the morning of the day fixed for any election, the qualified electors of the precinct present at the hour fixed for the opening of the polls may elect person [persons] qualified as aforesaid to act in the place of any absent member of any such board. In its order calling any election the board shall designate the hour and the place of each precinct where the election shall be held.



**History:** Laws 1917, ch. 22, § 15; C.S. 1929, § 40-215; 1941 Comp., § 77-2015; 1953 Comp., § 75-21-15.

### **73-8-16. [Chairman of election board; oath of judges; voting hours; certification of returns.]**

One of the judges shall be chairman of the election board. Before entering upon the discharge of their duties election judges shall take an oath for the faithful performance of their duties as such in the manner prescribed by the general election laws of the state.

The polls shall be opened at nine o'clock in the morning of the day fixed for any such election and shall be kept open until six o'clock p.m. of the same day. Immediately following the closing of the polls the clerk of the board of election shall forthwith transmit the returns duly certified by the election judges to the secretary of the board of directors of the district.

**History:** Laws 1917, ch. 22, § 16; C.S. 1929, § 40-216; 1941 Comp., § 77-2016; 1953 Comp., § 75-21-16.

**Cross-references.** - For oath of office of election judges, see 1-2-7 and 1-11-16 NMSA 1978.

### **73-8-17. [Canvass of returns after organization.]**

On the first Monday after any election other than the first election herein provided for, the board of directors shall meet at the office of the district and canvass the returns. If at such time it shall appear that returns from any precinct have not been received the canvass shall be postponed from day to day until same have been received or until six postponements have been had. The canvass shall be made publicly and the result thereof shall be formally declared by the board of directors and entered upon its minutes.

**History:** Laws 1917, ch. 22, § 17; C.S. 1929, § 40-217; 1941 Comp., § 77-2017; 1953 Comp., § 75-21-17.

### **73-8-18. [Statement of election results; filing; content; certificates of election; filling board vacancies.]**

As soon as the result of any election has been declared the secretary of the board of directors shall prepare and file with the county clerk of the county in which the office of the district is located a statement showing: first, a copy of the publication notice of the election; second, the names of the judges of election; third, the total number of votes cast in the district and in each precinct thereof; fourth, the names of the persons voted for; fifth, the number of votes cast in each precinct for each of such persons; sixth, the

names of the persons declared elected; seventh, the number of votes cast in each precinct for and against any question submitted to a vote other than the election of directors; eighth, the declared result of the vote upon any such question.

The secretary shall immediately execute and deliver to each elected director a certificate of election signed by such secretary and authenticated with the seal of the board.

In case of a vacancy in the board of directors by death, removal or inability from any cause properly to discharge the duties of the office, such vacancy shall be filled by appointment made by the remaining members of the board, and upon their failure to make such appointment within thirty days after such vacancy occurs then upon petition by five qualified electors of said district, the board of county commissioners of the county wherein the office of the board is situate shall fill any such vacancy. Any director appointed as above provided shall hold his office until the next general election of such district and until his successor is elected and qualified.

**History:** Laws 1917, ch. 22, § 18; C.S. 1929, § 40-218; 1941 Comp., § 77-2018; 1953 Comp., § 75-21-18.

### **73-8-19. [Duties of directors; contracts with United States; deposit of bonds; contract assessments.]**

The directors, having duly qualified, shall organize the board by the election of a president as hereinbefore provided and shall appoint a secretary. The board shall also adopt a seal and shall manage and conduct the affairs and business of the district, make and execute all necessary contracts, employ such agents, attorneys, officers and employees as may be required, and prescribe their duties; and shall establish bylaws, rules and regulations for the government of the affairs of the district and for the management, control, operation and maintenance of the system; and such board shall generally perform all such acts as shall be necessary fully to carry out the purposes of this act [73-8-1 to 73-8-60 NMSA 1978].

Said board may also enter into any obligation or contract with the United States for the construction, operation and maintenance of drainage works, and for the purpose of fully carrying into effect the purposes of this act, including drainage of district lands, or for the assumption as principal or guarantor of indebtedness to the United States on account of the drainage of district lands.

In case contract shall be made with the United States as herein provided, bonds of the district may be deposited with the United States at ninety-five percent of their par value, to the amount to be paid by the district to the United States under any such contract, the interest on such bonds not to exceed six percent per annum and such interest to be provided for by assessment and levy and regularly paid to the United States to be applied as provided for in such contract. If bonds of the district are not so deposited, it shall be the duty of the board of directors to include as part of any levy or assessment

provided for by law, an amount sufficient to meet each year all payments accruing under the terms of any such contract.

**History:** Laws 1917, ch. 22, § 19; C.S. 1929, § 40-219; 1941 Comp., § 77-2019; 1953 Comp., § 75-21-19.

**Cross-references.** - For election of president by board, see 73-8-5 NMSA 1978.

For special action to validate proceedings authorizing contracts with United States, see 73-8-54 to 73-8-58 NMSA 1978.

### **73-8-20. [Meetings of directors; records; inspection by elector or federal agent; entry on lands; eminent domain.]**

The directors shall hold quarterly meetings on the first Tuesday in January, April, July and October, and such special meetings as may be required for the proper transaction of the business. Calls for special meetings shall be made by the president or a majority of the directors. Meetings of the board shall be public and a majority of the board shall constitute a quorum for the transaction of business. All records of the board shall be open to inspection by any qualified elector during business hours. Such boards [board] of directors or the secretary thereof shall at any time allow any officer or agent of the United States, when acting under the order of the secretary of the interior, to have access to all books, records and vouchers of the district which are in the possession or under the control of the secretary or of the board.

The board, its agents and employees, shall have the right to enter upon any land in the district and make surveys and to locate any canals or open or close drainage conduits. The board shall also have the right to acquire by purchase or condemnation all lands, rights-of-way, franchises, canals, ditches and other water conduits or other property necessary for the use of the district or for the construction, use, maintenance, repair or improvement of its canals, ditches or other conduits or drainage works or for the enlargement or extension thereof.

**History:** Laws 1917, ch. 22, § 20; C.S. 1929, § 40-220; 1941 Comp., § 77-2020; 1953 Comp., § 75-21-20.

**Cross-references.** - For general condemnation statutes, see Chapter 42A NMSA 1978.

### **73-8-21. [Title and management of property.]**

The title to all property acquired under the provisions of this chapter [73-8-1 to 73-8-60 NMSA 1978] shall immediately and by operation of law vest in such drainage district, in its corporate name, and shall be held by such district in trust for, and is hereby dedicated and set apart for the uses and purposes set forth in this act [73-8-1 to 73-8-60 NMSA 1978] and shall be exempt from all taxation; and said board is authorized and empowered to hold, use, acquire, manage, occupy and possess said property as herein

provided: provided, further, that any property acquired by the district may be conveyed to the United States insofar as the same may be needed for the construction, operation and maintenance of works by the United States for the benefit of the district under any contract that may be entered into by the United States pursuant to this act.

**History:** Laws 1917, ch. 22, § 21; C.S. 1929, § 40-221; 1941 Comp., § 77-2021; 1953 Comp., § 75-21-21.

### **73-8-22. [Powers of board; judicial notice of district organization.]**

Said board shall be authorized to make conveyances or assurances for all property acquired by it under the provisions of this act [73-8-1 to 73-8-60 NMSA 1978] in the name of the district to and for the purposes herein expressed, to institute and maintain all actions and proceedings or suits at law or in equity necessary or proper for fully carrying out the provisions of this act or to enforce, maintain, protect or preserve any or all rights, privileges and immunities created by this act or acquired in pursuance hereof. In all courts, actions, suits or proceedings, the board may sue, appear or defend in person or by attorneys and in the name of the district. Judicial notice shall be taken in all actions, suits and judicial proceedings in any court of this state of the organization and existence of any drainage district of this state organized hereunder, from and after the filing in the office of the county clerk of a copy of the order by the board of county commissioners as hereinbefore provided for; and a certified copy of such order shall be prima facie evidence of the regularity and legal sufficiency of all acts, matters and proceedings therein recited and set forth; and any such drainage district the legality or regularity of the formation or organization whereof shall not be questioned by proceedings in quo warranto within one year from the date of the filing of such copy of such order, shall be conclusively deemed to be a legally and regularly organized and established and existing drainage district within the meaning of this act and its due and lawful formation and organization shall not thereafter be questioned in any action, suit or proceeding, whether brought under the provisions of this act or otherwise.

**History:** Laws 1917, ch. 22, § 22; C.S. 1929, § 40-222; 1941 Comp., § 77-2022; 1953 Comp., § 75-21-22.

**Cross-references.** - For proceedings in quo warranto, see 44-3-1 to 44-3-16 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Estoppel to rely on statute of limitations, 24 A.L.R.2d 1413.

28 C.J.S. Drains § 12.

### **73-8-23. [Elections on bond issues and federal contracts; conduct; terms of bonds.]**

For the purpose of constructing or purchasing or otherwise acquiring necessary rights-of-way, franchises, canals, ditches and other water conduits, or other property necessary for the use of the district, or for the maintenance, repair or improvement of its canals, ditches or other conduits or drainage works, or for the enlargement or extension thereof, or for the assumption of indebtedness to the United States for drainage district lands, or for the purpose of paying the first year's interest, if any, upon bonds, if any shall be issued, for and under the purposes of this act [73-8-1 to 73-8-60 NMSA 1978] as herein authorized, and otherwise carrying out the provisions of this act, the board of directors of any such district shall, as soon after such district has been organized as may be practicable, estimate and determine the amount of money necessary to be raised, or amount of indebtedness necessary to be assumed for such purposes, and shall forthwith call a special election, under and in accordance with the provisions of this act, at which election there shall be submitted in the manner by this act prescribed, the question of whether or not bonds of the district shall be issued in the amount determined upon to be necessary, if any, for deposit with the United States, in connection with contract to be entered into with the United States, or whether or not contract shall be entered into with the United States, with or without the deposit of bonds as aforesaid, as herein provided or any other of the questions for the purposes aforesaid. Notice of such election shall be given as hereinbefore specified, and shall clearly set forth the question or questions to be voted upon, the amount of bonds, if any, proposed to be issued for the purpose aforesaid, or the amount of indebtedness proposed to be assumed for the purposes aforesaid and the substance of any contract proposed to be entered into with the United States as aforesaid. Such election and all similar elections which may be held under the provisions of this act, shall be held and the result thereof determined and declared as nearly as possible in conformity with the provisions of this act. No informalities in conducting such election shall invalidate same, if the election shall have been fairly conducted.

At the first election provided for in this section the ballots shall contain the words "Bonds - Yes" and "Bonds - No," or "Contract - Yes" and "Contract - No," or appropriate words equivalent thereto, or descriptive of the question to be voted upon. The same rule shall be followed at any other elections which may be held under the provisions of this act [73-8-1 to 73-8-60 NMSA 1978] at which similar questions are submitted to a vote.

If any such election shall carry in conformity with the provisions of this act in favor of the issuance of bonds for the purposes of this act or for the assumption of the indebtedness to the United States for drainage district lands, or in favor of contract being entered into with the United States as herein provided, the directors shall immediately cause to be issued bonds as authorized by such election, or contract to be entered into with the United States as aforesaid. If bonds are not to be deposited with the United States in connection with such contract, bonds need not be issued.

Bonds, the issuance of which is authorized by the provisions of this act for deposit with the United States may be of such denominations, may call for the repayment of the principal at such times as may be agreed upon between the board and the secretary of the interior, and provide for the payment of such rate of interest not exceeding six

percent per annum as may be agreed upon by said parties; and where contract is made and bonds are not deposited with the United States in connection therewith, the contract may call for the repayment of principal at such times as may be agreed upon by such parties. Such bonds, if issued, shall be numbered consecutively as issued, and shall bear date of the time of their issue. Coupons for the interest shall be attached to each bond, bearing the lithographed signature of the president and the secretary. Such bonds shall express upon their face that they are issued by authority of this act, stating its title, and date of approval.

The secretary of the district shall keep a record of all bonds deposited as aforesaid, showing their number, date of issue, the date when same are deposited with the United States and the rate of interest required to be paid thereon.

If contract is proposed to be made with the United States in connection with which bonds are not to be deposited with the United States, the question to be submitted to the voters at such special election shall be whether contract shall be entered into with the United States. In such event the notice of election shall include a statement as to the maximum amount of money payable to the United States for construction purposes, exclusive of penalties and interest.

**History:** Laws 1917, ch. 22, § 23; C.S. 1929, § 40-223; 1941 Comp., § 77-2023; 1953 Comp., § 75-21-23.

**Cross-references.** - For conduct of elections under this act, see 73-8-8 to 73-8-11 and 73-8-15 to 73-8-18 NMSA 1978.

### **73-8-24. [Assessments for bond interest and installments.]**

Should such bonds be issued under the provisions of this act [73-8-1 to 73-8-60 NMSA 1978] for the purposes herein expressed, the same and the interest thereon, and all payments due or to become due the ensuing year to the United States under any contract between the district and the United States, accompanying which bonds of the district have not been deposited with the United States as aforesaid, shall be paid by revenue derived from an annual assessment upon the real property of the district, and such real property shall be and remain liable to be assessed for such payments as herein provided.

**History:** Laws 1917, ch. 22, § 24; C.S. 1929, § 40-224; 1941 Comp., § 77-2024; 1953 Comp., § 75-21-24.

### **73-8-25. [Drainage works constructed by United States; determining benefits and damages; annual assessment.]**

If any drainage district shall contract with the United States for the construction of drainage works, it shall be within the powers and the duties of the board of directors on or before September 1st next preceding the initial payment for such works under

contract with the United States, to fix and determine the rate or percentage of the benefits from the proposed works for all real property within the district to be affected by said works, subject to judicial confirmation as by this act [73-8-1 to 73-8-60 NMSA 1978] hereinafter provided. The board shall also assess the damages inflicted upon any real property by any such works of the district, and such amount shall be deducted from the assessments payable by each owner of the lands damaged, until compensation for the damages shall have been fully made. If the damage shall be found to exceed the benefits as regards any parcel of real property or any easement, a cash award of the difference shall be made. In thus fixing and determining the rate or percentage of benefits and assessing damages as aforesaid, such board shall determine the amount of money required to meet all obligations and all maintenance, operating and current expenses of the district during the ensuing year for properly carrying out the purposes of this act, all of which shall be taken into consideration in determining the rate or percentage of benefits and assessing damages as aforesaid; and the amount necessary for all of the aforesaid purposes shall thereafter be ascertained and determined by such board in like manner on or before September 1st of each year. The said rate of benefits shall be subsequently used as the basis for annual assessment; but such rate may be changed from time to time by the board of directors as new or changing conditions may, in their judgment, require, subject to judicial confirmation as aforesaid. Drainage districts organized under this act may assess realty within the district boundaries owned by all classes of persons and corporations, to the same extent as now permitted by the laws of this state to drainage districts.

**History:** Laws 1917, ch. 22, § 25; C.S. 1929, § 40-225; 1941 Comp., § 77-2025; 1953 Comp., § 75-21-25.

**Cross-references.** - For special action to validate assessment and awards, see 73-8-54 to 73-8-58 NMSA 1978.

### **73-8-26. [Certification of amounts to be assessed.]**

On or before September 1st of each year the board of directors of any such district shall certify to the board of county commissioners of the county in which the office of such district is located, the aggregate amount of money required for the purposes aforesaid; the amount required for the payment of interest upon bonds which may be issued for deposit with the United States and to meet payments required to be made under any contract with the United States, and the amount required for all other purposes under this act [73-8-1 to 73-8-60 NMSA 1978], shall be separately set forth; and the aforesaid certificate shall specify the assessments which are to become due for such purposes upon each tract of land within the district subject thereto. Provided, such lands as during any given year, shall not be subject to charges under the contract with the United States, shall not be assessed during any such year for the purposes of repayment to the United States under any such contract. And provided further, district lands shall be exempted from taxation, for the purposes of repayment to the United States, in any year when, and to the extent that, on account of seepage or other conditions, the district shall

be exempted from repayment to the United States for such lands under any such contract as aforesaid.

**History:** Laws 1917, ch. 22, § 26; C.S. 1929, § 40-226; 1941 Comp., § 77-2026; 1953 Comp., § 75-21-26.

### **73-8-27. [Duties of county assessor relating to district.]**

It shall be the duty of the county assessor of any county embracing the whole or a part of any drainage district, to assess and enter upon his tax roll each year, the names of the owners, together with a description showing the area of each tract of land in any such district of his county, subject to taxation under this act [73-8-1 to 73-8-60 NMSA 1978]. Each such assessor shall deliver to the board of county commissioners of his county a certified list of all such entries containing the information aforesaid, and the assessor of any county in which shall be situated lands within the district other than the county wherein is located the office of the district, shall transmit to the county commissioners of the county wherein the office of such district is located a duplicate certified list of the aforesaid lands within his county. Upon receipt by each such assessor of notice from the county commissioners of the levies required to be made by the provisions of this act, he shall extend such levies upon his tax roll, to be collected in the same manner as other taxes.

**History:** Laws 1917, ch. 22, § 27; C.S. 1929, § 40-227; 1941 Comp., § 77-2027; 1953 Comp., § 75-21-27.

### **73-8-28. [Assessment rates to be fixed by commissioners of county where district office is located.]**

Immediately upon receipt of the aforesaid certified list of lands in the district subject to taxation hereunder, and of the aforesaid certificate from the board of directors of the district showing the total amount of money necessary for the purposes aforesaid and the several assessments as aforesaid, the board of county commissioners of the county wherein is located the office of any such drainage district, shall separately determine and fix the rate per acre necessary to provide the funds requisite to meet interest upon bonds, if any, deposited under this act [73-8-1 to 73-8-60 NMSA 1978], and payments required to be made under contract with the United States, and also the rate per acre necessary to provide any and all other funds required for the purposes of this act, which rates may be increased fifteen percent to cover delinquencies; and the aggregate of the amounts required for the aforesaid purposes shall be raised by levy of taxes upon lands within the district upon the basis of the rate or percentage of benefits so as aforesaid ascertained, fixed and determined by the board of directors of the district as judicially confirmed and modified. Thereupon such board of county commissioners shall certify to the board of county commissioners of each county embracing any portion of the district, other than the county in which the office of the district is located, the rates per acre so as aforesaid determined and fixed. The board of county commissioners of each county within which shall be located any part of any drainage district shall, at the time of



making levies for county purposes, make a levy as, and upon the basis, hereinbefore provided, upon all lands of the drainage district within their respective counties subject to taxation under this act, and shall deliver a notice thereof to the county assessor. All taxes thus levied shall be considered special taxes.

**History:** Laws 1917, ch. 22, § 28; C.S. 1929, § 40-228; 1941 Comp., § 77-2028; 1953 Comp., § 75-21-28.

### **73-8-29. [Ex-officio district treasurer; functions; duties of treasurers of counties within district.]**

The county treasurer of the county in which is located the office of any such district, shall be and is hereby constituted ex-officio district treasurer of such district, and such county treasurer shall be liable upon his official bond, and to indictment and criminal prosecution for malfeasance, or misfeasance or failure to perform any duty herein prescribed as county treasurer or district treasurer as is provided by law in other cases as county treasurer. Such treasurer shall receive and receipt for all monies belonging to the district. It shall be the duty of the county treasurer of each county in which any drainage district is located in whole or in part, to collect and receipt for all taxes levied as herein provided, in the same manner and at the same time as is required in the receipt for and collection of taxes upon real estate for county purposes. The county treasurer of each county wherein shall be situate a portion of any such drainage district, other than the county treasurer of the county in which the office of such district is located, on the first Monday of each month shall remit to the aforesaid district treasurer all monies theretofore collected or received by him on account of such district. Every county treasurer shall keep a bond fund account and a United States contract fund account, and also a general fund account. The bond fund account shall consist of all monies received on account of interest or principal of bonds issued by such district, interest and principal to be separately entered; the United States contract fund account shall consist of all monies received to meet payments due or to become due to the United States under any contract between the district and the United States; the general fund account shall consist of all other monies received.

The district treasurer aforesaid shall pay out of such bond fund account, when due, the interest and principal of the bonds of the district at the time and place specified in such bonds; he shall also pay out of the contract fund account all payments due to the United States under any contract between the district and the United States at the time, place and in the manner provided for in such contracts. Funds arising from assessment and levy in any year and accruing to the bond fund account and the aforesaid contract fund account, shall respectively be devoted to the obligations of the district payable from such funds in the order of the priority of the creation of the obligations.

Such district treasurer shall disburse funds from the aforesaid general fund account only upon order signed as herein provided.

On the 15th day of each month the district treasurer shall report to the board of directors of the district the amount of money in his hands to the credit of the aforesaid respective funds. All such district taxes collected and paid to the county treasurer as aforesaid shall be received by such treasurers in their official capacity, and they shall be responsible for the safekeeping, disbursement and payment thereof, the same as for other monies collected by them as such treasurers. Provided, no such county treasurer shall receive any commission or extra compensation for the collection of such district taxes, nor shall such district treasurer receive any extra compensation for the discharge of his duties as such, but shall be allowed the sum of not to exceed twenty-five dollars [(\$25.00)] per month for extra clerical assistance which may be required on account of such additional duties.

**History:** Laws 1917, ch. 22, § 29; C.S. 1929, § 40-229; 1941 Comp., § 77-2029; 1953 Comp., § 75-21-29.

**Cross-references.** - For administration and enforcement of taxes, see 7-38-1 to 7-38-93 NMSA 1978.

### **73-8-30. [Application of general revenue laws.]**

The revenue laws of this state for the assessment, levy and collection of taxes on real estate for county purposes, except as herein modified, shall be applicable for the purposes of this act [73-8-1 to 73-8-60 NMSA 1978] including the enforcement of penalties and forfeitures for delinquent taxes.

**History:** Laws 1917, ch. 22, § 30; C.S. 1929, § 40-230; 1941 Comp., § 77-2030; 1953 Comp., § 75-21-30.

**Cross-references.** - For valuation of property and imposition of tax, see 7-36-1 to 7-36-33 and 7-37-1 to 7-37-8 NMSA 1978.

For administration and enforcement of taxes, see 7-38-1 to 7-38-93 NMSA 1978.

### **73-8-31. [Warrants; restrictions on issuance and payment; register.]**

With the exceptions hereinbefore specified no claims or accounts shall be paid by the district treasurer until the same shall have been approved and allowed by the board of directors of the district, and only upon warrants signed by the president and countersigned by the secretary, which warrants shall show the date when authorized by said board and the purpose for which drawn. No warrant shall be issued or obligation incurred unless the district treasurer has in his hands sufficient funds to pay any such warrant when presented for payment, or unless provision has been made so that such district treasurer will have in his hands funds with which to meet the payment of any such warrant when presented. All claims and accounts against the district shall be verified, and the secretary of the district is hereby authorized and empowered to administer oaths to parties desiring to verify claims or accounts against the district.

The district treasurer shall keep a register in which he shall enter each warrant presented for payment, showing the date and amount of such warrant, to whom payable, the date of presentation for payment and the date of payment; and all warrants shall be paid in the order of their presentation for payment to the district treasurer.

**History:** Laws 1917, ch. 22, § 31; C.S. 1929, § 40-231; 1941 Comp., § 77-2031; 1953 Comp., § 75-21-31.

### **73-8-32. [Expense levy; power of constructing system; rights-of-way; state land.]**

For the purpose of defraying the expenses incident to the organization of the district and the care, operation, management, repair and improvement of all drainage works and property of the district, including salaries of officers and employes, and all expenses necessarily incident to the conduct of the business of said district, the board of directors may provide for the payment of all such expenses by levy of assessment therefor in the manner hereinbefore specified. The board of directors shall have the power to construct its drainage canals, ditches or other conduits or drainage works across any stream of water, watercourse, street, avenue, highway, railway, canal, ditch or flume which the route of any such drainage works may intersect or cross; and if the owners of any such property so intersected or crossed, or those in control thereof, shall fail to agree with such board of directors upon the amount to be paid for such intersection or crossing, or as to the points or manner of such crossings, the controversy shall be determined in all respects in accordance with the provisions of law relative to the taking of lands for public uses.

Right-of-way is hereby given, dedicated and set apart to locate, construct and maintain any such drainage works over, through or upon any of the lands which are now or hereafter may be the property of the state.

Lands belonging to the state embraced within the limits of any such drainage district shall in all other respects be subject to the provisions of this act [73-8-1 to 73-8-60 NMSA 1978]; and the officers of the state who are authorized to administer the laws of the state with reference to state lands, and to disburse funds derived therefrom, are hereby authorized and empowered to take such action and make such disbursements from such funds as shall from time to time be required in order to comply with the provisions of this act applicable to any such lands embraced within any such drainage district.

**History:** Laws 1917, ch. 22, § 32; C.S. 1929, § 40-232; 1941 Comp., § 77-2032; 1953 Comp., § 75-21-32.

**Cross-references.** - For general condemnation statutes, see Chapter 42A NMSA 1978.

For duty to build bridge where ditch crosses highway, see 67-7-9 and 72-8-2 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 93.

### **73-8-33. [Compensation and expenses of directors and president; offenses; penalty.]**

Members of the board of directors of any such drainage district, other than the president, shall each receive compensation at the rate of two and 50-100 dollars [(\$2.50)] per day while attending meetings of the board, or otherwise necessarily employed in the discharge of their duties, and their actual and necessary traveling expenses incurred while engaged upon official business. The president shall receive as compensation one hundred dollars [(\$100)] per annum for each ten thousand acres of land, or major fraction thereof, included within the drainage district, and his actual and necessary traveling expenses incurred while engaged upon official business.

No director or officer named in this act [73-8-1 to 73-8-60 NMSA 1978] shall in any manner be interested directly or indirectly in any contract awarded or to be awarded by the board of directors, or in the profits to be derived therefrom; nor shall he receive any bonus, gratuity or bribe; and for any violation of this provision any such officer upon conviction thereof shall be punished by a fine of not exceeding five hundred dollars [(\$500)], or by imprisonment for not less than thirty days nor more than one year or by both such fine and imprisonment; and such conviction shall work a forfeiture of his office.

**History:** Laws 1917, ch. 22, § 33; C.S. 1929, § 40-233; 1941 Comp., § 77-2033; 1953 Comp., § 75-21-33.

### **73-8-34. [Incurrence of unauthorized debt prohibited.]**

The board of directors or other officers of the district shall have no power to incur any debt or liability whatever in excess of the express provisions of this act [73-8-1 to 73-8-60 NMSA 1978], and any debt or liability so incurred shall be void.

**History:** Laws 1917, ch. 22, § 34; C.S. 1929, § 40-234; 1941 Comp., § 77-2034; 1953 Comp., § 75-21-34.

### **73-8-35. [Changing boundaries; effect.]**

The boundaries of any drainage district organized under the provisions of this act [73-8-1 to 73-8-60 NMSA 1978] may be changed in the manner herein prescribed; but such change of boundaries shall not impair or affect the organization of the district, or its right in or to property, or any of its rights or privileges of whatsoever kind or nature, nor shall it affect, impair or discharge any contract, obligation, lien or charge, for or upon which it was or might become liable or chargeable had such change of boundaries not been made; provided, if the secretary of the interior shall give his assent to a change in boundaries in writing filed with the board of directors, any lands to the exclusion of

which from the district assent shall thus be given shall be discharged from any and all liens in favor of the United States, under any contract which shall have been made with the United States, and any bonds deposited with its agents.

**History:** Laws 1917, ch. 22, § 35; C.S. 1929, § 40-235; 1941 Comp., § 77-2035; 1953 Comp., § 75-21-35.

**Cross-references.** - For special action to validate inclusion and exclusion of lands, see 73-8-54 to 73-8-58 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 28 C.J.S. Drains § 7.

### **73-8-36. [Petition for inclusion of adjacent land; acknowledgment.]**

The holder or holders of title, or evidence of title, to any body of land adjacent to or situate without the boundaries of any drainage district organized under this act [73-8-1 to 73-8-60 NMSA 1978], may file with the board of directors of the district a petition in writing praying that such lands be included in such district. The petition shall describe the tracts or body of land owned by the petitioners in such manner as to identify same, and such petition shall be deemed to give the assent of the petitioners to the inclusion in such district of the lands described in the petition. Such petition shall be acknowledged in the same manner as provided by law for conveyances of land.

**History:** Laws 1917, ch. 22, § 36; C.S. 1929, § 40-236; 1941 Comp., § 77-2036; 1953 Comp., § 75-21-36.

**Cross-references.** - For manner of acknowledgment for conveyances of land, see 14-13-9 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 28 C.J.S. Drains § 8.

### **73-8-37. [Notice of hearing on petition to include lands; contents; expenses.]**

Upon the filing of such petition the secretary of the district shall cause notice of such filing to be given in the manner provided by this act [73-8-1 to 73-8-60 NMSA 1978] with reference to other notices required to be published. Such notice shall recite the filing of the petition, the names of the petitioners, a description of the lands involved and the prayer of the petitioners, and shall notify all interested persons to appear at the office of the board of directors at a time to be fixed in the notice, and show cause in writing, if any they have, why the petition should not be granted. The time specified in the notice shall be the regular meeting of the board held next after the expiration of the time fixed for the publication of notices under this act.

The petitioner or petitioners shall advance to the secretary sufficient money to cover the estimated costs of all proceedings under such petition, and until such estimated amount has been advanced no publication shall be made.

**History:** Laws 1917, ch. 22, § 37; C.S. 1929, § 40-237; 1941 Comp., § 77-2037; 1953 Comp., § 75-21-37.

**Cross-references.** - For manner of giving notice under this act, see 73-8-2 and 73-8-3 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 94.

### **73-8-38. [Hearing; procedure; effect.]**

At the time and place fixed in the notice, or at such time or times to which the hearing upon such petition may be adjourned, the board of directors shall proceed to hear the petition and all objections thereto, presented in writing by any person, showing cause as aforesaid, why the petition should not be granted. Failure by any interested person to make such showing of cause in writing shall be deemed and taken as an assent upon his part to the inclusion of such lands in said district.

**History:** Laws 1917, ch. 22, § 38; C.S. 1929, § 40-238; 1941 Comp., § 77-2038; 1953 Comp., § 75-21-38.

### **73-8-39. [Requiring payment of pro rata share of prior costs.]**

The board of directors may require as a condition precedent to the granting of the petition that the petitioners shall severally pay to the district such respective sums, as nearly as the same can be estimated by the board, as the petitioner or petitioners, or his or their grantor or grantors, would have been required to pay to such district as assessment for the payment of his or their pro rata of all bonds and the interest thereon which prior thereto may have been issued by said district, or his or their pro rata share of the cost of construction under any contract between the district and the United States, accompanying which bonds of the district have not been deposited with the United States, as in this act [73-8-1 to 73-8-60 NMSA 1978] provided, had such lands been included in such district at the time the same was originally formed, or when such bonds were so issued or when such contract with the United States was made.

**History:** Laws 1917, ch. 22, § 39; C.S. 1929, § 40-239; 1941 Comp., § 77-2039; 1953 Comp., § 75-21-39.

### **73-8-40. [Rejection or acceptance of petition to include lands; orders.]**

If the board of directors shall deem it not to be for the best interests of the district to include thereunder the lands mentioned in the petition, such board shall by order in writing reject the petition; but if the board shall deem it for the best interests of the district to include such lands it may by order so change the boundaries of the district as to include therein the lands mentioned in the petition. If such lands are so included the order shall describe the entire boundaries of the district with such lands so included, and for that purpose the board may cause a survey to be made of such portion of such boundaries as may be deemed necessary.

**History:** Laws 1917, ch. 22, § 40; C.S. 1929, § 40-240; 1941 Comp., § 77-2040; 1953 Comp., § 75-21-40.

### **73-8-41. [Filing certified copy of order including land, with map; effect.]**

Upon the entry of an order granting any such petition as aforesaid, a certified copy thereof and a plat of the district showing such change, certified by the president and secretary, shall be filed for record in the office of the county clerk of each county in which shall be situated any of the lands of the district; and the district shall be and remain a drainage district as fully and to every intent and purpose as if the lands so included within the district as aforesaid, had been included therein at the time of the original organization of the district; and the district as so changed and all the lands embraced therein shall be liable for all existing obligations and indebtedness of such organized district.

**History:** Laws 1917, ch. 22, § 41; C.S. 1929, § 40-241; 1941 Comp., § 77-2041; 1953 Comp., § 75-21-41.

### **73-8-42. [Recording petition in minutes of board; evidential value.]**

Upon the filing of certified copy of the order, together with plat as aforesaid, the secretary of the district shall record in the minutes of the board the aforesaid petition; and the minutes of the board of directors or a certified copy thereof shall be admissible in evidence with the same force and effect as the original petition.

**History:** Laws 1917, ch. 22, § 42; C.S. 1929, § 40-242; 1941 Comp., § 77-2042; 1953 Comp., § 75-21-42.

### **73-8-43. Powers of fiduciaries.**

A guardian, conservator or personal representative of an estate, under the laws of this state, and who as such guardian, conservator or personal representative is entitled to the possession of lands belonging to the estate which he represents on behalf of his ward or the estate which he represents, upon being thereunto authorized by the proper court may sign and acknowledge the petition in this act [73-8-1 to 73-8-60 NMSA 1978]

mentioned, and may show cause, as in this act provided, why the boundaries of the district should not be changed.

**History:** Laws 1917, ch. 22, § 43; C.S. 1929, § 40-243; 1941 Comp., § 77-2043; 1953 Comp., § 75-21-43; Laws 1975, ch. 257, § 8-128.

### **73-8-44. [Revising election divisions and precincts after including more land.]**

In case of the inclusion of the land within any district by proceedings under this act [73-8-1 to 73-8-60 NMSA 1978], the board of directors shall, at least thirty days prior to the next succeeding general election, make an order redividing such district into divisions as nearly equal in size as may be practicable, being in number as in this act hereinbefore provided, and which shall be numbered consecutively, and one director shall thereafter be elected from each such division, in the manner by this act hereinbefore specified.

For the purposes of election the board of directors shall establish a convenient number of election precincts in said district, and define the boundaries thereof, which precincts may change from time to time as the board may deem necessary.

**History:** Laws 1917, ch. 22, § 44; C.S. 1929, § 40-244; 1941 Comp., § 77-2044; 1953 Comp., § 75-21-44.

**Cross-references.** - For number of divisions in district, see 73-8-6 NMSA 1978.

### **73-8-45. [Excluding land.]**

Any tract of land included within the boundary of such district at or after its organization under this act [73-8-1 to 73-8-60 NMSA 1978], may be excluded therefrom, in the manner herein prescribed; but such exclusion of land from the district shall not impair or affect its organization, or its rights in or to property or any of its rights or privileges of whatever kind or nature, nor shall such exclusion affect, impair or discharge any contract, obligation, lien or charge for or upon which it would or might become liable or chargeable, had such land not been excluded from the district.

**History:** Laws 1917, ch. 22, § 45; C.S. 1929, § 40-245; 1941 Comp., § 77-2045; 1953 Comp., § 75-21-45.

### **73-8-46. [Petition for exclusion of land after organization.]**

The owner or owners of title, or evidence of title, to any lands embraced within any drainage district, may file with the board of directors of the district a petition praying that such lands may be excluded from the district. Such petition shall describe the lands



desired to be excluded in such manner as to identify the same; and the petition shall be acknowledged in the manner and form as required for conveyances of real estate.

**History:** Laws 1917, ch. 22, § 46; C.S. 1929, § 40-246; 1941 Comp., § 77-2046; 1953 Comp., § 75-21-46.

**Cross-references.** - For manner of acknowledgment for conveyances of land, see 14-13-9 NMSA 1978.

### **73-8-47. [Publication of notice of hearing on exclusion of land; contents; expenses.]**

Upon the filing of such petition the secretary of the district shall cause notice of such filing to be published in the manner by this act [73-8-1 to 73-8-60 NMSA 1978] prescribed for the publication of notices. The notices shall set forth the filing of the petition, the names of the petitioner, or petitioners, a description of the lands covered thereby sufficient for the identification thereof and the prayer of the petitioner, and shall notify all interested persons to appear at the office of the district at a time to be named in the notice, and show cause in writing, if any exist, why the petition shall not be granted. The time specified in the notice shall be the regular meeting of the board to be held next after the expiration of the time fixed by this act for the publication of notices. The estimated cost of all proceedings under any such petition shall be advanced by the petitioner or petitioners before the secretary shall publish such notice.

**History:** Laws 1917, ch. 22, § 47; C.S. 1929, § 40-247; 1941 Comp., § 77-2047; 1953 Comp., § 75-21-47.

**Cross-references.** - For manner of giving notice under this act, see 73-8-2 and 73-8-3 NMSA 1978.

### **73-8-48. [Hearing on petition for exclusion of land.]**

At the time and place mentioned in the notice, or at the time or times to which hearing upon such petition may be adjourned, the board of directors shall proceed to hear the petition and all objections thereto which are presented in writing, showing cause as aforesaid why the prayer of the petition should not be granted. The filing of such petition as aforesaid shall be deemed and taken as an assent by each and all of the petitioners to the exclusion from the district of the lands mentioned in the petition, or any part thereof.

**History:** Laws 1917, ch. 22, § 48; C.S. 1929, § 40-248; 1941 Comp., § 77-2048; 1953 Comp., § 75-21-48.

### **73-8-49. [Order for denial or approval of exclusion of land.]**

If the board of directors shall deem it not to be for the best interests of the district that the lands mentioned in the petition, or some portion thereof, shall be excluded from the district, it shall order that the said petition be denied; but if such board shall deem it to be for the best interests of the district that such lands, or some portion thereof be excluded from the district, and if the secretary of the interior shall in writing give his assent as by this act [73-8-1 to 73-8-60 NMSA 1978] hereinbefore provided, then the board may order the lands mentioned in the petition or some portion thereof to be excluded from the district.

**History:** Laws 1917, ch. 22, § 49; C.S. 1929, § 40-249; 1941 Comp., § 77-2049; 1953 Comp., § 75-21-49.

**Cross-references.** - For requirement that secretary of interior assent to change in boundaries of district, see 73-8-35 NMSA 1978.

### **73-8-50. [Filing order of exclusion and new plat; effect.]**

Upon the allowance of such petition a certified copy of the order of the board of directors authorizing such change, and a plat of such district showing such change, certified by the president and the secretary of the district, shall be filed for record in the office of the county clerk of each county in which shall be situated any of the lands of the district; and the district shall remain a drainage district as fully to every intent and purpose as if the lands excluded by change of the boundaries as aforesaid had not been excluded therefrom. Provided, in case contract has been made between the district and the United States as in this act [73-8-1 to 73-8-60 NMSA 1978] provided, no change shall be made in the boundaries of the district, and the board of directors shall make no order for any such change until the written assent of the secretary of the interior shall have been filed with the board of directors as aforesaid. Upon the filing of such written assent, however, the lands excluded from any such district shall be discharged of and free of liens in favor of the United States under any contract with the United States, or under bonds deposited with its agents.

**History:** Laws 1917, ch. 22, § 50; C.S. 1929, § 40-250; 1941 Comp., § 77-2050; 1953 Comp., § 75-21-50.

### **73-8-51. [Revising election divisions and precincts after exclusion of land.]**

At least thirty days before the next general election of any such district the board of directors thereof may make an order dividing said district into divisions as nearly equal in size as practicable, in number as in this act [73-8-1 to 73-8-60 NMSA 1978] hereinbefore specified, and numbered consecutively; one director shall be elected from each such division by the qualified electors of the whole district. For the purpose of election in such district the said board shall establish a convenient number of election precincts and define the boundaries thereof, which precincts may be changed from time to time as the board of directors may deem necessary.

**History:** Laws 1917, ch. 22, § 51; C.S. 1929, § 40-251; 1941 Comp., § 77-2051; 1953 Comp., § 75-21-51.

**Cross-references.** - For number of divisions in district, see 73-8-6 NMSA 1978.

### **73-8-52. [Dissolution of district; petition; election; restrictions.]**

When a majority of the resident freeholders owning one-third in area of the lands, or evidence of title to lands so owned within the limits of any such drainage district, shall petition the board of directors to call a special election for the purpose of submitting to the qualified electors of said district a proposition to vote on the dissolution of such drainage district, setting forth in the petition that all bills, claims and obligations of every nature whatsoever have been fully satisfied and paid, and that the necessity for a continuance of such organization no longer exists, it shall be the duty of the board, if satisfied as to the correctness of the showing made by the petition to call an election setting forth its object, and to cause notice thereof to be published in the manner and for the time prescribed by this act [73-8-1 to 73-8-60 NMSA 1978], designating the time and places for the holding of the election, as by this act required. At such election the ballots used shall bear the words "For dissolution .... Yes" and "For dissolution .... No," or words equivalent thereto.

Provided, the board of directors shall be without jurisdiction to entertain the petition or to call the election hereinbefore mentioned so long as contract with the United States, by this act authorized, remains in force, without the written consent of the secretary of the interior filed with the county clerk of the county wherein the office of the district is located.

**History:** Laws 1917, ch. 22, § 52; C.S. 1929, § 40-252; 1941 Comp., § 77-2052; 1953 Comp., § 75-21-52.

**Cross-references.** - For manner of giving notice under this act, see 73-8-2, 73-8-3 and 73-8-15 NMSA 1978.

### **73-8-53. [Canvass of vote; declaration of dissolution; filing.]**

The votes cast at such election shall be canvassed at the time and in the manner prescribed by this act [73-8-1 to 73-8-60 NMSA 1978] as applied to other elections herein mentioned; and if by such canvass it shall appear that a majority of the ballots cast at such election was in favor of dissolution, then it shall be the duty of the board of directors to declare the district to be disorganized; and the board shall certify to the county clerk [clerks] of the respective counties in which the district is situated, the number of signatures to the petition, the date when the election was held, the number of votes cast for and against the proposition and the result of the canvass as declared by the board; which certificate shall be signed by the president and secretary of the board, and authenticated by the seal of the district. Such certificate shall be recorded by the county clerks of the respective counties above mentioned.

Should it appear as the result of such canvass that a majority of the votes cast at such election were against dissolution, then the board of directors shall declare the proposition lost, and shall cause the result as thus ascertained and declared, and the vote cast, to be made a part of the records of the district.

**History:** Laws 1917, ch. 22, § 53; C.S. 1929, § 40-253; 1941 Comp., § 77-2053; 1953 Comp., § 75-21-53.

**Cross-references.** - For canvass of returns, see 73-8-17 NMSA 1978.

### **73-8-54. [Special actions for validation of proceedings of board.]**

The board of directors of any drainage district organized under the provisions of this act [73-8-1 to 73-8-60 NMSA 1978] shall commence special proceedings in and by which the proceedings of such board, and of any such district, providing for the authorization of contract with the United States, with or without the deposit of bonds, may be judicially examined, approved and confirmed.

Such proceedings shall be brought within sixty days after the adoption of resolution by the board declaring that the bond election or election for the authorization of contract with the United States has been favorably voted upon by the electorate of the district.

The board may, however, in its discretion, institute an action prior to the time specified, whereby the validity of the organization of the district or of any steps leading to the issuance of bonds or to the making of contract as aforesaid, may be separately judicially examined, approved and confirmed.

Within sixty days after the ascertainment of the rate or percentage of drainage benefits, and the award for damages inflicted by drainage works, as in this act provided, the board shall bring a similar special proceeding whereby such assessment and award may be judicially examined, approved and confirmed.

In the event of the inclusion by any drainage district of additional lands, or the exclusion of lands previously within the boundaries of any such district, the board of directors may, if it shall be deemed advisable so to do, institute a special proceeding in like manner and with like effect as herein provided for the confirmation of bonds, whereby the proceedings for such change of boundaries may be judicially examined, approved and confirmed.

**History:** Laws 1917, ch. 22, § 54; C.S. 1929, § 40-254; 1941 Comp., § 77-2054; 1953 Comp., § 75-21-54.

### **73-8-55. [Petition for validation of board proceedings; contents.]**

The board of directors of the drainage district shall file in the district court of the county in which the lands of the district, or some portion thereof, are situated, a petition in effect

praying that the proceedings aforesaid may be examined, approved and confirmed by the court. Such petition shall set forth the proceedings had for the issuance and deposit of bonds or for the authorization of contract with the United States, or for the determination of the rate of drainage benefits thereunder or for the ascertainment and assessment of damage to district lands under drainage works, as the case may be, shall allege generally that the drainage district was duly organized, and its first board of directors duly elected, but need not set forth facts showing such organization or election of the first board of directors.

**History:** Laws 1917, ch. 22, § 55; C.S. 1929, § 40-255; 1941 Comp., § 77-2055; 1953 Comp., § 75-21-55.

### **73-8-56. [Hearing on petition for validation of board proceedings.]**

The court shall fix the time for hearing upon said petition, shall order the clerk of the court to publish notice of the filing of such petition, which shall be published for the time and in the manner hereinbefore provided with reference to all notices required to be published under this act [73-8-1 to 73-8-60 NMSA 1978]. The notice shall designate the time and place fixed for hearing upon the petition, shall embody the substance of the prayer of the petition and shall notify any and all persons interested in the organization of the district, or in the proceedings for the issuance or deposit of the bonds or in any such other proceedings as may be in question on or before the date fixed for such hearing, to appear, demur or answer the petition. Such petition may be referred to and described in the notice as "The petition of the Board of Directors of . . . . . Drainage District" (giving its name), praying that the proceedings for the issuance and deposit of bonds of the district, or for the authorization of contract with the United States, or for the determination of the rate of drainage benefits under contract with the United States or for the ascertainment and assessment of damages to district lands under drainage works, as the case may be, may be examined, approved and confirmed by the court.

**History:** Laws 1917, ch. 22, § 56; C.S. 1929, § 40-256; 1941 Comp., § 77-2056; 1953 Comp., § 75-21-56.

**Cross-references.** - For time and manner of publication of notices, see 73-8-2 and 73-8-3 NMSA 1978.

**Demurrers abolished.** - Rule 1-007 C SCRA 1986 provides that demurrers shall not be used.

### **73-8-57. [Demurrers and answers to petition for validation of board proceedings.]**

Any person interested in the drainage district or in the issue or deposit of such bonds, or in such other proceedings as may be in issue as herein provided, may demur to or answer the petition. The provisions of Chapter LXXXVIII of the New Mexico Statutes Annotated, Codification of 1915, respecting demurrer or answer to a verified complaint,

shall be applicable to such proceeding. Any person so demurring or answering the petition shall be deemed a defendant to such special proceedings, and the board of directors shall be deemed to be the plaintiff.

Every material allegation of the petition not specifically controverted by answer, shall, for the purpose of such special proceeding, be taken as true; and each person failing to appear, demur or answer the petition shall be deemed to admit as true all the material allegations of the petition.

The rules of pleading and practice relating to appeals and writs of error as provided by the aforesaid Chapter LXXXVIII which are not inconsistent with the provisions of this act [73-8-1 to 73-8-60 NMSA 1978], shall be applicable to the special proceedings herein provided for. Provided, appeals to the supreme court of the state, involving special proceedings herein mentioned, shall be taken within thirty days, and shall be perfected within sixty days after the granting of any such appeal.

**History:** Laws 1917, ch. 22, § 57; C.S. 1929, § 40-257; 1941 Comp., § 77-2057; 1953 Comp., § 75-21-57.

**Compiler's note.** - The provisions of Code 1915, ch. 88, referred to in this section, are deemed superseded by the rules adopted by the supreme court for its own proceedings and proceedings in the district courts. See Judicial Pamphlets Nos. 1 and 17.

**Demurrers abolished.** - See same catchline in notes to 73-8-56 NMSA 1978.

### **73-8-58. [Consideration and judgment on petition to validate board proceedings.]**

Upon the hearing of such special proceedings the court shall find and determine whether the notice of the filing of the petition has been duly given and published as required by this act [73-8-1 to 73-8-60 NMSA 1978], and shall have power and jurisdiction to examine into and determine the legality and validity of, and to approve and confirm each and all of the proceedings for the organization of any such district under the provisions of this act from and including petition for the organization of the district, and all other proceedings which may affect the legality or validity of the aforesaid bonds, or the order for the issuance and deposit thereof, and all of the proceedings, if any, as the case may be, for the authorization of the contract with the United States, and the validity of the determination of the rate of drainage benefits which shall have been made under any such contract with the United States, and of all proceedings for the ascertainment, and assessment of damages to district lands under drainage works.

In inquiring into the regularity, legality or correctness of any such proceedings, the court shall disregard any error, irregularity or omission which does not affect the substantial rights of the parties to any such special proceedings; and the court may by decree

approve and confirm such proceeding [proceedings] in part, and disapprove and declare illegal or invalid other portions of any such proceedings.

The cost of any such special proceedings shall be allowed and apportioned between the parties in the discretion of the court.

When finally made and entered the judgment in any such special proceedings shall be res judicata in all cases arising in connection with the organization of the district and the collection of taxes for payment of the principal and interest of bonds, or for payment of monies required by any contract with the United States or for the payment of any indebtedness or obligation incurred under or authorized by the provisions of this act.

Provided, however, that a reopening of the judgment upon the rate of drainage benefits may be had at the petition of the board of directors.

**History:** Laws 1917, ch. 22, § 58; C.S. 1929, § 40-258; 1941 Comp., § 77-2058; 1953 Comp., § 75-21-58.

### **73-8-59. ["District" defined.]**

The word "district" as used in this act [73-8-1 to 73-8-60 NMSA 1978] shall be held to mean and include only the lands described in the official order establishing any drainage district, and the official plat thereof of record in the office of the county clerk as by this act hereinbefore provided and such other lands as may be subsequently included in any such district in accordance with the provisions of this act.

**History:** Laws 1917, ch. 22, § 59; C.S. 1929, § 40-259; 1941 Comp., § 77-2059; 1953 Comp., § 75-21-59.

**Cross-references.** - For recordation of official plat in office of county clerk, see 73-8-12, 73-8-41 and 73-8-50 NMSA 1978.

### **73-8-60. [Construction.]**

Nothing in this act [73-8-1 to 73-8-60 NMSA 1978] shall be construed as affecting or interfering with the general right of appeal and the rules of practice and procedure relative thereto under existing laws, except as herein specifically limited; and nothing herein contained shall be construed to amend, expressly or by any implication, existing district drainage laws of the state, nor to enlarge or restrict any of the powers of districts organized under such laws, nor to affect any districts organized, or to be organized, under other district drainage laws of the state.

**History:** Laws 1917, ch. 22, § 60; C.S. 1929, § 40-260; 1941 Comp., § 77-2060; 1953 Comp., § 75-21-60.

**Cross-references.** - For general drainage district laws, see 73-6-1 to 73-6-44 and 73-7-1 to 73-7-56 NMSA 1978.

## **ARTICLE 9**

### **IRRIGATION DISTRICTS**

#### **73-9-1. [Qualifications of organizers; works and areas exempted; exception.]**

Whenever a majority of the resident freeholders owning more than one-half of the lands or the evidence of title to said lands in any district in the state of New Mexico desire to provide for the irrigation of the same they may propose the organization of an irrigation district under the provisions of this act, and when so organized each district shall have the powers conferred or that may hereafter be conferred by law upon such irrigation districts; provided, that where ditches, canals or reservoirs were constructed before March 18, 1909, such ditches, canals, reservoirs and franchises and the lands irrigated therefrom shall be exempt from the operation of this act, unless such district be formed to purchase, acquire or lease such ditches, canals, reservoirs and their franchises, or unless a statement, signed by at least four-fifths in number of the owners of any such ditch, canal or reservoir and of the franchises and water rights thereof and of the lands irrigated therefrom, be filed with the board of county commissioners of each county in which such ditch, canal, reservoir and lands are situate, giving their consent that such ditch, canal, reservoir, franchises, water rights and lands may be included in one or more irrigation districts organized or to be organized under the provisions of this act, which statement shall be recorded in the office of the county clerk of said county.

**History:** Laws 1919, ch. 41, § 1; C.S. 1929, § 73-201; 1941 Comp., § 77-2101; 1953 Comp., § 75-22-1.

**Cross-references.** - For the definition of "resident freeholder," see 73-9-3 NMSA 1978.

For the purchase of tax certificates by irrigation districts, see 73-13-19 to 73-13-23 NMSA 1978.

As to the definition of "irrigation law," see 73-13-43 NMSA 1978.

For the disposition of unclaimed property, see 7-8-1 NMSA 1978.

As to impounding animals in irrigation districts, see 77-14-8 to 77-14-12 and 77-14-24 NMSA 1978.

**Meaning of "this act".** - The term "this act" properly refers to Laws 1919, ch. 41, the provisions of which are compiled as 73-9-1 to 73-9-6, 73-9-8, 73-9-10 to 73-9-19, 73-9-22, 73-9-24, and 73-9-26 to 73-9-62 NMSA 1978. The reference could be extended to include the entire article except where otherwise indicated.



**Not invalid as special legislation.** - This section does not violate the sections of the New Mexico Constitution prohibiting class legislation, or special laws. Davy v. McNeill, 31 N.M. 7, 240 P. 482 (1925), distinguished, State v. Pate, 47 N.M. 182, 138 P.2d 1006 (1943).

**Irrigation districts are not "municipal corporations"** within the meaning of Const., art. V, § 13 or art. VIII, § 3. Davy v. McNeill, 31 N.M. 7, 240 P. 482 (1925).

**Majority owning more than one-half land of district required.** - Where it appears that the outer boundaries of a district include some 20,000 acres of land, of which 10,627 acres are irrigable, and petition is signed by owners of 7,600 acres of irrigable land within said outside boundaries, and, upon examination of the tabulated statement attached to the petition as to the ownership of lands, from which said irrigable lands are taken, it appears that more than 10,000 acres are owned by these particular landowners, and that this includes not only a majority of the land included within the outside boundaries, but also of irrigable land, the petition is a sufficient compliance with this section. Davy v. McNeill, 31 N.M. 7, 240 P. 482 (1925).

**Irrigation projects cannot impair navigability.** - Congressional acts providing for the reclamation of arid lands do not authorize appropriation of the waters of the source of navigable streams above the point of navigability, to such an extent as to destroy or seriously injure their navigability. United States v. Rio Grande Dam & Irrigation Co., 174 U.S. 690, 19 S. Ct. 770, 43 L. Ed. 1136 (1899).

**Law reviews.** - For article, "Water Rights Problems in the Upper Rio Grande Watershed and Adjoining Areas," see 11 Nat. Resources J. 48 (1971).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation §§ 58 to 61.

"Owner," scope and import of term in statutes relating to formation of irrigation districts, 2 A.L.R. 791, 95 A.L.R. 1085.

Tax laws, irrigation district as a municipality within, 17 A.L.R. 81.

Covenant against encumbrances, easement for irrigation canal as breach of, 64 A.L.R. 1499.

Constitutionality of statutes for formation or change of irrigation districts, 69 A.L.R. 285.

Easement, irrigation ditch as charging purchaser of servient estate with notice of, 74 A.L.R. 1250.

Railroad company's right to permit construction of irrigation ditch over part of its right of way, 94 A.L.R. 530, 149 A.L.R. 378.

Liability of irrigation district for damages, 160 A.L.R. 1165.

Discrimination between property within and that outside governmental districts as to rates, 4 A.L.R.2d 598.

94 C.J.S. Waters § 319.

### **73-9-2. [Voting power of water users under town or village community ditches.]**

Nothing in this act shall be construed to in any manner affect the rights of water users under community ditches in towns or villages in this state as to their voting power in determining whether any such ditch shall be included in an irrigation district, and each of said water users shall have the same right and voice in determining such question and in the signing of the statement provided for in the preceding section [73-9-1 NMSA 1978] as he has in the control and management of such ditch.

**History:** Laws 1919, ch. 41, § 2; C.S. 1929, § 73-202; 1941 Comp., § 77-2102; 1953 Comp., § 75-22-2.

**Meaning of "this act".** - See same catchline in notes to 73-9-1 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation §§ 58 to 61.

94 C.J.S. Waters § 319.

### **73-9-3. [Petition to establish irrigation district; contents; signatures; filing; cost bond; publication of petition and notice; "resident freeholder" defined; agency.]**

For the purpose of the establishment of an irrigation district as provided by this act, a petition shall be filed with the board of county commissioners of the county which embraces the largest acreage of the proposed district praying that said board define and establish the boundaries of said proposed district and submit the question of the final organization of the same to the vote of the qualified electors resident therein. Said petition shall state that it is the purpose of the petitioners to organize an irrigation district under the provisions of this act and shall also contain a general description of the boundaries of such proposed district, the means proposed to supply water for the irrigation of the lands embraced therein, the name proposed for such district, and the name proposed need not use the words "irrigation district" but may use the words "water district" or "conservancy district," or other suitable designation, and such petition shall also contain the names of three of said petitioners selected as a committee to present such petition to the board of county commissioners. Said petition shall be signed by a majority of the resident freeholders within said proposed district, and who shall also be the owners in the aggregate of a majority of the whole number of acres of land within the said proposed district. The said petition shall also be accompanied by a good and sufficient bond, to be approved by said board of county commissioners in

double the amount of the probable cost of organizing such district, conditioned for the payment of all costs incurred in said proceeding in case said organization shall not be effected, but in case such organization is so effected, then said expenses incurred by the board of county commissioners shall be paid back to said county by said district. Such petition shall be published both in English and Spanish for at least two weeks before the time at which the same is to be presented, in some newspaper of general circulation published in the county where said petition is to be presented, together with a notice signed by the committee of said petitioners selected by the petition for that purpose stating the time and place of presentation of the same to said board of county commissioners. The last publication shall be made not less than five days prior to the time fixed by said notice for presenting said petition.

For the purpose of this act the term "resident freeholder" shall be construed to mean any citizen of the United States who owns lands within the district or the evidence of title to said land, or who is an entryman under the public land laws of the United States or a purchaser under contract for purchase of state lands, and shall also include corporations, associations and copartnerships owning land within the district. The president or vice president of such corporation or association, or any member of such copartnership, if a citizen of the United States, may represent such corporation, association or copartnership respectively in signing such petition or any other petition or protest provided for in this act.

**History:** Laws 1919, ch. 41, § 3; 1927, ch. 148, § 1; C.S. 1929, § 73-203; 1941 Comp., § 77-2103; 1953 Comp., § 75-22-3.

**Cross-references.** - As to notice by publication, see 14-11-1 NMSA 1978 et seq.

**Meaning of "this act".** - See same catchline in notes to 73-9-1 NMSA 1978.

**Majority owning more than one-half land of district required.** - Where it appears that the outer boundaries of a district include some 20,000 acres of land, of which 10,627 acres are irrigable, and petition is signed by owners of 7,600 acres of irrigable land within said outside boundaries, and upon examination of the tabulated statement attached to the petition as to the ownership of lands, from which said irrigable lands are taken, it appears that more than 10,000 acres are owned by those particular landowners, and that this includes not only a majority of the land included within the outside boundaries, but also of irrigable land, the petition is a sufficient compliance with this section. *Davy v. McNeill*, 31 N.M. 7, 240 P. 482 (1925).

**Authorized person may represent landowners.** - This section is permissive, and does not exclude any authorized person from representing landowners. *Davy v. McNeill*, 31 N.M. 7, 240 P. 482 (1925).

**Due process not denied by limiting petitioners to resident freeholders.** - The fact that only resident freeholders may sign the initiatory petition for creating an irrigation

district under this section does not deprive an owner of property without due process of law. *Davy v. McNeill*, 31 N.M. 7, 240 P. 482 (1925).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation §§ 58 to 61.

Discrimination between property within and that outside municipality or other governmental district as to rates, 4 A.L.R.2d 595.

94 C.J.S. Waters § 319.

**73-9-4. [Proceedings by county commissioners on receiving petition; boundaries; applications for inclusions and exclusions; adjournments; approval; election; denial of petition; mandamus; management by board of directors.]**

When such petition is presented and it shall appear that the notice of presentation of said petition has been given as required by law, and that said petition has been signed by the requisite number of petitioners as required by this act, the commissioners shall then proceed to define the boundaries of said proposed district from said petition and from such applications for the exclusion of lands therefrom and the inclusion of lands therein as may be made in accordance with the intent of this act. They may adjourn such examination from time to time not exceeding three weeks in all and shall by final order duly entered upon their records define and establish the boundaries of such proposed district; provided, that the said board shall not modify such proposed boundaries described in the petition so as to change the objects of said petition or so as to exempt from the operation of this act any land within the boundaries proposed by the petition susceptible to irrigation by the same system of irrigation works applicable to other lands in such proposed district; nor shall any land which will not in the judgment of the board be benefited by such proposed system be included in such district if the owner thereof shall make application at such hearing to withdraw the same; provided, also, that contiguous lands not included in said proposed district as described in the petition may upon application of the owner or owners be included in such district upon such hearing, if it shall be determined by said board that the water supply for such additional lands is available and that in other respects it is feasible for the lands of such applicant to be included within such district.

When the boundaries of any proposed district shall have been examined and defined as aforesaid the commissioners shall forthwith make an order allowing the prayer of said petition, defining and establishing the boundaries and designating the name of such proposed district. Thereupon the said commissioners shall by further order duly entered upon their records call an election of the qualified electors of said district to be held for the purpose of determining whether such district shall be organized under the provisions of this act, and by such order shall submit the names of one or more persons from each of the three divisions of said district as hereinafter provided to be voted for as directors therein, and for the purpose of said election shall divide said district into three divisions as nearly equal in size as may be practicable to be numbered respectively 1, 2 and 3,

and shall provide that a qualified elector of each of said three divisions shall be elected as a member of the board of directors of said district by the qualified electors of the whole district. Each of said divisions shall constitute an election precinct and the commissioners shall appoint three judges for each of such precincts, one of whom shall act as clerk of said election; provided, that in the hearing of any such petition the board of county commissioners shall disregard any informality therein, and in case they deny the same or dismiss it for any reason on account of the provisions of this act not having been complied with, which is the only reason upon which they shall have a right to refuse to [or] dismiss the same, they shall state their reason in writing therefor in detail, which shall be entered upon their records; and in case such reason is not well founded, a writ of mandamus shall, upon proper application therefor, be issued out of the district court of said county, compelling them to act in compliance with this act, which writ shall be heard within twenty days from the date of its issuance. The affairs of such district shall be managed by a board of three directors.

**History:** Laws 1919, ch. 41, § 4; C.S. 1929, § 73-204; 1941 Comp., § 77-2104; 1953 Comp., § 75-22-4.

**Meaning of "this act".** - See same catchline in notes to 73-9-1 NMSA 1978.

**Section gives property owners sufficient opportunity to be heard** after notice on the question of benefits, and does not violate the due process clause of the federal and state constitutions. *Davy v. McNeill*, 31 N.M. 7, 240 P. 482 (1925).

**Separate orders not required.** - This section does not require separate and distinct orders allowing the prayer of the petition and defining and establishing the boundaries and designating the name of the proposed district. *Davy v. McNeill*, 31 N.M. 7, 240 P. 482 (1925).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 94 C.J.S. Waters § 319.

### **73-9-5. Irrigation district; notice; election; ballots.**

The board of county commissioners shall thereupon cause notice embodying said orders in substance signed by the chairman and clerk of said board to be issued, given and published, giving public notice of said election, and time and places thereof and the matter submitted to the vote of the electors. Said notice and order shall be published once a week for at least three weeks immediately prior to the date fixed for such election in a newspaper of general circulation published in said county, and if any portion of such proposed district lies within any other county or counties, then such order and notice shall be published in a newspaper of general circulation published within each of said counties. At said election and all elections held under the provisions of this article, all owners of land within such district, who are qualified electors under the Election Code [1-1-1 to 1-21-14 NMSA 1978] shall be qualified electors; provided, that if any farm or tract of land in such district is owned by more than one owner, only one person shall be permitted to vote at any election as the owner of such one farm or tract

of land; and providing further that at such elections each otherwise qualified voter shall be entitled to cast, and have counted, as many votes as he shall have acres of land owned by him and situate within said district, but in no event shall such voter be entitled to cast, and have counted, more than one hundred votes. Insofar as applicable, the general election laws of the state, except requirements for registration and except as otherwise provided in this article, shall govern such elections. The ballots to be used and cast at such election for the formation of such district, shall have printed thereon the words: "Irrigation District - Yes," and "Irrigation District - No," or words equivalent thereto and also contain the names of the persons to be voted for as members of the board of directors of said district. Each elector may vote for three directors, one from each division, and shall indicate his vote by placing a marginal cross upon the ballot for or against any question submitted or name voted upon and opposite thereto, together with the figure or figures indicating the number of votes he is entitled to cast thereat.

**History:** Laws 1919, ch. 41, § 5; 1927, ch. 54, § 1; C.S. 1929, § 73-205; Laws 1935, ch. 36, § 1; 1941 Comp., § 77-2105; 1953 Comp., § 75-22-5; Laws 1973, ch. 138, § 31.

**Cross-references.** - For Election Code, see 1-1-1 NMSA 1978 et seq.

As to publication of notice, see 14-11-1 NMSA 1978 et seq.

**Electors not public officers.** - Requirement of certain qualifications for electors in irrigation districts does not violate N.M. Const., art. VII, § 1, as officers of irrigation districts are not "public officers" within the meaning of the constitutional provision. *Davy v. McNeill*, 31 N.M. 7, 240 P. 482 (1925).

**Inequalities must be corrected by legislature,** since the mode in which an election district is formed and operated under a general law is within the discretion of the legislature and, as a general rule, cannot be questioned by the courts. 1957-58 Op. Att'y Gen. No. 57-190.

**Acreage noted regardless of whether benefited by irrigation.** - Landowners within the boundaries of an irrigation district may vote such acreage as is allowable under this section, even though such acreage is not benefited by the irrigation works and the owner does not pay assessments on the acreage. 1957-58 Op. Att'y Gen. No. 57-190.

**Residence not required of district officer.** - One who owns land within irrigation district may be elected as a district officer even though he is not a resident of the district. 1945-46 Op. Att'y Gen. No. 4966.

**Record ownership required to vote.** - Since this section contemplates voting by bona fide owners only, the authorities who determine the qualifications of the electors within an irrigation district should permit only those owners of land to vote whose ownership is a matter of public record in the county clerk's office. 1951-52 Op. Att'y Gen. No. 5611.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 58.

94 C.J.S. Waters § 319.

**73-9-6. [Determining and declaring results of election; effect; including district's lands in another district; officers holdover; change of divisions, voting precincts and polling places.]**

The said board of county commissioners shall meet on the second Monday next after such election and canvass the votes cast thereat; and if it appears upon such canvass that at least two-thirds of the qualified electors voting at said election have voted "Irrigation District - Yes," the said board shall, by order duly entered upon the records, declare such territory duly organized as an irrigation district under the name and style theretofore designated, and shall declare the persons receiving respectively the highest number of votes for director to be duly elected to such office. Said board shall cause a copy of such order, including a plat of said district, duly certified by the clerk of the board of county commissioners, to be immediately filed for record in the office of the county clerk of each county in which any portion of such lands are situated, and no board of county commissioners of any county including any portion of such district shall, after the date of organization of such district, allow another district to be formed including any of the lands of such district, without the consent of the board of directors thereof; and from and after the date of such filing the organization of such district shall be complete and the officers thereof shall immediately enter upon the duties of their respective offices, upon qualifying in accordance with law, and shall hold such offices, respectively, until their successors are elected and qualified. The boundaries of said divisions and the voting precincts and polling places in any such district may, after such first election, be changed by order of the board of directors of the district: provided that the polling places shall be designated in the notice published for every election in the district.

**History:** Laws 1919, ch. 41, § 6; C.S. 1929, § 73-206; 1941 Comp., § 77-2106; 1953 Comp., § 75-22-6.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 58.

94 C.J.S. Waters § 319.

**73-9-7. First election; terms.**

At its first meeting within ten days after the election, the initial board shall determine by lot from its membership one member to serve for a term expiring on the next first Tuesday after the first Monday in December, and one member whose term expires on the same day for each of the succeeding two years, so that the term of one director will expire each year.

**History:** 1953 Comp., § 75-22-6.1, enacted by Laws 1965, ch. 271, § 1.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 58.

94 C.J.S. Waters § 319.

### **73-9-8. Second and subsequent elections.**

The regular election of the district shall be held on the first Tuesday after the first Monday in December in each year thereafter, at which one director shall be elected for a term of three years. The person receiving the highest number of votes is elected thereto. Within ten days after receiving his certificate of election, the director shall take and subscribe the official oath and file it in the office of the county clerk of the county where the organization was effected, and thereupon immediately assume the duties of office. Each member of the board of directors shall execute an official bond in the sum of three thousand dollars (\$3,000) which shall be approved by the chairman of the board of county commissioners and recorded in the office of the county clerk. All official bonds shall be in the form prescribed by law for county officials, except that the obligee named in the bond shall be the district. The premiums upon the bonds and any bonds required from any other officer of the district shall be paid by the district.

**History:** Laws 1919, ch. 41, § 7; C.S. 1929, § 73-207; 1941 Comp., § 77-2107; 1953 Comp., § 75-22-7; Laws 1965, ch. 271, § 2.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 58.

94 C.J.S. Waters § 319.

### **73-9-9. Irrigation districts; transitional features for present boards.**

Immediately following the next election following the effective date of this section, each board of directors shall determine by lot from its membership one member to serve for a term expiring on the first Tuesday after the first Monday in December of the following year, and one member whose term expires on the same day for each of the succeeding two years, so that the term of one director will expire each year.

**History:** 1953 Comp., § 75-22-7.1, enacted by Laws 1965, ch. 271, § 3.

**Effective dates.** - Laws 1965, ch. 271, contains no effective date provision, but was enacted at a session which adjourned on March 20, 1965. See N.M. Const., art. IV, § 23.

### **73-9-10. [Location of office; secretary; notice of elections; election board.]**

The office of the board of directors shall be located in the county where the organization was effected. Fifteen days before any election held under this act, subsequent to the



organization of the district, the secretary who shall be appointed by the board of directors shall cause notice, specifying the polling places of each precinct, to be posted in three public places in each election precinct, of the time and place of holding the election, and shall also post a general notice of the same in the office of said board, which shall be established and kept at some fixed place to be determined by said board in said county. Prior to the time for posting the notices, said board must appoint from each precinct, from the electors thereof, three judges, one of whom shall act as clerk, who shall constitute a board of election for such precinct. If the board fails to appoint a board of election, or the members appointed do not attend the opening of the polls on the morning of election, the electors of the precinct present at the hour may appoint the board or supply the place of an absent member thereof. The board of directors must, in its order appointing the board of election, designate the hour and the place in the precinct where the election must be held.

**History:** Laws 1919, ch. 41, § 8; C.S. 1929, § 73-208; 1941 Comp., § 77-2108; 1953 Comp., § 75-22-8.

**Cross-references.** - For location of office, see 73-13-1, 73-13-2 NMSA 1978.

**Meaning of "this act".** - See same catchline in notes to 73-9-1 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 58.

94 C.J.S. Waters § 319.

### **73-9-11. [Election board; chairman's powers; opening and closing polls; return.]**

One of the judges shall be chairman of the election board and may: first - administer all oaths required in the progress of any election; second - appoint judges and clerks, if during the progress of the election any judge or clerk ceases to act. Any member of the board of election, or any clerk thereof, may administer and certify the oaths required to be administered during the progress of an election. Before opening the polls, each member of the board must take and subscribe an oath to faithfully perform the duties imposed upon him by law. An elector of the precinct may administer and certify such oath. The polls must be opened at eight o'clock in the morning of election and be kept open until six o'clock p.m. of the same day. It shall be the duty of the clerk of the board of election to forthwith deliver the return duly certified to the board of directors of the district.

**History:** Laws 1919, ch. 41, § 9; C.S. 1929, § 73-209; 1941 Comp., § 77-2109; 1953 Comp., § 75-22-9.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 58.

94 C.J.S. Waters § 319.

### **73-9-12. [Determining and declaring result of election; plurality elects.]**

No list, tally paper or certificate returned from any election shall be set aside or rejected for want of form, if it can be satisfactorily understood. The board of directors must meet at its usual place of meeting on the first Monday after election and canvass the returns. If at the time of meeting the returns from each precinct in the district in which the polls were open have been received, the board of directors must then and there proceed to canvass the returns; but if all the returns have not been received, the canvass must be postponed from day to day until the returns have been received, or until six postponements have been had. The canvass must be made in public and by opening the returns and counting the votes cast for each person voted for, or as to each question voted upon, and declaring the results thereof. The board shall declare elected the person receiving the highest number of votes so returned for each office and also declare the result as to any question submitted.

**History:** Laws 1919, ch. 41, § 10; C.S. 1929, § 73-210; 1941 Comp., § 77-2110; 1953 Comp., § 75-22-10.

**Cross-references.** - As to special election to authorize bonds, see 73-9-17 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 58.

94 C.J.S. Waters § 319.

### **73-9-13. [Election statement and certificates; filling vacancy in office of director.]**

The secretary of the board of directors must, as soon as the result of any election held under the provisions of this act is declared, enter in the records of such board and file with the county clerk of the county in which the office of said district is located, a statement of such result, which statement must show: first, a copy of the publication notice of said election; second, the names of the judges of said election; third, the whole number of votes cast in the district and in each precinct of the district; fourth, the names of the persons voted for; fifth, the number of votes cast in the district for each of such persons; sixth, the names of the persons declared elected; seventh, the result declared on any question submitted, in accordance with the majority of the votes cast for or against such question. The secretary must immediately make out and deliver to the person elected a certificate of election, signed by him and authenticated with the seal of the board. In case of a vacancy in the board of directors by death, removal or inability from any cause to properly discharge the duties as such director, the vacancy shall be filled by appointment by the remaining members of the board, and upon their failure or inability to act within thirty days after such vacancy occurs, then upon petition of five electors of said district the board of county commissioners of the county where the office of said board of directors is situate, shall fill such vacancy or vacancies. Any

director appointed as above provided shall hold his office until the next general election of said district, and until his successor is elected and qualified.

**History:** Laws 1919, ch. 41, § 11; C.S. 1929, § 73-211; 1941 Comp., § 77-2111; 1953 Comp., § 75-22-11.

**Meaning of "this act".** - See same catchline in notes to 73-9-1 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 58.

94 C.J.S. Waters § 319.

**73-9-14. [Board of directors; organization; powers; water regulations; delinquent assessments; engineer's report on water supply; contracts; pro rata distribution; delivering water to other lands; assignment of water rights.]**

The directors, having duly qualified, shall organize as a board, elect a president from their number and appoint a secretary. The board shall have power and it shall be their duty to adopt a seal, manage and conduct the affairs and business of the district, make and execute all necessary contracts, employ such agents, attorneys, officers and employees as may be required and prescribe their duties, establish equitable rules and regulations for the distribution and use of water among the owners of said land and generally perform all such acts as shall be necessary to fully carry out the purposes of this act; which regulations, among other things, shall provide that no water shall be delivered from the irrigation system of the district for irrigation of any land while the taxes or tolls due thereon or from the owner thereof for district purposes levied or imposed under the provisions of this act are in arrears for more than twelve months; provided, however, that in the event such local assessments on any land within the district are more than twelve months in arrears, and the owner or tenant thereof shall pay, or satisfactorily secure said district for water assessments imposed for any current year, in advance of the actual delivery of water thereon, then said board may deliver water during such current year upon said lands. As soon as practicable after the board shall have organized it shall employ a competent hydraulic engineer to determine and report upon the water supply available for the district, which report shall be a full and complete record of all hydrographic data available and relating to the stream, streams or other sources of water supply from which water for the district is to be obtained; the report shall contain an estimate of the average amount of water available for each acre of land per year and shall show approximately the probable amounts available for irrigation or storage during each week of the year. The report accompanied by an examination fee of \$25.00, shall be submitted to the state engineer for his examination and if he shall find such report to be a full and complete record of the available hydrographic data, that the calculations are correct and that there will be water in the source or sources of supply sufficient to properly irrigate the lands included within such district, he shall so certify under his hand and official seal. If the report submitted is found to be insufficient, or incorrect, the state engineer shall return the same for

correction to the directors of the district with a statement of his objections. If such report is not corrected so as to meet with the approval of the state engineer or if from such report and other available information the engineer is of the opinion that there is not sufficient water in the source or sources of supply to properly irrigate the lands included within said district, he shall disapprove said report.

The board of directors shall have the right to appeal from the decision of the state engineer to the district court of the district in which such irrigation district is located, where the sufficiency and accuracy of the report and available water supply shall be determined. Until the report is approved by the state engineer or the courts, no bond issue shall be made as provided for in Section 15 [73-9-17 NMSA 1978] of this act. A copy of such report shall be kept on file in the office of the state engineer and the secretary of irrigation district, and shall be available for examination by any person desiring to do so.

Said board shall have the power (in addition to the means to supply water to said district) to construct, acquire or purchase any and all canals, ditches, reservoirs, reservoir sites, water, water rights, rights-of-way or other property necessary for the use of the district and to contract with any person, corporation or other irrigation district for supplying water for any or all of the lands in said district; and also to construct drainage works necessary to prevent or relieve the water logging of any lands within the district. In case of the purchase of any property by said district the bonds of the district hereinafter provided for may be used at their par value in payment without previous offer of such bonds for sale. But no contract involving a consideration exceeding ten thousand dollars [(\$10,000)] and no contract for the purchase, rental or delivery involving annual charges or payments exceeding fifteen thousand dollars [(\$15,000)] per annum shall be binding unless such contract shall be authorized and ratified in writing by not less than a majority of the qualified electors of said district according to the number of votes cast at the last preceding district election; nor shall any contract involving payment in excess of twenty-five thousand dollars [(\$25,000)] in any one year be binding until such contract shall have been authorized and ratified at an election held in the manner provided for the issue of bonds.

The rules and regulations established by said board shall be printed in convenient form as soon as the same are adopted, for distribution in the districts. All waters distributed shall be apportioned to each landowner pro rata to the lands assessed under this act within such district. The board of directors shall have power to lease or rent the use of water or contract for the delivery thereof to occupants of other lands within or without the said district at such prices and on such terms as they deem best, provided the rental shall not be less than one and one-half times the amount of the district tax for which said land would be liable if included in the district lands assessed under this act; provided, no vested or prescriptive rights to the use of such water shall attach to said land by virtue of such lease or such rental; provided, also, that any landowner in said district may with the consent of the board of directors assign the right to the whole or any portion of the water so apportioned to him for any one year where practicable to any

other bona fide landowner but only in case such owner shall have fully complied with the provisions of this act.

**History:** Laws 1919, ch. 41, § 12; C.S. 1929, § 73-212; Laws 1933, ch. 63, § 1; 1941 Comp., § 77-2112; 1953 Comp., § 75-22-12.

**Cross-references.** - As to director's appointment by bondholders, see 73-13-7 NMSA 1978.

As to the state engineer, see 72-2-1 NMSA 1978 et seq.

**Meaning of "this act".** - See same catchline in notes to 73-9-1 NMSA 1978.

**District has no right to reservoir fund.** - An irrigation district has no clear legal right to draw on income from land grant by Congress, the use of which is limited to establishment of reservoirs, and mandamus directed to the drawing of warrant thereon should be denied. Carson Reclamation Dist. v. Vigil, 31 N.M. 402, 246 P. 907 (1926).

**Mandamus not available to compel auditor to pay for engineer from fund.** - Where the duty of the state auditor to draw warrants upon the "permanent reservoirs for irrigation purposes income fund" is not made clear by the citation of statutory authority, he can not be compelled by mandamus to exercise his discretion in drawing upon such fund to employ a competent hydraulic engineer for an irrigation district. Carson Reclamation Dist. v. Vigil, 31 N.M. 402, 246 P. 907 (1926).

**Irrigation district has power to acquire water rights** by any legal means. 1964 Op. Att'y Gen. No. 64-1.

An irrigation district must continue to beneficially use any water right acquired under authority of this section or suffer the right to be forfeited. 1964 Op. Att'y Gen. No. 64-1.

**Beneficial use must commence within four years.** - The length of time that an irrigation district may hold a right without putting the water of that right to beneficial use is limited to four years, although, in the discretion of the state engineer, extensions of time may be granted beyond the four-year period. 1964 Op. Att'y Gen. No. 64-1.

**To prevent forfeiture.** - This section provides that a water right acquired by an irrigation district will not be lost by forfeiture if the water to which the district is entitled by virtue of such right is leased or rented and therefore used upon land other than the land to which the right may have been appurtenant. 1964 Op. Att'y Gen. No. 64-1.

**Leasing and using of water deemed beneficial use.** - The leasing or renting of water by an irrigation district together with the use thereof by the lessee is a beneficial use within the constitutional requirement of N.M. Const., art. XVI, § 3. 1964 Op. Att'y Gen. No. 64-1.

**Abatement of public nuisance maintained by irrigation district allowed.** - A court could certainly hold that the Elephant Butte irrigation district is maintaining a public nuisance in that its ditches and canals are breeding mosquitoes which have resulted in the presence of encephalitis. Although New Mexico has no specific provision requiring the abatement of this particular type of nuisance, the conditions now existing constitute a nuisance at common law and hence should be abated in the interest of the public health and safety in the opinion of this office. 1957-58 Op. Att'y Gen. No. 58-192.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation §§ 58 to 61.

Right of water district to charge for fire service, 37 A.L.R. 1511.

Liquidation of indebtedness incident to abandoned project where cost of improvement, if made, would have been assessed against property benefited, 82 A.L.R. 559.

Liability of irrigation district for damages, 160 A.L.R. 1165.

Discrimination between property within and that outside of governmental districts as to rates, 4 A.L.R.2d 598.

Duty of mutual association, nonprofit organization, or co-operative to distribute irrigation waters, 56 A.L.R.2d 418.

94 C.J.S. Waters § 319.

**73-9-15. [Meetings of directors; quorum; concurrence; records; entry on lands; acquisition of property; tax exemption.]**

The board of directors shall hold a regular quarterly meeting in their office on the first Tuesday in January, April, July and October of each year and such special meetings as may be required for the proper transaction of business. All special meetings shall be called by the president of the board, or any two directors. All meetings of the board must be made public, and two members shall constitute a quorum for the transaction of business; and on all questions requiring a vote there shall be a concurrence of at least two members of said board. All records of the board must be open to the inspection of any elector during business hours. The board, its agents and employees, shall have the right to enter upon any land in the district to make surveys and to locate and construct any canal or canals and the necessary laterals. Said board shall also have the right to acquire all lands, water rights, franchises and other property necessary for the construction, use, maintenance, repair and improvement of its canals, ditches, reservoirs and waterworks; and shall also have the right by purchase or condemnation to acquire rights-of-way for the construction or enlargement of any of its ditches, canals or reservoirs, also lands for reservoir sites.

The title to all property acquired under the provisions of this act shall immediately and by operation of law vest in such irrigation district, in its corporate name, and such

property shall be held for the uses and purposes set forth in this act, and shall be exempt from all taxation.

**History:** Laws 1919, ch. 41, § 13; C.S. 1929, § 73-213; 1941 Comp., § 77-2113; 1953 Comp., § 75-22-13.

**Meaning of "this act".** - See same catchline in notes to 73-9-1 NMSA 1978.

**Director's acts not voided by informality.** - Where all members of the board of directors of an irrigation district are present at a meeting, the acts done are not void although the meeting was not formally "called." *Davy v. McNeill*, 31 N.M. 7, 240 P. 482 (1925).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation §§ 57, 70 to 72.

### **73-9-16. [Acquisition of property; suits; judicial notice and presumption of organization; certified copies as evidence.]**

The said board is hereby authorized and empowered to take conveyances or contracts for all property or rights acquired by it under the provisions of this act in the name of such irrigation district to and for the purposes herein expressed, and to institute and maintain any and all actions, proceedings and suits at law or in equity, necessary or proper in order to fully carry out the provisions of this act, or to enforce, maintain, protect or preserve any or all rights, privileges and immunities created by this act or acquired in pursuance thereof. And in all courts, actions, suits or proceedings the said board may sue, appear and defend in person or by attorneys and in the name of such irrigation district. Judicial notice shall be taken in all actions, suits and proceedings in any court of this state of the organization and existence of any irrigation district in this state now or hereafter organized, from and after the filing for record in the office of the county clerk of the certified copy of the order of the board of county commissioners mentioned in Section 6 [73-9-6 NMSA 1978] of this act; and a certified copy of said order shall be prima facie evidence in all actions, suits and proceedings in any court in this state of the regularity and legal sufficiency of all acts, matters and proceedings therein recited and set forth; and any such irrigation district, in regard to which any such order has been heretofore or may hereafter be entered, and such certified copy thereof so filed for record, and which has exercised or shall exercise rights and powers of such district, and shall have had or shall have in office a board of directors exercising the duties of their office and the legality or regularity of the formation or organization whereof shall not have been questioned by proceedings in quo warranto instituted in the district court of the county in which such district or the greater portion thereof is situated within one year from the date of such filing, shall be conclusively deemed to be a legally and regularly organized, established and existing irrigation district within the meaning of this act, and its due and lawful formation and organization shall not thereafter be questioned in any action, suit or proceeding whether brought under the provisions of this act or otherwise.

**History:** Laws 1919, ch. 41, § 14; C.S. 1929, § 73-214; 1941 Comp., § 77-2114; 1953 Comp., § 75-22-14.

**Meaning of "this act".** - See same catchline in notes to 73-9-1 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation §§ 41 to 43.

94 C.J.S. Waters § 321.

### **73-9-17. Bonds; authority to issue; election; how payable; form and contents.**

For the purpose of acquiring by purchase or construction, or by any lawful means, necessary reservoirs, water rights, canals, ditches and works, including necessary drainage works, and acquiring the necessary property and rights therefor, and for the purpose of repairing, extending, improving and constructing necessary betterments thereof and thereon, and for the payment or retirement of any or all existing indebtedness not evidenced by outstanding bonds, or for any one or more of such purposes either singly or in combination with one or more of such purposes, and to pay the first year's interest upon the bonds herein authorized or otherwise to carry out the provisions of this act, the board of directors of any district shall estimate and determine the amount or amounts of money necessary to be raised for the purpose or purposes and the amount or amounts of bonds to issue therefor; provided, however, that none of the bonds shall run for a longer period than fifty years from the date thereof. The board of directors shall thereupon call a special election, at which election shall be submitted to the electors of the district possessing the qualifications prescribed by Section 73-9-5 NMSA 1978 the question of whether or not the bonds of the district shall be issued in the amount or amounts so determined. A notice of the election shall be given by one publication in any newspaper published in the county wherein the principal office of the district is located, the publication to be made not less than one week prior to the date of the election. The notice shall specify the time of holding the election and the amount and purpose of the bonds proposed to be issued. The election shall be held and the results thereof determined and declared in all respects as nearly as possible in conformity with the provisions of the statute governing the election of directors; provided that no informalities in conducting the election shall invalidate it if the election has been otherwise fairly conducted. At the election, the ballots shall contain the words: "Bonds-Yes" and "Bonds-No" or words equivalent thereto. If a majority of the votes cast, based upon the number of acres of land owned and voted, by the qualified electors are voted "Bonds-Yes," the board of directors shall, by resolution, immediately determine the amounts and series of the bonds and the due dates thereof and shall immediately thereafter cause bonds to be issued in amounts and payable in series as provided in the resolution. Each bond shall bear interest payable semiannually on June 1 and December 1 of each year. The principal and interest shall be payable at the office of the county treasurer of the county in which the organization of the district was effected as aforesaid and at another place or places, if any, as the board of directors may designate in the bonds. The bonds shall be in such form as the board of directors may determine



and be executed in the name of the district and signed by the president, and the seal of the district shall be affixed thereto and attested by the secretary, except for bonds issued in book entry or similar form without the delivery of physical securities. The bonds shall be numbered consecutively as issued and shall bear the date or dates as may be determined by the board of directors. Any coupons for interest shall be attached to each bond, bearing the facsimile signature of the president. The bonds may provide that they may be registered as to principal only or as to both principal and interest. The secretary shall keep a record of the bonds sold, their number, date of sale, the price received and the name of the purchaser. When the money provided by any previous issue of bonds has become exhausted by expenditures herein authorized and it becomes necessary to raise additional money for such purposes, additional bonds may be issued after submitting the question of issuing the bonds at a special election to the qualified voters of the district and otherwise complying with the provisions of this act in respect to an original issue of bonds.

**History:** Laws 1919, ch. 41, § 15; 1927, ch. 148, § 2; C.S. 1929, § 73-215; Laws 1934 (S.S.), ch. 8, § 1; 1935, ch. 36, § 2; 1941 Comp., § 77-2115; 1953 Comp., § 75-22-15; Laws 1957, ch. 228, § 1; 1983, ch. 265, § 55.

**Cross-references.** - As to publication of notice, see 14-11-1 NMSA 1978 et seq.

**The 1983 amendment** substituted "The board of directors" for "They" and "Section 73-9-5 NMSA 1978" for "Section 1 of this act" in the second sentence, divided the former fourth sentence into the present fourth and fifth sentences, substituted "bear interest" for "be payable at a given time for its entire amount, and not for a percentage, and said bonds shall bear interest at a rate not exceeding six percent a year, payable" in the eighth sentence, substituted "and" for "or" following "aforesaid" and inserted "or places, if any" in the ninth sentence, rewrote the tenth sentence, added "Any" at the beginning of the twelfth sentence, substituted "interest" for "coupons" in the thirteenth sentence and made minor stylistic changes throughout the section.

**Emergency clauses.** - Laws 1983, ch. 265, § 64, makes the act effective immediately. Approved April 7, 1983.

**Meaning of "this act".** - See same catchline in notes to 73-9-1 NMSA 1978.

**Definite plans essential.** - Prior to voting upon the issuance of bonds, it is necessary that an estimate of the money required be determined and based upon some definite plan for the construction of the irrigation system for which the bonds are to be issued. *Davy v. McNeill*, 31 N.M. 7, 240 P. 482 (1925).

**Bonds payable outside state.** - An irrigation district organized hereunder may issue its bonds and make them payable outside the state. *Davy v. Day*, 31 N.M. 519, 247 P. 842 (1926).

**Informality does not void fair election.** - The fact that the board of county commissioners canvass the returns of an election for bond issue after they had been canvassed by the directors of the irrigation district does not render such election void. *Davy v. McNeill*, 31 N.M. 7, 240 P. 482 (1925).

**Records of irrigation district are open to public** scrutiny for any lawful purpose. 1957-58 Op. Att'y Gen. No. 58-197.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation §§ 67 to 69.

94 C.J.S. Waters § 345.

### **73-9-18. Sale; notice.**

The board may sell bonds from time to time in such amounts as may be necessary and most advantageous to raise the money for the construction or purchase of canals, reservoir sites, reservoirs, water rights and works, including necessary drainage works, and to repair, extend, improve and to construct betterments for such works or systems and otherwise to fully carry out the objects and purposes of this act. Before making any sale, except as hereinafter provided, the board shall, at a meeting, by resolution declare its intention to sell a specified amount of the bonds and the day and hour and place of such sale, and shall cause such resolution to be entered in the minutes, and notice of the sale to be given by publication thereof, by three insertions in a daily newspaper published in the city of Santa Fe and a like notice in a daily newspaper published in the city of Albuquerque, and any other newspapers, at their direction, the first of which publications shall be not less than twenty (20) days prior and the last not less than five (5) days prior to the date fixed for such sale. The notice shall state that sealed proposals will be received by the board at their office, for the purchase of the bonds, till the day and hour named in the resolution. At the time appointed the board shall open the proposals and award the purchase of the bonds to the highest responsible bidder, and may reject all bids; but said board shall in no event, sell any of said bonds for less than ninety-five percent of the face value thereof. In case no bid is made and accepted as above provided, the board of directors is hereby authorized to use said bonds for the purchase of canals, reservoir sites, reservoirs, water rights and works, or for the construction of any canals, reservoir and works, including drainage works, or for repairs, extensions, improvements or betterments to any of such works or systems, provided such bonds shall not be so disposed of at less than ninety-five percent of the face value thereof. Provided, however, that in the event said board shall negotiate the sale of such bonds to the United States of America, either under the National Industrial Recovery Act, the Reconstruction Finance Corporation Act, the Agricultural Adjustment Act and acts amendatory of such acts and acts supplemental thereto and revisions thereof and any further acts of the congress of the United States, heretofore or which may hereafter be passed, then no notice of sale of said bonds shall be necessary and said board shall be fully authorized to make sale thereof to the United States of America or any agency thereof, on such terms and conditions as may be required by the government of the

United States, or any agency thereof, without notice, without competitive bidding and on resolution of the board of directors duly adopted and recorded in the minutes.

Upon resolution of the board of directors, funding or refunding bonds may be issued and used by any district organized under the laws of this state, for the purpose of retiring any bonds or any other obligations of the district which may have been issued, or incurred, under the provisions of this or any other act: provided, however, that no refunding bonds shall be issued and used by any district for the purpose of retiring obligations incurred other than bonds until after the question of issuing such refunding bonds shall have been submitted to an election as herein provided and shall have received the affirmative vote of a majority of those voting thereon within such district. Such funding or refunding bonds may be payable at such time or times and bear such rate of interest not exceeding six per centum per annum and may be of such denomination as the board of directors may determine and shall be executed in the same manner and have annexed interest coupons as provided herein for an original issue of bonds. The board of directors shall have power to contract for the purchase and exchange of any part or all of the outstanding funding bonds, refunding bonds or other obligations of the district at any price not exceeding par and accrued interest.

Such funding or refunding bonds, if they be not sold to the United States of America or an agency thereof, as hereinafter provided, shall be first deposited with the county treasurer of the county wherein the office of the district is located and shall be delivered only as and when bonds or other obligations so to be funded or refunded are surrendered to such county treasurer for cancellation and they shall be exchanged only on the basis agreed upon between the board of directors and the creditors of the district, acting individually or through an authorized creditors' committee. Such funding or refunding bonds may also be sold from time to time in such amounts as the board of directors may determine and in the same manner as provided for the sale of the original issue of bonds, at not less than ninety-five percent of their face value, the proceeds to be deposited with the said treasurer, to be paid out by him on order of the board of directors in exchange for any of the outstanding bonds or other obligations that may be so purchased or contracted for by the board of directors, at a price not exceeding the price agreed upon.

The said treasurer shall cancel all bonds of the district as and when the same are paid or refunded, and take full satisfaction of such other obligations as are being funded, and shall cause to be recorded in the office of the county clerk of said county, his certificate [showing] that said bonds and other obligations, giving the dates, serial numbers and amounts thereof, have been paid, canceled and satisfied; and such canceled bonds and other obligations shall be delivered to the board of directors of the district. It shall be the duty of said board of directors to enter upon their records a statement giving the dates, serial numbers and amounts of the bonds so canceled, and to preserve all receipts and satisfactions of other obligations. Provided, however, that in the event such funding or refunding bonds shall be sold to the United States of America or an agency thereof, under the terms of the National Industrial Recovery Act, the Reconstruction Finance Corporation Act, the Agricultural Adjustment Act and acts amendatory of such acts and

acts supplemental thereto, and revisions thereof and any further acts of the congress of the United States, heretofore or which may hereafter be passed, the cash so received shall be paid out and exchanged for bonds or other obligations intended to be funded or refunded only on such terms and conditions as may be prescribed by the government of the United States or an agency thereof.

**History:** Laws 1919, ch. 41, § 16; C.S. 1929, § 73-216; Laws 1934 (S.S.), ch. 8, § 2; 1941 Comp., § 77-2116; 1953 Comp., § 75-22-16.

**Cross-references.** - As to the authorization of director's appointment by bondholders, see 73-13-7 NMSA 1978.

**Compiler's note.** - For the Agricultural Adjustment Act, see 7 U.S.C. §§ 601 to 626.

The Reconstruction Finance Corporation referred to in this section was abolished by the Reorganization Plan No. 1 of 1957 pursuant to the Reorganization Act of 1949 as amended, effective June 30, 1957, 22 Fed. Reg. 4633, 71 Stat. 647 (1957).

The National Industrial Recovery Act referred to in this section was declared unconstitutional in *A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495, 55 S. Ct. 837, 79 L. Ed. 1570, 97 A.L.R. 947 (1935).

**Meaning of "this act".** - See same catchline in notes to 73-9-1 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation §§ 67 to 69.

94 C.J.S. Waters § 345.

### **73-9-19. Bonds; how paid; liens.**

Any and all bonds issued under the provisions of this act, and the interest coupons attached thereto, shall be paid by revenue derived from an annual ad valorem assessment and levy upon all of the real property within the district, which real property shall be and remain liable to be assessed for the payment of such bonds until such bonds, both principal and interest, are fully paid, and said assessment shall be made, levied and collected in the same manner as are general county and state taxes. Said bonds, interest coupons and the assessments made for their payment shall be and remain a perpetual lien upon all of the real property located within said district until said bonds and all interest coupons thereto appurtenant have been paid in full. The sale of any land within the district for general or other taxes [shall] in no manner divest said real property so sold of the lien of said bonds, interest coupons and assessments.

**History:** Laws 1919, ch. 41, § 17; C.S. 1929, § 73-217; Laws 1934 (S.S.), ch. 8, § 3; 1935, ch. 36, § 3; 1941 Comp., § 77-2117; 1953 Comp., § 75-22-17.

**Meaning of "this act".** - See same catchline in notes to 73-9-1 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation §§ 67 to 69.

94 C.J.S. Waters § 345.

### **73-9-20. Special proceedings to enforce collection.**

In the event of any default in the payment of the interest upon or principal of any bonds issued, and if the said district or its proper officers shall fail or neglect to enforce payment of any unpaid assessment, the holder of any one of said bonds may, for himself and for the benefit of all others similarly situated, enforce the said liens and collect the assessments by suit or action against the land or lands, property or properties on which such assessment has not been paid, and against said district; or may apply for the appointment of a receiver to collect the assessment and enforce the liens aforesaid; and the proceeds of such assessments and collections shall be applied, after payment of costs, first to overdue interest, and then to payment pro rata of all bonds issued by said board, which are then due and payable; and the said receiver may be directed by suit to foreclose the lien of said assessments on said property. The suits so brought by any bondholder or receiver shall be conducted in all matters as suits for the collection of debts and foreclosure of liens under mortgages and trust deeds, and the decree in such suits and the deeds issued pursuant thereto shall have the same presumption in their favor: provided, however, that when all such sums have been paid, the receiver shall be discharged, and the affairs of the district conducted by the board as hereinbefore provided.

In any special proceeding commenced under the provisions of this section, the district, and all land and all property or properties on which assessments have not been paid, may be made joint defendants, but separate judgments shall be entered and enforced.

**History:** C.S. 1929, § 73-217a, enacted by Laws 1934 (S.S.), ch. 8, § 4; 1941 Comp., § 77-2118; 1953 Comp., § 75-22-18.

**Irrigation district not state agency.** - Nowhere in this section is there any provision that such an irrigation district is a state agency, and there is no contention that it is an agency of the United States, although it is organized to operate under and cooperate with the United States in one of its reclamation projects. *Hooker v. Village of Hatch*, 66 N.M. 184, 344 P.2d 699 (1959).

**Village cannot sell gas to district.** - The village of Hatch may not sell gas to an irrigation district more than five miles from the village boundary, and it necessarily follows that the village also may not sell gas to an improvement district organized under the authority of the irrigation district. *Hooker v. Village of Hatch*, 66 N.M. 184, 344 P.2d 699 (1959).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation §§ 67 to 69.

94 C.J.S. Waters § 345.

### **73-9-21. President and secretary to compile bond statement.**

Upon the execution, issuance and delivery of such bonds, the president and secretary of the board of directors of any such irrigation district shall, forthwith, compile a statement in detail showing the amount of such issue, the rate of interest, the respective dates of maturity and interest payment dates; and if registered, the name or names of the registered owner or owners of said bonds, certifying to the same under their hands and the official seal of the district. Said certified statement shall thereupon be delivered to the county assessor of the county where such district is located, and if such district be located in more than one county, to the county assessor of each county where any part thereof is located. Thereafter it shall be the duty of said county assessor or county assessors, as and when they prepare the assessment rolls for each succeeding year thereafter, to include an ad valorem tax upon all of the real estate located within said irrigation district, in his county, in an amount sufficient to pay and retire the interest coupons and principal of said bonds, as and when they mature, according to the schedule so furnished by the president and secretary of said district, and it shall further be the duty of the board of county commissioners of said county or counties, as and when it makes it [its] levy for state and county taxes for each succeeding year, to make a levy upon all of the real estate within said district and in their respective counties, upon an ad valorem basis, in an amount sufficient to pay and retire the interest coupons and principal of said bonds, as and when they mature, said assessments and levies to be made in the same manner as taxes for general county and state purposes are levied, as provided by law; it being the intention hereby to place the duty and responsibility of making such assessment and levy upon said district lands for bond and coupon retirement requirements upon the county assessor and county commissioners, after the certified lists of bonds issued have been furnished by the president and secretary, as herein required.

**History:** C.S. 1929, § 73-217b, enacted by Laws 1934 (S.S.), ch. 8, § 5; 1941 Comp., § 77-2119; 1953 Comp., § 75-22-19.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation §§ 67 to 69.

94 C.J.S. Waters § 345.

### **73-9-22. Directors certify amounts needed; assessment; no funds to be transferred.**

It shall be the duty of the board of directors of the district, on or before September first of each year, to determine the amount of money required to meet the maintenance, operating and current expenses of the district for the ensuing fiscal year, and such additional sums as may be necessary to meet any deficiency for payment of maintenance or operation expenses theretofore incurred, and to certify the same to the board of county commissioners. Such certificate shall specify the sum required for each of the purposes therein mentioned. The county treasurer shall distribute the proceeds of the ad valorem taxes levied by the county commissioners under this act for the purpose

of paying and retiring outstanding bonds and interest coupons, to the credit of a fund to be known as "bond fund" and shall distribute the proceeds of the specific taxes levied on request of the board of directors of said district through their budget for maintenance, operation and current expenses, to a separate fund, established and maintained for said last-mentioned purposes.

It shall be unlawful to transfer any money from either the bond fund or the maintenance, operation and current expense fund, or to use the money therein for any other purpose, so long as any obligations of the district which should be paid out of such funds, respectively, remain unpaid.

The county treasurer is authorized to pay out of said bond fund any matured bond or coupon of the district, upon presentation of said bond, coupon or coupons, for that purpose, and without warrant from the board of directors of said district, and to pay out of the maintenance, operation and current expense fund or funds, any water charges or rentals due by the district and unpaid without warrant signed by the president and secretary of the district, in any case where the district officers neglect or refuse to issue such warrant in time to meet such obligations when due.

**History:** Laws 1919, ch. 41, § 18; 1921, ch. 173, § 1; C.S. 1929, § 73-218; Laws 1934 (S.S.), ch. 8, § 6; 1941 Comp., § 77-2120; 1953 Comp., § 75-22-20.

**Compiler's note.** - Laws 1934 (S.S.), ch. 8, § 6, purportedly amends Laws 1929, ch. 173, § 1, but this section dealt with a state highway. Laws 1921, ch. 173, § 1, dealing with certification of necessary amounts of money for irrigation districts, is the accurate reference. Thus, Laws 1934 (S.S.), ch. 8, § 6 is treated as amending Laws 1921, ch. 173, § 1.

**Meaning of "this act".** - See same catchline in notes to 73-9-1 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 2.

94 C.J.S. Waters § 321.

### **73-9-23. Board of directors to submit accurate description of lands to county assessor.**

That the board of directors of any such irrigation district shall, on or before September first of each succeeding year after the passage of this act, cause to be prepared an accurate description of all of the lands within their respective districts, as then legally constituted, and which lands are liable under the provisions of this act [73-9-17 to 73-9-27, 73-9-50, 73-13-4, 73-13-23 NMSA 1978] to an assessment for debt service or district maintenance purposes; that said list shall be certified to by the president and secretary of the district and delivered to the county assessor or assessors of the county or counties within which said lands or any portion thereof are located.

**History:** C.S. 1929, § 73-218a, enacted by Laws 1934 (S.S.), ch. 8, § 7; 1941 Comp., § 77-2121; 1953 Comp., § 75-22-21.

**Cross-references.** - For information to be furnished assessor, see 7-38-8 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation §§ 71, 72.

94 C.J.S. Waters § 334.

### **73-9-24. Tax assessments.**

It shall be the duty of the county assessor of any county embracing the whole or a part of any irrigation district, to assess and enter upon his tax rolls each year, the name of the owner, if known, and the description and area of each tract of land in said district in his said county, subject to assessment and taxation under this act, and upon receipt by such assessor of the notice from the county commissioner of the levies to be made as hereinafter provided, he shall extend the same upon his tax roll to be collected in the same manner as other taxes.

**History:** Laws 1919, ch. 41, § 19; C.S. 1929, § 73-219; Laws 1934 (S.S.), ch. 8, § 8; 1941 Comp., § 77-2122; 1953 Comp., § 75-22-22.

**Meaning of "this act".** - See same catchline in notes to 73-9-1 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation §§ 71, 72.

94 C.J.S. Waters § 334.

### **73-9-25. Creation of sinking fund.**

An assessment and levy for the retirement and payment of any outstanding bonds of any such district shall be made for each and every year after the issuance and delivery of such bonds, for the purpose of creating a sinking fund out of which said bonds and interest accruing thereon may be paid, as and when they mature, and a failure or refusal on the part of the taxing officers of said county or counties to make such bond levy, for any year, shall be a misdemeanor and each such taxing officer shall be punished therefor, accordingly.

**History:** C.S. 1929, § 73-219a, enacted by Laws 1934 (S.S.), ch. 8, § 9; 1941 Comp., § 77-2123; 1953 Comp., § 75-22-23.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 94 C.J.S. Waters § 243.

### **73-9-26. Tax levy.**



It shall be the duty of the county commissioners of the county in which is located the office of any irrigation district, immediately upon receipt of the said certified list of the lands in said district subject to tax hereunder, and upon the receipt of the certificate of said board of directors certifying the total amount of money required to be raised for maintenance, operating and current expenses, as herein provided, to make an ad valorem levy thereupon, such as may be necessary to provide the amount of money required to pay the interest upon and principal of the bonds of said district as the same shall become due; also to fix the specific tax per acre necessary to provide the amount of money required for any other purpose as in this act provided, and which are to be raised by the levy of taxes upon the lands of said district; and to certify said respective levies to the county commissioners of each other county embracing any portion of said district. The rate of levy of ad valorem and specific tax necessary to raise the required amount of money for said district, shall be increased not less than fifteen nor more than twenty-five percent to cover delinquencies and such percentage shall be determined by the board of county commissioners and certified by it to the county assessor of any county embracing the whole or a part of any irrigation district. For the purposes of said district it shall be the duty of the county commissioners of each county in which any irrigation district is located in whole or in part, at the time of making levy for county purposes, to make a levy, as above provided, upon all the lands in said district within their respective counties, subject to taxation under this act, and to deliver a notice to the county assessor thereof.

**History:** Laws 1919, ch. 41, § 20; 1927, ch. 148, § 3; C.S. 1929, § 73-220; Laws 1934 (S.S.), ch. 8, § 10; 1941 Comp., § 77-2124; 1953 Comp., § 75-22-24.

**Cross-references.** - For special assessments to repay loans, see 73-13-6, 73-13-16 NMSA 1978.

**Meaning of "this act".** - See same catchline in notes to 73-9-1 NMSA 1978.

**Not void for lack of notice provision.** - This section makes no provision for notice to landowners and hearing upon the enforcement and levy of assessments against the lands benefited to obtain funds for paying interest and retiring bonds; the legislature provides that such assessment be based upon a rate per acre basis, and it is purely a matter of mathematical calculation. No notice to landowners and hearing is necessary. It is not on that account repugnant to the Constitution. *Davy v. McNeill*, 31 N.M. 7, 240 P. 482 (1925).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation §§ 70 to 72.

Taxation for building and maintenance of canals as within constitutional provisions prohibiting legislature from imposing taxes for county and corporate purposes, or providing that legislature may invest power to levy such taxes in local authorities, 46 A.L.R. 735, 106 A.L.R. 906.

94 C.J.S. Waters § 243.

### **73-9-27. County treasurer; duties; bonds and coupons in payment of taxes; accounts; collection and distribution of taxes.**

The county treasurer of the county in which is located the office of any irrigation district, shall be and is hereby constituted ex-officio district treasurer of said district, and said county treasurer shall be liable upon his official bond, and to indictment and criminal prosecution for malfeasance, misfeasance or failure to perform any duty herein prescribed, as county treasurer or district treasurer, as is provided by law in other cases, as county treasurer. Said treasurer shall receive and receipt for all moneys belonging to said district. It shall be the duty of the county treasurer in each county in which any irrigation district is located, in whole or in part, to collect and receipt for all taxes levied as herein provided, in the same manner and at the same time as is required in the receipt for and collection of taxes upon real estate for county purposes.

The county treasurer of each county comprising a portion only of any irrigation district, excepting the county treasurer of the county in which the office of said district is located, on the first Monday of every month, shall remit to the district treasurer aforesaid, all moneys, bonds and coupons theretofore collected or received by him on account of said district. Every county treasurer shall keep a bond fund account and a general fund account. The bond fund shall consist of all moneys received on account of interest and principal of the bonds issued by said district, said accounts for interest and principal each to be kept separate. The general fund shall consist of all other moneys received. The district treasurer aforesaid shall pay out of said bond fund, when due, the interest and principal of the bonds of said district, at the time and at the place specified in said bonds, and shall pay out of said general fund only upon warrants signed by the president and countersigned by the secretary of said district, as herein provided. The district treasurer, on the fifteenth day of each month shall report to the board of directors of said district the amount of money in his hands to the credit of the respective funds above provided. All such district taxes collected and paid to the county treasurer, as aforesaid, shall be received by said treasurers in their official capacity, and they shall be responsible for the safekeeping, disbursement and payment thereof, the sale [same] as for other moneys collected by them as such treasurers; provided, said county treasurer shall not receive any commission for the collection of said district taxes or any extra compensation for acting as such district treasurer, other than the regular salary as such county treasurer, but the district may pay to said treasurer, for clerical assistance, a sum not to exceed twenty dollars [(\$20.00)] per month for each five thousand acres or major fraction thereof, in such district.

**History:** Laws 1919, ch. 41, § 21; 1927, ch. 148, § 4; C.S. 1929, § 73-221; Laws 1934 (S.S.), ch. 8, § 11; 1941 Comp., § 77-2125; 1953 Comp., § 75-22-25.

**Cross-references.** - For purchase of delinquent tax property by district, see 73-13-19 to 73-13-24 NMSA 1978.

**Separate bond not required.** - No separate official bond is required of the treasurer for his duties as treasurer of the irrigation district. 1919-20 Op. Att'y Gen. 178.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 70.

94 C.J.S. Waters § 243.

### **73-9-28. Taxation; general laws applicable.**

The revenue laws of this state for the assessment, levying and collection of taxes on real estate for county purposes, except as herein modified, shall be applicable for the purposes of this act, including the enforcement of penalties and forfeitures for delinquent taxes. All interest that may be collected on delinquent taxes levied and assessed for district purposes under the provisions of Chapter 41, Laws of 1919, [and] all interest from that source in hands of county treasurers shall be credited to the several district funds in proportion to the amounts thereof as certified by the board of directors of such district. In addition to such penalties and forfeitures the board of directors of each district is hereby authorized to refuse during any current year, to deliver water from the canals and reservoirs of the district, or purchased from any other district, person or corporation, to any land for irrigation thereof or domestic use thereon, so long as any taxes assessed and levied for district purposes against such land, or any interest, cost or penalties accrued thereon, are due, delinquent and unpaid. Provided the judge of the district court of the county where such taxes for district purposes are collected may, upon a satisfactory showing by any landowner in such district, that his failure to pay such taxes, interest or penalties, is due directly or indirectly to the failure of the district to furnish his lands with sufficient water to properly irrigate them, may order the treasurer and collector, whose duty it is to collect such taxes, interest and penalties, to strike from his tax rolls, all penalties assessed for the year or years such failure is so shown, and all interest theretofore accrued on such delinquent taxes in excess of six percent (6%) per annum.

In case the lists or certificates in this act required to be made as the basis for the tax levy for district purposes shall not be made within the time in this act prescribed, or in case such levy is not made or certified by the board of county commissioners before the tax roll is made up for any year, such lists and certificates shall nevertheless be made and such levy made and extended on the tax roll with the same effect as if made within the time prescribed by law. It shall be the duty of the board of directors to purchase in the name of such district any property which may be sold for delinquent taxes under this act, and said board is authorized to take title to such land in the name of the district, and to sell and convey the same when it has acquired title thereto, at a price not less than the taxes, penalty and interest accrued thereon.

**History:** Laws 1919, ch. 41, § 22; 1921, ch. 173, § 2; 1923, ch. 54, § 1; 1927, ch. 148, § 5; C.S. 1929, § 73-222; Laws 1933, ch. 124, § 1; 1941 Comp., § 77-2126; 1953 Comp., § 75-22-26.

**Cross-references.** - For purchases at tax sales by districts, see 73-13-19 to 73-13-23 NMSA 1978.

**Compiler's note.** - The provisions of Laws 1919, ch. 41, are 73-9-1 to 73-9-6, 73-9-8, 73-9-10 to 73-9-19, 73-9-22, 73-9-24, 73-9-26 to 73-9-62 NMSA 1978. See 73-9-1 NMSA 1978 and notes thereto.

**Meaning of "this act".** - See same catchline in notes to 73-9-1 NMSA 1978.

**Penalties not allocated according to General Revenue Law.** - Penalties and interest should be credited to the district funds in proportion to the amounts certified by the board of directors of such districts, in accordance with this section and not the General Revenue Law. 1921-22 Op. Att'y Gen. 90.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation §§ 70 to 72.

94 C.J.S. Waters § 243.

### **73-9-29. [Contracts for construction of works; advertisement; bids; contractor's bond; supervision by engineer.]**

After adopting a plan for the construction of canals, reservoirs and works, the board of directors shall give notice, by publication thereof, not less than twenty days in a newspaper published in each of the counties into which any such irrigation district extends, provided a newspaper is published therein, and in such other newspapers as they may deem advisable, calling for bids for the construction of said work or any portion thereof; if less than the whole work is advertised, then the portion so advertised must be particularly described in such notice; said notice shall set forth that plans and specifications can be seen at the office of the board, and that the board will receive sealed proposals therefor and that the contract will be let to the lowest responsible bidder, stating the time and the place for opening the proposals, which at said time and place shall be opened in public, and as soon as convenient thereafter the board shall let said work, either in portions or as a whole, to the lowest responsible bidder, or they may reject any or all bids and readvertise for proposals or may proceed to construct the work under their own superintendence.

Contracts for the purchase of material shall be awarded to the lowest responsible bidder. The person or persons to whom a contract may be awarded shall enter into a bond with good and sufficient sureties, to be approved by the board, payable to said district for its use, for not less than ten percent of the amount of the contract price, conditioned for the faithful performance of said contract. The work shall be done under the direction and to the satisfaction of the engineer in charge subject to the approval of the board.

**History:** Laws 1919, ch. 41, § 23; C.S. 1929, § 73-223; 1941 Comp., § 77-2127; 1953 Comp., § 75-22-27.

**Cross-references.** - As to notice by publication, see 14-11-1 NMSA 1978 et seq.

**Project under federal grant requires shorter notice.** - Any municipality or political subdivision is permitted to advertise the construction of public works projects when under federal loan or grant for a minimum period, not exceeding five days, regardless of the provisions of any general, special, or local law which may provide for a longer period of advertisement. 1939-40 Op. Att'y Gen. 38.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation §§ 80 to 87.

94 C.J.S. Waters § 321.

**73-9-30. [Claims against district; verification; allowance; warrants; register; payment.]**

No claims shall be paid by the district treasurer until the same shall have been allowed by the board, and only upon warrants signed by the president and countersigned by the secretary, which warrants shall state the date authorized by the board and for what purpose: provided, no warrant shall be issued or obligation incurred unless the district treasurer has sufficient funds on hand to pay such warrant when it is presented for payment. All claims against the district shall be verified and the secretary of the district is hereby authorized and empowered to administer [administer] oaths to the parties verifying said claims, the same as the county clerk or a notary public might do. The district treasurer shall keep a register in which he shall enter each warrant as issued and as presented for payment, showing the date and amount of such warrant, to whom payable, the date of the presentation for payment, the date of payment, and all warrants shall be paid in the order of their presentation for payment to the district treasurer. All warrants shall be drawn payable to the claimant or bearer, the same as county warrants.

**History:** Laws 1919, ch. 41, § 24; C.S. 1929, § 73-224; 1941 Comp., § 77-2128; 1953 Comp., § 75-22-28.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation §§ 64, 65.

94 C.J.S. Waters § 365.

**73-9-31. [Expenses of organization, operation and improvements to be paid from water tolls and/or tax levies; tax levy to complete original construction.]**

For the purpose of defraying the expenses of the organization of the district, and the care, operation, management, repair and improvement of all canals, ditches, reservoirs and works, including drainage works and including salaries of officers and employees and for rental or charges for water supplied to said district under any contract with owners of other irrigation works, the board may fix rates of tolls and charges and collect the same of all persons using said canal and water for irrigation or other purposes, or

may provide, in whole or in part, for the payment of such expenditures by levy of taxes therefor, as hereinbefore provided or by both tolls and taxes. In case the money raised by the sale of bonds issued be insufficient and in case bonds be unavailable for the construction or completion of any works in accordance with plans adopted, it shall be the duty of the board of directors to provide for the completion of said works by causing the levy of a tax therefor in the same manner in which levy of taxes is made for the other purposes provided for in this act.

**History:** Laws 1919, ch. 41, § 25; C.S. 1929, § 73-225; 1941 Comp., § 77-2129; 1953 Comp., § 75-22-29.

**Meaning of "this act".** - See same catchline in notes to 73-9-1 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation §§ 52 to 55.

94 C.J.S. Waters § 293.

### **73-9-32. [Crossings authorized; right-of-way over state lands granted.]**

The board of directors shall have the power to construct the said works across any stream of water, watercourse, street, avenue, highway, railway, canal, ditch or flume which the route of said canal or canals may intersect or cross; and if said board and the owners or controllers of the property so to be crossed cannot agree on the amount to be paid therefor, or as to the points or the manner of said crossings, the same shall be ascertained and determined in all respects as is provided by law in respect to the taking of land for public uses. The right-of-way is hereby granted to locate, construct and maintain said works or reservoirs, over, through or upon any of the lands which are now, or may be the property of the state.

**History:** Laws 1919, ch. 41, § 26; C.S. 1929, § 73-226; 1941 Comp., § 77-2130; 1953 Comp., § 75-22-30.

**Cross-references.** - For eminent domain, see 42A-1-1 NMSA 1978 et seq.

As to bridges at road crossings, see 67-7-9 and 72-8-2 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 76.

93 C.J.S. Waters § 214.

### **73-9-33. Compensation of directors and secretary; personal interest in contracts; bribery; penalty.**

The board of directors shall each receive compensation at the rate of five dollars (\$5.00) per day while attending meetings, and their actual and necessary expenses while engaged in official business. The salary of the secretary shall not exceed twelve hundred dollars (\$1,200) a year. No director or any officer named in this act shall, in any manner, be interested, directly or indirectly, in any contract awarded or to be awarded by the board, or in the profits to be derived therefrom; nor shall such director or officer receive any bonus, gratuity or bribe; and for any violation of this provision any such director or officer shall be deemed guilty of a felony, and upon conviction thereof shall forfeit his office, and be punished by a fine not exceeding five hundred dollars (\$500), or by imprisonment in the penitentiary not exceeding five years or less than one year.

**History:** Laws 1919, ch. 41, § 27; C.S. 1929, § 73-227; 1941 Comp., § 77-2131; 1953 Comp., § 75-22-31; Laws 1957, ch. 100, § 1.

**Meaning of "this act".** - See same catchline in notes to 73-9-1 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 94 C.J.S. Waters § 320.

### **73-9-34. [Statutory authorization required for debts and liabilities.]**

The board of directors, or other officers of the district, shall have no power to incur any debt or liability whatever, either by issuing bonds or otherwise, in excess of the express provisions of this act, and any debt or liability incurred in excess of such express provisions shall be and remain absolutely void.

**History:** Laws 1919, ch. 41, § 28; C.S. 1929, § 73-228; 1941 Comp., § 77-2132; 1953 Comp., § 75-22-32.

**Meaning of "this act".** - See same catchline in notes to 73-9-1 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation §§ 62 to 72.

94 C.J.S. Waters § 243.

### **73-9-35. [Water volume insufficient; distribution.]**

In case the volume of water in any canal, reservoir or other works in any district shall not be sufficient to supply the continual wants of the entire district and of lands susceptible of irrigation therein, then it shall be the duty of the board of directors to distribute all available water upon certain or alternate days to different localities as they may in their judgment think best for the interest of all parties concerned.

**History:** Laws 1919, ch. 41, § 29; C.S. 1929, § 73-229; 1941 Comp., § 77-2133; 1953 Comp., § 75-22-33.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation §§ 49 to 51.

Duty of mutual association, nonprofit organization, or cooperative to distribute irrigation waters, 56 A.L.R.2d 418.

94 C.J.S. Waters § 361.

### **73-9-36. [Prior water rights protected.]**

Nothing herein contained shall be deemed to authorize any person to divert the waters of any river, creek, stream, canal or reservoir to the detriment of any person having a prior right to the waters of such river, creek, stream, canal or reservoir.

**History:** Laws 1919, ch. 41, § 30; C.S. 1929, § 73-230; 1941 Comp., § 77-2134; 1953 Comp., § 75-22-34.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation §§ 49 to 51.

Right of owner of land within reclamation project in respect of which a water right was allowed upon application pursuant to reclamation act, to a perpetual right beyond control of federal government for a sufficient amount beneficially to irrigate the land, 115 A.L.R. 1320.

Rights, as between private parties, as to relocation of irrigation ditch easement not originally arising by necessity, 80 A.L.R.2d 790.

93 C.J.S. Waters §§ 58 to 70.

### **73-9-37. [Change of district boundaries; authorization; effect.]**

The boundaries of any irrigation district now or hereafter organized under the provisions of this act, may be changed in the manner herein prescribed; but such change of the boundaries of the district shall not impair or affect its organization, or its rights in or to property or any of its rights or privileges of whatsoever kind or nature, nor shall it affect, impair or discharge any contract, obligation, lien or charge for or upon which it or the owner of lands therein were or might become liable or chargeable had such change of its boundaries not been made.

**History:** Laws 1919, ch. 41, § 31; C.S. 1929, § 73-231; 1941 Comp., § 77-2135; 1953 Comp., § 75-22-35.

**Meaning of "this act".** - See same catchline in notes to 73-9-1 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 59.

Rights, as between private parties, as to relocation of irrigation ditch easement not originally arising by necessity, 80 A.L.R.2d 790.



94 C.J.S. Waters § 319.

### **73-9-38. [Petition for annexation of lands; who may file; contents; acknowledgment.]**

The holder or holders of title, or evidence of title, or any body of land adjacent to or situate within the boundaries of any irrigation district, may file with the board of directors of said district a petition in writing, praying that such lands be included in such district. The petition shall describe the tracts, or body of land owned by the petitioners, but such description need not be more particular than is required when such lands are entered by the county assessor in the assessment book. Such petition shall be deemed to give the assent of the petitioners to the inclusion of said district of the lands described in the petition, and such petition must be acknowledged in the same manner that conveyances of land are required to be acknowledged.

**History:** Laws 1919, ch. 41, § 32; C.S. 1929, § 73-232; 1941 Comp., § 77-2136; 1953 Comp., § 75-22-36.

**Cross-references.** - For acknowledgements for conveyances to land, see 14-13-9 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 59.

93 C.J.S. Waters § 15.

### **73-9-39. [Notice of proposed annexation; contents; publication; costs.]**

The secretary of the board of directors shall cause notice of the filing of such petition to be given and published once a week for three successive weeks in a newspaper published in the county where the office of said board is situate, which notice shall state the filing of such petition and the names of the petitioners; a description of the lands mentioned in the petition, and the prayer of said petitioners; giving notice to all persons interested, to appear at the office of said board at a time named in said notice, and show cause, in writing, if any they have, why the petition should not be granted. The time specified in the notice at which it shall be required to show cause shall be the regular meeting of the board next after the expiration of the time for the publication of the notice. The petitioner or petitioners shall advance to the secretary sufficient money to pay the estimated cost of all proceedings under such petition before the secretary shall be required to give such notice.

**History:** Laws 1919, ch. 41, § 33; C.S. 1929, § 73-233; 1941 Comp., § 77-2137; 1953 Comp., § 75-22-37.

**Cross-references.** - As to notice by publication, see 14-11-1 NMSA 1978 et seq.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 56.

94 C.J.S. Waters § 319.

### **73-9-40. [Hearing on proposed annexation; written objections.]**

The board of directors, at the time and place mentioned in said notice, or at such time or times to which the hearing of such petition may be adjourned, shall proceed to hear the petition, and all objections thereto, presented in writing by any person showing cause as aforesaid why said petition should not be granted. The failure of any person interested to show cause, in writing, as aforesaid, shall be deemed and taken as an assent on his part to the inclusion of such lands in said district as prayed for in said petition.

**History:** Laws 1919, ch. 41, § 34; C.S. 1929, § 73-234; 1941 Comp., § 77-2138; 1953 Comp., § 75-22-38.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 56.

94 C.J.S. Waters § 319.

### **73-9-41. [Petitioners required to pay sums determined by directors.]**

The board of directors to whom such petition is presented may require as a condition precedent to the granting of the same that the petitioners shall severally pay to such district such respective sums, as nearly as the same can be estimated by the board, as said petitioners or their grantors would have been required to pay for their pro rata share of all bonds and the interest thereon which may have previously thereto been issued by said district had such lands been included in such district at the time the same was originally formed or when said bonds were so issued; and said board may require such petitioners to pay such further sums as the board may deem just on account of irrigation works or water rights paid for otherwise than by issue of bonds.

**History:** Laws 1919, ch. 41, § 35; C.S. 1929, § 73-235; 1941 Comp., § 77-2139; 1953 Comp., § 75-22-39.

### **73-9-42. [Decision on petition; survey; allowance nullified by protests within thirty days.]**

The board of directors, if they deem it not for the best interests of the district to include therein the lands mentioned in the petition, shall by order reject the said petition, but if they deem it for the best interests of the district that said lands be included the board may order that the district be so changed as to include therein the lands mentioned in the said petition. The order shall describe the entire boundaries of the district with the lands so included, if the district boundaries be changed thereby, and for that purpose the board may cause a survey to be made of such portion of such boundaries as may

be deemed necessary: provided, if within thirty days from the making of such order a majority of the qualified electors of the district protest in writing to said board against the inclusion of such lands in said district, said order shall be held for naught and said lands shall not be included therein.

**History:** Laws 1919, ch. 41, § 36; C.S. 1929, § 73-236; 1941 Comp., § 77-2140; 1953 Comp., § 75-22-40.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation §§ 58 to 61.

94 C.J.S. Waters § 321.

### **73-9-43. [Allowance of petition for annexation; certified copy of order and plat; recording; effect; evidence.]**

Upon the allowance of such petition and in case no protest has been filed with the board within thirty days after the entry of said order as aforesaid, a certified copy of the order of the board of directors making such change, and a plat of such district showing such change, certified by the president and secretary, shall be filed for record in the office of the county clerk of each county in which are situate any of the lands of the district, and the district shall remain an irrigation district as fully to all intents and purposes as if the lands which are included in the district by the change aforesaid had been included therein at the organization of the district; and said district as so changed and all the lands therein shall be liable for all existing obligations and indebtedness of the organized district.

Upon the filing of the copies of the order and the plat, as herein mentioned, copies thereof, certified by said county clerk, shall be admissible in evidence to prove the inclusion of said lands in said district.

**History:** Laws 1919, ch. 41, § 37; C.S. 1929, § 73-237; 1941 Comp., § 77-2141; 1953 Comp., § 75-22-41.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 56.

93 C.J.S. Waters § 15.

### **73-9-44. Participation in proceedings for change of district boundaries.**

A guardian, conservator or personal representative of an estate, who is appointed as such under the laws of this state, and who, as such guardian, conservator or personal representative, is entitled to the possession of the lands belonging to the estate which he represents, may on behalf of his ward or the estate which he represents, upon being thereunto authorized by the proper court, sign any petition or protest in this act

mentioned, and may show cause, as in this act mentioned, why the boundaries of the district should not be changed or additional lands included therein.

**History:** Laws 1919, ch. 41, § 38; C.S. 1929, § 73-238; 1941 Comp., § 77-2142; 1953 Comp., § 75-22-42; Laws 1975, ch. 257, § 8-129.

**Meaning of "this act".** - See same catchline in notes to 73-9-1 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 59.

94 C.J.S. Waters § 319.

### **73-9-45. [Redivision of district after annexation.]**

In case of the inclusion of any lands within any district by proceedings under this act the board of directors shall, if they deem necessary, at least thirty days prior to the next succeeding regular election, make an order redividing such district into three divisions, as nearly equal in size as may be practicable, and one director shall thereafter be elected for each division as hereinbefore provided.

**History:** Laws 1919, ch. 41, § 39; C.S. 1929, § 73-239; 1941 Comp., § 77-2143; 1953 Comp., § 75-22-43.

**Meaning of "this act".** - See same catchline in notes to 73-9-1 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 59.

93 C.J.S. Waters § 76.

### **73-9-46. [Exclusion of lands from district; authorization; effect.]**

Any tract of land included within the boundaries of any such district, at or after its organization under the provisions of this act, may be excluded therefrom, in the manner herein prescribed, but such exclusion of land from the district shall not impair or affect its organization, or its rights in or to property or any of its rights or privileges of whatever kind or nature; nor shall such exclusion affect, impair or discharge any contract, obligation, lien or charge for or upon which the district or the land so excluded is liable or chargeable, at the time such land is excluded from the district.

**History:** Laws 1919, ch. 41, § 40; C.S. 1929, § 73-240; 1941 Comp., § 77-2144; 1953 Comp., § 75-22-44.

**Meaning of "this act".** - See same catchline in notes to 73-9-1 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 94 C.J.S. Waters § 319.

### **73-9-47. Petition or resolution for exclusion.**

The owner or owners in fee of any lands constituting a portion of any irrigation district, may file with the board of directors of the district, a petition praying that such lands may be excluded and taken from said district. The board of directors of said district may also initiate such exclusion proceedings against any lands which, in their judgment, it would be for the best interests of the district and all parties interested therein to exclude, by resolution adopted by it and included in the minutes of any regular meeting of said board or of any special meeting thereof called for that purpose. Said petition or said resolution shall describe the lands which the petitioners or the board of directors desire to have excluded, but the description of such lands need not be more particular than required when lands are entered in the assessment book by the county assessor. When such exclusion proceedings shall be initiated by petition of landowners, said petition must be acknowledged in the same manner and form as is required in case of a conveyance of land.

**History:** Laws 1919, ch. 41, § 41; C.S. 1929, § 73-241; Laws 1935, ch. 36, § 4; 1941 Comp., § 77-2145; 1953 Comp., § 75-22-45.

**Cross-references.** - As to acknowledgements see 14-13-8 and 14-13-9 NMSA 1978.

**Compiler's note.** - The title of Laws 1927, ch. 148, purports to amend Laws 1919, ch. 41, § 41, but the body of that act does not amend § 41. Thus, Laws 1927, ch. 148, is treated as not amending this section. See compiler's note under 73-9-55 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 94 C.J.S. Waters § 319.

### **73-9-48. Petition or resolution for exclusion; notice; publication.**

Upon the filing of said petition for exclusion or upon the adoption of such resolution for exclusion by the board of directors, the secretary of said board shall cause notice of such petition, or resolution to be published, once, in some newspaper published in the county where the office of the board of directors is situated, and, if any portion of said district lies within another county or counties, then said notice shall be published in a newspaper published within each of said counties. Said notice shall state the filing of such petition or the adoption of such resolution, the description of the lands mentioned in said petition or resolution and which it is desired be excluded from such district and it shall notify all persons interested to appear at the office of said board at a time named in said notice and show cause in writing, if any they have, why said petition or resolution should not be finally granted or adopted. The time and place of hearing on said petition or resolution shall be at any regular or special meeting of said board of directors and at the established office and place of business of said board and shall be upon a date not earlier than five days after the publication of said notice. If said exclusion proceedings be initiated by the landowners by petitions, said petitioners shall advance to the secretary sufficient money to pay the estimated cost of all proceedings on such petition before the secretary shall be required to give such notice. A copy of said notice as

published shall be by the secretary of said board mailed to each and all of the then owners of the tracts or parcels of lands proposed to be excluded from said district where said owners and their addresses are known, and in the event the owners of said lands or their addresses are not known, said notice shall be mailed and addressed to any last known owner of said parcel or parcels of land so proposed to be excluded and said notice shall be so mailed not later than five days prior to the date set for hearing.

**History:** Laws 1919, ch. 41, § 42; C.S. 1929, § 73-242; Laws 1935, ch. 36, § 5; 1941 Comp., § 77-2146; 1953 Comp., § 75-22-46.

**Cross-references.** - As to notice by publication, see 14-11-1 NMSA 1978 et seq.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 94 C.J.S. Waters § 319.

### **73-9-49. Petition or resolution for exclusion; hearing.**

The board of directors, at the time and place mentioned in the notice or at the time or times to which the hearing of said petition or resolution may have been adjourned, shall proceed to hear and consider any written objections which may have theretofore been filed by any person interested, to said petition or resolution for exclusion, and arguments, if any, by persons interested, in support or opposition to said petition or resolution.

**History:** Laws 1919, ch. 41, § 43; C.S. 1929, § 73-243; Laws 1935, ch. 36, § 6; 1941 Comp., § 77-2147; 1953 Comp., § 75-22-47.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 94 C.J.S. Waters § 319.

### **73-9-50. Petition or resolution for exclusion; hearing; order; protest.**

If after the hearing provided in the last preceding sections said board of directors deem it not for the best interest of the district that the lands mentioned in the petition or resolution, or any portion thereof, should be excluded from said district, they shall order that said petition be denied or that said resolution be repealed and abrogated, but if they deem it for the best interest of the district that the lands mentioned in the petition or in the resolution, or some portion thereof, be excluded from the district, then the board may order the lands mentioned in the petition or resolution or some defined portion therefor [thereof] to be excluded from the district; provided that if, within ten days from the making of such order, three-fourths of the qualified electors of the district protest in writing, to said board, against the exclusion of said lands from said district, said order shall be held for naught and such lands shall not be excluded therefrom; provided, further, that the exclusion of any lands which are now or may hereafter be included in any such irrigation district shall not be held to relieve any lands excluded from liability to assessment and levy for the purpose of paying and retiring any outstanding bonds and interest coupons which have theretofore been issued, but said lands shall, upon following the procedure provided in the foregoing Sections 73-9-46, 73-9-47, 73-9-48,

73-9-49 and 73-9-51 NMSA 1978, as hereby amended be thereafter wholly excluded from said district for all other purposes.

**History:** Laws 1919, ch. 41, § 44; C.S. 1929, § 73-244; Laws 1934 (S.S.), ch. 8, § 12; 1935, ch. 36, § 7; 1941 Comp., § 77-2148; 1953 Comp., § 75-22-48.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 94 C.J.S. Waters § 319.

### **73-9-51. [Unprotested allowance of petition; certified copy of order and plat; recording; effect.]**

Upon the allowance of such petition and in case no protest has been filed with the board within thirty days after the entry of said order as aforesaid, a certified copy of the order of the board of directors making such change and a plat of such district showing such change, certified by the president and secretary, shall be filed for record in the office of the county clerk of each county in which are situate any of the lands of the district, and the district shall remain an irrigation district as fully to all intents and purposes as if the lands which are excluded by the change aforesaid, had not been excluded therefrom.

**History:** Laws 1919, ch. 41, § 45; C.S. 1929, § 73-245; 1941 Comp., § 77-2149; 1953 Comp., § 75-22-49.

### **73-9-52. [Redivision of district after exclusion.]**

At least thirty days before the next regular election of such district the board of directors thereof may, if they deem it necessary, make an order redividing said district into three divisions, as nearly equal in size as practicable, and one director shall be elected for each division as hereinbefore provided.

**History:** Laws 1919, ch. 41, § 46; C.S. 1929, § 73-246; 1941 Comp., § 77-2150; 1953 Comp., § 75-22-50.

### **73-9-53. [Petition for dissolution of district; who may file; contents; calling election; notice; ballots.]**

Whenever a majority of the resident freeholders, representing a majority of the number of the acres of the land included in any irrigation district organized or hereafter to be organized under this act, shall petition the board of directors to call a special election for the purpose of submitting to the qualified electors of said irrigation district a proposition to vote on the question of dissolution of said irrigation district, setting forth in said petition that all obligations, bills and claims of every nature whatsoever have been fully satisfied and paid, it shall be the duty of said directors, if they shall be satisfied that all obligations, claims and bills have been fully satisfied, to call an election, setting forth the object of the said election, and to cause notice of said election to be published in some newspaper in each of the counties in which any part of said district is located, for a

period of thirty (30) days next prior to said election, setting forth the time and place for holding said election in each of the voting precincts in said district. It shall also be the duty of the directors to prepare ballots to be used at said election on which shall be written or printed the words: "For Dissolution - Yes," and "For Dissolution - No."

**History:** Laws 1919, ch. 41, § 47; C.S. 1929, § 73-247; 1941 Comp., § 77-2151; 1953 Comp., § 75-22-51.

**Meaning of "this act".** - See same catchline in notes to 73-9-1 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 94 C.J.S. Waters § 338.

### **73-9-54. [Determining and declaring result of election; recording certificate.]**

The board of directors shall name a day for canvassing the vote, and if it shall appear that a majority of said ballots contain the words, "For Dissolution - Yes," then it shall be the duty of said board of directors to make and cause to be entered upon their records an order declaring said district to be dissolved and to certify a copy of said order to the county clerk of each county wherein any part of said district is situated. And clerks shall record all such certificates in the records of the respective counties. Should it appear that a majority of the votes cast at said election were "For Dissolution - No," then the board of directors shall declare the proposition lost and shall cause the result to be made a part of the records of said irrigation district.

**History:** Laws 1919, ch. 41, § 48; C.S. 1929, § 73-248; 1941 Comp., § 77-2152; 1953 Comp., § 75-22-52.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 58.

94 C.J.S. Waters § 319.

### **73-9-55. Bond issue; proceedings to determine validity.**

The board of directors of an irrigation district organized under the provisions of this act may commence special proceedings, in and by which the proceedings of said board and of said district providing for and authorizing the issue and sale of the bonds of said district, whether said bonds or any of them have or have not been sold, or disposed of, may be judicially examined, approved and confirmed.

**History:** Laws 1919, ch. 41, § 49; 1927, ch. 148, § 6; C.S. 1929, § 73-249; Laws 1935, ch. 36, § 8; 1941 Comp., § 77-2153; 1953 Comp., § 75-22-53.

**Compiler's note.** - Laws 1927, ch. 148, § 6 purports to amend Laws 1919, ch. 41, § 49, but the title of that act purports to amend § 41 and nine other sections, not including § 49. All other sections were amended except § 41. Thus Laws 1927, ch. 148, § 6 is



treated as amending this section. This error was not corrected in the 1935 amendment, Laws 1935, ch. 36.

**Meaning of "this act".** - "This act" properly refers to Laws 1935, ch. 36, compiled as 73-9-5, 73-9-17, 73-9-19, 73-9-47 to 73-9-50, 73-9-55 to 73-9-59 NMSA 1978; it is probable that the reference also includes Laws 1919, ch. 41 or that act as amended. See note under 73-9-1 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation §§ 67 to 69.

94 C.J.S. Waters § 345.

### **73-9-56. Bond issue; petition for proceedings to determine validity.**

The board of directors of the irrigation district shall file in the district court of the county in which the lands of the district, or some portion thereof, are situated, a petition, praying, in effect, that the proceedings aforesaid may be examined, approved and confirmed by the court. The petition shall state the facts showing the proceedings had for the issue and sale of said bonds, and shall state generally that the irrigation district was duly organized, and that the first board of directors was duly elected, but the petition need not state the facts showing such organization of the district, or the election of said first board of directors.

**History:** Laws 1919, ch. 41, § 50; 1927, ch. 148, § 7; C.S. 1929, § 73-250; Laws 1935, ch. 36, § 9; 1941 Comp., § 77-2154; 1953 Comp., § 75-22-54.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation §§ 67 to 69.

94 C.J.S. Waters § 345.

### **73-9-57. Proceedings to determine validity of bonds; notice of hearing.**

The court shall fix the time for the hearing of said petition and shall order the clerk of the court to give and publish a notice of the filing of said petition. The notice shall be given and published by one publication in any newspaper published in the county where the principal office of said district is located, said publication to be made not less than one week prior to the date fixed for the hearing of said petition. The notice shall state the time and place fixed for the hearing of the petition and the prayer of the petitioners, and that any person interested in said district, or in the proceedings for the issue or sale of said bonds, may, on or before the day fixed for the hearing of said petition, demur to or answer said petition. The petition may be referred to and described in said notice as the petition of the board of directors of .....(giving its name), praying that the proceedings for the issue and sale of said bonds of said district may be examined, approved and confirmed by the court.

**History:** Laws 1919, ch. 41, § 51; 1927, ch. 148, § 8; C.S. 1929, § 73-251; Laws 1935, ch. 36, § 10; 1941 Comp., § 77-2155; 1953 Comp., § 75-22-55.

**Cross-references.** - As to publication of notice, see 14-11-1 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation §§ 67 to 69.

94 C.J.S. Waters § 345.

### **73-9-58. Determining validity of bonds; procedure.**

Any person interested in said district, or in the issue or sale of said bonds, may demur to or answer said petition. The provisions of the Code of Civil Procedure respecting the demurrer and answer to a verified complaint shall be applicable to a demurrer and answer to said petition. The persons so demurring and answering said petition shall be defendant to the special proceeding, and the board of directors shall be the plaintiff. Every material statement of the petition not specifically controverted by the answer shall, for the purpose of said special proceeding, be taken as true, and 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 relating to appeals and writs of error provided by the Code of Civil Procedure which are not inconsistent with the provisions of this act are applicable to the special proceedings herein provided for.

**History:** Laws 1919, ch. 41, § 52; 1927, ch. 148, § 9; C.S. 1929, § 73-252; Laws 1935, ch. 36, § 11; 1941 Comp., § 77-2156; 1953 Comp., § 75-22-56.

**Cross-references.** - For rules of procedure regarding answers, see Rules 1-008, 1-011, and 1-012 SCRA 1986.

For rules regarding appeals to the supreme court, see Rules of Appellate Procedure (Judicial Pamphlet 12).

**Code of Civil Procedure.** - The "Code of Civil Procedure" referred to herein has been virtually superseded by the Rules of Civil Procedure for the District Courts. See 1-001 SCRA 1986. Demurrers are abolished by Rule 1-007 C SCRA 1986.

**Meaning of "this act".** - See same catchline in notes to 73-9-1 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation §§ 67 to 69.

94 C.J.S. Waters § 345.

### **73-9-59. Determining validity of bonds; hearing; decree; costs.**

Upon the hearing of such special proceedings the court shall find and determine whether the notice of the filing of the petition has been duly given and published for the

time and in the manner in this act prescribed, and shall have power and jurisdiction to examine and determine the legality and validity of, and approve and confirm, each and all of the proceedings for the organization of said district under the provisions of said act, from and including the petition for the organization of the district, and all other proceedings which may affect the legality or validity of said bonds, and the order of the sale and the sale thereof. The court, in inquiring into the regularity, legality or correctness of said proceedings, must disregard any error, irregularity or omission which does not affect the substantial rights of the parties to said special proceedings; and the court may by decree approve and confirm such proceedings in part, and disapprove and declare illegal or invalid other or subsequent parts of the proceedings. The costs of the special proceedings may be allowed and apportioned between the parties, in the discretion of the court.

**History:** Laws 1919, ch. 41, § 53; 1927, ch. 148, § 10; C.S. 1929, § 73-253; Laws 1935, ch. 36, § 12; 1941 Comp., § 77-2157; 1953 Comp., § 75-22-57.

**Meaning of "this act".** - See same catchline in notes to 73-9-1 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation §§ 67 to 69.

94 C.J.S. Waters § 345.

### **73-9-60. ["District" defined.]**

Whenever the word "district" is used in this act it shall be held to mean and include only the lands described in the official order establishing said district and the official order including additional lands therein, if any, on record in the office of the county clerk and property and rights acquired by the district.

**History:** Laws 1919, ch. 41, § 54; C.S. 1929, § 73-254; 1941 Comp., § 77-2158; 1953 Comp., § 75-22-58.

**Meaning of "this act".** - See same catchline in notes to 73-9-1 NMSA 1978.

### **73-9-61. [Former districts; validation of organization, bonds and contracts; application of article.]**

Any irrigation district organized after March 18, 1909, and prior to the passage and approval of this act, substantially in accordance with the provisions of Chapter 109 of the Session Laws of 1909, or of Chapter 60 of the New Mexico Statutes, Code 1915, or Chapter 100, Session Laws, 1915, or of Chapter 21, Session Laws of 1917, and any bonds or contracts authorized or issued by any such district substantially in accordance with the provisions of either of said chapters, are hereby confirmed and validated, and such irrigation districts (except districts organized to cooperate with the United States), so organized and existing prior to the passage and approval of this act, and the officers

thereof, shall be governed by and be entitled to all the benefits of, and shall have, exercise and perform all the powers and duties prescribed by the provisions of this act.

**History:** Laws 1919, ch. 41, § 55; C.S. 1929, § 73-255; 1941 Comp., § 77-2159; 1953 Comp., § 75-22-59.

**Compiler's note.** - Laws 1909, ch. 109, (which was compiled as Chapter 60 in Code 1915), Chapter 60 of Code 1915, Laws 1915, ch. 100, and Laws 1917, ch. 21, referred to herein, were repealed by Laws 1919, ch. 41, § 56. See 73-9-62 NMSA 1978.

**Meaning of "this act".** - See same catchline in notes to 73-9-1 NMSA 1978.

### **73-9-62. [Repeal; saving clause.]**

So much of any law as is in conflict or inconsistent with the provisions of this act is hereby repealed; but nothing herein contained shall be held or construed to in any manner affect any irrigation districts organized or to be organized to cooperate with the United States, under the reclamation service laws, or other federal law, under Chapter 60 of [the] New Mexico Statutes, Code 1915, as amended by Chapter 21, Session Laws of 1917 or any other law authorizing the organization of irrigation districts for the purpose of such cooperation. Chapter LX, New Mexico Statutes, Code 1915, Chapter 100 Session Laws 1915, Chapter 21 Session Laws 1917, are hereby repealed.

**History:** Laws 1919, ch. 41, § 56; C.S. 1929, § 73-256; 1941 Comp., § 77-2160; 1953 Comp., § 75-22-60.

**Compiler's note.** - See note under same catchline following 73-9-61 NMSA 1978.

For federal reclamation service laws, see 43 U.S.C. § 371 et seq.

**Meaning of "this act".** - See same catchline in notes to 73-9-1 NMSA 1978.

## **ARTICLE 10**

# **IRRIGATION DISTRICTS COOPERATING WITH UNITED STATES UNDER RECLAMATION LAWS; FORMATION AND MANAGEMENT**

### **73-10-1. [Cooperation with United States under reclamation laws; districts organized; powers.]**

Whenever a majority of the resident freeholders owning more than one-half of the lands or the evidence of title to lands so owned in any district in the state of New Mexico, desire to provide for the irrigation of the same in cooperation with the United States under the federal reclamation law, or other federal laws, for the purpose of the

construction of irrigation works, including drainage works, necessary to maintain the irrigability of lands within any such district, or for the purchase, extension, operation or maintenance of constructed works or for the assumption as principal or guarantor of indebtedness to the United States on account of district lands, they may propose the organization of an irrigation district under the provisions of this act. When so organized, each district shall have the powers conferred by law, or that may be conferred by law, upon each irrigation district. Resident entrymen upon public lands of the United States, who are qualified electors, shall be considered as resident freeholders for the purposes of this act, and shall be qualified petitioners for the organization of an irrigation district and shall share all privileges and obligations of private landowners within the district subject to the terms of the act of congress approved August 11, 1916, entitled "An act to promote the reclamation of arid lands." Provided, that where ditches, canals or reservoirs have been constructed before March 18, 1909, such ditches, canals, reservoirs and franchises and the lands irrigated therefrom shall be exempt from the operations of this act; except such district be formed to purchase, acquire, lease or rent such ditches, canals, reservoirs and their franchises; or unless a statement signed by at least four-fifths in number of the owners of any such ditch, canal or reservoir and of the franchises and water rights thereof and the lands irrigated therefrom be filed with the board or boards of county commissioners of the county or counties in which such ditch, canal, reservoir and lands are situate, giving their consent that such ditch, canal, reservoir, franchises, water rights and lands may be included in one or more irrigation districts, organized or to be organized under the provisions of this act.

Districts organized under this act shall have the following incidental powers: to take over the assets and assume the liabilities of water users' associations organized for cooperation with the United States under the provisions of the act of congress approved June 17, 1902, (32 Stat., 388) and acts amendatory thereof, in case a majority of the lands of each association shall be within such district, subject to the provision that the shareholders of such association shall by vote, as provided by their articles of incorporation and bylaws, assent and agree that such assets and liabilities shall be so taken over; to construct, operate, lease and control plants for the generation, distribution, sale and lease of electrical energy, including the sale to municipalities, corporations, firms or individuals of the electrical energy so generated; to promote the agricultural resources and marketing facilities of the district, and to make any appropriation of money, or to take any and all other action necessary to effectuate the purposes here enumerated.

**History:** Laws 1919, ch. 20, § 1; C.S. 1929, § 73-101; 1941 Comp., § 77-2201; 1953 Comp., § 75-23-1.

**Cross-references.** - For special assessments in improvement districts, see 73-11-16 NMSA 1978.

For the definition of "irrigation district," see 73-13-43 NMSA 1978.

As to impounding animals in irrigation districts, see 77-14-8 to 77-14-12, 77-14-13 to 77-14-24 NMSA 1978.

As to the office of poundkeeper in irrigation district, see 77-14-25 to 77-14-34 NMSA 1978.

**Compiler's note.** - For the federal reclamation laws, which include the act of June 17, 1902, see 43 U.S.C. § 371 et seq.

For the Act of August 11, 1916, see 43 U.S.C. §§ 621 to 630.

**Meaning of "this act".** - The term "this act" refers to Laws 1919, ch. 20, provisions of which are compiled as 73-10-1 to 73-10-6, 73-10-8, 73-10-10 to 73-10-12, 73-10-14 to 73-10-22, 73-10-24 to 73-10-44, 73-11-1, 73-11-2, 73-11-4, 73-11-6 to 73-11-10, 73-11-12, 73-11-27 to 73-11-29, 73-11-31 to 73-11-33, 73-11-36, 73-11-49, 73-11-52, 73-11-53 NMSA 1978.

**Law reviews.** - For comment, "Protection of the Means of Groundwater Diversion," see 20 Nat. Resources J. 625 (1980).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation §§ 56, 88.

Right of owner of land within reclamation project in respect of which a water right was allowed upon application pursuant to Reclamation Act to a perpetual right beyond the control of the Federal Government for a sufficient amount beneficially to irrigate the land, 115 A.L.R. 1320.

Irrigation: validity, construction, and application of § 5 of Reclamation Law of 1902 (43 U.S.C.S. § 431) prohibiting sale of right of use of water for land in private ownership for tract exceeding 160 acres to any one landowner unless he is bona fide resident or occupant of such land residing in neighborhood, 27 A.L.R. Fed. 831.

94 C.J.S. Waters § 318.

## **73-10-2. [Water users under community ditches; voting power unaffected.]**

Nothing in the preceding section [73-10-1 NMSA 1978] shall be construed to in any manner affect the rights of water users under community ditches in towns or villages in this state as to their voting power in determining whether any such ditch shall be included in an irrigation district, and each of said water users shall have the same right and voice in determining such question and in the signing of the statement provided for in Section 1 [73-10-1 NMSA 1978] as he has in the control and management of such ditch.

**History:** Laws 1919, ch. 20, § 2; C.S. 1929, § 73-102; 1941 Comp., § 77-2202; 1953 Comp., § 75-23-2.

### **73-10-3. [Petition for irrigation district; contents; bond; publication of petition and notice of presentation time.]**

For the purpose of the establishment of an irrigation district as provided by this act, a petition shall be filed with the board of county commissioners of the county which embraces the largest acreage of the proposed district; said petition shall state that it is the purpose of petitioners to organize an irrigation district, under the provisions of this act; said petition shall also contain a general description of the boundaries of such proposed district, the means proposed to supply water for the irrigation of the lands embraced therein, the name proposed for such district and shall select a committee of three of said petitioners to present such petition to the board of county commissioners as provided by law, praying that the said board define and establish the boundaries of said proposed district and submit the question of the final organization of the same to the vote of the qualified electors resident within said proposed district; said petition shall be signed by a majority of the resident freeholders within said proposed district, and who shall also be the owners in the aggregate of the majority of the whole number of acres belonging to the resident freeholders within the said proposed district. The said petition shall also be accompanied by a good and sufficient bond, to be approved by said board of county commissioners in double the amount of the probable cost of organizing such district, conditioned for the payment of all costs incurred in said proceedings in case said organization shall not be effected, but in case such organization is so effected, then said expenses incurred by the board of county commissioners shall be paid back to said county by said district. Such petition shall be published once each week for four successive weeks in some newspaper of general circulation printed and published in each county wherein shall be situate any lands proposed to be embraced in any such district, together with a notice signed by the committee of said petitioners designated in the petition for that purpose, giving the time and place of presentation of the same to the said board of county commissioners.

**History:** Laws 1919, ch. 20, § 3; C.S. 1929, § 73-103; 1941 Comp., § 77-2203; 1953 Comp., § 75-23-3.

**Cross-references.** - For notice by publication, see 14-11-1 NMSA 1978 et seq.

**Meaning of "this act".** - See same catchline in notes to 73-10-1 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 58.

94 C.J.S. Waters § 319.

### **73-10-4. [Publications to be in English and Spanish.]**

All publications required by this act shall be made both in English and Spanish and in every instance the last publication shall be made not less than three days before the time fixed by such publication for the taking of the action therein mentioned.

**History:** Laws 1919, ch. 20, § 4; C.S. 1929, § 73-104; 1941 Comp., § 77-2204; 1953 Comp., § 75-23-4.

**Meaning of "this act".** - See same catchline in notes to 73-10-1 NMSA 1978.

### **73-10-5. [Boundaries defined in conformity with petition; divisions; election call; officers.]**

When such petition is presented and it shall appear that the notice of the presentation of said petition has been given as required by law, and that said petition has been signed by the requisite number of petitioners as required by this act, the commissioners shall then proceed to define the boundaries of said proposed district from said petition and from such application for the exclusion of lands therefrom and the inclusion of lands therein as may be made in accordance with the intent of this act; they may adjourn such examination from time to time not exceeding three weeks in all and shall by final order duly entered define and establish the boundaries of such proposed district; provided, that the said board shall not modify such proposed boundaries described in the petition so as to change the objects of said petition or so as to exempt from the operation of this act any land within the boundaries proposed by the petition susceptible to irrigation by the same system of waterworks applicable to other lands in such proposed district; nor shall any land which will not in the judgment of the board be benefited by such proposed water system be included in such district if the owner or entryman thereof shall make application at such hearing to withdraw the same; provided, also, that the contiguous lands not included in said proposed district as described in the petition may upon application of the owner or owners be included in such district upon such hearing, in the event that it shall be determined that the water supply for such additional lands is available and that in other respects it is feasible for the lands of the petitioners to be included within such district.

When the boundaries of any proposed district shall have been examined and defined as aforesaid the county commissioners shall forthwith make an order allowing the prayer of said petition, defining and establishing the boundaries and designating the name of such proposed district. Thereupon the said commissioners shall by further order duly entered upon their record call an election of the qualified electors of said district to be held for the purpose of determining whether such district shall be organized under the conditions of this act, and by such order shall submit the names of one or more persons from each of the divisions of said district as hereinafter provided to be voted for as directors therein and for the purpose of said election shall divide said district into divisions, in number as hereinafter designated, as nearly equal in size as may be practical and shall provide that one qualified elector of each of said divisions shall be elected as a member of the board of directors of said district by the qualified electors of the whole district. The board of county commissioners shall establish and define a



convenient number of election precincts and designate polling places, subject to amendment by the board of directors for subsequent elections; and three judges shall be appointed for each of such precincts, one of whom shall act as clerk of said election; provided, that in the hearing of any such petition the board of county commissioners shall disregard any informality therein, and in case they deny the same or dismiss it for any reason on account of the provisions of this act not having been complied with, which are the only reasons upon which they shall have a right to refuse or dismiss the same, they shall state their reasons in writing therefor in detail, which shall be entered upon their records and in case these reasons are not well founded, a writ of mandamus shall, upon proper application therefor, issue out of the district court of said county, compelling them to act in compliance with this act, which writ shall be heard within twenty days from the date of its issuance. The officers of such district shall consist of the directors, a secretary and a treasurer. The directors and divisions of irrigation districts shall be in a number, for districts having an irrigable area of twenty-five thousand acres or less, three; for districts having an irrigable area of more than twenty-five thousand acres and not more than fifty thousand acres, five; for districts having an irrigable area of more than fifty thousand acres and less than seventy-five thousand acres, seven; and for districts having an irrigable area of seventy-five thousand acres or more, nine directors and divisions.

**History:** Laws 1919, ch. 20, § 5; C.S. 1929, § 73-105; 1941 Comp., § 77-2205; 1953 Comp., § 75-23-5.

**Cross-references.** - For mandamus, see 44-2-1 NMSA 1978.

**Meaning of "this act".** - See same catchline in notes to 73-10-1 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 60.

94 C.J.S. Waters § 319.

### **73-10-6. Notice of election; qualified electors; general election laws applicable; mailing ballots; preparation and care of ballots.**

A. The board of county commissioners shall thereupon cause notice, embodying the orders in substance, signed by the chairman of the board of county commissioners and the clerk of the board, to be issued and published, giving public notice of the election, the time and place thereof and of the matters submitted to the vote of the electors. The notice and order shall be published once each week for four consecutive weeks prior to the election in a newspaper of general circulation in the county in which there are any lands proposed to be embraced in the district. At the election or elections held under the provisions of this act, the following persons shall be deemed qualified electors, and none others:

(1) all resident freeholders who have reached the age of majority and who are owners of two acres or more of agricultural land within the district, or of evidence of title to such

lands, or a purchaser under contract for the purchase of such lands from the state and who are citizens of the United States;

(2) all resident entrymen of public lands within the district who have reached the age of majority and who are citizens of the United States; and

(3) a corporation organized under the laws of the state of New Mexico and owning two acres or more of agricultural land within the district shall be entitled to one vote which shall be exercised by the president of the corporation or the person designated by the board of directors.

B. Insofar as applicable the general election laws of the state, except requirements for registration, and except as in this act otherwise provided, shall govern all elections under this act. The ballots to be used and cast at the election for the formation of the district shall be substantially as follows: "Irrigation District .....Yes," and "Irrigation District .....No," or words equivalent thereto. Each elector may vote for one director from each division and shall indicate his vote by placing a marginal cross upon the ballot for or against any question submitted and opposite thereto at any election held under this act. At the election for the formation of any irrigation district and at any other election for directors at which other questions are simultaneously submitted, separate ballots for the election of directors shall be used. In such event the separate ballots shall be substantially as follows:

"FOR DIRECTORS FOR .....DISTRICT"

(inserting name of district)

"For Director from Division No. 1.

.....  
....."

(the name of the person voted for to be inserted by the voter)

"For Director from Division No. 2.

.....  
....."

(the name of the person voted for to be inserted by the voter)

voter)

and serially thereafter to the number of directors to be chosen.

C. At all elections for directors, the persons receiving a plurality of the votes cast by qualified electors for directors from the several divisions, respectively, shall be declared elected. At any election held for the formation of an irrigation district under the provisions of this act or at any election held by any such district after its formation for the purpose of voting upon a proposition to issue bonds, or to enter into any contract creating any indebtedness in an amount equivalent in the aggregate to more than one dollar (\$1.00) per acre upon all district lands, or to create any indebtedness in excess of such amount, no such district shall be formed and no such proposition shall be deemed to be authorized or approved unless two-thirds of the votes cast by qualified electors at such election shall be in favor thereof.

D. At any election for the formation of an irrigation district or for the purpose of voting upon a proposition involving the issuance of bonds, or the contracting or creating of an indebtedness in excess of the amount last hereinabove prescribed, voting by mail shall be permissible. Any qualified elector, as defined by this section, desiring to vote by mail may do so by preparing his ballot in the manner prescribed by this act, affixing his signature thereto and mailing the same in a sealed envelope postpaid to the secretary of the district, or he may deliver or cause to be delivered the envelope containing his ballot to the secretary. The ballot may be thus prepared, signed and mailed or delivered at any time after the commencement of the publication of notice of the election and shall be mailed and delivered prior to the time fixed by law for the closing of the polls. All such ballots shall be safely kept by the secretary of the district until the time prescribed by law for the canvassing of the returns of such elections, when they shall be delivered to the canvassing board, by whom they shall be counted in like manner and at the same time as votes cast at the polling places designated for any such election. At the time of delivery of such ballots to the canvassing board, the secretary shall make and subscribe to an affidavit setting forth the number of ballots so received, that same were duly received within the time herein fixed, that the same are all of the ballots so received, and that they are in the same condition as when received.

E. Thirty days prior to any election under this act the board of directors shall cause to be printed a sufficient number of ballots for the purpose of the election, and within five days prior to the election, shall cause a sufficient number of ballots to be delivered to one of the election judges of each division or precinct. Provided, that at all times during the period of thirty days there shall be in the hands of the secretary of the district a sufficient number of ballots for distribution among qualified electors desiring to vote by mail at elections wherein such voting is authorized.

F. In any election for the formation of an irrigation district prior to the designation and qualification of a secretary, ballots, when cast by mail or sealed and delivered as provided in this section, shall be delivered to the county clerk of the county in which is situate the major portion of the lands within the proposed district, who shall be regarded as ex-officio secretary of the district until the designation and qualification of a secretary as provided in this act.

G. Any person residing within any county in which any portion of an irrigated [irrigation] district shall lie, and who is the owner of two acres or more of agricultural lands within the limits of the district, shall, for the purpose of this act, be considered a resident freeholder.

H. Not less than thirty days before any election, any twenty or more electors in the district, or any distinctly general farmers' nonprofit, cooperative organization or association of the district, may file with the board of directors a petition requesting that certain persons specified in the petition be placed on the ballots as candidates for the office or offices named in the petition. The names proposed by the various petitions so filed, and no others, shall be printed on the ballots, but there shall be sufficient blank spaces left in which electors may write other names if they so desire. The petitions shall be preserved in the office of the secretary of the district.

**History:** Laws 1919, ch. 20, § 6; 1921, ch. 39, § 1; C.S. 1929, § 73-106; 1941 Comp., § 77-2206; 1953 Comp., § 75-23-6; Laws 1973, ch. 138, § 32; 1981, ch. 312, § 1.

**Cross-references.** - For definition of resident freeholder, see 73-10-7 NMSA 1978.

For Election Code, see 1-1-1 NMSA 1978 et seq.

As to age of majority, see 28-6-1 NMSA 1978.

For notice by publication, see 14-11-1 NMSA 1978 et seq.

**The 1981 amendment**, in Subsection A, deleted "and" at the end of Paragraph (1), added "and" at the end of Paragraph (2) and added Paragraph (3).

**Effective dates.** - Laws 1981, ch. 312, contains no effective date provision, but was enacted at the session which adjourned on March 21, 1981. See N.M. Const., art. IV, § 23.

**Meaning of "this act".** - See same catchline in notes to 73-10-1 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 61.

94 C.J.S. Waters § 320.

### **73-10-7. Districts 25,000 acres or less; qualified electors.**

A. In any district having an irrigable area of twenty-five thousand acres or less, a "qualified elector" is any person who:

(1) owns one-half acre or more of agricultural land within the district or has evidence of title to such lands or is a purchaser of such lands under contract for the purchase of such lands from the state; or

(2) is a resident entryman of public lands within the district; and

(3) meets all other requirements of Section 73-10-7 NMSA 1978.

B. Any person who meets the qualifications of Section [Paragraph] A(1) is a resident freeholder.

**History:** 1953 Comp., § 75-23-6.1, enacted by Laws 1971, ch. 161, § 1.

### **73-10-8. [Canvass of votes; order declaring district organized; organization complete upon recording of order.]**

The said board of county commissioners shall meet on the second Monday next succeeding such election and proceed to canvass the votes cast thereat: and if, upon such canvass, it appears that two-thirds of the votes cast by the qualified electors at such election have voted "Irrigation District - Yes," the said board shall, by order entered on their minutes, declare such territory duly organized as an irrigation district, under the name and style theretofore designated, and shall declare the persons receiving, respectively, the highest number of votes for such several offices to be duly elected to such offices. Said board shall cause a copy of such order, including a plat of said district, duly certified by the clerk of the board of county commissioners, to be immediately filed for record in the office of the county clerk of each county in which any

portion of such lands are situated, and no board of county commissioners of any county, including any portion of such district, shall, after the date of organization of such district, allow another district to be formed, including any of the lands of such district, without the consent of the board of directors thereof; and from and after the date of such filing, the organization of such district shall be complete, and the officers thereof shall immediately enter upon the duties of their respective offices upon qualifying in accordance with law, and shall hold such offices, respectively, until their successors are elected and qualified.

**History:** Laws 1919, ch. 20, § 7; 1921, ch. 72, § 1; C.S. 1929, § 73-107; 1941 Comp., § 77-2207; 1953 Comp., § 75-23-7.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation §§ 58 to 61.

94 C.J.S. Waters § 319.

### **73-10-9. [First election of directors; biennial elections thereafter.]**

At the first regular election of any such irrigation district held after the passage of this act [73-10-8, 73-10-9 NMSA 1978], directors from odd-numbered divisions of any such district shall be elected for a term of two years each, and directors from even-numbered divisions for a term of four years each. At each succeeding biannual [biennial] election for directors, after the first held hereafter, successors to the directors whose terms expire that year shall be elected for a term of four years each.

**History:** Laws 1921, ch. 72, § 2; C.S. 1929, § 73-108; 1941 Comp., § 77-2208; 1953 Comp., § 75-23-8.

**Effective dates.** - Laws 1921, ch. 72, contains no effective date provision, but was enacted at a session which adjourned on March 12, 1921. See N.M. Const., art. IV, § 23.

### **73-10-10. [Election of officers; oath; bonds of directors.]**

The regular election of said district shall be held on the first Tuesday after the first Monday in December in each second calendar year thereafter, at which said officers shall be elected. The person receiving the highest number of votes for any office to be filled at such election is elected thereto. Within ten days after receiving their certificates of election, hereinafter provided for, said officers shall take and subscribe the official oath and file the same in the office of the county clerk of the county where the organization was effected, and thereupon immediately assume the duties of their respective offices. Each member of said board of directors shall execute an official bond in the sum of three thousand dollars (\$3,000), which bond shall be approved by the chairman of the board of county commissioners of said county where such organization was effected, and shall be recorded in the office of the county clerk thereof. All official bonds herein provided for shall be in form prescribed by law for official bonds for county officials, except that the obligee named in said bond shall be the said district. Premiums

upon bonds of directors and also the premium upon the extra amount of the bond required to be given by the treasurer and ex-officio collector acting as district treasurer under the provisions of this act shall be paid by the district.

**History:** Laws 1919, ch. 20, § 8; C.S. 1929, § 73-109; 1941 Comp., § 77-2209; 1953 Comp., § 75-23-9.

**Meaning of "this act".** - See same catchline in notes to 73-10-1 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 61.

94 C.J.S. Waters § 320.

### **73-10-11. [Office of directors; notice of election; judges; time and place.]**

The office of the board of directors shall be located in the county where the organization was effected. Fifteen days before any election held under this chapter, subsequent to the organization of the district, the secretary who shall be appointed by the board of directors shall cause notice specifying the polling places of each precinct to be posted in three public places in each election precinct, of the time and place of holding the election, and shall also post a general notice of the same in the office of said board, which shall be established and kept at some fixed place to be determined by said board in said county. Prior to the time for posting the notices, said board must appoint from each precinct, from the electors thereof, three judges, one of whom shall act as clerk, who shall constitute a board of election for such precinct. If the board fails to appoint a board of election, or the members appointed do not attend the opening of the polls on the morning of election, the electors of the precinct present at the hour may appoint the board or supply the place of an absent member thereof. The board of directors must, in its order appointing the board of election, designate the hour and the place in the precinct where the election must be held.

**History:** Laws 1919, ch. 20, § 9; C.S. 1929, § 73-110; 1941 Comp., § 77-2210; 1953 Comp., § 75-23-10.

**Meaning of "this chapter".** - The term "this chapter" presumably means the same as "this act" as used in other sections of Laws 1919, ch. 20. See "Meaning of 'this act'" note following 73-10-1 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 61.

94 C.J.S. Waters § 320.

### **73-10-12. [Oaths of judges; opening and closing of polls; returns.]**

One of the judges shall be chairman of the election board and may: first, administer all oaths required in the progress of any election; second, appoint judges and clerks, if during the progress of the election any judge or clerk ceases to act. Any member of the board of election, or any clerk thereof, may administer and certify the oaths required to be administered during the progress of an election. Before opening the polls, each member of the board must take and subscribe an oath to faithfully perform the duties imposed on them [him] by law. An elector of the precinct may administer and certify such oath. The polls must be opened at 8 o'clock in the morning of the election and be kept open until 6 o'clock p.m. of the same day. It shall be the duty of the clerk of the board of election to forthwith deliver the return duly certified by the board of directors of the district.

**History:** Laws 1919, ch. 20, § 10; C.S. 1929, § 73-111; 1941 Comp., § 77-2211; 1953 Comp., § 75-23-11.

### **73-10-13. Absent voting permitted.**

A. In any election of officers of the irrigation district, a qualified elector shall be entitled to vote by absent ballot. Absent ballots shall be furnished by the secretary of the board of directors and such ballots shall be in a form prescribed by the board of directors. In addition to the absent ballot, the secretary of the board of directors shall furnish each qualified elector requesting an absent ballot an official inner envelope for use in sealing the completed absent ballot and an official outer envelope for use in returning the inner envelope to the secretary.

B. A qualified elector voting by absent ballot shall secretly mark his ballot, place it in the official inner envelope and securely seal the envelope. He shall then place the inner envelope inside the outer envelope and securely seal the envelope. The qualified elector shall then sign his name and address on the outer envelope and deliver or mail it to the secretary of the board of directors any time prior to the opening of the polls on election day.

C. Upon receipt of an absent ballot, the secretary of the board of directors shall remove the outer envelope and enter in a register the name and address of the qualified elector and the date and time the ballot was received. The secretary shall keep the inner envelope sealed and unmarked or unidentified in any manner as to the qualified elector and place it in a safe place until the opening of the polls on election day. At the time the polls open on election day, the secretary shall deliver all the sealed inner envelopes to the chairman of the election board of the precinct nearest to the office of the district. The sealed inner envelopes shall be accompanied by a signed affidavit setting forth the number of ballots received, the number of ballots delivered and a statement to the effect that the ballots delivered are in the same condition as when received.

D. Absent ballots shall be counted, tallied and canvassed as are other ballots.

**History:** 1953 Comp., § 75-23-11.1, enacted by Laws 1973, ch. 112, § 1.



### **73-10-14. [Canvass of votes when all returns received; procedure; declaration of result of election.]**

No lists, tally paper or certificates returned from any election shall be set aside or rejected for want of form, if it can be satisfactorily understood. The board of directors must meet at its usual place of meeting on the first Monday after election and canvass the returns. If at the time of meeting the returns from each precinct in the district in which the polls were open have been received, the board of directors must then and there proceed to canvass the returns; but if all the returns have not been received the canvass must be postponed from day to day until the returns have been received, or until six postponements have been had. The canvass must be made in public and by opening the returns and counting the votes of the districts for each person voted for, and declaring the results thereof. The board shall declare elected the person receiving the highest number of votes so returned for each office and also declare the result of any question submitted.

**History:** Laws 1919, ch. 20, § 11; C.S. 1929, § 73-112; 1941 Comp., § 77-2212; 1953 Comp., § 75-23-12.

### **73-10-15. [Statement of results; certificates of election; vacancy in office of director.]**

The secretary of the board of directors must, as soon as the result of any election held under the provisions of this act is declared, enter in the records of such board and file with the county clerk of the county in which the office of said district is located a statement of such results, which statements must show: first, a copy of the published notice of said election; second, the names of the judges of said election; third, the whole number of votes cast in the district and in each precinct of the district; fourth, the names of the persons voted for; fifth, the number of votes given in each precinct for such persons; sixth, the number of votes given in the districts for each of such persons; seventh, the names of the persons declared elected; eighth, the result declared on any question submitted in accordance with the majority of the votes cast for or against such question. The board of directors must declare elected the person having the highest number of votes given for each office, and also the result of any question submitted. The secretary must immediately make out and deliver to such person a certificate of election, signed by him and authenticated with the seal of the board. In case of a vacancy in the board of directors, by death, removal or inability, from any cause, to properly discharge the duties of such director, the vacancy shall be filled by appointment by the remaining members of the board, and upon their failure or inability to act within thirty days after such vacancy occurs, then upon petition of five electors of said district the board of county commissioners of the county where the office of said board of directors is situate, shall fill such vacancy or vacancies. Any director appointed as above provided shall hold his office until the next general election of said district, and until his successor is elected and qualified.

**History:** Laws 1919, ch. 20, § 12; C.S. 1929, § 73-113; 1941 Comp., § 77-2213; 1953 Comp., § 75-23-13.

**Meaning of "this act".** - See same catchline in notes to 73-10-1 NMSA 1978.

**73-10-16. [Board of directors; organization; powers and duties; cooperation with United States; rules and regulations.]**

The directors, having duly qualified, shall organize a board, elect a president from their number and appoint a secretary. The board shall have power, and it shall be their duty to adopt a seal, manage and conduct the affairs and business of the district, make and execute all necessary contracts, employ such agents, attorneys, officers and employes as may be required and prescribe their duties and establish equitable rules and regulations for the distribution and use of water among the owners of said land.

The board may make investigations, and base thereon such representations and assurances to the secretary of the interior as may be requisite under the said act of congress of August 11, 1916. The board shall generally perform all such acts as may be necessary to fully carry out the purposes of this act. Said board may also enter into any obligation or contract with the United States for the construction, operation and maintenance of the necessary work for the delivery and distribution of water therefrom, or for drainage of district lands, or for the assumption, as principal or guarantor, of indebtedness to the United States on account of district lands or for the temporary rental of water under the provisions of this act, and of the federal reclamation law and all acts amendatory thereof or supplementary thereto, and the rules and regulations established thereunder; or the board may contract with the United States for water supply under any act of congress providing for or permitting such contract, and in case contract has been, or may hereafter be made with the United States, as herein provided, bonds of the district may be deposited with the United States, at ninety-five percent of their par value, to the amount to be paid by the district to the United States under any such contract, the interest on said bonds to be provided for by assessment and levy as in the case of other bonds of the district, and regularly paid to the United States to be applied as provided in such contract, and if bonds of the district are not so deposited it shall be the duty of the board of directors to include, as a part of any levy or assessment now provided for by law, an amount sufficient to meet each year all payments accruing under the terms of any such contract; and the board may accept, on behalf of the district, appointment of the district as fiscal agent of the United States, or authorization of the district by the United States to make collections of moneys for or on behalf of the United States in connection with any federal reclamation project, whereupon the district shall be authorized so to act and to assume the duties and liabilities incident to such action, and the said board shall have full power to do any and all things required by the federal statutes now or hereafter enacted and regulations now or that may hereafter be established by any department of the federal government in regard thereto.

Districts cooperating with the United States may rent or lease water to lands of entrymen or municipalities in the neighborhood of the districts in pursuance of contract with the United States.

The said board shall have the power, in addition to the means to supply water to said district, to construct, acquire or purchase any and all canals, ditches, reservoirs, sites, water, water rights, rights-of-way or other property necessary for the use of the district. In case of the purchase of any property by said district, the bonds of the district hereinafter provided for may be used at their par value in payment, without previous offer of such bonds for sale.

All waters distributed shall be apportioned to each landowner or entryman pro rata to the lands assessed under this act within such district. The board of directors shall have the power to lease or rent the use of water or electrical energy, or contract for the delivery thereof to occupants of other lands or municipalities within or without the said district at such prices and such terms as they deem best, but the rental shall not be less or on terms more favorable than those fixed for district lands. Provided no vested or prescriptive rights to the use of such water shall attach to said land by virtue of such lease or such rental. And, provided further, no rules shall be prescribed or regulations enforced which shall interfere with the vested rights of any water user or with the exercise of such rights of any such water user.

Any landowner or entrymen in said district may, with the consent of the board of directors, assign the right to the whole or any portion of the water so apportioned to him for any one year where practicable, to any other bona fide landowner; provided, such owner or entrymen shall have paid all amounts due on assessments upon all such lands.

Provided, further, that all water, the right to use of which is acquired by the district under any contract with the United States, shall be distributed and apportioned by the district in accordance with the acts of congress and rules and regulations of the secretary of the interior, and the provisions of said contract in relation thereto.

The rules and regulations provided in this section, as soon as adopted or furnished by the secretary of the interior, as the case may be, shall be printed in convenient form for distribution in the district. Such rules and regulations, among other things, may provide that no water shall be delivered from the irrigation system of the district for the irrigation of any land while the taxes or tolls due thereon, or from the owner thereof, for district purposes, levied or imposed under the provisions of this act are in arrears for more than twelve months, but nothing herein shall be construed as preventing said irrigation district from collecting any assessment by any other lawful method.

**History:** Laws 1919, ch. 20, § 13; 1921, ch. 39, § 2; C.S. 1929, § 73-114; 1941 Comp., § 77-2214; 1953 Comp., § 75-23-14.

**Cross-references.** - For definitions of "irrigation district" and "board of directors," see 73-11-54 NMSA 1978.

As to the appointment of a director by bondholders, see 73-13-7 NMSA 1978.

**Compiler's note.** - For the provisions of the Act of August 11, 1916 and for federal reclamation laws, see compiler's notes to 73-10-1 NMSA 1978.

**Meaning of "this act".** - See same catchline in notes to 73-10-1 NMSA 1978.

**Tax levied to cover expenses estimated to accrue in year.** - Directors of irrigation district may properly include in their estimates and the resulting tax levy the cost of operation and maintenance for the ensuing year, though demand for payment thereof might not be made during the ensuing year. *Sperry v. Elephant Butte Irrigation Dist.*, 33 N.M. 482, 270 P. 889 (1928).

**Separate assessment for supplemented water users authorized.** - An irrigation district is authorized to construct wells in order to provide supplemental water supplies to certain water users within the district and such district may separately assess the users of such supplemental water, apart from other irrigation charges. 1972 Op. Att'y Gen. No. 72-26.

**Board authorized to recover construction costs through water lease.** - The provision of this section that the board of directors may lease or rent the use of water at such prices and such terms as they deem best gives ample authority to the board to enter into contracts for the rental or lease of water supplies made available by the construction of water works pursuant to this same section and for the recovery in the rental price of the initial construction cost of the project, spread over a reasonable period of time, together with the reimbursement of cost of operation and maintenance. 1972 Op. Att'y Gen. No. 72-26.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 62.

94 C.J.S. Waters § 321.

### **73-10-17. [Regular and special meetings; records; right of entry on lands; right to acquire lands and property.]**

The board of directors shall hold a regular quarterly meeting in their office on the first Tuesday in January, April, July and October, and such special meetings as may be required for the proper transaction of business. All special meetings shall be called by the president of the board or a majority of the directors. All meetings of the board must be public, and a majority of the board shall constitute a quorum for the transaction of business. All records of the board must be open to the inspection of any elector during the business hours. And in case any district is appointed fiscal agent of the United States or by the United States is authorized to make collections for or on behalf of the

United States in connection with any federal irrigation project, such boards of directors or the secretary thereof shall at any time allow any officer or employe of the United States, when acting under the order of the secretary of the interior, to have access to all books, records and vouchers of the district which are in possession or control of the secretary or of said board. The board, its agents and employes shall have the right to enter upon any land in the district to make surveys and to locate any canal or canals and the necessary laterals. Said board shall also have the right to acquire all lands, water rights, franchises and other property necessary for the construction, use, maintenance, repair and improvement of its canals, ditches, reservoirs and waterworks; and shall also have the right by purchase or condemnation to acquire rights-of-way for the construction, enlargement, extension or improvement of any of its ditches, canals, reservoirs or other necessary works.

**History:** Laws 1919, ch. 20, § 14; C.S. 1929, § 73-115; 1941 Comp., § 77-2215; 1953 Comp., § 75-23-15.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 62.

94 C.J.S. Waters § 321.

### **73-10-18. [Compensation of board members; president; interest in contracts prohibited; penalty.]**

The members of the board of directors other than the president shall receive compensation at the rate of not to exceed five dollars [(\$5.00)] per day while attending meetings or otherwise necessarily employed in the discharge of their duties and their actual and necessary traveling expenses while engaged in official business. The president of said board shall receive as compensation not to exceed one hundred and fifty dollars [(\$150)] per annum for each ten thousand acres of land or major fraction thereof included within the district, said compensation to be set by the board of directors, and his actual and necessary traveling expenses while engaged in official business. No director or officer named in this act shall in any manner, be interested, directly or indirectly, in any contract awarded or to be awarded by the board, or in the profits to be derived therefrom; nor shall receive any bonus, gratuity or bribe, and for any violation of this provision such officer shall be deemed guilty of a felony, and such conviction shall work a forfeiture of his office, and he shall be punished by a fine not exceeding five hundred dollars [(\$500)], or by imprisonment in the penitentiary not exceeding five years.

**History:** Laws 1919, ch. 20, § 30; C.S. 1929, § 73-131; Laws 1937, ch. 74, § 1; 1941 Comp., § 77-2216; 1953 Comp., § 75-23-16.

**Meaning of "this act".** - See same catchline in notes to 73-10-1 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 96.

94 C.J.S. Waters § 320.

### **73-10-19. [Property acquired by district; title; tax exemption; conveyance to United States.]**

The title to all property acquired under the provisions of this act shall immediately and by operation of law vest in such irrigation district, in its corporate name, and shall be held by such district in trust for, and is hereby dedicated and set apart for the uses and purposes set forth in this act, and shall be exempt from all taxation; and said board is authorized and empowered to hold, use, acquire, manage, occupy and possess said property as herein provided; provided, that when any district contemplated in this act shall find it necessary to procure and acquire a supply of water from outside the boundaries of this state, then and in such event it shall be lawful for said district to contract and pay for the same in the same manner as other property acquired by the district is purchased and paid for: provided, further, that any property acquired by the district may be conveyed to the United States insofar as the same may be needed for the construction, operation and maintenance of works by the United States for the benefit of the district under any contract that may be entered into by the United States pursuant to this act.

**History:** Laws 1919, ch. 20, § 15; C.S. 1929, § 73-116; 1941 Comp., § 77-2217; 1953 Comp., § 75-23-17.

**Meaning of "this act".** - See same catchline in notes to 73-10-1 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 70.

94 C.J.S. Waters §§ 333 to 337.

### **73-10-20. [Legal status of irrigation district; conveyances; court proceedings.]**

The said board is hereby authorized and empowered to take conveyances or assurances for all property acquired by it under the provisions of this act in the name of such irrigation district to and for the purpose herein expressed, and to institute and maintain any and all actions and proceedings, suits at law or in equity, necessary or proper in order to fully carry out the provisions of this act, or to enforce, maintain, protect or preserve any of the rights, privileges and immunities created by this act or acquired in pursuance thereof. And in all courts, actions, suits or proceedings the said board may sue, appear and defend in person or by attorneys and in the name of such irrigation district. Judicial notice shall be taken in all actions, suits and judicial proceedings in any court of this state of the organization and existence of any irrigation district of this state now or hereafter organized, from and after the filing for record in the office of the county clerk of the certified copy of the order of the board of county commissioners mentioned in Section 7 [73-10-8 NMSA 1978], and a certified copy of said order shall be prima facie evidence in all actions, suits and proceedings in any

court of this state of the regularity and legal sufficiency of all acts, matters and proceedings therein recited and set forth; and any such irrigation district, in regard to which any such order has been heretofore or may hereafter be entered, and such certified copy thereof, so filed for record, and which has exercised or shall exercise rights and powers of such district, and shall have had or shall have in office a board of directors exercising the duties of their office and the legality or regularity of the formation or organization whereof shall not have been questioned by proceedings in quo warranto instituted in the district court of the county in which such district or the greater portion thereof is situated within one year from the date of such filing, shall be conclusively [conclusively] deemed to be a legally and regularly organized, established and existing irrigation district within the meaning of this act and its due and lawful formation and organization shall not thereafter be questioned in any action, suit or proceeding whether brought under the provisions of this act or otherwise.

**History:** Laws 1919, ch. 20, § 16; C.S. 1929, § 73-117; 1941 Comp., § 77-2218; 1953 Comp., § 75-23-18.

**Meaning of "this act".** - See same catchline in notes to 73-10-1 NMSA 1978.

### **73-10-21. [Plan for construction; advertising for bids; contractors' bonds.]**

After adopting a plan for the construction of canals, reservoirs and works, the board of directors shall give notice, by publication thereof, not less than twenty days in a newspaper published in each of the counties into which any such irrigation extends, provided a newspaper is published therein, and in such other newspapers as they may deem advisable, calling for bids for the construction of said work or any portion thereof; if less than the whole work is advertised, then the portion so advertised must be particularly described in such notice; said notice shall set forth that plans and specifications can be seen at the office of the board, and that the board will receive sealed proposals therefor and that the contract will be let to the lowest responsible bidder, stating the time and place for opening the proposals, which at said time and place shall be opened in public, and as soon as convenient thereafter, the board shall let said work, either in portions or as a whole, to the lowest responsible bidder, or they may reject any or all bids and readvertise for proposals or may proceed to construct the work under their own superintendence.

Contracts for the purchase of material shall be awarded to the lowest responsible bidder. The person or persons to whom a contract may be awarded shall enter into a bond with good and sufficient sureties, to be approved by the board, payable to said district for its use, for not less than ten percent of the amount of the contract price, conditioned for the faithful performance of said contract. The work shall be done under the direction and to the satisfaction of the engineer in charge and be approved by the board.

Provided, that the provisions of this section shall not apply in the case of any contract between the district and the United States.

**History:** Laws 1919, ch. 20, § 26; C.S. 1929, § 73-127; 1941 Comp., § 77-2219; 1953 Comp., § 75-23-19.

**Cross-references.** - For exemptions from the Procurement Code, see 13-1-98 NMSA 1978.

As to notice by publication, see 14-11-1 NMSA 1978.

**Shorter notice required for project under federal grant.** - Any municipality or political subdivision is permitted to advertise the construction of public works projects when under federal loan or grant for a minimum period, not exceeding five days, regardless of the provisions of any general, special, or local law which may provide for a longer period of advertisement. 1939-40 Op. Att'y Gen. 38.

### **73-10-22. [Rights-of-way over private property; eminent domain; state lands.]**

The board of directors shall have the power to construct the said works across any stream of water, watercourse, street, avenue, highway, railway, canal, ditch or flume which the route of said canal or canals may intersect or cross; and if such railroad company and said board, or the owners and controllers of said property, thing or franchise so to be crossed, cannot agree upon the amount to be paid therefor, or the points or the manner of said crossings, the same shall be ascertained and determined in all respects as is provided in respect to the taking of land for public uses. The right-of-way is hereby given, dedicated and set apart, to locate, construct and maintain said works or reservoirs, over, through or upon any of the lands which are now, or may be the property of the state.

**History:** Laws 1919, ch. 20, § 29; C.S. 1929, § 73-130; 1941 Comp., § 77-2220; 1953 Comp., § 75-23-20.

**Cross-references.** - For eminent domain, see 42A-1-1 NMSA 1978.

As to bridges at crossings, see 67-7-9 and 72-8-2 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 89.

94 C.J.S. Waters § 319.

### **73-10-23. [Joint works; union with districts of adjoining states; proportionate ownership; bond issues; management.]**



It is lawful for any irrigation district or districts organized under the laws of the state of New Mexico to unite with any irrigation district or districts of an adjoining state or states in the purchase, acquisition or construction, and in the annual cost of operation and maintenance, of a system of irrigation and drainage works for the irrigation of the land and maintaining the irrigability of the land within the said respective irrigation districts, and may also unite in the purchase, acquisition or construction, and in the annual operation and maintenance of hydroelectric power plants, transmission lines, etc., for the sale and distribution of electric power, and in such case, or cases, said irrigation districts are hereby jointly granted the same power of condemnation as is now possessed by each district under the laws of the state in which organized, and the cost of purchase, acquisition or construction, together with the annual cost of operation and maintenance of such irrigation, drainage system or power plants, shall be apportioned to each district in proportion to the irrigable acreage therein for which water shall be provided. Such joint works shall be owned jointly in proportion to such respective acreages, provided that the lands lying in the two or more said irrigation districts so united shall receive water from a common source; and provided, also, that such irrigation district or districts of such other adjoining state or states shall be duly organized under the laws of that state and for purposes the same or similar as the district or districts in this state desirous so to unite. Whenever it is deemed advisable and agreed to between such districts, lying in the same or adjoining states, that for the construction, acquisition or purchase of irrigation works for hydroelectric power plants, etc., it is necessary to issue bonds, it shall be lawful for such districts to issue bonds in proportion to their respective acreage, and such districts may be made jointly or severally liable for the repayment of such bonds. The terms and conditions of such joint ownership, operation and maintenance of issuance of bonds, as the case may be, shall be set out in a written contract. Any such contract shall not be binding until the same shall have been ratified by the electors of each of such districts in the manner provided by law for a bond issue by such districts respectively. An election shall be held in each such district to determine whether such contract shall be adopted. Such contract shall be printed, or in writing, and a true copy shall be filed in the office of each district fifteen days prior to such election, and be subject to public inspection, and one true copy shall be furnished each voter calling at such office for the same at any time fifteen days prior to such election. When such works are to be constructed by two or more districts, bids may be jointly called for and may be opened and considered at the designated office of either of such districts, and such districts shall approve the letting of the contract, and the contractor's bond, and may meet for that purpose at a place outside of their district, or at any office established for such joint project and at which all business of such joint project may be transacted. All bids, bonds, contracts, etc., of such joint project may be in the names of such joint project districts, and such districts, being empowered and authorized to do all acts by joint action that one district may do, the action of each district being determined by its board of directors. A general manager may be employed for such joint enterprise whose duties may be set forth in the joint ownership contract. Such contracts may be amended in the same manner.

**History:** Laws 1921, ch. 39, § 16; C.S. 1929, § 73-170; 1941 Comp., § 77-2221; 1953 Comp., § 75-23-21.

**Cross-references.** - For definitions of "irrigation district" and "board of directors," see 73-11-54 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 62.

94 C.J.S. Waters § 321.

### **73-10-24. [Water supply inadequate; distribution on alternate days.]**

In case the volume of water in any canal, reservoir or other works in any district shall not be sufficient to supply the continual wants of the entire district and susceptible of irrigation therefrom, then it shall be the duty of the board of directors to distribute all available water upon certain or alternate days to different localities, as they may in their judgment think best for the interests of all parties concerned.

Provided: that all water the right to the use of which is acquired by the district under any contract with the United States, shall be distributed and apportioned by the district in accordance with the acts of congress, and rules and regulations of the secretary of interior and provisions of such contract in relation thereto.

**History:** Laws 1919, ch. 20, § 32; C.S. 1929, § 73-133; 1941 Comp., § 77-2222; 1953 Comp., § 75-23-22.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 49.

94 C.J.S. Waters § 310.

### **73-10-25. [Preservation of prior rights.]**

Nothing herein contained shall be deemed to authorize any person or persons, to divert the waters of any river, creek, stream, canal or reservoir to the detriment of any person or persons having a prior right to the waters of such river, creek, stream, canal or reservoir.

**History:** Laws 1919, ch. 20, § 33; C.S. 1929, § 73-134; 1941 Comp., § 77-2223; 1953 Comp., § 75-23-23.

### **73-10-26. [Change of boundaries; effect; assent of secretary of the interior.]**

The boundaries of any irrigation district now or hereafter organized under the provisions of this act may be changed in the manner herein prescribed; but such change of the boundaries of the district shall not impair or affect its organization, or its rights in or to property or any of its rights or privileges of whatsoever kind or nature, nor shall it affect, impair or discharge any contract, obligation, lien or charge, for, or upon which it was or

might become liable or chargeable had such change of boundaries not been made; provided, that if the secretary of the interior shall give his assent to a change in boundaries in writing filed with the board of directors, any lands to the exclusion of which from the district assent shall thus be given, shall be discharged from any and all liens in favor of the United States under any contract which shall have been made with the United States and any bonds deposited with its agents.

**History:** Laws 1919, ch. 20, § 34; C.S. 1929, § 73-135; 1941 Comp., § 77-2224; 1953 Comp., § 75-23-24.

**Meaning of "this act".** - See same catchline in notes to 73-10-1 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 60.

94 C.J.S. Waters § 319.

### **73-10-27. [Petition for inclusion of additional lands.]**

The holder or holders of title, or evidence of title, of any body of land adjacent to or situate within the boundaries of any irrigation district, may file with the board of directors of said district a petition in writing praying that such lands be included in such district. The petition shall describe the tracts, or body of land owned by the petitioners, but such description need not be more particular than is required when such lands are entered by the county assessor in the assessment book. Such petition shall be deemed to give the assent of the petitioners to the inclusion in said district of the lands described in the petition, and such petition must be acknowledged in the same manner that conveyances of land are required to be acknowledged.

**History:** Laws 1919, ch. 20, § 35; C.S. 1929, § 73-136; 1941 Comp., § 77-2225; 1953 Comp., § 75-23-25.

**Cross-references.** - As to acknowledgment of conveyances of land, see 14-13-9 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 60.

94 C.J.S. Waters § 319.

### **73-10-28. [Publication of notice of petition for including lands; objections; payment of estimated cost of proceedings.]**

The secretary of the board of directors shall cause notice of the filing of such petition to be given and published once each week for three successive weeks in a newspaper published in the county where the office of said board is situate, which notice shall state the filing of such petition and the names of the petitioners; a description of the lands mentioned in the petition, and the prayer of said petitioners; giving notice to all persons

interested, to appear at the office of said board at a time named in said notice, and to show cause, in writing, if any they have, why the petition should not be granted. The time specified in the notice at which it shall be required to show cause shall be the regular meeting of the board next after the expiration of the time for the publication of the notice. The petitioner or petitioners, shall advance to the secretary sufficient money to pay the estimated cost of all proceedings under such petition before the secretary shall be required to give such notice.

**History:** Laws 1919, ch. 20, § 36; C.S. 1929, § 73-137; 1941 Comp., § 77-2226; 1953 Comp., § 75-23-26.

**Cross-references.** - For notice by publication, see 14-11-1 NMSA 1978 et seq.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 94.

94 C.J.S. Waters § 319.

### **73-10-29. [Hearing on petition for including lands.]**

The board of directors, at the time and place mentioned in said notice, or at such time or times to which the hearing of such petition may adjourn, shall proceed to hear the petition, and all objections thereto, presented in writing by any person, showing cause as aforesaid, why said petition should not be granted. The failure of any person interested to show cause, in writing, as aforesaid, shall be deemed and taken as an assent on his part to the inclusion of such lands in said district as prayed for in said petition.

**History:** Laws 1919, ch. 20, § 37; C.S. 1929, § 73-138; 1941 Comp., § 77-2227; 1953 Comp., § 75-23-27.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 94.

94 C.J.S. Waters § 319.

### **73-10-30. [Payment of assessments as condition precedent to granting petition for including lands.]**

The board of directors, to whom such petition is presented, may require as a condition precedent to the granting of the same, that the petitioners shall severally pay to such district such respective sums, as nearly as the same can be estimated by the board, as said petitioners or their grantors would have been required to pay to such district as assessment for the payment of their pro rata share of all bonds and interest thereon, which may have previously thereto been issued by said district, or for the payment of the pro rata share of the cost of construction under any contract between the district and the United States accompanying which bonds of the district have not been deposited with the United States as in this act provided, had such lands been included in such

district at the time the same was originally formed or when said bonds were so issued, or when said contract with the United States was made; provided, that in case unentered public land is proposed to be annexed to the district the board of directors of the district instead of requiring such payment as a condition precedent, may assess such charges against such unentered public land upon the records of the district to be collected in the manner authorized by the said act of congress of August 11, 1916.

**History:** Laws 1919, ch. 20, § 38; C.S. 1929, § 73-139; 1941 Comp., § 77-2228; 1953 Comp., § 75-23-28.

**Compiler's note.** - For the provisions of the Act of Congress of August 11, 1916, see compiler's notes to 73-10-1 NMSA 1978.

**Meaning of "this act".** - See same catchline in notes to 73-10-1 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 70.

94 C.J.S. Waters § 332.

### **73-10-31. [Order granting or rejecting petition for including lands; description of boundaries; protest of electors.]**

The board of directors if they deem it not for the best interests of the district to include therein the lands mentioned in the petition, shall by order reject the said petition, but if they deem it for the best interests of the district that said lands be included the board may order that the district be so changed as to include therein the lands mentioned in the said petition. The order shall describe the entire boundaries of the district with the lands so included, if the district boundaries be changed thereby, and for that purpose the board may cause a survey to be made of such portion of such boundaries as may be deemed necessary; provided, if within thirty days from the making of such order a majority of the qualified electors of the district protest in writing to said board against the inclusion of such lands in said district, said order shall be held for naught and said lands shall not be included therein.

Provided, further, that in case contract has been made between the district and the United States as in Section 13 [73-10-16 NMSA 1978] hereof provided, no change shall be made in the boundaries of the district and the board of directors shall make no order changing the boundaries of the district until the secretary of the interior shall assent thereto in writing and such assent be filed with the board of directors.

**History:** Laws 1919, ch. 20, § 39; C.S. 1929, § 73-140; 1941 Comp., § 77-2229; 1953 Comp., § 75-23-29.

**Cross-references.** - For proceedings to determine validity of inclusion of lands, see 73-11-6 to 73-11-10 NMSA 1978.

### **73-10-32. [Filing of order and new plat when land is added; status of district; liability of lands.]**

Upon the allowance of such petition and in case no protest has been filed with the board within thirty days after the entry of said order as aforesaid, a certified copy of the order of the board of directors making such change, and a plat of such district, showing such change, if any, certified by the president and secretary, shall be filed for record in the office of the county clerk of each county in which are situate any of the lands of the district, and the district shall remain an irrigation district, as fully as to every intent and purpose as if the lands which are included in the district by the change of the boundaries as aforesaid, had been included therein at the organization of the district; and said district as so changed and all the lands therein shall be liable for all existing obligations and indebtedness of the organized district.

Provided, that in case contract has been made between the district and the United States as in Section 13 [73-10-16 NMSA 1978] hereof provided, no change shall be made in the boundaries of the district until the secretary of the interior shall assent thereto in writing and such assent be filed with the board of directors.

**History:** Laws 1919, ch. 20, § 40; C.S. 1929, § 73-141; 1941 Comp., § 77-2230; 1953 Comp., § 75-23-30.

### **73-10-33. [Petition for including land to be recorded in minutes of board; evidential value.]**

Upon the filing of the copies of the order and the plat, as in the last preceding section [73-10-32 NMSA 1978] mentioned, the secretary shall record in the minutes of the board the petition aforesaid; and the said minutes, or a certified copy thereof, shall be admissible in evidence with the same effect as the petition.

**History:** Laws 1919, ch. 20, § 41; C.S. 1929, § 73-142; 1941 Comp., § 77-2231; 1953 Comp., § 75-23-31.

### **73-10-34. Authorization to sign petition or protest.**

A guardian, conservator or personal representative of an estate, who is appointed as such under the laws of this state, and who, as such guardian, conservator or personal representative, is entitled to the possession of the lands belonging to the estate which he represents, may on behalf of his ward or the estate which he represents, upon being thereunto authorized by the proper court, sign and acknowledge the petition in this act mentioned, and may show cause, as in this act mentioned, why the boundaries of the district should not be changed.

**History:** Laws 1919, ch. 20, § 42; C.S. 1929, § 73-143; 1941 Comp., § 77-2232; 1953 Comp., § 75-23-32; Laws 1975, ch. 257, § 8-130.

**Meaning of "this act".** - See same catchline in notes to 73-10-1 NMSA 1978.

### **73-10-35. [Redivision of district after addition of lands; election of directors.]**

In the case of the inclusion of any land within any district by proceedings under this act, the board of directors shall, at least thirty days prior to the next succeeding general election, make an order redividing such district into divisions, as nearly equal in size as may be practicable, being in number as in Section 5 [73-10-5 NMSA 1978] of this act provided and which shall be numbered consecutively, and one director shall thereafter be elected from each division. For the purposes of election the board of directors shall establish a convenient number of election precincts in said district, and define the boundaries thereof, which said precincts may be changed from time to time as the board may deem necessary.

**History:** Laws 1919, ch. 20, § 43; C.S. 1929, § 73-144; 1941 Comp., § 77-2233; 1953 Comp., § 75-23-33.

**Meaning of "this act".** - See same catchline in notes to 73-10-1 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 58.

94 C.J.S. Waters § 319.

### **73-10-36. [Exclusion of lands; status of district unaffected.]**

Any tract of land included within the boundaries of any such district, at or after its organization under the provisions of this act, may be excluded therefrom, in the manner herein prescribed, but such exclusion of land from the district shall not impair or affect its organization, or its rights in or to property or any of its rights or privileges of whatever kind or nature; nor shall such exclusion affect, impair or discharge any contract, obligation, lien or charge for or upon which it would or might become liable or chargeable, had such land not been excluded from the district.

**History:** Laws 1919, ch. 20, § 44; C.S. 1929, § 73-145; 1941 Comp., § 77-2234; 1953 Comp., § 75-23-34.

**Meaning of "this act".** - See same catchline in notes to 73-10-1 NMSA 1978.

### **73-10-37. [Petition to exclude lands; description of lands; acknowledgment.]**

The owner or owners in fee of any lands constituting a portion of any irrigation district may file with the board of directors of the district, a petition praying that such lands may be excluded and taken from said district. The petition shall describe the lands which the

petitioners desire to have excluded, but the description of such lands need not be more particular than required when lands are entered in the assessment book by the county assessor. Such petition must be acknowledged in the same manner and form as is required in case of a conveyance of land.

**History:** Laws 1919, ch. 20, § 45; C.S. 1929, § 73-146; 1941 Comp., § 77-2235; 1953 Comp., § 75-23-35.

**Cross-references.** - As to acknowledgment of conveyances of land, see 14-13-9 NMSA 1978.

### **73-10-38. [Notice of petition to exclude lands; publication; estimated costs of proceedings.]**

The secretary of the board of directors shall cause a notice of the filing of such petition to be published for at least three weeks in some newspaper published in the county where the office of the board of directors is situated, and if any portion of said district lie within another county or counties, then said notice shall be so published in a newspaper published within each of said counties; or if no newspaper be published therein, then by posting such notice for the same time in at least three public places in said district, and in case of the posting of said notices, one of the said notices must be so posted on the lands proposed to be excluded. The notice shall state the filing of such petition, the names of the petitioners, description of the lands mentioned in said petition and the prayer of said petitioners; and it shall notify all persons interested to appear at the office of said board at a time named in said notice, and show cause in writing, if any they have, why said petition should not be granted. The time to be specified in the notice at which they shall be required to show cause shall be the regular meeting of the board next after the expiration of the time for the publication of the notice. The petitioner or petitioners shall advance to the secretary sufficient money to pay the estimated cost of all proceedings under the petition before the secretary shall give such notice.

**History:** Laws 1919, ch. 20, § 46; C.S. 1929, § 73-147; 1941 Comp., § 77-2236; 1953 Comp., § 75-23-36.

**Cross-references.** - As to notice by publication, see 14-11-1 NMSA 1978 et seq.

### **73-10-39. [Hearing on petition for excluding lands; objections.]**

The board of directors at the time and place mentioned in the notice, or at the time or times to which the hearing of said petition may be adjourned, shall proceed to hear the petition and all objections thereto, presented in writing by any persons, showing cause as aforesaid why the prayer of said petition should not be granted. The filing of such petition with the board, as aforesaid, shall be deemed and taken as an assent by each and all of such petitioners to the exclusion from such district of the lands mentioned in the petition, or any part thereof.



**History:** Laws 1919, ch. 20, § 47; C.S. 1929, § 73-148; 1941 Comp., § 77-2237; 1953 Comp., § 75-23-37.

### **73-10-40. [Order granting or denying petition for excluding land; protest of electors.]**

The board of directors, if they deem it not for the best interest of the district that the lands mentioned in the petition or some portion thereof, should be excluded from said district, shall order that said petition be denied; but if they deem it for the best interest of the district that the lands mentioned in the petition, or some portion thereof, be excluded from the district, and if there are no outstanding bonds of the district, then the board may order the lands mentioned in the petition [petition], or some defined portion thereof, to be excluded from the district; provided, if within thirty days from the making of such order a majority of the qualified electors of the district protest in writing to said board against the exclusion of such lands from said district, said order shall be held for naught and such lands shall not be excluded therefrom.

Provided, further, that in case contract has been made between the district and the United States as in Section 13 [73-10-16 NMSA 1978] hereof provided, no change shall be made in the boundaries of the district, and the board of directors shall make no order changing the boundaries of the district until the secretary of the interior shall assent thereto in writing and such assent shall be filed with the board of directors.

**History:** Laws 1919, ch. 20, § 48; C.S. 1929, § 73-149; 1941 Comp., § 77-2238; 1953 Comp., § 75-23-38.

**Cross-references.** - For proceedings to determine validity of exclusion, see 73-11-6 to 73-11-10 NMSA 1978.

### **73-10-41. [Petition for exclusion of land approved; filing order and new plat.]**

Upon the allowance of such petition and in case no protest has been filed with the board within thirty days after the entry of said order as aforesaid, a certified copy of the order of the board of directors making such change and a plat of such district showing such change, certified by the president and secretary, shall be filed for record in the office of the county clerk of each county in which are situated any of the lands of the district, and the district shall remain an irrigation district as fully to every intent and purpose as if the lands which are excluded by the change of the boundary as aforesaid, had not been excluded therefrom. And, provided, further, that in case contract has been made between the district and the United States as in Section 13 [73-10-16 NMSA 1978] of this act provided, no change shall be made in the boundaries of the district, and the board of directors shall make no order changing the boundaries of the district until the secretary of the interior shall assent thereto in writing and such assent be filed with the board of directors. Upon the filing of such assent, however, the lands excluded from any

such district shall be discharged of all liens in favor of the United States under any contract with the United States or under bonds deposited with its agents.

**History:** Laws 1919, ch. 20, § 49; C.S. 1929, § 73-150; 1941 Comp., § 77-2239; 1953 Comp., § 75-23-39.

### **73-10-42. [Redivision of district after exclusion of lands; election of directors.]**

At least thirty days before the next general election of such district the board of directors thereof may make an order, dividing said district into divisions, as nearly equal in size as practicable, being in number as in Section 5 [73-10-5 NMSA 1978] of this act provided and which shall be numbered consecutively, and one director shall be elected for each division by the qualified electors of the whole district. For the purpose of election in such district the said board of directors must establish a convenient number of election precincts and define the boundaries thereof, which said precincts may be changed from time to time, as the board of directors may deem necessary.

**History:** Laws 1919, ch. 20, § 50; C.S. 1929, § 73-151; 1941 Comp., § 77-2240; 1953 Comp., § 75-23-40.

### **73-10-43. [Petition for dissolution of district; notice of election; ballots.]**

Whenever a majority of the resident freeholders, representing a majority of the number of acres of irrigable land, in any irrigation district organized or hereafter to be organized, under this act, shall petition the board of directors to call a special election for the purpose of submitting to the qualified electors of said irrigation district a proposition to vote on the dissolution of said irrigation district, setting forth in said petition that all bills and claims of every nature whatsoever have been fully satisfied and paid, it shall be the duty of said directors, if they shall be satisfied that all bills and claims have been fully satisfied, to call an election, setting forth the object of the said election, and to cause notice of said election to be published in some newspaper in each of the counties or county in which said district is located, for a period of thirty (30) days prior to said election, setting forth the time and place for holding said election in each of the voting precincts in said district. It shall also be the duty of the directors to prepare ballots to be used at said election on which shall be written or printed the words: "For Dissolution - Yes," and "For Dissolution - No."

**History:** Laws 1919, ch. 20, § 51; C.S. 1929, § 73-152; 1941 Comp., § 77-2241; 1953 Comp., § 75-23-41.

**Cross-references.** - For notice by publication, see 14-11-1 NMSA 1978 et seq.

**Meaning of "this act".** - See same catchline in notes to 73-10-1 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 57.

94 C.J.S. Waters § 338.

### **73-10-44. [Canvass of votes on dissolution; certificate of election; recording; assent of secretary of interior.]**

The board of directors shall name a day for canvassing the vote, and if it shall appear that a majority of the ballots contain the words, "For Dissolution - Yes," then it shall be the duty of said board of directors to declare said district to be disorganized, and they shall certify such fact to the county clerk of the respective counties in which the district is situated, stating the number of signers to the petition; that said election was called and set for the .....day of .....month of .....year; that said election was held and that so many votes (stating the number) had been cast for, and that so many votes (stating the number) had been cast against, said proposition. Said certificate shall bear the seal of the district, and the signatures of the president and secretary of said board of directors. It shall be the duty of the said respective clerks to record all such certificates in the records of the respective counties. Should it appear that a majority of the votes cast at said election were "For Dissolution - No," then the board of directors shall declare the proposition lost and shall cause the result and the vote to be made a part of the records of said irrigation district.

Provided, however, that no dissolution shall be made of the district, and the board of directors shall make no order dissolving the same until the secretary of the interior shall assent thereto in writing and such assent be filed with the board of directors.

**History:** Laws 1919, ch. 20, § 52; C.S. 1929, § 73-153; 1941 Comp., § 77-2242; 1953 Comp., § 75-23-42.

### **73-10-45. [Succession of irrigation districts to rights and duties of water users' associations.]**

That any irrigation district organized and existing under and by virtue of Chapter 20, Session Laws of New Mexico 1919, may succeed to all the rights, assets, privileges and immunities, and assume all the obligations, duties and liabilities of any water users' association organized and existing under the laws of New Mexico, by conveyance and simple contract; and any election heretofore or hereafter called and held at which a majority of the members or stockholders of such association voting at such election shall favor or shall have favored such succession and assumption, shall be sufficient authority for the directors of such district and of such association to execute and put into effect such conveyances and such contracts; and no action or defense drawing in question, directly or indirectly, the validity or effectiveness of such transfer, succession or assumption, shall be brought, maintained or set up except within one year from and after the filing for record of any such contract, transfer or conveyance; and in case of any such contract, transfer or conveyance, the same shall be filed for record in the office of the county clerk of the county where the principal office of such association is

situate, and where the principal office of such district is situate and also in each county where the real estate is situate belonging to either such district or association.

**History:** Laws 1921, ch. 39, § 23; C.S. 1929, § 73-177; 1941 Comp., § 77-2243; 1953 Comp., § 75-23-43.

**Cross-references.** - For definitions of "irrigation district" and "directors," see 73-11-54 NMSA 1978.

**Compiler's note.** - For the compilation of Laws 1919, ch. 20, see note, catchlined "Meaning of 'this act,'" to 73-10-1 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 62.

94 C.J.S. Waters § 321.

### **73-10-46. [Irrigation district organized to cooperate with United States; civil service board; employees.]**

Any irrigation district organized or to be organized for the purpose of cooperating with the government of the United States under the terms of federal reclamation law, and other federal laws operating and maintaining its irrigation, drainage, storage and protection works, and storing and distributing water, and for operating and maintaining works for the generation, control and distribution of electrical energy is hereby authorized to institute and maintain a system of civil service employment for such classes of its employees as in the opinion of the board of directors of said district should be placed under such system. The boards of directors are also authorized to enact any and all rules and regulations which may be necessary to carry out the purposes of this act [73-10-46, 73-10-47 NMSA 1978] including the appointment of a civil service board consisting of three members to serve three years, two members being permanent employees of the district and one a member of the board. To this civil service board the board of directors shall delegate the duties of establishing grades and of setting up standards of employment, of conducting examinations, creating a roster of approved applicants and in general to exercise advisory powers in the hiring and dismissal of employees. It shall be understood that the purpose of this act in general is to permit said district to create conditions of employment in which tenure of service is dependent upon efficiency, loyalty and dependability. This act shall be applied to all permanent employees at or below the grade of superintendent, and above and not including the grade of common laborer, but including the fiscal officer of the district who may be assessor-collector treasurer of the district as appointed by the board of directors.

**History:** Laws 1931, ch. 78, § 1; 1941 Comp., § 77-2244; 1953 Comp., § 75-23-44.

**Compiler's note.** - For the provisions of federal reclamation law, see compiler's notes to 73-10-1 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 97.

94 C.J.S. Waters § 316.

### **73-10-47. [Employees' pensions; group insurance; employers' liability insurance.]**

Any irrigation district is authorized to create out of its general funds a fund to pension old or incapacitated employees, to make reasonable reservations out of wages and salaries of employees for creation, augmentation or support of such a fund and to provide out of its general fund or any other fund created for such purpose, the premiums for group insurance or for employers' liability insurance now required by the laws of New Mexico or which hereafter may be required by said laws.

**History:** Laws 1931, ch. 78, § 2; 1941 Comp., § 77-2245; 1953 Comp., § 75-23-45.

**Effective dates.** - Laws 1931, ch. 78, contains no effective date provision, but was enacted at a session which adjourned on March 14, 1931. See N.M. Const., art. IV, § 23.

## **ARTICLE 11 IRRIGATION DISTRICTS COOPERATING WITH UNITED STATES UNDER RECLAMATION LAWS; FISCAL AFFAIRS; LOCAL IMPROVEMENTS AND SPECIAL POWERS**

### **73-11-1. Special election for bond issue or contract; notice; ballots; bond terms and form; record of bonds; priority of issues.**

For the purpose of constructing or purchasing or acquiring necessary reservoir sites, reservoirs, water rights, canals, ditches and works and acquiring the necessary property and rights therefor, for the assumption of indebtedness to the United States for district lands, for the purpose of paying the first year's interest upon the bonds herein authorized, and for otherwise carrying out the provisions of this act, the board of directors of any such district shall, as soon after the district has been organized as may be practicable, estimate and determine the amount of money necessary to be raised or amount of indebtedness necessary to be assumed for such purposes and shall forthwith call a special election, at which election shall be submitted to the electors of the district possessing the qualifications prescribed by this act the question of whether or not the bonds of the district shall be issued in the amount so determined or whether or not a contract shall be entered into with the United States as herein provided. A notice of such election must be given by posting notices in three public places in each election precinct in the district for at least twenty days and also by publication of such notice in

some newspaper of general circulation published in each county wherein is situate any lands within the district once each week for at least four successive weeks. Such notice shall specify the time of holding the election and the amount of bonds proposed to be issued. The election must be held and the result thereof determined and declared in all respects as nearly as possible in conformity with the provisions of this act; provided that no informalities in conducting the election shall invalidate it if the election has been otherwise fairly conducted. At such election, the ballots shall contain the words "Bonds - Yes" and "Bonds - No," or "Contract - Yes" and "Contract - No," or words equivalent thereto. If any such election shall carry in conformity with the provisions of this act, the board of directors shall immediately cause bonds in such amounts to be issued or contract made with the United States. If bonds are not to be deposited with the United States in connection with such contract, bonds need not be issued; or if required for the construction fund in addition to such contract, bonds shall be issued only for the amounts needed in addition to such contract; bonds, other than those deposited with the United States, when required, shall be issued and payable in series as follows.

At the expiration of eleven years, not less than five percent of the whole amount and number of the bonds; at the expiration of twelve years, not less than six percent of the whole amount and number of the bonds; at the expiration of thirteen years, not less than seven percent of the whole amount and number of the bonds; at the expiration of fourteen years, not less than eight percent of the whole amount and number of the bonds; at the expiration of fifteen years, not less than nine percent of the whole amount and number of of the bonds; at the expiration of sixteen years, not less than ten percent of the whole amount and number of the bonds; at the expiration of seventeen years, not less than eleven percent of the whole amount and number of the bonds; at the expiration of eighteen years, not less than thirteen percent of the whole amount and number of the bonds; at the expiration of nineteen years, not less than fifteen percent of the whole amount and number of the bonds; at the expiration of twenty years, a percentage sufficient to pay off the remainder of the bonds, that the several enumerated percentages be of the entire amount of the bond issue; that each bond must be payable at the given time for its entire amount and not for a percentage; that the bonds shall bear interest payable semiannually on June 1 and December 1 of each year. The principal and interest shall be payable at the office of the county treasurer of the county in which the organization of the district was effected as aforesaid and at such other place or places, if any, as the board of directors may designate in the bond. The bonds shall be in such form as the board of directors may determine and, except for bonds issued in book entry or similar form without the delivery of physical securities, shall be executed in the name of the district and signed by the president and secretary, and the seal of the district shall be affixed thereto. Provided that bonds deposited with the United States may be of the denominations and may call for the repayment of the principal at the times agreed upon between the board and the secretary of the interior, and where contract is made and bonds are not deposited with the United States, a contract may likewise call for the repayment of principal at such times as may be agreed upon. The bonds shall be numbered consecutively as issued and bear date at the time of their issue. Any coupons for interest shall be attached to each bond bearing the facsimile signatures of the president and the secretary. The bonds shall express on their

face that they are issued by the authority of this act, stating its title and date of approval. The secretary shall keep a record of the bonds sold, their number, date of sale, the price received and the name of the purchaser; provided, any such district may, in the manner whereby the issuance of bonds may be authorized, provide for the issuance of bonds that will mature in any number of years less than twenty and arrange for the payment thereof, in series as above provided; provided further that when the money provided by any previous issue of bonds has become exhausted by expenditures herein authorized therefor and it becomes necessary to raise additional money for such purposes, additional bonds may be issued after submitting the question to the qualified voters of the district, as for an original issue of such bonds. Provided, also, the lien for the bonds of any issue shall be a preferred lien to that of any subsequent issue, and the lien for all payments due or to become due under any contract with the United States, accompanying which bonds of the district have not been deposited with the United States as in Section 73-10-16 NMSA 1978 provided, shall be a preferred lien to any issue of bonds subsequent to the date of such contract.

If a contract is proposed to be made with the United States and bonds are not to be deposited with the United States in connection therewith, the question to be submitted to the voters at such special election shall be whether a contract shall be entered into with the United States. The notice of election shall state the maximum amount of money payable to the United States for construction purposes exclusive of penalties and interest.

**History:** Laws 1919, ch. 20, § 17; C.S. 1929, § 73-118; 1941 Comp., § 77-2301; 1953 Comp., § 75-24-1; 1983, ch. 265, § 56.

**Cross-references.** - For the qualifications of electors, see 73-10-6 NMSA 1978.

As to notice by publication, see 14-11-1 NMSA 1978 et seq.

**The 1983 amendment** divided the former third sentence into the present third and fourth sentences in the first paragraph; in the second paragraph, deleted "at the rate of not to exceed six percent per annum" preceding "payable semiannually" near the end of the first sentence, substituted "June 1 and December 1" for "the first day of June and December" at the end of the first sentence, inserted "or places, if any" in the second sentence, substituted "The bonds shall be in such form as the board of directors may determine and, except for bonds issued in book entry or similar form without the delivery of physical securities, shall be" for "Said bonds shall be each of the denomination of not less than one hundred dollars (\$100), nor more than five hundred dollars (\$500), shall be negotiable in form" in the third sentence, deleted "and where issued for the construction of projects hereafter undertaken may call for the payment of interest not exceeding six percent per annum" following "secretary of the interior" in the fourth sentence, added "Any" at the beginning of the sixth sentence, substituted "facsimile" for "lithographed" also in the sixth sentence, divided the former eighth sentence into the present eighth and ninth sentences and substituted the New Mexico citation for "Section

13 of this act" in the ninth sentence; and made minor stylistic changes throughout the section.

**Emergency clauses.** - Laws 1983, ch. 265, § 64, makes the act effective immediately. Approved April 7, 1983.

**Meaning of "this act".** - The term "this act" refers to Laws 1919, ch. 20, the provisions of which are compiled as 73-10-1 to 73-10-6, 73-10-8, 73-10-10 to 73-10-12, 73-10-14 to 73-10-22, 73-10-24 to 73-10-44, 73-11-1, 73-11-2, 73-11-4, 73-11-6 to 73-11-10, 73-11-12, 73-11-27 to 73-11-29, 73-11-31 to 73-11-33, 73-11-36, 73-11-49, 73-11-52 and 73-11-53 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 67.

Right of owner of land within reclamation project in respect of which a water right was allowed upon application pursuant to Reclamation Act to a perpetual right beyond the control of the Federal Government for a sufficient amount beneficially to irrigate the land, 115 A.L.R. 1320.

94 C.J.S. Waters § 322.

### **73-11-2. [Sale of bonds; notice; bids; rejection of bids; use of bonds.]**

The board may sell bonds from time to time in such quantities as may be necessary and most advantageous to raise the money for the construction or purchase of canals, reservoir sites, reservoirs, water rights and works, and otherwise to fully carry out the objects and purposes of this act. Before making any sale the board shall, at a meeting, by resolution declare its intention to sell a specified amount of the bonds and the day and hour and place of such sale, and shall cause such resolution to be entered in the minutes and notice of the sale to be given by publication thereof by three insertions thereof at least twenty days prior to such sale in a daily newspaper published in the city of Santa Fe and a like notice in a daily newspaper published in the city of Albuquerque, and any other newspaper at their discretion. The notice shall state that sealed proposals will be received by the board at their office, for the purchase of the bonds, till the day and hour named in the resolution. At the time appointed the board shall open the proposals and award the purchase of the bonds to the highest responsible bidder and may reject all bids; but said board shall, in no event, sell any of said bonds for less than ninety-five percent of the face value thereof. In case no bid is made and accepted as provided in this act, the board of directors is hereby authorized to use said bonds for the purchase of canals, reservoir sites, reservoirs, water rights and works, or for the construction of any canal, reservoir and works; provided, such bonds shall not be so disposed of at less than ninety-five percent of the face value thereof.

**History:** Laws 1919, ch. 20, § 18; C.S. 1929, § 73-119; 1941 Comp., § 77-2302; 1953 Comp., § 75-24-2.



**Cross-references.** - For authorization of bond holders to appoint director, see 73-13-7 NMSA 1978.

**Meaning of "this act".** - See same catchline in notes to 73-11-1 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 67.

94 C.J.S. Waters § 324.

### **73-11-3. [Special election to authorize sale of bonds at less than ninety-five percent par value.]**

If any irrigation district bonds have been authorized and the board of directors of said district deem it as desirable that the said board be authorized to sell said bonds for less than ninety-five percent of the par value thereof, said board may call a special election to submit to the voters of the district said proposition. Such election shall be held, and notice thereof shall be given in the same manner as is provided in the case of a special election to authorize the issuance of bonds for irrigation districts. The proposition shall be stated in substantially the following form: "Shall the board of directors of ..... irrigation district be authorized to sell bonds of the district for less than ninety-five percent of the par value thereof, but not less than ..... percent of the par value?" (Stating the minimum price), followed by the word "yes" or "no," as provided in Section 6 [73-10-6 NMSA 1978] of said Chapter 20. If at least two-thirds of the legal votes cast at such election are for "yes," then the board of directors may sell any such bonds to the highest responsible bidder, at or above the minimum price authorized at such election.

**History:** Laws 1921, ch. 39, § 9; C.S. 1929, § 73-163; 1941 Comp., § 77-2303; 1953 Comp., § 75-24-3.

**Cross-references.** - For definitions of "irrigation district" and "directors," see 73-11-54 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 67.

94 C.J.S. Waters § 330.

### **73-11-4. [Payment of bonds and debt due United States; taxation.]**

Said bonds and interest thereon, and all payments due or to become due the ensuing year to the United States under any contract between the district and the United States, accompanying which bonds of the district have not been deposited with the United States shall be paid, by revenue derived from an annual assessment upon the real property of the district, and the real property of the district shall be made and remain liable to be assessed for such payments as herein provided. Public lands of the United States within any district shall be subject to taxation for all purposes of this chapter to

the extent provided by the act of congress approved August 11, 1916, upon full compliance therewith by the district.

**History:** Laws 1919, ch. 20, § 19; C.S. 1929, § 73-120; 1941 Comp., § 77-2304; 1953 Comp., § 75-24-4.

**Cross-references.** - As to property tax, see 7-35-1 to 7-35-10, 7-36-1 to 7-36-33, 7-37-1 to 7-37-8, 7-38-1 to 7-38-93 NMSA 1978.

**Compiler's note.** - For the Act of Congress of August 11, 1916, see 43 U.S.C. §§ 621 to 630.

**Meaning of "this chapter".** - The term "this chapter" refers to Laws 1919, ch. 20. For the compilation of that act, see note, catchlined "Meaning of 'this act,'" to 73-11-1 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 67.

94 C.J.S. Waters § 337.

### **73-11-5. [Payment of bonds; interest after default; excess money in bond fund; redemption of bonds; investment of funds.]**

Upon presentation of any matured bond, or any matured interest coupon of any bond of the district, the treasurer shall pay the same from the bond fund. If funds are not available for the payment of any such matured bonds or interest coupons, both such shall draw interest at the rate of seven percent per annum from the date of presentation for payment until notice is given that funds are available for payment. Whenever the bond fund or sinking fund created for retirement of bonds contains ten thousand dollars (\$10,000.00) in excess of the amount necessary to pay all bonds and interest coupons of the district that have matured or that will mature before the time when any part of the next annual assessment, to be levied in the district, will become delinquent, the board of directors may advertise, in the manner herinbefore [hereinbefore] provided for the sale of bonds, for the receipt of sealed proposals for the delivery to the district for redemption of any of its bonds not due. Said advertisement shall state the amount which may be used for the redemption of such bonds. Any such proposals shall be opened by the board in open meeting at the time named in said advertisement, and the offer or offers of such bonds at the lowest rate or rates shall be accepted; provided, that no bonds shall be redeemed at more than par value thereof, except by unanimous vote of the directors. In case two or more proposals are equal, and there is not sufficient money available to accept them all, the lowest numbered bonds shall have the preference. In case not enough bonds are offered for redemption at prices which the board of directors accepts, the board may invest any money available for redemption of bonds in bonds of the United States, or bonds approved for the investment of state school funds, and shall hold the bonds so purchased as part of the bond fund until such time as the board may determine that it is for the best interests of the district that such bonds, or any of them,

be sold. In case of the sale of any such bonds the proceeds of the sale shall be deposited in the bond fund. The county treasurer, insofar as the redemption of unmatured bonds are [is] concerned, or the investment of any excess in the bond fund shall act under the order of the board of directors.

**History:** Laws 1921, ch. 39, § 10; C.S. 1929, § 73-164; 1941 Comp., § 77-2305; 1953 Comp., § 75-24-5.

**Cross-references.** - For notice for bond sale, see 73-11-2 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 67.

94 C.J.S. Waters § 337.

### **73-11-6. [Proceedings to determine validity; bond issue or contract with United States; ascertainment of benefits and damages; inclusion or exclusion of land.]**

The board of directors of any irrigation district organized under the provisions of this act shall commence special proceedings in and by which the proceedings of said board and of said district providing for and authorizing the issue and sale of the bonds of said district, whether said bonds or any of them have or have not been sold or disposed of, or in and by which the proceedings of said board and of said district providing for the authorization of contract with the United States may be judicially examined, approved and confirmed. Such proceedings shall be brought within sixty days after the adoption of resolution by the board declaring that the bond election or election for the authorization of the execution of contract with the United States has been voted upon favorably by the electorate of the district. The board may, however, in its discretion, bring an action prior to the time specified, whereby the validity of the organization of the district or of any steps leading to the issuance of bonds or to the making of contract as aforesaid, may be separately judicially examined, approved and confirmed. Within sixty days after the ascertainment of the rate or percentage of drainage benefits, and of the award for damages inflicted by drainage works, as in this act provided, the board shall bring a similar special proceeding, whereby such assessment and award may be judicially examined, approved and confirmed. In the event of the inclusion by any irrigation district of additional lands, or the exclusion of lands previously within the boundaries of any such district, the board of directors may, if they deem it advisable so to do, institute a special proceeding in like manner and with like effect as herein provided for the confirmation of bonds, whereby the proceedings for such change of boundaries may be judicially examined, approved and confirmed.

**History:** Laws 1919, ch. 20, § 53; C.S. 1929, § 73-154; 1941 Comp., § 77-2306; 1953 Comp., § 75-24-6.

**Cross-references.** - For ascertainment of benefits or damages, see 73-11-12 NMSA 1978.

For inclusion and exclusion of lands, see 73-10-27 to 73-10-42 NMSA 1978.

**Meaning of "this act".** - See same catchline in notes to 73-11-1 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 67.

94 C.J.S. Waters § 328.

### **73-11-7. [Petition to determine validity of proceedings; contents.]**

The board of directors of the irrigation district shall file in the district court of the county in which the lands of the district, or some portion thereof, are situated, a petition praying, in effect, that the proceedings aforesaid may be examined, approved and confirmed by the court. The petition shall state the facts showing the proceedings had for the issue and sale of bonds, or for the authorization of contract with the United States or for the determination of the rate of drainage benefits and award of damages, as the case may be, and shall state generally that the irrigation district was duly organized, and that the first board of directors was duly elected, but the petition need not state the facts showing such organization of the district or the election of said first board of directors.

**History:** Laws 1919, ch. 20, § 54; C.S. 1929, § 73-155; 1941 Comp., § 77-2307; 1953 Comp., § 75-24-7.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 59.

94 C.J.S. Waters § 323.

### **73-11-8. [Time of hearing; notice; publication; contents.]**

The court shall fix the time for the hearing of said petition and shall order the clerk of the court to give and publish a notice of the filing of such petition. The notice shall be given and published once each week for four consecutive weeks in a newspaper of general circulation published in each county wherein shall be situate any lands within the district. The notice shall state the time and place fixed for the hearing of the petition and the prayer of the petitioners, and that any person interested in the organization of said district or in the proceedings for the issue or sale of said bonds, or in any such other proceedings as may be in question, may, on or before the day fixed for the hearing of said petition, demur to or answer said petition. The petition may be referred to and described in said notice as the petition of the board of directors of ..... irrigation district (giving its name), praying that the proceedings for the issue and sale of said bonds of said district, or that the proceedings for the authorization of contract with the United States or the validity of the determination of the rate of drainage benefits and of the award of damages, as the cases may be respectively, may be examined, approved and confirmed by the court.

**History:** Laws 1919, ch. 20, § 55; C.S. 1929, § 73-156; 1941 Comp., § 77-2308; 1953 Comp., § 75-24-8.

**Cross-references.** - For notice by publication, see 14-11-1 NMSA 1978 et seq.

**Compiler's note.** - Rule 1-007 C SCRA 1986 abolishes the demurrer.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 59.

94 C.J.S. Waters § 324.

### **73-11-9. [Procedure; pleading; appeals.]**

Any person interested in said district or in the issue or sale of said bonds, or in such other proceedings as may be in issue as herein provided, may demur to or answer said petition. The provisions of Chapter LXXXVIII respecting the demurrer and answer to a verified complaint shall be applicable to a demurrer and answer to said petition. The person so demurring and answering said petition shall be the defendant to the special proceedings and the board of directors shall be the plaintiff. Every material statement of the petition not specifically controverted by the answer shall, for the purpose of said special proceedings, be taken as true, and 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 relating to appeals and writs of error as provided by Chapter 43 Laws of 1917 which are not inconsistent with the provisions of this act are applicable to the special proceedings herein provided for; provided, appeals to the supreme court of the state involving the special proceedings herein mentioned shall be taken within twenty days, and shall be perfected within sixty days after the granting of any such appeal.

**History:** Laws 1919, ch. 20, § 56; C.S. 1929, § 73-157; 1941 Comp., § 77-2309; 1953 Comp., § 75-24-9.

**Compiler's note.** - The reference to "Chapter LXXXVIII" is to that chapter of the 1915 Code which has been virtually superseded by the Rules of Civil Procedure for District Courts. See Rule 1-001 SCRA 1986. Rule 1-007 C SCRA 1986 abolishes the demurrer. See Rules 1-008 to 1-012 SCRA 1986 for provision regarding answers and defenses.

Laws 1917, ch. 43, has been virtually superseded by the Rules of Appellate Procedure. See Judicial Pamphlet 12.

**Meaning of "this act".** - See same catchline in notes to 73-11-1 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 59.

94 C.J.S. Waters § 324.

### **73-11-10. [Hearing on validation; scope of proceeding; irregularities disregarded; costs; judgment.]**

Upon the hearing of such special proceedings the court shall find and determine whether the notice of the filing of the petition has been duly given and published for the time and in the manner in this act prescribed, and shall have power and jurisdiction to examine and determine the legality and validity of, and approve and confirm, each and all of the proceedings for the organization of said district under the provisions of said act, from and including the petition for the organization of the district, and all other proceedings which may affect the legality or validity of said bonds, and the order of the sale and the sale thereof, and all the proceedings, if any, as the case may be, for the authorization of contract with the United States and the validity of the determination of the rate of drainage benefits and award of damages, which shall have been made pursuant to contract with the United States. The court, in inquiring into the regularity, legality or correctness of said proceedings, must disregard any error, irregularity or omission which does not affect the substantial rights of the parties to said special proceedings; and the court may by decree approve and confirm such proceedings in part, and disapprove and declare illegal or invalid other or subsequent parts of the proceedings. The cost of the special proceedings may be allowed and apportioned between the parties, in the discretion of the court. The judgment when finally made and entered, shall be res judicata in all cases arising in connection with the organization of the district, and the collection of taxes for payment of the principal and interest of bonds or for payment of monies required by contract with the United States and in connection with the award of damages. Provided, however, that a reopening of the judgment upon the rate of drainage benefits may be had at the petition of the board of directors, upon sufficient cause shown.

**History:** Laws 1919, ch. 20, § 57; C.S. 1929, § 73-158; 1941 Comp., § 77-2310; 1953 Comp., § 75-24-10.

**Meaning of "this act".** - See same catchline in notes to 73-11-1 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 59.

94 C.J.S. Waters § 323.

### **73-11-11. [Modification of time and method of payments due United States; modification of assessments.]**

That any irrigation district cooperating with the United States under the federal reclamation laws and other federal laws shall have the power, through its board of directors, to extend the time for payment of any indebtedness due from said district to the United States, and to otherwise change and modify the time and manner of payment and amount to be paid to the extent permitted under the acts of congress and under any rule, regulation or contract of the department of the interior appertaining thereto, and to that end the board of directors of such district may amend or modify any existing

contract with the United States, or enter into a new contract, and may change, adjust, readjust or modify the liens, charges and assessments theretofore made against the lands of said district, and may cancel the taxes theretofore levied by said district, including delinquent tax certificates still held by said district and may do any and all things necessary to carry out such amended or new contract, in accordance with such acts of congress.

**History:** Laws 1933, ch. 15, § 1; 1941 Comp., § 77-2311; 1953 Comp., § 75-24-11.

**Federal reclamation laws.** - For federal reclamation laws, see 43 U.S.C. § 371 et seq.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 59.

94 C.J.S. Waters § 330.

### **73-11-12. [Determination of benefits and damages; assessments; assessment for drainage costs.]**

If any district shall contract with the United States for the construction of drainage works, it shall be within the powers and the duties of the board of directors on or before September 1 next preceding the initial payment for such works under contract with the United States to fix and determine the rate or percentage of the benefits from the proposed works for all real property within the district to be affected by said works, subject to judicial confirmation as provided by Section 53 [73-11-6 NMSA 1978] of this act. The board shall also assess the damages inflicted upon any real property by the works of the district and such amount shall be deducted from the assessments payable by each owner of lands damaged until compensation for the damages shall have been fully made. If the damage shall be found to exceed the benefits as regards any parcel of real property or any easement, a cash award of the difference shall be made. The said rate of benefits shall be subsequently used as the basis for the annual assessment, but such rate may be changed from time to time by the board of directors as new or changing conditions may, in their judgment, require, subject to judicial confirmation as aforesaid. Irrigation districts, as regards drainage costs, may assess realty within the district boundaries owned by all such classes of persons and corporations, to the same extent as now permitted by the laws of this state to drainage districts.

**History:** Laws 1919, ch. 20, § 20; C.S. 1929, § 73-121; 1941 Comp., § 77-2312; 1953 Comp., § 75-24-12.

**Cross-references.** - As to drainage district assessment, see 73-7-1 and 73-8-25 NMSA 1978 et seq.

For the duties of the county assessor, see 73-11-31 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation §§ 70 to 72.

### **73-11-13. [Local improvements; petition; bond for costs of investigation; dismissal of petition.]**

Any desired special construction, reconstruction, betterment or improvement in an irrigation system, including drainage (and protection from arroyo floods or encroachment of arroyo fans, river rectification and control, river bank protection, construction of levees and jetties), which are for the special benefit of certain agricultural lands tributary thereto and lying within the geographical boundaries of an irrigation district, may be constructed, or improvements already constructed for similar or the same purposes may be purchased or acquired, and provision made to meet the cost thereof as follows:

the holders of title or evidence of title of one-quarter of the acreage proposed to be assessed may file with the board of directors of the irrigation district their petition reciting the nature and general plan of the desired improvement and specifying the lands proposed to be specially taxed therefor. Such petition shall be accompanied by a bond in the sum of one hundred (\$100) dollars, with the surety to be approved by the said board of directors, conditioned that the petitioners will pay the cost of the investigation of the project and the hearing thereon if the same be not established. Said board may, at any time, require a bond in an additional sum, as may be deemed advisable. Upon the filing of such petition the board of directors, with the assistance of a competent engineer, shall make an investigation of the feasibility, cost and need of the proposed local improvement, together with the ability of the land to pay such costs, and if the same appears feasible they shall have a plan and estimate of the cost thereof prepared. If the cost shall appear to the board to exceed the benefits to accrue therefrom, or if the land proposed to be embraced within the local improvement district shall be found to be insufficient security for the return of the cost, or if a protest against the establishment of the proposed improvement, signed by a majority of the holders of title in the proposed local improvement district, be presented at or prior to the hearing herein provided for, or if in other respects the proposed local improvement district should be found not feasible, they shall hold such petition for organization for naught, and dismiss the same at the expense of the petitioners.

**History:** Laws 1921, ch. 39, § 17; C.S. 1929, § 73-171; Laws 1931, ch. 80, § 1; 1941 Comp., § 77-2313; 1953 Comp., § 75-24-13.

**Cross-references.** - For definitions of "irrigation district" and "directors," see 73-11-54 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 81.



### **73-11-14. [Approval of petition for improvement; notice of hearing; publication; determination.]**

In event that the said board shall approve such petition, the board shall fix the time and place for the hearing thereof, and shall publish a notice in English and Spanish once each week for four successive weeks prior to such hearing in a newspaper of general circulation in the county, stating that the lands within certain described boundaries are proposed to be organized as a local improvement district, stating generally the nature of the proposed improvement; that certificates of indebtedness for such local improvement are proposed to be issued as the obligations of the irrigation district; that the lands within the said local improvement district are to be assessed for such improvement, and the time and place of hearing thereon. At the time and place of hearing named in said notice all persons interested may appear before the board and show cause for or against the formation of the proposed improvement district, and the issuance of certificates of indebtedness aforesaid. Upon the hearing the board shall determine as to the establishment of the proposed local improvement district. Any landowner whose lands can be served, or will be benefited by the proposed improvement, may make application to the board, at the time of hearing to include such lands, and the board of directors, in any such case, may, at their discretion, include such lands within the district. The board of directors may exclude any land specified in said notice from said district, provided that in the judgment of the board the inclusion thereof will not be practicable.

**History:** Laws 1921, ch. 39, § 18; C.S. 1929, § 73-172; 1941 Comp., § 77-2314; 1953 Comp., § 75-24-14.

**Cross-references.** - For definitions of "irrigation district" and "board," see 73-11-54 NMSA 1978.

As to notice by publication, see 14-11-1 NMSA 1978 et seq.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 94.

94 C.J.S. Waters § 321.

### **73-11-15. [Local improvement district; establishment; cost of improvement; certificates of indebtedness; inclusion of additional land.]**

If decision shall be rendered in favor of the improvement, the board shall enter an order establishing the boundaries of said improvement district, and shall adopt plans for the proposed improvement and determine the number of annual installments, not exceeding fifteen, in which the cost of said improvement shall be paid. The cost of said improvement shall be paid by the issuance of certificates of indebtedness of the district therefor, from time to time, either directly for the payment of the labor and material, or

for the securing of funds for such purpose. Said certificates shall bear interest at a rate not to exceed eight percent per annum, payable semiannually, evidenced by coupons, and shall state upon their face that they are issued as certificates of indebtedness of the irrigation district for the benefit of the local improvement district within said irrigation district; that all lands within said local improvement district shall be primarily liable to assessment for the payment of the principal and interest of said certificates, and that said notes are also a general obligation of the district. No certificate of indebtedness shall be issued in denomination exceeding five hundred (\$500) dollars, and no certificates shall be sold for less than par. Whenever such improvement district has been organized, the boundaries thereof may be enlarged to include other lands which can be served, or will be benefited by the proposed improvements, upon petition of the owners thereof; provided, that at such time the lands so included shall pay their equitable proportion upon the basis of benefits of the investment theretofore made by the said local improvement district, and shall be liable for the indebtedness of the said local improvement district in the same proportion, the same manner, and subject to assessments as if the said lands had been incorporated in said improvement district at the beginning of its organization.

**History:** Laws 1921, ch. 39, § 19; C.S. 1929, § 73-173; 1941 Comp., § 77-2315; 1953 Comp., § 75-24-15.

**Cross-references.** - For definitions of "irrigation district" and "board of directors," see 73-11-54 NMSA 1978.

### **73-11-16. Special assessment of improvement district.**

The cost of said improvement shall be specially assessed against the lands within such improvement district in proportion to the benefits accruing therefrom and shall be levied and collected in the manner provided for the assessments of construction costs.

All provisions contained in this chapter and Chapter 20, Session Laws of 1919, for the assessment, equalization, levy and collection of assessments for irrigation district purposes shall be applicable to assessment for local improvement, except that no election shall be required to authorize said improvement or the expenditure therefor. Assessments, when collected by the district treasurer for the payment of the improvement of any local improvement district and for the maintenance thereof, shall constitute special funds to be called "construction fund of local improvement district no. ...." and "operation and maintenance fund of local improvement district no. ...."

**History:** Laws 1921, ch. 39, § 20; C.S. 1929, § 73-174; Laws 1931, ch. 80, § 2; 1941 Comp., § 77-2316; 1953 Comp., § 75-24-16.

**Cross-references.** - For assessments, see 73-11-29 to 73-11-48 NMSA 1978.

For definitions of "irrigation district" and "board of directors," see 73-11-54 NMSA 1978.

**Compiler's note.** - For the compilation of "Chapter 20, Session Laws of 1919," see note, catchlined "Meaning of 'this act,'" to 73-11-1 NMSA 1978.

**Meaning of "this chapter".** - The term "this chapter" refers to Laws 1921, ch. 39, which chapter amended various provisions of Laws 1919, ch. 20 and enacted new provisions. The new provisions and the provisions amended by Laws 1921, ch. 39, are compiled as 73-10-6, 73-10-16, 73-10-23, 73-10-45, 73-11-3, 73-11-5, 73-11-13 to 73-11-17, 73-11-19 to 73-11-27, 73-11-29 to 73-11-31, 73-11-34, 73-11-35, 73-11-49 to 73-11-51, 73-11-54 NMSA 1978. See also 73-11-54 NMSA 1978 and notes thereto.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 70.

94 C.J.S. Waters § 334.

### **73-11-17. [Insufficiency of funds from local improvement district; liability of district at large.]**

In the event of the failure of the lands within the local improvement district to furnish money sufficient for the payment of principal or interest of the certificates of indebtedness for such local improvement work, and in case of a default in the payment of principal and interest, as aforesaid, the amount delinquent shall be paid by the general warrant of the irrigation district at large, but the lands of the local improvement district shall not thereby become released from liability for special assessment therefor. Such certificates of indebtedness, if issued, shall be redeemed as soon as there shall be available for that purpose money in the construction fund of the local improvement district.

**History:** Laws 1921, ch. 39, § 21; C.S. 1929, § 73-175; 1941 Comp., § 77-2317; 1953 Comp., § 75-24-17.

**Cross-references.** - For definition of "irrigation district," see 73-11-54 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 93.

94 C.J.S. Waters § 337.

### **73-11-18. [Lands contiguous to municipality; exception from improvement district.]**

All provisions contained in Section 17 as herein amended, Sections 18 and 19 and 21 of Chapter 39 of Session Laws of 1921 and Section 20 [73-11-13 to 73-11-17 NMSA 1978] as herein amended shall be understood and construed as applying to agricultural lands lying wholly outside of the boundaries, and not subject to any of the provisions, of a local improvement district formed for the betterment, improvement or protection of lands within and contiguous to the corporation [corporate] limits of a municipality and which

naturally are or would be included in the local improvement district of such municipality nor shall local improvement districts within the meaning and intent of this act [73-11-13, 73-11-16, 73-11-18 NMSA 1978] be held to cover lands within and contiguous to the corporate limits of a municipality, town or village whether such lands be or may not be agricultural lands subject to or in a state of cultivation but which geographically are so located as to share in the benefits of any improvement or protection works planned or built by the municipality.

**History:** Laws 1931, ch. 80, § 3; 1941 Comp., § 77-2318; 1953 Comp., § 75-24-18.

### **73-11-19. [Bonds for redemption of certificates of indebtedness; priority of liens.]**

It shall be lawful for any irrigation district, which has issued certificates of indebtedness for said local improvement as in this chapter provided, to issue in place thereof an amount of bonds not in excess of such issue of certificates, and sell the same, or any part thereof, or exchange the same, or any part thereof, with the holders of such previously issued certificates of indebtedness for the purpose of redeeming said certificates; provided, however, that all the provisions of this act and Chapter 20, Session Laws of 1919, regarding the authorization and issue of bonds shall apply; and, provided further, that the issuance of said bonds shall not release the lands of the local improvement district, or districts, from liability for special assessment for the payment thereof; and, provided further, that the lien of any issue of bonds of the district, or indebtedness arising from any contracts with the United States prior, in point of time, to the issue of bonds or certificates of indebtedness herein provided for, shall be deemed a prior lien.

**History:** Laws 1921, ch. 39, § 22; C.S. 1929, § 73-176; 1941 Comp., § 77-2319; 1953 Comp., § 75-24-19.

**Cross-references.** - For definition of "irrigation district," see 73-11-54 NMSA 1978.

**Compiler's note.** - For the compilation of "Chapter 20, Session Laws of 1919," see note, catchlined "Meaning of 'this act,'" to 73-11-1 NMSA 1978.

"This chapter" and "this act" refer to Laws 1921, ch. 39, compiled as set out in note catchlined "Meaning of 'this chapter,'" in notes to 73-11-16 NMSA 1978. See also 73-11-54 NMSA 1978 and notes thereto.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 67.

94 C.J.S. Waters § 322.

### **73-11-20. [Contract with United States for local improvement work.]**

Any irrigation district may contract with the United States for local improvement work, and for such purpose may form local improvement districts as herein provided.

Authorization of certificates of indebtedness or of contract with the United States for local improvements may be confirmed in the same manner as in Sections 53 to 57 [73-11-6 to 73-11-10 NMSA 1978], inclusive, of Chapter 20, Session Laws of 1919.

**History:** Laws 1921, ch. 39, § 24; C.S. 1929, § 73-178; 1941 Comp., § 77-2320; 1953 Comp., § 75-24-20.

**Cross-references.** - As to modification of contract with the United States, see 73-11-11 NMSA 1978.

As to the definition of "irrigation district," see 73-11-54 NMSA 1978.

### **73-11-21. [Electric power plants; acquisition, construction and operation.]**

Any irrigation district heretofore organized or hereafter to be organized under Chapter 20, Session Laws of New Mexico 1919, or any act supplementary thereto or amendatory thereof, may provide for the purchase, acquisition, construction, operation, lease and control of plants for the generation, distribution, sale and lease of electrical energy, including sale to municipalities, corporations, public utility districts or individuals, of electrical power so generated within or without the district; and any such district may use, incidentally in the generation of power, water heretofore appropriated for irrigation purposes by or on behalf of such district or any other district or districts cooperating in the construction, operation and maintenance of irrigation projects or power plants, or both; and subject to the conditions in this section contained, may make special appropriations of water for power purposes, as now authorized by law; provided, however, that any use of water for generating such electrical power or energy at any given time of the year, which use is in excess of the water already appropriated for irrigation purposes by such district, or any other agency in its behalf, at said period of the year, shall be subject to all prior existing appropriations; and the officers, agents and employees of such district shall have the same power, duties and liabilities respecting such power and the construction, repair, maintenance, management and control thereof as they now have, or may hereafter have respecting such irrigation and drainage works. Chapter 20, Session Laws of the state of New Mexico, 1919, shall be so construed, applied and enforced as to apply to such power as well as to such irrigation and drainage works. The board of directors of any irrigation district organized under and by virtue of said act, and all its officers, agents and employees shall do all necessary and proper acts for the construction, repair, maintenance and management of such electrical power works.

**History:** Laws 1921, ch. 39, § 25; C.S. 1929, § 73-179; 1941 Comp., § 77-2321; 1953 Comp., § 75-24-21.

**Cross-references.** - For the definition of "irrigation district," see 73-11-54 NMSA 1978.

**Compiler's note.** - "Chapter 20, Session Laws of New Mexico" is compiled as set out in note, catchlined "Meaning of 'this act,'" to 73-11-1 NMSA 1978.

The reference to irrigation districts organized under Laws 1919, ch. 20, or acts supplementary or amendatory thereto, presumably would refer to an irrigation district organized under the provisions of 73-10-1 to 73-10-47, 73-11-1 to 73-11-55 NMSA 1978.

### **73-11-22. [Bonds for electric power plants.]**

In case funds are not otherwise available, any irrigation district organized under the aforesaid act may issue bonds for such purpose, and all of the provisions of the aforesaid act or acts amendatory thereof or supplemental thereto, relating to the issuance of bonds for irrigation purposes, insofar as the same are applicable and not inconsistent with the law, shall apply.

**History:** Laws 1921, ch. 39, § 26; C.S. 1929, § 73-180; 1941 Comp., § 77-2322; 1953 Comp., § 75-24-22.

**Cross-references.** - For definition of "irrigation district," see 73-11-54 NMSA 1978.

**Compiler's note.** - "Aforesaid act or acts amendatory thereof or supplemental thereto" refers to Laws 1919, ch. 20, as amended or supplemented, compiled as 73-10-1 to 73-10-47, 73-11-1 to 73-11-55 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 67.

94 C.J.S. Waters § 322.

### **73-11-23. [Election for issuance of bonds; notice; ballots; sale of bonds.]**

The board of directors of any such irrigation district may estimate and determine the amount of money necessary to be raised, or the amount of indebtedness necessary to be assumed for such purpose or purposes, and may include in such amounts a sum sufficient to pay the first four years' interest on such indebtedness, and the said board, deeming it expedient to issue bonds to provide such funds or provide for such indebtedness, shall forthwith call a special election, at which election shall be submitted to the electorate of such district, possessing the qualifications required by law, the question whether or not the bonds of said district for such purposes as aforesaid shall be issued in the amount so determined. A notice of such election must be given by posting notices in three public places in each election precinct in said district for at least twenty (20) days, and also by publication of such notice in some newspaper of general circulation published in each county wherein there is situate any lands within the district,

once each week for at least four consecutive weeks; such notice shall specify the time of holding the election, the amount of bonds proposed to be issued, the purpose thereof, and said election must be held, and the result thereof determined and declared in all respects as nearly as possible, in conformity with the provisions of this and said Chapter 20, Session Laws of 1919, and acts amendatory and supplementary thereto and hereof; provided, that no informalities in conducting such election shall invalidate the same if the election shall be fairly conducted. At such election the ballots shall contain the words "Bonds - Yes," and "Bonds - No," or words equivalent thereto. If such election shall carry in conformity with the provisions of this, and said act, the board of directors shall immediately cause said bonds for such amounts to be issued, and the same may be sold, placed or disposed of at not less than ninety-five per centum of their par value, according, as is now provided in said Chapter 20, Session Laws of 1919 of New Mexico, for the sale and disposal of bonds for irrigation and incidental purposes.

**History:** Laws 1921, ch. 39, § 27; C.S. 1929, § 73-181; 1941 Comp., § 77-2323; 1953 Comp., § 75-24-23.

**Cross-references.** - For the qualifications of electors, see 73-10-6 NMSA 1978.

For the sale of bonds, see 73-11-2 NMSA 1978.

For the definitions of "irrigation district" and "board of directors," see 73-11-54 NMSA 1978.

As to notice by publication, see 14-11-1 NMSA 1978 et seq.

**Compiler's note.** - For Laws 1919, ch. 20, and acts amending and supplementing same, see 73-10-1 to 73-10-47, 73-11-1 to 73-11-55 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 67.

94 C.J.S. Waters § 322.

### **73-11-24. [Term of bonds; interest; redemption; earnings of power plant; sinking fund.]**

Said board of directors, within the limitations herein specified, shall have discretion as to the terms, conditions, interest rate and manner of providing for the refunding of said bonds; such bonds shall run for a period not less than twenty years nor more than forty years, and shall bear interest at not to exceed six percent per annum, which interest shall be payable the first day of October and April of each year. The board, in issuing such bonds, shall have the power to provide for the redemption of such bonds serially, or before maturity by lot, at not more than one hundred and five per centum of par value and accrued interest. Such bonds shall be issued subject to all liens created and existing by reason of bonds previously issued or liens created by any contract with the United States made prior thereto. The earnings of such power plants, after the payment

of operating expenses, shall be kept intact for the purposes of paying the interest on said bonds, and with the beginning of the eleventh complete fiscal year after the issuance of said bonds, or sooner if the board so determine, the said board of directors of the said irrigation district shall, for the purpose of retiring such issue of bonds, make and provide suitable sinking funds, which sinking fund shall not be less than one per centum of the total issue of bonds, set aside annually, and shall be invested in the bonds of the district, or such securities as are approved for the investment of state school funds, in such manner and at such prices, and upon such terms as it, the said board of directors, may deem expedient.

**History:** Laws 1921, ch. 39, § 28; C.S. 1929, § 73-182; 1941 Comp., § 77-2324; 1953 Comp., § 75-24-24.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 67.

94 C.J.S. Waters § 329.

### **73-11-25. [Security for payment of bonds; earnings of plant insufficient; assessment upon lands.]**

That the net earnings of such power plant, and such plant and all property and property rights connected or used therewith, except property the title to which is vested in the United States pursuant to the act of congress of June 17, 1902 (32 Stat. 388) and acts amendatory thereof or supplementary thereto, shall be and remain as security for the payment of said bonds and the interest thereon; that in the event the net earnings from said power plant are not sufficient to pay said interest and provide for the refunding of said bonds, as hereinbefore provided, then the board of directors of said district shall, by levying annual assessments upon the lands of said district, raise the required funds, and all the real property in the district shall be made and remain liable to be assessed for such payments.

**History:** Laws 1921, ch. 39, § 29; C.S. 1929, § 73-183; 1941 Comp., § 77-2325; 1953 Comp., § 75-24-25.

**Cross-references.** - For the definitions of "district" and "board of directors," see 73-11-54 NMSA 1978.

**Compiler's note.** - For the Act of Congress of June 17, 1902 and acts amending and supplementing said act, see 43 U.S.C. § 371 et seq.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 68.

94 C.J.S. Waters § 326.



### **73-11-26. [Proceeding to determine validity of power plant bonds; decision res judicata.]**

The board of directors shall, within sixty days after the adoption of a resolution finding and declaring that the bond election has been voted upon favorably by the electorate of the district, commence special proceedings in the district court in and by which the proceedings of the said board, and of the said district, providing for and authorizing the issue and sale of said bonds of said district, whether said bonds or any of them have or have not been sold or disposed of, shall be judicially examined, approved and confirmed according to the procedure provided in Sections 53 to 57 [73-11-6 to 73-11-10 NMSA 1978], inclusive, of Chapter 20, Session Laws of 1919 of New Mexico; and the final decree in such proceedings shall be res judicate [judicata] of all matters and things which may arise as to the legality and regularity of such issue of bonds and the right to issue same.

**History:** Laws 1921, ch. 39, § 30; C.S. 1929, § 73-184; 1941 Comp., § 77-2326; 1953 Comp., § 75-24-26.

**Cross-references.** - For definitions of "district" and "board of directors," see 73-11-54 NMSA 1978.

### **73-11-27. Borrowing money; limitation on indebtedness.**

A. To secure money for the operation, maintenance, improvement or betterment of the works of the district, or in case of emergency, the board of directors shall have the power to borrow money, with interest not exceeding the rate permitted under Section 56-8-11 NMSA 1978, upon such terms and conditions as deemed for the best interest of the district, not to exceed, however, in the aggregate, ten dollars (\$10.00) per acre upon all district lands.

B. The board of directors, or other officers of the district, shall have no power to incur any debt or liability whatever, either by issuing bonds or otherwise, except as expressly provided by law, and any debt or liability incurred in excess of such express provision shall be and remain absolutely void.

C. Lease agreements and lease purchase agreements are declared not to constitute the creation of debt.

**History:** Laws 1919, ch. 20, § 31; 1921, ch. 39, § 6; C.S. 1929, § 73-132; 1941 Comp., § 77-2327; 1953 Comp., § 75-24-27; Laws 1981, ch. 335, § 1.

**Cross-references.** - For definitions of "district" and "board of directors," see 73-11-54 NMSA 1978.

As to borrowing and repayment, see 73-13-8, 73-13-9 NMSA 1978.

**The 1981 amendment** added the catchline, designated the formerly undesignated paragraphs as Subsection A and B, substituted "the rate permitted under Section 56-8-11 NMSA 1978" for "eight percent" and "ten dollars (\$10.00)" for "one dollar (\$1.00)" and deleted "the" following "all" in Subsection A and added Subsection C.

**Effective dates.** - Laws 1981, ch. 335, contains no effective date provision, but was enacted at the session which adjourned on March 21, 1981. See N.M. Const., art. IV, § 23.

**Compiler's note.** - Section 56-8-11 NMSA 1978, referred to in Subsection A, was repealed in 1981.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 62.

94 C.J.S. Waters § 321.

### **73-11-28. [Expenses of district; charge for water; levy of assessments.]**

For the purpose of defraying the expenses of the organization of the district, and the care, operation, management, repair and improvement of all canals, ditches, reservoirs and works, including salaries of officers and employees, or for payment of charges to the United States for the temporary rental of water, the board may either fix rates of tolls and charges and collect the same of all persons using said canal and water for irrigation, or other purposes, and in addition thereto may provide, in whole or in part, for the payment of such expenditures by levy of assessments therefor, as heretofore provided, or by both tolls and assessments; provided, that if any contract be made with the United States the charge for operation and maintenance of the district and for temporary rental of water may be fixed in accordance with the federal laws, notices, rules and regulations and the contract with the district.

**History:** Laws 1919, ch. 20, § 28; C.S. 1929, § 73-129; 1941 Comp., § 77-2328; 1953 Comp., § 75-24-28.

**Powers of board broadly construed.** - In construing this section in view of the large discretionary powers conferred upon the board and without which the corporation could not successfully operate, we are not bound to that strictness which applies when determining the powers of municipal corporations. *Stahmann v. Elephant Butte Irrigation Dist.*, 61 N.M. 68, 294 P.2d 636 (1956).

**As to fiscal policy.** - In view of the broad powers conferred on the board in handling the fiscal policy of the district, the district court is without authority to grant refunds for allegedly unlawful assessments. *Stahmann v. Elephant Butte Irrigation Dist.*, 61 N.M. 68, 294 P.2d 636 (1956).

**Declaration of reasons for levy not required.** - It is not essential to validity of assessments levied for excess waters used that any specific reason therefor, such as cost of furnishing same, benefits conferred or conservation of water, be declared the purpose of the levy. *Stahmann v. Elephant Butte Irrigation Dist.*, 61 N.M. 68, 294 P.2d 636 (1956).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation §§ 70 to 72.

94 C.J.S. Waters § 334.

**73-11-29. Application for water; budget meeting of directors; notice of meeting; tax assessments and water charges; exemptions from tax; appeal; succession to rights of water users' associations.**

Every person desiring to receive water during the course of the year, at the time he applies for water shall furnish the secretary of the board of directors of the said irrigation district, a statement in writing of the number of acres intended by him to be irrigated, and a statement, as near as may be, of the crops planted or intended to be planted.

The board of directors, on a date to be fixed by a standing order of the board, which shall not be later than July first, of each year, shall estimate and determine the amount of funds required to meet the obligations and needs of the district for the ensuing year, together with such additional amount as may be necessary to meet any deficiency in the payment of expenses or obligations previously incurred by the district and remaining unpaid, for such of the following purposes as may be required by the activities of the district, to wit:

Item One. the payment of the interest upon bonds of the district and any instalment on the principal thereof;

Item Two. any payment to become due under any contract with the United States, to secure which bonds have not been deposited with the United States, whether for the cost of irrigation or drainage system or for the operation and maintenance thereof, or both; or if the lands of the district have been divided by the secretary of the interior into units, not necessarily contiguous, for repayment purposes, the board shall prepare separate estimates for each such unit;

Item Three. the portion of the expenses of operation and maintenance of the irrigation and drainage systems to be collected by tax assessment and levy, including funds required to meet obligations as provided in Section 5 (Section 73-11-49 NMSA 1978) hereof. This portion shall not be less than one-half, of that portion required for such operation and maintenance costs for the ensuing year, and shall be determined by the board of directors of said district from year to year, and the said portion of said operation and maintenance expenses so collected by tax assessment and levy, shall be collected from all lands as may be exempted from taxation by the terms of this act, and the same, when collected, shall be applied to the cost of operating and maintaining of

the irrigation and drainage systems. The remainder of said estimated amount shall be paid by the parties actually using said systems and water for irrigation or other purposes, in accordance with the terms of their contract for water;

Item Four. current and miscellaneous expense fund requirements, other than as above specified, and necessary to defray the expenses of maintaining the organization of the district and carrying out the purposes of this act, shall be determined annually, at a per acre rate, by the board of directors. The amounts to be collected under Item Four may, at the option of the board of directors of said district, be collected as tolls and charges in the manner provided in Section 28, Chapter 20, of the Laws of 1919 [73-11-28 NMSA 1978].

Lands which, in the opinion of the board of directors, are unfit for cultivation by irrigation, on account of seepage, alkali or physical condition and location of the land, or other conditions, or lands to which the existing distributing system or extensions thereof cannot furnish water at such points of delivery as the board may consider reasonable, shall not be taxed for Item Three; (and provided, that tax shall not be assessed for Item Three against land involved in the boundary suit now pending in the United States supreme court between the state of Texas and the state of New Mexico until the final determination of said suit, unless such land is in cultivation and using water for irrigation;) and lands shall not be taxed for Items One and Two for the periods, and to the extent that, on account of seepage or other conditions, in the opinion of the directors or the secretary of the interior, as may be provided by contract with the United States, or with district bondholders, such lands are not fit for cultivation by irrigation on account of such conditions; but nothing herein contained shall be construed to relieve the district from making provision to raise the amount required to make full payment to private creditors or to the United States for the full cost of construction or of operation and maintenance, irrespective of the exemption of any lands from taxation, unless expressly provided by the assent of the bondholders or other private creditors, or by agreement with the United States, as the case may be; and in determining the amount required for the respective items aforesaid the board shall take into consideration the gross amount of exemption and credits allowable pursuant to entries made by the board upon the assessor's certified list, as in Section 22 (§ 73-11-31 NMSA 1978) of this act provided. Proper entry shall be made by the district officers of all exemptions made and of credits allowed. The amount required to meet the obligations of the district, except the portion thereof collected from tolls and charges, shall be raised by tax assessments, levy and collection, as hereinafter provided, to be extended pro rata per acre over all lands in the said district, or, in appropriate cases, under Item Two above, against all land in each respective unit of the district. When the board shall assemble for the purposes hereinabove prescribed it shall consider, determine and designate the lands within said district which shall be subjected to the assessments and levies hereinbefore mentioned.

Notice of the time, place and purpose of such meeting shall be given by publication in English and Spanish in some newspaper or newspapers of general circulation published within the county wherein the headquarters of the district are located, and shall inform all the persons interested that at the time and place specified an opportunity will be

afforded to appear before the board and show cause why any particular tract of land, or any portion thereof, should be exempted from taxation under the provisions of this act. Such notice shall be published once a week for four (4) consecutive weeks, and the last publication shall be not less than three (3) days prior to the date fixed for such meeting. Proof of such publication shall be furnished by the publisher and shall be filed in the archives of the secretary of the district.

At such meeting said board of directors, subject to such reasonable regulations as it may prescribe, shall afford to all persons desiring to do so, an opportunity to make such showing as they may deem proper as to why any given tract of land or portion thereof shall be exempted from taxation as aforesaid. In each case the board may cause to be made such investigation as it may deem proper, after which the board shall determine the question submitted, as right and justice may require, and shall cause its decision to be duly entered upon its minutes, and a copy thereof to be sent by registered mail to all parties who have made claim of exemption of land from taxation, as aforesaid.

Any person feeling himself aggrieved by such decision, as aforesaid, may appeal therefrom to the district court of the county wherein the decision is rendered at any time within thirty (30) days from and after the rendition and mailing as aforesaid of said copy of the decision complained of, by serving upon the secretary of the district written notice of such action and filing a copy thereof, together with the copy of the decision complained of, in the office of the clerk of the court to which the appeal is taken. Upon being served with such notice the secretary of the district shall forthwith transmit to the clerk of such court a certified transcript of all the papers and records pertaining to the case which may have been filed in connection therewith. Upon such appeal the case shall be tried in such district court, subject to the law, rules and practice governing such court as upon writ of certiorari.

The filing of said appeal in said district court shall not stay the proceedings relating to the collection of said tax, but in the event that appellant has paid said tax before the rendition of final judgment in said suit, and judgment is rendered in said suit in favor of the appellant, appellant shall have refunded to him such sum of money as shall be determined by the judgment of the court, together with legal interest thereon and costs of court. But if appellant fails to recover in said suit, appellant shall pay all costs of court. In case the assets and liabilities of any water users' association are taken over, as in Section 1 (Section 73-10-1 NMSA 1978) of this act provided, the board of directors shall allow to the owner of lands, on account of which payment shall have been made to said association, all proper and equitable credits to which the said owner may be entitled, according to the books and records of said association, which shall be prima facie evidence of the credits of its various members, and such credits shall be taken into consideration by the board of directors in determining the amount of money required to meet obligations, maintenance, operating and current expenses of the district for the ensuing year, and the board of directors shall certify to the county commissioners the amount of such credits, and levy hereinafter provided for shall be made accordingly.

The term "asset" as used herein includes any and all grants, rights, powers, privileges and appropriations heretofore conferred by any law, general or special, and upon any water users' association and upon taking over the assets of any water users' association as hereinbefore provided, by any irrigation district. Said district shall succeed to all such grants, rights, powers, privileges and appropriations, and the officers of said irrigation district are authorized and empowered to perform such duties and execute such instruments in regard thereto as said law required of the officers of said water users' association.

**History:** Laws 1919, ch. 20, § 21; 1921, ch. 39, § 3; C.S. 1929, § 73-122; 1941 Comp., § 77-2329; Laws 1953, ch. 23, § 1; 1953 Comp., § 75-24-29.

**Cross-references.** - For repayment of loans, see 73-13-9 NMSA 1978.

As to notice by publication, see 14-11-1 NMSA 1978 et seq.

As to appeals to district court, see 39-3-1 and 39-3-2 NMSA 1978.

**Compiler's note.** - The final decree in the case of *New Mexico v. Texas* was rendered April 9, 1928, 276 U.S. 558, 48 S. Ct. 344, 72 L. Ed. 699 (1928), and reports of the boundary commissioner approved March 23, 1931, 283 U.S. 788, 51 S. Ct. 357, 75 L. Ed. 1415 (1931). Therefore, that portion of this section in the seventh paragraph referring to that case was placed in parentheses by the compilers of the 1941 Code and the parentheses were retained by Laws 1953, ch. 23.

**Meaning of "this act".** - "This act" properly refers to Laws 1953, ch. 23, § 1, which is compiled as 73-11-29 NMSA 1978. However, it is probable that the reference includes Laws 1919, ch. 20, the compilation of which is set out in note to 73-11-1 NMSA 1978. See also 73-11-54 NMSA 1978.

**Board conferred with broad discretionary powers.** - In construing this section, in view of the large discretionary powers conferred upon the board and without which the corporation could not successfully operate, we are not bound to that strictness which applies when determining the powers of municipal corporations. *Stahmann v. Elephant Butte Irrigation Dist.*, 61 N.M. 68, 294 P.2d 636 (1956).

**As to fiscal policy.** - In view of the broad powers conferred on the board in handling the fiscal policy of the district, the district court is without authority to grant refunds for allegedly unlawful assessments. *Stahmann v. Elephant Butte Irrigation Dist.*, 61 N.M. 68, 294 P.2d 636 (1956).

**Directors may budget based on costs estimated to accrue within year.** - Directors of irrigation district may properly include in its estimates and the resulting tax levy the cost of operation and maintenance for the ensuing year, though demand for payment thereof might not be made during the ensuing year. *Sperry v. Elephant Butte Irrigation Dist.*, 33 N.M. 482, 270 P. 889 (1928).

**Research, water protection costs not chargeable to operation and maintenance.** - Irrigation district may not include in item three of this section for "operation and maintenance" estimated cost of research and investigation with a view to development of hydroelectric power, nor cost of protecting its water supply and rights, which estimates for cost of research and investigation and for cost of protecting water supply and rights belong to item four of this section. *Sperry v. Elephant Butte Irrigation Dist.*, 33 N.M. 482, 270 P. 889 (1928).

**Declaration of reason for assessment not required.** - It was not essential to validity of assessments levied for excess waters used that any specific reason therefor, such as cost of furnishing same, benefits conferred or conservation of water, be declared the purpose of the levy. *Stahmann v. Elephant Butte Irrigation Dist.*, 61 N.M. 68, 294 P.2d 636 (1956).

**Boundary establishment not bar to tax exemption.** - The establishment of boundaries of an irrigation district by order of county commissioners, construed as a benefit to the district, do not preclude exemption of the land from taxation according to exemption provisions. *Atchison, T. & S.F. Ry. v. Elephant Butte Irrigation Dist.*, 110 F.2d 767 (10th Cir. 1940).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation §§ 70 to 72.

94 C.J.S. Waters § 334.

### **73-11-30. [Charges for water; payment in advance; unpaid charges become part of assessment; assessment of omitted property.]**

Whenever any tolls and charges for the use of water have been fixed by the board of directors it shall be lawful to make the same payable in advance, and in case any such tolls and charges remain unpaid, or any balances for water delivered by measurement are unpaid at the time specified for levying the annual assessment, the amount due for such tolls and charges or balances may be added to, and become a part of the assessment levied upon the land upon which the water, for which such tolls, charges or balances are unpaid, was used. Any land which may have escaped assessment for any year or years shall, in addition to the assessment for the then current year, be assessed for such year or years with the same effect and with the same penalties as are provided for the current year, and any property delinquent for any year may be directly assessed during the current year for any expenses caused the district on account of such delinquency.

In the event any land within said district subject to assessment for any of the purposes of the district has not been assessed by the county assessor, or does not appear upon the county assessment roll as prepared for the county treasurer and collector, the land submitted belonging to any person, copartnership, association, corporation or municipality, shall be forthwith assessed by the county treasurer upon an order of the board of directors of the district (approved by the board of county commissioners), and

as so ordered a description of the property so omitted shall be written on the roll and the proper assessment levied.

**History:** Laws 1921, ch. 39, § 11; C.S. 1929, § 73-165; 1941 Comp., § 77-2330; 1953 Comp., § 75-24-30.

**Cross-references.** - For definition of "district" and "board," see 73-11-54 NMSA 1978.

As to assessments in districts which collect their own taxes, see 73-13-28 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation §§ 52, 70.

94 C.J.S. Waters §§ 315, 332.

### **73-11-31. [Duties of county assessor; assessment list furnished county commissioners.]**

It shall be the duty of the county assessor of any county embracing the whole or any part of an irrigation district to enter upon his tax roll each year, the name of the owner, description and area of each tract of land in said district, in said county, subject to taxation under this act, and to deliver a certified list thereof to the county commissioners of said county and to transmit a like certified list to the secretary of said irrigation district on or before July 1st of each year. If the board of directors has exempted any lands from taxation, in whole or in part, or if the secretary of the interior has taken similar action pursuant to contract with the district, or if any tract is entitled to credit upon assessments by reason of payments to any water users' association also, under the provisions of Section 21 [73-11-29 NMSA 1978] of said Chapter 20, or any amendment thereof, or if there be drainage assessments judiciously confirmed as in this act provided or awards for damages due to drainage or other work pursuant to Section 20 [73-11-12 NMSA 1978] of said Chapter 20, the secretary of the district shall note such exemptions, credits and drainage assessments and awards for each tract upon the certified list furnished by the assessor as in this section provided, and the said list, together with the items prescribed in said Section 21 [73-11-29 NMSA 1978], or any amendment thereof, shall be delivered to the county commissioners of the county in which the office of the said irrigation district is located within sixty days from and after the receipt of such certified list by the secretary of such district.

**History:** Laws 1919, ch. 20, § 22; 1921, ch. 39, § 4; C.S. 1929, § 73-123; 1941 Comp., § 77-2331; 1953 Comp., § 75-24-31.

**Cross-references.** - For definitions of "irrigation district" and "board of directors," see 73-11-54 NMSA 1978.

As to tax exemptions, see 73-11-29 NMSA 1978.

As to districts that collect their own taxes, see 73-13-24 to 73-13-37 NMSA 1978.



**Meaning of "this act".** - See 73-11-16 NMSA 1978 and note thereto catchlined "Meaning of 'this chapter.'" See also 73-11-54 NMSA 1978 and notes thereto.

### **73-11-32. [Levy of taxes; duty of county commissioners when district in more than one county.]**

It shall be the duty of the county commissioners of the county in which the office of the district is located, acting under the provisions of this act, upon the receipt of the certificate of the board of directors, certifying the amounts to be raised for the different purposes hereinbefore mentioned, and upon receipt of the assessor's certified list of the tracts of lands in the district upon which the secretary of the district has entered the notations hereinbefore referred to, to fix the respective rates of levy per acre necessary to provide the amounts of money required for said purposes as specified in said certificate. The rate of levy necessary to raise the required amount of money for said district shall be increased 15 percent to cover delinquencies. And if there be any other county or counties wherein are situate lands within the district to be taxed hereunder the said county commissioners shall certify to the county commissioners of such other county or counties, the said tax levies and the lists of land in such other county or counties subject to taxation therefor. The respective boards of county commissioners of such other counties shall furnish to the respective county assessors of such other counties such tax levies and lists of lands, and such county assessors shall thereupon cause extension to be made upon their assessment rolls of the amounts due from each tract of land for each of said purposes in separate columns and also the total taxes so levied for all of the purposes of said irrigation district, and also the total amount due from each tract for all of the purposes of said irrigation district.

For the purposes of said district, it shall be the duty of the county commissioners in each county in which any irrigation district is located, in whole or in part, at the time of making the levy for county purposes, to make a levy as above provided upon all lands within their respective counties, subject to taxation under this act, and to deliver a notice thereof to the county assessor, which notice shall be accompanied [accompanied] by a certified list of said tracts of land within said district with notations made thereon as aforesaid.

**History:** Laws 1919, ch. 20, § 23; C.S. 1929, § 73-124; 1941 Comp., § 77-2332; 1953 Comp., § 75-24-32.

**Cross-references.** - As to special assessments to repay loans, see 73-13-16 NMSA 1978.

For districts which collect their own taxes, see 73-13-24 to 73-13-37 NMSA 1978.

As to levy of taxes, see 7-35-1 to 7-35-10, 7-36-1 to 7-36-33, 7-37-1 to 7-37-8, 7-38-1 to 7-38-93 NMSA 1978.

**Meaning of "this act".** - See same catchline in notes to 73-11-1 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation §§ 70, 71.

94 C.J.S. Waters § 334.

**73-11-33. [County treasurers ex-officio district treasurers; duties; funds; report to board of directors; clerical assistance.]**

The county treasurer of the county in which is located the office of any irrigation district, shall be and is hereby constituted ex-officio district treasurer of said district, and said county treasurer shall be liable upon his official bond, and to indictment and criminal prosecution for malfeasance, misfeasance or failure to perform any duty herein prescribed as county treasurer or district treasurer, as is provided by law in other cases as county treasurer. Said treasurer shall receive and receipt for all monies belonging to said district. It shall be the duty of the county treasurer in each county in which any irrigation district is located, in whole or in part, to collect and receipt for all taxes levied as herein provided, in the same manner and at the same time as is required in the receipt for, and collection of, taxes upon real estate for county purposes; provided, that such county treasurer shall receive in payment of the district bond fund taxes above mentioned for the year in which said taxes were levied, interest coupons or bonds issued by said irrigation districts maturing within said year, the same as so much lawful money of the United States, if such interest coupons do not exceed the amount of taxes for district bond funds which the person tendering the same owes. The county treasurer of each county comprising a portion only of any irrigation district, excepting the county treasurer of the county in which the office of said district is located, on the first Monday of every month, shall remit to the district treasurer aforesaid, all monies and coupons theretofore collected or received by him on account of said district. Every county treasurer shall keep a district bond fund account, a district contract fund account, a district operation and maintenance fund account and a district general fund account, and the proceeds of the taxes collected shall be covered into the respective funds. The bond fund shall consist of all monies collected for principal and interest of the bonds issued by the said district; the district contract fund shall consist of all monies received from taxes levied to provide for payments to the United States; the operation and maintenance fund shall consist of all monies received on account of the operation and maintenance of irrigation and drainage system, except monies to be paid to the United States pursuant to any contract; and the general fund shall consist of all monies received on account of current and miscellaneous expenses, not to be covered into any of the foregoing funds.

The district treasurer aforesaid shall pay out of said bond fund when due, the interest and principal of said bonds of said district, at the time and place specified in said bonds. The district treasurer shall pay out of said contract fund, all payments as they become due to the United States under contract at the time and in the manner provided in said contract. The district treasurer shall pay out of said operation and maintenance fund, only upon warrants signed by the president and countersigned by the secretary of the district, directed to such party or parties as are due payments for operating and maintaining said irrigation and drainage system. The district treasurer shall pay out of

said general fund only upon order signed by the president and countersigned by the secretary of said district.

The district treasurer, on the fifteenth day of each month, shall report to the board of directors of said district the amount of money in his hands to the credit of the respective funds above provided. All such district taxes collected and paid to the county treasurers as aforesaid shall be received by said treasurers in their official capacity and they shall respectively be responsible for the safekeeping, disbursement and payment thereof the same as for other monies collected by them as such treasurers. Provided, that said county treasurers shall not receive any commission for the collection of said district taxes but shall receive for clerical assistance the sum of ten (\$10.00) dollars monthly for each 25,000 acres of land or major fraction thereof situate in his county, subject to taxation herein for district purposes.

**History:** Laws 1919, ch. 20, § 24; C.S. 1929, § 73-125; 1941 Comp., § 77-2333; 1953 Comp., § 75-24-33.

**Cross-references.** - As to districts which collect their own taxes, see 73-13-24 to 73-13-37 NMSA 1978.

### **73-11-34. [Errors or irregularities in tax; validity of assessment and levy; sale for taxes; validity.]**

Any irregularity or error in the description of land assessed shall not be deemed jurisdictional or render the assessment void, if the land assessed can be identified. All matters and things done by the board of directors as by law provided are prima facie evidence that all the requirements of the law in relation thereto have been complied with, and that the same are liens against the property to the same extent as other taxes lawfully levied. When land is sold under the revenue laws of this state for irrigation assessments correctly imposed as the property of a particular person, no misnomer of the owner, or supposed owner, or other mistake relating to the ownership thereof, affects the sale or renders it void or voidable. Such sale or procedure relating thereto shall not be attacked or questioned for any reason, or on any grounds except that the land assessed was not subject to such assessment, or that such assessment had been paid at the time of the sale.

**History:** Laws 1921, ch. 39, § 13; C.S. 1929, § 73-167; 1941 Comp., § 77-2334; 1953 Comp., § 75-24-34.

**Cross-references.** - As to permissible objections subsequent to tax deed issuance, see 73-11-44 NMSA 1978.

As to definition of "board of directors," see 73-11-54 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation §§ 70 to 72.

94 C.J.S. Waters § 332.

### **73-11-35. [Bids by district at tax sale; district to pay cash.]**

The district may appear as a bidder at the sale of any lands for delinquent district or other taxes, and may purchase and take title to said lands and dispose of them like any other purchaser. To protect its assessments the district, at a tax sale where there is no other bid for the full amount of the delinquencies, including interest and penalties, may bid and buy in the land; provided, the district shall never bid or pay a greater sum than the total of all taxes against the land, with interest and penalties; and, provided, further, when purchasing any land at any tax sale the district shall pay cash for all taxes, interest and penalties, including the district taxes, like other purchasers, and such expenditures shall be deemed operating expenses of the district, and may be assessed as maintenance charges.

**History:** Laws 1921, ch. 39, § 14; C.S. 1929, § 73-168; 1941 Comp., § 77-2335; 1953 Comp., § 75-24-35.

**Cross-references.** - For operation expenses, see 73-11-29 NMSA 1978.

As to tax sales by district, see 73-11-42 NMSA 1978.

For definition of "district," see 73-11-54 NMSA 1978.

As to district purchases at tax sale, see 73-13-19 to 73-13-23 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 72.

94 C.J.S. Waters § 337.

### **73-11-36. [General tax laws applicable.]**

The revenue laws of this state for the assessment, levying and collection of taxes on real estate for county purposes except as herein modified, shall be applicable for the purposes of this act, including the enforcement of penalties and forfeiture for delinquent taxes.

**History:** Laws 1919, ch. 20, § 25; C.S. 1929, § 73-126; 1941 Comp., § 77-2336; 1953 Comp., § 75-24-36.

**Cross-references.** - As to districts which collect their own taxes, see 73-13-24 to 73-13-37 NMSA 1978.

As to real estate taxation, see 7-35-1 to 7-35-10, 7-36-1 to 7-36-33, 7-37-1 to 7-37-8, 7-38-1 to 7-38-93 NMSA 1978.

**Meaning of "this act".** - See same catchline in notes to 73-11-1 NMSA 1978.

### **73-11-37. [Date for payment of taxes.]**

That the taxes, levies and assessments of any irrigation district, cooperating with the United States under the federal reclamation law, and other federal laws, shall be due and payable as follows: first half December 1st of each year and the second half on June 1st of each year.

**History:** Laws 1931, ch. 91, § 1; 1941 Comp., § 77-2337; 1953 Comp., § 75-24-37.

**Compiler's note.** - For federal reclamation laws, see 43 U.S.C. § 371 et seq.

There is a conflict between this section and 73-13-33 NMSA 1978, which sets January 1 and July 1 as due dates for taxes of irrigation districts cooperating with the United States under federal reclamation laws, which districts collect their own taxes under 73-13-24 to 73-13-37 NMSA 1978.

### **73-11-38. [Delinquent taxes; interest.]**

On January 1st of each year if the taxes, levies and assessments made the previous year shall not have been paid, one-half thereof shall become delinquent and on July 1st following if not paid, the remaining one-half of said taxes, assessments and levies shall become delinquent and such taxes, assessments and levies from the respective dates of delinquency shall bear interest at the rate of one percent per month until paid.

**History:** Laws 1931, ch. 91, § 2; 1941 Comp., § 77-2338; 1953 Comp., § 75-24-38.

**Compiler's note.** - This section conflicts with 73-13-33 NMSA 1978 as to delinquent dates and interest rates. The latter provides February 1 and August 1 as delinquent dates, after which interest of one-half percent per month is charged. See also 73-11-39 NMSA 1978, which conflicts with this section as to interest rates chargeable to delinquent assessments by providing for rate of one-half percent per month.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 72.

### **73-11-39. [Delinquent assessments; interest.]**

That on assessments made in irrigation districts, organized to cooperate with the United States government under the federal reclamation laws and other federal laws, after any such assessment shall become delinquent, the same shall bear interest at the rate of one-half (1/2%) percent per month until paid.

**History:** Laws 1937, ch. 76, § 1; 1953 Comp., § 75-24-38.1.

**Federal reclamation laws.** - For federal reclamation laws, see 43 U.S.C. § 371 et seq.

As to conflict with 73-11-38 NMSA 1978, see compiler's notes thereto.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 72.

94 C.J.S. Waters § 334.

**73-11-40. [Delinquent tax list in district with assessor-collector; publication.]**

That within six months after first day of July of each year it shall be the duty of the assessor-collector of such irrigation district to prepare and be caused to be published in a newspaper of general circulation in the county or counties where any such irrigation district is located, a list containing the names of owners of all property upon which taxes, assessments and levies of the district have become delinquent, together with the description and the amount of taxes, assessments, levies, penalties and costs due, opposite each name, and in the event taxes, levies and assessments of the district are due and unpaid for any preceding year or years on any piece of property described in said publication, shall include in said publication all the unpaid taxes, levies and assessments due against any piece of property described therein setting forth the years for which the same are due, together with the amount of tax, assessment and levy and the interest, penalties and costs for each year.

That the assessor-collector must append and publish with the delinquent tax list a notice that he will, on a certain day to be specified in said notice, occurring not less than 30 days after the last publication of said notice, offer for sale and sell at public auction, at the front door of the courthouse of the county in which the land therein described shall be located, the real estate described in said notice for the amount of taxes, assessments, levies, penalties, interest and costs thereon. The said delinquent tax list and notice shall be published not less than once each week for the period of four consecutive weeks. The whole of the advertisement shall be contained in each edition of such newspaper and supplement, if such supplement be necessary, provided that the assessor-collector may subsequently advertise in the same manner for the sale of any lands or real estate that may have been omitted, or erroneously advertised or described, in the first advertisements.

**History:** Laws 1931, ch. 91, § 3; 1941 Comp., § 77-2339; 1953 Comp., § 75-24-39.

**Cross-references.** - For notice by publication, see 14-11-1 NMSA 1978 et seq.

As to districts collecting their own taxes, see 73-13-24 to 73-13-37 NMSA 1978.

**Compiler's note.** - An irrigation district is authorized by 73-13-24 NMSA 1978 to collect its own taxes; an assessor-collector is to be appointed to perform this function, 73-13-28 NMSA 1978. "Assessor-collector" is defined by 73-13-25 NMSA 1978 as the assessor-collector of a district that collects its own taxes. Thus, it appears that 73-11-40 to 73-11-

47 NMSA 1978, written in terms of the assessor-collector, apply only to those districts collecting their own taxes under 73-13-24 to 73-13-37 NMSA 1978.

### **73-11-41. [Failure of assessor-collector to publish delinquency list in time; later publication.]**

If by the neglect of the officer, or for any other good cause, real estate cannot be duly advertised and offered for sale within the time prescribed in this act [73-11-37, 73-11-38, 73-11-40 to 73-11-47 NMSA 1978], such advertisement may be made or had at any other time and the officer so advertising may set out in the advertisement the reasons for such delay.

**History:** Laws 1931, ch. 91, § 4; 1941 Comp., § 77-2340; 1953 Comp., § 75-24-40.

**Cross-references.** - As to application of this section, see compiler's note to 73-11-40 NMSA 1978.

### **73-11-42. [Delinquent tax sale by assessor-collector; disposition of surplus; sales to district.]**

The assessor-collector, in person, or by deputy, shall attend at the courthouse in the county on the day specified in the notice of sale of property hereunder, and shall, between the hours of 10 o'clock in the forenoon and four o'clock in the afternoon, offer for sale, separately and in consecutive order, each parcel of property included in the list attached to the order of sale, or so much thereof as may be necessary to realize the amounts due. The same shall be continued from day to day until all the property described in the notice of sale, shall be sold, or until the amounts due shall be paid or realized. In case any property ordered to be sold be in too large tract or tracts to be conveniently sold, then the assessor-collector shall offer the smallest tract in acres for which any one shall bid the amount of tax and penalty, such tract to be as nearly as may be square body beginning at the northeast corner of the whole tract. In case the property sold shall realize more than enough to pay the amount due, the surplus shall be paid over by such assessor-collector, to the owner of such property. Each lot or parcel of property offered for sale shall be struck off to the best bidder for cash; but if there should be no purchaser in good faith, bidding upon the same, the whole amount of the property assessed shall be struck off to the district as the purchaser and the duplicate certificate delivered to the treasurer of the district and filed by him in his office after having the same recorded in the office of the county clerk of said county, and the assessor-collector shall make an entry "sold to the district" on the tax roll opposite the tax and shall be credited with the amount thereon in his settlement.

**History:** Laws 1931, ch. 91, § 5; 1941 Comp., § 77-2341; 1953 Comp., § 75-24-41.

**Cross-references.** - For application of this section, see compiler's note to 73-11-40 NMSA 1978.

**73-11-43. [Failure to pay bid to assessor-collector; resale; certificate of sale; recording; redemption; occupancy during redemption period.]**

If a purchaser does not pay the amount of his bid before ten o'clock of the day succeeding the sale, the property shall be reoffered for sale and the bid of any person refusing to make any such payment shall not be received on the resale of any such property. After receiving the amount for which said real estate shall be sold, the assessor-collector shall execute and deliver to the purchaser thereof a certificate of sale containing a description of the property sold, and stating the name of the person or persons against whom the same was assessed, or that the same was assessed against unknown owners, as the case may be, the amount paid therefor, that it was sold for taxes, the amount and for the year or years for which the taxes were assessed, the amount of interest, penalties and costs, the date of sale, and the consideration or amount so paid therefor at such sale, that the assessor-collector by virtue of the authority vested in him by law, has sold and does convey said real estate to said purchaser, his heirs and assigns, subject to the right of the owner to redeem the same within three years from date of sale by paying to the purchaser, his heirs or assigns, the amount paid therefor at such sale with interest thereon at the rate of one and one-half percent per month from date of sale. Such certificate must be recorded in the office of the county clerk of the county in which such real estate is located in a book to be kept for the purpose of recording such certificates and when so recorded, shall vest in the purchaser, his heirs or assigns, a complete legal title to the real estate described therein, subject however, to redemption as herein provided, and such property shall thereafter, unless redeemed, be assessed in the name of the purchaser, or his assigns, but the former owner shall have the right to redeem the same at any time within three years from the date of sale by paying to the assessor-collector then in office, for the use of the purchaser the amount of purchase money with interest at the rate of one and one-half percent per month from date of such sale, together with any taxes that may have been paid upon such real estate by the purchaser and assignees with interest thereon at the same rate; and such former owner may retain possession of said real estate until redeemed, or until the time of redemption has expired.

The assessor-collector shall keep a book of sale containing the dates of sale, description of the property sold, name of purchaser and amount for which sold. Upon the redemption of any property sold, as herein provided, the assessor-collector shall enter the fact of such redemption upon his book of sales, and shall issue to the person redeeming a certificate of redemption describing the property and giving the date of redemption and amount paid, upon the production of such certificate of redemption the county clerk shall mark the word "redeemed" with the date of redemption and by whom redeemed, on the margin of the page where the record of such certificate of sale is made, and from the date of such redemption when so made, and noted, the certificate of sale shall be deemed canceled and annulled.

**History:** Laws 1931, ch. 91, § 6; 1941 Comp., § 77-2342; 1953 Comp., § 75-24-42.



**Cross-references.** - For application of this section, see compiler's note to 73-11-40 NMSA 1978.

**73-11-44. [Tax deed issued by assessor-collector; form; effect.]**

At any time after the expiration of the term of three years from the date of the tax sale certificate where the property has not been redeemed on demand of the holder of the tax sale certificate, presentation thereof to the assessor-collector, payment of the fee of one dollar [(\$1.00)], the assessor-collector shall execute and deliver to said person a tax deed for said property, said deed shall vest in the grantee, his heirs, successors and assigns, a perfect and complete title, in fee simple, to said premises, free and clear of all liens and encumbrances, except taxes, levies and assessments of the district levied thereon prior, or subsequent to the year for which the same was sold, and county, state and municipal taxes, which deed shall be substantially in the following form:

TAX DEED

No. ....

State of New Mexico  
County of .....

..... district of the State of New Mexico, does hereby grant, bargain, sell and convey unto ....., his heirs and assigns (and successors) forever, the following described property, situate in the County of ....., State of New Mexico, to wit: (description of property).

To have and to hold said property and its appurtenances unto the grantee, his heirs, executors, administrators, successors and assigns forever.

Dated this ..... day of ....., 19.....

.....  
.....

Assessor-Collector of  
the.....  
Irrigation District of New Mexico.

An assessor-collector may include more than one parcel of land in a deed executed and delivered to any person or persons holding more than one certificate of sale, and the assessor-collector shall be entitled to a fee of one dollar [(\$1.00)] to be paid by the grantee, and any tax deed so issued shall estop all parties from raising any objection thereto, except that the

taxes, levies and assessments have been paid or that the real estate was not liable to such tax, levy and assessments.

**History:** Laws 1931, ch. 91, § 7; 1941 Comp., § 77-2343; 1953 Comp., § 75-24-43.

**Cross-references.** - For grounds to attack tax sale, see 73-11-34 NMSA 1978.

For the application of this section, see compiler's note to 73-11-40 NMSA 1978.

### **73-11-45. [Sale of tax sale certificate held by district; duty of assessor-collector.]**

In case any property shall be bid in by the district as provided in Section 5 [73-11-42 NMSA 1978], the duplicate certificate of sale shall be sold by the assessor-collector to any person who shall pay the face value thereof with accrued interest; and if the same cannot be sold at private sale within one year from the date of such certificate, the said certificate shall be sold at public auction to the highest bidder for cash by the assessor-collector, or his successor in office at the time of making sales of property for delinquent taxes, assessments and levies for the succeeding year.

**History:** Laws 1931, ch. 91, § 8; 1941 Comp., § 77-2344; 1953 Comp., § 75-24-44.

**Cross-references.** - For application of this section, see compiler's note under 73-11-40 NMSA 1978.

As to purchase of tax certificate by district, see 73-13-19 to 73-13-23 NMSA 1978.

### **73-11-46. [Assessment in name of purchaser; assignment of certificate.]**

All real estate so sold shall be assessed for the succeeding year in the name of the purchaser, or his assign, if the name of such assignee be known; and it shall be the duty of every such purchaser upon making an assignment of said certificate to cause the same to be noted upon the page of the book in which such certificate is recorded in the office of the county clerk.

**History:** Laws 1931, ch. 91, § 9; 1941 Comp., § 77-2345; 1953 Comp., § 75-24-45.

**Cross-references.** - For application of this section, see compiler's note to 73-11-40 NMSA 1978.

### **73-11-47. [Property of unknown owners; tax sales by district.]**

Whenever any property is listed on the assessment roll of the district, if the property of unknown owners, the same proceedings shall be had as provided for in this act [73-11-37, 73-11-38, 73-11-40 to 73-11-47 NMSA 1978] against the property of known owners.

**History:** Laws 1931, ch. 91, § 10; 1941 Comp., § 77-2346; 1953 Comp., § 75-24-46.

**Cross-references.** - For application of this section, see compiler's note to 73-11-40 NMSA 1978.

### **73-11-48. Suit for collection of assessments and charges.**

A. The board of directors of any irrigation district formed for the purpose of cooperating with the United States government under the federal reclamation laws and other federal laws may bring suit at law for the recovery [recovery] of assessments, tolls and charges which may be due from any person or corporation, or upon any property. If the assessments be a lien upon any real estate, the fact shall be stated in the complaint, together with a description of said real estate. The judgment in such case, if in favor of the district, shall, in addition to other ordinary requisites, contain a description of the real estate, if any, upon which such assessments, tolls and charges are a lien, and shall itself be a lien thereon, and shall contain an order for the sale thereof. The order of sale shall likewise contain a description of such real estate and shall be directed to the sheriff of the county in which such real estate is situated.

B. In lieu of bringing suit for collection of assessment and charges, the board of directors of any irrigation district may elect to declare forfeited the water rights on any land less than two acres within the district for which assessments and charges are delinquent and on which irrigation district water has not been used for a period of three years.

C. When charges or assessments are delinquent for a period in excess of three years and if the board of directors determines to declare forfeited the water rights on the lands within the district for which the charges are delinquent, a notice shall be first given to the owner and [sic] at the address shown by the records of the district, and which notice shall be sent by registered and certified mail and allow the owner thirty days from the date that such notice is received within which time to correct such delinquency by paying the assessments and charges, with accrued interest, and such notice shall further provide that the landowner, within said thirty-day period, may, instead of making payment of the assessments and charges, file a written notice of protest with the board of directors stating why such assessment and charges are not owed. Unless payment is so made or the notice of protest so filed within said period of time, then the board of directors may declare the water rights on such land forfeited. In the event that a protest is filed within said period of time, a hearing shall be held before the board of directors and if such protest is thereafter denied, then the delinquent assessment and charges shall be forthwith paid or the water rights forfeited.

D. Any forfeited water rights will be subject to further appropriation for use on other lands within the district in accordance with rules adopted by the board of directors.

**History:** Laws 1937, ch. 97, § 1; 1941 Comp., § 77-2347; 1953 Comp., § 75-24-47; Laws 1981, ch. 334, § 1.

**Cross-references.** - As to execution of judgments, see 39-4-1 NMSA 1978 et seq.

**The 1981 amendment** added the catchline, designated the formerly undesignated language as Subsection A, deleted "That" at the beginning and substituted "may bring suit at law for the recovery" for "be and hereby is authorized to bring suit at law for the recovery" in the first sentence in Subsection A and added Subsections B to D.

**Effective dates.** - Laws 1981, ch. 334, contains no effective date provision, but was enacted at the session which adjourned on March 21, 1981. See N.M. Const., art. IV, § 23.

### **73-11-49. [Payment of claims; warrants; register of warrants.]**

No claim, except as otherwise provided in Section 24 [73-11-33 NMSA 1978], of said Chapter 20, shall be paid by the district treasurer until the same shall have been allowed by the board, and only upon warrants signed by the president and countersigned by the secretary, which warrants shall state the date authorized by the board and for what purpose; provided, however, warrants to pay current expenses, salaries, labor and material accounts may be drawn by an officer and an employe, designated by standing order of the directors, when such accounts have been contracted and ordered paid by the directors. Provided, also, no warrant shall be issued or obligation incurred unless the district treasurer has sufficient funds on hand to pay such warrant when it is presented for payment. The district treasurer shall keep a register in which he shall enter each warrant presented for payment, showing the date and amount of such warrant, to whom payable, the date of the presentation for payment, the date of payment, and all warrants shall be paid in the order of their presentation for payment to the district treasurer.

**History:** Laws 1919, ch. 20, § 27; 1921, ch. 39, § 5; C.S. 1929, § 73-128; 1941 Comp., § 77-2348; 1953 Comp., § 75-24-48.

**Cross-references.** - For definitions of "district" and "board," see 73-11-54 NMSA 1978.

### **73-11-50. Financial statement of directors.**

A. The board of directors of any such irrigation district, at the first regular meeting of each year, shall render, and immediately thereafter cause to be published a verified statement of the financial condition of the district for the preceding year, together with a statement of expenditures by the United States under any contract the district has entered into with the United States, or other construction contracts, such statement or

statements to show status of administration expenses, operation and maintenance costs and construction costs, in a manner reasonably clear to the general public. Said publications shall be made at least once each week for two weeks in some newspaper published in the county where the office of the district is located, or the said statements may be issued in pamphlet or leaflet form and mailed to the last known address of each qualified elector.

B. The board of directors of any irrigation district organized for the purpose of cooperation with the United States under the federal reclamation law, so long as such district is in continued cooperation with the United States in accordance with the purpose for which it was organized, may satisfy the publication requirements of this subsection in lieu of the requirements imposed by Subsection A of this section in the following manner:

(1) by maintaining on file in the office of the district the same financial information as required to be published by other irrigation districts; and,

(2) making such financial [financial] information available for inspection by any qualified elector of the district; and

(3) providing any qualified elector of the district a copy of such financial information upon request.

**History:** Laws 1921, ch. 39, § 8; C.S. 1929, § 73-162; 1941 Comp., § 77-2349; 1953 Comp., § 75-24-49; Laws 1959, ch. 250, § 1.

**Cross-references.** - For definitions of "irrigation district" and "board of directors," see 73-11-54 NMSA 1978.

For notice by publication, see 14-11-1 NMSA 1978.

**Federal reclamation laws.** - For federal reclamation laws, see 43 U.S.C. § 371 et seq.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 61.

94 C.J.S. Waters § 320.

### **73-11-51. [Violation of duty; liability on bond; removal from office.]**

For any wilful violation of any express duty herein provided for on the part of any officer named in this act, or in Chapter 20, Session Laws of 1919, he shall be liable upon his official bond and be subject to removal from office by proceedings brought in the district court of the county wherein the office of the board of directors of the district is located by any assessment payer of the district.

**History:** Laws 1921, ch. 39, § 12; C.S. 1929, § 73-166; 1941 Comp., § 77-2350; 1953 Comp., § 75-24-50.

**Cross-references.** - For definitions of "district" and "board of directors," see 73-11-54 NMSA 1978.

**Meaning of "this act".** - See 73-11-16 NMSA 1978 and note thereto catchlined, "Meaning of 'this chapter.'" See also 73-11-54 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 61.

94 C.J.S. Waters § 320.

### **73-11-52. ["District" defined; law of 1919.]**

Wherever the word district is used in this act it shall be held to mean and include only the lands described in the official order establishing said district and the official plat thereof on record in the office of the county clerk, as hereinbefore provided in this act, and such lands as may be included in any district in accordance with the provisions of Sections 34 to 43 [73-10-26 to 73-10-35 NMSA 1978] inclusive.

**History:** Laws 1919, ch. 20, § 58; C.S. 1929, § 73-159; 1941 Comp., § 77-2351; 1953 Comp., § 75-24-51.

**Cross-references.** - For the establishment of the district, see 73-10-5 NMSA 1978.

**Meaning of "this act".** - See same catchline in notes to 73-11-1 NMSA 1978.

### **73-11-53. [Construction of law of 1919.]**

This act shall be construed as applying only to districts organized for the purpose of cooperation with the United States under the federal reclamation law or other federal laws as defined in Section one [1] [73-10-1 NMSA 1978] hereof and nothing herein contained shall be so construed as to affect or interfere with the organization, operation or maintenance of any irrigation district organized or to be organized under any other laws of this state. Nor shall this act be so construed as to affect the validity of any district heretofore organized under the laws of this state for the purpose of cooperation with the United States under the federal reclamation law or other federal laws, or its right in or to property or any of its rights or privileges of whatsoever kind or nature; but said districts are hereby made subject to the provisions of this act so far as applicable; nor shall this act be construed to affect, impair or discharge any contract, obligation, lien or charge, for, or upon which such district was or might become liable or chargeable had not this act been passed; nor shall it affect the validity of any bonds which have been issued and sold, or issued but not sold; nor shall it affect any action which may now be pending.

Provided, that any irrigation district heretofore organized, or hereafter to be organized under the provisions of any other laws of this state which may desire to cooperate with the United States under the federal reclamation law or other federal laws, may enter into a contract with the United States providing for such cooperation with the United States, and after such contract shall have been approved by a majority of the qualified electors of said district at an election held as provided under this act, such irrigation district shall thereafter become subject to the provisions of this act.

**History:** Laws 1919, ch. 20, § 59; C.S. 1929, § 73-160; 1941 Comp., § 77-2352; 1953 Comp., § 75-24-52.

**Federal reclamation laws.** - For federal reclamation laws, see 43 U.S.C. § 371 et seq.

**Meaning of "this act".** - See same catchline in notes to 73-11-1 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 97.

94 C.J.S. Waters § 316.

### **73-11-54. [Definitions and construction; law of 1921.]**

Whenever the term "irrigation district" or the word "district" shall appear in this act, it shall mean irrigation district organized under and by virtue of Chapter 20, Session Laws of New Mexico, 1919, or acts supplemental thereto or amendatory thereof; and the words "this act" appearing in the foregoing amendatory sections, may be construed as applying also to said Chapter 20, and the words "board of directors" or the word "directors" anywhere in this act shall mean the board of directors of such an irrigation district; and the following sections herein except the last are to be construed as applying only to irrigation districts so organized.

**History:** Laws 1921, ch. 39, § 7; C.S. 1929, § 73-161; 1941 Comp., § 77-2353; 1953 Comp., § 75-24-53.

**Compiler's note.** - For the "foregoing amendatory sections," see 73-10-6, 73-10-16, 73-11-27, 73-11-29, 73-11-31, 73-11-49 NMSA 1978.

For the "following sections," see 73-10-23, 73-10-45, 73-11-3, 73-11-5, 73-11-13 to 73-11-17, 73-11-19 to 73-11-26, 73-11-30, 73-11-34, 73-11-35, 73-11-50, 73-11-51 NMSA 1978.

The "last" section, referred to herein, is a general repeal section. See Laws 1921, ch. 39, § 31.

See, also, "Meaning of 'this chapter'" note following 73-11-16 NMSA 1978 and "Meaning of 'this act'" note following 73-11-1 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 107.

94 C.J.S. Waters § 336.

### **73-11-55. [Unpaid per-acre construction charges to remain as lien.]**

That whenever any irrigation district in this state, organized for the purpose of cooperating with the United States under the federal reclamation laws and acts amendatory thereof and supplemental thereto, shall have paid in full all construction charges due from such district to the United States, under the construction contract, and there shall remain any lands in the district upon which the per-acre charge for construction under the contract between the United States and the district have not been paid in full, such charges shall continue as a lien against such lands until paid in full. The district is hereby authorized to continue to assess such lands for such unpaid construction charges for a period not to exceed twenty years following the date of final payment of the construction liability of the district to the United States, and to collect the same until they have been paid in full; and the board of directors of said district shall be authorized to set the period of repayment within the twenty-year period specified above. The monies derived from such assessments shall be used by the district for operation, maintenance and betterment of the district's works.

**History:** 1941 Comp., § 77-2516a, enacted by Laws 1951, ch. 26, § 1; 1953 Comp., § 75-24-54.

**Effective dates.** - Laws 1951, ch. 26, contains no effective date provision, but was enacted at a session which adjourned on March 10, 1951. See N.M. Const., art. IV, § 23.

**Compiler's note.** - For federal reclamation laws, see 43 U.S.C. § 371 et seq.

## **ARTICLE 12 ELECTRICAL IRRIGATION DISTRICTS**

### **73-12-1. Majority of the resident freeholders may propose district.**

Whenever a majority of the resident freeholders, owning more than one-half of the lands or the evidence of title to said lands in any arid or semiarid district in the state of New Mexico, desire to provide for the irrigation of the same by pumping water for such irrigation, they may propose the organization of an irrigation district under the provisions of this act [73-12-1 to 73-12-57 NMSA 1978] and when so organized such district shall have the powers conferred or that may hereafter be conferred by law upon such irrigation district.

**History:** Laws 1929, ch. 76, § 1; C.S. 1929, § 73-701; 1941 Comp., § 77-2401; 1953 Comp., § 75-25-1.



**Cross-references.** - For definitions, see 73-13-43 NMSA 1978.

**Effective dates.** - Laws 1929, ch. 76, contains no effective date provision, but was enacted at a session which adjourned on March 9, 1929. See N.M. Const., art. IV, § 23.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 58.

94 C.J.S. Waters § 319.

### **73-12-2. Petition, where filed and contents; definition of term "resident freeholders"; security for costs.**

For the purpose of the establishment of an irrigation district, as provided by this act [73-12-1 to 73-12-57 NMSA 1978], a petition shall be filed with the board of county commissioners of the county which embraces the largest acreage of the proposed district, praying that said board define and establish the general boundaries of said proposed district, setting forth by legal subdivision the lands within said general boundaries that are to be included in and become a part of said proposed district and praying that the said board submit the question of the final organization of the same to the vote of the qualified electors resident therein. Said petition shall state that it is the purpose of the petitioners to organize an electrical irrigation district under the provisions of this act and shall also contain a general description of the outer boundaries of such district and a description by legal subdivisions within such outer boundaries of the lands to be included and become a part of such district; the total number of acres therein; the means proposed to supply water for the irrigation of the lands embraced therein; and the estimated cost thereof, and the estimated cost of pumping per acre-foot of water in the manner proposed; the name proposed for such district and the names of three of said petitioners selected as a committee to file and to present petition to the board of county commissioners. Said petition shall be signed by a majority of the resident freeholders of lands to be included in said proposed district and who shall also be the owners in the aggregate of a majority of the whole number of acres of the land to be included within these said proposed districts.

For the purpose of this act the term "resident freeholder" shall be construed to mean any citizen of the United States who owns land within the district or the evidence of title to said land or who is an entryman under the public land laws of the United States or a purchaser under contract for purchase of state lands and shall also include corporations, associations and copartnerships owning land within the district. The president or vice president of such corporation or association or any member of such copartnership, if citizens of the United States, may represent such corporation, association or copartnership, respectively, in signing such petition or any other petition or written objection, exception or protest provided for in this act.

The committee presenting such petition to the board of county commissioners, as hereinbefore provided, shall give such security or make such deposit as the board of

county commissioners in the county may require of them, conditioned upon the payment of all costs, if, for any reason, such proposed district should fail of organization.

**History:** Laws 1929, ch. 76, § 2; C.S. 1929, § 73-702; 1941 Comp., § 77-2402; 1953 Comp., § 75-25-2.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 58.

94 C.J.S. Waters § 319.

### **73-12-3. Notice of hearing on petition to be published.**

When such petition is presented, it shall be the duty of the board of county commissioners with which such petition is filed, at the next regular or special meeting thereafter or at a special meeting called earlier for the purpose to fix a date for the hearing on said petition, naming in the minutes of such board the day and date thereof, the place of hearing which shall be at the office of said board, and cause the county clerk of said county to publish a notice of such hearing in English for at least two weeks before the time to which the same is to be held in some newspaper of general circulation published in the county where such hearing is to be held, which notice shall contain a copy of said petition and shall state the time and place of such hearing and shall notify all persons affected or interested by or in the organization of such proposed district to appear at such time and place and present to said board any objection, exception or protest to the organization of such proposed district. The last publication of such notice shall be made not less than five days prior to the time fixed by said notice for presenting said petition.

**History:** Laws 1929, ch. 76, § 3; C.S. 1929, § 73-703; 1941 Comp., § 77-2403; 1953 Comp., § 75-25-3.

**Cross-references.** - For notice by publication, see 14-11-1 NMSA 1978 et seq.

### **73-12-4. The hearing on the petition and any objections to organization; establish boundaries; calling an election and providing for appeals.**

At the hearing before the board of county commissioners, provided for in the preceding section [73-12-3 NMSA 1978], the said board shall proceed to determine whether said petition has been signed by the requisite number of petitioners; whether or not the lands in the proposed district are arid or semiarid lands; whether such lands are susceptible of irrigation and have a fertile soil that will warrant farming the same by irrigation; whether there is a supply of water which can be made efficiently available for irrigation by the use of pumps; whether the proposed plan is practicable; and, whether, on the whole, the development said to result from the introduction of power is of such interest and benefit to the whole district as to impress it with the character of public use. For the

purpose of determining the public use of the operations of the proposed district and all other of the foregoing questions, the board of county commissioners is hereby established as an inferior court and its decisions shall be binding upon all persons interested unless reversed on appeal, as hereinafter provided, and if modified or affirmed it shall be so binding.

If the board of county commissioners hearing the matter shall determine that the petition has been signed by the requisite number of petitioners, as required by this act [73-12-1 to 73-12-57 NMSA 1978], and shall determine that such proposed development is of such interest and benefit to the whole district as to impress with the character of public use, it shall then proceed to hear any and all objections, exceptions and protests which have been made in writing to the organization of such district or to the inclusion of any lands within such district or to the exclusion of lands from such district and such other objections, exceptions and protests as may be presented in writing to the organization of the district. All persons whose lands have not been included in the proposed district, as defined in the petition, shall have the right to appear before said board at such time and place as parties interested in or affected by the organization of the district and shall have the right to petition that their lands be included within such district, and, if it shall appear to the board that the inclusion of such lands may be made without materially increasing the cost of service, the commissioners may by order include such lands within said district.

If the board shall make findings approving of the organization of such district, it shall then proceed to define the boundaries of such proposed district from said petition and from such applications in writing for the exclusion of lands therefrom and the inclusion of lands therein, as may be made in accordance with the intent of this act. The board may adjourn such meeting from time to time not exceeding three weeks in all and shall by final order duly entered upon their records, allow the prayer of said petition and define and establish the boundaries of such proposed district. Provided that said board shall not modify such proposed boundaries described in the petition so as to change the objects of said petition or so as to exempt from the operation of this act any land within the boundaries proposed by the petition susceptible to irrigation by the same system or power works applicable to other lands in such proposed district; nor shall any land, which will not in the judgment of the board be benefited by such proposed system, be included in such district if the owner thereof shall make written application at such hearing to withdraw the same.

Any person aggrieved by the decision of the board of county commissioners, upon the hearing hereinbefore provided for, is hereby given the right of appeal from such decision or any part thereof to the district court in and for the county in which said hearing was held. Said appeal shall be taken and perfected by the service of notice within fifteen days from the time of the decision and not thereafter. Such notice of appeal shall be served upon each of the three members of the committee presenting the petition, herein provided for, to the board of county commissioners.

When the petition has been allowed and the boundaries established and the name of the proposed district designated, which shall be .....electrical district, the said board of county commissioners shall by further order duly entered upon their records call an election of the qualified electors of said district to be held for the purpose of determining whether such district shall be organized under the provisions of this act and by such order shall submit the names of one or more persons from each of three divisions of said district, as hereinafter provided, to be voted for as directors therein, and for the purpose of said election shall divide said district into three divisions, as nearly equal in size as may be practicable to be numbered, respectively, I, II and III and shall provide that a qualified elector of each of said three divisions shall be elected as a member of the board of directors of said district by the qualified electors of the whole district. Each of said divisions shall constitute an election precinct and the commissioners shall appoint three judges for each of such precincts, one of whom shall act as clerk of said election.

Upon appeal having been taken, as in this section provided, the clerk of the court of the county wherein such proceedings have been instituted, shall transmit a certified copy of the petition and of all orders and findings made by the board of county commissioners in said cause and of all written objections, exceptions or protests or applications of whatsoever nature filed in such matter with the board of county commissioners to the district court of such county. Such certified copy of such proceedings must be transmitted to said district court within fifteen days from the date which such appeal is taken. The district court shall determine all questions submitted to the said board of county commissioners on their merits, and appeals from the decision of the district court in such matters may be taken to the supreme court of the state in the same manner as appeals are taken to the supreme court from the district courts of the state in civil matters. The findings of fact in the district court shall have the effect as the findings of fact in that court in all civil cases at law.

**History:** Laws 1929, ch. 76, § 4; C.S. 1929, § 73-704; 1941 Comp., § 77-2404; 1953 Comp., § 75-25-4.

**Cross-references.** - For appellate procedure, see Rules of Appellate Procedure (Judicial Pamphlet 12).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 58.

94 C.J.S. Waters § 319.

### **73-12-5. Notice of election; qualification of electors; election procedure.**

The board of county commissioners shall thereupon cause notice embodying the orders in substance, signed by the chairman and clerks of the board to be issued, given and published, giving public notice of the election, the time and place thereof and the matters submitted to the vote of the electors. The notice and order shall be published

once a week for at least three weeks immediately prior to the date fixed for the election in a newspaper of general circulation published in the county, and, if any portion of the proposed district lies within any other county or counties, then the order and notice shall be published in a newspaper of general circulation published within each of those counties. Publication shall be made in English. At the election and all elections held under the provisions of this act [73-12-1 to 73-12-57 NMSA 1978], all persons who are resident freeholders and owners of the land within the district, citizens of the United States and who are qualified electors under the Election Code [1-1-1 to 1-21-14 NMSA 1978], shall be qualified electors, provided that if any farm or tract of land in the district is owned by more than one owner, only one person shall be permitted to vote at any election as the owner of such one farm or tract of land; and provided further that at such elections each otherwise qualified voter shall be entitled to cast and have counted as many votes as he shall have acres of land owned by him and situate within the district. Insofar as applicable, the general election laws of the state, except requirements for registration and except as otherwise provided for in this act, shall govern elections. Prior to the day of the election, the board of directors shall make up a list of the owners of land or the reputed owners of land for each of the three election districts, giving the number of acres owned or reputed to be owned by each person and furnish the list to the judges of election to be kept at the polls during the day of the election and the list of owners and acreage shall be prima facie evidence of the right of each owner to vote the number of acres shown to be owned by him by the list. No person shall vote by proxy or power of attorney except an officer or agent designated in writing as proxy or agent of a corporation entitled to vote at the election. The ballot to be used and cast at the election for the formation of the district shall have printed or typewritten thereon the words "..... Electrical Irrigation District, .....Yes ..... Votes, and ..... Electrical Irrigation District, ..... No ..... Votes," or words equivalent thereto and shall contain the names of the persons to be voted for as members of the board of directors of the district and each ballot shall be signed by the person casting the same. Each elector may vote for three directors, one from each division, and shall indicate his vote by placing a marginal cross upon the ballot for or against any questions submitted or name voted upon and opposite thereto together with the figure or figures indicating the number of votes he is entitled to cast thereat.

**History:** Laws 1929, ch. 76, § 5; C.S. 1929, § 73-705; 1941 Comp., § 77-2405; 1953 Comp., § 75-25-5; Laws 1973, ch. 138, § 33.

**Cross-references.** - For notice by publication, see 14-11-1 NMSA 1978 et seq.

For appeals to district court, see 39-3-1 and 39-3-2 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 3d Irrigation § 61.

94 C.J.S. Waters § 320.

**73-12-6. Canvass of votes, by board of county commissioners.**

The said board of county commissioners shall meet on the second Monday next after such election and canvass the votes cast thereat; and if it appears upon such canvass that at least two-thirds of the qualified electors voting at said election have voted "Electrical Irrigation District .....Yes," the said board shall, by order duly entered upon the records, declare such territory duly organized as an irrigation district under the name and style theretofore designated, and shall declare the persons receiving respectively the highest number of votes for director to be duly elected to such office. Said board shall cause a copy of such order, including a plat of said district, duly certified by the clerk of the board of county commissioners, to be immediately filed for record in the office of the county clerk of each county in which any portion of such lands are situated, and no board of county commissioners of any county including any portion of such district shall, after the date of organization of such district, allow another district to be formed including any of the lands of such district, without the consent of the board of directors thereof; and from and after the date of such filing the organization of such district shall be complete and the officers thereof shall immediately enter upon the duties of their respective office [offices] qualifying in accordance with law, and shall hold such offices, respectively, until their successors are elected and qualified. The boundaries of said divisions and the voting precincts and polling places in any such district may, after such first election, be changed by order of the board of directors of the district; provided that the polling places shall be designated in the notice published for every election in the district.

**History:** Laws 1929, ch. 76, § 6; C.S. 1929, § 73-706; 1941 Comp., § 77-2406; 1953 Comp., § 75-25-6.

### **73-12-7. Regular elections of district; oath of office and bond of directors.**

The regular election of said district shall be held on the first Tuesday after the first Monday in December in each second calendar year thereafter, at which said officers shall be elected. The person receiving the highest number of votes for any office to be filled at such election is elected thereto. Within ten days after receiving their certificates of election, hereinafter provided for, said officers shall take and subscribe the official oath and file the same in the office of the county clerk of the county where the organization was effected, and thereupon immediately assume the duties of their respective offices. Each member of said board of directors shall execute an official bond in the sum of three thousand dollars (\$3,000), which bond shall be approved by the chairman of the board of county commissioners of said county and shall be recorded in the office of the probate clerk and ex-officio county recorder thereof. All official bonds herein provided for shall be in form prescribed by law for official bonds for county officials, except that the obligee named in said bonds shall be the said district. The premiums upon such bonds and the bonds required from any other officer of the district shall be paid by the district.

**History:** Laws 1929, ch. 76, § 7; C.S. 1929, § 73-707; 1941 Comp., § 77-2407; 1953 Comp., § 75-25-7.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 61.

94 C.J.S. Waters § 320.

### **73-12-8. Office of board; subsequent elections.**

The office of the board of directors shall be located in the county where the organization was effected. Fifteen (15) days before any election held under this act [73-12-1 to 73-12-57 NMSA 1978], subsequent to the organization of the district, the secretary who shall be appointed by the board of directors shall cause notice, specifying the polling places of each precinct, to be posted in three public places in each election precinct, of the time and place of holding the election, and shall also post a general notice of the same in the office of said board, which shall be established and kept at some fixed place to be determined by said board in said county. Prior to the time for posting the notices, said board must appoint from each precinct, from the electors thereof, three judges, one of whom shall act as clerk, who shall constitute a board of election for such precinct. If the board fails to appoint a board of election, or the members appointed do not attend the opening of the polls on the morning of the election, the electors of the precinct present at the hour may appoint the board or supply the place of an absent member thereof. The board of directors must, in its order appointing the board of election, designate the hour and place in the precinct where the election must be held.

**History:** Laws 1929, ch. 76, § 8; C.S. 1929, § 73-708; 1941 Comp., § 77-2408; 1953 Comp., § 75-25-8.

**Cross-references.** - As to location of office, see 73-13-1, 73-13-2 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 61.

94 C.J.S. Waters § 320.

### **73-12-9. The election board; oath of judges; polls kept open.**

One of the judges shall be chairman of the election board and may: first - administer all oaths required in the progress of any election; second - appoint judges and clerks, if during the progress of the election any judge or clerk ceases to act. Any member of the board of election, or any clerk thereof, may administer and certify the oaths required to be administered during the progress of an election. Before opening the polls, each member of the board must take and subscribe an oath to faithfully perform the duties imposed upon him by law. An elector of the precinct may administer and certify such oath. The polls must be opened at eight o'clock in the morning of election and be kept open until six o'clock p.m. of the same day. It shall be the duty of the clerk of the board of election to forthwith deliver the return duly certified to the board of directors of the district.

**History:** Laws 1929, ch. 76, § 9; C.S. 1929, § 73-709; 1941 Comp., § 77-2409; 1953 Comp., § 75-25-9.

### **73-12-10. Returns canvassed by board of directors.**

No list, tally paper or certificate returned from any election shall be set aside or rejected for want of form, if it can be satisfactorily understood. The board of directors must meet at its usual place of meeting on the first Monday after election and canvass the returns. If at the time of meeting, the returns from each precinct in the district in which the polls were open have been received, the board of directors must then and there proceed to canvass the returns; but if all the returns have not been received, the canvass must be postponed from day to day until the returns have been received, or until six postponements have been had. The canvass must be made in public and by opening the returns and counting the votes case for each person voted for, or as to each question voted upon, and declaring the results thereof. The board shall declare elected the person receiving the highest number of votes so returned for each office and also declare the result as to any question submitted.

**History:** Laws 1929, ch. 76, § 10; C.S. 1929, § 73-710; 1941 Comp., § 77-2410; 1953 Comp., § 75-25-10.

### **73-12-11. Secretary to certify results of election to county clerk.**

The secretary of the board of directors must, as soon as the result of any election held under the provisions of this act [73-12-1 to 73-12-57 NMSA 1978] is declared, enter in the records of such board and file with the county clerk of the county in which the office of said district is located, a statement of such result, which statement must show: first, a copy of the publication notice of said election; second, the names of the judges of said election; third, the whole number of votes cast in the district and in each precinct of the district; fourth, the names of the persons voted for; fifth, the number of votes cast in the district for each of such persons; sixth, the names of the persons declared elected; seventh, the result declared on any question submitted, in accordance with the majority of the votes cast for or against such question. The secretary must immediately make out and deliver to the person elected a certificate of election, signed by him and authenticated with the seal of the board. In case of a vacancy in the board of directors by death, removal or inability from any cause to properly discharge the duties as such director, the vacancy shall be filled by appointment by the remaining members of the board, and upon their failure or inability to act within thirty days after such vacancy occurs, then upon petition of five electors of said district, the board of county commissioners of the county where the office of said board of directors is situate, shall fill such vacancy or vacancies. Any director appointed as above provided shall hold his office until the next general election of said district, and until his successor is elected and qualified.

**History:** Laws 1929, ch. 76, § 11; C.S. 1929, § 73-711; 1941 Comp., § 77-2411; 1953 Comp., § 75-25-11.



**73-12-12. Organization of board, its powers, its duties; employment of engineers; rules and regulations; report on water supply and engineering plans; when bonds may be used in payment; when contracts must be ratified by electors; uniform rates; disposal of surplus power.**

The directors having duly qualified, shall organize as a board, elect a president from their number, appoint a secretary, who may be or may not be a member of the board. The board shall have the power and it shall be their duty to adopt a seal, manage and conduct the affairs of the district, make and execute all necessary contracts, employ such agents, attorneys, officers and employees as may be required and prescribe their duties, establish equitable rules and regulations for the purchasing and use of water, power or fuel among the owners of land in said district and generally perform all such acts as shall be necessary to fully carry out the purposes of this act [73-12-1 to 73-12-57 NMSA 1978]; which regulations, among other things, shall provide that no person shall be entitled or shall be permitted to use power or fuel furnished by the district for pumping of water while the taxes or tolls or service charges due thereon or from the owner thereof for district purposes levied or imposed under the provisions are in arrears for more than six months.

As soon as practicable, after the board shall have organized, it shall employ a competent hydraulic engineer to determine and report upon the water supply available for pumping in the district, which report shall be a full and complete geological report from all available data relating to such water supply. The report accompanied by an examination fee of twenty-five dollars (\$25.00) shall be submitted to the state engineer for his examination, and, if he shall find such report to be satisfactory and that there will be water sufficient to properly irrigate the lands within such district, he shall so certify under his hand and official seal. If the report submitted is found to be insufficient or incorrect, the state engineer shall return the same for correction to the directors of the district with the statement of his objections. If such report is not corrected so as to meet with the approval of the state engineer or if from such report and other available information the engineer is of the opinion that there is not sufficient water to properly irrigate the lands included within said district by pumping at a cost that will make such pumping practicable, he shall disapprove such report.

The board of directors shall have the right to appeal from the decision of the state engineer to the district court of the district in which such irrigation district is located where the sufficiency and accuracy of the report and available water supply and whether water for irrigation purposes can be pumped at a reasonable cost shall be determined. Until the report is approved by the state engineer or the courts no bond issue shall be made, as provided for in Section 15 [73-12-15 NMSA 1978] of this act. A copy of such report shall be kept on file in the office of the state engineer and in the office of the board of directors of such district and shall be available for examination by any person desiring to do so.

The board of directors shall also, at the same time, fully investigate the manner by which power can be brought into or generated within or without the district so as to be efficiently distributed to the landowners for irrigation purposes and for such purpose shall employ a competent engineer, who shall report to said board, making recommendations as to the character of power to be used, the cost of securing such power whether by purchase of power or power plant or by construction of a plant with transmission lines or otherwise, and shall furnish an estimate of the cost of such power to the owners of such lands per acre-foot of water pumped. Such report accompanied by an examination fee of twenty-five (\$25.00) dollars shall be submitted to the state engineer for his examination, and, if he shall find such report to be a full and complete report of the cost to the landowners of irrigation of his lands by the plan devised by said engineer and that it appears to be practicable to use such power for irrigation with the available water supply of the district, said state engineer shall approve such report and so certify under his hand and official seal. If such report submitted is found to be insufficient or incorrect, the state engineer shall return the same for correcting to the board of directors of the district with a statement of his objections. If such report is not corrected so as to meet with the approval of the state engineer or if from such report and other available information the engineer is of the opinion that the manner of securing power for irrigation purposes is too expensive to be practicable or is otherwise impracticable he shall disapprove said report.

The board of directors shall have the right to appeal from the decision of the state engineer to the district court of the district in which such irrigation district is located where the sufficiency and accuracy of the report and where the practicability of the manner of securing water, power or fuel shall be determined. Until the report is approved by the state engineer or the courts, no bond issue shall be made, as provided for in Section 15 [73-12-15 NMSA 1978] of this act. A copy of such report shall be kept on file in the office of the state engineer and the office of the board of directors of the said irrigation district and shall be available for examination by any person desiring to do so.

Said board shall have the power (in addition to the means to supply water to said district) to construct, acquire or purchase any and all canals, ditches, reservoirs, reservoir sites, water, water wells, water rights, rights-of-way, motors, engines, power plants, power transmission lines, gas and oil lines or other property necessary for the use of the district and to contract with any person or corporation for supplying water or for power or fuel to be used in pumping water for any or all of the lands and purposes in said district; and may lease its plant or transmission lines under a contract with any person or corporation for operation purposes, for the supplying to such district power for pumping and other purposes; and also to construct drainage works necessary to prevent or relieve waterlog or [of] any lands within the district. In case of the purchase of any property or the payment of any debt by said district, the bonds of the district, hereinafter provided for, may be used at their par value in payment without previous offer of such bonds for sale. But no contract involving any consideration exceeding ten thousand dollars (\$10,000) and no contract for the purchase, rental or delivery or [of] water or power or fuel involving annual charges or payments exceeding fifteen thousand

dollars (\$15,000) shall be binding unless such contracts shall be authorized and ratified in writing by not less than a majority of the qualified electors of said district according to the number of votes cast at the last preceding election; nor shall any contract involving payment in excess of twenty-five thousand (\$25,000) dollars in one year be binding until such contract shall have been authorized and ratified by a majority of the votes at an election held in the manner provided for the issue of bonds.

The rules and regulations established by said board shall be printed in convenient form as soon as the same are adopted, for distribution in the district. All power distributed shall be at a uniform rate per kilowatt [kilowatt] hour. The board of directors shall have power to supply and deliver power or fuel within or without said district to others than owners of land within the district at such price and on such terms as they deem best, provided the price received for power or fuel shall be not less than the price charged to the owners of land within the district plus a price or charge which will make the total price not less than the total cost to the owners of land within the district. Provided no power or fuel shall be supplied to any other than a landowner in said district unless there shall be available a surplus of power over and above that needed for the use of landowners within the irrigation district for pumping for irrigation purposes and for domestic uses.

**History:** Laws 1929, ch. 76, § 12; C.S. 1929, § 73-712; Laws 1931, ch. 133, § 1; 1941 Comp., § 77-2412; 1953 Comp., § 75-25-12.

**Cross-references.** - For authorization of bondholders to appoint director, see 73-13-7 NMSA 1978.

As to appeal to district court, see 39-3-1 and 39-3-2 NMSA 1978.

As to the qualifications and duties of the state engineer, see 72-2-1 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation §§ 61, 62.

Liability of water distributor for damage caused by water escaping from main, 20 A.L.R.3d 1294.

94 C.J.S. Waters §§ 320, 321.

**73-12-13. Regular and special meetings of board; records of board to be kept open; rights-of-way; right to acquire oil or gas for power; title to property; exemption from taxation.**

The board of directors shall hold a regular quarterly meeting in their office on the first Tuesday of January, April, July and October of each year and such special meetings as may be required for the proper transaction of business. All special meetings shall be called by the president of the board or any two directors. All meetings of the board must be made public and two members shall constitute a quorum for the transaction of

business, and on all questions requiring a vote there shall be a concurrence of at least two members of said board. All records of the board must be open to the inspection of any elector during business hours. The board, its agents and employees, shall have the right to enter upon any land in the district to make surveys and to locate and construct any canal or canals and the necessary laterals and any power or transmission lines. Said board shall also have the right to acquire all lands, water rights, gas lines, oil lines franchise [franchises] and other property necessary for the construction, use, maintenance, repair and improvement of such property and shall also acquire, under contract, natural or artificial gas or oil to be used in generating power for pumping purposes; and shall also have the right by purchase or condemnation to acquire rights-of-way for the construction or enlargement of its ditches, canals or reservoirs or power lines or gas mains and also lands for reservoir sites.

The title to all property acquired under the provisions of this act [73-12-1 to 73-12-57 NMSA 1978] shall immediately and by operation of law vest in such irrigation on [sic] district in its corporate name and such property shall be held for the uses and purposes set forth in this act and shall be exempt from all taxation.

**History:** Laws 1929, ch. 76, § 13; C.S. 1929, § 73-713; 1941 Comp., § 77-2413; 1953 Comp., § 75-25-13.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation §§ 58, 70, 88, 89, 102.

94 C.J.S. Waters §§ 314 to 320, 332.

### **73-12-14. Acquire property and rights for district; actions in court; legality of organization of district presumed after one year.**

The said board is hereby authorized and empowered to take conveyances or contracts for all property or rights acquired by it under the provisions of this act [73-12-1 to 73-12-57 NMSA 1978] in the name of such irrigation district to and for the purposes herein expressed, and to institute and maintain any and all actions, proceedings and suits at law or in equity, necessary or proper in order to fully carry out the provisions of this act, or to enforce, maintain, protect or preserve any or all rights, privileges and immunities created by this act or acquired in pursuance thereof. And in all courts, actions, suits or proceedings the said board may sue, appear and defend in person or by attorneys and in the name of such irrigation district. Judicial notice shall be taken in all actions, suits and proceedings in any court of this state of the organization and existence of any irrigation district in this state now or hereafter organized, from and after the filing for record in the office of the county clerk of the certified copy of the order of the board of county commissioners mentioned in Section 6 [73-12-6 NMSA 1978] of this act; and a certified copy of said order shall be prima facie evidence in all actions, suits and proceedings in any court in this state of the regularity and legal sufficiency of all acts, matters and proceedings therein recited and set forth; and any such irrigation district, in regard to which any such order has been heretofore or may hereafter be entered, and

such certified copy thereof so filed for record, and which has exercised or shall exercise rights and powers of such district, and shall have had or shall have in office a board of directors exercising the duties of their office and the legality or regularity of the formation or organization whereof shall not have been questioned by proceedings in quo warranto instituted in the district court of the county in which such district or the greater portion thereof is situated within one year from the date of such filing, shall be conclusively deemed to be a legally and regularly organized, established and existing irrigation district within the meaning of this act, and its due and lawful formation and organization shall not thereafter be questioned in any action, suit or proceeding whether brought under the provisions of this act or otherwise.

**History:** Laws 1929, ch. 76, § 14; C.S. 1929, § 73-714; 1941 Comp., § 77-2414; 1953 Comp., § 75-25-14.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 91.

94 C.J.S. Waters § 316.

### **73-12-15. Determining cost; bond election; notice; conduct; bond terms and conditions; subsequent issues.**

For the purpose of constructing or purchasing or acquiring the necessary fuel transmission lines, pipelines, power plants, electrical motors, engines, reservoir sites, reservoirs, water rights, water wells, canals, ditches and works, including the necessary drainage works and the acquiring of the necessary property and rights therefor, and for the purpose of paying the first year's interest on the bonds herein authorized and for the purpose of paying legal expenses incurred in the organization of the district and preliminary expenses incurred under the provisions of Section 73-12-12 NMSA 1978 and otherwise carrying out the provisions of this act [73-12-1 to 73-12-57 NMSA 1978], the board of directors of any such district shall, as soon after the district has been organized as may be practicable, estimate and determine the amount of money necessary to be raised for such purposes and shall, by resolution to be entered in the minutes of the board of directors of the district, fix the amounts and series of the bonds of the district proposed to be issued. Provided, however, that none of the bonds shall run for a longer period than twenty years from the date thereof. The board of directors shall forthwith call a special election, at which election shall be submitted to the electors of the district possessing the qualifications prescribed by this act the question if whether or not the bonds of the district shall be issued in the amount so determined. Notice of the election shall be given by publication in some newspaper published in the county where the office of the board of directors of the district is required to be kept, once a week for at least three successive weeks immediately preceding the date of the election. The notice shall specify the time of holding the election, the amount of bonds proposed to be issued and the series and due dates thereof. The election shall be held and the results thereof determined and declared in all respects as nearly as possible in conformity with the provisions of this act governing the election of directors. Provided that no informalities in conducting the election shall invalidate it if the election has been

otherwise fairly conducted. At such election, the ballots shall contain the words "Bonds, Yes" or "Bonds, No" or words equivalent thereto. If a majority of the votes of the qualified electors who are freeholders within the district have been voted "Bonds, Yes," the board of directors shall immediately cause bonds to be issued in amounts and payable in series, as provided in the resolution of the board of directors. Each bond shall bear interest payable semiannually on June 1 and December 1 of each year. The principal and interest shall be payable at the office of the county treasurer of the county in which the organization of the district was effected as aforesaid and at such other place or places, if any, as the board of directors may designate in the bonds. The bonds shall be in such form as the board of directors may determine and, except for bonds issued in book entry or similar form without the delivery of physical securities, shall be executed in the name of the district and signed by the president and secretary, and the seal of the district shall be affixed thereto. The bonds shall be numbered consecutively as issued and bear date at the time of their issue. Any coupons for interest shall be attached to each bond bearing the facsimile signature of the president and the secretary. The bonds shall express on their face that they are issued by authority of this act, stating its title and date of approval. The secretary shall keep a record of the bonds sold, their number, date of sale, the price received and the name of the purchaser. Provided that when the money provided by any previous issue of bonds has become exhausted by expenditures herein authorized therefor and it becomes necessary to raise additional money for such purposes, additional bonds may be issued after submitting the question of issuing the bonds at a special election to the qualified voters of the district and otherwise complying with the provisions of this act in respect to an original issue of bonds. Provided further that the lien for taxes for the payment of the interest and the principal of any bond issue shall be a prior lien to that of any subsequent bond issue.

**History:** Laws 1929, ch. 76, § 15; C.S. 1929, § 73-715; Laws 1931, ch. 133, § 2; 1941 Comp., § 77-2415; 1953 Comp., § 75-25-15; 1983, ch. 265, § 57.

**Cross-references.** - For election of directors, see 73-12-5 to 73-12-11 NMSA 1978.

As to notice by publication, see 14-11-1 NMSA 1978 et seq.

**The 1983 amendment** added the catchline, divided the former first sentence into the present first, second and third sentences, substituted the New Mexico citation for "Section 12 of this act" in the first sentence, "The board of directors" for "and" in the third sentence and "shall" for "must" in the fourth sentence, divided the former third sentence into the present fifth, sixth and seventh sentences, substituted "shall" for "must" in the sixth sentence, rewrote the tenth sentence, inserted "or places, if any" in the eleventh sentence, substituted "The bonds shall be in such form as the board of directors may determine and, except for bonds issued in book entry or similar form without the delivery of physical securities, shall be" for "Such bonds shall be each of the denomination not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000), shall be negotiable in form" in the twelfth sentence, added "Any" at the beginning of the fourteenth sentence, substituted "facsimile" for "lithographed," also in

the fourteenth sentence, divided the former twelfth sentence into the present sixteenth, seventeenth and eighteenth sentences and made minor stylistic changes throughout the section.

**Emergency clauses.** - Laws 1983, ch. 265, § 64, makes the act effective immediately. Approved April 7, 1983.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 67.

94 C.J.S. Waters § 322.

### **73-12-16. Sale of bonds; refunding bonds; use of bonds.**

The board may sell bonds from time to time in amounts necessary and most advantageous to raise money for the construction or purchase of canals, reservoirs, reservoir sites, water rights, water wells and works, power plants, electrical motors, engines, power transmission lines, gas lines or oil lines for the primary purpose of supplying fuel and generating power for pumping purposes and necessary drainage works and otherwise to fully carry out the object and purposes of this act [73-12-1 to 73-12-57 NMSA 1978]. Before making any sale, the board shall, at a meeting, by resolution declare its intention to sell a specified amount of the bonds and the day and hour and place of the sale and shall cause the resolution to be entered in the minutes and notice of the sale to be given by publication thereof by three insertions at least twenty days prior to the sale in a daily newspaper published in the city of Santa Fe and a like notice in a daily newspaper published in the city of Albuquerque and any other newspaper at its discretion. The board shall state that sealed proposals will be received by the board at its office for the purchase of the bonds and tell the day and hour named in the resolution. At the time appointed, the board shall open the proposals and award the purchase of the bonds to the highest responsible bidder and may reject all bids, but said board shall, in no event, sell any of said bonds for less than eighty-five percent of the face value thereof. In case no bid is made and accepted, as above provided, the board of directors is hereby authorized to use the bonds for the purchase or construction of canals, reservoir sites, reservoirs, water rights and works, power plants and transmission lines, oil and gas lines for the primary purpose of generating power for pumping purposes and necessary drainage works, provided such bonds shall not be so disposed of at less than eighty-five percent of the face value thereof.

Refunding bonds may be issued and used by any district organized under the laws of this state for the purpose of retiring any bonds which may have been issued under the provisions of this act after the question of issuing refunding bonds has been submitted to an election as herein provided and has received the affirmative vote of a majority of those voting thereon within the district. The refunding bonds may be payable at the time or times and may be of such denominations as the board of directors may determine and shall be executed in the same manner as provided herein for the original issue of bonds. The board of directors shall have power to contract for the purchase of, and exchange of refunding bonds for, the whole or any part of the bonds to be refunded by

the issue. The refunding bonds shall first be deposited with the county treasurer of the county wherein the office of the district is located and shall be delivered only as and when bonds so to be refunded in like amounts are surrendered to the county treasurer for cancellation. The refunding bonds may also be sold from time to time in such amounts as the board of directors may determine and in the same manner as provided for the sale of the original issue of bonds, the proceeds to be deposited with the treasurer to be paid out by him upon order of the board of directors in exchange for any of the outstanding bonds that may be so purchased or contracted for by the board of directors.

The treasurer may use the proceeds at any time in his hands to pay the principal and interest of any matured outstanding bonds presented for payment in case he does not have sufficient funds of the district otherwise provided for paying such maturing bonds.

The treasurer shall cancel all bonds of the district as and when the bonds are paid or refunded and shall cause to be recorded in the office of the county clerk of the county his certificate showing that the bonds, giving dates, serial numbers and amounts thereof, have been paid and cancelled, and such cancelled bonds shall be delivered to the board of directors of the district to be destroyed. It shall be the duty of the board of directors to destroy such cancelled bonds and to enter upon their records a statement giving the dates, serial numbers and amounts of the bonds so destroyed.

**History:** Laws 1929, ch. 76, § 16; C.S. 1929, § 73-716; Laws 1931, ch. 133, § 3; 1941 Comp., § 77-2416; 1953 Comp., § 75-25-16; 1983, ch. 265, § 58.

**Cross-references.** - For authorization of bondholders to appoint a director, see 73-13-7 NMSA 1978.

**The 1983 amendment** added the catchline; in the second paragraph, deleted "bear such rate of interest not exceeding six per centum (6) per annum and" following "time or times and" and "and have annexed interest coupons" following "in the same manner" in the second sentence, substituted "the issue" for "such issue at any price not exceeding par and approved interest" in the third sentence and deleted "at not less than eighty-five (85) percent of their face value" following "original issue of bonds" in the last sentence and "at a price not exceeding par and accrued interest" at the end of the last sentence; and made minor stylistic changes throughout the section.

**Emergency clauses.** - Laws 1983, ch. 265, § 64, makes the act effective immediately. Approved April 7, 1983.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 67.

94 C.J.S. Waters § 322.

**73-12-17. How revenue raised to pay bonds; service charges within district to be uniform; may use highways.**



Said bonds, and the interest thereon, shall be paid by revenue derived from an annual assessment upon the real property within the district and such real property shall be and remain liable to be assessed and taxed for such payments as herein provided.

Provided that any revenue derived by the district on account of the service charge over and above the amounts required for maintenance and operation of power plant or plants, ditches, canals and general overhead expenses of the district shall be considered "surplus" and covered into the bond fund of the district, and in the succeeding year the board of directors in making up an estimate of assessments to meet the interest on such bonds or the principal on such bonds as may become payable in such year shall take into account the money in said bond fund derived from such "surplus."

The service charges to the electors within the district shall be uniform. The primary object of the district being, the providing of power or fuel for pumping for irrigation purposes and it shall not be lawful to extend such service to points outside of such district except there be a surplus of power over and above the needs for irrigation purposes and other purposes within the district, but the board of directors are authorized to make reasonable contracts with the state of New Mexico, cities and towns, or other municipal corporations of said state and with other persons and corporations to supply such surplus power, if any, or to carry out the construction plans or other plans of organization of the district. Any district organized under this act [73-12-1 to 73-12-57 NMSA 1978] shall have the use of public highways, roads, streets and alleys in or outside such district to the extent needed to transmit power or fuel into the district, but such use shall be subject to the primary use of the public to such highways, streets and alleys and shall be under such reasonable conditions and restrictions as may be made by the board of county commissioners in the county in which the same are situated or of the board of trustees or of the city council of such towns and cities in which the same are situated. The said board of directors shall have power to construct, operate, lease and control plants for the generation, distribution, sale, lease and use of electric energy and to construct, operate, lease and control pipelines for the transmission of oil or gas to be used in connection with the purposes for which such district is organized.

**History:** Laws 1929, ch. 76, § 17; C.S. 1929, § 73-717; 1941 Comp., § 77-2417; 1953 Comp., § 75-25-17.

**Cross-references.** - As to excavation damage to underground utility lines, see 62-14-1 NMSA 1978 et seq.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 68.

94 C.J.S. Waters § 330.

**73-12-18. Certifying requirements to board of county commissioners each year; county commissioners may act [; duties**

**of county treasurer; delinquent accounts; special assessments; disbursements].**

It shall be the duty of the board of directors of the district, on or before September first of each year, to determine the amounts of money required to meet the obligations and the maintenance, operating and current expenses of the district for the ensuing fiscal year, and such additional sums as may be necessary to meet any deficiency for payment of such obligations and expenses theretofore incurred, and to certify the same to the board of county commissioners. Such certificate shall specify the sum required for each of the purposes therein mentioned. The county treasurer shall distribute the proceeds of the taxes levied by the board of county commissioners under this act [73-12-1 to 73-12-57 NMSA 1978] to the credit of the separate funds in proportion to the sums specified in said certificate, among which shall be a bond fund for payment of interest and sinking fund or [for] principal of outstanding bonds of the district, and a power and water fund out of which to pay the annual water rentals or charges for water purchased or contracted for by the district from any other district, person or corporation, and to pay for power or fuel contracted for by the district and to pay costs of service, operation, maintenance and taxes on surplus power sold, as hereinafter provided.

If at the time of making and filing the certificate mentioned above there should be due the district, from a landowner within the district, or an agent or lessee of such landowner, any bill for services rendered or for money advanced on account of guarantees furnished by the district, it shall be the duty of the said board of directors to make a list of such delinquent accounts showing the name of the owner of the land and the legal description of the land to which service was rendered, the amount due and delinquent and they shall certify this list to the county assessor who shall place the same on the tax rolls as a special assessment against the particular piece of land to which the service was rendered. Such assessments, when entered on the tax roll shall have the same force and effect as other assessments, and shall constitute a lien on such land.

It shall be unlawful to transfer any money from either the bond fund or the power and water fund, or to use the money therein for any other purposes so long as any obligations of the district, which should be paid out of such funds, respectively remain unpaid.

The county treasurer is authorized to pay out of said bond fund any matured bond or coupon of the district, and to pay out of the power and water fund any charges or rentals for power or water due by the district and unpaid, without warrant signed by the president and secretary of the district in any case where the district officers neglect or refuse to issue such warrants in time to meet such obligations when due.

Should the board of directors fail to certify the amount so needed or should the amount certified to the board of county commissioners be, in the judgment of such board of county commissioners, insufficient to meet such obligations, then, in that event, the board of county commissioners shall determine the amount of money required to meet

such obligations and fix the rate per acre or levy taxes to provide such amount of money.

**History:** Laws 1929, ch. 76, § 18; C.S. 1929, § 73-718; 1941 Comp., § 77-2418; 1953 Comp., § 75-25-18.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 61.

94 C.J.S. Waters § 320.

### **73-12-19. Duties of county assessor.**

It shall be the duty of the county assessor of any county embracing the whole or a part of any irrigation district to assess and enter upon his tax roll each year the name of the owner and the description, and area of, each tract of land in said district in said county subject to taxation under this act [73-12-1 to 73-12-57 NMSA 1978], and to deliver a certified list thereof to the county commissioners of said county and to transmit a like certified list to the county commissioners of the county in which the office of said district is located; and upon receipt by such assessor of the notice from the county commissioners of the levies to be made as hereinafter provided, he shall extend the same upon his tax roll to be collected in the same manner as other taxes; provided, that in no case shall any land be taxed for any purpose under this act which from any natural cause cannot be irrigated by the irrigation system of said district, or is incapable of cultivation: provided further, that such exception from taxation shall not apply to any land until the same shall have been excluded for that purpose by order of the board of directors in a proper proceeding as provided by this act and after a certified copy of such order shall have been filed for record in the office of the county clerk of the county wherein such lands are situate.

**History:** Laws 1929, ch. 76, § 19; C.S. 1929, § 73-719; 1941 Comp., § 77-2419; 1953 Comp., § 75-25-19.

**Cross-references.** - As to property taxation, see 7-35-1 to 7-35-10, 7-36-1 to 7-36-33, 7-37-1 to 7-37-8, 7-38-1 to 7-38-93 NMSA 1978.

### **73-12-20. Board of county commissioners to fix rate per-acre levy.**

It shall be the duty of the county commissioners of the county in which is located the office of any irrigation district, immediately upon receipt of the said certified list of the lands in said district subject to tax hereunder, and upon the receipt of the certificate of the said board of directors certifying the total amount of money required to be raised as herein provided to fix the rate per acre of levy necessary to provide said amount of money, and to fix the rate per acre necessary to provide the amount of money required to pay the interest and principal of the bonds of said district as the same shall become due; also to fix the rate per acre necessary to provide the amount of money required for any other purposes as in this act [73-12-1 to 73-12-57 NMSA 1978] provided, and which

are to be raised by the levy of taxes upon the lands of said district; and to certify said respective levies to the county commissioners of each other county embracing any portion of said district. The rate of levy necessary to raise the required amount of money for said district shall be increased fifteen percent to cover delinquencies. For the purpose of said district, it shall be the duty of the county commissioners of each county in which any irrigation district is located in whole or in part, at the time of making levy for county purposes, to make a levy, as above provided, upon all lands in said district within their respective counties subject to taxation under this act and to deliver a notice to the county assessor thereof.

**History:** Laws 1929, ch. 76, § 20; C.S. 1929, § 73-720; 1941 Comp., § 77-2420; 1953 Comp., § 75-25-20.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation §§ 70 to 72.

94 C.J.S. Waters §§ 332 to 334.

### **73-12-21. Duties of county treasurer.**

The county treasurer of the county in which is located the office of any irrigation district, shall be and is hereby constituted ex-officio district treasurer of said district, and said county treasurer shall be liable upon his official bond and to indictment and criminal prosecution, for malfeasance, misfeasance or failure to perform any duty herein prescribed as county treasurer or district treasurer, as is provided by law in other cases as county treasurer. Said treasurer shall receive and receipt for all moneys belonging to said district. It shall be the duty of the county treasurer in each county in which any irrigation district is located, in whole or in part, to collect and receipt for all taxes levied as herein provided, in the same manner and at the same time as is required in the receipt for and collection of taxes upon real estate for county purposes; provided, that such county treasurer shall receive in payment of the district bond fund taxes above mentioned for the year in which said taxes were levied, interest coupons or bonds issued by said irrigation districts maturing within said year, the same as so much lawful money of the United States, if such interest coupons do not exceed the amount of district bond fund taxes which the person tendering the same owes. The county treasurer of each county comprising a portion only of any irrigation district, excepting the county treasurer of the county in which the office of said district is located, on the first Monday of every month, shall remit to the district treasurer aforesaid all moneys, bonds and coupons theretofore collected or received by him on account of said district. Every county treasurer shall keep a bond fund account and a general fund account. The bond fund shall consist of all moneys received on account of interest and principal of the bonds issued by said district, said accounts for interest and principal each to be kept separate. The general fund shall consist of all moneys received. The district treasurer aforesaid shall pay out of said bond fund, when due, the interest and principal of the bonds of said district, at the time and at the place specified in said bonds, and shall pay out of said general fund only upon warrants signed by the president and countersigned by the secretary of said district, as herein provided. The district treasurer, on the

fifteenth day of each month shall report to the board of directors of said district the amount of money in his hands to the credit of the respective funds above provided. All such district taxes collected and paid to the county treasurers as aforesaid shall be received by said treasurers in their official capacity and they shall be responsible for the safekeeping, disbursement and payment thereof the same as for other moneys collected by them as such treasurers; provided, said county treasurer shall not receive any commission for the collection of said district taxes or any extra compensation for acting as such district treasurer other than the regular salary as such county treasurer but the district may pay to such treasurer for clerical assistance a sum not to exceed twenty dollars (\$20.00) per month for each five thousand acres or major fraction thereof in such district.

**History:** Laws 1929, ch. 76, § 21; C.S. 1929, § 73-721; 1941 Comp., § 77-2421; 1953 Comp., § 75-25-21.

### **73-12-22. Revenue laws of state to govern; may refuse service to delinquents.**

The revenue laws of this state for the assessment, levying and collection of taxes on real estate for county purposes, except as herein modified, shall be applicable for the purposes, of this act [73-12-1 to 73-12-57 NMSA 1978], including the enforcement of penalties and forfeitures for delinquent taxes. All interest that may be collected on delinquent taxes levied and assessed for district purposes under the provisions of Chapter 41, Laws of 1919, and all interest from that source in hands of county treasurers shall be credited to the several district funds in proportion to the amounts thereof as certified by the board of directors of such district.

In addition to such penalties and forfeitures the board of directors of each district is hereby authorized to refuse during any current year, to deliver water from the canals and reservoirs of the district, or purchased from any other district, person or corporation, to any land for irrigation thereof or domestic use thereon, so long as any taxes assessed and levied for district purposes against such land, or any interest, cost or penalties accrued thereon, are due, delinquent and unpaid.

In case the lists or certificates in this act required to be made as the basis for the tax levy for district purposes shall not be made within the time in this act prescribed, or in case such levy is not made or certified by the board of county commissioners before the tax roll is made up for any year, such lists and certificates shall nevertheless be made and such levy made and extended on the tax roll with the same effect as if made within the time prescribed by law. It shall be the duty of the board of directors to purchase in the name of such district any property which may be sold for delinquent taxes under this act, and said board is authorized to take title to such land in the name of the district, and to sell and convey the same when it has acquired title thereto, at a price not less than the taxes, penalty and interest accrued thereon.

**History:** Laws 1929, ch. 76, § 22; C.S. 1929, § 73-722; 1941 Comp., § 77-2422; 1953 Comp., § 75-25-22.

**Cross-references.** - For collection of real estate taxes, see 7-35-1 to 7-35-10, 7-36-1 to 7-36-33, 7-37-1 to 7-37-8, 7-38-1 to 7-38-93 NMSA 1978.

**Compiler's note.** - For the provisions of Laws 1919, ch. 41, see 73-9-1 to 73-9-6, 73-9-8, 73-9-10 to 73-9-19, 73-9-22, 73-9-24, 73-9-26 to 73-9-62 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 72.

94 C.J.S. Waters § 332.

### **73-12-23. Construction and material contracts to be let to lowest bidder.**

After adopting a plan for the construction of power plants, transmission lines, pipelines, canals, reservoirs and works, the board of directors shall give notice, by publication thereof, not less than twenty days in a newspaper published in each of the counties into which any such irrigation district extends, provided a newspaper is published therein, and in such other newspapers as they may deem advisable, calling for bids for the construction of said work or any portion thereof; if less than the whole work is advertised, then the portion so advertised must be particularly described in such notice; said notice shall set forth that plans and specifications can be seen at the office of the board, and that the board will receive sealed proposals therefor, and that the contract will be let to the lowest responsible bidder, stating the time and the place for opening the proposals, which at said time and place shall be opened in public, and as soon as convenient thereafter the board shall let said work, either in portions or as a whole, to the lowest responsible bidder, or they may reject any or all bids and readvertise for proposals or may proceed to construct the work under their own superintendence.

Contracts for the purchase of material shall be awarded to the lowest responsible bidder. The person or persons to whom a contract may be awarded shall enter into a bond with good and sufficient sureties, to be approved by the board, payable to said district for its use, for not less than ten percent of the amount of the contract price, conditioned for the faithful performance of said contract. The work shall be done under the direction and to the satisfaction of the engineer in charge subject to the approval of the board.

**History:** Laws 1929, ch. 76, § 23; C.S. 1929, § 73-723; 1941 Comp., § 77-2423; 1953 Comp., § 75-25-23.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 92.

### **73-12-24. Payment of claim; when warrants to issue; claims to be verified; record to be kept.**

No claims shall be paid by the district treasurer until the same shall have been allowed by the board, and only upon warrants signed by the president and countersigned by the secretary, which warrants shall state the date authorized by the board and for what purpose; provided, no warrant shall be issued or obligation incurred unless the district treasurer has sufficient funds on hand to pay such warrant when it is presented for payment. All claims against the district shall be verified and the secretary of the district is hereby authorized and empowered to administer oath to the parties verifying said claims, the same as the county clerk or a notary public might do. The district treasurer shall keep a register in which he shall enter each warrant as issued and as presented for payment showing the date and amount of such warrant, to whom payable, the date of the presentation for payment, the date of payment and all warrants shall be paid in the order of their presentation for payment to the district treasurer. All warrants shall be drawn payable to the claimant or bearer, the same as county warrants.

**History:** Laws 1929, ch. 76, § 24; C.S. 1929, § 73-724; 1941 Comp., § 77-2424; 1953 Comp., § 75-25-24.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 66.

### **73-12-25. [Service charges to pay operation and maintenance; tax levy; employment of electrician or mechanic.]**

For the purpose of defraying the expenses of the organization of the district and the care, operation, management, repair and improvements of all canals, ditches, reservoirs, water wells, power plants, electrical motors, engines, power plants, transmission lines, pipelines and other works including drainage works and including salaries of officers and employees and for rental of [or] charges for water, power or fuel supplied to said district under any contract with owners of other irrigation works or power plants, or transmission lines or pipelines, the board may fix rates of tolls and charges and collect the same of all persons using such canals, ditches, water for irrigation or power or fuel for irrigation, or other purposes, or may provide in whole or in part payment of such expenditures by levy of taxes therefor, as hereinbefore provided, or by both tolls and taxes. In case the money raised be insufficient and in case bonds be unavailable for the construction or completion of any works in accordance with plans adopted, it shall be the duty of the board of directors to provide for the completion by causing the levy of a tax therefor in the same manner in which levy of taxes is made for the other purposes provided for in this act [73-12-1 to 73-12-57 NMSA 1978].

The board of directors may employ an expert electrician or mechanic to keep all electrical motors, engines and pumps and other service properties in good repair, so as to produce the maximum efficiency.

**History:** Laws 1929, ch. 76, § 25; C.S. 1929, § 73-725; Laws 1931, ch. 133, § 4; 1941 Comp., § 77-2425; 1953 Comp., § 75-25-25.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 70.

94 C.J.S. Waters § 332.

### **73-12-26. Right of eminent domain.**

The board of directors shall have the power to construct the said works across any stream of water, watercourse, street, avenue, highway, railway, canal, ditch or flume which the route of said canal or canals, power, transmission or pipelines may intersect or cross; and if said board and the owners or controllers of the property so to be crossed cannot agree on the amount to be paid therefor, or as to the points or the matter of said crossings, the same shall be ascertained and determined in all respects as is provided by law in respect to the taking of land for public uses. The right-of-way is hereby granted to locate, construct and maintain said works or reservoirs, over, through or upon any of the lands which are now, or may be the property of the state.

**History:** Laws 1929, ch. 76, § 26; C.S. 1929, § 73-726; 1941 Comp., § 77-2426; 1953 Comp., § 75-25-26.

**Cross-references.** - For eminent domain, see 42A-1-1 NMSA 1978 et seq.

As to bridges over road crossings, see 67-7-9 and 72-8-2 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 89.

Eminent domain for water power, combination of public and private purposes, 53 A.L.R. 9

94 C.J.S. Waters § 315.

### **73-12-27. Compensation of board; members may not be interested in any contract.**

The board of directors shall each receive compensation at the rate of two and one-half dollars (\$2.50) per day while attending meetings, and their actual and necessary expenses while engaged in official business. The salary of the secretary shall not exceed eight hundred dollars (\$800) per annum. No director or any officer named in this act [73-12-1 to 73-12-57 NMSA 1978] shall, in any manner, be interested, directly or indirectly, in any contract awarded or to be awarded by the board, or in the profits to be derived therefrom; nor shall such director or officer receive any bonus, gratuity or bribe; and for any violation of this provision any such director or officer shall be deemed guilty of a felony, and upon conviction thereof shall forfeit his office, and be punished by a fine



not exceeding five hundred dollars (\$500) or by imprisonment in the penitentiary not exceeding five years nor less than one year.

**History:** Laws 1929, ch. 76, § 27; C.S. 1929, § 73-727; 1941 Comp., § 77-2427; 1953 Comp., § 75-25-27.

### **73-12-28. Board of directors have no power to incur debt other than provided in this act.**

The board of directors, or other officers of the district, shall have no power to incur any debt or liability whatever either by issuing bonds or otherwise, in excess of the express provisions of this act [73-12-1 to 73-12-57 NMSA 1978], and any debt or liability incurred in excess of such express provisions shall be and remain absolutely void.

**History:** Laws 1929, ch. 76, § 28; C.S. 1929, § 73-728; 1941 Comp., § 77-2428; 1953 Comp., § 75-25-28.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 65.

94 C.J.S. Waters § 318.

### **73-12-29. Manner of distribution of power or water.**

In case the volume of water in any canal, reservoir or other works or in case the volume of power or fuel in any district shall not be sufficient to supply the continual wants of the entire district and all lands susceptible of irrigation therein, then it shall be the duty of the board of directors to distribute all available water, power or fuel upon certain or alternate days to different users or localities, as they may in their judgment think best, for the interest of all parties concerned, provided, however, that power or fuel for the production of power shall be first served to the fullest extent practicable for use in pumping of water for irrigation.

**History:** Laws 1929, ch. 76, § 29; C.S. 1929, § 73-729; 1941 Comp., § 77-2429; 1953 Comp., § 75-25-29.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 49.

94 C.J.S. Waters § 314.

### **73-12-30. Prior water rights not affected.**

Nothing herein contained shall be deemed to authorize any person to divert the waters of any river, creek, stream, canal or reservoir to the detriment of any person having a prior right to the waters of such river, creek, stream, canal or reservoir.

**History:** Laws 1929, ch. 76, § 30; C.S. 1929, § 73-730; 1941 Comp., § 77-2430; 1953 Comp., § 75-25-30.

### **73-12-31. Boundaries may be changed, but such change shall not affect obligations incurred.**

The boundaries of any irrigation district now or hereafter organized under the provisions of this act [73-12-1 to 73-12-57 NMSA 1978], may be changed in the manner herein prescribed; but such change of the boundaries of the district shall not impair or affect its organization, or its rights in or to property or any of its rights or privileges of whatsoever kind or nature, nor shall it affect, impair or discharge any contract, obligation, lien or charge for or upon which it or the owner of lands therein were or might become liable or chargeable had such change of its boundaries not been made.

**History:** Laws 1929, ch. 76, § 31; C.S. 1929, § 73-731; 1941 Comp., § 77-2431; 1953 Comp., § 75-25-31.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 60.

94 C.J.S. Waters § 319.

### **73-12-32. Petition for inclusion of land.**

The holder or holders of title, or evidence of title, or [of] any body of land adjacent to or situate within the boundaries of any irrigation district, may file with the board of directors of said district a petition in writing, praying that such lands be included in such district. The petition shall describe the tracts, or body of land owned by the petitioners, but such description need not be more particular than is required when such lands are entered by the county assessor in the assessment book. Such petition shall be deemed to give the assent of the petitioners to the inclusion of [in] such district of the lands described in the petition and such petition must be acknowledged in the same manner that conveyances of land are required to be acknowledged.

**History:** Laws 1929, ch. 76, § 32; C.S. 1929, § 73-732; 1941 Comp., § 77-2432; 1953 Comp., § 75-25-32.

**Cross-references.** - For acknowledgement of land conveyances, see 14-13-9 NMSA 1978.

### **73-12-33. Notice of application for inclusion of land to be published.**

The secretary of the board of directors shall cause notice of the filing of such petition to be given and published once a week for three successive weeks in a newspaper published in the county where the office of said board is situate, which notice shall state the filing of such petition and the names of the petitioners; a description of the lands

mentioned in the petition, and the prayer of said petitioners; giving notice to all persons interested, to appear at the office of said board at a time named in said notice, and show cause, in writing, if any they have, why the petition should not be granted. The time specified in the notice at which it shall be required to show cause shall be the regular meeting of the board next after the expiration of the time for the publication of the notice. The petitioner or petitioners shall advance to the secretary sufficient money to pay the estimated cost of all proceedings under such petition before the secretary shall be required to give such notice.

**History:** Laws 1929, ch. 76, § 33; C.S. 1929, § 73-733; 1941 Comp., § 77-2433; 1953 Comp., § 75-25-33.

**Cross-references.** - For notice by publication, see 14-11-1 NMSA 1978 et seq.

### **73-12-34. Hearing on petition for inclusion of land.**

The board of directors, at the time and place mentioned in said notice, or at such time or times to which the hearing of such petition may be adjourned, shall proceed to hear the petition, and all objections thereto, presented in writing by any person showing cause as aforesaid why said petition should not be granted. The failure of any person interested to show cause, in writing, as aforesaid, shall be deemed and taken as an assent on his part to the inclusion of such lands in said district as prayed for in said petition.

**History:** Laws 1929, ch. 76, § 34; C.S. 1929, § 73-734; 1941 Comp., § 77-2434; 1953 Comp., § 75-25-34.

### **73-12-35. Terms on which lands may be included.**

The board of directors to whom such petition is presented may require as a condition precedent to the granting of the same that the petitioners shall severally pay to such district such respective sums, as nearly as the same can be estimated by the board, as said petitioners or their grantors would have been required to pay for their pro rata share of all bonds and the interest thereon which may have previously thereto be [been] issued by said district had such lands been included in such district at the time the same was originally formed or when said bonds were so issued; and said board may require such petitioners to pay for such further sums as the board may deem just on account of irrigation works or water rights paid for otherwise than by issue of bonds.

**History:** Laws 1929, ch. 76, § 35; C.S. 1929, § 73-735; 1941 Comp., § 77-2435; 1953 Comp., § 75-25-35.

### **73-12-36. Action of board on petition to include land; order describing new boundaries; electors may protest.**

The board of directors if they deem it not for the best interests of the district to include therein the lands mentioned in the petition, shall by order reject the said petition, but if they deem it for the best interests of the district that said lands be included the board may order that the district be so changed as to include therein the lands mentioned in the said petition. The order shall describe the entire boundaries of the district with the lands so included, if the district boundaries be changed thereby, and for that purpose the board may cause a survey to be made of such portion of such boundaries as may be deemed necessary; provided, if within thirty days from the making of such order a majority of the qualified electors of the district protest in writing to said board against the inclusion of such lands, in said district, said order shall be held for naught and said lands shall not be included therein.

**History:** Laws 1929, ch. 76, § 36; C.S. 1929, § 73-736; 1941 Comp., § 77-2436; 1953 Comp., § 75-25-36.

### **73-12-37. Board to transmit order and plat of new boundaries to county clerk.**

Upon the allowance of such petition and in case no protest has been filed with the board within thirty days after the entry of said order as aforesaid, a certified copy of the order of the board of directors making such change, and a plat of such district showing such change, certified by the president and secretary, shall be filed for record in the office of the county clerk of each county in which are situate any of the lands of the district, and the district shall remain an irrigation district as fully to all intents and purposes as if the lands which are included in the district by the change aforesaid had been included therein at the organization of the district; and said district as so changed and all the lands therein shall be liable for all existing obligations and indebtedness of the organized district.

Upon the filing of the order and the plat, as herein mentioned, copies thereof, certified by said county clerk, shall be admissible in evidence to prove the inclusion of said lands in said district.

**History:** Laws 1929, ch. 76, § 37; C.S. 1929, § 73-737; 1941 Comp., § 77-2437; 1953 Comp., § 75-25-37.

### **73-12-38. Authority to sign petition of protest.**

A guardian, conservator or personal representative of an estate, who is appointed as such under the laws of this state, and who, as such guardian, conservator or personal representative is entitled to the possession of the lands belonging to the estate which he represents, may on behalf of his ward or the estate which he represents, upon being thereunto authorized by the proper court, sign any petition or protest in this act [73-12-1 to 73-12-57 NMSA 1978] mentioned, and may show cause, as in this act mentioned, why the boundaries of the district should not be changed or additional lands included therein.

**History:** Laws 1929, ch. 76, § 38; C.S. 1929, § 73-738; 1941 Comp., § 77-2438; 1953 Comp., § 75-25-38; Laws 1975, ch. 257, § 8-131.

### **73-12-39. Board may redivide district for election purposes [after inclusion of land].**

In case of the inclusion of any lands within any district by proceedings under this act [73-12-1 to 73-12-57 NMSA 1978] the board of directors, shall, if they deem necessary, at least thirty days prior to the next succeeding regular election, make an order redividing such district into three divisions, as nearly equal in size as may be practicable, and one director shall thereafter be elected for each division as hereinbefore provided.

**History:** Laws 1929, ch. 76, § 39; C.S. 1929, § 73-739; 1941 Comp., § 77-2439; 1953 Comp., § 75-25-39.

### **73-12-40. Land may be excluded from district.**

Any tract of land included within the boundaries of any such district, at or after its organization under the provisions of this act [73-12-1 to 73-12-57 NMSA 1978], may be excluded therefrom, in the manner herein prescribed, but such exclusion of land from the district shall not impair or affect its organization, or its rights in or to property or any of its rights or privileges of whatever kind or nature; nor shall such exclusion affect, impair or discharge any contract, obligation, lien or charge for or upon which the district or the land so excluded is liable or chargeable, at the time such land is excluded from the district.

**History:** Laws 1929, ch. 76, § 40; C.S. 1929, § 73-740; 1941 Comp., § 77-2440; 1953 Comp., § 75-25-40.

### **73-12-41. Owner shall file petition for exclusion.**

The owner or owners in fee of any lands constituting a portion of any irrigation district may file with the board of directors of the district, a petition praying that such lands may be excluded and taken from said district. The petition shall describe the lands which the petitioners desire to have excluded, but the description of such lands need not be more particular than required when lands are entered in the assessment book by the county assessor. Such petition must be acknowledged in the same manner and form as is required in case of a conveyance of land.

**History:** Laws 1929, ch. 76, § 41; C.S. 1929, § 73-741; 1941 Comp., § 77-2441; 1953 Comp., § 75-25-41.

**Cross-references.** - For acknowledgement of land conveyances, see 14-13-9 NMSA 1978.

### **73-12-42. Publish notice of petition for exclusion.**

The secretary of the board of directors shall cause a notice of the filing of such petition to be published for at least three weeks in some newspaper published in the county where the office of the board of directors is situated, and if any portion of said district lie within another county or counties, then said notice shall be so published in a newspaper published within each of said counties. The notice shall state the filing of such petition, the names of the petitioners, description of the lands mentioned in said petition and the prayer of said petitioners; and it shall notify all persons interested to appear at the office of said board at a time named in said notice, and show cause in writing, if any they have, why said petition should not be granted. The time to be specified in the notice at which they shall be required to show cause shall be the regular meeting of the board next after the expiration of the time for the publication of the notice. The petitioner or petitioners shall advance to the secretary sufficient money to pay the estimated cost of all proceedings under such petition before the secretary shall give such notice.

**History:** Laws 1929, ch. 76, § 42; C.S. 1929, § 73-742; 1941 Comp., § 77-2442; 1953 Comp., § 75-25-42.

**Cross-references.** - For notice by publication, see 14-11-1 NMSA 1978 et seq.

### **73-12-43. Board shall consider petition for exclusion.**

The board of directors at the time and place mentioned in the notice, or at the time or times to which the hearing of said petition may be adjourned, shall proceed to hear the petition and all objections thereto presented in writing by any person showing cause as aforesaid why the prayer of said petition should not be granted. The filing of such petition with such board, as aforesaid, shall be deemed and taken as an assent by each and all of such petitioners, to the exclusion from such district of the lands mentioned in the petition, or any part thereof.

**History:** Laws 1929, ch. 76, § 43; C.S. 1929, § 73-743; 1941 Comp., § 77-2443; 1953 Comp., § 75-25-43.

### **73-12-44. Board shall act on petition for exclusion.**

The board of directors, if they deem it not for the best interest of the district that the lands mentioned in the petition or any portion thereof should be excluded from said district shall order that said petition be denied; but if they deem it for the best interest of the district that the lands mentioned in the petition, or some portion thereof, be excluded from the district, and if there are no outstanding bonds of the district, then the board may order the lands mentioned in the petition, or some defined portion thereof, to be excluded from the district; provided, if within thirty days from the making of such order a majority of the qualified electors of the district protest in writing to said board against the exclusion of such lands from said district, said order shall be held for naught and such lands shall not be excluded therefrom.

**History:** Laws 1929, ch. 76, § 44; C.S. 1929, § 73-744; 1941 Comp., § 77-2444; 1953 Comp., § 75-25-44.

### **73-12-45. Order making change and plat to be transmitted to county clerk.**

Upon the allowance of such petition and in case no protest has been filed with the board within thirty days after the entry of said order as aforesaid, a certified copy of the order of the board of directors making such change and a plat of such district showing such change, certified by the president and secretary, shall be filed for record in the office of the county clerk, of each county in which are situate any of the lands of the district, and the district shall remain an irrigation district as fully to all intents and purposes as if the lands which are excluded by the change aforesaid, had not been excluded therefrom.

**History:** Laws 1929, ch. 76, § 45; C.S. 1929, § 73-745; 1941 Comp., § 77-2445; 1953 Comp., § 75-25-45.

### **73-12-46. Board may redivide district for election purposes [after exclusion of land].**

At least thirty days before the next regular election of such district the board of directors thereof may, if they deem it necessary, make an order redividing said district into three divisions, as nearly equal in size as practicable, and one director shall be elected for each division as hereinbefore provided.

**History:** Laws 1929, ch. 76, § 46; C.S. 1929, § 73-746; 1941 Comp., § 77-2446; 1953 Comp., § 75-25-46.

### **73-12-47. Supervision of electrical and mechanical appliances; schedules for use of power; regulations of quantity of water to be pumped.**

The board may employ a competent engineer or mechanic whose duty it shall be to supervise the operation and maintenance of all power plants, transmission lines, motors, engines, pumps and all electrical and mechanical appliances installed by the district and may, through such engineer or otherwise, provide engineering, electrical, mechanical, irrigation and agricultural assistance and instruction to owners of lands within the district.

The board shall in its printed rules relating to the service provide schedules for irrigation by the several owners of land so as to evenly and equitably distribute the power-load and may establish rules as to the amount of water to be pumped from each of such wells in conjunction with any state authority that may now or later be vested with jurisdiction of the appropriation of water from subsurface streams or reservoirs, in order to control, as far as practicable, the water level of such subsurface streams or

reservoirs, and to avoid excessive pumping which might increase the pumping cost beyond the point of efficiency.

Said board shall also have the jurisdiction and authority to stop the waste of water in such district. The board may refuse service to owners of land unless and until such owners conform to such rules so established by the board in their use of such power and water.

All such rules must be reasonable and are subject to correction by action of any person affected thereby in the district court.

**History:** Laws 1929, ch. 76, § 47; C.S. 1929, § 73-747; 1941 Comp., § 77-2447; 1953 Comp., § 75-25-47.

**Effective dates.** - Laws 1929, ch. 76, contains no effective date provision, but was enacted at a session which adjourned on March 9, 1929. See N.M. Const., art. IV, § 23.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation §§ 52, 53.

94 C.J.S. Waters § 321.

### **73-12-48. District shall pay tax on gross revenue derived from sales of surplus power.**

Any district organized under the provisions of this act [73-12-1 to 73-12-57 NMSA 1978] shall be taxed in the sum of four percent (4%) of the gross revenue derived from the sale of surplus power, which amount shall be paid into the county treasury of the county in which such district is organized to the credit of the county road fund.

**History:** Laws 1929, ch. 76, § 48; C.S. 1929, § 73-748; 1941 Comp., § 77-2448; 1953 Comp., § 75-25-48.

### **73-12-49. Petition for dissolution of district; election thereon.**

Whenever a majority of the resident freeholders, representing a majority of the number of acres of the land included in any irrigation district organized or hereafter to be organized under this act [73-12-1 to 73-12-57 NMSA 1978], shall petition the board of directors to call a special election for the purpose of submitting to the qualified electors of said irrigation district a proposition to vote on the question of dissolution of said irrigation district, setting forth in said petition that all obligations, bills and claims of every nature whatsoever have been fully satisfied and paid, it shall be the duty of said directors, if they shall be satisfied that all obligations, claims and bills have been fully satisfied, to call an election, setting forth the object of the said election, and to cause notice of said election to be published in some newspaper in each of the counties in which any part of said district is located, for a period of thirty (30) days next prior to said election, setting forth the time and place for holding said election in each of the voting



precincts in said district. It shall also be the duty of the directors to prepare ballots to be used at said election on which shall be written or printed words: "For Dissolution - Yes," and "For Dissolution - No."

**History:** Laws 1929, ch. 76, § 49; C.S. 1929, § 73-749; 1941 Comp., § 77-2449; 1953 Comp., § 75-25-49.

**Effective dates.** - Laws 1929, ch. 76, contains no effective date provision, but was enacted at a session which adjourned on March 9, 1929. See N.M. Const., art. IV, § 23.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 58.

94 C.J.S. Waters § 338.

### **73-12-50. Vote on dissolution to be canvassed.**

The board of directors shall name a day for canvassing the vote, and if it shall appear that a majority of said ballots contain the words, "For Dissolution - Yes," then it shall be the duty of said board of directors to make and cause to be entered upon their records an order declaring said district to be dissolved and to certify a copy of said order to the county clerk of each county wherein any part of said district is situated. And clerks shall record all such certificates in the records of the respective counties. Should it appear that a majority of the votes cast at said election were "For Dissolution - No," then the board of directors shall declare the proposition lost and shall cause the result to be made a part of the records of said irrigation district.

**History:** Laws 1929, ch. 76, § 50; C.S. 1929, § 73-750; 1941 Comp., § 77-2450; 1953 Comp., § 75-25-50.

### **73-12-51. Confirmation proceedings may be brought.**

The board of directors of any irrigation district purporting to be organized under this act [73-12-1 to 73-12-57 NMSA 1978], may commence special proceeding [proceedings] in and by which the proceedings of said board and of the county commissioners for the organization of said district and for the authorizing of the issuance and sale of the bonds of said district, whether said bonds or any of them have or have not been sold or disposed of, may be judicially examined, determined, approved and confirmed, and the validity of said bonds determined, and in which proceedings there shall likewise be determined the question of benefits received by the land of any landowner owning land within said district, and as to whether or not such land of any such landowner will receive benefits equivalent to the taxes which may be necessary to be levied against his lands in order to provide funds for the payment of the bonds of district, including the amounts to be levied thereon for the purpose of paying delinquencies, as provided in Section 20 of Chapter 41, Laws of 1919, as amended by Section 3 of this act.

**History:** Laws 1929, ch. 76, § 51; C.S. 1929, § 73-751; 1941 Comp., § 77-2451; 1953 Comp., § 75-25-51.

**Meaning of "Section 3 of this act".** - This section was copied from Laws 1927, ch. 148, § 6. Thus, "Section 3 of this act" refers to Laws 1927, ch. 148, § 3, which amends Laws 1919, ch. 41, § 20; the present compilation is 73-9-26 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 94 C.J.S. Waters § 319.

### **73-12-52. Petition to be filed in district court.**

The board of directors of the irrigation district shall file in the district court of the county in which the lands of the district, or some portion thereof, are situated, a petition stating briefly the facts concerning the organization of the district, a description of the boundaries of the district, the amount of the bond issue, the rate of interest, the series in which the bonds mature, the amount of the taxes necessary to be levied upon each acre of land in the district and the amount which may be levied to cover delinquencies, and praying that the proceedings, including the question of benefits, may be examined, determined, approved and confirmed by the court. The petition shall state the facts showing the proceedings leading up to the issue of said bonds, but the petition need not state in detail the facts showing such organization or the election of said board of directors.

**History:** Laws 1929, ch. 76, § 52; C.S. 1929, § 73-752; 1941 Comp., § 77-2452; 1953 Comp., § 75-25-52.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 94 C.J.S. Waters § 319.

### **73-12-53. Court to fix time for hearing and publish notice thereof.**

The court shall fix the time for the hearing of said petition and shall order the clerk of the court to give and publish a notice of the filing of such petition. The notice shall be published for three successive weeks in a newspaper published in the county where the office of the district is situated. The notice shall state the time and place fixed for the hearing of the petition and the prayer of the petitioners, and that any person interested in the organization of said district or in the proceedings for the issue or sale of said bonds, or the benefits received or the tax necessary to be levied, may on or before the day fixed for the hearing of said petition, demur to or answer said petition. The petition may be referred to and described in said notice as the petition of the board of directors of ..... (giving its name), praying that the proceedings for the issue and sale of said bonds of said district and benefits received may be examined, determined, approved and confirmed by the court.

**History:** Laws 1929, ch. 76, § 53; C.S. 1929, § 73-753; 1941 Comp., § 77-2453; 1953 Comp., § 75-25-53.

**Cross-references.** - For notice by publication, see 14-11-1 NMSA 1978 et seq.

As to the abolition of demurrers, see Rule 1-007 C SCRA 1986.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 94 C.J.S. Waters § 319.

### **73-12-54. Provisions of Civil Code shall apply; effect of findings of court.**

The provisions of the Code of Civil Procedure respecting the demurrer and answer to a verified complaint shall be applicable to a demurrer and answer to said petition. The person so demurring and answering said petition shall be the defendant to the special proceedings, and the board of directors shall be the plaintiff. Every material statement of the petition not specifically controverted by the answer shall, for the purpose of said special proceedings, be taken as true, and every person failing to answer the petition shall, in case said bonds are declared by the court to be valid and the benefits received equal to the taxes necessary to be levied, be estopped from thereafter questioning the legality of the organization of the district, that the benefits received equal the taxes necessary to be levied, or the validity of said bonds in any proceeding. The rules of pleading and practice relating to appeals and writs of error provided by the Code of Civil Procedure which are not inconsistent with the provisions of this act [73-12-1 to 73-12-57 NMSA 1978] are applicable to the special proceedings herein provided for.

**History:** Laws 1929, ch. 76, § 54; C.S. 1929, § 73-754; 1941 Comp., § 77-2454; 1953 Comp., § 75-25-54.

**Cross-references.** - As to abolition of demurrer, see Rule 1-007 C SCRA 1986.

**Compiler's note.** - The Code of Civil Procedure referred to in this section has been largely superseded by the Rules of Civil Procedure for District Courts (Judicial Pamphlet 1). The Code of Civil Procedure relating to appeals and writs of error has been superseded by the Rules of Appellate Procedure (Judicial Pamphlet 12).

### **73-12-55. The court's findings of fact and conclusions of law; judgment res judicata.**

Upon the hearing of such special proceedings the court shall find and determine whether the notice of the filing of the petition has been duly published for the time and in the manner in this act [73-12-1 to 73-12-57 NMSA 1978] prescribed, and shall have power and jurisdiction to examine and determine the legality and validity of, and approve and confirm, each and all of the proceedings for the organization of said district, including the question of benefits received by each and every tract of land within said district, under the provisions of this act, from and including the petition for the organization of the district, and all other proceedings which may affect the legality or validity of said bonds, the order of sale and the sale thereof, and benefits received by

each and every tract of land within said district. The court may make a general order determining the question of benefits, except as to the issue raised by any landowner appearing, in which event there shall be a definite and specific finding as to benefits received by the land owned by such appearing landowner. The court in inquiring into the question of benefits received, the regularity, legality or correctness of said proceedings, must disregard any error, irregularity or omission, which does not affect the substantial rights of the parties to said special proceedings, or others whose rights or interests are involved in such proceedings. Upon issue joined the court shall hear the evidence, and the court may, by decree, determine the question of benefits and approve and confirm such proceedings in part, and disapprove and declare illegal or invalid other or subsequent parts thereof.

If the court finds that such proceedings have been legal and valid, and that the lands within said district will be benefited to an amount equal to the bonds proposed to be issued, and the tax necessary to be levied for the payment thereof and delinquencies thereon, as in this act provided, it shall, by decree, approve and confirm the same and declare the tax to be levied and the bonds issued and sold or to be issued or sold thereunder, to be valid. And if the court finds any part of such proceedings for the organization of the district, or for the levy of the tax, or for the issue and sale of bonds or other purposes of the district to be illegal, invalid or insufficient, it may direct such proceedings or action to be taken as will remedy the defects in the former proceedings. And upon presentation to the court of satisfactory evidence that such action or proceedings have been duly taken as directed the court may by its decree approve and confirm said proceedings and declare said bonds to be valid. The costs of the special proceedings may be allowed and apportioned between the parties in the discretion of the court.

The judgment or decree when finally made and entered shall be res judicata in all cases arising in connection with the organization of the district and the levy and collection of taxes for payment of the principal or interest of the bonds or of moneys due under contracts or obligations of the district, including the question of benefits received by each tract of land within said district.

**History:** Laws 1929, ch. 76, § 55; C.S. 1929, § 73-755; 1941 Comp., § 77-2455; 1953 Comp., § 75-25-55.

### **73-12-56. ["Electrical district" defined.]**

Whenever the words "..... Electrical District" are used in this act [73-12-1 to 73-12-57 NMSA 1978] it shall be held to mean and include only the lands described in the official order establishing said district and the official order including additional lands therein, if any, on record in the office of the county clerk and property and rights acquired by the district.

**History:** Laws 1929, ch. 76, § 56; C.S. 1929, § 73-756; 1941 Comp., § 77-2456; 1953 Comp., § 75-25-56.

## **73-12-57. Provisions of Chapter 20, Acts of 1925, relating to certification board, shall apply to this act.**

The provisions of Chapter 20, of the Sessions Acts of 1925, being an act "relating to bonds of irrigation and conservancy districts, providing under what circumstances such bonds shall be legal investments for funds of banks in which companies and trust companies, trust funds and permanent funds derived from the sale of lands that may have been or may hereafter be granted to the state or any money or fund which may now or hereafter be invested in bonds, of cities, counties, school districts or municipalities and providing under what circumstances the use of irrigation and conservancy districts as security for the performance of any act may be authorized and provided that such bonds may be deposited to secure public money deposited in banks in the state of New Mexico," is hereby extended and made to apply also to electrical irrigation districts organized under this act [73-12-1 to 73-12-57 NMSA 1978].

**History:** Laws 1929, ch. 76, § 57; C.S. 1929, § 73-757; 1941 Comp., § 77-2457; 1953 Comp., § 75-25-57.

**Effective dates.** - Laws 1929, ch. 76, contains no effective date provision, but was enacted at a session which adjourned on March 9, 1929. See N.M. Const., art. IV, § 23.

**Compiler's note.** - Laws 1976, ch. 33, § 1 repealed the compiled sections of Laws 1925, ch. 20, which had dealt with certification of bonds.

## **ARTICLE 13 GENERAL PROVISIONS RELATING TO IRRIGATION DISTRICTS**

### **73-13-1. [Office of district.]**

That the office of all irrigation districts shall be in the county where the lands of said district, or some part thereof, are situate.

**History:** Laws 1933, ch. 181, § 1; 1941 Comp., § 77-2501; 1953 Comp., § 75-26-1.

### **73-13-2. [Location determined by board of directors.]**

The board of directors of each such district shall determine where the office of said district shall be and may change the location of such office, from time to time, in such manner as, in their opinion, will best serve the purposes of said district and convenience of the property owners therein.

**History:** Laws 1933, ch. 181, § 2; 1941 Comp., § 77-2502; 1953 Comp., § 75-26-2.

### **73-13-3. [Power to deal in lands and water rights.]**

The directors of any irrigation district, now organized or which may be hereafter organized under the laws of the state of New Mexico, shall have power to purchase, hold, use, control, operate, sell, convey, lease and otherwise acquire and deal in lands and water rights, and any and all interests therein, in the name and for the use of the district, whenever, in their judgment such action shall be for the benefit of the district.

**History:** Laws 1925, ch. 139, § 1; C.S. 1929, § 73-601; 1941 Comp., § 77-2503; 1953 Comp., § 75-26-3.

**Irrigation district has power to acquire water rights** by any legal means. 1964 Op. Att'y Gen. No. 64-1.

**Use of water right must commence within four years.** - The length of time that an irrigation district may hold a right without putting the water of that right to beneficial use is limited to four years, although, in the discretion of the director of the water resources division, extensions of time may be granted beyond the four-year period. 1964 Op. Att'y Gen. No. 64-1.

**Forfeiture for nonuse.** - An irrigation district must continue to beneficially use any water right acquired pursuant to this section or suffer the right to be forfeited. 1964 Op. Att'y Gen. No. 64-1.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 62.

94 C.J.S. Waters § 321.

### **73-13-4. Transfer water from one tract to another tract owned by district.**

Upon the application of any landowner in the district or upon its own motion, the board of directors of any such district may transfer any water rights appurtenant to lands held by or within such district, which for any cause are not suitable for irrigation or capable of being properly irrigated, to any other lands held by or within such district and which, in their judgment may be profitably and advantageously irrigated. Said action shall be taken by first publishing a notice in any newspaper published within the county where the office of said district is located, of the board's intention to consider a resolution setting a time and place thereof, which resolution shall have for its purpose the transfer of such water rights from certain lands described in said notice to certain other lands described in said notice, and the reason for such transfer. At such time and place protest or protests from any person or persons interested may be heard and thereafter said board of directors shall take formal action upon said resolution. Any protestant or protestants may appeal direct to the district court from any action taken by said board upon said resolution, provided said appeal be taken and notice thereof served within ten (10) days from the date of the adoption or rejection of such resolution.

Such appeal when so taken to the district court, shall be heard de novo and in all matters the same as appeals from justice of the peace courts [magistrate courts], except that no right of trial by jury shall be allowed.

**History:** Laws 1925, ch. 139, § 2; C.S. 1929, § 73-602; Laws 1934 (S.S.), ch. 8, § 14; 1941 Comp., § 77-2504; 1953 Comp., § 75-26-4.

**Cross-references.** - For notice by publication, see 14-11-1 NMSA 1978 et seq.

As to appeals to district court, see 39-3-1 and 39-3-2 NMSA 1978.

**Abolishment of office of justice of the peace.** - The office of the justice of the peace is abolished by 35-1-38 NMSA 1978, which section also provides that any reference to the justice of the peace shall be construed as a reference to the magistrate court, which court has all of the jurisdiction, power and duty of the justice of the peace.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 62.

94 C.J.S. Waters § 321.

### **73-13-5. [State engineer notified of transfer.]**

That when, acting under the provisions of Section 73-602 of the New Mexico Statutes Annotated as amended by Section 14 of Chapter 8 of the Special Session Laws of 1934 [73-13-4 NMSA 1978], the board of directors of any irrigation district shall have transferred water rights to lands other than those to which such water rights had theretofore been appurtenant, the secretary of said board shall immediately certify and file with the state engineer, a true copy of the board's resolution and action effecting such transfer. And in case of an appeal from such action of said board, the clerk of the district court, without charge or cost, shall immediately file with said state engineer a certified copy of the judgment of court entered in said appeal.

**History:** Laws 1935, ch. 41, § 1; 1941 Comp., § 77-2505; 1953 Comp., § 75-26-5.

### **73-13-6. [Assessments on transfer of water rights.]**

Whenever water rights shall be transferred, under the provisions of this act [73-13-3, 73-13-4, 73-13-6, 73-13-7 NMSA 1978], from lands which are subject to any assessment for the payment of any outstanding bonds or other obligations of the district, the lands to which such water rights are transferred shall be subject to the same assessment or assessments from the date of such transfer. Such lands shall also be charged, from the date of transfer with assessments levied for the maintenance of the irrigation system or systems of the district, and for the general expenses of the district, in the same proportion as other lands in the district.

**History:** Laws 1925, ch. 139, § 3; C.S. 1929, § 73-603; 1941 Comp., § 77-2506; 1953 Comp., § 75-26-6.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 63.

94 C.J.S. Waters § 332.

### **73-13-7. [Bondholders may be authorized to appoint director.]**

Whenever the board of directors of an irrigation district are authorized to issue bonds of the district, or refunding bonds, and have issued or are about to issue such bonds, said board shall be authorized to enter into a contract with the purchasers of said bonds, or with the financial agency which may undertake or have in charge the sale thereof, that so long as any of such bonds remain outstanding, the owners of two-thirds in principal amount of said bonds may appoint one as director of said district. Such appointment shall be made by a written statement, in duplicate, signed by the owners of two-thirds of said bonds, showing the number, series, par value and date of issue of each bond owned or held by each respectively, and appointing such person as may be provided by such contract to be member of the board of directors of said district. One of such duplicate statements shall be filed with the board of directors of the district and entered in full upon the minutes of its next meeting, and the other with the county clerk. Directors so appointed shall not be required to have any other qualifications than those herein or in said duplicate statement provided but shall take the oath and give any bond required by law. They shall have the same powers, duties and liabilities as other directors of the district but shall receive no compensation for their services.

**History:** Laws 1925, ch. 139, § 4; C.S. 1929, § 73-604; 1941 Comp., § 77-2507; 1953 Comp., § 75-26-7.

### **73-13-8. Borrowing money; limitations.**

In addition to the powers and authority, and including districts organized for the purpose of cooperating with the government of the United States under the terms of the federal reclamation law and other federal laws now vested in irrigation districts organized and existing under the laws of New Mexico, irrigation districts, through their respective boards of directors are hereby authorized and empowered to borrow money upon the income, credit and assets of such district and pledge the credit, income and assets thereof to secure the same, provided that no such loan shall exceed the sum of thirty dollars (\$30.00) per acre for each acre of irrigated land within such district; if said loan exceeds one thousand dollars (\$1,000) the same shall be authorized or approved in writing by landowners who own in excess of fifty-one percent of the lands irrigated and assessed by the district for district purposes, as such ownership and acreage be shown by the records of such district as certified by the secretary and president of said district and which said certificate or certificates shall be considered sufficient and conclusive as to the amount of such total irrigated acreage, and of the assent of the landowners authorizing or approving such loan; and after securing the said approval in writing of the



landowners, the board of directors of any such district making any such loan is hereby authorized and empowered to execute, make and deliver, in the name of and for and on behalf of such district, notes, debentures, mortgages or pledges, or other form of obligation as shall by the board of directors be deemed for the best interest of such district.

**History:** Laws 1933, ch. 52, § 1; 1941 Comp., § 77-2508; Laws 1943, ch. 41, § 1; 1953 Comp., § 75-26-8; Laws 1957, ch. 135, § 1.

**Cross-references.** - As to borrowing in districts cooperating with federal reclamation law, see 73-11-27 NMSA 1978.

**Federal reclamation laws.** - For federal reclamation laws, see 43 U.S.C. § 371 et seq.

### **73-13-9. [Security for loan; repayment; special assessments.]**

The board of directors of any district securing or to secure any loan hereunder shall have power and authority to pledge and/or mortgage the income, assets and property of said district, and are authorized and empowered, and it shall be the duty of said board, to make special levy of assessment and assessments, from year to year, against all lands within the district to meet the payment and payments, including interest and sinking fund, obligated under any loan made hereunder; that such special assessments shall be increased not less than 15 per centum over and above the amount and amounts deemed to be required to meet the loan obligation, and if the sum realized from such special assessment and assessments be insufficient then any and all other income and property of the district shall be used as necessary to meet such obligation, except that no funds of the district shall be used to pay obligations hereunder where such funds have been made available to pay the outstanding bonds of such district, or interest thereon, or other obligations of the district shown of the public records of the county clerk of the county in which said district be situated, or if situated in more than one county, then the said records of each county.

**History:** Laws 1933, ch. 52, § 2; 1941 Comp., § 77-2509; 1953 Comp., § 75-26-9.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 94 C.J.S. Waters § 326.

### **73-13-10. [Execution and acknowledgment of security for loan.]**

Loans hereunder may be made and secured by notes, debentures, mortgages or pledges, or other form of obligation as shall by its board of directors be deemed for the best interest of such district and the board of directors of such district are hereby authorized and empowered to make, execute, acknowledge and deliver any and all such notes, bonds, mortgages, pledges, debentures or other form of obligation in the name of, and for and upon behalf of such district.

**History:** Laws 1933, ch. 52, § 3; 1941 Comp., § 77-2510; 1953 Comp., § 75-26-10.

### **73-13-11. Limitation on term of loan; interest; renewal of loan.**

Loans made under the provisions hereof shall be for a period of not exceeding twenty (20) years, payable as to principal and interest as the board of directors may determine, but no obligation of the district issued hereunder shall be sold for less than ninety cents (90%) of the dollar par value thereof, and shall draw interest not to exceed seven (7) per centum per annum, provided that any such loan may be refunded or renewed, if necessary, for a further period of five (5) years.

**History:** Laws 1933, ch. 52, § 4; 1941 Comp., § 77-2511; 1943, ch. 41, § 2; 1953 Comp., § 75-26-11.

### **73-13-12. [Advertisement or notice of sale unnecessary; private sale.]**

It shall not be necessary that any advertisement or notice of sale of any obligation issued hereunder be had or given, but any such loan may be made and evidence of debt sold, negotiated and delivered at private sale without advertisement or notice.

**History:** Laws 1933, ch. 52, § 5; 1941 Comp., § 77-2512; 1953 Comp., § 75-26-12.

### **73-13-13. [Total of loans not to exceed maximum.]**

No second or subsequent loan shall be made hereunder where the total thereof, including loan previously made hereunder, shall exceed the maximum amount per acre authorized hereunder.

**History:** Laws 1933, ch. 52, § 6; 1941 Comp., § 77-2513; 1953 Comp., § 75-26-13.

**Cross-references.** - As to loan amount limit, see 73-13-8 NMSA 1978.

### **73-13-14. [Debt constitutes lien on district.]**

That obligations and evidence of debt issued by any district hereunder shall be a first lien on the income and property of such district, except outstanding bonds and lien obligations of [on] the records of the county clerk and recorder of the county or counties wherein said district be situated, as of prior date and recording of the loan or loans hereunder.

**History:** Laws 1933, ch. 52, § 7; 1941 Comp., § 77-2514; 1953 Comp., § 75-26-14.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 107.

94 C.J.S. Waters § 336.

### **73-13-15. [Use of borrowed money.]**

Money obtained or borrowed under the provisions hereof shall be expended only in the betterment, extension, construction, operation, reconstruction and repair of the canal, irrigation system and physical works of the district, and for the payment or retirement of any or all existing indebtedness not evidenced by outstanding bonds, and in any such expenditures made by the district the tender [lender] of the monies shall not be responsible for the application or expenditure thereof.

**History:** Laws 1933, ch. 52, § 8; 1941, ch. 112, § 1; 1941 Comp., § 77-2515; 1953 Comp., § 75-26-15.

### **73-13-16. [Special assessment entered by county assessor; lien; collection.]**

Special assessments authorized and made hereunder shall be certified by the secretary of the board of directors of said district to the county assessor of the county or counties where the lands assessed are situated and said assessor shall immediately enter said special assessment on the tax rolls for the year specified in said special assessment whether such roll be in his hands or in the hands of the county treasurer and said special assessment when entered shall be and constitute a first lien upon the lands assessed until paid and shall be collected by the county treasurer at the same time and in the same manner with the same penalties and interest, when in default of payment, as are other levies and assessments of the district collected, or special assessments may be made and included with the regular levies and assessments made by the district for district purposes as now provided by law.

**History:** Laws 1933, ch. 52, § 9; 1941 Comp., § 77-2516; 1953 Comp., § 75-26-16.

**Cross-references.** - For assessment collection in irrigation districts, see 73-9-22 to 73-9-28 NMSA 1978.

As to assessment collection in districts cooperating with federal reclamation laws, see 73-11-32 to 73-11-48 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 70.

94 C.J.S. Waters § 332.

### **73-13-17. [Purpose of act.]**

The intent of this act [73-13-8 to 73-13-18 NMSA 1978] is to authorize and allow irrigation district [districts] coming under the provisions hereof to borrow money and make loans from the reconstruction finance corporation, under the provisions of the Relief Act of the federal congress of 1932, and amendments made or to be made

thereto, or from any like agency of the federal government or from any other agency, person, corporation or association, and it is declared that tolls, assessments or charge for the use of water and other facilities of any such district shall be deemed self-liquidating, within the intent and meaning of the said act of congress in reference thereto.

**History:** Laws 1933, ch. 52, § 10; 1941 Comp., § 77-2517; 1953 Comp., § 75-26-17.

**Relief Act.** - The Relief Act of 1932 formerly appeared as 15 U.S.C. § 601 et seq., but has now been repealed or omitted. The reconstruction finance corporation was abolished pursuant to Reorganization Plan No. 1 of 1957, 22 Fed. Reg. 4633, 71 Stat. 647, effective June 30, 1957.

### **73-13-18. [Construction of act.]**

Any and all laws relating to irrigation districts within the state of New Mexico which would or might be construed in conflict with this act [73-13-8 to 73-13-18 NMSA 1978] shall be held inoperative for the purposes and intent of this act, and this act shall be deemed to be additional to other laws and acts permitting or authorizing indebtedness by any district coming under the provisions hereof.

**History:** Laws 1933, ch. 52, § 11; 1941 Comp., § 77-2518; 1953 Comp., § 75-26-18.

### **73-13-19. [Delinquent tax sales; purchase by district.]**

Whenever any lands within and forming part of any irrigation district organized under or governed by Chapter 41 of the Session Laws of 1919, and Chapter 20 of the Session Laws of 1919, have been heretofore or may be hereafter sold for delinquent taxes, such district may become the purchaser thereof or of the duplicate tax sale certificate therefor; provided, the rights and privileges by this act [73-13-19 to 73-13-23 NMSA 1978] conferred upon irrigation districts shall be cumulative, and this act shall not be construed to repeal Section 14 [73-11-35 NMSA 1978], Chapter 39 of the Sessions Laws of 1921.

**History:** Laws 1923, ch. 107, § 1; C.S. 1929, § 73-301; 1941 Comp., § 77-2520; 1953 Comp., § 75-26-19.

**Cross-references.** - As to tax sale purchases by districts cooperating with federal reclamation laws, see 73-11-35, 73-11-42, 73-11-45 NMSA 1978.

As to tax sale procedure generally, see 7-38-65 NMSA 1978 et seq.

**Compiler's note.** - For Laws 1919, ch. 41, see 73-9-1 NMSA 1978 and note thereto catchlined "Meaning of 'this act.'"

For Laws 1919, ch. 20, see 73-11-1 NMSA 1978 and note thereto catchlined "Meaning of 'this act.'"

**Delinquency of district assessment cause for sale at which district may purchase.**

- Property within an irrigation district may be sold for delinquency of the irrigation district's assessments even though state and other taxes have been paid and the irrigation district may buy the property which is thus sold. 1943-44 Op. Att'y Gen. No. 4484.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 72.

94 C.J.S. Waters § 337.

**73-13-20. [Expiration of redemption period; tax deed to district; prior liens.]**

Whenever any such land so sold has been heretofore or shall be hereafter struck off to the county, and has not been redeemed, and the duplicate tax sale certificate therefor has not been sold or assigned by the county, it shall be the duty of the county treasurer, upon application by the board of directors of such district, at any time after the expiration of the period of redemption provided by law, to execute and deliver a tax deed conveying said land to said district subject to a prior lien for all the taxes, interest, penalty and costs due thereon; provided that where such land has been sold for delinquent taxes under the provisions of Chapter 133 of the Session Laws of 1921, the provisions of Section 453 of said Chapter 133 shall be complied with before such deed shall be issued.

**History:** Laws 1923, ch. 107, § 2; C.S. 1929, § 73-302; 1941 Comp., § 77-2521; 1953 Comp., § 75-26-20.

**Cross-references.** - As to procedure for districts cooperating under federal reclamation laws, see 73-11-44, 73-11-45 NMSA 1978.

As to deeds issued for sale for tax delinquency, see 7-38-70 NMSA 1978.

**Compiler's note.** - Laws 1921, ch. 133, as to delinquent taxes and sales, was superseded by 72-7-1 to 72-7-38, 72-8-1 to 72-8-52, 1953 Comp. These provisions were superseded by 7-38-1 NMSA 1978 et seq. Laws 1925, ch. 102, § 28, repeals Laws 1921, ch. 133, § 453 referred to herein.

**73-13-21. [Sale of land or water rights acquired through tax sale; discharge of lien; recording.]**

It shall be the duty of said board of directors to sell said land or any part thereof or any water rights appurtenant thereto as soon as practicable for not less than the amount of

such lien and to pay to the county treasurer the amount of said lien together with accrued interest and costs, and thereupon said treasurer shall issue and deliver to the district a receipt therefor, which shall discharge said taxes and merge said lien in the district and its successor in title, which receipt shall be entitled to be recorded in the real estate records of the county without acknowledgment.

**History:** Laws 1923, ch. 107, § 3; C.S. 1929, § 73-303; 1941 Comp., § 77-2522; 1953 Comp., § 75-26-21.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 107.

94 C.J.S. Waters § 336.

### **73-13-22. [Authority to purchase; expenses of purchase.]**

The board of directors of any such district shall have full power and authority in the name and for the benefit of such district to make such purchases, to receive and hold title to such lands and water rights, to prosecute suits to quiet title thereto and to sell and convey the same. The costs and expenses of any purchases and sales authorized by this act [73-13-19 to 73-13-23 NMSA 1978] and amounts required to pay the taxes assessed against such lands while title thereto is held by the district shall be deemed operating and current expense of such district and may be assessed as such.

**History:** Laws 1923, ch. 107, § 4; C.S. 1929, § 73-304; 1941 Comp., § 77-2523; 1953 Comp., § 75-26-22.

**Cross-references.** - For actions to quiet title, see 42-6-1 NMSA 1978 et seq.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 62.

94 C.J.S. Waters § 321.

### **73-13-23. When county be reinvested with title.**

Provided, however, that if the amount of the lien to which the county treasurer's deed shall be made, as provided by Section 2 [73-13-20 NMSA 1978] hereof, be not fully paid within six years from the date of such deed, the county shall, at the expiration of such period, be and immediately become reinvested by operation of law, with the title conveyed thereby: and this amendment shall apply to tax deeds heretofore issued if three years have not expired after the date of said deeds and prior to the time this act shall go into effect.

**History:** Laws 1923, ch. 107, § 5; C.S. 1929, § 73-305; Laws 1934 (S.S.), ch. 8, § 13; 1941 Comp., § 77-2524; 1953 Comp., § 75-26-23.

### **73-13-24. [Assessment, levy and collection of taxes by district.]**

That whenever any board of directors of any irrigation district, organized under the laws of the state of New Mexico, shall decide by appropriate resolution that it is to the best interest of such district to assess, levy and collect the taxes of such district it may take over such duties.

**History:** Laws 1927, ch. 129, § 1; C.S. 1929, § 73-401; Laws 1933, ch. 121, § 1, 1941 Comp., § 77-2525; 1953 Comp., § 75-26-24.

**Compiler's note.** - There is some question about the application of 73-13-24 to 73-13-37 NMSA 1978. Laws 1927, ch. 129, related solely to districts cooperating with federal reclamation laws, but Laws 1933, ch. 121, amending 73-13-24, 73-13-25, 73-13-34, 73-13-35 NMSA 1978, apparently broadened the application to include all irrigation districts, although the title of the original act, limiting application to districts cooperating with federal reclamation law, was not amended. Also, Laws 1933, ch. 23, amending 73-13-28, 73-13-30 NMSA 1978, Laws 1933, ch. 14, amending 73-13-31 NMSA 1978 and Laws 1939, ch. 217, amending 73-13-33 NMSA 1978, are all limited in their application by the title to those districts cooperating with federal reclamation laws.

**Tax assessment void if made by unauthorized person.** - An assessment of taxes can be made only by an official or board designated by law to make it, and an attempted assessment by any other person is void. *Atchison, T. & S.F. Ry. v. Elephant Butte Irrigation Dist.*, 110 F.2d 767 (10th Cir. 1940).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 70.

94 C.J.S. Waters § 334.

### **73-13-25. [Definitions.]**

The word "district" as hereinafter used shall mean an irrigation district, organized under the laws of the state of New Mexico; the word "assessor-collector" as hereinafter used shall mean the assessor-collector of such irrigation district; the word "treasurer" as hereinafter used shall mean the treasurer of such irrigation district.

**History:** Laws 1927, ch. 129, § 2; C.S. 1929, § 73-402; Laws 1933, ch. 121, § 2; 1941 Comp., § 77-2526; 1953 Comp., § 75-26-25.

**Cross-references.** - As to application of section, see compiler's notes to 73-13-24 NMSA 1978.

### **73-13-26. [Notice of intention to take over taxation duties.]**

In the event any board of directors of any such irrigation district shall, as provided in the first section [73-13-24 NMSA 1978] hereof, decide to take over the levying, assessment and collection of taxes of its district, it shall notify the boards of county commissioners of the counties in which such district lies of its intention, by serving on the chairman or

chairmen thereof a copy of its resolution on or before the last day of February of the year for which it intends to take over such duties.

**History:** Laws 1927, ch. 129, § 3; C.S. 1929, § 73-403; 1941 Comp., § 77-2527; 1953 Comp., § 75-26-26.

**Cross-references.** - As to application of section, see compiler's notes to 73-13-24 NMSA 1978.

### **73-13-27. [Meeting for determination of tax rate.]**

In the event of any such board of directors taking over such duties it shall become the duty of the board of directors, on or before the first day of September of each year, to determine the amount of money required to meet the obligations, maintenance, operating and current expenses for the ensuing year, and to fix the rate per acre of levy necessary to provide the amount of money required to pay the interest and principal of the bonds of said district as the same shall become due; also, to fix the rate per acre necessary to provide for the amount of money required for any other purposes under laws providing for the creating and operation of irrigation districts, and which are to be raised by the levy of taxes upon the lands of said district, and to certify the same to the assessor-collector of said district. The rate of levy necessary to raise the required amount of money for said district may be increased 15% to cover delinquencies.

**History:** Laws 1927, ch. 129, § 4; C.S. 1929, § 73-404; 1941 Comp., § 77-2528; 1953 Comp., § 75-26-27.

**Cross-references.** - For application of section, see compiler's notes to 73-13-24 NMSA 1978.

As to meeting to determine expenses, see 73-9-22 NMSA 1978.

As to meeting to determine expenses of a district cooperating with federal reclamation laws, see 73-11-29 NMSA 1978.

As to the meeting to determine the expenses of electrical districts, see 73-12-18 NMSA 1978.

**Tax assessment void if made by unauthorized person.** - An assessment of taxes can be made only by an official or board designated by law to make it, and an attempted assessment by any other person is void. *Atchison, T. & S.F. Ry. v. Elephant Butte Irrigation Dist.*, 110 F.2d 767 (10th Cir. 1940).

### **73-13-28. [Assessor-collector and treasurer; appointment; bond of assessor-collector; salary; deputies.]**



It shall become the duty of the board of directors of any such district after deciding to take over the duties of levying, assessing and collecting of the taxes of such district to appoint an assessor-collector and treasurer of such district; provided, that one person may be appointed to all of such offices. The person or persons appointed to such offices shall hold the same at the pleasure of the board.

The assessor-collector shall qualify by making and entering into a good and sufficient bond signed by a surety company, authorized to do business in this state, such bond to be subject to the approval of the board of directors and of the district judge of the district in which the office of the irrigation district is located, the amount thereof to be fixed by such board of directors, but such bond shall be in a sum not less than the sum of twenty thousand (\$20,000) dollars, conditioned for the faithful performance of his duties as assessor-collector, and for the paying over to the treasurer or to a legal depository all funds or sums of money and other things of value coming into his hands as such assessor-collector. The board of directors may require additional bond or additional security at any time the same be advisable in their judgment. Such assessor-collector shall receive in full compensation for his service such salary as shall be fixed by the board of directors not exceeding the rate of fifteen hundred (\$1,500) dollars per annum.

One or more deputies may be appointed by the board of directors to assist the assessor-collector and treasurer, for such period of time as the board may direct, and when so appointed, such deputy shall perform such duties as the board of directors may order, and may be removed at any time, at the pleasure of the board of directors. Any such deputy shall give bond in such amount as the board of directors may require, which shall be conditioned as the bond of the assessor-collector is conditioned.

Such assessor-collector shall perform such other duties as the board of directors shall determine, and the board shall fix his additional compensation, if any, therefor.

**History:** Laws 1927, ch. 129, § 5; C.S. 1929, § 73-405; Laws 1933, ch. 23, § 1; 1941 Comp., § 77-2529; 1953 Comp., § 75-26-28.

**Cross-references.** - As to application of section, see compiler's notes to 73-13-24 NMSA 1978.

### **73-13-29. [Collections for United States; additional bond of treasurer.]**

In case any district is appointed fiscal agent of the United States, or is authorized by the United States to make collections of money for and in behalf of the United States, in connection with any federal reclamation project, such treasurer shall execute a further additional bond, in such sum as the secretary of the interior may require, conditioned for the faithful discharge by the district of its duties as fiscal or other agent of the United States, under such appointment or authorization; such additional bond to be approved, recorded and filed as provided for other official bonds, and any such additional bond

may be sued on by the United States or any person injured by the failure of such officer or the district to perform the conditions of such bond.

**History:** Laws 1927, ch. 129, § 6; C.S. 1929, § 73-406; 1941 Comp., § 77-2530; 1953 Comp., § 75-26-29.

**Cross-references.** - For application of section, see compiler's notes to 73-13-24 NMSA 1978.

### **73-13-30. [Treasurer; bond; salary.]**

The treasurer after being appointed by the board of directors shall qualify by making an oath that he will well and truly perform his duties as such treasurer and by entering into a bond to the state of New Mexico conditioned the same as the bonds of county treasurers. Said bond to be in a sum to be fixed by the board of directors, but such bond shall be not less than the sum of twenty thousand (\$20,000) dollars, to be signed by a surety company, authorized to do business in this state, and to be approved by the board of directors and the district judge of the district in which the office of said irrigation district is located. Said treasurer shall receive a salary fixed by the board of directors not exceeding the rate of fifteen hundred (\$1,500) dollars per annum, and shall hold his office at the pleasure of the board or [of] directors; provided, however, that in the event one person is appointed to all the offices of assessor-collector and treasurer, only one bond need be furnished in such sum as may be fixed by the board of directors, subject to the approval of the district judge of the district in which the office of the irrigation district is located.

**History:** Laws 1927, ch. 129, § 7; C.S. 1929, § 73-407; Laws 1933, ch. 23, § 2; 1941 Comp., § 77-2531; 1953 Comp., § 75-26-30.

**Cross-references.** - For application of section, see compiler's notes to 73-13-24 NMSA 1978.

### **73-13-31. [Assessment roll.]**

The assessor-collector, on or before the first day of November of each year, shall prepare the assessment roll of the district, upon the blanks to be furnished by the board of directors, by entering upon said roll the name of the owner, the description and area of each tract of land in said district subject to taxation under the irrigation district laws of this state; a description of the tracts on the assessment rolls according to the plat numbers on the maps of the district, prepared by the United States bureau of reclamation, shall be a sufficient description; and shall extend upon said assessment roll the amounts due from each tract of land for each fund certified to him by the board of directors in a separate column and also the total taxes so levied for all the purposes of said irrigation district and the total amount due from each tract of land for all purposes in said irrigation district. In the event said district is composed of land lying in different counties, the assessor-collector shall make a separate assessment roll for each county.

Said assessment roll shall be kept at the office of the district and the taxes shall be payable at the office of the district.

**History:** Laws 1927, ch. 129, § 8; C.S. 1929, § 73-408; Laws 1933, ch. 14, § 1; 1941 Comp., § 77-2532; 1953 Comp., § 75-26-31.

**Cross-references.** - For application of section, see compiler's notes to 73-13-24 NMSA 1978.

**Assessor-collector cannot assess land not determined to be subject to levy.** - While the assessor-collector under this section is charged with the duty of preparing the final assessment roll of the district and extending the levies thereon, the primary duty of considering, determining and designating the land subject to assessment and levy and passing on claims of exemption is vested in the board of directors, and the assessor-collector can only extend upon the assessment roll such lands as have been determined and designated as subject to assessment and levy by the board of directors. *Atchison, T. & S.F. Ry. v. Elephant Butte Irrigation Dist.*, 110 F.2d 767 (10th Cir. 1940).

**Board must determine.** - Where board of directors does not determine and designate the lands of the railroad company as subject to assessment and levy for the years 1919 to 1931, inclusive, the treasurer-collector is without authority to place them on the tax rolls and to extend the levies thereon for such years. *Atchison, T. & S.F. Ry. v. Elephant Butte Irrigation Dist.*, 110 F.2d 767 (10th Cir. 1940).

### **73-13-32. [Collection of taxes.]**

It shall be the duty of the assessor-collector of said irrigation district to collect and receipt for all taxes levied as herein provided in the same manner and at the same time as is required in the receipt for, and the collection of, taxes upon real estate for county purposes; provided, that such collector shall receive in payment of the district bond fund taxes above mentioned for the year in which said taxes were levied, interest coupons or bonds issued by said irrigation district maturing within said year, the same as so much lawful money of the United States, if such interest coupons do not exceed the amount of taxes for district bond fund which the person tendering the same owes. The assessor-collector shall on or before the first Monday of each month, turn over to the treasurer all monies and coupons theretofore collected or received by him or an account of such taxes.

**History:** Laws 1927, ch. 129, § 9; C.S. 1929, § 73-409; 1941 Comp., § 77-2533; 1953 Comp., § 75-26-32.

**Cross-references.** - For application of this section, see compiler's notes to 73-13-24 NMSA 1978.

As to collection of real estate taxes, see 7-38-73.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 70.

94 C.J.S. Waters § 337.

**73-13-33. [Date for payment of taxes; delinquency; interest; penalties and costs; districts cooperating with reclamation laws.]**

All district taxes, tolls and charges of any irrigation district cooperating with the United States under the federal reclamation laws and other federal laws shall be due and payable as follows: first half January 1st of each year; second half July 1st of each year; on February 1 of each year, if the taxes, tolls and charges made the previous year shall not have been paid, one-half shall become delinquent; and on August 1st following, if not paid, the remaining one-half of said taxes, tolls and charges, shall become delinquent; and such taxes, tolls and charges from the respective dates of delinquency, shall bear interest at the rate of one-half of one percent per month until paid; provided, however, that when any such district shall have entered into a contract with the United States requiring the payment of the operation and maintenance costs to the United States in advance, all of such operation and maintenance taxes, tolls and charges, and all taxes, tolls and charges for current and miscellaneous expenses, shall be due and payable on the first day of January of each year, and on February 1st of each year, if the operation and maintenance taxes, tolls and charges, and taxes, tolls and charges for current miscellaneous expenses made the previous year shall not have been paid, all of the same shall become delinquent and shall bear interest at the rate of one-half of one percent per month until paid; and provided further, that the laws as to penalties and costs for delinquent taxes due to the county shall apply to delinquent taxes due to the district.

**History:** Laws 1927, ch. 129, § 10; C.S. 1929, § 73-410; Laws 1939, ch. 217, § 1; 1941 Comp., § 77-2534; 1953 Comp., § 75-26-33.

**Cross-references.** - As to apparently conflicting sections, see 73-11-37, 73-11-38 NMSA 1978 and notes thereto.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 72.

94 C.J.S. Waters § 337.

**73-13-34. [Powers of district treasurer; delinquent taxes.]**

That whenever any such irrigation district shall take over the levy, assessment and collection of the taxes of such district, the treasurer of such district shall have all the powers and be charged with all the duties, with reference to the collection of delinquent taxes of such district as are imposed by law on the county treasurer, with reference to the collection of state and county taxes, and that the provision by law regarding the collection of delinquent state and county taxes by suit, judgment, issuance and sale of tax sale certificates and tax deeds, or otherwise, shall be applicable to collection of

delinquent taxes of such district; provided, however, that any tax sale certificate or tax deed, issued by the treasurer of such district shall be issued, subject to state, county and municipal taxes.

**History:** Laws 1929, ch. 88, § 1; C.S. 1929, § 73-411; Laws 1933, ch. 121, § 3; 1941 Comp., § 77-2535; 1953 Comp., § 75-26-34.

**Cross-references.** - As to application of section, see compiler's notes to 73-13-24 NMSA 1978.

As to collection of delinquent taxes and sales in districts cooperating with federal reclamation laws, see 73-11-40 to 73-11-48 NMSA 1978.

As to collection of and sale for delinquent taxes, see 7-38-1 NMSA 1978 et seq.

### **73-13-35. [Accounts kept by treasurer; payments; monthly report; depositories.]**

It shall be the duty of the treasurer to keep a district bond fund account, a district contract fund account, a district operation and maintenance fund account and a district general fund account, and the proceeds of the taxes collected shall be covered into the respective funds. The district bond fund shall consist of all moneys collected for principal and interest of the bonds issued by said district; the district contract fund shall consist of all moneys received from taxes levied to provide for payment to the United States; the operation and maintenance fund shall consist of all moneys received on account of the operation and maintenance of irrigation and drainage system, except moneys to be paid to the United States pursuant to any contract; and the federal [general] fund shall consist of all moneys received on account of current and miscellaneous expenses, not to be covered into any of the foregoing funds. Provided, however, that the treasurer and other officers of irrigation districts, other than those organized to cooperate with the government of the United States under federal reclamation law, shall not be required to keep a contract fund account.

The treasurer shall pay out of the district bond fund when due, the interest and principal of said bonds of said district, at the time and place specified in said bonds. The treasurer shall pay out of the said contract fund, all payments as they become due to the United States under contract at the time and in the manner provided in said contract. The treasurer shall pay out of said operation and maintenance fund, only upon warrants signed by the president or vice president, and countersigned by the secretary of the district directed to such party or parties as are due payment for operating and maintaining said irrigation and drainage system. The treasurer shall pay out of said general fund only upon order signed by the president or vice president, and countersigned by the secretary of said district.

The treasurer, on the fifteenth day of each month, shall report to the board of directors of said district, the amount of money in his hands to the credit of the respective funds

above provided. All district taxes collected and paid to the treasurer, as aforesaid, shall be by him deposited in a bank or banks to be designated by the board of directors as a depository, and the board of directors is hereby created a board of finance, and the funds of said district shall be deposited in accordance with the law in force in respect to public depositories.

**History:** Laws 1927, ch. 129, § 12; C.S. 1929, § 73-412; Laws 1933, ch. 121, § 4; 1941 Comp., § 77-2536; 1953 Comp., § 75-26-35.

**Cross-references.** - As to application of section, see compiler's notes to 73-13-24 NMSA 1978.

As to public depositories, see 6-10-2 NMSA 1978 et seq.

**Federal reclamation laws.** - For federal reclamation laws, see 43 U.S.C. § 371 et seq.

### **73-13-36. [County treasurer to turn over funds to district treasurer upon appointment.]**

Immediately upon the appointment and qualification of the treasurer, the county treasurer and ex-officio district treasurer shall turn over to the treasurer all funds of the district and take proper receipts therefor.

**History:** Laws 1927, ch. 129, § 13; C.S. 1929, § 73-413; 1941 Comp., § 77-2537; 1953 Comp., § 75-26-36.

**Cross-references.** - For application of section, see compiler's notes to 73-13-24 NMSA 1978.

### **73-13-37. [Criminal liability of assessor-collector and treasurer.]**

The assessor-collector and treasurer of such district shall be liable for indictment and criminal prosecution for malfeasance, misfeasance or failure to perform any duty herein prescribed, as provided by law in cases of county treasurers.

**History:** Laws 1927, ch. 129, § 14; C.S. 1929, § 73-414; 1941 Comp., § 77-2538; 1953 Comp., § 75-26-37.

**Cross-references.** - As to application of section, see compiler's notes to 73-13-24 NMSA 1978.

**Effective dates.** - Laws 1927, ch. 129, contains no effective date provision, but was enacted at a session which adjourned March 12, 1927. See N.M. Const., art. IV, § 23.

### **73-13-38. [Insolvency of municipal irrigation districts; appointment of receiver.]**

That whenever any municipal irrigation district shall become insolvent and unable to pay its debts, the district court may, at the suit of its board of directors, appoint a receiver for such municipal irrigation district, to operate the same under the court's directions, for the purpose of conducting the affairs of such irrigation district.

**History:** Laws 1931, ch. 55, § 1; 1941 Comp., § 77-2539; 1953 Comp., § 75-26-38.

**Cross-references.** - As to appointment of receivers, see Rule 1-066 SCRA 1986.

### **73-13-39. [Powers of receiver of municipal district.]**

Whenever any receiver is appointed, as provided in the preceding section [73-13-38 NMSA 1978], he shall enter into such bond as the court may fix, and he shall have the same powers and authority heretofore exercised by the board of directors of such irrigation district, and such additional powers as a court of equity may or can grant.

**History:** Laws 1931, ch. 55, § 2; 1941 Comp., § 77-2540; 1953 Comp., § 75-26-39.

**Effective dates.** - Laws 1931, ch. 55, contains no effective date provision, but was enacted at a session which adjourned on March 14, 1931. See N.M. Const., art. IV, § 23.

### **73-13-40. [Powers of receivers of irrigation districts; limitation on power.]**

That whenever any irrigation district has been placed in the hands of a receiver by order of court, such receiver shall be vested with all powers and authority which, in the absence of such receivership, would be vested in the board of directors of such district; provided, however, that in all cases where, in the absence of such receivership, a formal resolution of the board of directors of such district would be necessary for the exercise of some power or authority or the accomplishment of some purpose, such receiver shall only exercise such power or authority or accomplish such purpose when authorized so to do by order of the court in which such receivership proceedings are pending.

**History:** Laws 1933, ch. 180, § 1; 1941 Comp., § 77-2541; 1953 Comp., § 75-26-40.

### **73-13-41. [Powers upon order of court; effect of action.]**

That upon order of the court in which any such receivership is pending, the receiver of any irrigation district may execute, on behalf of such district, any contract, conveyance, bond, debenture or other instrument which the board of directors of such district might

or could have executed in its behalf in the absence of such receivership and may take any other action in connection with the affairs of such district which such board of directors might or could take in the absence of such receivership, and that any and all such action so taken or instruments so executed by such receiver shall, in all respects, have the same force and effect and be binding upon such district in the same manner and to the same extent as if such action had been taken or said instruments had been executed by or under the authority of the board of directors or other appropriate officer or officers of such district in the absence of such receivership.

**History:** Laws 1933, ch. 180, § 2; 1941 Comp., § 77-2542; 1953 Comp., § 75-26-41.

### **73-13-42. [Additional powers.]**

That in addition to the power and authority specified in Paragraphs [Sections] one and two hereof [73-13-40, 73-13-41 NMSA 1978], all such receivers shall have further powers and authority as the court in which such proceedings are pending may or can grant.

**History:** Laws 1933, ch. 180, § 3; 1941 Comp., § 77-2543; 1953 Comp., § 75-26-42.

**Effective dates.** - Laws 1933, ch. 180, contains no effective date provision, but was enacted at a session which adjourned March 11, 1933. See N.M. Const., art. IV, § 23.

### **73-13-43. [Validating law; definitions.]**

The following terms, whenever used or referred to in this act [73-13-43 to 73-13-46 NMSA 1978], shall have the following meaning unless a different meaning clearly appears from the context:

A. the term "irrigation law" shall mean Chapter 20 of the Session Laws of 1919, Chapter 41 of the Session Laws of 1919 and Chapter 76 of the Sessions Laws of 1929, and acts amendatory thereof, and Chapter 73 of the 1929 Compiled Statutes Annotated of New Mexico, as amended;

B. the term "irrigation district" shall mean and include every irrigation district created, established or organized, or purporting to have been created, established or organized under the provisions of the irrigation law;

C. the term "directors" shall mean and include every board of directors or other governing body of any irrigation district, created, established or organized, or purporting to have been created, established or organized under the provisions of the irrigation law.

**History:** Laws 1934 (S.S.), ch. 9, § 1; 1941 Comp., § 77-2544; 1953 Comp., § 75-26-43.



**Compiler's note.** - For Laws 1919, ch. 20, see "Meaning of 'this act'" note following 73-11-1 NMSA 1978. For Laws 1919, ch. 41, see "Meaning of 'this act'" note following 73-9-1 NMSA 1978. For Laws 1929, ch. 76, see 73-12-1 to 73-12-57 NMSA 1978. For Comp. Stat. 1929, ch. 73, which included other provisions in addition to Laws 1919, ch. 20, Laws 1919, ch. 41 and Laws 1929, ch. 76, see 73-9-1 to 73-9-6, 73-9-8, 73-9-10 to 73-9-62, 73-10-1 to 73-10-6, 73-10-8 to 73-10-12, 73-10-14 to 73-10-45, 73-11-1 to 73-11-10, 73-11-12 to 73-11-17, 73-11-19 to 73-11-36, 73-11-49 to 73-11-54, 73-12-1 to 73-12-57, 73-13-3, 73-13-4, 73-13-6, 73-13-7, 73-13-19 to 73-13-37 NMSA 1978.

### **73-13-44. [Establishment and proceedings of districts validated.]**

That the creation, establishment and organization of irrigation districts, or purported creation, purported establishment and purported organization under the provisions of the irrigation law, together with all notices, proceedings, acts and deeds done and performed with reference thereto, be and the same are hereby validated, ratified, confirmed, approved and declared legal in all respects, and that the aforesaid irrigation districts are hereby created, established and organized and continued bodies corporate and politic, and shall include and be comprised, as if the metes and bounds thereof were set forth herein, of the lands originally included in each irrigation district as defined and established by the board of county commissioners of the proper county under the provisions of the irrigation law, and any other lands included or purporting to have been included in such district, by the directors thereof by proceedings as provided by the irrigation law, excepting only such lands as may have been excluded or purporting to have been excluded from such district, by the directors thereof by proceedings as provided by the irrigation law; provided, that nothing herein contained shall be so construed as to hereafter prevent any lands from being excluded from or included in such district by the directors in accordance with the procedure now or hereafter provided by the irrigation law; and any and all proceedings heretofore had by the board of directors of any such irrigation district intended for the purpose of excluding from or including within such district or districts, any lands, are hereby validated, ratified, confirmed, approved and declared legal in all respects.

**History:** Laws 1934 (S.S.), ch. 9, § 2; 1941 Comp., § 77-2545; 1953 Comp., § 75-26-44.

**Cross-references.** - For meaning of "irrigation law," see 73-13-43 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation §§ 58 to 61.

94 C.J.S. Waters § 319.

### **73-13-45. [Elections and appointments of officers and employees validated.]**

That all elections of directors of said irrigation districts held or purporting to be held under the provisions of the irrigation law and all appointments of officers, employees

and agents of irrigation districts made or purported to have been made by the directors of such irrigation district, be, and the same hereby are validated, ratified, confirmed, approved and declared legal in all respects, and the said directors, officers, employees and agents are hereby declared to be the duly qualified directors, officers, employees and agents of the said irrigation districts with the rights, powers and duties granted unto them by the laws of this state or conferred upon them by the directors of such district, with like effect as though at the time or times said acts and proceedings, elections and appointments were done or had, there existed de jure irrigation districts and statutory authority for the doing thereof.

**History:** Laws 1934 (S.S.), ch. 9, § 3; 1941 Comp., § 77-2546; 1953 Comp., § 75-26-45.

**Cross-references.** - For meaning of "irrigation law," see 73-13-43 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 61.

94 C.J.S. Waters § 320.

### **73-13-46. [Unissued bonds; elections validated.]**

That all elections in said irrigation districts authorizing or purporting to authorize the issuance of bonds of said irrigation districts which have not been delivered and paid for prior to the date this act [73-13-43 to 73-13-46 NMSA 1978] shall become effective, be, and the same hereby are validated, ratified, confirmed, approved and declared legal and still effective in all respects. Upon resolution adopted by a majority of the members of the board of directors of such irrigation districts, all such authorized and unissued bonds may be issued, sold, executed and delivered by the directors notwithstanding any discrepancies or irregularities which may have occurred in the proceedings relating to the holding of such elections or in the length of time, not exceeding twenty years, which may have occurred from the date of the holding of such elections or purported elections to the date of the passage of such resolution, any laws of this state to the contrary notwithstanding.

**History:** Laws 1934 (S.S.), ch. 9, § 4; 1941 Comp., § 77-2547; 1953 Comp., § 75-26-46.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 67.

94 C.J.S. Waters § 322.

### **73-13-47. Irrigation districts; regulations; recreational use of reservoirs.**

Whenever an irrigation district impounds waters on lands leased from or with consent of a state or federal agency, the irrigation district may adopt regulations in conformance

with the existing state laws that provide for public safety, environmental protection and restricted use provisions relating to the use of the surface waters for recreational purposes.

**History:** Laws 1987, ch. 325, § 1.

**Effective dates.** - Laws 1987, ch. 325 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 19, 1987.

## **ARTICLE 14 CONSERVANCY DISTRICTS; DEFINITIONS; ORGANIZATION AND MANAGEMENT**

### **73-14-1. Declaration.**

The establishment of conservancy districts for the purposes and in the manner provided for in this act is hereby declared to be conducive to the public health, safety, convenience and welfare.

**History:** Laws 1927, ch. 45, § 101; C.S. 1929, § 30-101; 1941 Comp., § 77-2701; 1953 Comp., § 75-28-1.

**Cross-references.** - For definitions of terms, see 73-14-3 and 73-18-1 NMSA 1978.

**Meaning of "this act".** - The term "this act" refers to the Conservancy Act, enacted by Laws 1927, ch. 45, the provisions of which are presently compiled as 73-14-1 to 73-14-8, 73-14-16, 73-14-17, 73-14-33 to 73-14-48, 73-15-1 to 73-15-15, 73-16-1 to 73-16-4, 73-16-6 to 73-16-29 and 73-17-1 to 73-17-24 NMSA 1978. Laws 1990, ch. 48, § 1 adds 73-14-20.1 NMSA 1978 to the Conservancy Act. See also 73-18-1 NMSA 1978 and notes thereto.

### **Constitutionality of including railroad right-of-way within conservancy district.** -

The inclusion of a strip of railroad right-of-way within an extension of a conservancy district created for purpose of irrigation and placing an ad valorem tax thereon was not invalid as a taking of the railroad's property without due process of law, as the benefits derived need not be direct or immediate, the legislature's determination that there is an enhancement in value being final, unless the method prescribed is one so arbitrary and unfair as to amount to an abuse of legislative power. In re Arch Hurley Conservancy Dist., 52 N.M. 34, 191 P.2d 338 (1948).

**When new conservancy district creation warranted.** - The creation of a new conservancy district is warranted if its purposes are conducive to public health, safety, convenience and welfare. In re Sandia Conservancy Dist., 57 N.M. 413, 259 P.2d 577 (1953).

**Legislature may authorize ad valorem tax on real property** in the conservancy district so long as the same is neither discriminatory nor confiscatory. In re Arch Hurley Conservancy Dist., 52 N.M. 34, 191 P.2d 338 (1948).

**Law reviews.** - For article, "Existing Legislation and Proposed Model Flood Plain Ordinance For New Mexico Municipalities," see 9 Nat. Resources J. 629 (1969).

For comment, "Attractive Nuisance - Liability of the United States for Accidental Drowning of Infant Trespassers in Middle Rio Grande Project Irrigation Ditches," see 10 Nat. Resources J. 137 (1970).

For article, "Water Rights Problems in the Upper Rio Grande Watershed and Adjoining Areas," see 11 Nat. Resources J. 48 (1971).

For article, "New Mexico Water Law: An Overview and Discussion of Current Issues," see 22 Nat. Resources J. 1045 (1982).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 78 Am. Jur. 2d Waters §§ 95 to 98.

Formation and organization of conservancy districts, 69 A.L.R. 285.

Constitutionality of provisions for conservancy districts, 70 A.L.R. 1274.

94 C.J.S. Waters §§ 318, 319.

## **73-14-2. Application.**

This act shall be construed as applying to districts organized for the purpose of providing and maintaining flood protection, river control, drainage, water storage for supplementing irrigation needs, constructing and maintaining distribution systems for irrigation; and other improvements for public health, safety, convenience and welfare either in cooperation with the United States government or any department thereof under federal laws, or to districts organized for the purpose of making such improvements under the powers in this act contained; but the provisions hereof shall not apply to or affect irrigation or drainage districts heretofore organized under any other laws of this state.

**History:** Laws 1927, ch. 45, § 102; C.S. 1929, § 30-102; 1941 Comp., § 77-2702; 1953 Comp., § 75-28-2.

**Emergency clauses.** - Laws 1927, ch. 45, § 1101, makes the act effective immediately. Approved March 11, 1927.

**Meaning of "this act".** - See same catchline in notes to 73-14-1 NMSA 1978.

**Reorganization of prior existing conservancy district unnecessary.** - A conservancy district organized under Laws 1923, ch. 140 (repealed), with incidental power to promote irrigation did not require reorganization after enactment of Laws 1972, ch. 45 (73-14-1 to 73-14-8, 73-14-16, 73-14-17, 73-14-33 to 73-14-48, 73-15-1 to 73-15-15, 73-16-1 to 73-16-4, 73-16-6 to 73-16-29 and 73-17-1 to 73-17-24 NMSA 1978), conferring upon it power to pursue irrigation as a primary object. *Gutierrez v. Middle Rio Grande Conservancy Dist.*, 34 N.M. 346, 282 P. 1 (1929), cert. denied, 280 U.S. 610, 50 S. Ct. 158, 74 L. Ed. 653 (1930).

**Conservancy district may be organized for irrigation of lands**, though they are not menaced by floods. *Cater v. Sunshine Valley Conservancy Dist.*, 33 N.M. 583, 274 P. 52 (1928).

### **73-14-3. Definition of terms.**

A. This act may be known and cited as "The Conservancy Act of New Mexico"; the districts created hereunder may be termed "conservancy districts"; and the bonds which may be issued hereunder may be called "conservancy bonds," and such designation may be engraved or printed on their face; the tax books and records provided hereunder shall be termed "conservancy books" or "conservancy records," and such title shall be printed, stamped or written thereon.

B. Whenever the term "person" is used, and not otherwise specified, it shall be taken to mean a person, firm, copartnership, association or corporation, other than a county, town, city or other political subdivision. Similarly, the words "public corporation" shall be taken to mean counties; towns; villages; cities; community land grants; community ditches or acequias; water users' associations; school, drainage, irrigation, water, park improvement or conservancy districts; and all governmental agencies clothed with the power of levying or providing for the levy of general or special taxes, or special assessments.

C. Whenever the term "land" or "real property" is used, and not otherwise specified, it shall be taken to mean real estate, as the words "real estate" are defined by the laws of the state of New Mexico, and shall embrace all railroads, electric railroads, street and interurban railroads, highways, roads, streets and street improvements, electric, telephone, telegraph and transmission lines, gas, electric, sewer and water systems, water rights, irrigation, drainage and community ditches or acequias; pipelines and rights-of-way of public or private corporations and all other real property whether held for public or private use.

D. Whenever the term "land" or "property" is used with reference to benefits, appraisals, assessments or taxes; public corporations shall, as political entities, be considered as included in such reference, in the same manner as "land" or "property."

E. Whenever the term "tax" or "taxes" is used, and not otherwise specified, with reference to levies for benefits, damages, construction, improvements or maintenance, it shall be taken to mean special taxes or special assessments.

F. Whenever the term "publication" is used and no manner specified therefor, it shall be taken to mean publication, in both English and Spanish, once a week for three (3) consecutive weeks in at least one newspaper of general circulation in each county wherein such publication is to be made. It shall not be necessary that publication shall be made on the same days of the week in each of the three (3) weeks, but not less than fourteen (14) days (excluding the day of the first publication) shall intervene between the first publication and the last publication; and publication shall be complete on the date of the last publication.

G. In case of a conservancy district or proposed conservancy district lying in one judicial district, whenever the term "court" or "conservancy court" is used, and not otherwise specified, it shall be taken to mean the district court of that judicial district of the state of New Mexico wherein the petition for the organization of a conservancy district shall be filed, or a judge thereof in vacation. In case of a conservancy district, or proposed conservancy district lying in more than one judicial district then for the purposes of this act, the words "court" or "conservancy court" shall have the same significance.

H. Whenever the term "clerk" is used, and not otherwise specified, it shall be taken to mean the clerk of the county of the state of New Mexico wherein the petition for the organization of a conservancy district shall be filed.

I. Whenever the term "district" is used, and not otherwise specified, it shall be taken to mean a conservancy district organized or ratified and continued under the provisions of this act, and to include only the lands described in the order of the court establishing said district and such additional lands therein, if any, on record in the office of the clerk, and property and rights acquired by the district.

J. Whenever the term "board" or "directors" is used, and not otherwise specified, it shall be taken to mean the board of directors appointed by the court for a conservancy district organized under the provisions of this act.

K. Whenever the term "president" is used, and not otherwise specified, it shall be taken to mean the chairman of the board of directors and the president of a conservancy district organized under the provisions of this act.

L. Whenever the term "secretary" is used, and not otherwise specified, it shall be taken to mean the secretary of the board of directors of a conservancy district organized under the provisions of this act.

M. Whenever the term "treasurer" is used, and not otherwise specified, it shall be taken to mean the treasurer of [a] conservancy district organized under the provisions of this act.

N. Whenever the term "appraisers" is used, and not otherwise specified, it shall be taken to mean the board of appraisers appointed by the court for a conservancy district organized under the provisions of this act.

O. Whenever the term "public health" is used in this act it shall be construed to include any act or thing tending to improve the general sanitary condition of the community, whether by way of drainage, relieving low or wet land of stagnant and unhealthy conditions or preventing the flooding of any lands producing or tending to produce unhealthful conditions.

P. Whenever the terms "public welfare" or "public benefit" are used, they shall be construed to extend to and include any act or thing tending to improve or benefit the general public or benefit the inhabitants of the district.

**History:** Laws 1927, ch. 45, § 103; C.S. 1929, § 30-103; Laws 1933, ch. 80, § 1; 1941 Comp., § 77-2703; 1953 Comp., § 75-28-3.

**Cross-references.** - For additional definitions of terms, see 73-18-1 NMSA 1978.

**Meaning of "this act".** - See same catchline in notes to 73-14-1 NMSA 1978.

#### **73-14-4. Jurisdiction of the conservancy court.**

A. The conservancy court is hereby vested with jurisdiction, power and authority, when the conditions stated in Section 202 [73-14-5 NMSA 1978] are found to exist, to establish conservancy districts for all or any of the following purposes:

- (1) preventing floods;
- (2) regulating stream channels by changing, widening or deepening the same;
- (3) regulating the flow of streams;
- (4) diverting, controlling or in whole or in part eliminating watercourses;
- (5) reclaiming, draining or filling wet and overflowed lands;
- (6) of providing for irrigation where it may be needed and otherwise benefiting and developing agricultural lands or lands susceptible of irrigation or agricultural development;
- (7) protecting public and private property from inundation.

Incident to the foregoing purposes and to enable their accomplishment, any district so established shall have the power to straighten, widen, deepen, divert or change the course or terminus of any natural or artificial watercourse; drainage, irrigation or

community ditches, or acequias; to build reservoirs, canals, drainage, irrigation or community ditches or acequias, levees, walls, embankments, bridges or dams; to drain, reclaim or fill low lands and lands subject to overflow; to make improvements, to remove and to regulate and prescribe the location of improvements upon land; to maintain, operate and repair any of the construction herein named; to sink wells, to purchase, develop and reclaim waters for the purpose of using, distributing, selling or leasing the same; to construct, operate, lease and control plants for the generation, distribution, sale, lease and use of electric energy; to construct, maintain and operate irrigation and drainage works or systems, necessary to maintain the irrigability of lands within the district, or to purchase, extend, improve, operate and maintain constructed works; to cooperate and contract with the federal or any state government or agent or department thereof; to promote the agricultural resources and marketing facilities of the district; to levy assessments, issue bonds and make appropriations of money, and to do all things necessary to effectuate and fulfill the purposes of this act; and such powers shall also be appraised as herein provided.

B. The conservancy court shall thereafter, for all purposes of this act, except as heretofore or hereinafter otherwise provided, maintain and have original and exclusive jurisdiction coextensive with the boundaries of said district, and of lands and other property proposed to be included in said district or affected by said district, without regard to the usual limits of its jurisdiction.

C. No judge of such court wherein such petition is filed or other judge exercising administrative or judicial functions under the provisions of this act shall be disqualified to perform any duty imposed by this act by reason of ownership of property within any district or proposed district, or by reason of ownership of any property that may be benefited, taxed or assessed therein.

**History:** Laws 1927, ch. 45, § 201; C.S. 1929, § 30-201; 1941 Comp., § 77-2704; 1953 Comp., § 75-28-4.

**Cross-references.** - For definition of conservancy court, see 73-14-3 NMSA 1978.

For establishment of guaranty fund, see 73-16-41 to 49 NMSA 1978.

**Meaning of "this act".** - See same catchline in notes to 73-14-1 NMSA 1978.

**Constitutionality of powers and duties conferred.** - Powers and duties conferred upon the district court by this act (Laws 1927, ch. 45) are essentially judicial and do not violate N.M. Const., art. III, § 1. *Gutierrez v. Middle Rio Grande Conservancy Dist.*, 34 N.M. 346, 282 P. 1 (1929), cert. denied, 280 U.S. 610, 50 S. Ct. 158, 74 L. Ed. 653 (1930).

The Conservancy Act (Laws 1927, ch. 45) is not unconstitutional under contention that under it the individual petitioners, by fixing the boundaries of the district are empowered to determine whether or not the property included will be benefited, thereby causing an



unlawful delegation to them of the legislative power, as the petitioners must allege and the conservancy court must find that the property described in the petition will be benefited, not merely some of the property described. In re Arch Hurley Conservancy Dist., 52 N.M. 34, 191 P.2d 338 (1948).

**This act (Laws 1927, ch. 45) does not create a new court** in violation of N.M. Const., art. VI, § 1. Gutierrez v. Middle Rio Grande Conservancy Dist., 34 N.M. 346, 282 P. 1 (1929), cert. denied, 280 U.S. 610, 50 S. Ct. 158, 74 L. Ed. 653 (1930).

**Other provisions not made unconstitutional.** - This section does not of itself make the Conservancy Act (Laws 1927, ch. 45) unconstitutional under N.M. Const., art. VI, § 18. Gutierrez v. Middle Rio Grande Conservancy Dist., 34 N.M. 346, 282 P. 1 (1929), cert. denied, 280 U.S. 610, 50 S. Ct. 158, 74 L. Ed. 653 (1930).

**Scope of discretion to form districts.** - A water conservancy district is a quasi-municipal corporation, the formation of which is a legislative function, and for which the Conservancy Act (Laws 1927, ch. 45) has set up certain standards and requirements and has delegated to the district court the ministerial and judicial task of determining whether these standards have been met in a given case; but the court does not have and could not constitutionally have been invested with a general discretion for the formation of whatever districts the court deemed to be in the public interest. Rancho Del Rio Grande Conservancy Dist. v. Tres Rios Ass'n, 87 N.M. 482, 535 P.2d 1333 (1975).

**Powers not to be expanded beyond language.** - Formation of a water conservancy district is a statutory proceeding and the powers conferred may not be expanded by inference or construction beyond the language of the statute. Rancho Del Rio Grande Conservancy Dist. v. Tres Rios Ass'n, 87 N.M. 482, 535 P.2d 1333 (1975).

**Jurisdiction not exclusive to determine collectibility of assessments.** - There is a supportable inference in the Conservancy Act (Laws 1927, ch. 45) itself that the conservancy court does not have exclusive jurisdiction to determine the collectibility of assessments in the provision that the county treasurer is relieved of his statutory duty to collect them if their collection has been enjoined by order of court of competent jurisdiction. Tondre v. Garcia, 45 N.M. 433, 116 P.2d 584 (1941).

**To issue injunction.** - Injunction to restrain county treasurer from refusing to accept payment of county and state taxes unless taxpayers paid all conservancy district assessments against the lands need not be brought in conservancy court. Tondre v. Garcia, 45 N.M. 433, 116 P.2d 584 (1941).

**Or to prevent wrongs.** - Jurisdiction of a district court other than the conservancy court to prevent wrongs may not be successfully challenged merely because such district may be incidentally interested in the outcome of the litigation. This is not the kind of a case that is exclusively within the jurisdiction of the conservancy court. Tondre v. Garcia, 45 N.M. 433, 116 P.2d 584 (1941).

**Law reviews.** - For note, "County Regulation of Land Use and Development," see 9 Nat. Resources J. 266 (1969).

For article, "Existing Legislation and Proposed Model Flood Plain Ordinance for New Mexico Municipalities," see 9 Nat. Resources J. 629 (1969).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 94 C.J.S. Waters § 321.

### **73-14-5. Petition; place of filing; signatures; contents; land included.**

A. Before any district shall be established under this act, a petition shall be filed in the office of the clerk of the court vested with jurisdiction, in a county in which all or a part of the lands embraced in said proposed district are situated, signed by the owners of more than one-third of the real property in such proposed district, in either acreage or value, as shown by the last preceding assessment roll of the county or counties wherein such district is proposed to be created.

B. Whenever a proposed district shall include territory extending into more than one judicial district, the petition for the organization of said district shall be filed in the office of the clerk of the court in and for that county which has the greatest valuation of real property within the proposed district, as shown by the tax rolls of the respective counties.

C. Such a petition may also be signed by any private corporations owning lands within the proposed district, or by the governing body of any public corporation lying wholly or partly within the proposed district, in such manner as it may prescribe, and when so signed, such petition shall fill all the requirements of representation upon such petition of the owners of land of such public corporation, as they appear upon the tax rolls; and thereafter it shall not be necessary for individuals within said public corporation to sign such a petition.

D. Any city interested in some degree in the improvement, upon proper action by its governing body, may alone file the petition required by this section.

E. The petition shall set forth:

(1) the proposed name of said district;

(2) that property within the proposed district will be benefited by the accomplishment of one or more of the purposes enumerated in Section 73-14-4 NMSA 1978;

(3) a general description of the purpose of the contemplated improvement, and of the territory to be included in the proposed district; such description need not be given by metes and bounds or by legal subdivisions, but it shall be sufficient to enable a property owner to ascertain whether his property is within the territory proposed to be organized

as a district; said territory need not be contiguous, provided it be so situated that the organization as a single district of the territory described is calculated to promote one or more of the purposes enumerated in Section 73-14-4 NMSA 1978;

(4) said petition shall pray for the organization of the district by the name proposed.

F. No petition with the requisite signatures shall be declared null and void on account of alleged defects, but the court may at any time permit the petition to be amended to conform to the facts, by correcting any errors in the description of the territory or in any other particular.

G. Several similar petitions or duplicate copies of the same petition for the organization of the same district may be filed and shall together be regarded as one petition. All such petitions filed, prior to the hearing on the first petition filed, shall be considered by the court the same as though filed with the first petition.

H. A guardian, conservator or personal representative of an estate who is appointed as such under the laws of this state, and who as such guardian, conservator or personal representative is entitled to the possession of the lands belonging to the estate which he represents, may, on behalf of his ward or the estate which he represents, upon being thereunto authorized by the proper court, sign and acknowledge the petition in this act mentioned and may act in respect to the said lands to the same extent and in the same manner as a private owner might act.

I. For the inclusion in any existing district of territory beyond its boundaries, the same procedure as specified for the organization of a district may be followed by the landowners of the said territory; provided, however, approval and consent thereto by the court shall first have been obtained. Such territory may also be included by the appraisers of such existing district as hereinafter provided. In the event that all of the landowners of such territory desire to have the same included in such district, a petition signed by each of them shall be filed in the court which has jurisdiction over such district, and upon approval and consent thereto by the court, no further proceedings except the order of the court including such territory in such district shall be necessary. Provided, however, the directors of the district may be heard before the court on any objections the district may have to the inclusion of such territory therein because of the change in official plan and the appraisal of the benefits and damages.

J. In determining whether a requisite number of landowners have signed the petition, the court shall be governed by the names as they appear upon the tax roll, which shall be prima facie evidence of such ownership.

K. No land shall be included or proposed to be included in any such district which is so situated that it cannot reasonably be drained, flooded or irrigated as an integral part thereof by or from any stream or waters to be controlled thereby, and is more than two miles distant from any lands above described.

L. No district formed under the provisions of Chapter 140, Laws of New Mexico, 1923, or formed under the provisions of this act, for the protection and conservation of property in the Rio Grande valley, shall include any lands south of the Elephant Butte dam; provided that any district formed under said Chapter 140, Laws of New Mexico, 1923, shall retain all rights to impound and control the water of the Rio Grande or other streams or waters, or to acquire rights and property incident thereto that it now possesses, whether within or without the district as hereby limited and defined. Except as otherwise provided herein, the boundaries of any such district heretofore created shall be limited and confined to the territory as herein defined.

**History:** Laws 1927, ch. 45, § 202; C.S. 1929, § 30-202; 1941 Comp., § 77-2705; 1953 Comp., § 75-28-5; Laws 1971, ch. 51, § 1; 1975, ch. 257, § 8-132.

**The 1975 amendment** substituted "conservator or personal representative" for "executor or administrator" in two places near the beginning of Subsection H.

**Effective dates.** - Laws 1975, ch. 257, § 10-101, as amended by Laws 1977, ch. 121, § 11, makes the Probate Code effective on July 1, 1976, as to affairs of decedents dying on or after July 1, 1976, and as to matters of trusts, missing or protected persons, minors and incapacitated persons commenced on or after July 1, 1976, and provides that rights or remedies or rules of procedure or evidence with regard to affairs of decedents dying prior to July 1, 1976, and matters of trust, missing or protected persons, minors or incapacitated persons commenced prior to July 1, 1976, shall not be affected.

**Emergency clauses.** - Laws 1977, ch. 121, § 13, makes the act effective immediately. Approved March 31, 1977.

**Compiler's note.** - Laws 1927, ch. 45, § 910, compiled as 73-17-23 NMSA 1978, repeals Laws 1923, ch. 140, relating to establishing conservancy districts to cooperate with the federal government under federal reclamation law.

**Meaning of "this act".** - See same catchline in notes to 73-14-1 NMSA 1978.

**No unconstitutional delegation of legislative power.** - The Conservancy Act (Laws 1927, § 45) is not unconstitutional under contention that under it the individual petitioners, by fixing the boundaries of the district are empowered to determine whether or not the property included will be benefited, thereby causing an unlawful delegation to them of the legislative power, as the petitioners must allege and the conservancy court must find that the property described in the petition will be benefited, not merely some of the property described. In re Arch Hurley Conservancy Dist., 52 N.M. 34, 191 P.2d 338 (1948).

**Constitutionality of former law.** - Laws 1923, ch. 140, §§ 202, 205 (repealed), regarding petitions for the establishment of conservancy districts and hearings on said petitions, did not violate U.S. Const., amend. XIV, to N.M. Const., art. II, § 2 or art. XI, §

8. In re Proposed Middle Rio Grande Conservancy Dist., 31 N.M. 188, 242 P. 683 (1925) (decided under former law).

**Legislative purpose not abused.** - The true legislative purpose of the Conservancy Act (Laws 1927, ch. 45) was not abused by applying it to a strip of railroad right-of-way on account of incidental benefits that will be derived. In re Arch Hurley Conservancy Dist., 52 N.M. 34, 191 P. 2d 338 (1948).

**Inclusion of certain Rio Grande valley lands not prohibited.** - This section does not prohibit inclusion of lands in the Rio Grande valley in the north of Santa Fe county in conservancy districts organized for irrigation only. Cater v. Sunshine Valley Conservancy Dist., 33 N.M. 583, 274 P. 52 (1928).

**Effect of repeal of prior law on refiled petition.** - Where petition was filed for the organization of a district under the 1923 Conservancy Act before its repeal by Laws 1927, ch. 45, but before action, and by order of the court, the petition was withdrawn after the repeal and refiled as an original petition, proceeding was under Laws 1927, ch. 45, even though the prayer was inapt. Cater v. Sunshine Valley Conservancy Dist., 33 N.M. 583, 274 P. 52 (1928).

**Effect of substantial change in property to be included.** - In the formation of water conservancy districts which will result in the imposition of taxes or other assessments upon the property included therein, a substantial change in the property to be included from that described in the petition or petitions for the creation of such districts vitiates the petition or petitions and requires their dismissal. Rancho Del Rio Grande Conservancy Dist. v. Tres Rios Ass'n, 87 N.M. 482, 535 P.2d 1333 (1975).

Once the people have weighed the merits of the proposal to establish a water conservancy district as embodied in the petition and each has estimated the burden and benefit for himself, it would be grossly unfair to permit changes to be made by eliminating property belonging to numerous individuals and municipalities, thus multiplying the cost per acre foot of water to the user; this would materially and substantially amend the signer's original petition without his authority, subjecting him to additional burdens, and cannot be approved. Rancho Del Rio Grande Conservancy Dist. v. Tres Rios Ass'n, 87 N.M. 482, 535 P.2d 1333 (1975).

**Result of excluding certain lands from petition** for creation of a water conservancy district is that the signatures of all persons on originating petitions become a nullity, since after the exclusions the petitions no longer describe the territory to be included in the proposed district. It cannot be assumed that any one of the petitioners would have affixed his signature to the originating petitions had he known that the district to be created would be substantially different from that made known to him by the instrument which he signed as an originating petitioner. Rancho Del Rio Grande Conservancy Dist. v. Tres Rios Ass'n, 87 N.M. 482, 535 P.2d 1333 (1975).

**All property in petition must be benefited.** - The petitioners must allege and the conservancy court must find that the property described in the petition will be benefited by the organization of the conservancy district - not some of the property described in the petition, but all of it, and upon finding some of the lands would not be benefited, the conservancy court should have dismissed the petition; when it permitted the amendment of the petition and the creation of a new and different district, it exceeded its authority. *Rancho Del Rio Grande Conservancy Dist. v. Tres Rios Ass'n*, 87 N.M. 482, 535 P.2d 1333 (1975).

**Incidental benefits to lands included in district.** - The Conservancy Act specifically provides for the inclusion of lands that will not be directly benefited by the establishment or enlargement of a district. A district may be established or enlarged if some of the lands to be included will receive only incidental benefits. The lands to be incidentally benefited, however, must not lie more than two miles from the lands to be irrigated, drained, or protected from flooding as an integral part of the district. 1978 Op. Att'y Gen. No. 78-13.

**Extension of La Plata conservancy district to include Farmington and Aztec precluded.** - Subsection K of this section would preclude the extension of the boundaries of the La Plata conservancy district to include Farmington and Aztec since nearly all of the land within the limits of Farmington, Aztec, and the surrounding area proposed to be included within the boundaries of the La Plata conservancy district is located more than two miles from district land that would be drained, irrigated, or protected from flooding by the district or Animas-La Plata project facilities. 1978 Op. Att'y Gen. No. 78-13.

**Petition proposal must be specific.** - To make the support evidenced by the filing of a petition for the creation of a water conservancy district meaningful, and to comply with the notice requirements of due process, the proposal in the petition must be specific; otherwise, a citizen cannot form an intelligent opinion as to whether to sign and has no way of knowing what he is petitioning for or what he is agreeing to pay and the effect of his signing upon others who also will be taxed. *Rancho Del Rio Grande Conservancy Dist. v. Tres Rios Ass'n*, 87 N.M. 482, 535 P.2d 1333 (1975).

**Signatures by private and public corporations.** - Petition to establish and organize a conservancy district must be signed by owners of more than one-third of the real property in the proposed district, in either acreage or value, as shown by the last preceding tax roll of the county wherein the district is to be created, but Subsection C of said section plainly authorizes private corporations and governing bodies of public corporations, lying wholly or partly within the proposed district and owning lands therein, to sign such petition in a representative capacity, thereby dispensing with the requirement that the petition be signed by landowners individually. *In re Sandia Conservancy Dist.*, 57 N.M. 413, 259 P.2d 577 (1953).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Constitutionality and construction of statute which leaves to determination of private individuals boundaries of territory to be erected into water districts, 70 A.L.R. 1064.

94 C.J.S. Waters § 319(2).

### **73-14-6. Bond of petitioners.**

At the time of filing the petition, or at any time subsequent thereto and prior to the time of the hearing on said petition, a bond shall be filed, with security approved by the court, sufficient to pay all the expenses [expenses] connected with the proceedings in case the organization of the district be not effected. If at any time during the proceeding the court shall be satisfied that the bond first executed is not sufficient it may require the execution of an additional bond within a time to be fixed, which shall not be less than ten days from the date of such order, and upon failure of the petitioners to execute the same, the petition shall be dismissed.

**History:** Laws 1927, ch. 45, § 203; C.S. 1929, § 30-203; 1941 Comp., § 77-2706; 1953 Comp., § 75-28-6.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 94 C.J.S. Waters § 319(2).

### **73-14-7. Notice of hearing on petition.**

A. Immediately after the filing [filing] of such petition the court shall by order fix a place and time, not less than ninety (90) days after the petition is filed, for hearing thereon, and thereupon the clerk shall cause notice by publication (Schedule Form I) [73-17-24 NMSA 1978] to be made of the pendency of the petition and of the time and place of the hearing thereon, in each county in which there is territory included in the proposed district. If no newspaper is published in any such county, publication shall be made in a newspaper of general circulation in the proposed district.

B. It shall not be necessary for said clerk to name the parties interested, nor to describe separate lots or tracts of land in giving said notice, but it shall be sufficient to give such descriptions as will enable the owner to determine whether or not his land is covered by such description.

**History:** Laws 1927, ch. 45, § 204; C.S. 1929, § 30-204; 1941 Comp., § 77-2707; 1953 Comp., § 75-28-7.

**Cross-references.** - As to short form of notice, see 73-17-19 NMSA 1978.

For legal newspapers, see 14-11-2 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 94 C.J.S. Waters § 319(2).

### **73-14-8. Protesting petitions and hearing on petitions.**

Any owner of real property or any public corporation in said proposed district not having individually signed a petition for the organization and incorporation of said district may, on or before the date set for the cause to be heard, file objections to the organization and incorporation of such district. Such objections shall be heard by the court as an advanced case without unnecessary delay.

**History:** Laws 1927, ch. 45, § 205; C.S. 1929, § 30-205; 1941 Comp., § 77-2708; 1953 Comp., § 75-28-8.

### **73-14-9. Hearing.**

A. Upon the hearing of the petition as provided for in Section 73-14-8 NMSA 1978, if it appears that a petition for the organization of the district has been signed and presented as required by law, and that the allegations of the petition are true, that the lands described in the petition substantially conform to the requirements of Subdivision [Subsection] K, Section 73-14-5 NMSA 1978, and that no protesting petition has been filed, or if filed has been dismissed, the court shall give the district a corporate name, by which in all proceedings it shall thereafter be known, and shall fix a date for an election and order the board of county commissioners of any county within which the proposed district lies, to conduct such election on the question of whether or not the district shall be created.

B. If the court finds against the prayer of the petitions [petition], it shall dismiss the proceedings and adjudge the costs against the signers of the petition in the proportions as it deems just and equitable.

**History:** 1953 Comp., § 75-28-8.1, enacted by Laws 1965, ch. 76, § 1.

**Scope of discretion to form districts.** - A water conservancy district is a quasi-municipal corporation, the formation of which is a legislative function, and for which the Conservancy Act (Laws 1927, ch. 45) has set up certain standards and requirements and has delegated to the district court the ministerial and judicial task of determining whether these standards have been met in a given case; but the court does not have and could not constitutionally have been invested with a general discretion for the formation of whatever districts the court deemed to be in the public interest. *Rancho Del Rio Grande Conservancy Dist. v. Tres Rios Ass'n*, 87 N.M. 482, 535 P.2d 1333 (1975).

**Powers not to be expanded beyond language.** - Formation of a water conservancy district is a statutory proceeding and the powers conferred may not be expanded by inference or construction beyond the language of the statute. *Rancho Del Rio Grande Conservancy Dist. v. Tres Rios Ass'n*, 87 N.M. 482, 535 P.2d 1333 (1975).

**Effect of substantial change in property to be included.** - In the formation of water conservancy districts which will result in the imposition of taxes or other assessments



upon the property included therein, a substantial change in the property to be included from that described in the petition or petitions for the creation of such districts vitiates the petition or petitions and requires their dismissal. *Rancho Del Rio Grande Conservancy Dist. v. Tres Rios Ass'n*, 87 N.M. 482, 535 P.2d 1333 (1975).

Once the people have weighed the merits of the proposal to establish a water conservancy district as embodied in the petition and each has estimated the burden and benefit for himself, it would be grossly unfair to permit changes to be made by eliminating property belonging to numerous individuals and municipalities, thus multiplying the cost per acre foot of water to the user; this would materially and substantially amend the signer's original petition without his authority, subjecting him to additional burdens, and cannot be approved. *Rancho Del Rio Grande Conservancy Dist. v. Tres Rios Ass'n*, 87 N.M. 482, 535 P.2d 1333 (1975).

**Result of excluding certain lands from petition** for creation of a water conservancy district is that the signatures of all persons on originating petitions become a nullity, since after the exclusions the petitions no longer describe the territory to be included in the proposed district. It cannot be assumed that any one of the petitioners would have affixed his signature to the originating petitions had he known that the district to be created would be substantially different from that made known to him by the instrument which he signed as an originating petitioner. *Rancho Del Rio Grande Conservancy Dist. v. Tres Rios Ass'n*, 87 N.M. 482, 535 P.2d 1333 (1975).

**All property in petition must be benefited.** - The petitioners must allege and the conservancy court must find that the property described in the petition will be benefited by the organization of the conservancy district - not some of the property described in the petition, but all of it, and upon finding some of the lands would not be benefited, the conservancy court should have dismissed the petition; when it permitted the amendment of the petition and the creation of a new and different district, it exceeded its authority. *Rancho Del Rio Grande Conservancy Dist. v. Tres Rios Ass'n*, 87 N.M. 482, 535 P.2d 1333 (1975).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 94 C.J.S. Waters § 319(2).

### **73-14-10. Notice of election; publication.**

Upon entry of the order of the court, the board of county commissioners of any county within which the proposed district lies, shall cause to be published a notice of the election in a newspaper of general circulation in the proposed conservancy district, at least once a week for three consecutive weeks.

**History:** 1953 Comp., § 75-28-8.2, enacted by Laws 1965, ch. 76, § 2.

### **73-14-11. Form of ballot.**

The form of the ballots for the creation of the conservancy district shall be printed and appear in substantially the following form:

"BALLOT

On the question of the formation of .....  
Conservancy District.

(Place "X" in one of the boxes  
below)

For the creation of the conservancy  
district..... []

Against the creation of the conservancy  
district..... []."

**History:** 1953 Comp., § 75-28-8.3, enacted by Laws 1965, ch. 76, § 3.

**Paper ballot safest route.** - The use of paper ballots in accordance with 73-14-63 and 73-14-64 NMSA 1978 would appear to be the safest route to follow in conducting the conservancy district election. Such ballots could be handed to qualified electors who could mark the ballots in the same booths as contain the voting machines used in the city elections and after leaving the booth, drop such ballots into a separate ballot box provided for that purpose. 1959-60 Op. Att'y Gen. No. 59-136.

### **73-14-12. Conduct of election.**

A. The election on the issue of whether the proposed conservancy district will be created shall be conducted and canvassed in the same manner in the territory of the proposed district as elections for municipal school board members are carried out. Only persons who are qualified electors and landowners of the district shall be eligible to vote in the election.

B. The cost of conducting the election within each county in which the district is proposed shall be borne by that county.

C. Election officials shall count the votes cast and as soon as all the ballots have been counted, they shall certify the total number of votes cast and the number cast for the creation of the district and the number cast against the creation of the district within the territory of the proposed district.

D. The results of the election after being canvassed shall be certified to the court by the board of county commissioners.

**History:** 1953 Comp., § 75-28-8.4, enacted by Laws 1965, ch. 76, § 4.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 94 C.J.S. Waters § 319(2).

### **73-14-13. Declaration of organization.**

A. The court, upon receipt of the certified results of the election that a majority of the persons voting have voted in favor of creating the district, shall declare the district organized.

B. Thereupon, the district shall be a political subdivision of the state and a body corporate with all the powers of a public or municipal corporation. The district shall have power to sue and be sued, to incur debts, liabilities and obligations, to exercise the right of eminent domain and of taxation and assessment as provided in the Conservancy Act of New Mexico, to issue negotiable bonds, and to perform all acts necessary and proper for carrying out the purposes for which the district was created and for exercising the powers with which it is invested.

C. In its declaration, the court shall designate where the office or principal place of business of the district shall be located, which shall be within the corporate limits of the district, if practicable, and which may be changed by order of the court. The regular meetings of the board of directors shall be held at such office or place of business, but for cause may be adjourned to any other convenient place. The official records and files of the district shall be kept at the office so established.

**History:** 1953 Comp., § 75-28-9, enacted by Laws 1965, ch. 76, § 5.

**Cross-references.** - For form of decree, see Form II under 73-17-24 NMSA 1978.

**Repeals and reenactments.** - Laws 1965, ch. 76, § 5, repeals 75-28-9, 1953 Comp., relating to declaration of organization of district, nature of district and contents of decree, and enacts the above section.

**Conservancy Act.** - See catchline "Meaning of 'this act'" in notes to 73-14-1 NMSA 1978.

**Free license plates.** - The middle Rio Grande conservancy district is a political subdivision of state and body corporate and is entitled to free license plates for its cars and trucks. 1931-32 Op. Att'y. Gen. 166 (opinion rendered under former law).

**Reports to be filed.** - Conservancy districts are public bodies of the state and are required to file reports with the state comptroller (now state auditor). 1937-38 Op. Att'y Gen. 166 (opinion rendered under former law).

**Granting of easements.** - The state tax commission (now property tax division of taxation and revenue department) may grant easements for public purposes over tax deeded lands to the middle Rio Grande conservancy district. 1959-60 Op. Att'y Gen. No. 60-81 (opinion rendered under former law).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 94 C.J.S. Waters § 319(2).

### **73-14-14. Application of election law.**

Sections 73-14-9 through 73-14-13 NMSA 1978 shall not be construed as applying to any conservancy district organized for the purpose of providing and maintaining for surface waters: flood protection, river control, drainage, water storage for supplementing irrigation needs, constructing and maintaining distribution systems for irrigation and other improvements for public health and safety.

**History:** 1953 Comp., § 75-28-9.1, enacted by Laws 1971, ch. 201, § 1.

**Powers not to be expanded beyond language.** - Formation of a water conservancy district is a statutory proceeding and the powers conferred may not be expanded by inference or construction beyond the language of the statute. *Rancho Del Rio Grande Conservancy Dist. v. Tres Rios Ass'n*, 87 N.M. 482, 535 P.2d 1333 (1975).

### **73-14-15. Hearing; declaration of organization; nature of district; contents of decree.**

A. In respect to conservancy districts involving surface waters, upon the hearing of the petitions as provided in Section 73-14-8 NMSA 1978, if it shall appear that a petition for the organization of a district has been signed and presented, as hereinbefore provided, and that the allegations of the petition are true, that the lands described in the petition substantially conform to the requirements of Section 73-14-5 K NMSA 1978, and that no protesting petition has been filed, or if filed has been dismissed, the court shall, by order, adjudicate all questions of jurisdiction, declare the district organized and give it a corporate name by which in all proceedings it shall thereafter be known.

B. Thereupon the district shall be a political subdivision of the state of New Mexico and a body corporate with all the powers of a public or municipal corporation; shall have power to sue and be sued, to incur debts, liabilities and obligations, to exercise the right of eminent domain and of taxation and assessment as herein provided, to issue negotiable bonds and to do and perform all acts herein expressly authorized, and all acts necessary and proper for carrying out the purposes for which the district was created and for exercising the powers with which it is vested.

C. In such decree, the court shall designate the place where the office or principal place of business of the district shall be located, which shall be within the corporate limits of the district, if practicable, and which may be changed by order of the court from time to time. The regular meetings of the board of directors shall be held at such office or place of business, but for cause may be adjourned to any other convenient place. The official records and files of the district shall be kept at the office so established.

D. If the court finds against the prayer of petition, it shall dismiss said proceedings and adjudge the costs against the signers of the petition in such proportions as it shall deem just and equitable.

**History:** 1953 Comp., § 75-28-9.2, enacted by Laws 1971, ch. 201, § 2.

**Military leave and pay.** - Employees of a conservancy district are entitled to 15 days military leave and pay each year. 1959-60 Op. Att'y Gen. No. 59-54 (opinion rendered under former law).

### **73-14-16. Filing order of incorporation.**

Within thirty (30) days after the said district has been declared a corporation by the court, the clerk shall transmit to the state corporation commission and to the probate clerk and ex-officio recorder in each of the counties having lands in said district, copies of the findings and the order of the court incorporating said district. The same shall be filed in the office of the state corporation commission in the same manner as articles of incorporation are now required to be filed under the general laws concerning corporations, and copies shall also be filed in the office of the probate clerk and ex-officio recorder of each county in which a part of the district may be, where they shall become permanent records; and the said recorder in each county shall receive a fee of one (\$1.00) dollar for filing and preserving the same, and the state corporation commission shall receive a fee of five (\$5.00) dollars for filing and preserving the same.

**History:** Laws 1927, ch. 45, § 207; C.S. 1929, § 30-207; 1941 Comp., § 77-2710; 1953 Comp., § 75-28-10.

**Cross-references.** - For filing of articles of incorporation with corporation commission, see 53-12-3 NMSA 1978.

**Duties of probate clerk transferred.** - New Mexico Const., art. VI, § 22, provides that, unless otherwise provided by law, a county clerk shall be elected in each county who shall perform the duties now performed by the clerks of the district courts and clerks of the probate courts. However, Laws 1968, ch. 69, § 20, provides that the district court shall appoint a district court clerk for each county of the judicial district, and that the duties and place of employment shall be designated by the court. See 34-6-19 NMSA 1978.

**Filing fees are part of cost of improvement of lands** under the El Vado dam, and all lands whether in federal, state or private ownership must bear the proportionate share of the costs. 1929-30 Op. Att'y Gen. 129.

### **73-14-17. Appointment of directors.**

A. Within thirty (30) days after entering the decree incorporating said district or, in cases of conservancy districts heretofore created under the laws of the state of New Mexico,

within thirty (30) days after the passage and approval of this act (§§ 77-2701 - 77-2928, 77-3001 - 77-3024) the conservancy court shall appoint as a board of directors of the district, five (5) persons. Directors must be residents of and owners of property in the district, provided, however, in districts embracing lands situate in four or more counties the number of directors appointed shall be seven (7) and, at least one (1) director shall be a resident of and appointed from each county therein, and no more than two (2) directors so appointed shall be residents of the same county and provided further that, in districts embracing lands situate in four (4) or more counties at least one (1) director shall be appointed from each county having land within such district and each director so appointed shall be a person who is a resident of and owner of land within the district who derives not less than 75% of his income from irrigation farming. Said directors shall be appointed for terms of six (6) years. The court shall fill all vacancies which may occur on said board. Each director shall hold office during the term for which he is appointed and until his successor is duly appointed and has qualified, being removable therefrom only for cause after a hearing upon a motion filed by any interested person in the original proceeding in which the district was organized, and shall furnish a corporate surety bond at the expense of the district in amount and form fixed and approved by the court, conditioned upon the faithful performance of his duties as such director, which shall be filed in the office of the clerk.

B. All of the provisions of this act (Secs. 77-2701 - 77-2928, 77-3001 - 77-3024), and of proceedings thereunder and relating to the qualifications, powers and duties of "director" and "boards [board] of directors" shall apply to the "commissioners" and "board of commissioners" provided for in this section; and whenever the term "director" or "board of directors" is used in this act (Secs. 77-2701 - 77-2928, 77-3001 - 77-3024) with reference to their organization, powers and duties, it shall be taken and construed to mean and include the "commissioners" and "board of commissioners" created by this section. Vacancies on the board by expiration of term or otherwise shall be filled in the same manner as original appointment. The office of director and the board of directors created under Chapter 140 of the Laws of 1923, so far as it relates to any conservancy district organized thereunder for the protection and conservation of lands in the Rio Grande valley, extending into two (2) or more judicial districts is hereby terminated and abolished.

**History:** Laws 1927, ch. 45, § 301; C.S. 1929, § 30-301; Laws 1933, ch. 80, § 2; 1941 Comp., § 77-2711; Laws 1953, ch. 183, § 1; 1953 Comp., § 75-28-11.

**Emergency clauses.** - Laws 1927, ch. 45, § 1101, makes the act effective immediately. Approved March 11, 1927.

Laws 1933, ch. 80, § 3, makes the act effective immediately. Approved March 14, 1933.

**Compiler's note.** - The words "after the passage and approval of this act," in the first sentence, were inserted by Laws 1933, ch. 80, § 2.

The references to "77-2701 - 77-2928, 77-3001 - 77-3024" of the 1941 compilation, were inserted by Laws 1953, ch. 183, § 1, and refer to the original compilation of Laws 1927, ch. 45, the provisions of which are presently compiled as 73-14-1 to 73-14-8, 73-14-16, 73-14-17, 73-14-33 to 73-14-48, 73-15-1 to 73-15-15, 73-16-1 to 73-16-4, 73-16-6 to 73-16-29 and 73-17-1 to 73-17-24 NMSA 1978. However, as enacted by Laws 1953, ch. 183, the references also include the provisions of the 1941 Comp. Supp. namely 77-2727a - 77-2743, which are presently compiled as 73-14-49 to 73-14-69 NMSA 1978.

Laws 1927, ch. 45, § 910, compiled as 73-17-23 NMSA 1978 repeals Laws 1923, ch. 140, relating to establishing conservancy districts to cooperate with the federal government under federal reclamation law.

With respect to directors or commissioners in districts having 100,000 acres or less after the works have been constructed, this section is superseded by 73-14-54 to 73-14-69 NMSA 1978.

**Former provisions for appointment of board of directors constitutional.** - Laws 1923, ch. 140, § 301, (repealed), providing for the appointment of the board of directors for the conservancy district by district court, did not violate N.M. Const., art. II, § 3. In re Proposed Middle Rio Grande Conservancy Dist., 31 N.M. 188, 242 P. 683 (1925) (decided under former law).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 94 C.J.S. Waters § 320.

### **73-14-18. Abolition of boards of directors of districts having more than one hundred thousand acres and created prior to 1930.**

As the same are now constituted, any conservancy district organized under the provisions of the Conservancy Act of New Mexico and such conservancy district being created prior to 1930, embracing land situate in four or more counties and having an appointed board of directors, shall, after the election and qualification of the board of directors cease to have an appointed board of directors and in lieu thereof shall have an elected board of directors as provided in Sections 73-14-18 through 73-14-32 NMSA 1978, which board of directors shall bear the name "Board of Directors of the ..... Conservancy District" and shall be a body corporate, may sue and be sued, and which shall succeed to, have, exercise, enjoy, assume and perform all of the rights, powers, obligations and duties now by law vested in, conferred upon, imposed upon or required of, the boards hereby abolished.

**History:** 1953 Comp., § 75-28-11.1, enacted by Laws 1975, ch. 262, § 1.

**Conservancy Act.** - See catchline "Meaning of 'this act'" in notes to 73-14-1 NMSA 1978.

### **73-14-19. Boards of directors; membership; qualifications.**

The boards of directors hereby created shall consist of three directors from and representing that portion of the most populous county within the conservancy district; one director each from and representing those portions of each of the remaining counties within the conservancy district; and one director from and representing the district at large; provided that each director:

A. is a qualified elector of the conservancy district; and

B. resides within the conservancy district and the county from which he is elected.

**History:** 1953 Comp., § 75-28-11.2, enacted by Laws 1975, ch. 262, § 2.

**Ownership of real property within district.** - A member of the middle Rio Grande conservancy district board of directors who does not own real property within the district may not continue to serve on the board. 1987 Op. Att'y Gen. No. 87-3.

**Residency requirement for election.** - A person cannot stand for election for the board of directors of the Middle Rio Grande Conservancy District if that person resides in a county in which part of the district is located but outside the district itself. 1988 Op. Att'y Gen. No. 88-34.

### **73-14-20. Definition of "qualified elector."**

As used in Sections 73-14-18 through 73-14-32 NMSA 1978, "qualified elector" means a natural person who owns real property within the benefited area of the conservancy district or resides on and owns legal or equitable title in tribal lands, and who is over the age of majority.

**History:** 1953 Comp., § 75-28-11.3, enacted by Laws 1975, ch. 262, § 3.

**Cross-references.** - For age of majority, see 12-2-2 and 28-6-1 NMSA 1978.

#### **73-14-20.1. Qualified elector list.**

A. The secretary of the board of directors of any conservancy district organized under the provisions of the Conservancy Act of New Mexico and created prior to 1930, embracing land situate in four or more counties, shall maintain a current list of qualified electors in the conservancy district, which shall be known as the registration list. Updating of the list shall be completed on an annual basis no later than the thirty-first day of August. Any qualified elector whose name appears on the registration list is considered to be a registered elector in the conservancy district.

B. Names of qualified electors shall be obtained from the records of the county clerk of the appropriate county, from the records of the conservancy district or from the records provided by the pueblos on an annual basis.



C. Updating the list shall consist of adding, for any new qualified elector who has purchased property in the district, the name, address and description of all property owned by the elector in the benefited area of the conservancy district and removing the name of any elector who is deceased or is no longer a qualified elector because he no longer owns property within the benefited district.

D. Proof of ownership of land within the benefited area of the conservancy district requires one of the following:

(1) a recorded deed or real estate contract indicating current ownership of land within the benefited area of the district;

(2) an individual's name on county clerk records indicating a description of property the individual owns within the benefited area of the district;

(3) an individual's name on a list compiled by the governing body of a pueblo within the benefited area of the conservancy district indicating that the individual named is residing on and has legal or equitable title in the pueblo; or

(4) a current property tax bill indicating ownership of land within the benefited area of the district.

E. The secretary of the board of directors of the conservancy district shall distribute to each polling location a current registration list. A qualified elector may vote at any one polling place in the pueblo or county where he owns land. A qualified elector who seeks to cast his vote but finds his name is not on the registration list shall be allowed to vote upon a satisfactory showing of proof of current ownership of land within the benefited area of the district in any manner provided in Subsection D of this section.

**History:** 1978 Comp., § 73-14-20.1, enacted by Laws 1990, ch. 48, § 1; 1991, ch. 136, § 1; 1991, ch. 248, § 1.

**1991 amendments.** - Identical amendments to this section were enacted by Laws 1991, ch. 136, § 1 and Laws 1991, ch. 248, § 1, both effective June 14, 1991, which, in Subsection C, deleted "or has failed to pay any one or more of the conservancy district assessments charged to him within the last year" at the end of the first sentence and deleted a second sentence, which read "The precinct and county in which the elector shall vote shall be indicated on the registration list for each qualified elector"; deleted former Subsection D, relating to electors qualified to vote in more than one county; redesignated former Subsections E and F as present Subsections D and E; in Subsection D, inserted "recorded" preceding "deed" in Paragraph (1), added Paragraph (4), and made a related stylistic change; and, in Subsection E, substituted "registration list" for "list of those qualified electors who are registered to vote in the precinct where the polling place is located" at the end of the first sentence and added the second sentence. This section is set out above as amended by Laws 1991, ch. 248, § 1. See 12-1-8 NMSA 1978.

**Emergency clauses.** - Laws 1990, ch. 48, § 3 makes the act effective immediately. Approved March 1, 1990.

**Conservancy Act of New Mexico.** - See 73-14-1 NMSA 1978 and notes thereto.

### **73-14-21. Board of directors; election; terms.**

A. Each member of the board of directors shall be elected for a term of four years and, unless removed from office, shall serve until his successor is duly elected and has qualified; provided that in the first election immediately following the effective date of the provisions of this act [73-14-18 to 73-14-32 NMSA 1978], candidates for positions 1, 2 and 5 shall be elected for two-year terms each, and candidates for positions 3, 4, 6 and 7 shall be elected for four-year terms each.

B. Vacancies on the board of directors shall be filled by the remaining members of the board of directors for the unexpired term of the director whose office becomes vacant. The person appointed to fill the vacancy shall have the same qualifications as the member whose unexpired term he is completing.

**History:** 1953 Comp., § 75-28-11.4, enacted by Laws 1975, ch. 262, § 4.

**Effective dates.** - Laws 1975, ch. 262, contains no effective date provision, but was enacted at a session which adjourned on March 22, 1975. See N.M. Const., art. IV, § 23.

### **73-14-22. Board of directors; apportionment.**

The representation on the board of directors of the conservancy district shall be apportioned as follows:

A. three members shall be elected from and by the qualified electors of the most populous county within the conservancy district;

B. one member each shall be elected from and by the qualified electors of those portions of each of the remaining counties in the conservancy district; and

C. one member shall be elected from and by the qualified electors of the conservancy district at large.

**History:** 1953 Comp., § 75-28-11.5, enacted by Laws 1975, ch. 262, § 5.

### **73-14-23. Suspension or removal.**

A member of the conservancy district board may be suspended or removed in the same manner and for the same reasons that a county officer may be suspended or removed.

**History:** 1953 Comp., § 75-28-11.6, enacted by Laws 1975, ch. 262, § 6.

**Cross-references.** - For removal of local officers, see 10-4-1 to 10-4-29, 10-5-1 to 10-5-9, 10-6-1 to 10-6-6 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 94 C.J.S. Waters § 320.

### **73-14-24. Time and procedure for election.**

A. The members of the board of directors created by Sections 73-14-18 through 73-14-32 NMSA 1978 shall be elected on the first Tuesday of May of the year 1976 and at elections on the first Tuesday after the first Monday in November beginning in 1990 and in each second year thereafter.

B. The elections for the members of the board of directors of the conservancy district shall be conducted, counted and canvassed as provided in Sections 73-14-84 through 73-14-86 NMSA 1978. The polls shall be opened and closed at the same time as provided for the general election under the Election Code [Chapter 1 NMSA 1978].

**History:** 1953 Comp., § 75-28-11.7, enacted by Laws 1975, ch. 262, § 7; 1990, ch. 48, § 2; 1991, ch. 136, § 2; 1991, ch. 248, § 2.

**The 1990 amendment,** effective March 1, 1990, in Subsection A, substituted "Sections 73-14-18 through 73-14-32 NMSA 1978" for "Sections 75-28-11.1 through 75-28-11.15 NMSA 1953" and "first Tuesday after the first Monday in November beginning in 1990 and in" for "first Tuesday of May" and, in Subsection B, substituted "Sections 73-14-83 through 73-14-86 NMSA 1978" for "Sections 75-28-62 through 75-28-65 NMSA 1953".

**1991 amendments.** - Identical amendments to this section were enacted by Laws 1991, ch. 136, § 2 and Laws 1991, ch. 248, § 2, both effective June 14, 1991, which, in Subsection B, substituted "73-14-84" for "73-14-83" in the first sentence and added the second sentence. This section is set out above as amended by Laws 1991, ch. 248, § 2. See 12-1-8 NMSA 1978.

**Restrictions on timing of elections.** - The Middle Rio Grande Conservancy District is not subject to the restrictions on the timing of elections contained in 1-4-10 NMSA 1978. 1988 Op. Att'y Gen. No. 88-34.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 94 C.J.S. Waters § 320.

### **73-14-25. Notice of candidacy; signatures of electors.**

A. Any person who desires to become a candidate for election as a member of the conservancy district board and who has the qualifications as provided by law, shall file his written notice of candidacy with the secretary of the existing board at least thirty days before the election.

B. The notice of candidacy shall contain:

- (1) a statement that the candidate is a qualified elector of the district and meets the qualifications of a director as required by law;
- (2) the candidate's name, address and county of residence;
- (3) the numerical designation of the position on the board of directors for which he desires to be a candidate;
- (4) if a candidate for a position representing a county in the conservancy district, a petition signed by at least seventy-five qualified electors of the district resident in that county; and
- (5) if a candidate for the position at large in the conservancy district, a petition signed by at least one hundred twenty-five qualified electors resident in the conservancy district.

**History:** 1953 Comp., § 75-28-11.8, enacted by Laws 1975, ch. 262, § 8.

**Residency requirement for election.** - A person cannot stand for election for the board of directors of the Middle Rio Grande Conservancy District if that person resides in a county in which part of the district is located but outside the district itself. 1988 Op. Att'y Gen. No. 88-34.

### **73-14-26. Designation of positions for purposes of election.**

For purposes of election to the board of directors of the conservancy district, each office on the board shall be assigned a position number in numerical sequence beginning with the at-large position, and then next those positions within the most populous county. At all elections the same position numbers shall be used to designate the same offices.

**History:** 1953 Comp., § 75-28-11.9, enacted by Laws 1975, ch. 262, § 9.

### **73-14-27. Election; location of polling places; notice of election.**

A. For every election, the board of directors shall provide for a polling place at each physical location within the boundaries of the conservancy district at which polling places for the general election are located. In addition, the board of directors shall provide a polling place at the main office of the conservancy district and may provide such other locations as it deems necessary.

B. Notice of election shall be published three times in a newspaper of general circulation within each county of the district. Each notice shall state the time, place and purpose of the election and shall be published twenty, ten and five days before the election.

**History:** 1953 Comp., § 75-28-11.10, enacted by Laws 1975, ch. 262, § 10; 1991, ch. 136, § 3; 1991, ch. 248, § 3.

**1991 amendments.** - Identical amendments to this section were enacted by Laws 1991, ch. 136, § 3 and Laws 1991, ch. 248, § 3, both effective June 14, 1991, which substituted "location of polling" for "selection of voting" in the catchline and rewrote Subsection A, which read "Not less than thirty days prior to an election, the board of directors then in office shall meet and select voting places within the conservancy district. Voting places shall be sufficiently numerous and in locations throughout the district so that qualified electors shall have a reasonable opportunity to vote. The selection of voting places shall be by written resolution and shall be preserved as a permanent record of the board". This section is set out above as amended by Laws 1991, ch. 248, § 3. See 12-1-8 NMSA 1978.

### **73-14-28. Election judges.**

The board of directors shall select three election judges for each polling place established within the conservancy district. The judges shall be qualified electors of the district.

**History:** 1953 Comp., § 75-28-11.11, enacted by Laws 1975, ch. 262, § 11.

### **73-14-29. Form of ballot.**

The ballots for a conservancy district board of directors' election shall be prepared and printed by the board of directors at the expense of the conservancy district. The board of directors may prepare a separate ballot for each county within the conservancy district or it may prepare one ballot for use within the entire conservancy district. The ballot shall contain the numbered position or positions, as the case may be, to which directors are to be elected at the election, with the names of all candidates for each position listed under that designation.

**History:** 1953 Comp., § 75-28-11.12, enacted by Laws 1975, ch. 262, § 12.

### **73-14-30. Election expenses.**

The conservancy district board shall pay out of the district's treasury those sums necessary to meet the actual expenses of elections. The board may levy a tax or assessment sufficient to meet election expenses on all property that is subject to direct assessment or taxation within the district.

**History:** 1953 Comp., § 75-28-11.13, enacted by Laws 1975, ch. 262, § 13.

### **73-14-31. Absent voting permitted.**

A. In any election of officers of the conservancy district, a qualified elector shall be entitled to vote by absent ballot. Absent ballots shall be furnished by the secretary of the board of directors and such ballots shall be in a form prescribed by the board of directors. In addition to the absent ballot, the secretary of the board of directors shall furnish each qualified elector requesting an absent ballot an official inner envelope for use in sealing the completed absent ballot and an official outer envelope for use in returning the inner envelope to the secretary.

B. A qualified elector voting by absent ballot shall secretly mark his ballot, place it in the official inner envelope and securely seal the envelope. He shall then place the inner envelope inside the outer envelope and securely seal the envelope. The qualified elector shall then sign his name and address on the outer envelope and deliver or mail it to the secretary of the board of directors any time prior to the opening of the polls on election day.

C. No absent ballot shall be counted unless it is received by the secretary of the board of directors prior to the opening of the polls. Upon receipt of an absent ballot, the secretary of the board of directors shall remove the outer envelope and enter in a register the name and address of the qualified elector and the date and time the ballot was received. The secretary shall keep the inner envelope sealed and unmarked or unidentified in any manner as to the qualified elector and place it in a safe place until the opening of the polls on election day. At the time the polls open on election day, the secretary shall deliver all the sealed inner envelopes to the chairman of the election board of the precinct nearest to the office of the district. The sealed inner envelopes shall be accompanied by a signed affidavit setting forth the number of ballots received, the number of ballots delivered and a statement to the effect that the ballots delivered are in the same condition as when received.

D. Absent ballots shall be counted, tallied and canvassed as are other ballots.

**History:** 1953 Comp., § 75-28-11.14, enacted by Laws 1975, ch. 262, § 14.

### **73-14-32. Election violations; penalty.**

A. No director, secretary or employee of a conservancy district board shall willfully fail to perform any of the duties imposed upon him by the provisions of Sections 73-14-18 through 73-14-31 NMSA 1978.

B. No person who is not a qualified elector of the district shall vote at a conservancy district election.

C. No election judge or other election official shall willfully miscount ballots or intentionally falsify the results of an election.

D. Any person violating this section is guilty of a fourth degree felony and shall be punished by a fine of not more than five thousand dollars (\$5,000) or by imprisonment for not less than one year nor more than three years, or both.

**History:** 1953 Comp., § 75-28-11.15, enacted by Laws 1975, ch. 262, § 15.

**Effective dates.** - Laws 1975, ch. 262, contains no effective date provision but was enacted at a session which adjourned on March 22, 1975. See N.M. Const., art. IV, § 23.

**Severability clauses.** - Laws 1975, ch. 262, § 16, provides for the severability of the act if any part or application thereof is held invalid.

### **73-14-33. Organization of the board of directors.**

A. Immediately after their appointment the directors shall meet for the purpose of organizing the board of directors. Each director before entering upon his official duties shall take and subscribe to an oath before an officer authorized to administer oaths, that he will honestly, faithfully and impartially perform the duties of his office, and that he will not be interested directly or indirectly in any contract let by said district, which said oath shall be filed in the office of the clerk.

B. Upon taking the oath, the board shall choose one of their member [members] chairman of the board and president of the district, and shall elect some suitable person secretary of the board, who may or may not be a member of the board.

C. Such board shall adopt a seal, and shall keep in a well-bound book a record of all its proceedings, minutes of all meetings, certificates, contracts, bonds given by employes and all corporate acts, which shall be open to the inspection of all owners of property in the district, as well as to all other interested parties. It shall have power to make and adopt rules and regulations, not inconsistent with the provisions of this act, for the conduct of the business and affairs of the district, and when adopted, no rule or regulation shall be altered, amended or repealed except upon three (3) days' notice to each member of the board, service to be had by a personal delivery or by mailing a copy of such notice in a sealed envelope, postage fully prepaid, to the address of the director to be served, or at a regular or called meeting at which all directors are present.

**History:** Laws 1927, ch. 45, § 302; C.S. 1929, § 30-302; 1941 Comp., § 77-2712; 1953 Comp., § 75-28-12.

**Cross-references.** - For election of directors of districts having 100,000 acres or less, see 73-14-54 to 73-14-69 NMSA 1978.

As to compensation of members of board, see 73-16-29 NMSA 1978.

**Meaning of "this act".** - See same catchline in notes to 73-14-1 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 94 C.J.S. Waters § 320.

### **73-14-34. Quorum.**

A majority of the directors shall constitute a quorum, and a concurrence of the majority in any matter within their duties shall be sufficient for its determination.

**History:** Laws 1927, ch. 45, § 303; C.S. 1929, § 30-303; 1941 Comp., § 77-2713; 1953 Comp., § 75-28-13.

### **73-14-35. Employment of agents.**

A. The secretary shall be the custodian of the records of the district and of its corporate seal, and shall assist the board on such particulars as it may direct in the performance of its duties. The secretary shall attest, under the corporate seal, all certified copies of the official records and files that may be required of him by this act, or by any person ordering the same and paying the reasonable cost of transcription, and any portion of the record so certified and attested shall prima facie import verity. The secretary shall serve also as treasurer of the district, unless a treasurer is otherwise provided for by the board.

B. The board may also employ a manager or chief engineer, who may be an individual, copartnership or corporation; an attorney, and such other engineers, attorneys and other agents and assistants as may be needful; and may provide for their compensation, which, with all other necessary expenditures, shall be taken as a part of the cost of the improvement. The employment of the secretary, treasurer, manager or chief engineer and attorney for the district shall be evidenced by agreements in writing, which, so far as possible, shall specify the amounts to be paid for their services.

C. The manager or chief engineer shall be superintendent of all the works and improvements, and shall make a full report to the board each year, or oftener, if required by the board, and may make such suggestions and recommendations to the board as he may deem proper.

D. The secretary and treasurer and such other agents or employees of the district as the court may direct, shall furnish corporate surety bonds, at the expense of the district, in amount and form fixed and approved by the court, conditioned upon the faithful performance of their respective duties.

**History:** Laws 1927, ch. 45, § 304; C.S. 1929, § 30-304; Laws 1939, ch. 37, § 1; 1941 Comp., § 77-2714; 1953 Comp., § 75-28-14.

**Cross-references.** - For county treasurer as ex officio district treasurer, see 73-16-25 NMSA 1978.

**Meaning of "this act".** - See same catchline in notes to 73-14-1 NMSA 1978.



**Am. Jur. 2d, A.L.R. and C.J.S. references. - 94 C.J.S. Waters § 320.**

### **73-14-36. Preparation of plans.**

A. Upon their qualification, the board shall prepare or cause to be prepared a plan for the improvements for which the district was created. Such plan shall include such maps, profiles, plans and other data and descriptions as may be necessary to set forth properly the location and character of the work, and of the property benefited or taken or damaged, with estimates of cost and specifications for doing the work.

B. In case the board finds that any former survey made by any other district or in any other manner is useful for the purposes of the district, it may take over the data secured by such survey or such other proceedings as may be useful to it, and may pay therefor an amount equal to the value of such data to said district.

C. Upon the completion of such plan, the board of directors shall hold a hearing thereon to hear objections thereto, shall cause notice thereof to be given by publication in each county into which said district may extend and shall permit the inspection thereof at the office of the district by all interested. Said notice shall fix the time and place for the hearing of all objections to said plan not less than twenty (20) days nor more than thirty (30) days after the last publication of said notice. All objections to said plan shall be in writing and filed with the secretary at the office of the district not more than ten (10) days after the last publication of said notice.

D. After said hearing before the board, the board shall adopt a plan as the official plan of said district. If, however, any person or public corporation objects to said official plan, so adopted, then such person or public corporation may within ten (10) days from the adoption of said official plan, file in the office of the clerk in the original case establishing the district, their objections in writing, specifying the features of the plan to which objection is made, and thereupon the court, shall fix a day for the hearing thereof before the court, not less than twenty (20) nor more than thirty (30) days after the time fixed for filing objections, at which time the court shall hear said objections and adopt, modify, reject or refer back said plan to said board.

E. If the court should reject said plan, then the board shall proceed as in the first instance under this section to prepare another plan. If the court should refer back said plan to the board for amendment, then the court shall continue the hearing to a day certain without publication of notice. When the court shall approve a plan as the official plan of said district, then a certified copy of the order of the court approving the same shall be filed with the secretary and by him incorporated into the records of the district.

F. The official plan may be altered in detail from time to time until the assessment record herein provided is filed, and of all such alterations the appraisers shall take notice. But after the assessment record has been filed in court, no alterations of the official plan shall be made except as provided in Section 412 [73-15-12 NMSA 1978].

**History:** Laws 1927, ch. 45, § 305; C.S. 1929, § 30-305; 1941 Comp., § 77-2715; 1953 Comp., § 75-28-15.

**Constitutionality of power to take over community ditch.** - It is within the power of the conservancy district to take over a community ditch, making appropriate compensation therefor, which power is not in violation of N.M. Const., art. XVI, § 1. *Gutierrez v. Middle Rio Grande Conservancy Dist.*, 34 N.M. 346, 282 P. 1 (1929), cert. denied, 280 U.S. 610, 50 S. Ct. 158, 74 L. Ed. 653 (1930).

**Effect of absence of objections within time limit.** - In the absence of objections within the limit of time prescribed, all parties and property within the area are bound by the plan adopted by the conservancy district. *Middle Rio Grande Conservancy Dist. v. Chavez*, 44 N.M. 240, 101 P.2d 190 (1940).

**Tax authorities must look to land alone** to satisfy outstanding obligations resulting from conservancy district assessments and a new purchaser of state lands would not become personally liable for assessments already accrued, but he would take the lands burdened with a lien for the assessments. 1941-42 Op. Att'y Gen. No. 4090.

### **73-14-37. Powers to execute improvement plans [; facilities for recreation and research].**

The board shall have full power and authority to devise, prepare for, execute, maintain and operate any or all works or improvements necessary or desirable to complete, maintain, operate and protect the works provided for by the official plan, and to that end, may employ and secure men and equipment under the supervision of the chief engineer or other agents, or may in its discretion, let contracts for such works, either as a whole or in parts. The board may authorize the use of suitable conservancy district facilities and properties for purposes of recreation and environmental studies and research.

**History:** Laws 1927, ch. 45, § 306; C.S. 1929, § 30-306; 1941 Comp., § 77-2716; 1953 Comp., § 75-28-16; Laws 1975, ch. 27, § 1.

**Emergency clauses.** - Laws 1975, ch. 27, § 2, makes the act effective immediately. Approved March 17, 1975.

### **73-14-38. Access to land.**

The board, its employes and the appraisers hereinafter provided for and their assistants, may enter upon lands within or without the district in order to make surveys and examinations to accomplish the necessary preliminary purposes of the district, or to have access to the work; being liable, however, for actual damage done; but no unnecessary damage shall be done. Any person or corporation preventing such entry shall be guilty of misdemeanor, punishable by fine not exceeding fifty (\$50.00) dollars.

**History:** Laws 1927, ch. 45, § 307; C.S. 1929, § 30-307; 1941 Comp., § 77-2717; 1953 Comp., § 75-28-17.

### **73-14-39. General powers.**

A. In order to protect life and property within the district, and to protect or relieve land subject to overflow or washing, or which is menaced or threatened by the normal flow of flood or surplus or overflow waters of any natural watercourse, stream, canyon, arroyo or wash, whether perennial, intermittent or flood, and in order to effect the protection of life, land and other property in the district and to accomplish all other purposes of the district, the board is authorized and empowered to clean out, strighten [straighten], widen, alter, deepen or change the course or terminus of any ditch, community ditch or acequia, drain, sewer, flume, river, watercourse, pond, lake, creek, arroyo or natural or artificial stream in or out of said district; to fill up any abandoned or altered ditch, community ditch or acequia, drain, sewer, river, flume, watercourse, pond, lake, creek, arroyo or natural or artificial stream, and to concentrate, divert or divide the flow of water in or out of said district; to construct and maintain main and lateral ditches, community ditches or acequias, sewers, canals, flumes, levees, dikes, dams, sluices, revetments, reservoirs, or retarding basins, floodways, wells, pumping stations and syphons and any other works and improvements deemed necessary to construct, preserve, operate or maintain the works in or out of said district; to construct, reconstruct or enlarge or cause to be constructed, reconstructed or enlarged, any and all bridges that may be needed in or out of said district; to construct, reconstruct or elevate highways and streets; to construct or reconstruct any and all of said works and improvements along, across, through or over any public highway, canal, railroad right-of-way, track, grade, fill or cut, in or out of said district; to remove or change the location of any fence, building, railroad, canal or other improvements in or out of said district; and shall have the right to acquire by donation, purchase or condemnation, to construct, own, lease, use and sell, to hold, encumber, control and maintain any easement, water right, acequias, well, railroad right-of-way, canal, sluice, flume, reservoir site, reservoir or retarding basin, mill dam, water power, franchise, park, cemetery or any other public way or place, or any real or personal property, public or private, in or out of said district, for rights-of-way and such other things, or for materials of construction or for any other use not inconsistent with the purposes of this act; and to replot or subdivide land, open new roads, highways, parks, streets and alleys, or change the location of existing ones; and provided, further, that in case the construction provided by the official plan interferes with an irrigation ditch, community ditch or acequia or other works used for applying water to beneficial use the district shall make equivalent provision by means of ditches or works constructed by the district at its expense for supplying such water to such water users to the extent that the same was being lawfully obtained and used through such ditches or works. The district shall have the right to increase at its expense the storage capacity of any reservoirs and to store therein or release therefrom water in excess of the capacity of such reservoirs as developed by any person; but such additional storage so created by the district shall not interfere with the storage and regulation of flow of water as developed by such person prior to such increased storage capacity being added by the district; and, that in case the district shall increase the

storage capacity of any such reservoir, either by adding to the dam, dams or other structures built, or by removing such dam, dams or other structures and rebuilding same, the damages, if any, to such person for the property so utilized or removed shall be ascertained and paid as provided in the case of property taken by the district by right of eminent domain.

**History:** Laws 1927, ch. 45, § 308; C.S. 1929, § 30-308; 1941 Comp., § 77-2718; 1953 Comp., § 75-28-18.

**Cross-references.** - For eminent domain by conservancy district, see 73-14-41, 73-14-42 NMSA 1978.

For elections for directors in districts of 100,000 acres or less, see 73-14-62 to 73-14-66 NMSA 1978.

For audit of records in districts of 100,000 acres or less, see 73-14-68 NMSA 1978.

**Compiler's note.** - As enacted, this section contained no Subsection B.

**Meaning of "this act".** - See same catchline in notes to 73-14-1 NMSA 1978.

**Right to enforce water control through injunction.** - On acquiring community ditch, conservancy district was "proper party" to enforce by injunction its right to control flow of water in the ditch and the delivery of same to those entitled to it. Middle Rio Grande Conservancy Dist. v. Chavez, 44 N.M. 240, 101 P.2d 190 (1940).

**And to supply water where only district assessments paid.** - Where conservancy district acquired a community ditch after due appraisal and compensation, it could supply water to users who had paid all assessments due the district regardless of payment of assessments levied by community ditch commissioners and mayordomo. Middle Rio Grande Conservancy Dist. v. Chavez, 44 N.M. 240, 101 P.2d 190 (1940).

**Conflict of interest.** - Because no statute defines the duties of a member of a board of directors of a conservancy district when a conflict of interest arises, the common law prevails. At common law, a member of a governing board is disqualified from voting on a matter in which he has a direct personal, financial interest, and a court will invalidate any board action in violation of this rule. 1988 Op. Att'y Gen. No. 88-18.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 94 C.J.S. Waters § 321.

### **73-14-40. Letting contracts.**

When it is determined to let the work by contract, contracts in amounts in excess of ten thousand dollars (\$10,000.00) dollars [sic] shall be advertised after notice by publication as the board shall order, calling for bids, and the board may reject any or all bids, or may let said contract to the lowest or best bidder who shall give a good and approved

bond, with ample security, conditioned on the carrying out of the contract. Such contract shall be in writing, and shall be accompanied by or shall refer to plans and specifications for the work to be done, prepared by the chief engineer. Said contract shall be let by the chief engineer, approved by the board, signed by the president and by the contractor, and shall be executed in duplicate; provided, that in case of sudden emergency when it is necessary in order to protect the district, the advertising of contracts may be waived upon the consent of the board, with the approval of the court; provided, further, that the provisions of this section shall not apply if it is determined by the board with the approval of the court that the work be done on force account.

**History:** Laws 1927, ch. 45, § 309; C.S. 1929, § 30-309; 1941 Comp., § 77-2719; 1953 Comp., § 75-28-19.

**Effect of section regulating public works project advertising.** - Section 6-8-11, 1953 Comp., is in the nature of an enabling act, and its effect is to permit any municipality or political subdivision to advertise the construction of public works projects (when under federal loan or grant) by contract for a minimum period, not exceeding five days, regardless of the provisions of any general, special or local law which may provide for a longer period of advertisement. 1939-40 Op. Att'y Gen. 38.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 94 C.J.S. Waters § 321.

### **73-14-41. Dominant right of eminent domain.**

A. The district, when necessary for the purposes of this act, shall have a dominant right of eminent domain over the right of eminent domain of private or public corporations [corporations].

B. In the exercise of this right, due care shall be taken to do no unnecessary damage to others, and, in case of failure to agree upon the mode and terms of interference, not to interfere with their operations or usefulness beyond the actual necessities of the case, due regard being given to other public interest [interests] involved.

**History:** Laws 1927, ch. 45, § 310; C.S. 1929, § 30-310; 1941 Comp., § 77-2720; 1953 Comp., § 75-28-20.

**Meaning of "this act".** - See same catchline in notes to 73-14-1 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 29A C.J.S. Eminent Domain § 47.

### **73-14-42. Condemnation under general law.**

The district shall also have the right, instead of having appraisals made by the board of appraisers, to condemn for the use of the district according to the procedure provided by the Eminent Domain Code [42A-1-1 to 42A-1-33 NMSA 1978] for the appropriation of

property taken for public use and [any] property within or without the district not acquired or condemned by the court on the report of the appraisers.

**History:** Laws 1927, ch. 45, § 311; C.S. 1929, § 30-311; 1941 Comp., § 77-2721; 1953 Comp., § 75-28-21; Laws 1981, ch. 125, § 58.

**The 1981 amendment** inserted "board of" preceding "appraisers" near the beginning of the section, substituted "the Eminent Domain Code" for "Chapter XXXIV of the Codification of 1915, and all amendatory or supplementary acts" near the middle of the section, deleted "land or other" following "appropriation of" near the middle of the section, substituted "and" for "any land or" near the end of the section and substituted "the" for "said" preceding "district" near the end of the section.

**Effective dates.** - Laws 1981, ch. 125, § 64, makes the act effective on July 1, 1981.

**Relaxation of damages doctrine evidenced.** - The various provisions of this article manifest an intention to avoid or relax the doctrine that damages when assessed according to law must include all allowable damages. *Zamora v. Middle Rio Grande Conservancy Dist.*, 44 N.M. 364, 102 P.2d 673 (1940).

**Other compensation proceedings distinguished.** - Provision of 73-17-18 NMSA 1978 pertaining to ascertainment of the amount of compensation for lands taken and damaged to be arrived at by the board of appraisers is not a substitute for condemnation proceedings referred to in this section. *Zamora v. Middle Rio Grande Conservancy Dist.*, 44 N.M. 364, 102 P.2d 673 (1940).

**Petition for damages no substitute for condemnation proceedings.** - Section 73-17-18 NMSA 1978 is not a substitute for condemnation proceedings referred to in 73-14-42 NMSA 1978. Under 73-17-18 NMSA 1978, the plaintiffs initiate their claims for damages with a petition, while under eminent domain proceedings the defendant initiates its claims for condemnation of plaintiffs' property. *Wells v. Arch Hurley Conservancy Dist.*, 89 N.M. 516, 554 P.2d 678 (Ct. App. 1976).

### **73-14-43. Regulations to protect works.**

A. Where necessary, in order to secure the best results from the execution and operation of the plans of the district, and to prevent damage to the district by the deterioration or misuse or by the pollution of the waters of any natural or artificial watercourse therein, the board may make regulations for and may prescribe the manner of building bridges, roads, highways, or fences or other works in, into, along or across any channel, natural or artificial watercourse, reservoir or other construction; and may prescribe the manner in which ditches or other works shall be adjusted to or connected with the works of the district or any watercourse therein; and when not in conflict with the regulations of the state board of health [department of health], may prescribe the manner in which the watercourses of the district may be used for sewer outlets or for disposal of waste.

B. The construction of any works in a manner harmful to the district or to any watercourse therein, and in a manner contrary to that specified by the board, shall be a misdemeanor, punishable by a fine of not more than one thousand (\$1,000) dollars.

C. The board shall have authority to enforce by mandamus or other legal proceedings all necessary regulations, made by it and authorized by this act, and may remove any harmful construction or may close any opening improperly made. Any person or public corporation wilfully failing to comply with such regulations shall be liable for all damage caused by such failure, and for the cost of renewing any construction damaged or destroyed.

**History:** Laws 1927, ch. 45, § 312; C.S. 1929, § 30-312; 1941 Comp., § 77-2722; 1953 Comp., § 75-28-22.

**Cross-references.** - For mandamus, see 44-2-1 to 44-2-14 NMSA 1978.

**Bracketed material.** - The bracketed reference in Subsection A to the department of health was inserted by the compiler, as Laws 1991, ch. 25, § 16 repeals former 9-7-4 NMSA 1978, relating to the health and environment department, and enacts a new 9-7-4 NMSA 1978, creating the department of health. That section provides that references to the state board of health shall be construed as referring to the department of health. The bracketed material was not enacted by the legislature and is not part of the law.

**Meaning of "this act".** - See same catchline in notes to 73-14-1 NMSA 1978.

### **73-14-44. Removal of structures.**

A. For the accomplishment of the official plan, the board of directors of any district shall have full power and authority to improve in alignment, section, grade, location or in any other manner, any watercourse, and they may remove, widen, lengthen, lower, raise or otherwise change any public or private road bridge or railroad bridge, or any flume, aqueduct or telephone, telegraph, gas, oil, sewer, water or other pipelines or any other construction, over, across, in, into, under or through any such watercourse, or may require the same to be done, and the foregoing shall apply to all such changes specified by the official plan, or reasonably necessary for the accomplishment of the same; provided, however, that whenever any such change is made necessary in any construction because of the failure of the same to permit the free flow of the water in such stream in time of flood, or to permit the necessary enlargement or protection of the channel, then the owner of such construction shall make such change and all adjustments of grade, roadway, track, approach or other construction incidental thereto, without cost to the district, and without any claim for damages against the district; except that the district shall pay the cost of excavating the earth for the enlargement of any channel, or for placing earth for the filling of any channel, where such excavation or filling is required as a part of the official plan in making the changes outlined in this section; but the district shall not be required to make such fill or excavation unless the

same would be necessary to the official plan if the construction or work so changed did not exist.

Before the removal, change or modification of any work or construction outlined in this section, the board of directors shall give notice to the owner thereof, requiring that the same be adapted to the official plan. In case such removals, changes or adjustments are not commenced and completed by the owner within the respective times specified therefor in such notice (which time shall be reasonable under all the circumstances) such removals, changes or adjustments may be made by the district, at the expense of the owner.

**History:** Laws 1927, ch. 45, § 313; C.S. 1929, § 30-313; 1941 Comp., § 77-2723; 1953 Comp., § 75-28-23.

**Compiler's note.** - As enacted, this section contained no Subsection B.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 94 C.J.S. Waters § 321.

### **73-14-45. Passing equipment through bridge or grade.**

In case it be necessary to pass any dredgeboat, or other equipment through a bridge or grade of any person or public corporation, the board shall give notice to the owner of said bridge or grade that the same shall be removed temporarily to allow the passage of such equipment, or that an agreement be immediately entered into in regard thereto. The owner of said bridge or grade shall keep an itemized account of the cost of the removal, and if necessary, of the replacing of said bridge or grade, and the necessary actual cost shall be paid by the district. In case the owner of said bridge or grade shall fail to commence or complete provisions for the passage of said equipment within the time specified in the notice, the board may remove such bridge or grade at its own expense, interrupting traffic in the least degree consistent with good work and without unnecessary damage or delay. In case it shall be hindered or prevented from so doing, the owner of said bridge or grade shall be liable for all damage resulting to the district therefrom.

**History:** Laws 1927, ch. 45, § 314; C.S. 1929, § 30-314; 1941 Comp., § 77-2724; 1953 Comp., § 75-28-24.

### **73-14-46. Surveys and investigations [; flood warning service].**

The board shall also have the right to establish and maintain stream gages, rain gages, a flood warning service with telephone or telegraph lines or telephone and telegraph service, and may make such surveys and examinations of rainfall and flood conditions, stream flow and other scientific and engineering subjects as are necessary and proper for the purposes of the district and they may issue reports thereon.



**History:** Laws 1927, ch. 45, § 315; C.S. 1929, § 30-315; 1941 Comp., § 77-2725; 1953 Comp., § 75-28-25.

### **73-14-47. The use of water.**

A. No sale, lease, assignment, permit or other right in the waters of the district shall be made or granted which shall infringe upon or interfere with the water rights of lands in the district, or with water provided for irrigation purposes on the lands within the district for which benefits have been appraised and assessments levied under this act.

B. All the rights and property of the district in the waters and watercourses thereof, and in their use, shall be exercised in such a manner as to promote the welfare of the district and of all the inhabitants thereof; to promote the safest, most economical and most reasonable use of such waters; to protect the water rights of the lands and landowners of the district; to encourage and promote agriculture and industry and to pay the cost of constructing, maintaining and operating the improvements.

C. The rights of persons or public corporations and of other users of water, to the waters in and of the district for irrigation, water supply, industrial purposes, water power or for any other purposes, shall extend only to such rights as were owned by them or their predecessors prior to their inclusion in the district; and to such use as could be made of such waters if the improvements of the districts had not been made.

D. At the time of the general appraisal of benefits and damages of the district, or at any subsequent time, the board may cause a determination to be made of the conditions and extent of the water rights, and water supply and of the watercourses within the district as they were before the improvements of the district were made, or as they existed at any subsequent time, and they may make a determination of all rights, property, easements or other interests in the waters, or the watercourses, such determination being based upon records of greatest and least flow, upon the evidence of use, or evidence of legal rights, and upon any other evidence and records which may be available.

E. Upon the completion of such determination, the board shall make its report thereon to the court. Thereupon a hearing shall be had, notice shall be given of the pendency of said report and of the hearing, which notice and hearing shall conform as nearly as possible to the notice and hearing on appraisals of benefits and of land to be taken; and the right of appeal shall exist. Such final determination shall be the basis of any future use of the waters in the district; provided that in case any party shall thereafter establish in court any right or property in the waters in the district or the use thereof, which has not been adjudicated, the existence of such right, or the failure to adjudicate it, shall not affect the operation of this provision nor the findings of the court thereon in any other particular.

F. Where the district acquires by purchase, condemnation or otherwise, water or water rights, or where it conserves, develops or reclaims water, it shall have the rights which

go with the appropriation and beneficial use thereof; save and except such use for which benefits have been appraised and assessments levied by the district upon property for irrigation purposes; and the development, conservation or reclamation of water by the district is hereby declared to be an appropriation thereof by the district, and the disposition thereof under the terms of this act is hereby declared to be a beneficial use thereof by said district and by the lands included therein.

G. The expression "greater, better or more convenient use of the waters of the district, or benefit therefrom" as hereafter used, refers to use or benefit which is made greater, better or more convenient by the organization, administration and works of the district, as compared with use or benefit which could be had under the conditions existing before the district was organized.

H. The appraisals of benefits made by the appraisers may include benefits appraised for the greater, better or more convenient use of the waters of the district, or benefit therefrom; but if such benefits are not assessed, as in case of high lying lands for which water supply is at first uncertain, but afterwards is found to be available, the district may provide by contract or other agreement as hereafter provided, for such greater, better or more convenient use, and receive compensation therefor in accordance with the following provisions.

I. Persons, public corporations or others desiring to secure such use of the waters or watercourses of the district, or of the district rights therein, may make application to the board for permission to lease, or purchase for such use. Such application shall state the purposes and character of such use, the period and degree of continuity of such use, the amount of water desired and the place of use. In case any party makes greater, better or more convenient use of the waters of the district without formal application, the fact of such use shall serve all purposes of an application, and the board may proceed to determine a reasonable rate of compensation the same as though formal application has been made. Where it is not possible or reasonable to grant all applications, preference shall be given to the greatest need and to the most reasonable use, as may be determined by the board, subject to the approval of the court. Preference shall be given, first, to domestic and municipal water supply, and no charge shall be made for the use of water taken by private persons for home and farmyard use, or for watering farm stock; second, to supplying water used in irrigation, processes of manufacture, for the production of steam, for refrigerating, cooling and condensing and for maintaining sanitary conditions of stream flow; third, for power development, recreation, fisheries and for other uses. All sales, leases, assignments or other acts of the board affecting the use, sale or lease of the waters of the district under this section, shall be subject to the approval of the court.

J. The board shall not permanently sell, lease, assign, permit or otherwise part with the control by the district of the use of the waters thereof; provided, however, that upon the recommendation of the chief engineer the board may contract to furnish a permanent water supply for lands susceptible of irrigation, at rates to be established as hereinafter provided. Rates for light, power or other services charged by vendees, assignees,

lessees or licensees of such board shall be subject at all times to revision and control by state law. Assignments, leases, sales or permissions, except as to contracts hereinbefore authorized, may be made for periods of not greater than ten (10) years, except that with the approval of the court, such assignments, permissions, leases or sales, when necessary to justify investments for constructing and establishing, manufacturing power and industrial plants or works, may be made for longer terms, but not to exceed fifty years. At the termination of the period of such permission, assignments, leases or sales, they shall be renewable for a reasonable period not longer than is provided by this section, on the condition that a new determination be made of a reasonable charge therefor, as herein provided; unless there are other applications on file, the granting of which would result in filling a greater need or a more reasonable use. In case such applications are on file, they shall have preference.

K. The board may make regulations for the determination and measurement of the greater, or better or more convenient use of, or benefit from the water supply of the district, for the purpose of determining rates of compensation, and for the purpose of securing to all parties interested the greatest and best use of the waters thereof. The board shall have power to determine the rates of compensation for such greater, better or more convenient use of, or benefit from the water supply of the district, which rates shall be reasonable, and may require bond to be given to secure the payment for such use.

Upon the determination of any rate, or rates, the board shall make a report of its determination to the court. The court shall thereupon cause personal notice by summons to be given to the parties interested, stating that such a determination of rates has been made, that a hearing before the court will be had thereon on a certain day and that objection may be made at such time to such determination of rates. The hearing may be had before the court, and objection may be made, in the same manner as in case of the appraisal of benefits. Upon the final determination of the matter by the court, the determination of such rates of compensation shall be conclusive and binding for the period set forth in the order of the court; and in the event the said matter is before the court upon an agreement to lease, assign or sell, it shall be binding for the term and under the conditions specified in the lease or other agreement as approved by the court.

L. The court may approve general rates for the use of water under this section, as applying to all cases of the same class, and in cases of such class separate hearings shall not be required.

M. The compensation for greater, better or more convenient use of, or benefit from the waters of the district, may be made by payment according to a unit price per cubic foot of water used, or by a unit price for theoretical horse power developed or in any other reasonable measurement of value received by reason of the greater, better or more convenient use of, or benefit from the waters of the district. All money received as compensation under the provisions of this section shall be added to the general fund of the district and used for defraying the expenses thereof.

**History:** Laws 1927, ch. 45, § 316; C.S. 1929, § 30-316; 1941 Comp., § 77-2726; 1953 Comp., § 75-28-26.

**Meaning of "this act".** - See same catchline in notes to 73-14-1 NMSA 1978.

**Right to damages and compensation protected.** - The right of community ditches for damages done to their property and compensation for the taking has been fully protected. Subsection I of this section concerns only the disposition of water rights which have been regularly acquired by the district. *Gutierrez v. Middle Rio Grande Conservancy Dist.*, 34 N.M. 346, 282 P. 1 (1929), cert. denied, 280 U.S. 610, 50 S. Ct. 158, 74 L. Ed. 653 (1930).

**Supremacy of other section regarding water conveyance.** - Laws 1927, ch. 45, § 316, must bow to Laws 1939, art. 32, (59-4-5 NMSA 1978) giving the board authority to convey waters of the district to the United States for security. *Middle Rio Grande Water Users Ass'n v. Middle Rio Grande Conservancy Dist.*, 57 N.M. 287, 258 P.2d 391 (1953).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 94 C.J.S. Waters § 359.

### **73-14-48. General grant of power.**

The board of directors of any district organized under this act is hereby vested with all powers necessary and requisite for the accomplishment of the purposes for which the district is organized and capable of being delegated by the legislature of the state of New Mexico; and no enumeration of particular powers hereby granted shall be construed to impair any general grant of power herein contained, nor to limit any such grant to power or powers of the same class or classes as those so enumerated.

**History:** Laws 1927, ch. 45, § 317; C.S. 1929, § 30-317; 1941 Comp., § 77-2727; 1953 Comp., § 75-28-27.

**Meaning of "this act".** - See same catchline in notes to 73-14-1 NMSA 1978.

**Conflict of interest.** - Because no statute defines the duties of a member of a board of directors of a conservancy district when a conflict of interest arises, the common law prevails. At common law, a member of a governing board is disqualified from voting on a matter in which he has a direct personal, financial interest, and a court will invalidate any board action in violation of this rule. 1988 Op. Att'y Gen. No. 88-18.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 94 C.J.S. Waters § 321.

### **73-14-49. Declaration of policy.**

It is recognized that in conservancy districts heretofore or hereafter organized under New Mexico law that certain land therein has or may have vested irrigation water rights.

While fully recognizing such rights, nevertheless, in the proper operation of such districts, and especially in time of droughts, it is essential that the districts have the specific and unquestioned power to distribute the water remaining available for irrigation and to properly allocate the same for the purposes most essential for the welfare and economy of landowners within the district. To this end, the legislature deems it of manifest importance that conservancy districts have the unquestioned power to make such distribution and allocation of irrigation waters. While such power is present in existing laws, the method of enforcement is doubtful. To avoid any question in the future, this act [73-14-49 to 73-14-53 NMSA 1978] is enacted, with the aforesaid legislative intent and policy in mind.

**History:** 1941 Comp., § 77-2727a, enacted by Laws 1951, ch. 222, § 1; 1953 Comp., § 75-28-28.

**Emergency clauses.** - Laws 1951, ch. 222, § 6, makes the act effective immediately. Approved March 16, 1951.

### **73-14-50. Distribution of irrigation waters.**

All conservancy districts heretofore organized under the laws of New Mexico, and all such districts hereafter to be organized, are specifically empowered to make such proper and necessary distribution and allocation of the waters available for irrigation within such districts as the boards of directors thereof, in consultation with the chief engineer of such districts, shall determine to be reasonable and proper. The method and manner of distribution and allocation may be altered and changed as often as is deemed requisite. The decision [decisions] of said board of directors, as determined from time to time, shall be expressed in rules and regulations to be adopted and published as hereinbelow specified.

**History:** 1941 Comp., § 77-2727b, enacted by Laws 1951, ch. 222, § 2; 1953 Comp., § 75-28-29.

**Emergency clauses.** - Laws 1951, ch. 222, § 6, makes the act effective immediately. Approved March 16, 1951.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 94 C.J.S. Waters § 359.

### **73-14-51. Rules and regulations.**

The method of distribution and allocation of available irrigation waters shall be set forth in rules and regulations to be adopted by the board of directors of conservancy districts, in consultation with the chief engineer thereof, which said rules and regulations, before becoming effective, shall be published in English only in two issues, one week apart, of one legal newspaper in each county embraced within such conservancy district, and by posting one copy in English only of such rules and regulations at the courthouse of each county within such conservancy district. If there be no newspaper published in any such

county, then copies of such rules and regulations shall be posted in English only at three public places within such county, in addition to posting at the county courthouse; the said notices to be posted at least seven days before the effective date of such rules and regulations.

**History:** 1941 Comp., § 77-2727c, enacted by Laws 1951, ch. 222, § 3; 1953 Comp., § 75-28-30.

### **73-14-52. Enforcement.**

Conservancy districts, having adopted rules and regulations providing for the distribution and allocation of irrigation waters pursuant to the provisions of this act [73-14-49 to 73-14-53 NMSA 1978], shall have all powers available by law to enforce the same, including the right of injunction and mandamus.

**History:** 1941 Comp., § 77-2727d, enacted by Laws 1951, ch. 222, § 4; 1953 Comp., § 75-28-31.

**Cross-references.** - For mandamus, see 44-4-1 NMSA 1978 et seq.

For injunctions, see Rule 1-066 SCRA 1986.

### **73-14-53. Penalties.**

Any person, partnership, association, private or public corporation or entity wilfully failing to comply with such rules and regulations, and violating same, shall be deemed guilty of a misdemeanor, and upon conviction, shall be punished by imprisonment for not less than six months or more than one year, or by a fine of not to exceed \$3000 or both such fine and imprisonment within the discretion of the court.

**History:** 1941 Comp., § 77-2727e, enacted by Laws 1951, ch. 222, § 5; 1953 Comp., § 75-28-32.

**Emergency clauses.** - Laws 1951, ch. 222, § 6, makes the act effective immediately. Approved March 16, 1951.

### **73-14-54. [Abolition of boards of directors or commissioners of districts having 100,000 acres or less; creation of new boards of directors; powers and duties.]**

That as the same are now constituted under the provisions of "The Conservancy Act of New Mexico," "boards of commissioners," and "boards of directors" of all conservancy districts except as hereinafter provided shall be abolished and shall cease to exist upon the happening of the events hereinafter specified.

In lieu of the boards hereby abolished, there is hereby created within and for each conservancy district, now or hereafter organized and existing under and by virtue of said Conservancy Act of New Mexico, a board of directors, which shall bear the name "Board of Directors of the ..... Conservancy District"; shall be a body corporate, may sue and be sued and which shall succeed to, have, exercise, enjoy, assume and perform all of the rights, powers, obligations and duties now by law vested in, conferred upon, imposed upon or required of, the boards hereby abolished.

**History:** 1941 Comp., § 77-2728, enacted by Laws 1943, ch. 126, § 1; 1953 Comp., § 75-28-33.

**Effective dates.** - Laws 1943, ch. 126, contains no effective date provision, but was enacted at a session which adjourned on April 12, 1943. See N.M. Const., art. IV, § 23.

**Conservancy Act.** - See catchline "Meaning of 'this act'" in notes to 73-14-1 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 94 C.J.S. Waters § 320.

### **73-14-55. [Boards of directors; membership; qualifications.]**

The boards of directors hereby created, shall consist of five (5) directors, each of whom must own real property within the conservancy district, which is subject to conservancy district appraisals, assessments, levies and taxes, and each of whom must actually reside within the conservancy district, and also within the county from which he shall be elected as hereinafter provided.

**History:** 1941 Comp., § 77-2729, enacted by Laws 1943, ch. 126, § 2; 1953 Comp., § 75-28-34.

### **73-14-56. [Election of board members.]**

All of said directors shall be elected at large by the qualified electors of the entire district.

**History:** 1941 Comp., § 77-2730, enacted by Laws 1943, ch. 126, § 3; 1953 Comp., § 75-28-35.

### **73-14-57. Definition of "qualified electors."**

The term "qualified electors," as used in Sections 73-14-54 through 73-14-69 NMSA 1978, means only those persons who have reached the age of majority and, for at least six months prior to the election, have owned, during the entire six-month period, real property situated within the district which is subject to conservancy district appraisals, assessments, levies and taxes.

**History:** 1941 Comp., § 77-2731, enacted by Laws 1943, ch. 126, § 4; 1953 Comp., § 75-28-36; Laws 1973, ch. 134, § 1.

**Cross-references.** - For age of majority, see 12-2-2 and 28-6-1 NMSA 1978.

### **73-14-58. [Six-year terms; vacancies; organization of board; transfer of property.]**

Each director shall be elected for a term of six years from and after the date of his election, and, unless removed from office as hereinafter provided, shall serve until his successor is duly elected and has qualified, provided that at the first election one director shall be elected for a term of two years, two for a term of four years and two for a term of six years, to be determined according to counties if there be land in any district in more than one county by the board calling the election. Appointments to fill vacancies shall be for the unexpired term of the director whose office becomes vacant.

Within ten days after the first and each succeeding election to be held under the provisions of this act [73-14-54 to 73-14-69 NMSA 1978], the directors so elected shall meet and qualify as directors and shall organize the board of directors hereby created, in the same manner now by law required of members of the board of directors hereby abolished.

When the elected directors shall have qualified and the boards of directors hereby created shall have been organized as aforesaid, then the present board of directors as now constituted shall immediately cease to exist and to function and all conservancy district records and property of what kind or character soever, shall be by the outgoing board and its outgoing directors, officers and employees, transferred and delivered unto the newly organized board of directors of said conservancy district.

**History:** 1941 Comp., § 77-2732, enacted by Laws 1943, ch. 126, § 5; 1953 Comp., § 75-28-37.

**Cross-references.** - For organization of boards, see 73-14-33 NMSA 1978.

### **73-14-59. [Suspension or removal of directors.]**

Any elected director may be suspended or removed from office by order or judgment of the district court of the county of said director's residence, in the same manner, under the same procedure and for the same causes as are or may be provided by the laws governing the removal of county officers.

**History:** 1941 Comp., § 77-2733, enacted by Laws 1943, ch. 126, § 6; 1953 Comp., § 75-28-38.

**Cross-references.** - For removal of county officers, see 10-4-1 to 10-4-29 NMSA 1978.



**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 94 C.J.S. Waters § 320.

### **73-14-60. [Board empowered to fill vacancies.]**

The board of directors, hereby created, shall have the power to fill any vacancy in its membership for the unexpired term of the member in whose office such vacancy occurs.

**History:** 1941 Comp., § 77-2734, enacted by Laws 1943, ch. 126, § 7; 1953 Comp., § 75-28-39.

### **73-14-61. Notice of candidacy; signatures of electors.**

Any qualified elector, as herein defined, who desires to become a candidate for election as a director shall, at least forty days prior to the election, file with the secretary of the board of directors then in office, his written notice of candidacy, which shall state his name and residence, and the term for which he is a candidate for election within the conservancy district. If he is a candidate at large, his notice of candidacy must be signed by twenty qualified electors resident within the district. If he is a candidate only from that portion of the district which lies within one county, his notice of candidacy must be signed by ten qualified electors, who reside within that particular portion of the district and county from which the candidate seeks to be elected. No person who has not filed his notice of candidacy as and within the time required in this section shall be placed on the ballot.

**History:** 1941 Comp., § 77-2735, enacted by Laws 1943, ch. 126, § 8; 1953 Comp., § 75-28-40; Laws 1975, ch. 41, § 1.

### **73-14-62. [Time, place and procedure for election.]**

A. The five director members of the board of directors by this act [73-14-54 to 73-14-69 NMSA 1978] created shall be elected on the first Tuesday of October of the year 1943 and of each succeeding sixth year thereafter at general election for districts having less than one hundred thousand acres. The five director members of the boards of directors of conservancy districts formed after July 1, 1952, shall be elected on the first Tuesday of October, 1959, and of each succeeding sixth year thereafter at general election.

B. Not less than thirty days prior to said election the board of directors then in office shall meet and by written resolution, which shall be preserved among the permanent records of the board, shall select a voting place within each voting precinct or voting division thereof within the conservancy district and shall select three judges of election to conduct the election at the place so selected. Said judges shall be qualified electors, as herein defined, and residents of the precinct within which they are appointed to act and shall serve without pay. The resolution shall appoint one of said judges to receive the ballots and post its notice of election. Not less than five days thereafter, the secretary of said board shall notify each judge so selected of his appointment as such

and send to the judge selected to receive the ballots, four copies of a notice of election, which shall state the time and purpose thereof, the place where held within the precinct and the names of the judges selected for such precinct, and said notices shall be posted at the four most prominent places within the precinct as soon as received.

**History:** 1941 Comp., § 77-2736, enacted by Laws 1943, ch. 126, § 9; 1953 Comp., § 75-28-41; Laws 1959, ch. 313, § 1.

**Cross-references.** - For first election after constructing works of district, see 73-14-69 NMSA 1978.

### **73-14-63. [Ballots; printing and distribution; form; manner of marking.]**

For use of each county into which the conservancy district extends the secretary of the board of directors then in office shall prepare and print ballots containing only the names of the candidates for election at large in the entire district and the names of the candidates for election in the county for and to which the ballots are prepared and apply. No ballots containing the names of candidates to be elected from one particular county only, shall contain the names of any candidates to be elected from any other county only, but all ballots shall contain the names of all candidates for election in the district at large.

All such ballots shall be printed and distributed to the election judges appointed in each precinct within the district at the expense of said district. No name shall appear upon any ballot save that of a candidate who shall have filed his notice of candidacy at the time and in the manner above provided, and the names shall appear in the order in which the notices of candidacy were received by the secretary of said board. The ballots shall indicate whether the candidate be one for election in the entire district at large or only in the named county, and shall bear the facsimile signature of said secretary. Otherwise, the board of directors may prescribe the form and manner of marking said ballots.

**History:** 1941 Comp., § 77-2737, enacted by Laws 1943, ch. 126, § 10; 1953 Comp., § 75-28-42.

**Paper ballots safest route.** - The use of paper ballots in accordance with 73-14-63 and 73-14-64 NMSA 1978 would appear to be the safest route to follow in conducting the conservancy district election. Such ballots could be handed to qualified electors who could mark the ballots in the same booths as contain the voting machines used in the city elections and after leaving the booth, drop such ballots into a separate ballot box provided for that purpose. 1959-60 Op. Att'y Gen. No. 59-136.

**Use of voting machines.** - If voting machines are used by the conservancy district, they should not be the same machines used in the city election. The statutory requirements for certification of conservancy ballots to the secretary of the board and

the different provisions for the hours the polls are to remain open preclude the use of the same machines for both municipal and conservancy district elections. 1959-60 Op. Att'y Gen. No. 59-136.

### **73-14-64. [Conduct of election; procedure.]**

The judges of election shall select one of their number to act as clerk of election and shall open the polls at 9:00 o'clock a.m., and close the polls at 6:00 [o'clock] p.m. on the day of election.

If within one-half hour after the time so set for the opening of the polls it shall appear that any of the judges so appointed is unable to serve as such, those qualified electors then present at the polls may select another judge to fill the vacancy.

Immediately after the closing of the polls, the judges of election shall proceed to open the ballot boxes, count the total votes cast and those cast for each candidate and by triplicate copies, each to be signed by all three judges, certify the same to the board of directors then in office. One of said certificates together with all ballots cast, shall be placed in the ballot box, which shall be securely locked and sealed, and shall be delivered to the secretary of the board of directors then in office by one or more of said judges of election in person, not less than twenty-four hours after the closing of the polls. One of said certificates shall be mailed to said secretary of the board and the third shall be filed with the county clerk of the county in which said precinct is situate, likewise within twenty-four hours after said polls are closed.

**History:** 1941 Comp., § 77-2738, enacted by Laws 1943, ch. 126, § 11; 1953 Comp., § 75-28-43.

**Paper ballots safest route.** - The use of paper ballots in accordance with 73-14-63 and 73-14-64 NMSA 1978 would appear to be the safest route to follow in conducting the conservancy district election. Such ballots could be handed to qualified electors who could mark the ballots in the same booths as contain the voting machines used in the city elections and after leaving the booth, drop such ballots into a separate ballot box provided for that purpose. 1959-60 Op. Att'y Gen. No. 59-136.

**Use of voting machines.** - If voting machines are used by the conservancy district, they should not be the same machines used in the city election. The statutory requirements for certification of conservancy ballots to the secretary of the board and the different provisions for the hours the polls are to remain open preclude the use of the same machines for both municipal and conservancy district elections. 1959-60 Op. Att'y. Gen. No. 59-136.

### **73-14-65. [Canvass of returns; certificates of election.]**

On the morning of Friday next following the election, the board of directors shall meet at the principal office of the board and canvass the returns to it certified by the judges of election and shall declare the results thereof.

Where only one director is to be elected in one county, the candidate receiving the highest number of votes cast within that county shall be declared to have been elected.

Where two directors are to be elected in one county, the two candidates receiving the highest number of votes cast within that county shall be declared to have been elected.

Where only one director is to be elected with [within] the conservancy district at large, the candidate receiving the highest number of votes within the district at large shall be declared to have been elected.

Where two or more directors are to be elected within the conservancy district at large, those candidates, in number corresponding to the number of offices to be filled, receiving the highest number of votes shall be declared to have been elected.

The board of directors shall thereupon issue its certificate of election to each candidate elected.

**History:** 1941 Comp., § 77-2739, enacted by Laws 1943, ch. 126, § 12; 1953 Comp., § 75-28-44.

### **73-14-66. [Election expenses; payment; levy of tax.]**

The board of directors of conservancy districts are hereby authorized to pay out of the treasury all sums necessary to meet the actual expenses of elections and to levy a tax, upon all property within said district which is subject to district assessment or taxation, which shall be sufficient to meet election expenses.

**History:** 1941 Comp., § 77-2740, enacted by Laws 1943, ch. 126, § 13; 1953 Comp., § 75-28-45.

### **73-14-67. [Election violations; penalty.]**

Whoever, not being a qualified elector as herein defined, shall vote at the election herein provided for, or being a judge of election shall wilfully miscount the ballots cast or shall wilfully make false certificate of the number of votes received by each candidate, or otherwise falsely certify election results; or any canvassing officer who shall wilfully falsely canvass and declare the results of said canvass, and any director or secretary of the board of directors who shall wilfully refuse to perform the duties upon him imposed by this act [73-14-54 to 73-14-69 NMSA 1978], shall be deemed guilty of a felony and upon conviction shall be punished by imprisonment for not less than one year or more than five years and [or] by fine not to exceed \$5000, or both such fine and imprisonment within the discretion of the court.

**History:** 1941 Comp., § 77-2741, enacted by Laws 1943, ch. 126, § 14; 1953 Comp., § 75-28-46.

### **73-14-68. Audit of district records; levy.**

Not less than once every two years said board shall have an audit of the records and books of said district, and shall levy and collect assessments for the [that] purpose. Said audit shall be made by a private firm or auditor approved by the secretary of finance and administration.

**History:** 1941 Comp., § 77-2742, enacted by Laws 1943, ch. 126, § 15; 1953 Comp., § 75-28-47; Laws 1977, ch. 247, § 199.

**The 1977 amendment** substituted "the purpose" for "that purpose" at the end of the first sentence and substituted "secretary of finance and administration" for "state comptroller."

**Temporary provisions.** - Laws 1984, ch. 128, § 1, directs the local government division of the department of finance and administration to research, review and investigate the taxing structure and assessment practices and procedures of the middle Rio Grande conservancy district and requires that division to submit a report to the legislative finance committee and legislative council on or before December 1, 1984, to contain the findings of its study.

**Exemption from audit.** - Under 73-14-69 NMSA 1978, the middle Rio Grande conservancy district has been specifically exempted from the provision of this section requiring that an audit shall be made by a private firm or auditor approved by the state comptroller. 1953-54 Op. Att'y Gen. No. 5658.

### **73-14-69. Application of provisions of act.**

A. The provisions of this act [73-14-54 to 73-14-69 NMSA 1978] shall not apply to nor be construed as affecting any conservancy districts organized to conserve, protect or develop the waters of underground streams, channels, artesian basins, reservoirs or lakes having reasonably ascertainable boundaries where such waters have been placed to beneficial use. The provisions of this act shall not apply to nor be construed as affecting conservancy districts having more than 100,000 acres, formed prior to July 1, 1952, whether agricultural or otherwise, included within said conservancy district, subject to conservancy assessment. The provisions of this act do not apply to conservancy districts to which the provisions of Sections 73-14-70 through 73-14-88 NMSA 1978 apply.

B. This act shall not take effect as to any conservancy district in which the irrigation system is under construction, and no election of directors shall be held therein, until the main canals in such district are in such condition that water can be delivered therefrom for irrigation upon lands in said district; and the first election of directors in any such

district shall be held on the first Tuesday of October after the water can be delivered for irrigation from said canals upon the lands in said conservancy district.

**History:** 1941 Comp., § 77-2743, enacted by Laws 1943, ch. 126, § 16; 1953 Comp., § 75-28-48; Laws 1959, ch. 313, § 2; 1961, ch. 67, § 1.

**Cross-references.** - For appointment of directors on formation of district, see 73-14-17 NMSA 1978.

**Exemption from audit.** - Under this section, the middle Rio Grande conservancy district has been specifically exempted from the provision of 73-14-68 NMSA 1978 requiring that an audit shall be made by a private firm or auditor approved by the state comptroller. 1953-54 Op. Att'y Gen. No. 5658.

### **73-14-70. Applicability of act.**

The provisions of Sections 73-14-70 through 73-14-88 NMSA 1978 apply only to conservancy districts in existence and having between fifteen thousand and thirty thousand acres within their exterior boundaries on July 1, 1961 and to all conservancy districts formed after that date. The provisions of these sections do not apply to any conservancy district organized to conserve, protect or develop the waters of underground streams, channels, artesian basins, reservoirs or lakes having reasonably ascertainable boundaries where those waters have been placed in beneficial use.

**History:** 1953 Comp., § 75-28-49, enacted by Laws 1961, ch. 67, § 2.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 94 C.J.S. Waters § 320.

### **73-14-71. Definition of "qualified elector."**

As used in the provisions of Sections 73-14-70 through 73-14-88 NMSA 1978, "qualified elector" means a natural person who has reached the age of majority and who, for at least six months prior to the election, has owned, either in community or separately, real property located within the district and subject to conservancy district appraisals, assessment, levies and taxes.

**History:** 1953 Comp., § 75-28-50, enacted by Laws 1961, ch. 67, § 3; 1973, ch. 138, § 34.

**Cross-references.** - For age of majority, see 12-2-2 and 28-6-1 NMSA 1978.

### **73-14-72. Board of directors; powers; election; terms.**

A. Boards of directors of conservancy districts shall consist of five members each of whom shall be a qualified elector of the district, and shall be bodies corporate, may sue and be sued and shall have all of the statutory rights, powers, obligations and duties

conferred upon or required of the boards of directors of conservancy districts created under the Conservancy Act of New Mexico.

B. Members of boards of directors shall be elected at large from the entire conservancy district and shall serve for a term of six years except as provided in Section 73-14-75 NMSA 1978 which establishes staggered terms for the first elected board.

**History:** 1953 Comp., § 75-28-51, enacted by Laws 1961, ch. 67, § 4; 1963, ch. 18, § 1.

**Cross-references.** - For qualified elector, see 73-14-71 NMSA 1978.

**Conservancy Act.** - See catchline "Meaning of 'this act'" in notes to 73-14-1 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 94 C.J.S. Waters § 320.

### **73-14-73. Elections; when held.**

A. The first election for conservancy districts existing on July 1, 1961 and eligible under the provisions of Section 73-14-74 NMSA 1978 to have an elected board of directors shall be held on the first Tuesday in October, 1961.

B. Subsequent elections shall be held every two years following the year 1961, and shall be held on the first Tuesday of October.

C. Conservancy districts formed after July 1, 1961 shall hold their first election as provided in Section 73-14-74 NMSA 1978.

**History:** 1953 Comp., § 75-28-52, enacted by Laws 1961, ch. 67, § 5.

### **73-14-74. Eligibility of district to hold election.**

A. No election shall be held in any existing conservancy district until the main canals in that district are in such a condition that water can be delivered from them for irrigation on the lands within the district.

B. The first election in any district formed after July 1, 1961, or in a district existing on July 1, 1961 and having an appointed board of directors, shall be held on the first Tuesday of October occurring in an odd-numbered year during or after which the requirements of Subsection A of this section are fulfilled.

**History:** 1953 Comp., § 75-28-53, enacted by Laws 1961, ch. 67, § 6; 1965, ch. 76, § 6.

**Saving clauses.** - Laws 1965, ch. 76, § 7, provides that nothing in the act shall apply to conservancy districts organized to provide and maintain surface waters.

### **73-14-75. Election of first board of directors.**

At the first election of board members for a conservancy district one of the candidates shall be elected for a two year term, two candidates for four year terms and two candidates for six year terms.

**History:** 1953 Comp., § 75-28-54, enacted by Laws 1961, ch. 67, § 7.

### **73-14-76. Vacancies on board; how filled.**

If a vacancy occurs on a conservancy district board of directors the remaining board members shall appoint by majority vote a qualified elector of the district to serve the unexpired term of the vacant office.

**History:** 1953 Comp., § 75-28-55, enacted by Laws 1961, ch. 67, § 8.

### **73-14-77. Suspension or removal of board members.**

A member of a conservancy district board of directors may be removed in the same manner and for the same reasons that a county officer may be removed.

**History:** 1953 Comp., § 75-28-56, enacted by Laws 1961, ch. 67, § 9.

**Cross-references.** - For removal of county officers, see 10-4-1 to 10-4-29, 10-5-1 to 10-5-8, 10-6-1 to 10-6-6 NMSA 1978.

### **73-14-78. Notice of candidacy; signatures of electors.**

A. Any qualified elector who desires to become a candidate for election as a member of a conservancy district board of directors shall file his written notice of candidacy with the secretary of the existing appointed or elected board at least twenty days before the election.

B. A notice for candidacy shall state:

(1) the candidate's name and address; and

(2) the numerical designation of the office position on the board for which he desires to be a candidate.

C. In addition to the requirements of Subsection B a notice for candidacy shall be signed by at least ten qualified electors within the conservancy district.

**History:** 1953 Comp., § 75-28-57, enacted by Laws 1961, ch. 67, § 10.



### **73-14-79. Designation of board members for purposes of election.**

For purpose of election only, at the first election in a conservancy district the two year term [of] office is designated as position 1, the two four year terms as positions 2 and 3 and the two six years terms as positions 4 and 5. At all elections subsequent to the first these same numbers shall be used to designate the office or offices for which persons become candidates.

**History:** 1953 Comp., § 75-28-58, enacted by Laws 1961, ch. 67, § 11.

### **73-14-80. Election; selection of voting places; notice of election.**

A. Not less than thirty days prior to an election the board of directors then in office shall meet and select a voting place or voting places within the conservancy district. This selection shall be by written resolution and shall be preserved as a permanent record of the board.

B. Notice of election shall be posted by the board in at least three prominent and conspicuous places within the district. The board may publish the notice in a newspaper of general circulation within the district in addition to posting. The notice of election shall state the time, place and purpose of the election and shall be posted at least twenty days before the election.

**History:** 1953 Comp., § 75-28-59, enacted by Laws 1961, ch. 67, § 12.

### **73-14-81. Election judges.**

The board of directors shall select three election judges for each polling place established within the conservancy district. The judges shall be qualified electors of the district and shall serve without pay.

**History:** 1953 Comp., § 75-28-60, enacted by Laws 1961, ch. 67, § 13.

### **73-14-82. Election; form of ballot.**

The ballots for a conservancy district board of directors election shall be prepared and printed by the board of directors at the expense of the conservancy district. Only one ballot shall be prepared, and it shall contain the numbered positions to which directors are to be elected at the election with the names of all candidates for each position listed under that designation. Only a candidate who has fulfilled the filing requirements of Section 73-14-78 NMSA 1978 shall be entitled to have his name appear on the ballot.

**History:** 1953 Comp., § 75-28-61, enacted by Laws 1961, ch. 67, § 14.

### **73-14-83. Election; polls; opening and closing times.**

The polls shall open at nine o'clock a.m. and close promptly at six o'clock p.m. on election day.

**History:** 1953 Comp., § 75-28-62, enacted by Laws 1961, ch. 67, § 15.

### **73-14-84. Election; procedure.**

The board of directors shall promulgate necessary and reasonable rules and regulations for the procedure to be followed at the polling places, instructions to voters and methods of determining voter eligibility.

**History:** 1953 Comp., § 75-28-63, enacted by Laws 1961, ch. 67, § 16.

**"Procedure" defined.** - The definition of "procedure" for the purpose of construing this section is the mode of proceeding by which a legal right is enforced, as distinguished from the law which gives or defines the right. *Gonzales v. Middle Rio Grande Conservancy Dist.*, 106 N.M. 426, 744 P.2d 554 (Ct. App. 1987).

**Write-in ballots.** - The board's power to regulate procedure at polling places, instructions to voters, and determinations of voter eligibility does not include the authority to deny the privilege of casting a write-in ballot to elect a board member. *Gonzales v. Middle Rio Grande Conservancy Dist.*, 106 N.M. 426, 744 P.2d 554 (Ct. App. 1987).

### **73-14-85. Elections; counting ballots; certification of results to the board.**

After the polls have closed the three election judges shall count the total vote cast and those cast for each candidate. They shall then certify the results on a form prescribed by the board of directors. This written certification shall be returned immediately to the board of directors. The ballots shall be placed in a ballot box and the box shall be securely locked. The ballot box shall then be delivered to the secretary of the board of directors by one of the judges in person not less than twenty-four hours after the closing of the polls.

**History:** 1953 Comp., § 75-28-64, enacted by Laws 1961, ch. 67, § 17.

### **73-14-86. Election; canvass; certificates of election.**

A. On the morning of the first Friday following the election the board of directors shall meet and canvass the returns certified to it by the election judges.

B. After canvassing the returns the board shall issue election certificates to the candidate or candidates receiving the highest number of votes for each position on the

ballot. The board shall declare the results of the election in writing and forward a copy of the declaration to the secretary of state and to the state engineer.

**History:** 1953 Comp., § 75-28-65, enacted by Laws 1961, ch. 67, § 18.

### **73-14-87. Election expense.**

The board of directors of conservancy districts are [is] authorized to pay out of the treasury those sums necessary to meet the actual expenses of elections, and the board may levy a tax sufficient to meet election expenses on all property that is subject to direct assessment or taxation within the district.

**History:** 1953 Comp., § 75-28-66, enacted by Laws 1961, ch. 67, § 19.

### **73-14-88. Election violations; penalty.**

A. No director or secretary of a board of directors of a conservancy district shall wilfully fail to perform any of the duties imposed upon him by the provisions of Sections 73-14-70 through 73-14-88 NMSA 1978.

B. No person who is not a qualified elector shall vote at a conservancy district election unless he casts his vote with a reasonable belief that he is a qualified elector.

C. No election judge shall wilfully miscount ballots or intentionally falsify the results of an election.

D. A person who commits a violation of this section is guilty of a felony and upon conviction shall be punished by imprisonment for not less than one year nor more than five years or [by] a fine of not more than five thousand dollars (\$5,000), or both.

**History:** 1953 Comp., § 75-28-67, enacted by Laws 1961, ch. 67, § 20.

**Effective dates.** - Laws 1961, ch. 67, § 21, makes the act effective on July 1, 1961.

## **ARTICLE 15 CONSERVANCY DISTRICTS; APPRAISAL OF BENEFITS**

### **73-15-1. Appointment of appraisers.**

A. At the time of making its order organizing the district or at any time thereafter, the court, or board of judges as the case may be, in the manner provided shall appoint three appraisers (herein described and referred to as appraisers or the board of appraisers), whose term of office shall be until the appraisals of benefits and damages

are filed and finally determined by court and whose duty it shall be to appraise the lands or other property within and without the district to be acquired for rights-of-way, reservoirs and other works of the district, and to appraise all benefits and damages accruing to all land within or without the district by reason of the execution of the official plan.

B. Two of said appraisers shall be freeholders residing within the state of New Mexico, who may or may not own lands within said district. Each of the appraisers shall, before taking up his duties, take and subscribe to an oath that he will faithfully and impartially discharge his duties as such appraiser, and that he will make a true report of such work done by him.

C. The said appraisers shall at their first meeting elect one of their own number chairman, and the secretary of the board or his deputy shall be ex-officio secretary of said board of appraisers during their continuance in office. A majority of the appraisers shall constitute a quorum, and a concurrence of the majority in any matter within their duties shall be sufficient for its determination.

D. The court or board of judges as the case may be, shall fill all vacancies in the board of appraisers, or may appoint a new board, all in the manner provided, as occasion may require, which new board, if appointed, shall perform all the duties and exercise all the powers of the appraisers of the district.

**History:** Laws 1927, ch. 45, § 401; C.S. 1929, § 30-401; 1941 Comp., § 77-2801; 1953 Comp., § 75-29-1.

**Cross-references.** - For compensation of appraisers, see 73-16-29 NMSA 1978.

**Duration and function of board of appraisers.** - The board of appraisers is a tribunal continuing in character as long as there is work to be done, and their duties are to appraise only such damages as are contemplated by the statute (Laws 1927, ch. 45). *Zamora v. Middle Rio Grande Conservancy Dist.*, 44 N.M. 364, 102 P.2d 673 (1940).

**Law reviews.** - For article, "Existing Legislation and Proposed Model Flood Plain Ordinance For New Mexico Municipalities," see 9 Nat. Resources J. 629 (1969).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation §§ 70 to 72.

52A C.J.S. Levees and Flood Control § 33; 94 C.J.S. Waters § 333.

## **73-15-2. Appraisals.**

A. During the preparation of the official plan, the appraisers shall examine and become acquainted with the nature of the plans for the improvement and of the lands and other property affected thereby, in order that they may be better prepared to make appraisals.

B. When the official plan is filed with the secretary he shall at once notify the appraisers, and they shall thereupon proceed to appraise the benefits of every kind to all land and property within or without the district, which will result from the organization of said district and the execution of the official plan, except as otherwise provided in Section 316 [73-14-47 NMSA 1978] of this act; and also to appraise the damages sustained [sustained], and the value of the land and other property necessary to be taken by the district for which settlement has not been made by the board. In the progress of their work, the appraisers shall have the assistance of the attorney, engineers, secretary and other agents and employees of the district.

C. The appraisers shall also appraise the benefits and damages, if any, accruing to public corporations, as political entities, and to the state of New Mexico, and the same shall be taken and considered the same as benefits or damages, as the case may be, to land or other property, and to public health, safety, convenience and welfare.

D. Before appraisals of compensation and damages are made, the board may report to the appraisers the parcels of land it may wish to purchase and for which it may wish appraisals to be made, both for easement and for purchase in fee simple, and the board may specify the particular purpose for which and the extent to which an easement in any property is desired, describing definitely such purpose and extent. Wherever instructed so to do by the board, appraisers shall appraise lands which it may be necessary or desirable for the district to own, and when instructed by the board so to do, they shall appraise both the total value of the land and also the damages due to an easement for the purposes of the district.

Upon such appraisals being confirmed by the court, the board shall have the option of paying the entire appraised value of the property and acquiring full title to it in fee simple, or of paying only the cost of such easement. Upon written demand by the owner, such option shall be exercised by the board within ninety (90) days after the date of the final judicial determination of such appraisals.

E. In appraising the value of property taken, no additional damages shall be allowed on account of any increase in value of property due to the execution of the official plan. The appraisers in appraising benefits and damages shall consider only the effect of the execution of the official plan.

F. The appraisers shall appraise all damages which may, because of the execution of the official plan, accrue to real or other property, either within or without the district, which damages shall also cover easements acquired by the district for all of the purposes of the district, unless otherwise specifically stated.

G. The appraisers in making appraisals shall give due consideration and credit to any other works or other systems of protection already constructed, or under construction, which form a useful part of the work of the district according to the official plan. Where the appraisers or a jury, in case one be called, return no appraisal of damages to any property, it shall be deemed a finding by them that no damages will be sustained.

H. In determining the amount which each tract of land will be benefited by the improvements of the district, especially drainage systems, the appraisers shall consider the damage done to low land from seepage, and saturation by irrigation water from high land, and the necessity for the carrying off of waste water, and such high land shall be considered as being benefited to the extent and in the amount that such lands are responsible for damage to low lands from seepage and saturation by irrigation water.

**History:** Laws 1927, ch. 45, § 402; C.S. 1929, § 30-402; 1941 Comp., § 77-2802; 1953 Comp., § 75-29-2.

**Constitutionality of appraisal provisions.** - This section, 73-16-6 and 73-16-14 NMSA 1978 do not violate N.M. Const., art. IX, § 13. *Gutierrez v. Middle Rio Grande Conservancy Dist.*, 34 N.M. 346, 282 P. 1 (1929), cert. denied, 280 U.S. 610, 50 S. Ct. 158, 74 L. Ed. 653 (1930).

**Constitutionality of former law.** - Laws 1923, ch. 140, § 402(3) (repealed; which was identical with the same present law) did not violate the provisions of N.M. Const., art. IV, § 24; art. VIII, § 3. *In re Proposed Middle Rio Grande Conservancy Dist.*, 31 N.M. 188, 242 P. 683 (1925).

Subsection D applies to proceedings in eminent domain brought by defendant landowners and is not applicable to proceedings initiated by plaintiff landowners under 73-17-18 NMSA 1978 relating to damages. *Wells v. Arch Hurley Conservancy Dist.*, 89 N.M. 516, 554 P.2d 678 (Ct. App. 1976).

### **73-15-3. Land affected outside the district.**

A. If the appraisers find that land not embraced within the boundaries of the district will be affected by the proposed improvement, or should be included in the district, they shall appraise the benefits and damages to such land, and shall file a special report in court regarding the land which, in their opinion should be included in the district, giving a description thereof and their appraisal thereof.

B. The appraisers shall also report to the court any land which, in their opinion, should be eliminated from the district.

**History:** Laws 1927, ch. 45, § 403; C.S. 1929, § 30-403; 1941 Comp., § 77-2803; 1953 Comp., § 75-29-3.

### **73-15-4. Notice of hearing on land excluded from or taken into district [; order of court].**

A. If the special report of the appraisers includes recommendations that land be included in the district, or that land be excluded from the district, the court shall by order, fix a place and time for hearing thereon, and thereupon the clerk of the said court shall cause notice by publication (Schedule Form V) [73-17-24 NMSA 1978] to be made of

the filing of the said special report and of the time and place of the hearing thereon, as is provided for a hearing on the petition for the creation of a district.

B. As to the notice to be given owners of land to be excluded from the district, it will be sufficient to notify each owner of that fact by mail.

C. Upon such hearing the court shall make and enter such order with respect to lands to be included in or excluded from the district as the facts and provisions of this act require.

**History:** Laws 1927, ch. 45, § 404; C.S. 1929, § 30-404; 1941 Comp., § 77-2804; 1953 Comp., § 75-29-4.

**Cross-references.** - For notice of hearing on petition for creation of district, see 73-14-7 NMSA 1978.

For notice of hearing on appraisals, see 73-15-6 NMSA 1978 and notes thereto.

For short form of notice, see 73-17-19 NMSA 1978.

**Meaning of "this act".** - The term "this act" refers to the Conservancy Act, enacted by Laws 1927, ch. 45, the provisions of which are presently compiled as 73-14-1 to 73-14-8, 73-14-16, 73-14-17, 73-14-33 to 73-14-48, 73-15-1 to 73-15-15, 73-16-1 to 73-16-4, 73-16-6 to 73-16-29 and 73-17-1 to 73-17-24 NMSA 1978. See also 73-18-1 NMSA 1978 and notes thereto.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 60.

52A C.J.S. Levees and Flood Control § 17; 94 C.J.S. Waters § 319(3).

### **73-15-5. Report of appraisers.**

A. The appraisers shall prepare a tabulated report of all of their findings which shall be bound in book form and shall be known as the conservancy appraisal record. Such record (Schedule Form VI) [73-17-24 NMSA 1978] shall contain the names of the owners of property appraised as they may appear on the tax rolls or from the records of the office of the probate clerk and ex-officio recorder; a description of the property appraised; the amount of benefits appraised; the amount of damages appraised; and the appraised value of land or other property which [which] may be taken for the purposes of the district.

B. The appraisers shall also report any other benefits or damages or any other matter which, in their opinion, should be brought to the attention of the court. No error in the names of the owners of property or in the description thereof shall invalidate said appraisal or the levy of assessments or taxes based thereon, if sufficient description be given to identify such property.

C. When the report is completed, it shall be signed by at least a majority of the appraisers and deposited with the clerk who shall file it in the original case.

**History:** Laws 1927, ch. 45, § 405; C.S. 1929, § 30-405; 1941 Comp., § 77-2805; 1953 Comp., § 75-29-5.

### **73-15-6. Notice of hearing on appraisals.**

A. Upon the filing of the report of the appraisers, the court shall by order fix places and times not less than thirty (30) days nor more than sixty (60) days after the report of the appraisers is filed, for hearing thereon, and thereupon the clerk shall cause notice by publication (Schedule Form VII) [73-17-24 NMSA 1978] to be made in each county in the district, of the filing of the said report, and of the times and places of the hearing thereon.

B. It shall not be necessary for said clerk to name the parties interested, nor to describe separate lots or tracts of land in giving said notice, but it shall be sufficient to give such description as will enable the owner to determine whether or not his land is covered by such description.

C. Where lands in different counties are mentioned in said report, it shall not be necessary to publish in each county a description of all the lands in the district, but only of that part of the said lands situate in the county in which publication is made.

D. The conservancy court shall fix a date when hearing on exceptions shall be heard in each county within the conservancy district, and all exceptions to the appraisal report shall be tried and heard in the county in which such property affected is located, by the special master, or otherwise; provided trial and hearing in such county is claimed in the exception.

**History:** Laws 1927, ch. 45, § 406; C.S. 1929, § 30-406; 1941 Comp., § 77-2806; 1953 Comp., § 75-29-6.

**Cross-references.** - For short form of notice, see 73-17-19 NMSA 1978.

**Constitutionality of notice.** - Notice provided for in this section does not deprive parties in interest of any guaranty contained in N.M. Const., art. II, § 18. Gutierrez v. Middle Rio Grande Conservancy Dist., 34 N.M. 346, 282 P. 1 (1929), cert. denied, 280 U.S. 610, 50 S. Ct. 158, 74 L. Ed. 653 (1930).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation §§ 70 to 72.

52A C.J.S. Levees and Flood Control § 36; 94 C.J.S. Waters § 333.

### **73-15-7. Hearing on appraisals.**



A. Any property owner may accept the appraisals in his favor of benefits and of damages and of land to be taken, made by the appraisers, or may acquiesce in their failure to appraise damages in his favor, and shall be construed to have done so unless he shall within ten (10) days after the last publication provided for in the preceding section [73-15-6 NMSA 1978], file written exceptions to said report or to any appraisal of either benefits or of damages, or of the value of land to be taken.

B. All exceptions except in cases where a trial by jury is demanded shall be heard by the court beginning on the date set for the said hearing, or as soon thereafter as the matter may be heard, and determined in advance of other business so as to carry out, liberally, the purposes and needs of the district.

C. The court may, if it deems necessary, by order, direct the return of the report to the appraisers for further consideration and amendment. If the court directs the appraisers to revise and amend the roll, specifying the changes to be made, a further hearing thereon may be had without new notice. If, however, the appraisal roll or the report, as a whole is referred back to the appraisers, the court shall not resume the hearing thereon without new notice, as for an original hearing thereon.

D. The conservancy court may appoint a special master, to take testimony and conduct hearings on all controversies arising under provisions of this act, whenever a jury trial is not guaranteed thereon by the constitution. Such special master together with the chief engineer, or his assistant shall attend at convenient places within the district after giving notice by publication of the time and place of such hearings, and shall endeavor to adjust such controversies. He shall have power to administer oaths, issue subpoenas and compel the attendance of witnesses. He shall take the evidence on each such controversy and report the same with his findings and conclusions and recommendations thereon to the conservancy court.

E. The special master shall be paid for his services a per diem compensation to be fixed and approved by the court, together with his expenses including a stenographer, which shall be paid out of any available funds of the conservancy [conservancy] district.

F. The special master shall not report the evidence unless the exceptant requires him to do so, and deposits the fees required to transcribe such testimony. Failure to make such requirement and to pay such fees within five days after such hearing shall be taken and considered a waiver of reporting testimony and an election to rely on the report so made as to fact.

G. A person aggrieved by any report of such special master must, within ten days after it is filed, file written exceptions to said report specifying his grounds of objection thereto; failing in which he shall be considered to have acquiesced in such report as made.

H. Immediately on filing such exceptions with the court the clerk thereof shall set the same for hearing before the court on a day certain set apart by the court for hearing such exceptions.

I. Upon hearing such exceptions to the report the court shall enter such final judgment thereon as the facts shall warrant or return the matter to the master for further proceedings.

**History:** Laws 1927, ch. 45, § 407; C.S. 1929, § 30-407; 1941 Comp., § 77-2807; 1953 Comp., § 75-29-7.

**Meaning of "this act".** - See same catchline in notes to 73-15-4 NMSA 1978.

**This section affords fair hearing** on the total amount which may be assessed against any property in the conservancy district. *Gutierrez v. Middle Rio Grande Conservancy Dist.*, 34 N.M. 346, 282 P. 1 (1929), cert. denied, 280 U.S. 610, 50 S. Ct. 158, 74 L. Ed. 653 (1930).

**Finality of appraisal proceedings.** - Where an established conservancy district managed a community ditch, and property owners did not object to the method of taking and appraising the ditch prior to the court's approval, the proceedings were final. *Middle Rio Grande Conservancy Dist. v. Chavez*, 44 N.M. 240, 101 P.2d 190 (1940).

### **73-15-8. Order on appraisals.**

A. If it appear to the satisfaction of the court, after having heard and determined all exceptions, that the estimated cost of constructing the improvements contemplated in the official plans [plan] is less than the benefits appraised, then the court shall by order approve and confirm the report of the appraisers as so modified and amended, and the findings and appraisals in such approved and confirmed report shall become the award of the appraisers.

B. In considering the findings and the appraisals made by the appraisers, the court shall take cognizance of the official plan and of the degree to which it is effective for the purposes of the district. In case the court shall find that the estimated benefits appraised are less than the estimated total cost of the execution of the official plan, exclusive of interest on deferred payments; or that the official plan is not suited to the requirements of the district, it may at its discretion return said official plan to the board, with an order directing it to prepare new or amended plans; or it may by order dissolve the district, after having provided for the payment of all expenses theretofore incurred.

C. Where the property or rights of any property owner of the district located or to be exercised in another judicial district, are finally adjudicated in the conservancy court, and the matter or right so decided is other than appraisal of benefits and damages and does not involve the policy of the district or the general right of other property owners therein, the court shall upon motion of the property owner so aggrieved, filed within five

days after such decision, grant a rehearing of such matter and transfer the trial thereof to the district court of the county in which such property or right in question is located.

**History:** Laws 1927, ch. 45, § 408; C.S. 1929, § 30-408; 1941 Comp., § 77-2808; 1953 Comp., § 75-29-8.

**Cross-references.** - For payment of construction fund assessments, see 73-16-6 NMSA 1978.

### **73-15-9. Jury trials.**

Whenever provision is made in this act for trial of any controversy by a jury, it shall be taken and construed to mean only those controversies in which trial by jury is guaranteed by the constitution of the state of New Mexico. All other controversies provided herein to be heard by the court or jury shall be heard and decided by the judge without the intervention of a jury.

**History:** Laws 1927, ch. 45, § 409; C.S. 1929, § 30-409; 1941 Comp., § 77-2809; 1953 Comp., § 75-29-9.

**Meaning of "this act".** - See same catchline in notes to 73-15-4 NMSA 1978.

**Constitutionality of former provisions.** - The provisions of Laws 1923, ch. 140, § 409(5) (repealed), which gave the district court jurisdiction to try condemnation cases involving lands which might be beyond the territorial limits of the district, were not unconstitutional. In re Proposed Middle Rio Grande Conservancy Dist., 31 N.M. 188, 242 P. 683 (1925).

### **73-15-10. Entry after deposit of award [pending jury trial].**

No property shall be taken until just compensation has been paid according to law. But where a trial by jury is demanded under the preceding section [73-15-9 NMSA 1978], the board may pay into court, in money, the amount allowed by the appraisers, with the costs, and thereupon the court shall make an order admitting the said district into possession of the property. And thereupon the board may enter into undisturbed possession of the property and rights involved. The right of entry provided herein shall be a cumulative remedy and additional to the district's right of possession during the pendency of condemnation proceedings under the provisions of Chapter XXXIV of the Codification of 1915, and all amendatory or supplementary acts thereto.

**History:** Laws 1927, ch. 45, § 410; C.S. 1929, § 30-410; 1941 Comp., § 77-2810; 1953 Comp., § 75-29-10.

**Compiler's note.** - Chapter 34 of the 1915 Code, referred to in this section, was compiled as 42-1-1, 42-1-3 to 42-1-9, and 42-1-11 to 42-1-22 NMSA 1978, before being repealed in 1981.

### **73-15-11. Filing order.**

A. Upon the entry of the order of the court approving the report of the appraisers, the clerk shall transmit to the secretary a certified copy of the said order, and of the appraisals as confirmed by the court.

B. When any proceedings on a trial had in any other court have been finally determined, the clerk of the court deciding the same shall certify the amount of each item of the judgment to the clerk having the original case, who shall file the same therein and thereupon transmit certified copies of the same to the secretary as in this section above provided, who shall thereupon complete the conservancy appraisal record.

**History:** Laws 1927, ch. 45, § 411; C.S. 1929, § 30-411; 1941 Comp., § 77-2811; 1953 Comp., § 75-29-11.

### **73-15-12. Change of official plan.**

A. The board at any time, when necessary to fulfill the objects for which the district was created, may alter or add to the official plan; and when such alterations or additions are formally approved by the board and by the court, and are filed with the secretary, they shall become parts of the official plan for all purposes.

B. Where such alterations or additions in the judgment of the court neither materially modify the general character of the work, nor materially increase resulting damages, for which the board is not able to make amicable settlement, nor increase the total cost more than ten (10%) percent above the [that] estimated in the official plan, no action other than a resolution of the board shall be necessary for obtaining the approval of such alterations or additions by an order of the court.

C. In case the proposed alterations or additions materially modify the general character of the work; or materially modify the resulting damages; or materially reduce the benefits, for which the board is not able to make amicable settlement; or materially increase the benefits in such a manner as to require a new appraisal; or increase the total cost more than ten (10%) percent, above that estimated in the official plan; the court shall direct the appraisers (which may be the original board, or a new board appointed by the court on petition of the board of directors) to appraise the property to be taken, benefited or damaged by the proposed alterations or additions.

D. Upon the completion of the report of the appraisers, notice shall be given and a hearing had on their report in the same manner as in the case of the original report of the appraisers; provided, that where a few property owners are affected, the clerk may, on order of the court, if found to be more economical and convenient, give personal notice as provided in said order of the pendency of the report of said appraisers, instead of notice by publication; and provided further, that when the only question at issue is additional damages or reduction of benefits to property, due to modification in or additions to the official plan, the board may, if practicable, make settlement with the

owners of the property damaged, instead of having appraisals made by appraisers. In case such settlements are made, notice and hearing need not be had.

E. After district bonds have been sold, as hereinafter provided, in order that their security may not be impaired, no reduction shall be made in the amount of uncontested benefits appraised or costs assessed against any property in the district; but in lieu of any reduction in assessment, if by reason of a modification in or addition to the official plan an excessive assessment is made under the provisions of Section 504 [73-16-4 NMSA 1978] hereof, the excess shall be paid to the property owner in cash. This provision shall apply to all changes in appraisals under this act.

**History:** Laws 1927, ch. 45, § 412; C.S. 1929, § 30-412; 1941 Comp., § 77-2812; 1953 Comp., § 75-29-12.

**Meaning of "this act".** - See same catchline in notes to 73-15-4 NMSA 1978.

**Provisions pertaining to appraisal of damages mean** damages to property as in eminent domain proceedings, and not for negligent execution and operation of district's official plan. *Zamora v. Middle Rio Grande Conservancy Dist.*, 44 N.M. 364, 102 P.2d 673 (1940).

### **73-15-13. Property exempt and later liable to assessment.**

If property in any district organized under this act is not liable to assessment at the time of the execution of the work, but afterwards, during the period when such work is being paid for, become [becomes] liable to assessment, such property shall thereupon be appraised and assessed.

**History:** Laws 1927, ch. 45, § 413; C.S. 1929, § 30-413; 1941 Comp., § 77-2813; 1953 Comp., § 75-29-13.

**Meaning of "this act".** - See same catchline in notes to 73-15-4 NMSA 1978.

### **73-15-14. Subsequent appraisals.**

In case any property within or without any district is benefited, which for any reason was not appraised in the original proceedings or was not appraised to the extent of benefits received; or in case any person or public corporation shall make use of or profit by the works of any district to a degree not compensated for in the original appraisal; or in case the board finds it necessary subsequent to the time when the first appraisals are made, to damage or take any additional property, the board, at any time such condition becomes evident, shall direct the appraisers to appraise the benefits, or the enhanced benefits received, or damages or the value of property taken; and the proceedings outlined for appraising lands not at first included within the boundaries of the district shall in all matters be conformed to, including notice to the party or parties interested; or

the board may, at its discretion, make settlement with such parties for such use, benefit, damage or property taken.

**History:** Laws 1927, ch. 45, § 414; C.S. 1929, § 30-414; 1941 Comp., § 77-2814; 1953 Comp., § 75-29-14.

**Cross-references.** - For change of official plan, see 73-15-12 NMSA 1978.

### **73-15-15. Validation of irregular proceedings.**

A. No fault in any notice or other proceeding shall affect the validity of any proceeding under this act, except to the extent to which it can be shown that such fault resulted in a material denial of justice to the property owner complaining of such fault.

B. In case it be found upon a hearing, that by reason of some irregularity or defect in the proceedings, the appraisal has not been properly made, the court may, nevertheless, on having proof that expense has been incurred which is a proper charge against the property of the complainant, make an order finding the amount of benefits to said property, and appraising the proper benefits accordingly, subject to a claim for a jury as provided, and thereupon said land shall be assessed as other land equally benefited.

C. In the event that, either before or after the issuance of bonds, the appraisal of benefits, either as a whole or in part, be declared by any court of competent jurisdiction, to be invalid by reason of any defect or irregularity in the proceedings therefor, whether jurisdictional or otherwise; the court where the original case is pending is hereby authorized and directed; on the application of the board, or of any holder of any bonds which may have been issued, promptly and without delay, to remedy all defects or irregularities as the case may require, by directing and causing to be made in the manner hereinbefore provided, a new appraisal of the amount of benefits against the whole or any part of the property in the said district as the case may require.

**History:** Laws 1927, ch. 45, § 415; C.S. 1929, § 30-415; 1941 Comp., § 77-2815; 1953 Comp., § 75-29-15.

**Meaning of "this act".** - See same catchline in notes to 73-15-4 NMSA 1978.

## **ARTICLE 16 CONSERVANCY DISTRICTS; FINANCIAL ADMINISTRATION**

### **73-16-1. Moneys.**

A. The moneys of every district shall consist of the following separate funds:

(1) "preliminary fund," by which is meant the proceeds of the level rate assessment authorized by Section 502 [73-16-2 NMSA 1978];

(2) "construction fund," by which is meant the proceeds of levies made against the special benefits appraised, equalized and confirmed;

(3) "maintenance fund," by which is meant the proceeds of a special assessment to be levied annually for the purpose of maintenance, upkeep, administration and current expenses;

(4) "general fund," by which is meant the moneys received by the district from any other source than hereinbefore set forth, and which may be withdrawn and placed in any other fund by order of the board.

B. The treasurer upon receipt of any moneys, shall credit the respective funds entitled thereto with the same. Money in the respective funds shall be withdrawn only upon warrants properly executed, in accordance with the form and requirements adopted by the board.

C. No warrants shall be drawn against the preliminary fund or the maintenance fund until an assessment-levying resolution shall have been properly passed by the board duly entered upon its records; and no bonds shall be issued against the construction fund until an assessment-levying resolution shall have been properly passed by the board and duly entered upon its records, and until the property owners shall have been given an opportunity, for a period of not less than sixty (60) days, to pay in cash the assessments so levied against their respective properties.

**History:** Laws 1927, ch. 45, § 501; C.S. 1929, § 30-501; 1941 Comp., § 77-2901; 1953 Comp., § 75-30-1.

**Cross-references.** - For conservation and development fund, see 73-16-32 NMSA 1978.

For guaranty fund, see 73-16-41 NMSA 1978.

**Law reviews.** - For article, "Existing Legislation and Proposed Model Flood Plain Ordinance For New Mexico Municipalities," see 9 Nat. Resources J. 629 (1969).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 52A C.J.S. Levees and Flood Control § 40; 94 C.J.S. Waters § 337.

## **73-16-2. Preliminary fund.**

A. As soon as any district shall have been organized under this act and a board shall have been appointed and qualified, such board shall have the power and authority to fix the amount of a uniform assessment upon the property within the district not to exceed

six (6) mills for every dollar of assessed valuation thereof, as a level rate to be used for the purpose of paying the expenses of organization, of assessing benefits and damages, for surveys and plans and for other incidental expenses which may have been incurred prior to the time when money is received from the sale of bonds or otherwise.

B. The said assessment shall be levied by resolution of the board; shall be known as the preliminary fund assessment; and the amount of assessment shall be certified to the boards of county commissioners of the various counties in which the district, or any portion thereof, is located, and by them included in their next annual levy for state and county purposes. Said amount shall be collected for the use of such district in the same manner as are taxes for county purposes, and the revenue laws of the state for the levy and collection of taxes for county purposes, except as herein modified, shall be applicable for the levy and collection of the amount certified by the board of such district as aforesaid, including the enforcement of penalties and forfeiture for delinquent taxes. All collections made by the county treasurer pursuant to such levy shall be paid to the treasurer of the district on or before the tenth day of the next succeeding calendar month and a list of the payers, the amounts paid by each and the property covered thereby shall accompany such remittance.

C. If such items of expense have already been paid in whole or in part from other sources, they may be repaid from the receipts of such levy, and such levy may be made although the work proposed may have been found impracticable or for other reasons is abandoned.

D. In case the proceeds of such assessment, including those of any other assessment previously made for the preliminary fund, exceeds, [exceed] the total amount of money borrowed for the preliminary fund or the amount needed to complete the preliminary expenses, the surplus shall be placed in the general fund of the district and used to pay cost of construction, except that the same may be refunded or adjusted as hereinafter provided if deemed more just and so ordered by the court; provided, however, that if the district be dissolved the amount of surplus, if there be any, shall be prorated and refunded to the landowners paying such assessment.

E. The information collected by the necessary surveys, the appraisals of benefits and damages and other information and data are hereby declared to constitute benefits for which said assessment may be levied. In case a district is dissolved or abandoned, before the work is constructed, the data, plans and estimates which have been secured shall be filed with the clerk of the court in which the district was organized, and shall be matters of public record available to anyone interested.

**History:** Laws 1927, ch. 45, § 502; C. S. 1929, § 30-502; 1941 Comp., § 77-2902; 1953 Comp., § 75-30-2.

**Meaning of "this act".** - The term "this act" refers to the Conservancy Act, enacted by Laws 1927, ch. 45, the provisions of which are presently compiled as 73-14-1 to 73-14-



8, 73-14-16, 73-14-17, 73-14-33 to 73-14-48, 73-15-1 to 73-15-15, 73-16-1 to 73-16-4, 73-16-6 to 73-16-29 and 73-17-1 to 73-17-24 NMSA 1978. See also 73-18-1 NMSA 1978 and notes thereto.

**Legislative intent.** - That this assessment was on a millage basis did not indicate a legislative intention that it be a general tax and not a benefit assessment. *Hamilton v. Arch Hurley Conservancy Dist.*, 42 N.M. 86, 75 P.2d 707 (1938).

**Millage assessment not constitutionally prohibited.** - That this assessment was upon the millage basis did not bring it within the constitutional limitation of twenty mills for taxes on real and personal property. *Hamilton v. Arch Hurley Conservancy Dist.*, 42 N.M. 86, 75 P.2d 707 (1938).

**Constitutionality of former provisions.** - Laws 1923, ch. 140, § 502 (repealed), which authorized preliminary assessments to defray the preliminary costs of surveys, plans and other incidental expenses, did not violate N.M. Const., art. VIII, § 1. *In re Proposed Middle Rio Grande Conservancy Dist.*, 31 N.M. 188, 242 P. 683 (1925).

**Duty of commissioners to certify assessment.** - If a preliminary fund assessment has been levied by resolution of the board of directors of a conservancy district, the boards of county commissioners to whom the assessment is certified have a mandatory duty to certify the assessment to the county assessor for inclusion in the next annual tax levy. 1961-62 Op. Att'y Gen. No. 61-10.

### **73-16-3. Power to borrow money for the preliminary fund.**

A. In order to facilitate the preliminary work, the board may borrow money at a rate of interest not exceeding eight (8%) percent per annum, and as evidence of the debt so contracted, may issue and sell or may issue to contractors or others, negotiable evidences of debt (herein called warrants), and may pledge the preliminary assessment for the repayment thereof. If any warrant so issued by the board is presented for payment and is not paid for want of funds in the treasury, that fact, with the date of presentation, shall be endorsed on the back of such warrant, which shall thereafter draw interest at the rate specified in the endorsement, not exceeding eight (8%) percent per annum, until such time as there is money on hand sufficient to pay the amount of said warrant with interest.

B. In case of a district organized under the provisions of Chapter 140 of the Laws of New Mexico, 1923, where money has been borrowed for the preliminary fund, such borrowed money shall be repaid from the construction fund or general fund when available and all assessments made under said Chapter 140 of the Laws of 1923 for the preliminary fund shall be refunded or cancelled; provided, however, that if said construction fund for any cause shall not be available upon the maturity of indebtedness incurred for the preliminary fund, the board of directors of said district shall fix such an ad valorem assessment upon the property within the district as will be sufficient to repay such indebtedness, as a level rate to be used for the purpose of repaying said borrowed

money, and not to exceed two (2) mills for every dollar of assessed valuation in addition thereto, and the board of directors may anticipate the collection of such levy by the issuance of warrants for the repayment of money so borrowed; provided, however, that the total amounts permitted to be levied for such preliminary fund and for the repayment of any such indebtedness shall not exceed in the aggregate eight mills for every dollar of assessed valuation. Said assessment shall be levied by resolution of the board; shall be known as preliminary fund-refunding assessment; and said assessment shall be certified to the boards of county commissioners of the various counties in which the district or any portion thereof is located, and by them included in their next annual levy for state and county purposes. The manner of collection by the county treasurers, and the laws applicable to such collections and handling of the same, shall be as heretofore provided in Section 502 [73-16-2 NMSA 1978] hereof.

**History:** Laws 1927, ch. 45, § 503; C.S. 1929, § 30-503; 1941 Comp., § 77-2903; 1953 Comp., § 75-30-3.

**Cross-references.** - For preliminary fund, see 73-16-2 NMSA 1978.

**Compiler's note.** - Laws 1923, ch. 140, referred to in this section, was repealed by 73-17-23 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 66.

94 C.J.S. Waters § 321.

### **73-16-4. Construction fund.**

A. After the list of property, with the appraised benefits as approved by the court, or that part thereof from which no appeal is pending, has been filed with the secretary, then from time to time, as the affairs of the district may demand, the board shall levy on all property upon which benefits have been appraised, and assessment of such portion of said benefits as may be found necessary by said board to pay the cost of the appraisal (except as paid out of the preliminary fund), the preparation and execution of the official plan, including superintendence of construction and administration during the period of construction, plus ten (10%) percent of said total, to be added for contingencies, but not to exceed, in the total of principal, the appraised benefits so adjudicated. In case of acreage tracts of twenty acres or less, on which benefits are appraised, in order to reduce the expense of administration, and to promote convenience in making payments, the installments of interest during the five-year period prior to the payment of the first annual installment of principal, shall be capitalized and added to the principal of the assessment; provided that any owner of an acreage tract of twenty (20) acres or less may elect within the period, and in the manner provided in Section 505 [73-16-6 NMSA 1978] hereof, to pay installments of interest as in the case of other lands.

B. The said assessment shall be levied by resolution of the board, shall be known as the construction fund assessment, shall be apportioned to and levied on each tract of

land or other property in said district in proportion to the benefits appraised, and not in excess thereof, and in case bonds are issued as hereinafter provided, then the amount of interest which will accrue on such bonds, as estimated by said board, shall be included in and added to the said assessment but the interest to accrue on account of the issuing of said bonds shall not be construed as a part of the cost of construction in determining whether or not the expenses and costs of making said improvement are or are not equal to or in excess of the benefits appraised.

C. As soon as said assessment is levied, the secretary shall prepare in duplicate a construction fund assessment record of the district. The said record shall be in the form of a well-bound book endorsed and named "construction fund assessment record of ..... conservancy district," which endorsement shall also be printed at the top of each page thereof.

D. The construction fund assessment record shall include a table or schedule (Schedule Form VIII) [73-17-24 NMSA 1978] showing in properly ruled columns:

(1) the names of the owners of the property to which benefits are appraised, which may be as they appear in the order of the court confirming the appraisals, and, in case of appraisals against a town, city, county or other public corporation, the name of the individual owners need not be given, but only the name of such corporation;

(2) the descriptions of the items of property appraised and assessed, arranged by counties;

(3) the total amount of benefits appraised against each item of property;

(4) the total assessment levied against each item of property to which benefits have been appraised; in this column of the record provision shall be made for the entry of successive levies of assessments;

(5) suitable columns shall be provided for entering the options and elections for paying the assessments provided for in this act;

(6) in successive columns, the construction fund installments (or if bonds are issued, these columns may be designated bond fund installments) both principal and interest, one column for each installment, with provision for the entry of installments of successive levies, if any, and suitable blank columns in which the county treasurer shall record the several installment amounts, principal and interest, as collected by him, and the names of the person or persons paying the same.

E. Where successive levies of assessments are made for the construction fund, the construction fund assessment record shall contain suitable notations to show the number of levies and the amount of each, to the end that it may disclose the aggregate of all levies for the construction fund.

F. Upon the completion of the construction fund assessment record it shall be signed by the president, and the seal of the district shall be thereunto affixed and attested by the signature of the secretary, and the same shall thereafter become a permanent record in the office of said district.

G. If it shall be found at any time that the total amount of assessments levied is insufficient to pay the cost of the works set out in the official plan or of additional work done, the board may levy such additional assessments and may make such amendments or supplements to the construction fund assessment record, from time to time as may be necessary to provide funds to complete the work, provided the total of all such assessments exclusive of interest, does not exceed the total of benefits appraised.

**History:** Laws 1927, ch. 45, § 504; C.S. 1929, § 30-504; 1941 Comp., § 77-2904; 1953 Comp., § 75-30-4.

**Cross-references.** - For payment of construction fund levies, see 73-16-6 NMSA 1978.

For conservation and development fund assessment, see 73-16-31 NMSA 1978.

**Meaning of "this act".** - See same catchline in notes to 73-16-2 NMSA 1978.

**Property control division required to pay levies.** - The property control division of the general services department is required to pay levies assessed by the middle Rio Grande conservancy district on real property owned by the property control division within the conservancy district. 1987 Op. Att'y Gen. No. 87-7.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation §§ 70 to 72.

52A C.J.S. Levees and Flood Control §§ 28 to 39; 94 C.J.S. Waters §§ 319, 332 to 337.

### **73-16-5. Election for approval of construction fund assessment levy of certain districts; form of ballot; supplemental levies.**

A. In all cases excepting those hereinafter excluded, as soon as the first construction fund assessment levy is made the board shall call an election to be held not less than sixty days after notice of the election is completed by publication. The procedure for and conduct of the election shall be that provided for election of boards of directors who are elected. The question to be referred to the voters shall be the approval or rejection of the construction fund assessment levy resolved by the board. The form of ballots shall be substantially as follows:

CONSTRUCTION FUND ASSESSMENT LEVY  
FOR.....  
.....  
.... DISTRICT

(Name of

District)

FOR the construction fund assessment levy of the district in the maximum total sum of \$..... []

AGAINST the construction fund assessment levy of the district in the maximum total sum of \$..... []

B. If the majority of voters are against the levy, upon exhibit to the court of the returns so proving, the district shall be dissolved after insuring payment of all outstanding debts. If the majority of voters are for the levy, upon exhibit to the court of the returns so proving, the levy shall be ordered executed and the secretary shall prepare the construction fund assessment record of the district.

C. Thereafter, from time to time, as the affairs of the district may demand, the board may make supplemental levies for the construction fund; provided, that the aggregate of all these supplemental levies shall not exceed ten percent of the first levy approved in the election or, in principal, the appraised benefits adjudicated, whichever is less; provided, further, that if for any reason the affairs of the district shall demand a supplemental levy in excess of ten percent, an election as herein provided shall be required to approve and order them into execution, and in the event they are rejected the district shall not execute supplemental levies in excess of the limits above stated; and provided further, that in no case shall a levy be submitted to election where the amount thereof exceeds in principal the appraised benefits adjudicated.

Nothing in this section applies to any district which has commenced or completed any phase of improvements pursuant to official plans, or to any district containing between fifteen thousand to thirty thousand acres.

**History:** 1953 Comp., § 75-30-4.1, enacted by Laws 1961, ch. 123, § 1.

**Effective dates.** - Laws 1961, ch. 123, contains no effective date provision, but was enacted at a session which adjourned March 11, 1961. See N.M. Const., art. IV, § 23.

**73-16-6. Payment of construction fund assessments.**

A. When the construction fund assessment record is placed on file in the office of the district, notice by publication shall be given to property owners that they may pay their assessments. Any owner of property assessed for the execution of the official plan shall have the privilege of paying such assessment to the treasurer within sixty (60) days from the time such publication is completed, and the amount to be paid shall be the full amount of the assessment without interest. When such assessment has been paid the secretary shall enter upon the said assessment record opposite each tract for which payment is made the words "paid in full," and such assessment shall not relieve the property owner from the payment of a maintenance assessment nor from the payment of any further assessments (not exceeding the total of benefits appraised) which may be necessary as herein provided.

B. Failure to pay the whole construction fund assessment within said period of sixty (60) days shall be conclusively considered and held an election on the part of all persons interested, whether under disability or otherwise, to pay such assessment in installments as hereinafter provided. All persons so electing to pay in installments, shall be conclusively held and considered as consenting to said official plan and all work thereunder, the issuance of bonds and the payment of interest thereon; and such election shall be conclusively held and considered as a waiver of any and all right to question the power or jurisdiction of the district to construct the works set forth in said official plan, the regularity or sufficiency of the proceedings or the validity or the correctness of such assessment; provided, however, that any public corporation may, within sixty (60) days, elect to pay, in whole or in part, the amount assessed against such corporation in not more than ten (10) annual installments, beginning at the time of the next annual levy of taxes by such corporation, but nothing herein contained shall be construed to relieve such corporation from liability for successive levies of assessments, not exceeding the amount of benefits appraised.

C. In case of such election to pay in installments, the construction fund assessment shall be payable in not more than forty (40) annual installments of principal, the first of which installments shall be payable in five years and the last in not more than forty-five (45) years after the filing of the construction fund assessment record in the office of the district; with interest in all cases on the unpaid principal, computed and payable semiannually from the filing of the construction fund assessment record, at a rate not exceeding eight percent (8%) per annum, all as may be determined by the board by resolution.

The assessments against agricultural lands shall be so apportioned that no one of the first ten installments of the construction fund assessment shall exceed the sum of three dollars (\$3.00) per acre.

D. Subject to the foregoing requirements, all installments, both of principal and interest, shall be payable at such times as may be determined by the board by resolution.

E. Upon the failure to pay any installment, whether of principal or interest, when due, the whole amount of the unpaid principal of such installment and accrued interest

thereon, shall thereafter draw interest at the rate of one percent (1%) per month or fraction of a month until the day of sale, as hereinafter provided; but at any time prior to the day of sale, the owner may pay the amount of all unpaid and overdue installments, with interest at one (1%) percent per month or fraction of a month and all penalties accrued.

F. After the expiration of the period of sixty days within which the property owners may pay their respective assessments, as limited herein, the treasurer shall certify to the board the aggregate of the amount so paid, thereupon the board may pass and spread upon its records a bonding resolution in which shall be stated the amount of the construction fund assessment, and the amount thereof paid as aforesaid; and, in the same resolution shall apportion the uncollected assessment into installments or levies, provide for the collection of interest upon the unpaid installments and may order the issuance of conservancy bonds (in an amount not exceeding ninety (90%) percent of the levy) in anticipation of the collection of said installments. The residue of the tax so levied (not less than ten (10%) percent) shall constitute a contingent account to protect the bonds from casual default, and if not needed for this purpose, may be transferred from time to time to the maintenance fund.

G. Provided, however, that after the expiration of the sixty (60) day period hereinbefore set out, the board may, upon written request of an owner of property within the district, authorize the treasurer to accept payment of the full amount of assessment then outstanding on such property together with interest thereon to the next interest-paying date of outstanding bonds, if in their judgment it is to the best interests of the district to accept such payment, but nothing herein contained shall be construed to relieve such property from the lien of any successive assessments which may be made not exceeding the amount of benefits appraised. In case such payments are tendered and accepted after bonds have been sold, the proceeds from such payments shall be used in the following prescribed manner to purchase and retire outstanding bonds of the district of the issue for which the assessment so paid had been levied. When an amount sufficient for the retirement of one or more bonds has been received, the board shall ask for and receive sealed bids from at least three reputable persons or firms on the number of bonds desired to be purchased. The bids shall state the number of bonds offered for sale, the serial number and maturity date of each such bond and the price including unpaid interest, at which the bond or bonds are offered. The board shall accept the offer which gives the greatest saving to the district in principal and interest over the life of the bonds so offered for sale, provided, however, that the board may reject all bids and request new bids if in their judgment the bids made are unsatisfactory.

**History:** Laws 1927, ch. 45, § 505; C.S. 1929, § 30-505; Laws 1941, ch. 153, § 1; 1941 Comp., § 77-2905; 1953 Comp., § 75-30-5.

**Cross-references.** - For form of notice of assessment, see 73-17-24 NMSA 1978.

**Constitutionality of construction fund and related provisions.** - This section, 73-15-2 NMSA 1978 relating to appraisals and 73-16-14 NMSA 1978 relating to duties of officers of public corporations, do not violate N.M. Const., art. IX, § 13. *Gutierrez v. Middle Rio Grande Conservancy Dist.*, 34 N.M. 346, 282 P. 1 (1929), cert. denied, 280 U.S. 610, 50 S. Ct. 158, 74 L. Ed. 653 (1930).

**Constitutionality of election period.** - The 60-day period allowed for election is not unreasonable or unconstitutional. *Gutierrez v. Middle Rio Grande Conservancy Dist.*, 34 N.M. 346, 282 P. 1 (1929), cert. denied, 280 U.S. 610, 50 S. Ct. 158, 74 L. Ed. 653 (1930).

**Installment payments, generally.** - The landowner's waiver of the right to question the correctness of the assessment, and his agreement to pay interest thereon, was a sufficient consideration for the district to accept payments in installments, and constituted a contract, beyond the power of the legislature to change or impair. *Durand v. Middle Rio Grande Conservancy Dist.*, 46 N.M. 138, 123 P.2d 389 (1941).

**Interest on deferred payments is not a part of assessment,** but is the carrying charge on the unpaid portion of the assessment. *Gutierrez v. Middle Rio Grande Conservancy Dist.*, 34 N.M. 346, 282 P. 1 (1929), cert. denied, 280 U.S. 610, 50 S. Ct. 158, 74 L. Ed. 653 (1930).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 70.

52A C.J.S. Levees and Flood Control § 37; 94 C.J.S. Waters § 337.

## **73-16-7. Conservancy bonds.**

### **A. Issuance.**

(1) The board may, if in its judgment it seems best, issue conservancy bonds (Schedule Form IV) in coupon or registered form in an amount not to exceed ninety percent of the total amount of the construction fund assessments, exclusive of interest, levied under the provisions of this act to mature at annual intervals within fifty years, commencing not later than five years after date, as may be determined by the board, both principal and interest payable at a place or places determined by the board and designated in the bonds.

(2) The bonds shall show on their face the purpose for which they are issued and shall be payable out of money of the construction fund. The bonds may be payable to bearer or the registered owner and, except for bonds issued in book entry or similar form without the delivery of physical securities, shall be signed by the president, and the seal of the district shall be thereunto affixed and attested by the signature of the secretary. Installments of interest may be evidenced by coupons bearing a facsimile of the signature of the treasurer. In case any officer whose signature or certificate appears upon bonds or coupons issued pursuant to this act ceases to be an officer before the



delivery of the bonds to the purchaser, such signature or certificate shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until the delivery of the bonds.

B. Disposal. All bonds, when executed, shall be delivered to the treasurer of the district, who shall sell the bonds in such quantities and at such times as the board of directors may order to meet the payments for the works and improvements of the district. The bonds may be sold at, above or below par, but they shall be sold at such a price that the net effective interest rate of the bonds shall not exceed the maximum net effective interest rate permitted by the Public Securities Act [6-14-1 to 6-14-3 NMSA 1978], as hereafter amended and supplemented. No bonds of the district shall be sold until after notice of the sale has been published in a newspaper of general circulation in the district and in recognized financial journals published in the cities of Chicago and New York once a week for four successive weeks preceding the sale, describing the issue and terms and fixing a time and place for receiving and opening sealed bids.

The board may reject all offers or bids received as a result of such notice and then sell the bonds at private sale; but the board shall not sell the bonds at private sale on terms less advantageous to the district than the best bid so received until after the public sale has been again advertised.

#### C. Payment.

(1) A sufficient amount of the assessments shall be appropriated by the board for the purpose of paying the principal and interest of bonds, and the same shall, when collected, be set apart in a separate fund for that purpose and no other. Any expenses incurred in the issuance and sale of the bonds and in paying bonds and interest thereon may be paid out of any funds in the hands of the treasurer.

(2) The board, in making assessment levies as herein provided, shall take into account maturing bonds and interest on all bonds and shall make ample provision for the payment thereof. In case the proceeds of the original assessments made under the provisions of this act are not sufficient punctually to pay the principal of and the interest upon all bonds issued hereunder, then the board shall make such additional levy as may be necessary for such purposes. Under no circumstances shall any assessment levies be made that will in any manner or to any extent impair the security of any bond issued hereunder or the fund available for the payment of the principal thereof and interest thereon. No bond issued hereunder or the assessment made to pay the same shall have a priority of lien over any other bond issued or assessments made hereunder.

#### D. District Treasurer.

(1) The treasurer shall, prior to receiving and accepting the bonds as provided aforesaid and in addition to the bond required, at the time of taking office as provided by Section 73-14-35 NMSA 1978, furnish a corporation surety company bond at the expense of the

district, executed to the district, conditioned that he shall account for and pay over as required by law and as ordered by the board, any money received by him on the sale of the bonds or from any other source and that he will sell and deliver the bonds to the purchaser thereof, under and according to the terms herein prescribed and not otherwise, and that he will, when ordered by the board, return to the board, duly canceled any and all bonds not sold; which bond shall be filed in the office of the clerk, who shall produce the same for inspection or for use as evidence whenever or wherever legally required.

(2) The treasurer shall promptly report all sales of bonds to the board. The board shall issue warrants upon the treasurer at the proper time for the payment of the maturing bonds so sold and the interest payment coming due on all bonds sold, and the treasurer shall place sufficient funds at the place of payment to pay the same. In case warrants are not issued by the board as herein provided, then the treasurer shall of his own accord place funds at the place of payment, and the canceled bonds and coupons, if any, shall be accepted in lieu of such warrants.

(3) The successor in office of any such treasurer shall not be entitled to the bonds or the proceeds thereof until he has complied with all the foregoing provisions applicable to his predecessor in office; provided, however, that if it should be deemed more expedient to the board, as to money derived from the sale of bonds issued or from any other source, the board may, by resolution, select some suitable bank or banks or other depository, which depository shall give good and sufficient bond, as temporary or assistant treasurer or treasurers, to hold and disburse the money on orders of the board as the work progresses, until such fund is exhausted or transferred to the treasurer by the order of the board. For such deposit, the district shall receive not less than two percent interest a year. The funds derived from the sale of bonds shall be used for the purpose of paying the cost of the works and improvements and such costs, expenses, fees and salaries as may be authorized by law and shall be used for no other purpose.

#### E. Pledging.

(1) If at the time when the bonds are ready to be issued the board is of the opinion that the bonds cannot advantageously be issued and sold in whole or in part, the board may sell parts only of the entire issue or may pledge not to exceed ten percent of the issue as collateral to a loan, but no partial sale or pledge shall be made without the order of the board made and entered of record, and no pledge shall be made at a greater margin than at the rate of one hundred dollars (\$100) of bond principal for ninety dollars (\$90.00) of loan.

(2) The district may borrow money from the United States government and provide for the repayment thereof in the manner provided for the payment of bonds, and the board may make any necessary regulations to provide for such payment. The board may also pledge the bonds for the work done by the United States government in cooperation with the district.

F. Validity.

(1) This act shall, without reference to any other act of the legislature be full authority for the issuance and sale of the bonds in this act authorized, including refunding bonds; which bonds when executed and sealed in conformity with the provisions of this act and when sold or pledged in the manner prescribed herein and the consideration therefor received by the district, shall not be invalid for any irregularity or defect in the proceedings for the issue, sale or pledge thereof and shall be incontestable in the hands of the bona fide purchasers or holders thereof for value. No proceedings in respect to the issuance of any such bonds shall be necessary except such as are required by this act.

(2) A party who has not sought a remedy against any proceeding under this act until after bonds have been sold shall not for any cause have an injunction against the collection of taxes or assessment for the payment of the bonds.

G. Registration.

(1) A district may, by recital in its coupon bonds, agree to register its coupon bonds either as to principal only or as to both principal and interest at the option of the bondholder. Whenever the owner of any coupon bond issued pursuant to the provisions of this act presents the bond to the treasurer or to such bank or other depository as the board may, for such purpose, designate as registrar, with a request for the conversion of the coupon bond into a registered bond, the treasurer, bank or other depository shall stamp, print or write upon the coupon bond so presented, either upon the back or the face thereof, as may be convenient, a statement to the effect that the bond is registered in the name of the owner and that thereafter the principal or the interest and principal of the bond are payable to the registered owner. Thereafter and from time to time, the bond may be transferred by the registered owner in person or by attorney duly authorized upon presentation of the bond for registration as before, a similar statement being stamped, printed or written thereon. Such statements stamped, printed or written upon any such bond may be substantially in the following form:

"This bond is registered in the name of (here insert name of owner) pursuant to the provisions of the Conservancy Act of New Mexico, and the interest and principal (or principal only) thereof are hereafter payable to such owner.

..... Treasurer (or registrar)

.....  
Conservancy District.  
Date ....."

(2) When any bond is registered as aforesaid, the principal and interest of the bond shall be payable to the registered owner, except in the case of a coupon bond registered as to principal only, in which case the principal shall be payable to such person, unless the bond is discharged from registering by being registered as payable to bearer. Upon the registration of a coupon bond as to both principal and interest, the treasurer shall also cut off and cancel the coupons. The treasurer of the district shall enter in a register of bonds to be kept by him, or in a separate book, the fact of the registration of the bond and the name of the registered owner of the bond, so that the register or book shall at all times show what bonds are registered and the name of the registered owners.

**History:** Laws 1927, ch. 45, § 506; C.S. 1929, § 30-506; 1941 Comp., § 77-2906; 1953 Comp., § 75-30-6; Laws 1983, ch. 265, § 59.

**Cross-references.** - For definitions of "board" and "clerk," see 73-14-3 NMSA 1978.

As to issuance of additional bonds, see 73-16-33 NMSA 1978.

For Schedule Form IV, see 73-17-24 NMSA 1978.

**The 1983 amendment,** in Subsection A(1), inserted "in coupon or registered form" and deleted "in denominations of not less than one hundred (\$100) dollars, bearing interest from date at a rate not to exceed six (6%) percent per annum, payable semiannually" preceding "to mature at annual intervals;" in Subsection A(2), substituted "The bonds may be payable to bearer or the registered owner and, except for bonds issued in book entry or similar form without the delivery of physical securities" for "Said bonds shall be payable to bearer" in the second sentence and substituted "Installments of interest may" for "The semiannual payments of interest shall" in the third sentence; in Subsection B, rewrote completely the second sentence and deleted the beginning of the third sentence; in Subsection C(1), deleted the former second sentence; in Subsection C(2), divided the former second sentence into the present second and third sentences, and deleted "or levies" following "additional levy" in the second sentence; in Subsection D(1), substituted the New Mexico citation for "Section 304" and deleted "or any of them" following "Sale of the bonds;" in Subsection D(2), inserted "if any" in the last sentence; in Subsection D(3), substituted "successor" for "successors" in the first sentence, substituted "a year" for "per annum" in the second sentence and deleted "or any of them" following "sale of bonds" in the last sentence; in Subsection E(2), inserted "money" following "district may borrow;" in Subsection F(1) deleted "of the state of New Mexico" following "legislature;" in Subsection G, inserted "coupon" preceding "bonds" in three places in Paragraph (1), inserted "principal or the" preceding "interest and principal" in the second sentence of Paragraph (1), deleted the designation of Paragraph (2) preceding the sample bond form and substituted the present designation of Paragraph (2) for the former designation of Paragraph (3), inserted "and principal"

following "and the interest" in the sample bond form and substituted "When" for "If" at the beginning of Paragraph (2); and made other minor changes.

**Emergency clauses.** - Laws 1983, ch. 265, § 64, makes the act effective immediately. Approved April 7, 1983.

**Meaning of "this act".** - See same catchline in notes to 73-16-2 NMSA 1978.

**Conservancy Act of New Mexico.** - See "Meaning of 'this act'" note following 73-14-1 NMSA 1978.

**Where exceeding interest limit immaterial.** - In suit to enjoin sale of 51/2% conservancy bonds at 90% of total amount of construction fund assessments, where it appeared that the total payment of principal and interest, including discount, would not exceed what would have been required if the bonds had borne 6% interest and had brought par and accrued interest, the fact that the interest yield would exceed 6% was immaterial. *Jacobson v. Middle Rio Grande Conservancy Dist.*, 36 N.M. 357, 15 P.2d 674 (1932) (decided prior to 1983 amendment, deleting language as to interest rate).

**Where readvertising discretionary.** - In suit to enjoin private sale of conservancy bonds, no sealed bids having been received in response to advertisement 18 months previously, and the complaint showing no change in bond market conditions, readvertising was discretionary with district board. *Jacobson v. Middle Rio Grande Conservancy Dist.*, 36 N.M. 357, 15 P.2d 674 (1932).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation §§ 67 to 69.

52A C.J.S. Levees and Flood Control § 40; 94 C.J.S. Waters §§ 322 to 331.

### **73-16-8. Bonds tax exempt.**

All bonds issued by any district pursuant to this act shall be exempt from all state, county, municipal, school and other taxes imposed by any taxing authority of the state of New Mexico.

**History:** Laws 1927, ch. 45, § 507; C.S. 1929, § 30-507; 1941 Comp., § 77-2907; 1953 Comp., § 75-30-7.

**Meaning of "this act".** - See same catchline in notes to 73-16-2 NMSA 1978.

### **73-16-9. Bonds, investment of state funds.**

All bonds issued by any district pursuant to this act shall be considered as such interest-bearing securities as the permanent funds of the state of New Mexico may be invested in as provided by law.

**History:** Laws 1927, ch. 45, § 508; C.S. 1929, § 30-508; 1941 Comp., § 77-2908; 1953 Comp., § 75-30-8.

**Meaning of "this act".** - See same catchline in notes to 73-16-2 NMSA 1978.

### **73-16-10. Maintenance fund.**

A. Upon the substantial completion of the improvements of the district, or any unit thereof, and on or before the first day of September in each year the board may levy an assessment on all property and upon public corporations subject to assessment under this act, to maintain, operate and preserve the improvements made, to strengthen, repair and restore the same when needed or to defray the current expenses of the district.

B. The said assessment shall be levied by resolution of the board, shall be known as a maintenance assessment, shall be apportioned upon the basis of the total appraisal of benefits accruing for original and subsequent construction and shall not exceed one (1%) per centum thereof in any one year unless the court shall by its order authorize an assessment of a larger percentage.

C. As soon as said assessment is levied, the secretary shall prepare, in duplicate, a maintenance fund assessment record of the district. The said record shall be in the form of a well-bound book, endorsed and named "Maintenance Fund Assessment Record of ..... Conservancy District," which endorsement shall also be printed at the top of each page thereof.

D. The maintenance fund assessment record shall include a table or schedule (Form IX) [73-17-24 NMSA 1978] showing in properly ruled columns:

(1) the names of the owners of the property to which benefits are appraised, which may be as they appear in the decree of the court confirming the appraisals, and, in case of appraisals against a town, city, county or other public corporation, the name of the individual owners need not be given, but only the name of such corporation;

(2) the description of the items of property appraised and assessed, arranged by counties;

(3) the total maintenance assessment levied against each item of property;

(4) blank columns in which the treasurer shall enter payments as made, and the names of the persons paying the same.

E. Where successive levies of assessments are made for the maintenance fund, the maintenance fund assessment record shall contain suitable notations to show the number of levies and the amount of each, to the end that it may disclose the aggregate of all levies for the maintenance fund.

F. Upon the completion of the maintenance fund assessment record it shall be signed by the president of the district, and the seal of the district shall be thereunto affixed and attested by the signature of the secretary and the same shall thereafter become a permanent record in the office of the said district.

G. The amount of the said assessment paid by the owner of any property or by any public corporation shall not be credited against the benefits appraised against such property, or public corporation, but the maintenance assessment shall be in addition to any assessment that has been or can be levied against the benefits so appraised.

**History:** Laws 1927, ch. 45, § 509; C.S. 1929, § 30-509; 1941 Comp., § 77-2909; 1953 Comp., § 75-30-9.

**Cross-references.** - For annual levies, see 73-16-15 NMSA 1978.

For construction and development fund assessment, see 73-16-31 NMSA 1978.

**Meaning of "this act".** - See same catchline in notes to 73-16-2 NMSA 1978.

**Property control division required to pay levies.** - The property control division of the general services department is required to pay levies assessed by the middle Rio Grande conservancy district on real property owned by the property control division within the conservancy district. 1987 Op. Att'y Gen. No. 87-7.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation §§ 70 to 72.

52A C.J.S. Levees and Flood Control §§ 28 to 39; 94 C.J.S. Waters §§ 332 to 337.

### **73-16-11. Power to borrow money for the maintenance fund.**

A. In anticipation of the collection of maintenance assessments, the board may borrow money at a rate of interest not exceeding eight (8%) percent per annum, and as evidence of the debt so contracted may issue and sell, or may issue to contractors or others, negotiable evidence of debt (herein called warrants) and may pledge (after it has been levied) the said maintenance assessments for the repayment thereof.

B. If any warrant so issued by the board is presented for payment and is not paid for want of funds in the treasury, that fact, with the date of presentation, shall be endorsed on the back of such warrant, which shall thereafter draw interest at the rate specified in the endorsement, not exceeding eight (8%) percent per annum, until such time as there is money on hand sufficient to pay the amount of said warrant with interest.

**History:** Laws 1927, ch. 45, § 510; C.S. 1929, § 30-510; 1941 Comp., § 77-2910; 1953 Comp., § 75-30-10.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 66.

52A C.J.S. Levees and Flood Control § 40; 94 C.J.S. Waters § 322.

### **73-16-12. Readjustment of maintenance fund assessments.**

A. Whenever the owners or representatives of twenty-five (25%) per centum or more of the acreage or value of the lands in the district shall file a petition in the court in which the original petition was filed, stating that there has been a material change in the values of the property in the district since the last previous appraisal of benefits, and praying for a readjustment of the appraisal of benefits for the purpose of making a more equitable basis for the levy of the maintenance fund assessment, the court shall by order fix a time and place for a hearing thereon, and thereupon the clerk shall give notice by publication of the filing of and hearing upon said petition, in such manner as the court shall provide in the order for such hearing.

B. Upon the hearing of said petition, if said court shall find that there has been a material change in the value of property in said district since the last previous appraisal of benefits, the court shall order that there be a readjustment of the appraisal of benefits for the sole purpose of providing a basis upon which to levy the maintenance assessments of said district. Thereupon the court shall direct the appraisers to make such readjustment of appraisals in the manner provided in this act, and said appraisers shall make their report, and the same proceedings shall be had thereon, as nearly as may be, as are hereinbefore provided for the appraisal of benefits accruing for original construction; provided, that in making the readjustment of the appraisal of benefits said appraisal shall not be limited to the aggregate amount of the original or any previous appraisal of benefits, and that after the making of such readjustment the limitation of the annual maintenance assessment to one (1%) per centum of the total appraised benefits, shall, unless otherwise ordered by the court, apply to the amount of benefits as readjusted; and provided further, that there shall be no such readjustment of benefits oftener than once in ten (10) years.

**History:** Laws 1927, ch. 45, § 511; C.S. 1929, § 30-511; 1941 Comp., § 77-2911; 1953 Comp., § 75-30-11.

**Cross-references.** - For appraisals, see 73-15-1 to 73-15-15 NMSA 1978.

**Meaning of "this act".** - See same catchline in notes to 73-16-2 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 94 C.J.S. Waters § 335.

### **73-16-13. Assessment of public corporations.**

Whenever an assessment shall be levied against a public corporation, a certified copy of that portion of the construction fund assessment record or the maintenance fund assessment record, or both, as the case may be, relating to property in each public corporation, properly signed by the president with the seal of the district thereunto



affixed and attested by the signature of the secretary, shall be delivered to the governing or taxing body of each such public corporation.

**History:** Laws 1927, ch. 45, § 512; C.S. 1929, § 30-512; 1941 Comp., § 77-2912; 1953 Comp., § 75-30-12.

### **73-16-14. Duties of officers of public corporations.**

A. Whenever an assessment is levied against a public corporation, and is finally determined, it shall be the duty of the governing or taxing body of such public corporation immediately to take all the legal and necessary steps to provide for the payment of the same. It shall be the duty of the said governing or taxing body of such public corporation in its next annual levy succeeding the determination aforesaid, to provide for the said assessment by levying a uniform rate upon all the taxable property within the boundaries of said public corporation, and certify the same to the board of county commissioners of the county in which such corporation is located, whose duty it shall be to proceed to certify the same for collection, for the benefit of the district, in like manner and with like remedies and penalties as is provided by law for collection of other assessments or taxes, for the benefit of the said public corporation.

B. The county treasurer shall receive, collect and pay the same to the treasurer as is herein provided for assessments of other property.

C. Nothing in this section shall prevent the assessment of the real estate of others situated within the corporate limits of such public corporation, which may be subject to assessment for special benefits to be received.

**History:** Laws 1927, ch. 45, § 513; C.S. 1929, § 30-513; 1941 Comp., § 77-2913; 1953 Comp., § 75-30-13.

**Constitutionality of construction fund and related provisions.** - This section, 73-15-2 NMSA 1978 relating to appraisals and 73-16-6 NMSA 1978 relating to payment of construction fund assessments do not violate N.M. Const., art. IX, § 13. *Gutierrez v. Middle Rio Grande Conservancy Dist.*, 34 N.M. 346, 282 P. 1 (1929), cert. denied, 280 U.S. 610, 50 S. Ct. 158, 74 L. Ed. 653 (1930).

### **73-16-15. Annual levy.**

A. After the expiration of the sixty-day period in which the construction fund assessment may be paid, and each year thereafter, if necessary to effectuate the provisions of this act. The board shall determine, order and levy the total assessments to be collected annually for the purpose of paying district bonds, principal and interest and other needs, uses and purposes for which the construction fund is created; and for the needs, uses and purposes for which the maintenance fund is created.

B. Upon the passage of the resolution by the board levying the said assessments, the treasurer shall enter the same in the respective construction fund assessment record and maintenance fund assessment record, tabulating and extending the said records as herein provided.

C. On or before the first day of September of each year in which assessments are levied for the construction fund or maintenance fund, or both; that portion of the construction fund assessment record, or the maintenance fund assessment record or both, as the case may require, relating to the property in each county, certified by the board to be the construction fund assessment record, or the maintenance fund assessment record, as the case may be, signed by the president, attested by the signature of the secretary with the seal of the board thereto affixed, shall be delivered to the county assessor of each county wherein property assessed is located, and such records so certified shall be sufficient warrant for the levy, assessment and collection of the assessments therein contained and for the certification thereof by boards of county commissioners as in case of state and county taxes.

D. It shall be the duty of the assessor of each county to receive the said records as tax or assessment books and to make and enter the assessment therein set forth upon the tax rolls of the county at the time state and county taxes are assessed and entered according to law.

E. Such assessment shall become due and shall be collected during each year at the same time and in the same manner that state and county taxes are due and collectible; and if further assessments in any year are necessary, to effectuate the provisions hereof, such assessment shall be levied, evidenced and certified as herein provided in apt time and not later than the first day of December in such year, to the assessor of each county in which the property subject to such assessment is situate, and with like effect as in case of other assessments.

If a county treasurer shall wilfully neglect or fail to collect any assessment provided for herein at the time of the collection of other taxes, he shall be subject to a penalty of one hundred (\$100) dollars for each such failure, unless the collection of the assessment has been enjoined by order of a court of competent jurisdiction; such penalty to be recovered in a suit brought by the board to the use of the district.

**History:** Laws 1927, ch. 45, § 514; C.S. 1929, § 30-514; 1941 Comp., § 77-2914; 1953 Comp., § 75-30-14.

**Meaning of "this act".** - See same catchline in notes to 73-16-2 NMSA 1978.

**Constitutionality of annual levy provisions.** - This section and 73-16-17 NMSA 1978 relating to applicable revenue laws, when considered with other portions of the Conservancy Act (Laws 1927, ch. 45), are not uncertain, indefinite or blind, and are not obnoxious to provisions of the first paragraph of N.M. Const., art. IV, § 18, and county treasurer cannot refuse to accept tenders of state and county taxes without payment at

same time of conservancy district assessments, nor sell lands for both state and county taxes and conservancy district assessments after wrongfully refusing tender of state and county taxes. *Tondre v. Garcia*, 45 N.M. 433, 116 P.2d 584 (1941).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation §§ 70 to 72.

52A C.J.S. Levees and Flood Control §§ 28 to 39; 94 C.J.S. Waters §§ 332 to 337.

### **73-16-16. Lien of assessments.**

A. All assessments provided for in this act, together with all interest thereon and all penalties for default in payment of the same, and all costs in collecting the same, shall, from the date of filing, in the county or counties where lands affected thereby are situated, to wit:

(1) the certificate of preliminary fund assessment with the county commissioners;

(2) the construction fund assessment record with the assessor; and

(3) the maintenance fund assessment record with the assessor, constitute a perpetual lien in amount not in excess of the benefits severally appraised, upon all the lands and other property against which such assessments shall be levied, as provided in this act, to which only the lien for general or special state, county, city, town, village or school taxes shall be paramount, and no sale of such property to enforce any general or special state, county, city, town, village, school tax or other lien shall extinguish the perpetual lien of such assessments; provided, however, that assessments levied under this act shall not in any event be a personal liability against the owner, but shall constitute a lien upon the property only.

B. In the event of any dissolution or disincorporation of any district organized pursuant to the provisions of this act, such dissolution or disincorporation shall not affect the lien of any assessment for benefits imposed, or the liability of any property in such district to the levy of any future assessment for the purpose of paying the principal of and interest upon any bonds issued hereunder.

C. In case of said event, or in the event of any failure on the part of the officers of any district to qualify and act or in the event of any resignations or vacancies in office, which shall prevent action by the said district or by its proper officers, it shall be the duty of the county assessor and of all other officers charged in any manner with the duty of assessing, levying and collecting taxes for public purposes in any county, municipality or political subdivision in which such land shall be situated, to do and perform all acts which may be necessary and requisite to the collection of any such assessment which may have been imposed, and to the levying, imposing and collecting of any assessment which it may be necessary to make for the purpose of paying the principal and interest of said bonds. Any holder of any bonds issued, or any person or officer being a party in interest, may either at law or in equity by suit, action or mandamus, enforce and compel

performance of the duties required by this act, of any of the officers or persons mentioned.

**History:** Laws 1927, ch. 45, § 515; C.S. 1929, § 30-515; 1941 Comp., § 77-2915; 1953 Comp., § 75-30-15.

**Meaning of "this act".** - See same catchline in notes to 73-16-2 NMSA 1978.

**Constitutionality of former lien priority provisions.** - Laws 1923, ch. 140, § 515 (repealed), which gave priority to assessment lien except as to taxes, did not violate N.M. Const., art. II, § 19 by impairing the obligation of contracts. In re Proposed Middle Rio Grande Conservancy Dist., 31 N.M. 188, 242 P. 683 (1925).

**Legislative intent.** - The legislature intended that tax officials look to the land only for satisfying obligations due for conservancy district assessments and the state would not be liable where the land commissioner (now commissioner of public lands) cancels a contract for purchase of state lands on the ground of a delinquency in payments. 1941-42 Op. Att'y Gen. No. 4090.

**Where paving assessment lien superior to conservancy lien.** - Paving assessment liens, which were recorded prior to conservancy liens, were superior. City of Albuquerque v. Middle Rio Grande Conservancy Dist., 45 N.M. 313, 115 P.2d 66 (1941).

**But sale of property acquired by state tax deed is not.** - Sale of property acquired by state through tax deed is subject to municipal and conservancy assessment liens. 1937-38 Op. Att'y Gen. 194.

**New purchaser takes subject.** - When a new purchaser of state lands takes over, he takes subject to the lien for assessments due. 1941-42 Op. Att'y Gen. No. 4090.

### **73-16-17. Revenue laws of state [applicable].**

The revenue laws of this state for the assessment, levying and collection of taxes for state and county purposes, except as herein modified, shall be applicable for the purposes of the district in the collection of assessments including the enforcement of penalties and forfeiture for delinquent taxes. All interest and penalties that may be collected on delinquent assessments levied and assessed for district purposes shall be by the respective county treasurers delivered to the treasurer as herein provided for the delivery of assessments collected by such county treasurer.

**History:** Laws 1927, ch. 45, § 516; C.S. 1929, § 30-516; 1941 Comp., § 77-2916; 1953 Comp., § 75-30-16.

**Cross-references.** - For public lands not to be sold for assessments, see 73-17-14 NMSA 1978.

For valuation of property, see 7-36-1 to 7-36-33 NMSA 1978.

For administration and enforcement of taxes, see 7-38-1 to 7-38-46 NMSA 1978.

As to delinquent taxes, see 7-38-46 to 7-38-93 NMSA 1978.

**Constitutionality of annual levy provisions.** - This section and 73-16-15 NMSA 1978 relating to annual levy, when considered with other portions of the Conservancy Act (Laws 1927, ch. 45), are not uncertain, indefinite or blind, and are not obnoxious to provisions of the first paragraph of N.M. Const., art. IV, § 18, and the county treasurer cannot refuse to accept tenders of state and county taxes without payment at same time of conservancy district assessments, nor sell lands for both state and county taxes and conservancy district assessments after wrongfully refusing tender of state and county taxes. *Tondre v. Garcia*, 45 N.M. 433, 116 P.2d 584 (1941).

**Statutes of limitation.** - This section raises the question as to whether or not the 10-year statute of limitations on taxation was incorporated into the Conservancy District Act. It may be that it was. It is reasonably certain that collections for these assessments may not be made beyond 10 years. However, there is a possibility that, as in paving assessments and under the holding of *Altman v. Kilburn*, 45 N.M. 453, 116 P.2d 812 (1941), collection for these assessments may be barred after four years (37-1-25 NMSA 1978). 1955-56 Op. Att'y Gen. No. 6563.

### **73-16-18. Division of assessment.**

When any property has been divided, sold or transferred, the county treasurer may receive district assessments on a part of any tract, piece or parcel of land or other property, and give his receipt accordingly only when the deed or transfer of said property shows the agreed division of said assessments and the approval of the board of the district.

**History:** Laws 1927, ch. 45, § 517; C.S. 1929, § 30-517; 1941 Comp., § 77-2917; 1953 Comp., § 75-30-17.

### **73-16-19. County takes property subject to lien of district assessments.**

When any county shall take and hold any tax sale certificate or the title to any property under the provisions of this act, or of any taxing act of this state, such taking and holding shall be subject to the lien and charge of all district assessments, made, levied and assessed under the provisions of this act, and such district assessments shall be and become collectible as are other district assessments when the tax sale certificate or title to property taken and held by the county shall by sale or assignment become vested in any person.

**History:** Laws 1927, ch. 45, § 518; C.S. 1929, § 30-518; 1941 Comp., § 77-2918; 1953 Comp., § 75-30-18.

**Meaning of "this act".** - See same catchline in notes to 73-16-2 NMSA 1978.

### **73-16-20. County commissioners cannot rebate district assessments.**

County commissioners shall have no power to abate, reduce or compromise by any order, sale or any other means or device whatsoever, any district assessment made, levied and assessed under the provisions of this act.

**History:** Laws 1927, ch. 45, § 519; C.S. 1929, § 30-519; 1941 Comp., § 77-2919; 1953 Comp., § 75-30-19.

**Meaning of "this act".** - See same catchline in notes to 73-16-2 NMSA 1978.

### **73-16-21. Board may be purchaser on sale.**

The board shall have the power to bid in and hold for the use and benefit of the district and with like effect as any other purchaser, any property sold for delinquent taxes or district assessments and to purchase from the county or other owner the tax sale certificate or duplicate tax sale certificate outstanding against any property within the district. At the expiration of the period of redemption under any tax sale of property within the district, the board may, at its election pay all taxes, penalties, interests and costs represented by the tax sale certificate or duplicate tax sale certificate therefor and thereupon the county treasurer shall execute and deliver a tax deed conveying said property to the district.

**History:** Laws 1927, ch. 45, § 520; C.S. 1929, § 30-520; 1941 Comp., § 77-2920; 1953 Comp., § 75-30-20.

### **73-16-22. Special proceedings to enforce collections.**

In the event of any default in the payment of the interest or principal of any bonds issued, and if the said district or its proper officers shall fail or neglect to enforce the payment of any unpaid assessment, the holder of such bonds may, for himself and for the benefit of all others similarly situated, enforce the said liens by suit or action against the land or lands, property or properties, on which such assessment has not been paid, and against the said district; or may apply for the appointment of a receiver to collect the assessment and enforce the liens aforesaid; and the proceeds of such assessments and collections shall be applied, after payment of costs, first to overdue interest, and then to payment pro rata of all bonds issued by the said board which are then due and payable; and the said receiver may be directed by suit to foreclose the lien of said assessments on said property and the suits so brought by the receiver shall be

conducted in all matters as suits for the collection of debts and foreclosure of liens under mortgages and trust deeds, and the decrees in such suits and the deeds issued pursuant thereto, shall have the same presumption in their favor; provided, however, that when all such sums have been paid, the receiver shall be discharged, and the affairs of the district conducted by the board as hereinbefore provided.

In any special proceeding commenced under the provisions of this section, the district, and all land and all property or properties on which assessments have not been paid, may be made joint defendants, but separate judgments shall be entered and enforced.

**History:** Laws 1927, ch. 45, § 521; C.S. 1929, § 30-521; 1941 Comp., § 77-2921; 1953 Comp., § 75-30-21.

**Cross-references.** - For public lands not to be sold for assessments, see 73-17-14 NMSA 1978.

### **73-16-23. Assessment records prima facie evidence.**

The records of assessments contained in the respective assessments [assessment] records of the district and of the respective counties thereof shall be prima facie evidence in all courts of all matters therein contained.

**History:** Laws 1927, ch. 45, § 522; C.S. 1929, § 30-522; 1941 Comp., § 77-2922; 1953 Comp., § 75-30-22.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 94 C.J.S. Waters § 337.

### **73-16-24. Remedy for defective assessments.**

If any assessment made under the provisions of this act shall prove invalid, the board shall by subsequent or amended acts or proceedings promptly and without delay remedy all defects or irregularities, as the case may require, by making and providing for the collection of new assessments or otherwise.

**History:** Laws 1927, ch. 45, § 523; C.S. 1929, § 30-523; 1941 Comp., § 77-2923; 1953 Comp., § 75-30-23.

**Meaning of "this act".** - See same catchline in notes to 73-16-2 NMSA 1978.

### **73-16-25. Ex-officio district treasurer.**

The county treasurer of the county in which is located any portion of the lands of the district shall be and he is hereby constituted ex-officio district treasurer of the district extending into his county, and the said county treasurer shall be liable upon his official bonds to indictment and criminal prosecution for malfeasance, misfeasance or failure to

perform any duty herein prescribed, as county treasurer or ex-officio treasurer, as provided by law in either case as county treasurer.

**History:** Laws 1927, ch. 45, § 524; C.S. 1929, § 30-524; 1941 Comp., § 77-2924; 1953 Comp., § 75-30-24.

**Cross-references.** - For secretary of board of directors to serve as treasurer of district unless a treasurer is otherwise provided for by the board, see 73-14-35 NMSA 1978.

### **73-16-26. Bond of county treasurer.**

Before receiving the assessment records, the treasurer of each county into which the district extends, shall furnish a corporate surety company bond, at the expense of the district, executed to the district, in a sum not less than the probable amount to be collected by him for the district during any one year, conditioned that said treasurer shall as hereinbefore provided pay over and account for all assessments so collected by him. Said bond after approval by the board shall be deposited with the clerk who shall produce the same for inspection and use as evidence whenever and wherever lawfully required so to do.

**History:** Laws 1927, ch. 45, § 525; C.S. 1929, § 30-525; 1941 Comp., § 77-2925; 1953 Comp., § 75-30-25.

**Cross-references.** - For surety bonds and companies, see 46-6-1 to 46-6-9 NMSA 1978.

### **73-16-27. Duty of county treasurer to pay over tax; failure.**

All collections of any assessments made by any county treasurer shall be paid to the treasurer of the proper district, on or before the tenth day of the next succeeding calendar month. If any county treasurer or other person entrusted with the collection of any assessment made under the provisions of this act, refuses, fails or neglects to make prompt payment of the assessments, or any part thereof, collected under this act to the treasurer of the district upon his presentation of a written demand for the board, then he shall pay a penalty of ten (10%) percent on the amount of his delinquency; such penalty shall at once become due and payable and both he and his sureties shall be liable therefor on his bond provided for in this act.

**History:** Laws 1927, ch. 45, § 526; C.S. 1929, § 30-526; 1941 Comp., § 77-2926; 1953 Comp., § 75-30-26.

**Meaning of "this act".** - See same catchline in notes to 73-16-2 NMSA 1978.

### **73-16-28. Surplus funds and annual reports.**



A. Any surplus funds in the treasury of the district may be used for retiring bonds, reducing the rate of assessment or for accomplishing any other of the legitimate objects of the district.

B. At least once a year, or oftener if the court shall so order, the board shall make a report to the court of its proceedings and an accounting of receipts and disbursements to that date, which shall be filed with the clerk. Thereupon the court shall order the auditing of said accounts by competent public accountants, who shall file their reports thereon with the clerk, which audit shall be in lieu of and fulfill all purposes of any audit now required by law for any similar political subdivision of the state.

**History:** Laws 1927, ch. 45, § 527; C.S. 1929, § 30-527; 1941 Comp., § 77-2927; 1953 Comp., § 75-30-27.

**Legislative intent.** - The intention of the legislature was to provide for an annual audit for the political subdivision, but did not exempt them from control of the state comptroller (now state auditor). 1953-54 Op. Att'y Gen. No. 5658.

**Annual reports, generally.** - Conservancy districts should, as other political subdivisions of the state, make the required reports to the office of the state comptroller (now state auditor). 1937-38 Op. Att'y Gen. 173.

**Audits, generally.** - Any of the political subdivisions of the state has a right under the law to make independent audits or such audits may be made by the office of the state comptroller (now state auditor). It is an audit of this nature to which this section refers. 1937-38 Op. Att'y Gen. 173.

The exception in Subsection B regarding "any audit now required by law" only refers to former 7-107 NMSA 1941, which was in effect at the time Subsection B was enacted, and not to the Audit Act, which was not enacted until 1969. 1989 Op. Att'y Gen. No. 89-07.

### **73-16-29. Compensation of officials.**

A. Each member of the board of directors shall receive five (\$5.00) dollars per day and his necessary expenses for the time actually employed in the performance of his duties.

B. Each appraiser shall receive ten (\$10.00) dollars per day and his expenses for the time actually employed in the performance of his duties.

C. Before any duties devolve upon the county treasurers under this act, the board shall consult them and agree upon the salaries for the extra clerical force, if any, required in their respective offices to carry out the requirements of the law by reason of the establishment of a district, and the said board shall provide for and pay said salaries to said clerk or clerks while engaged on the work of the district, which clerks shall be selected and appointed by each of said county officers for their respective offices. In

case of disagreement as to the compensation of such extra clerical force, the matter shall be referred to the court for its determination.

**History:** Laws 1927, ch. 45, § 528; C.S. 1929, § 30-528; 1941 Comp., § 77-2928; 1953 Comp., § 75-30-28.

**Meaning of "this act".** - See same catchline in notes to 73-16-2 NMSA 1978.

**Generally.** - Appraisers receive compensation for their services upon a per diem basis for the time actually employed in the performance of their duties. *Zamora v. Middle Rio Grande Conservancy Dist.*, 44 N.M. 364, 102 P.2d 673 (1940).

**Board of appraisers and assistants.** - The compensation paid to the board of appraisers comes from the money which is set aside by conservancy law for the operation of the conservancy district. The board of directors of the conservancy district does not exercise any control over the operation of the board of appraisers and their assistants. The control of the board of appraisers is actually exercised by the court. 1955-56 Op. Att'y Gen. No. 6529.

**Extra clerical help of assessor.** - The county assessor of Socorro county cannot require that the Middle Rio Grande conservancy district enter into an agreement with such assessor whereby the conservancy district agrees to pay for extra clerical help needed by the assessor to help collect conservancy district assessments. No authorization for the assessor to enter into such an agreement is found in the statutes. The fact that the assessor must hire extra clerical help to properly assist in conservancy district assessment collections is of no consequence legally. Such an agreement between the assessor and the conservancy district is not authorized and, therefore, cannot be required. 1959-60 Op. Att'y Gen. No. 60-131.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Right of governmental unit other than flood control district, or officers thereof, to compensation for collecting or disbursing assessment, of levee or flood control districts, 114 A.L.R. 1098.

52A C.J.S. Levees and Flood Control § 21; 94 C.J.S. Waters § 320.

### **73-16-30. [Conservation and development of resources; assessments authorized.]**

That conservancy districts heretofore or hereafter created under New Mexico statutes be and hereby are authorized to levy an assessment of not to exceed 10% of the special benefits confirmed and approved for the purpose of conserving and developing the resources thereof, servicing outstanding bonds or obligations of such districts and for other purposes under the terms and conditions herein specified.

**History:** Laws 1935, ch. 37, § 1; 1941 Comp., § 77-2929; 1953 Comp., § 75-30-29.

**Emergency clauses.** - Laws 1935, ch. 37, § 12, makes the act effective immediately. Approved February 16, 1935.

**73-16-31. [Conservation and development fund assessment; levy; records; payment.]**

Said special assessment shall be known as the "conservation and development fund assessment"; [it] shall be made by resolution of the board and duly extended on the proper district and tax records in like manner and in accordance with the same procedure as the construction fund assessment under the provisions of the Conservancy Act of New Mexico. A complete record in duplicate shall be kept of the conservation and development fund assessment similar to the records and extension thereof required to be made for the construction fund assessment, and said conservation and development fund assessment may, by sufficient columns provided therefor, be recorded on the same books as the construction fund assessment record, or in such manner as shall be most convenient for the proper recording thereof.

Under the terms of a resolution levying and extending said conservation and development fund assessment, principal payments thereon by the property owners shall commence to be paid within five years from the date thereof, and be apportioned over the remainder of the life of the conservancy bonds theretofore issued, but like opportunity shall be given the property owners to pay said assessment in cash as provided for in the case of the construction fund assessment under the Conservancy Act; and nothing herein contained shall impair the right of said districts in the making of annual levies for construction fund and maintenance fund assessments to levy sufficient amounts as may be necessary to service all of the outstanding obligations of said district, including interest and principal as needed to pay and discharge those authorized under the provisions hereof, at the time and in the manner prescribed for annual levies under Section 514 [73-16-15 NMSA 1978] of the Conservancy Act.

**History:** Laws 1935, ch. 37, § 2; 1941 Comp., § 77-2930; 1953 Comp., § 75-30-30.

**Cross-references.** - For construction fund assessment, see 73-16-4, 73-16-6 NMSA 1978.

**Conservancy Act.** - See catchline "Meaning of 'this act'" in notes to 73-16-2 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation §§ 70 to 72.

52A C.J.S. Levees and Flood Control §§ 28 to 39; 94 C.J.S. Waters §§ 332 to 337.

**73-16-32. [Conservation and development fund created; legislative finding.]**

In addition to the separate funds provided for under Section 501, Subsection 1 [73-16-1 A NMSA 1978] of Article V of the Conservancy Act, there is hereby created a separate fund to be known as the "conservation and development fund," by which shall be meant the proceeds of a special levy hereby authorized to be made against the special benefits appraised, equalized and confirmed; and legislative finding is hereby made that for the purpose of conserving and developing the resources of any conservancy district heretofore or hereafter created under the Conservancy Act of New Mexico, the lands and properties therein have and will be benefited by the construction of the official plan and the conserving and developing of the resources thereof to the extent of the benefits confirmed and approved, and that the same have and will be further benefited and improved by conserving and developing the resources thereof in the manner provided hereunder.

**History:** Laws 1935, ch. 37, § 3; 1941 Comp., § 77-2931; 1953 Comp., § 75-30-31.

**Emergency clauses.** - Laws 1935, ch. 37, § 12, makes the act effective immediately. Approved February 16, 1935.

**Conservancy Act.** - See catchline "Meaning of 'this act'" in notes to 73-16-2 NMSA 1978.

### **73-16-33. [Conservancy bonds; conservation and development issue.]**

That conservancy districts heretofore or hereafter organized under the provisions of the Conservancy Act of New Mexico, subsequent to the passage of a resolution authorizing the conservation and development fund assessment, may issue additional bonds to be known as "conservancy bonds - conservation and development issue" which bonds shall be in similar or like form to the bonds provided for under Section 506 [73-16-7 NMSA 1978] of the Conservancy Act, save and except that they shall have printed thereon the following words: "Conservancy Bonds - Conservation and Development Issue," and made otherwise to conform to the provisions of this act [73-16-30 to 73-16-40 NMSA 1978].

**History:** Laws 1935, ch. 37, § 4; 1941 Comp., § 77-2932; 1953 Comp., § 75-30-32.

**Emergency clauses.** - Laws 1935, ch. 37, § 12, makes the act effective immediately. Approved February 16, 1935.

**Conservancy Act.** - See catchline "Meaning of 'this act'" in notes to 73-16-2 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation §§ 67 to 69.

52A C.J.S. Levees and Flood Control § 40; 94 C.J.S. Waters §§ 322 to 337.

### **73-16-34. [Interest rate; sale to governmental agencies without advertisement.]**

The bonds authorized under the provisions hereof shall bear a rate of interest not exceeding 6%, and the same may be sold to the United States government, the reconstruction finance corporation or any federal or state governmental agency without advertisement.

**History:** Laws 1935, ch. 37, § 5; 1941 Comp., § 77-2933; 1953 Comp., § 75-30-33.

**Reconstruction finance corporation abolished.** - The reconstruction finance corporation was abolished by the 1957 Reorganization Plan No. 1 and its functions transferred to the Housing and Home Finance Administration.

### **73-16-35. [Bonds tax exempt; investment of state funds.]**

The bonds herein authorized shall be entitled to all the privileges of tax exemption and be eligible for the investment of state funds in like manner as provided for conservancy bonds under the provisions of Sections 507 and 508 [73-16-8, 73-16-9 NMSA 1978] of the Conservancy Act.

**History:** Laws 1935, ch. 37, § 6; 1941 Comp., § 77-2934; 1953 Comp., § 75-30-34.

### **73-16-36. [Amount of bonds; use of proceeds; exemptions from assessment.]**

Securities authorized to be issued under provisions hereof may be issued in an amount not exceeding 10% of the benefits confirmed and approved in accordance with Articles IV and V of the Conservancy Act and the proceeds upon the sale, exchange or delivery thereof shall be devoted to conserving and developing the resources of said conservancy district, the servicing of outstanding obligations thereof or any other expenses and carrying charges of said district, but no property which has paid in full its construction fund assessment prior to the issuance of said securities shall be subject to the conservation and development fund assessment.

**History:** Laws 1935, ch. 37, § 7; 1941 Comp., § 77-2935; 1953 Comp., § 75-30-35.

**Conservancy Act.** - The provisions of Articles IV and V of the Conservancy Act are presently compiled as 73-15-1 to 73-15-15 and 73-16-1 to 73-16-4, 73-16-6 to 73-16-29 NMSA 1978 respectively.

### **73-16-37. [Application of other laws.]**

All of the provisions of Article V of the Conservancy Act of New Mexico relating to the manner of filing, extension on district or tax records, issuance, payment, financial

administration and other clauses of the Conservancy Act pertaining to the construction fund assessment or the issuance of bonds and the payments therefor and thereon; the duties of public officers in connection therewith; the annual levies therefor and the lien of construction fund assessment shall be applicable to and apply with like force to conservation and development fund assessments save and except the negotiable securities authorized to be sold under the provisions hereof may be disposed of or pledged to the United States government, the reconstruction finance corporation or any federal or other governmental agency without advertisement on sale, pledge or other disposition thereof, and said "conservation and development issue" or bonds shall otherwise be made to conform to the provisions of this act [73-16-30 to 73-16-40 NMSA 1978].

**History:** Laws 1935, ch. 37, § 8; 1941 Comp., § 77-2936; 1953 Comp., § 75-30-36.

**Conservancy Act.** - See catchline "Meaning of 'this act'" in notes to 73-16-2 NMSA 1978. The provisions of Article V of the Conservancy Act are presently compiled as 73-16-1 to 73-16-4, 73-16-6 to 73-16-29 NMSA 1978.

**Reconstruction finance corporation abolished.** - The reconstruction finance corporation was abolished by the 1957 Reorganization Plan No. 1 and its functions transferred to the Housing and Home Finance Administration.

### **73-16-38. [Bonds in serial form; maturity dates.]**

The securities authorized to be issued hereunder shall be serial in form and the entire issue of said conservation and development fund bonds so serially to be issued shall begin to mature within five years after the issuance thereof and a like amount as near as may be of principal and interest shall fall due and mature annually thereafter as in the case of other conservancy bonds, save that the life of the bonds authorized under the terms of this act [73-16-30 to 73-16-40 NMSA 1978] shall be so adjusted serially that all of the principal and interest thereof shall fall due and be payable within the life of the original construction fund bonds.

**History:** Laws 1935, ch. 37, § 9; 1941 Comp., § 77-2937; 1953 Comp., § 75-30-37.

### **73-16-39. [Bonds considered additional to other bonds; authority to issue; limitations.]**

The bonds authorized to be issued under the terms hereof shall not in any manner impair the original construction fund bond issue, but shall be considered as additional securities authorized to be issued by conservancy districts, and full legislative authority is hereby granted to said districts to sell tax anticipation bonds, refunding bonds, debentures and other negotiable securities, pledging the full faith and credit of such districts, and power is hereby granted to such districts for the levy of special assessments to pay the same, but in no event shall the assessments or outstanding obligations of such districts exceed the amount of the benefits confirmed and approved.

**History:** Laws 1935, ch. 37, § 10; 1941 Comp., § 77-2938; 1953 Comp., § 75-30-38.

### **73-16-40. [Limited repeal.]**

All provisions of the original Conservancy Act of New Mexico conflicting herewith or limiting the power of conservancy district to issue or sell negotiable securities conforming to the provisions of this act [73-16-30 to 73-16-40 NMSA 1978] are to that extent repealed, but no remaining provisions of said Conservancy Act, otherwise than necessary to conform hereto or affected hereby shall be changed, altered or repealed.

**History:** Laws 1935, ch. 37, § 11; 1941 Comp., § 77-2939; 1953 Comp., § 75-30-39.

**Conservancy Act.** - See catchline "Meaning of 'this act'" in notes to 73-16-2 NMSA 1978.

### **73-16-41. [Guaranty fund established in districts of 50,000 acres or more.]**

That conservancy districts heretofore or hereafter organized under the Conservancy Act of New Mexico, be and they hereby are authorized and directed, in addition to the separate funds now provided for, to establish in the manner hereinafter set forth a "guaranty fund" for the purpose of guaranteeing the prompt payment of the principal of and the interest upon all conservancy bonds heretofore issued or hereafter to be issued as the same may severally mature.

**History:** Laws 1931, ch. 50, § 1; 1941 Comp., § 77-2940; 1953 Comp., § 75-30-40.

**Emergency clauses.** - Laws 1931, ch. 50, § 14, makes the act effective immediately. Approved March 13, 1931.

**Conservancy Act.** - See catchline "Meaning of 'this act'" in notes to 73-16-2 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 52A C.J.S. Levees and Flood Control § 40; 94 C.J.S. Waters § 330.

### **73-16-42. [Tax levy for guaranty fund.]**

That for the establishment and maintenance of such guaranty fund, the board of commissioners or directors of any such district be and they hereby are authorized and directed annually to levy a tax, in addition to all other taxes, upon the real property within such district subject to general taxation for state and county purposes, of two mills for every dollar of the assessed valuation thereof, as shown by the last preceding assessment for state and county taxes; provided, however, that whenever and so long as the amount of such guaranty fund equals or exceeds an amount equal to fifteen per

centum of the total bonded indebtedness of such district, no further levy shall be made therefor, unless and until the amount of such fund may be depleted by payments therefrom as hereinafter authorized.

**History:** Laws 1931, ch. 50, § 2; 1941 Comp., § 77-2941; 1953 Comp., § 75-30-41.

**Real estate to include steam production equipment.** - Steam production equipment, consisting of turbines, boilers, pumps and fans, was real estate for taxation purposes where the utility company installed and maintained such equipment on special foundations, could not foresee moving it because of its huge size and weight and such equipment was the very heart of the company's business. *Southwestern Pub. Serv. Co. v. Chaves County*, 85 N.M. 313, 512 P.2d 73 (1973).

**But not electric transmission and distribution substation equipment.** - Electric transmission and distribution substation equipment, consisting of transformers, switches and circuit breakers, was not real estate for taxation purposes since it was readily portable and had very little, if any, annexation or adaptation. *Southwestern Pub. Serv. Co. v. Chaves County*, 85 N.M. 313, 512 P.2d 73 (1973).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation §§ 70 to 72.

52A C.J.S. Levees and Flood Control §§ 28 to 39; 94 C.J.S. Waters §§ 332 to 337.

### **73-16-43. [Levy and collection of tax for guaranty fund.]**

The tax for such guaranty fund shall be levied by resolution of the board; shall be known as the guaranty fund levy; and the amount of such levy upon the property subject thereto shall be certified and extended as in the case of other levies for state and county taxes. Said amount shall be collected for the use of such district as herein provided at the same time and in the same manner as taxes for state and county purposes, and the revenue laws of the state of New Mexico for the levy and collection of taxes for state and county purposes, including the enforcement of penalties and forfeiture for delinquent taxes, shall be applicable to the levy and collection of the amount of taxes certified by the board of such district for the guaranty fund as aforesaid. All collections made by the county treasurers pursuant to such levy shall be paid over to the district within the time and in the same manner as other district funds, and the county treasurers shall be liable on their official bonds and subject to the same penalties for failure so to collect and pay over such taxes, as in the case of other conservancy funds.

**History:** Laws 1931, ch. 50, § 3; 1941 Comp., § 77-2942; 1953 Comp., § 75-30-42.

**Cross-references.** - For public lands not to be sold for assessments, see 73-17-14 NMSA 1978.

For valuation of property, see 7-36-1 to 7-36-33 NMSA 1978.



For administration and enforcement of taxes, see 7-38-1 to 7-38-46 NMSA 1978.

As to delinquent taxes, see 7-38-46 to 7-38-93 NMSA 1978.

### **73-16-44. [Disposition of guaranty fund.]**

The entire proceeds from such guaranty fund levy shall be deposited by the treasurer of such conservancy district in a separate fund to be known as the guaranty fund, and so long as any bonded indebtedness of such district remains outstanding and unpaid, the guaranty fund may be used only to pay the principal of and interest upon the bonded indebtedness of the district as the same shall mature, and then only when and if the district does not have on hand other funds available for such purposes.

**History:** Laws 1931, ch. 50, § 4; 1941 Comp., § 77-2943; 1953 Comp., § 75-30-43.

### **73-16-45. [Investment of guaranty fund.]**

The treasurer of any such district shall, when directed by resolution of the board, invest such guaranty fund, and the income thereof, in the United States government bonds or municipal bonds approved for savings bank investment in the states of New York and Massachusetts, so that the same may always be readily convertible into cash if and when needed for the purposes in this act [73-16-41 to 73-16-49 NMSA 1978] provided.

**History:** Laws 1931, ch. 50, § 5; 1941 Comp., § 77-2944; 1953 Comp., § 75-30-44.

### **73-16-46. [Transfers from guaranty fund to other funds.]**

If and when the bonded indebtedness of any such district has been paid and retired, and such guaranty fund is no longer needed for the purposes herein provided, such moneys, or any unexpended portion thereof, shall be placed in the construction or such other fund of the district as may be ordered by the board thereof.

**History:** Laws 1931, ch. 50, § 6; 1941 Comp., § 77-2945; 1953 Comp., § 75-30-45.

### **73-16-47. [Other assessments unaffected.]**

The provisions of this act [73-16-41 to 73-16-49 NMSA 1978] shall not invalidate the levy of any assessments or the apportionment of any benefits heretofore made in conservancy districts, nor shall the power to levy additional assessments in the manner provided in the Conservancy Act be affected hereby.

**History:** Laws 1931, ch. 50, § 7; 1941 Comp., § 77-2946; 1953 Comp., § 75-30-46.

**Emergency clauses.** - Laws 1931, ch. 50, § 14, makes this act effective immediately. Approved March 13, 1931.

**Conservancy Act.** - See catchline "Meaning of 'this act'" in notes to 73-16-2 NMSA 1978.

### **73-16-48. [Limitation on use of fund.]**

No revenues collected from the ad valorem tax authorized herein shall be used for the payment of any interest or principal on bonds hereafter sold under any option existing at the time of the passage of this act [73-16-41 to 73-16-49 NMSA 1978] for the purchase of bonds of any conservancy district.

**History:** Laws 1931, ch. 50, § 8; 1941 Comp., § 77-2947; 1953 Comp., § 75-30-47.

**Emergency clauses.** - Laws 1931, ch. 50, § 14, makes the act effective immediately. Approved March 13, 1931.

**Temporary provisions.** - Laws 1931, ch. 50, §§ 9 to 12, provide for the extension of time for payment of assessments and for the issuance of debentures.

### **73-16-49. [Application of Guaranty Fund Act.]**

The provisions of this act [73-16-41 to 73-16-49 NMSA 1978] shall apply only to conservancy districts containing 50,000 acres or more.

**History:** Laws 1931, ch. 50, § 13; 1941 Comp., § 77-2948; 1953 Comp., § 75-30-48.

**Emergency clauses.** - Laws 1931, ch. 50, § 14, makes the act effective immediately. Approved March 13, 1931.

### **73-16-50. Refunding bonds; form; registration.**

Any conservancy district now organized and operating under the provisions of the Conservancy Act of New Mexico is authorized, whenever the board of directors of the district determines that it is for the best interests of the district and the taxpayers of the district, to refund the bonds of the district of every character at any time outstanding, including bonds issued hereunder, by the issue of new bonds of the district in such amount, in such form, designation and denomination and with such maturities and provisions for their payment and conditions for their retirement and calling and bearing such rate or rates of interest as the board may, by resolution, prescribe. Such bonds, except for bonds issued in book entry or similar form without the delivery of physical securities, shall be executed in the name and on behalf of the district and signed by the president of the board, with the seal of the district affixed thereto, and attested by the signature of the secretary. Installments of interest may be evidenced by coupons bearing the facsimile signature of the district treasurer. In case any officer whose signature or certificate appears upon bonds or coupons issued pursuant to Sections 73-16-50 through 73-16-53 NMSA 1978 ceases to be an officer before the delivery of the bonds, such signature or certificate shall nevertheless be valid and sufficient for all

purposes the same as if he had remained in office until the delivery of the bonds. The coupon bonds may be registered either as to principal or interest or both, at the option of the holder, at the office of the district.

**History:** Laws 1941, ch. 108, § 1; 1941 Comp., § 77-2949; 1953 Comp., § 75-30-49; Laws 1983, ch. 265, § 60.

**The 1983 amendment** added the section catchline, deleted "negotiable" following "by the issue of new" in the first sentence, inserted "or rates" following "bearing such rate" in the first sentence, inserted "except for bonds issued in book entry or similar form without the delivery of physical securities" in the second sentence, substituted "Installments of interest may" for "The semiannual payments of interest shall" in the third sentence, substituted the New Mexico citation for "this act" in the fourth sentence and inserted "coupon" preceding "bonds" in the last sentence.

**Effective dates.** - Laws 1941, ch. 108, contains no effective date provision, but was enacted at a session which adjourned on April 14, 1941.

**Emergency clauses.** - Laws 1983, ch. 265, § 64, makes the act effective immediately. Approved April 7, 1983.

**Compiler's note.** - Laws 1941, ch. 108, is deemed to supersede Laws 1935, ch. 150, which authorized the issuance of refunding bonds to be in denominations of not less than \$100, to bear interest at a rate not to exceed 6% and to mature within not more than 50 years. Laws 1935, ch. 150, also authorized the public sale, and the private sale, to governmental entities, of the refunding bonds, and declared them to be exempt from certain taxes.

**Conservancy Act of New Mexico.** - See "Meaning of 'this act'" note following 73-14-1 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 67.

52A C.J.S. Levees and Flood Control § 40; 94 C.J.S. Waters §§ 322, 330.

### **73-16-51. [Exchange or sale of bonds; incontestability.]**

Such new bonds, when executed, shall be held by the treasurer of the district subject to the orders of the board of directors of the district. Such new bonds may be issued in exchange for the bonds refunded, or may be sold at public or private sale and the proceeds thereof used to acquire for retirement the bonds refunded. Such new bonds shall be incontestable in the hands of bona fide purchasers or holders thereof for value. No proceedings in respect to the issuance of any such bonds shall be necessary except such as are required by this act [73-16-50 to 73-16-53 NMSA 1978].

**History:** Laws 1941, ch. 108, § 2; 1941 Comp., § 77-2950; 1953 Comp., § 75-30-50.

### **73-16-52. [Bonds tax exempt; investment of state funds.]**

Bonds issued under this act [73-16-50 to 73-16-53 NMSA 1978] shall be exempt from all state, county, municipal, school and other taxes imposed by any taxing authority of the state of New Mexico, and shall be considered as such interest-bearing securities as the permanent funds of the state of New Mexico may be invested in, as provided by law.

**History:** Laws 1941, ch. 108, § 3; 1941 Comp., § 77-2951; 1953 Comp., § 75-30-51.

### **73-16-53. [Rank of bonds; security.]**

Bonds issued under this act [73-16-50 to 73-16-53 NMSA 1978] shall rank on a parity with all other bonds of the issue or issues refunded in part thereby and shall in all respects be deemed substituted for the particular bonds refunded thereby and entitled to the same security and payable from the same funds as the bonds so refunded. For the payment of the new bonds the district shall be required to levy and collect the same assessments, taxes and charges as it would have been required to do for the payment of the bonds refunded.

**History:** Laws 1941, ch. 108, § 4; 1941 Comp., § 77-2952; 1953 Comp., § 75-30-52.

## **ARTICLE 17 CONSERVANCY DISTRICTS; GENERAL PROVISIONS**

### **73-17-1. Lands in more than one district.**

A. The same land may be included in more than one district and be subject to the provisions of this act for each and every district in which it may be included, provided that no district shall be organized in whole or in part within the territory of a district already organized, until the court having jurisdiction of the original district shall determine, upon application, whether the purposes of this act will best be accomplished by the organization of an additional district, or whether the conditions demand that the territory proposed to be organized into an additional district shall be organized as part of the existing district. Such application shall fulfill all the requirements of a petition for a district as set forth in Section 202 [73-14-5 NMSA 1978].

B. Upon such application being made, if the court shall determine that the organization of such territory as a part of the original district should not be ordered, then proceedings may be had before any court of competent jurisdiction for the formation of an additional district.

C. Any person whose signature has been subscribed to said application may within ten (10) days after such decision withdraw his signature therefrom, and if at the expiration of said period there remain sufficient subscribers to said petition to satisfy the requirements of Section 202, and in case the court shall determine that the territory

described in such application, if organized for the purpose of a district, should be included within the original district, like proceedings shall thereupon be had with respect to the territory and the owners thereof as in the case of a petition for the formation of a district. Upon the hearing so had, if it shall appear that the purpose of this act would be subserved by the organization of such territory as part of the original district, the court shall enter an order accordingly.

**History:** Laws 1927, ch. 45, § 601; C.S. 1929, § 30-601; 1941 Comp., § 77-3001; 1953 Comp., § 75-31-1.

**Meaning of "this act".** - The term "this act" refers to the Conservancy Act, enacted by Laws 1927, ch. 45, the provisions of which are presently compiled as 73-14-1 to 73-14-8, 73-14-16, 73-14-17, 73-14-33 to 73-14-48, 73-15-1 to 73-15-15, 73-16-1 to 73-16-4, 73-16-6 to 73-16-29 and 73-17-1 to 73-17-24 NMSA 1978. See also 73-18-1 NMSA 1978 and notes thereto.

**Same land may be included in more than one district.** In re Sandia Conservancy Dist., 57 N.M. 413, 259 P.2d 577 (1953).

**Law reviews.** - For article, "Existing Legislation and Proposed Model Flood Plain Ordinance For New Mexico Municipalities," see 9 Nat. Resources J. 629 (1969).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 60.

52A C.J.S. Levees and Flood Control § 17; 94 C.J.S. Waters § 319(3).

### **73-17-2. Union of districts.**

A. In case two or more districts have been organized in a territory which, in the opinion of the board of each of the districts, should constitute but one district, the boards of the districts may petition the court for an order uniting said districts into a single district; provided, however, if such districts are contiguous, such petition may be signed and presented by the board of any one of such contiguous districts. Such petition shall be filed in the office of the clerk of the district court in and for that county which has the greatest valuation of property within the districts sought to be included, as shown by the tax rolls of the respective counties. Said petition shall set forth facts showing that the purposes of this act would be subserved by the union of said districts, and that such union would promote the economical execution of the purposes for which the districts were organized.

B. Upon the filing of said petition the court shall by order fix a time and place of hearing; and thereupon the clerk shall give notice by publication or by personal service to the board or boards of the district or districts which it is desired to unite with the district of the petitioners, which notice shall contain the time and the place of the hearing and the purpose of the same.

C. Upon the hearing, should the court find that the averments of the petition are true and that the said districts, or any of them, should be united, it shall so order, and thereafter such districts shall be united into one district and proceed as such. The court shall designate the corporate name of such united district, and such further proceedings shall be taken as provided for in this act. The court shall in such order appoint the directors of such united district, who shall thereafter have such powers and be subject to such regulations as are provided for directors in districts created in the first instance.

D. All legal proceedings already instituted by or against any of such constituent districts may be revived and continued against such united district by an order of the court substituting the name of such united district for such constituent districts, and such proceedings shall then continue accordingly.

E. Instead of organizing a new district from such constituent districts, the court may, in its discretion, direct that one or more of such districts described in the petition be included in another of said districts, which other shall continue under its original corporate name and organization; or it may direct that the district or districts so absorbed shall be represented on the board of directors of the original district, designating what members of the board of directors of the original district shall be retired from the new board, and what members representing the included district or districts shall take their places; or it may direct that the included district or districts shall become subdistricts of the main district.

F. In case the districts sought to be united were organized in different judicial districts, then the court to determine the question involved shall consist of one judge from each of the judicial districts in which each of the districts was organized, and a majority shall be necessary to render a decision. From such a decision, or from a failure to decide, any interested property owner may appeal to the district court of the county in which a district was organized having the largest assessed valuation. No action under the provisions of this section shall operate to interrupt or delay any proceeding under this act until the questions involved are finally determined.

**History:** Laws 1927, ch. 45, § 602; C.S. 1929, § 30-602; 1941 Comp., § 77-3002; 1953 Comp., § 75-31-2.

**Meaning of "this act".** - See same catchline in notes to 73-17-1 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 52A C.J.S. Levees and Flood Control § 19; 94 C.J.S. Waters § 319.

### **73-17-3. Subdistricts.**

A. Whenever it is desired to construct improvements wholly within or partly within and partly without any district organized under this act, which improvements will affect only a part of said district, for the purpose of accomplishing such work, subdistricts may be organized upon petition of the owners of property, which petition shall fulfill the same

requirements concerning the subdistricts as the petition outlined in Section 202 [73-14-5 NMSA 1978] of this act is required to fulfill concerning the organization of the main district, and shall be filed with the clerk of the district court and shall be accompanied by a bond as provided for in Section 203 [73-14-6 NMSA 1978] of this act. All proceedings relating to the organization of such subdistricts shall conform in all things to the provisions of this act relating to the organization of districts.

B. Whenever the court shall by its order duly entered of record, declare and decree such subdistricts to be organized, the clerk of the said court shall thereupon give notice of such order to the board of the district, who shall thereupon act also as the board of directors of the subdistrict.

C. Thereafter, the proceedings in reference to the subdistrict shall in all matters conform to the provisions of this act, except that in the appraisal of benefits and damages for the purposes of such subdistricts, in the issuance of bonds, in the levying of assessments and in all other matters affecting only the subdistrict, the provisions of this act shall apply to the subdistrict as though it were an independent district, and it shall not, in these things, be amalgamated with the main district.

D. The board of directors, board of appraisers, chief engineer, attorney, secretary and other officers, agents and employes of the district shall, so far as it may be necessary, serve in the same capacity for such subdistrict, and contracts and agreements between the main district and subdistrict may be made in the same manner as contracts and agreements between two districts. The distribution of administration expense between the main district and subdistrict shall be in proportion to the interests involved, and the amount of service rendered, such division to be made by the board with the right of appeal to the court establishing the district.

E. This section shall not be held to prevent the organization of independent districts for local improvements under other laws within the limits of a district organized under this act.

**History:** Laws 1927, ch. 45, § 603; C.S. 1929, § 30-603; 1941 Comp., § 77-3003; 1953 Comp., § 75-31-3.

**Meaning of "this act".** - See same catchline in notes to 73-17-1 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 52A C.J.S. Levees and Flood Control §§ 13, 19; 94 C.J.S. Waters § 319.

### **73-17-4. District protection.**

The board shall have the right to police and protect the works of the district, to prevent persons, vehicles or livestock from passing over the works of the district and prevent the doing of any act which would result in damage thereto.

**History:** Laws 1927, ch. 45, § 701; C.S. 1929, § 30-701; 1941 Comp., § 77-3004; 1953 Comp., § 75-31-4.

### **73-17-5. Prohibition of injury to survey marks [; field notes are district property].**

The wilful destruction, injury or removal of any bench marks, witness marks, stakes or other reference marks, placed by the surveyors or engineers or by contractors in constructing the works of the district, shall be a misdemeanor, punishable by fine not exceeding one hundred (\$100) dollars. The original field notes of surveys shall be the permanent property of the district.

**History:** Laws 1927, ch. 45, § 702; C.S. 1929, § 30-702; 1941 Comp., § 77-3005; 1953 Comp., § 75-31-5.

### **73-17-6. Liability for damages.**

A. All persons and public corporations, shall be liable for damages done to works of the district by themselves, their agents, their employes or by their livestock. Any person guilty of wilful damage shall be guilty of a misdemeanor, and shall be fined not to exceed two hundred (\$200) dollars and costs and shall be liable for all damages and costs. The board shall have authority to repair such damage at the expense of the person or public corporation causing the same.

B. In all cases declared misdemeanors by this act, any justice of the peace [magistrate] of the county in which the offense is committed shall have jurisdiction thereof, and upon complaint being made as is now required by law, may issue a warrant directed to any proper officer of his county, for the arrest of any person so charged with any such misdemeanor, and upon the arrest of such person, the justice of the peace [magistrate] before whom such person is brought for trial shall hear and determine the cause, and if he finds the accused guilty, shall assess the fine as prescribed in this act.

**History:** Laws 1927, ch. 45, § 703; C.S. 1929, § 30-703; 1941 Comp., § 77-3006; 1953 Comp., § 75-31-6.

**Cross-references.** - For interference with use of works, see 72-8-3 NMSA 1978.

**Meaning of "this act".** - See same catchline in notes to 73-17-1 NMSA 1978.

**Jurisdiction, etc., of justices of the peace transferred.** - The office of justice of the peace has been abolished, and the jurisdiction, powers and duties have been transferred to the magistrate court. See 35-1-38 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 52A C.J.S. Levees and Flood § 41.



### **73-17-7. Penalty for fraud.**

The making of profit, directly or indirectly, by any officer of any district, or by any other public officer within the state, out of any contracts entered into by the district, or the use of any money belonging to the district by loaning it or otherwise using it, or by depositing the same in any manner contrary to law or by removal of any money by any such officer or by his consent, and placing it elsewhere than is prescribed, either by law or by the official acts of the board, for the purpose of profit, shall constitute a felony, and on conviction thereof shall subject such officer to imprisonment in the state penitentiary for a term not exceeding two years, or a fine not exceeding five thousand (\$5,000) dollars or both fine and imprisonment, and the officer offending shall be liable personally and upon his official bond for all losses to such district, and for all profits realized by such unlawful use of monies.

**History:** Laws 1927, ch. 45, § 704; C.S. 1929, § 30-704; 1941 Comp., § 77-3007; 1953 Comp., § 75-31-7.

### **73-17-8. Removal of officials for cause.**

Any director or other officer of any district organized under this act may be removed for cause after a hearing upon a motion filed by any interested person in the original proceeding in which the district was organized.

**History:** Laws 1927, ch. 45, § 705; C.S. 1929, § 30-705; 1941 Comp., § 77-3008; 1953 Comp., § 75-31-8.

**Meaning of "this act".** - See same catchline in notes to 73-17-1 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 61.

52A C.J.S. Levees and Flood Control § 21; 94 C.J.S. Waters § 320.

### **73-17-9. Remedy by mandamus.**

The performance of all duties prescribed in this act concerning the organization and administration or operation of a district may be enforced against any officer thereof or against any person or public corporation refusing to comply with any order of the board, by mandamus, at the instance of the said board or of any person or public corporation interested in any way in such district or proposed district. Such proceedings shall be instituted in the district court having jurisdiction of the original case.

**History:** Laws 1927, ch. 45, § 706; C.S. 1929, § 30-706; 1941 Comp., § 77-3009; 1953 Comp., § 75-31-9.

**Cross-references.** - For mandamus, see 44-2-1 to 44-2-14 NMSA 1978.

**Meaning of "this act".** - See same catchline in notes to 73-17-1 NMSA 1978.

### **73-17-10. Cooperation with United States government or other agencies.**

The board shall have the right and authority to enter into contracts or other arrangements with the United States government or any department thereof; or with the state government of this or other states; or with irrigation, drainage, conservation, conservancy or other improvement districts, in this or other states; or with persons, or public corporations; for cooperation or assistance in making surveys or investigations and reports thereon; in constructing, maintaining, using and operating works of the district, in acquiring, purchasing, extending, operating or maintaining constructed works; water supplies, water systems, irrigation or drainage works, dam and reservoir sites; in building dams to impound flood waters; in conserving and using the said waters for irrigation or other purposes, including the development of hydroelectric energy; in purchasing, leasing or acquiring land or property in adjoining states in order to secure outlets and other needs of the district; and in any other manner furthering the purposes and incidental purposes of districts.

**History:** Laws 1927, ch. 45, § 801; C.S. 1929, § 30-801; 1941 Comp., § 77-3010; 1953 Comp., § 75-31-10.

### **73-17-11. Board to secure cooperation.**

Whenever lands owned by the federal government or over which it has jurisdiction or control, shall be included in any district, the board shall immediately upon its appointment, proceed to make all necessary arrangements with the proper department or agency of the government for cooperating in making the contemplated improvements to the end that the said lands may properly remain within the district, and may be charged with and bear their just share of the costs of the improvements.

**History:** Laws 1927, ch. 45, § 802; C.S. 1929, § 30-802; 1941 Comp., § 77-3011; 1953 Comp., § 75-31-11.

### **73-17-12. Interference with state and federal rights.**

Should the contemplated improvements by any district interfere with any right or property of the federal government or any state government and it becomes necessary to obtain permission and consent of such governments or any of the departments or agents thereof, to carry out such improvements, the board shall enter into any compact, agreement or contract to obtain the necessary permission and consent for the purpose of making the improvements contemplated; provided, however, the failure of the board to obtain such permission and consent for the district shall not be taken advantage of by any property owner in any proceeding against the district and such failure shall only be questioned by such governments as shall have their rights interfered with.

**History:** Laws 1927, ch. 45, § 803; C.S. 1929, § 30-803; 1941 Comp., § 77-3012; 1953 Comp., § 75-31-12.

### **73-17-13. Federal [or state] appropriations.**

The board shall by proper action obtain the money or the use thereof, of any fund created by any federal or state appropriations heretofore or hereafter to be made, to which the district may be entitled for discharging, fulfilling and accomplishing the objects and purposes for which such appropriations were made.

**History:** Laws 1927, ch. 45, § 804; C.S. 1929, § 30-804; 1941 Comp., § 77-3013; 1953 Comp., § 75-31-13.

**Emergency clauses.** - Laws 1927, ch. 45, § 1101, makes the act effective immediately. Approved March 11, 1927.

### **73-17-14. State lands.**

A. Whenever there shall be included in any district public lands belonging to the state of New Mexico subject to entry or which have been entered, and for which no certificates of purchase have been issued, such lands are hereby made and declared to be subject to all of the provisions of this act to the same extent and in the same manner in which the lands of a like character held under private ownership are or may be subject.

B. All notices required to be given under this act shall, as soon as such notices are issued, be served upon the commissioner of public lands of the state of New Mexico by mailing to his office a copy thereof, enclosed in a sealed envelope, with postage prepaid.

C. On all books and records of the district, the words "state lands" shall be used in the places therein provided for the name of the owner of lands, but in all other respects the said books and records shall be kept as though the described lands were privately owned.

D. Upon the confirmation of any assessment against lands of the state, that portion of the records relating to state lands, properly signed by the president and with the seal of the district thereunto affixed and attested by the signature of the secretary, shall be delivered by the secretary to the commissioner of public lands. It shall be the duty of the commissioner of public lands to receive the same as a record of the assessment of the said district against the said lands and the said record shall be the authority of the commissioner of public lands to demand and receive the assessments due the district as found in the same.

E. The commissioner of public lands shall enter on the books of his office, against each description of such state lands, the amounts of assessments thereon, and shall certify the same to the secretary of finance and administration, who shall draw a warrant on

the state treasurer therefor, to be paid out of any funds in his hands not otherwise appropriated. Such warrant shall be forwarded by the secretary of finance and administration to the treasurer, and shall by him be applied in payment of such assessments and by him be credited to the proper funds of the district. No patent shall issue for such lands until the amount of all such assessments with interest at seven percent has been paid. No public lands which were unentered at the time any assessment was levied against the same by any district shall be sold for such assessment.

**History:** Laws 1927, ch. 45, § 805; C.S. 1929, § 30-805; 1941 Comp., § 77-3014; 1953 Comp., § 75-31-14; Laws 1977, ch. 247, § 200.

**The 1977 amendment** substituted "secretary of finance and administration" for "state auditor" in Subsection E, and deleted "(7%)" following "seven percent" in the next to last sentence in Subsection E.

**Meaning of "this act".** - See same catchline in notes to 73-17-1 NMSA 1978.

**Effect of section.** - The section applies to state lands as if the state lands were held in private ownership. 1955-56 Op. Att'y Gen. No. 6383.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 60.

52A C.J.S. Levees and Flood Control § 17; 94 C.J.S. Waters § 319(3).

### **73-17-15. Correction of faulty notices.**

A. In any and every case where a notice is provided for in this act, if the court finds for any reason that due notice was not given, the court shall not thereby lose jurisdiction, and the proceeding in question shall not thereby be void or be abated, but the court shall in that case order due notice to be given, and shall continue the hearing until such time as notice shall be properly given and thereupon shall proceed as though notice had been properly given in the first instance.

B. In case any particular appraisal or appraisals, assessment or assessments, levy or levies, shall be held void for want of legal notice, or in case the board shall determine that any notice with reference to any land or lands may be faulty, then the board may file a motion in the original cause asking that the court order notice to be given to the owner of such land or lands, and the court shall set a time for hearing as provided in this act. And in case the original notice as a whole shall be held to be sufficient, but faulty only with reference to publication as to certain particular lands, in such case only the owners of and persons interested in such particular lands need be notified by such subsequent notice, and if the publication of any notice in any court shall be held to be defective or not made in time, publication of the defective notice need be had only in the county in which the defect occurred.

**History:** Laws 1927, ch. 45, § 901; C.S. 1929, § 30-901; 1941 Comp., § 77-3015; 1953 Comp., § 75-31-15.

**Meaning of "this act".** - See same catchline in notes to 73-17-1 NMSA 1978.

### **73-17-16. Early hearings.**

All cases in which there may arise a question of the validity of the organization of a conservancy district, or a question of the validity of any proceedings under this act, shall be advanced as a matter of immediate public interest and concern, and heard in all courts at the earliest practicable moment. The courts shall be open at all times for the purposes of this act.

**History:** Laws 1927, ch. 45, § 902; C.S. 1929, § 30-902; 1941 Comp., § 77-3016; 1953 Comp., § 75-31-16.

**Meaning of "this act".** - See same catchline in notes to 73-17-1 NMSA 1978.

### **73-17-17. Appeals shall not delay proceedings.**

A. No appeal under this act shall be permitted to interrupt or delay any action or the prosecution of any work, except where the appellant is entitled to a jury trial under the constitution of the state, in which case, only so much of the work shall be interrupted or delayed as would constitute a taking or damaging of the property of such appellant.

B. The right of appeal from orders and decrees of said court shall exist as in civil cases, except no proceeding to review an order or decree of the court, entered under the provisions of this act, shall be commenced after thirty (30) days from the entry of the order or decree sought to be reviewed.

C. The board shall have the same right as property owners to invoke the jurisdiction of the supreme court of the state of New Mexico to review any reviewable order or decree of the court made in any proceeding.

D. The failure to appeal from or seek a review of any order or decree of the court in any proceedings, within the time specified herein, shall constitute a waiver of any irregularity in the proceedings, and the remedies provided herein shall exclude all other remedies except as herein provided.

**History:** Laws 1927, ch. 45, § 903; C.S. 1929, § 30-903; 1941 Comp., § 77-3017; 1953 Comp., § 75-31-17.

**Cross-references.** - For Rules of Appellate Procedure, see Judicial Pamphlet 12.

**Meaning of "this act".** - See same catchline in notes to 73-17-1 NMSA 1978.

**Constitutionality of former limitation provisions.** - Conservancy Act of 1923 (Laws 1923, ch. 140) was not unconstitutional because of the provisions of Section 903 thereof restricting time for appeal and providing that same should not delay proceedings except where appellant was entitled to a jury trial under the Constitution. In re Proposed Middle Rio Grande Conservancy Dist., 31 N.M. 188, 242 P. 683 (1925).

**Effect of present limitation.** - The supreme court had no jurisdiction where the appeal was not taken within the thirty days prescribed by this section. Albuquerque Gun Club v. Middle Rio Grande Conservancy Dist., 42 N.M. 8, 74 P.2d 67 (1937).

**Provisions governing right of appeal.** - Right of appeal from judgment awarding damages under the Conservancy Act (Laws 1927, ch. 45) is controlled by that statute and not by the general statute covering appeals from the district court. Albuquerque Gun Club v. Middle Rio Grande Conservancy Dist., 42 N.M. 8, 74 P.2d 67 (1937).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 2 Am. Jur. 2d Administrative Law §§ 553 to 560.

73A C.J.S. Public Administrative Law and Procedure §§ 172 to 201.

### **73-17-18. Remedy for injury by a district.**

In case any person or public corporation, within or without any district organized under this act, may be injuriously affected [affected] with respect to property rights in any manner whatsoever by any act performed by any official or agent of such district, or by the execution, maintenance or operation of the official plan, and in case no other method of relief is offered under this act, the remedy shall be as follows:

A. the person or public corporation seeking relief shall petition the court before which said district was organized for an appraisal of damages sufficient to compensate for such injuries;

B. the court shall thereupon direct the board of appraisers of the district to appraise said damages and injuries, and to make a report to the court on or before the time named in the order of the court;

C. upon the filing of such report, the court shall cause notice to be given to the petitioner and to the board of the district, of a hearing on said report. At the time of such hearing, the court shall consider said report of the appraisers, and may ratify said report or amend it as the court may deem equitable, or, may return it to the said appraisers and require them to prepare a new report;

D. upon the filing of an order of the court approving said report of the appraisers, with such modifications as it may have made, said order shall constitute a final adjudication of the matter, unless it shall be appealed from in the manner hereinafter provided, within twenty (20) days;

E. appeal from said order to a jury may be had as hereinbefore provided in case of condemnation proceedings, by the petitioners, by the board of the district or by any person or public corporation adversely affected by the report of the board of appraisers;

F. no damages shall be allowed under this section which would not otherwise be allowed in law; provided, however, that nothing in this section shall be construed to deprive any person or public corporation of the remedy of injunction in the case of prospective irreparable injury.

**History:** Laws 1927, ch. 45, § 904; C.S. 1929, § 30-904; 1941 Comp., § 77-3018; 1953 Comp., § 75-31-18.

**Meaning of "this act".** - See same catchline in notes to 73-17-1 NMSA 1978.

**Legislative intent.** - Legislature intended that the statutory remedy for injury by conservancy districts should apply to actions in nature of condemnation proceedings for the taking of private property for public use. *Zamora v. Middle Rio Grande Conservancy Dist.*, 44 N.M. 364, 102 P.2d 673 (1940).

**Reference of appeal provision.** - Provision of this section for appeal to jury as in case of condemnation proceedings has reference to statutory provision for condemnation under general law, 73-14-42 NMSA 1978. *Zamora v. Middle Rio Grande Conservancy Dist.*, 44 N.M. 364, 102 P.2d 673 (1940).

**Scope of damages.** - Provision of Conservancy Act (Laws 1927, ch. 45), pertaining to appraisals of damages, has reference to damages to property in the sense employed in eminent domain proceedings. *Zamora v. Middle Rio Grande Conservancy Dist.*, 44 N.M. 364, 102 P.2d 673 (1940).

**Duty of court to direct appraisal.** - Under this section, upon plaintiffs' filing their petition, the court had a duty to direct the appraisers to appraise the damages and injuries to plaintiffs' properties. *Wells v. Arch Hurley Conservancy Dist.*, 89 N.M. 516, 554 P.2d 678 (Ct. App. 1976).

**Expiration of appraisal board no defense.** - Claim that the term of office of the board of appraisers of conservancy district had expired and that the district had no appraisers or board of appraisers was not a defense to property-owner's action for assessment and damages. *Zamora v. Middle Rio Grande Conservancy Dist.*, 44 N.M. 364, 102 P.2d 673 (1940).

**Time for taking appeal under this section may not be extended.** *Albuquerque Gun Club v. Middle Rio Grande Conservancy Dist.*, 42 N.M. 8, 74 P.2d 67 (1937).

**Scope of Subsection D.** - Subsection D applies to proceedings in eminent domain brought by defendant landowners, and is not applicable to proceedings initiated by

plaintiff landowners under this section. *Wells v. Arch Hurley Conservancy Dist.*, 89 N.M. 516, 554 P.2d 678 (Ct. App. 1976).

**Transformation of cause of action prohibited.** - Defendant conservancy district, which was dissatisfied with damages awarded plaintiffs after appraisals were made, pursuant to this section, were entitled only to a trial on assessment of damages to plaintiffs' property and could not transform plaintiffs' petition and the appraisals made into an eminent domain proceeding. *Wells v. Arch Hurley Conservancy Dist.*, 89 N.M. 516, 554 P.2d 678 (Ct. App. 1976).

**Compensation provisions not substitute for condemnation proceedings.** - Provision of this section pertaining to ascertainment of the amount of compensation for lands taken and damaged to be arrived at by the board of appraisers is not a substitute for condemnation proceedings referred to in 73-14-42 NMSA 1978. *Zamora v. Middle Rio Grande Conservancy Dist.*, 44 N.M. 364, 102 P.2d 673 (1940).

Section 73-17-18 NMSA 1978 is not a substitute for condemnation proceedings referred to in 73-14-42 NMSA 1978. Under 73-17-18 NMSA 1978, the plaintiffs initiate their claims for damages with a petition, while under eminent domain proceedings the defendant initiates its claims for condemnation of plaintiffs' property. *Wells v. Arch Hurley Conservancy Dist.*, 89 N.M. 516, 554 P.2d 678 (Ct. App. 1976).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Liability of irrigation district for damages, 69 A.L.R. 1231, 160 A.L.R. 1165.

### **73-17-19. Short forms and abbreviations.**

A. In any order of the court the words "the court now here finds that it hath jurisdiction of the parties to and of the subject matter of this proceeding," shall be equivalent to a finding of existence of each jurisdictional fact necessary to confer plenary jurisdiction upon the court and necessary from the proper signing and filing of the initial petitions to the date of the order to meet every legal requirement imposed by this act.

B. No other or further evidence of the legal hypothecation of the proceeds of any special assessment levied hereunder, for the payment of bonds or warrants issued pursuant to this act shall be required than the passage of a resolution by the board of directors and the issuance of bonds or warrants in accordance therewith.

C. In the preparation of any assessment or appraisal record the usual abbreviations employed by engineers, surveyors and abstracters may be used.

D. Where properly to describe any parcel of land, it would be necessary to use a long description, the appraisers after locating the land generally, may refer to the book and page of the public record of any instrument in which the land is described, or they may utilize plat numbers or other designations that may be established by the chief engineer in district surveys, copies of which surveys shall be received and filed in the office of the



county clerk in the county or counties in which the lands are situated, which reference shall be sufficient for all the purposes of this act to identify the land described in the records so referred to.

E. It shall not be necessary, in any notice required to be published by this act, to specify the names of the owners of the lands or property of the persons interested therein; but any such notice may be addressed "To All Persons and Public Corporations Interested" with like effect as though such notice named by name every owner of any lands or property within the territory specified in the notice and every person interested therein and every lienor, actual or inchoate.

**History:** Laws 1927, ch. 45, § 905; C.S. 1929, § 30-905; 1941 Comp., § 77-3019; 1953 Comp., § 75-31-19.

**Cross-references.** - As to forms, see 73-17-24 NMSA 1978.

**Meaning of "this act".** - See same catchline in notes to 73-17-1 NMSA 1978.

### **73-17-20. Liberal construction.**

This act being necessary to secure and preserve the public health, safety, convenience and welfare, and being necessary for the prevention of great loss of life, and for the security of public and private property from floods and other uncontrolled waters, it shall be liberally construed to effect the purposes of this act.

**History:** Laws 1927, ch. 45, § 906; C.S. 1929, § 30-906; 1941 Comp., § 77-3020; 1953 Comp., § 75-31-20.

**Meaning of "this act".** - See same catchline in notes to 73-17-1 NMSA 1978.

**Absence of provisions reposing management in property-owners not unconstitutional.** - The absence of provisions reposing the management of the conservancy district in the property-owners does not violate any constitutional provision. This is a general law (Laws 1927, ch. 45) and not special or class legislation. *Gutierrez v. Middle Rio Grande Conservancy Dist.*, 34 N.M. 346, 282 P. 1 (1929), cert. denied, 280 U.S. 610, 50 S. Ct. 158, 74 L. Ed. 653 (1930).

**Raising of constitutional questions.** - Questions involving the constitutionality of the act (Laws 1927, ch. 45) cannot be considered unless raised in the court below. *Cater v. Sunshine Valley Conservancy Dist.*, 33 N.M. 583, 274 P. 52 (1928).

### **73-17-21. Prescription and adverse possession.**

The rights of the district to the waters of the district, or the use thereof, or the land within the district and property owned by it shall not be lost by the district by prescription or by adverse possession, or for nonuse of the waters.

**History:** Laws 1927, ch. 45, § 908; C.S. 1929, § 30-908; 1941 Comp., § 77-3021; 1953 Comp., § 75-31-21.

**District may not lose priority rights over other users by nonuse.** - In a prior appropriation system, the right to use a certain quantity of water is inextricably linked to the priority date of that right; therefore the section precludes a claim of abandonment of a conservancy district's priority rights over other users of the same stream by reason of nonuse. *City of Raton v. Vermejo Conservancy Dist.*, 101 N.M. 95, 678 P.2d 1170 (1984).

**Section does not deny equal protection.** - The legislature's distinction between conservancy districts and other appropriators, with respect to the loss of water rights through nonuse, is neither unreasonable nor arbitrary and thus this section does not deny equal protection. *City of Raton v. Vermejo Conservancy Dist.*, 101 N.M. 95, 678 P.2d 1170 (1984).

### **73-17-22. Property, title, tax exempt.**

Title to all rights and property acquired by any district, shall immediately and by operation of law, vest in such district in its corporate name; such property shall be held for the uses and purposes of the district, and shall be exempt from all taxation.

**History:** Laws 1927, ch. 45, § 909; C.S. 1929, § 30-909; 1941 Comp., § 77-3022; 1953 Comp., § 75-31-22.

**Cross-references.** - For tax exemptions, see N.M. Const., art. VIII, § 3.

### **73-17-23. Saving clause and repeals.**

A. The purposes and powers herein contained and provided for are hereby granted to and conferred upon conservancy districts heretofore organized under the provisions of Chapter 140 of the Laws of New Mexico of 1923 and all the provisions hereof shall be held applicable in the manner herein prescribed, to such conservancy districts heretofore organized under said Chapter 140 of the Laws of New Mexico of 1923 and all acts and proceedings done or had, and obligations incurred by any such conservancy district or its directors or officers under and pursuant to the provisions of the aforesaid act are hereby ratified and confirmed.

B. Chapter 140 of the Laws of New Mexico of 1923, entitled "An act to provide for the organization of conservancy districts for the purpose of cooperating with the government of the United States under the terms of the federal reclamation law and other federal laws, and to define the purposes and powers thereof," is hereby repealed; but such repeal shall not invalidate any act or proceeding theretofore done under said act; provided, however, that the continuity and status of any district organized under the provisions of said Chapter 140 of the Laws of New Mexico of 1923, shall be unaffected

by the repeal of said Chapter 140, and such district shall, after this act is in full force and effect, continue to exist under and be governed by the provisions of this act.

C. All other acts or parts of acts conflicting in any way with any of the provisions of this act, in regard to improvements of the character contemplated by this act, or regulating or limiting the power of taxation or assessment or otherwise interfering with the execution of this act according to its terms, are hereby declared inoperative and ineffective as to this act, as completely as if they did not exist, but all such acts and parts of acts shall not in any way be otherwise affected by this act.

**History:** Laws 1927, ch. 45, § 910; C.S. 1929, § 30-910; 1941 Comp., § 77-3023; 1953 Comp., § 75-31-23.

**Emergency clauses.** - Laws 1927, ch. 45, § 1101, makes the act effective immediately. Approved March 11, 1927.

**Federal reclamation law.** - The federal reclamation law, referred to in this section, is compiled as 43 U.S.C. § 371 et seq.

**Meaning of "this act".** - See same catchline in notes to 73-17-1 NMSA 1978.

## **73-17-24. Forms.**

The following forms illustrate the character of the procedure contemplated by this act; and if substantially complied with (with changes to meet particular requirements), shall be held to meet the requirements of this act.

### FORM I

In the district court of the ..... judicial district of the state of New Mexico.

In the matter of ..... conservancy district.

### **NOTICE OF HEARING ON PETITION**

To all persons and public corporations interested:

Public notice is hereby given:

1. That on the ..... day of ....., 19 ....., pursuant to the provisions of the Conservancy Act of New Mexico, there was filed in the office of the clerk of the district court sitting in and for ..... county, New Mexico, the petition of ..... and others for the establishment of a conservancy district to be known as ..... conservancy district.

(Here insert the purpose.)

2. That the lands sought to be included in said district comprise lands in ..... and ..... counties, New Mexico, described substantially as follows:

(Here insert description.)

3. That a public hearing on said petition will be had in said court on the ..... day of ....., 19 ....., at the hour of ..... o'clock ...m., by the district court sitting in and for ..... county, at the courthouse in the city ..... county of ....., New Mexico.

All persons and public corporations owning or interested in real estate and other property within the territory hereinbefore described will be given the opportunity to be heard at the time and place above specified.

Dated at ....., New Mexico, the ..... day of ....., 19 .....

.....  
.....  
Clerk of the district court of the  
.....  
.....  
judicial district of the state of New Mexico, within and for the county of  
.....  
.....  
By  
.....  
Deputy.

FORM II

FINDING ON HEARING

In the district court sitting in and for ..... county, New Mexico.

In the matter of ..... conservancy district:

FINDINGS AND DECREE ON HEARING

On this ..... day of ....., 19 ....., this cause coming on for hearing upon the petition of ..... and others, for the organization of a conservancy district under the Conservancy Act of the state of New Mexico, the court after a full hearing, now here finds:

1. That said petition had been signed and presented in full

conformity with the Conservancy Act of New Mexico.

2. That the allegations of said petition are true.

3. That no protesting petition has been filed (or if filed has been dismissed).

4. That this court had jurisdiction of the parties to, and the subject matter of, this proceeding.

5. That the purposes for which said district is established are:

(Insert the purposes, e.g., a system of flood prevention.)

6. That the public safety, health, convenience and welfare will be promoted by the organization of a conservancy district substantially as prayed in said petition; and that a public necessity exists for the construction of the proposed work.

7. That the territory to be included in the proposed district and the boundaries of said district are as follows:

(Here insert boundaries of district.)

8. That the said territory last above described should be constituted and created a conservancy district under the Conservancy Act of New Mexico, under the corporate name of ..... conservancy district.

Wherefore, it is by the court ordered, adjudged and decreed:

That the territory as above described be and the same hereby is constituted and created a conservancy district under the Conservancy Act of New Mexico under the corporate name of ..... conservancy district, with its office or principal place of business at ..... in ..... county, New Mexico. (If directors are appointed at the same time.) The following persons are hereby appointed directors of said conservancy district: ..... for the term of six years, ..... for the term of six years, ..... for the term of six years, ..... for the term of six years, ..... for the term of six years, who are hereby directed to qualify and proceed according to law.

9. For consideration of other matters herein, this cause is retained on the docket of this court.

Dated at ....., New Mexico, the ..... day of ....., 19 .....

, Judge.

FORM III

NOTICE TO PROPERTY OWNERS TO PAY ASSESSMENTS

..... conservancy district

To all persons and public corporations interested:

Public notice is hereby given:

1. That on the ..... day of ....., 19 ....., the board of directors of ..... conservancy district duly levied for the amount of the construction fund of said district, an assessment upon all the property in said district in the aggregate sum of ..... dollars, (\$.....), and has caused the same to be extended upon the construction fund assessment record of said district, and that said record is now in the hands of the treasurer of the said district for collection.

2. That the entire assessment against any parcel of land or other property may be paid to the said treasurer of the district at any time on or prior to ....., 19....., without costs and without interest.

3. That as soon after the ..... day of ....., 19 ....., as conveniently may be, the board of directors of said district will divide the uncollected portion of said assessment into convenient installments and will issue bonds bearing interest not exceeding six percent per annum in anticipation of the collection of the several installments of said assessment, pursuant to the Conservancy Act of New Mexico.

Dated at ....., New Mexico, the ..... day of ....., 19 .....

.....  
.....

President.

(SEAL)

Attest:

.....

Secretary.

FORM IV

BONDS AND COUPONS

(Form of bond)

No.....

\$.....

United States of America, state of New Mexico.

..... conservancy district.

### CONSERVANCY BOND

Know all men by these presents, that ..... conservancy district, a legally organized conservancy district of the state of New Mexico, acknowledges itself to owe and for value received, hereby promises to pay to the bearer ..... dollars, on the first day of ....., 19 ....., with interest thereon from the date hereof until paid at the rate of ..... percent per annum, payable ....., 19 ....., and semiannually thereafter on the first day of ....., and of ..... in each year on presentation and surrender of the annexed interest coupons as they severally become due. Both the principal of and the interest on this bond are hereby made payable in lawful money of the United States of America at ..... and .....

This bond is one of a series of bonds issued by ..... conservancy district for the purpose of paying the cost of constructing a system for flood prevention (or for other words [works]) for said district, and in anticipation of the collection of the several installments of an assessment duly levied upon lands and other property within said district and benefited by said improvement in strict compliance with the Conservancy Act of New Mexico, and pursuant to an order of the board of directors of said district, duly made and entered of record.

And it is hereby certified and recited that all acts, conditions and things required to be done in locating and establishing said district and in equalizing appraisals of benefits and in levying assessments against lands benefited thereby, and in authorizing, executing and issuing this bond, have been legally had, done and performed in due form of law; that the total amount of bonds issued by said district does not exceed ninety (90) percent of the assessments so levied and unpaid at the time said bonds are issued, and does not exceed any legal limitation imposed by law.

And for the performance of all the covenants and stipulations of this bond and of the duties imposed by law upon said district for the collection of the principal of and the interest upon said assessment and the application thereof to the payment of this bond and the interest thereon, and for the levying of such other and further assessments as are authorized by law and as may be required for the prompt payment of this bond and the interest thereon, the full faith, credit and

resources of ..... conservancy district are hereby irrevocably pledged.

In testimony whereof, the board of directors of ..... conservancy district has caused this bond to be signed by its president and sealed with the corporate seal of said district, attested by its secretary, and has caused the coupons hereto annexed to be executed by the facsimile signature of its treasurer as of the ..... day of ....., 19 .....

.....  
.....

President.  
(SEAL)

Attest:

.....

Secretary.

\$ .....

FORM V

In the district court of the ..... judicial district of the state of New Mexico.

In the matter of ..... conservancy district.

NOTICE OF ENLARGEMENT OF DISTRICT

To all persons and public corporations interested:

Public notice is hereby given:

1. That heretofore on the ..... day of ....., 19....., the district court sitting in and for ..... county, New Mexico, duly entered a final order and decree constituting and creating ..... conservancy district and appointing a board of directors therefor.

2. That thereafter this court duly appointed

.....  
.....  
.....  
.....  
.....

to be the board of appraisers, for said district. That said .....board of appraisers, on the ..... day of ....., 19 ....., filed its report recommending that the following lands and other property not originally included in the district be



added thereto. (Here describe generally the lands which the report of the board of appraisers recommends should be added to the district.)

3. That on ....., the day of ....., 19 ....., (or soon thereafter as the convenience of the court will permit), at the courthouse in the city of ..... county of ....., New Mexico, the district court sitting in and for ..... county, New Mexico, will hear all persons and public corporations who are owners of or interested in the property described in this notice upon the question whether said lands should be added to and included in said ..... conservancy district.

Dated at ....., New Mexico, the .....day of ....., 19 .....

.....  
.....

Clerk of the district court of the

.....  
judicial district of the state of New Mexico,  
within and for the county of

.....  
.....

By.....

.....  
Deputy.

FORM VI

STATE OF NEW MEXICO

. . . . . CONSERVANCY DISTRICT

CONSERVANCY APPRAISAL RECORD

. . . . . COUNTY

REFER TO THE BOOK FOR THE PROPER FORM

FORM VII

In the district court of the ..... judicial district of the state of New Mexico.

In the matter of ..... conservancy district.

NOTICE OF HEARINGS ON APPRAISALS

To all persons and public corporations interested:

Public notice is hereby given:

1. That heretofore on the ..... day of ....., 19 ....., the district court sitting in and for ..... county, New Mexico, duly entered an order and decree, constituting and creating ..... conservancy district, and appointing a board of directors therefor.

2. That thereafter this court duly appointed

.....  
.....  
.....  
.....  
.....

the board of appraisers for said district. That said board of appraisers on the ..... day of ....., 19 ....., filed its appraisal of benefits and damages. The land and other property affected by such appraisal is described as follows:

(here insert general description of land appraised.)

(It will be sufficient to state: "all land lying in the ..... ward of the city of .....", or "all land abutting on ..... street in the city of .....", or "all land lying west of ..... river and east of ..... railroad in section ....., township ..... range .....", or any general description pointing out the lands involved.)

The said appraisal of benefits and damages and of land to be taken is now on file in the office of the clerk of this court.

3. All public corporations and all persons, owners of or interested in the property described in said report, whether as benefited property or as property taken or damaged (whether said taken or damaged property lies within or without said district), desiring to contest the appraisals as made and returned by the board of appraisers, must file their objections in said court on or before the ..... day of ....., 19 ....., and a hearing on said appraisal will be held in this court on the ..... day of ....., 19 ....., at the hour of ..... o'clock, .... m., at the courthouse in the city of ....., county of .....,



.....

President.

(SEAL)

Attest: ....., Secretary.

The construction fund assessment record shall be in substantially the following form:

No.....

CONSTRUCTION FUND ASSESSMENT RECORD

of

..... conservancy district.

..... county.

REFER TO THE BOOK FOR THE PROPER FORM

FORM IX

CERTIFICATE OF LEVY OF ASSESSMENTS FOR MAINTENANCE FUND ASSESSMENT

RECORD

State of New Mexico

ss.

County of .....

To the assessor ..... county, New Mexico.

This is to certify that by virtue and under the authority of the Conservancy Act of New Mexico, the board of directors of ..... conservancy district has levied the sum of ..... dollars (\$ .....), for the account of the maintenance fund for the year 19.....

The amounts of said levies upon the several parcels of land and other property upon which the same are imposed are set forth in the maintenance fund assessment record to which this certificate is appended.

The said assessments set forth in the maintenance fund

assessment record, to which this certificate is appended, shall be assessed, collectible and payable for the present year in the sums therein specified at the time that the state and county taxes are due and collectible, and you are directed and ordered to make and enter such assessments upon the tax rolls of the county at the time that the state and county taxes are assessed and entered against the same property and the maintenance fund assessment record to which this certificate is appended shall be your authority to make such assessment.

Witness the signature of the president of the district attested by the seal thereof, and the signature of its secretary this ..... day of ....., 19 .....

.....  
.....  
President.

(SEAL)

Attest: ....., Secretary.

The maintenance fund assessment record shall be in substantially the following form:

Maintenance fund assessment record of ..... conservancy district, .....county for the year .....

(Due in the year ....., at the same times general taxes are due.)

REFER TO THE BOOK FOR THE PROPER FORM

**History:** Laws 1927, ch. 45, § 1001; C.S.1929, § 30-1001; 1941 Comp., § 77-3024; 1953 Comp., § 75-31-24.

**Cross-references.** - For publication of notice of hearing, see 73-14-7 NMSA 1978.

For declaration of organization by court, see 73-14-13 NMSA 1978.

For publication of notice for Form V, see 73-15-4 NMSA 1978.

For appraiser's report, see 73-15-5 NMSA 1978.

For notice of hearing on appraisals, see 73-15-6 NMSA 1978.

For construction fund assessment record, see 73-16-4 NMSA 1978.

For notice to pay assessments, see 73-16-6 NMSA 1978.

For conservancy bonds, see 73-16-7 NMSA 1978.

For maintenance fund assessment record, see 73-16-10 NMSA 1978.

For short forms and abbreviations, see 73-17-19 NMSA 1978.

**Meaning of "this act".** - See same catchline in notes to 73-17-1 NMSA 1978.

**Where finding of benefit conforms to statutory provisions.** - Where a petition filed with the conservancy court specifically alleges the property of the proposed district will be benefited by the accomplishment of any one of certain purposes and at the conclusion of the hearing, the conservancy court found the allegation of the petition to be true, as alleged, this finding conforms to suggested statutory formula in Form II. In re Sandia Conservancy Dist., 57 N.M. 413, 259 P.2d 577 (1953).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 52A C.J.S. Levees and Flood Control § 18; 94 C.J.S. Waters §§ 319(2), 319(3), 324, 334.

## **ARTICLE 18 CONSERVANCY DISTRICTS; RECLAMATION CONTRACTS**

### **73-18-1. Definition of terms.**

Except when otherwise specified, as used in this act [73-18-1 to 73-18-24 NMSA 1978]:

A. the term "Conservancy Act" means the Conservancy Act of New Mexico, Chapter 45, Session Laws of 1927 (being Chapter 30, New Mexico Statutes Annotated, 1929 Compilation), as amended by Chapter 50, Session Laws of 1931, Chapter 80, Session Laws of 1933 and Chapter 37 and Chapter 150, Session Laws of 1935 (being Chapter 30, New Mexico Supplement, 1938), and any subsequent amendment thereof;

B. the term "reclamation law" means the act of congress approved June 17, 1902, 32 Statutes at Large 388, and acts amendatory thereof or supplementary thereto;

C. the term "district" means a conservancy district heretofore organized or existing under the provisions of the Conservancy Act;

D. the term "United States" means the United States of America;

E. the term "reclamation contract" means any contract between a district and the United States under the provisions of the reclamation law for any of the purposes set forth in Section 2 [73-18-2 NMSA 1978] hereof;

F. the term "contracting district" means any district which heretofore or hereafter shall have entered into a reclamation contract;

G. the terms "contract indebtedness" and "contract obligation" mean respectively any indebtedness or obligation undertaken by a district in a reclamation contract;

H. the terms "district lands" or "district real property" mean any real property within the boundaries of a district;

I. the term "board" means the board of directors of a district.

**History:** Laws 1939, ch. 148, § 1; 1941 Comp., § 77-3101; 1953 Comp., § 75-32-1.

**Compiler's note.** - Laws 1931, ch. 50, is presently compiled as 73-16-41 to 73-16-49 NMSA 1978.

Laws 1933, ch. 80, amends 73-14-3 and 75-14-17 NMSA 1978.

Laws 1935, ch. 37, is presently compiled as 73-16-30 to 73-16-40 NMSA 1978.

Laws 1935, ch. 150, has been superseded. See compiler's notes to 73-16-50 NMSA 1978.

**Conservancy Act.** - Laws 1927, ch. 45, enacts the Conservancy Act, the provisions of which are presently compiled as 73-14-1 to 73-14-8, 73-14-16, 73-14-17, 73-14-33 to 73-14-48, 73-15-1 to 73-15-15, 73-16-1 to 73-16-4, 73-16-6 to 73-16-29 and 73-17-1 to 73-17-24 NMSA 1978.

**Reclamation law.** - The reclamation law, which includes the act of congress of June 17, 1902 and all acts amendatory thereof and supplemental thereto, referred to in this section, is compiled as 43 U.S.C. § 371 et seq.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 52A C.J.S. Levees and Flood Control § 24; 94 C.J.S. Waters § 316.

## **73-18-2. Additional powers; duties of board; contract indebtedness a general obligation.**

A. Any district, in addition to all other powers heretofore conferred by law upon districts, is empowered to cooperate with the United States under the reclamation law and in the exercise of such power may enter into a reclamation contract or contracts for the purpose of the construction of irrigation works, including ancillary works and drainage

works to maintain the irrigability of lands within any such district; for the purchase, extension, operation or maintenance of constructed works; for the assumption as principal or guarantor of indebtedness to the United States on account of the cost of construction or operation and maintenance of irrigation, drainage and ancillary works; for rental of water or otherwise securing a water supply for district lands; for acceptance of appointment or designation of the district as fiscal agent of the United States to make collections of monies for or on behalf of the United States in connection with any federal reclamation project, or for all or any one or more of said purposes; and all payments to become due to the United States under any reclamation contract heretofore or hereafter entered into between a district and the United States shall be paid by revenue derived from an annual assessment upon the real property of the district and all the real property in the district shall be and remain liable to be assessed for such payments until fully made. It shall be the duty of the board of a contracting district, notwithstanding any other provision of the Conservancy Act, to make and establish all levies, assessments, tolls or charges to meet each year the contract indebtedness and obligation as the same may be provided for in any reclamation contract heretofore or hereafter entered into by a contracting district and to do any and all acts necessary to carry out the provisions of any such reclamation contract.

**B. A contracting district:**

(1) may convey to the United States land or water rights or any interest therein, either without monetary consideration therefor or in partial consideration of the privileges derived from a reclamation contract or for other consideration;

(2) may, and if so agreed in a reclamation contract shall, withhold water from lands which under the terms of the reclamation law, a reclamation contract or rules and regulations thereunder are not entitled to receive water, and from water users or the lands of water users delinquent in the payment of any assessment, toll, rental or other charge, but this remedy shall be in addition to all other remedies available for the enforcement of a reclamation contract or collection of assessments, tolls, rentals or other charges; and

(3) may accept the provisions of any existing or future act of congress applicable to such district.

**C.** The board of directors of any contracting district is hereby vested with all powers necessary and requisite for the accomplishment of the purposes for which the district is organized and for which the reclamation contract has been entered into by the district, and capable of being delegated to it by the legislature of the state of New Mexico; and no enumeration of particular powers in the Conservancy Act or in this act [73-18-1 to 73-18-24 NMSA 1978] granted shall be construed to impair any general grant of power herein contained, nor to limit any such grant to power or powers of the same class or classes as those so enumerated.

**History:** Laws 1939, ch. 148, § 2; 1941 Comp., § 77-3102; 1953 Comp., § 75-32-2.



**Effective dates.** - Laws 1939, ch. 148, contains no effective date provision, but was enacted at a session which adjourned on March 11, 1939. See N.M. Const., art. IV, § 23.

**Conservancy Act.** - See same catchline in notes to 73-18-1 NMSA 1978.

**Reclamation law.** - See same catchline in notes to 73-18-1 NMSA 1978.

**Constitutionality of reclamation contract.** - A provision of a reclamation contract allowing a reclamation district to enter into a lawful contract with the United States for the improvement of the district and the increase of its water supply does not violate N.M. Const., art II, §§ 4 and 18. *Middle Rio Grande Water Users Ass'n v. Middle Rio Grande Conservancy Dist.*, 57 N.M. 287, 258 P.2d 391 (1953).

**Adoption of reclamation statutes by reference** to the title of the federal Reclamation Act is not violative of N.M. Const., art. IV, § 18, where these reclamation statutes are not a necessary part of the act in which they are adopted. *Middle Rio Grande Water Users Ass'n v. Middle Rio Grande Conservancy Dist.*, 57 N.M. 287, 258 P.2d 391 (1953).

**Illegal provision.** - A provision of a reclamation contract which provides that, "Should any assessment or assessments required by the terms of this contract and levied against any tract of land or water user in the district be judicially determined to be irregular or void or the district or its officers be enjoined or restrained from making or collecting any assessment upon said land as provided for herein, then such tract or water user shall have no right to any of the benefits of this contract and no water made available through the works constructed or rehabilitated by the United States hereunder shall be delivered to or for such tract of land or water user," is an express provision that the secretary of the interior may override the decision of the conservancy court, or any other court, and enforce his mandate whether legal or illegal, regardless even of what the supreme court of the United States might say, and is illegal. *Middle Rio Grande Water Users Ass'n v. Middle Rio Grande Conservancy Dist.*, 57 N.M. 287, 258 P.2d 391 (1953) (holding contract valid with provision deleted).

**Making secretary of interior final arbiter not illegal.** - The provision of a reclamation contract making the secretary of interior the final arbiter of disputed facts is improvident, but it is not illegal. *Middle Rio Grande Water Users Ass'n v. Middle Rio Grande Conservancy Dist.*, 57 N.M. 287, 258 P.2d 391 (1953).

**Reclamation contract does not lack mutuality** although the United States is not bound to do or perform any act to carry out the terms of said contract other than to take possession, at its discretion, of the property of the district and operate it in whole or in part in its discretion unless and until the congress of the United States appropriates or makes available funds for the United States to carry out the improvements mentioned and described in said contract, and the district is obligated without any consideration to transfer all of its property and the management thereof to the United States. *Middle Rio*

Grande Water Users Ass'n v. Middle Rio Grande Conservancy Dist., 57 N.M. 287, 258 P.2d 391 (1953).

**No authority to barter vested water rights.** - A conservancy district does not have the authority to barter away the vested water rights of the landowners who have applied them to beneficial use. The waters are appurtenant to the land and the district stores and delivers them to the users. Middle Rio Grande Water Users Ass'n v. Middle Rio Grande Conservancy Dist., 57 N.M. 287, 258 P.2d 391 (1953).

**Power to compel district to make assessment.** - For money lawfully expended for the district, or operation and maintenance charges lawfully made, the secretary of interior can compel the district to make assessment; but this must be made by the conservancy district following a hearing at which the water owner may have his day in court. Middle Rio Grande Water Users Ass'n v. Middle Rio Grande Conservancy Dist., 57 N.M. 287, 258 P.2d 391 (1953).

**Valid existing water rights recognized.** - The federal Reclamation Act, as well as the federal Flood Control Act of 1948, under topic "Rio Grande Basin," provides for the recognition of valid existing water rights, as does this article (now 73-18-1 to 73-18-24 NMSA 1978). Middle Rio Grande Water Users Ass'n v. Middle Rio Grande Conservancy Dist., 57 N.M. 287, 258 P.2d 391 (1953).

**Excess acreage limitation is not confiscation of water user's land.** Middle Rio Grande Water Users Ass'n v. Middle Rio Grande Conservancy Dist., 57 N.M. 287, 258 P.2d 391 (1953).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation §§ 62, 88.

52A C.J.S. Levees and Flood Control § 24; 94 C.J.S. Waters §§ 316, 321.

### **73-18-3. Contract procedure inapplicable.**

The provisions of Section 309, Chapter 45, Session Laws of 1927 (being Section 73-14-40 NMSA 1978), shall not apply to any reclamation contract.

**History:** Laws 1939, ch. 148, § 3; 1941 Comp., § 77-3103; 1953 Comp., § 75-32-3.

### **73-18-4. Plan of works.**

The provisions of the Conservancy Act as to the formulation and approval and establishment of the official plan shall not apply to contracting districts with respect to works to be constructed pursuant to a reclamation contract, but the plan of works so to be constructed by the United States shall be such plan as may be formulated, altered, extended, modified or revised by the bureau of reclamation of the department of the interior.

**History:** Laws 1939, ch. 148, § 4; 1941 Comp., § 77-3104; 1953 Comp., § 75-32-4.

**Cross-references.** - For adoption of official plan, see 73-14-36 NMSA 1978.

**Conservancy Act.** - See same catchline in notes to 73-18-1 NMSA 1978.

### **73-18-5. When certain provisions to apply; general obligation.**

A. Except as otherwise herein provided, the provisions of the Conservancy Act relating to the appraisal and confirmation of benefits and assessments and levy pursuant thereto shall not apply to a contracting district.

B. The provisions of the Conservancy Act relating to the appraisal and confirmation of benefits and assessments and levy pursuant thereto shall, with respect to assessments and levies for works to be constructed pursuant to reclamation contracts, apply as to any contracting district which, after the passage of this act [73-18-1 to 73-18-24 NMSA 1978], shall have executed a reclamation contract wherein it is expressly so provided and in that event the provisions of this act relating to classification of district real property, the apportionment of assessments and the assessment and levy pursuant thereto shall be applicable only to the extent expressly provided for in said reclamation contract.

Notwithstanding the provisions of any other act and whether the revenues necessary to meet payments to the United States under a reclamation contract are to be raised under the provisions of Sections six, seven, eight and nine [73-18-6 to 73-18-9 NMSA 1978] of this act or under the provisions of the Conservancy Act relating to appraisal, confirmation, assessment of benefits and levy thereon, the indebtedness to the United States under a reclamation contract shall constitute a general obligation of the contracting district and of all the real property therein for the payment of which the district and all the real property therein shall be and remain liable until full payment thereof is made, notwithstanding default in payment by individual property owners.

**History:** Laws 1939, ch. 148, § 5; 1941 Comp., § 77-3105; 1953 Comp., § 75-32-5.

**Cross-references.** - For appraisal and confirmation of benefits and assessments, see 73-15-1 to 73-15-15 NMSA 1978.

**Effective dates.** - Laws 1939, ch. 148, contains no effective date provision, but was enacted at a session which adjourned on March 11, 1939. See N.M. Const., art. IV, § 23.

**Conservancy Act.** - See same catchline in notes to 73-18-1 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 88.

94 C.J.S. Waters § 316.

## **73-18-6. Classification of real property.**

A. For the purpose of assessment all real property in any contracting district is hereby divided into two classes. The first, which shall be known as Class "A" property, shall embrace the irrigable lands in the district and shall be assessed and levied against annually as herein provided at a uniform rate per acre. The second class shall be known as Class "B" property, which shall embrace all other real property in the district not within Class "A" and shall be assessed and levied against annually on an ad valorem basis as herein provided.

B. Within thirty days after the secretary of the interior has by public notice or otherwise designated the irrigable lands within a contracting district pursuant to a reclamation contract, the board of directors shall meet and adopt a resolution wherein all real property of the district shall be classified into Class "A" or Class "B" property as hereinabove in this section defined, giving due consideration to such designation of irrigable lands as may have been made by the secretary of the interior. Immediately after the adoption by the board of said resolution classifying the real property of the district, the board shall commence in the conservancy court proceedings to determine the validity thereof as provided in Section 20 [73-18-20 NMSA 1978] hereof. Such classification of real property as confirmed by the conservancy court shall thereafter continue in force until modified as herein provided.

C. At any time after the classification of property so made as hereinabove in this section provided the board of directors, by resolution, the consent thereto of the secretary of the interior having been first obtained, may provide for changes in such classification of lands as the welfare of the district and the property owners affected may require upon notice to the owners of the respective properties proposed to be so reclassified of the time for hearing thereon. The said notice shall be given by registered mail addressed to the last known post-office address of such owner and mailed not less than 14 days prior to the time for hearing; provided, notice to said owner, if not a resident within the state of New Mexico, shall be given also by publication which shall be completed not less than fourteen days prior to the time for hearing. Any owner of district real property aggrieved at the decision of the board of directors as embraced in such resolution shall have the right of appeal therefrom to the conservancy court within thirty days after service upon such property owner, by registered mail, of a certified copy of such resolution. The resolution providing for such reclassification shall provide for such disposition of credits arising from payments of assessments and charges for construction costs theretofore made on account of the Class "A" property therein reclassified as Class "B" property, as the board may deem equitable and such resolution may provide for the transfer of credits on account of such payments to the parcels of land by the term of such resolution to become Class "A" property, not exceeding the aggregate of credits shown on the books of the district at the time of such reclassification in favor of the like area of property the classification of which by said resolution is changed from Class "A" property to that of Class "B" property.

D. The secretary of the district shall deliver promptly to the county assessor of each county embracing any part of the district a certified copy of each resolution of the board relating to the classification or reclassification of real property within the district and a certified copy of any judgment or order of the conservancy court which may be entered in connection with such resolution and classification or reclassification of property.

**History:** Laws 1939, ch. 148, § 6; 1941 Comp., § 77-3106; Laws 1949, ch. 76, § 1; 1953 Comp., § 5-32-6.

**Cross-references.** - For definition of conservancy court, see 73-14-3 G NMSA 1978.

**Emergency clauses.** - Laws 1949, ch. 76, § 5, makes the act effective immediately. Approved March 14, 1949.

**Temporary provisions.** - Laws 1984, ch. 128, § 1, directs the local government division of the department of finance and administration to research, review and investigate the taxing structure and assessment practices and procedures of the middle Rio Grande conservancy district and requires that division to submit a report to the legislative finance committee and legislative council on or before December 1, 1984, to contain the findings of its study.

**Interior secretary's power to classify land constitutional.** - Provision of act (73-18-1 to 73-18-24 NMSA 1978) which recognizes power of United States secretary of interior over the classification of lands in a conservancy district does not constitute an unlawful delegation of legislative power in view of additional provision for classification by the board of directors of the district "giving due consideration" to the secretary of interior's classification and in view also of provision for judicial examination of any resolution classifying the property. In re Arch Hurley Conservancy Dist., 52 N.M. 34, 191 P.2d 338 (1948).

### **73-18-7. Apportionment.**

The board of a contracting district, within 30 days after execution of a reclamation contract or within 30 days after the effective date of this act, whichever date is the later, shall by resolution determine and establish an apportionment of the annual assessments to be thereafter made from year to year against the real property within the district between Class "A" property and Class "B" property as in this act [73-18-1 to 73-18-24 NMSA 1978] defined, providing in such resolution the percentage or fractional part of such total annual assessments thereafter to be levied in accordance with Section 8 [73-18-8 NMSA 1978] of this act which shall be apportioned to Class "A" property and that which shall be apportioned to Class "B" property. The action of the board of directors in establishing such apportionment shall be subject to the approval of the secretary of the interior and after the same shall have been approved shall be submitted to the conservancy court for judicial examination, approval and confirmation of such action as in Section 20 [73-18-20 NMSA 1978] hereof provided. Such apportionment may be modified in like manner from time to time thereafter, but not more frequently

than once in every five years, and no such modification or reapportionment shall become effective until the same shall have been first approved by the secretary of the interior nor until such proposed reapportionment shall thereafter have been judicially examined, approved and confirmed by the conservancy court in the same manner as the original apportionment.

**History:** Laws 1939, ch. 148, § 7; 1941 Comp., § 77-3107; 1953 Comp., § 75-32-7.

**Cross-references.** - For definition of conservancy court, see 73-14-3 G NMSA 1978.

**Effective dates.** - Laws 1939, ch. 148, contains no effective date provision, but was enacted at a session which adjourned on March 11, 1939. See N.M. Const., art IV, § 23.

**No unlawful delegation of legislative power.** - This act (73-18-1 to 73-18-24 NMSA 1978) does not constitute an unlawful delegation of legislative power to the secretary of interior because of the further provision that the action of the secretary on apportionment of assessments as between irrigable lands and others must be submitted to the conservancy court for judicial examination, confirmation and approval. In re Arch Hurley Conservancy Dist., 52 N.M. 34, 191 P.2d 338 (1948).

**Generally.** - Under this section, the governing board of the district, after the execution of a contract, determines and establishes an apportionment of the annual assessments to be made against Class "A" and Class "B" property. Such apportionment is subject to the approval of the secretary of the interior and the approval and confirmation of the conservancy court. Such apportionment may be modified not more frequently than once every five years after approval by the secretary of the interior and conservancy court in the same manner as the original apportionment. 1959-60 Op. Att'y Gen. No. 60-209.

### **73-18-8. Assessments; appeals.**

A. The board, on a date to be fixed by a standing order of the board, which shall not be later than July 1 of each year, shall convene for the purposes in this section set forth and shall estimate and determine the amount of funds required to meet the obligations to come due and needs of the district in the ensuing year, together with such additional amount as may be necessary to meet any deficiency in the payment of expenses or obligations previously incurred by the district and remaining due and unpaid, and an amount to cover the estimated delinquencies in payments of assessments for the ensuing year; the aforesaid obligations, needs and items of expense being for such of the following purposes as may be required by the district, to wit:

Item one. The payment of the interest upon bonds of the district and any installment on principal thereof;

Item two. Any payment to become due under any contract with the United States whether for the cost of the irrigation and drainage system and works incidental thereto or for the operation and maintenance thereof, or both, or if the reclamation contract

contemplates the division of irrigable lands by the secretary of the interior, into units not necessarily contiguous for repayment purposes, the board shall prepare separate estimates for such respective units or otherwise adapt the same to the requirements of the reclamation contract;

Item three. The portion of the expense of operation and maintenance of the irrigation and drainage system to be collected by assessment and levy. This portion shall not be less than one-fourth nor more than three-fourths of the estimate for such operation and maintenance costs, including the funds required to be advanced to the United States for operation and maintenance of the irrigation and drainage systems in accordance with the provisions of the reclamation contract for the ensuing year, and shall be determined by the board from year to year, and that part thereof apportioned as in this act [73-18-1 to 73-18-24 NMSA 1978] provided for assessment and levy upon Class "A" real property shall be so assessed and levied against each acre thereof, pro rata, whether irrigated or not and the same when collected shall be applied to the cost of operating and maintaining the irrigation and drainage systems. The remainder of said total amount estimated for the expense of operation and maintenance for the ensuing year shall be paid as tolls or charges by those actually using said irrigation and drainage systems and water in accordance with the terms of their respective contracts for water;

Item four. Current and miscellaneous expenses other than as above specified and including necessary expenses of maintaining the organization of the district and carrying out the purpose of this act, which may be in the aggregate in a sum which when apportioned as in this act provided, will result in a per acre charge against Class "A" lands not in excess of forty cents (40¢) per acre. That portion of the amounts to be collected under Item four apportioned to Class "A" real property, may, at the option of the board of directors of said district, be collected in whole or in part as tolls and charges in the manner provided in this act (73-18-1 to 73-18-24 [NMSA 1978]).

B. The aggregate amount so determined by the board, required to meet the obligations of the district and to be collected by assessment and levy shall be apportioned between Class "A" real property and Class "B" real property, as in this act defined, on the basis of the apportionment determined in accordance with the provisions of Section 7 (73-18-7 [NMSA 1978]) hereof and that portion thereof apportioned to Class "A" real property shall be raised by assessment and levy to be extended pro rata per acre over all of said Class "A" property and that portion thereof so apportioned to Class "B" real property shall be raised by assessment and levy at a uniform rate ad valorem upon all of said Class "B" real property upon every dollar of the assessed valuation thereof as shown by the last preceding assessment for state and county taxes. Provided that if any Class "B" real property within the district for which benefits were appraised under the Conservancy Act does not appear on county assessment polls [rolls] for state and county taxes, the board shall have the same appraised, placed upon the county tax rolls for assessment purposes and levy the assessments herein provided against said property on the valuation so determined. Such annual assessment and levy shall be made by resolution of the board of directors. In any year or years prior to the classification of real property within the district, as provided for in Section 6 (73-18-6

[NMSA 1978]) hereof, the entire amount so determined by resolution of the board of directors to be needed to meet the obligations of the district for the ensuing year shall embrace only amounts required under the aforesaid Item four and shall be raised by annual assessment and levy at a uniform rate upon all of the real property within such district of not exceeding four mills for every dollar of the assessed valuation thereof, as shown by the last preceding assessment for state and county taxes and shall be in addition to all other taxes and assessments levied thereon.

C. When the board shall assemble for the purposes hereinbefore described it shall sit as a board of equalization and, subject to such reasonable regulations as it may prescribe, shall afford to all persons desiring to do so an opportunity to make such showing as they may deem proper as to why any given tract or parcel of real property or portion thereof should not be so assessed. In each case the board may cause to be made such investigation as it may deem proper, after which the board shall determine the question submitted as right and justice may require, and shall cause its decision to be duly entered upon its minutes and a copy thereof to be sent by registered mail to all parties who have so appeared and offered to show cause why such assessment should not be made against their respective properties.

D. Any person feeling himself aggrieved by such decision as aforesaid, may appeal therefrom to the conservancy court within thirty (30) days from and after the rendition and mailing as aforesaid of said copy of the decision complained of by serving upon the secretary of the district written notice of such action and filing a copy thereof together with the copy of the decision complained of in the office of the clerk of the conservancy court. Upon being served with such notice the secretary of the district shall forthwith transmit to the clerk of said court a certain [certified] transcript of all the papers and records pertaining to the case which may have been filed in connection therewith. Upon such appeal the case shall be tried in the conservancy court, subject to the law, rules and practice governing such court as upon a writ of certiorari.

E. The filing of said appeal in said conservancy court shall not stay the proceedings relating to the collection of said tax, but in the event that appellant has paid such tax before the rendition of final judgment in said suit and judgment is rendered in said suit in favor of appellant, appellant shall have refunded to him such sum of money as shall be determined by the judgment of the said court, together with legal interest thereon and costs of court, but if the appellant fails to recover in said suit, appellant shall pay the costs of court.

F. The secretary of the district, not later than September first each year shall deliver to the county assessor of each county embracing any part of the district a certified copy of the resolution of the board of directors making the annual assessment and levy as in this section provided.

G. The secretary of the district shall prepare and keep a record of all land within the district classified as Class "A" showing the per acre assessments made against such land and the payment of such assessments. In preparation and keeping such record,



the said secretary shall take into consideration the recommendations of the bureau of reclamation of the United States. The board of directors of the district are hereby authorized to fix the amount of such assessments and the date of the maturities thereof, in accordance with the provisions of this act. At any time any of such per acre assessments are delinquent, the board of directors may institute proceedings in the district court for the collection thereof, such proceedings to be governed by the laws applicable to mortgage foreclosures. In any such proceedings, the district court or the supreme court may allow such attorney's fees as to the court may seem equitable, such attorney's fees and court costs incurred to be a lien upon the land charged with the assessment or assessments upon which the proceedings may be had. Any number of assessments and tracts may be included in one suit. Per acre assessments shall be considered any assessment made on a per acre basis without regard to valuation. All such per acre assessments shall bear interest at the rate of 12% per annum from the date of delinquency until paid. The county treasurer and the county assessor are hereby relieved from all responsibility with regard to per acre assessments for such conservancy district. All such assessments shall be liens upon the real estate upon which such assessments are made as of the date of the action of the board of directors of the conservancy district fixing such assessments.

H. For the purposes of the assessment and enforcement of all liens provided by this act, the records and plats of the conservancy district shall be official records, and certified copies of such records and plats duly authenticated by the secretary of said conservancy district, under the seal of said district, shall be admissible as evidence in all courts of this state. Cognizance is hereby taken of the difficulty or impossibility of such plats of irregular irrigable tracts being exact, and inaccuracies in such plats and descriptions which do not affect the validity of any liens upon such irrigable tracts; and in proceedings for the enforcement of any liens created by this act, the court may in its discretion correct any errors which may appear. Provided such corrections or errors shall not affect adversely the substantial rights of the parties; and the court shall have power in any proceeding for the enforcement of such liens to clarify any descriptions which may be inaccurate. Provided such action of the court does not do substantial injustice to any party.

**History:** Laws 1939, ch. 148, § 8; 1941 Comp., § 77-3108; Laws 1949, ch. 77, § 1; 1953 Comp., § 75-32-8; Laws 1961, ch. 231, § 1.

**Cross-references.** - For definition of conservancy court, see 73-14-3 G NMSA 1978.

**Emergency clauses.** - Laws 1949, ch. 77, § 1, makes the act effective immediately. Approved March 14, 1949.

**Conservancy Act.** - See same catchline in notes to 73-18-1 NMSA 1978.

**Constitutional limitation not applicable.** - The assessments levied through the provisions of this section are not within the purview of the limitations imposed by N.M.

Const., art. VIII, § 2, and thus, are not subject to the 20-mill limitation. 1959-60 Op. Att'y Gen. No. 60-209.

**Duty to collect.** - The district board has a duty to collect tolls and charges from past years that remain uncollected. 1988 Op. Att'y Gen. No. 88-32.

**Collection of "tolls and charges".** - If the district board adds past due "tolls and charges" to the current year's assessments, the district treasurer shall assess and collect them on a "per acre" basis. If the board elects to proceed in contract, the district has standing as plaintiff to enforce those contracts. 1988 Op. Att'y Gen. No. 88-32.

**Appeal limitations.** - Although a taxpayer may file a protest with the district board at any time, if he intends to challenge the board's decision in conservancy court he must bring his suit within four years of the assessment at issue and within 30 days of the board's determination. 1988 Op. Att'y Gen. No. 88-32.

**Limitations applicable with regard to collection of "past" tolls or charges from class A water users** are ten years if the district board adds the tolls and charges to the user's assessment and levy, four years if the board brings suit on an unwritten contract, and six years if it brings suit on a written contract. 1988 Op. Att'y Gen. No. 88-32.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation §§ 70 to 72.

94 C.J.S. Waters §§ 332 to 337.

### **73-18-9. District treasurer; county treasurers; assessors; duties; accounts; collection and disposition of assessments.**

A. The district treasurer of a contracting district and the county treasurer of each county in which is located any part of a contracting district shall in connection with assessments, levies and collections made as authorized under this act [73-18-1 to 73-18-24 NMSA 1978], keep a district bond fund account, a district contract fund account, a district operation and maintenance fund account and a district general fund account, and the proceeds of the assessments collected shall be covered into the respective funds. The bond fund shall consist of all moneys collected for principal and interest on the bonds issued by the said district; the district contract fund shall consist of all moneys received from assessments levied to provide for payment to the United States, including funds for operation and maintenance required to be paid to the United States under any reclamation contract; the operation and maintenance fund shall consist of all moneys received on account of operation and maintenance of the irrigation and drainage system, except moneys to be paid to the United States pursuant to any contract; and the general fund shall consist of all moneys received on account of current and miscellaneous expenses not to be covered into any other of the aforesaid funds.

B. It shall be the duty of the district treasurer to collect and receipt for all per acre assessments levied as herein provided in accordance with the resolutions and orders of

the board of directors of the district. It shall be the duty of each of the county treasurers to collect and receipt for all ad valorem assessments levied as herein provided, in the same manner and at the same time as is required in the receipt for and collection of taxes upon real estate for county purposes, and on the first Monday of each month to remit to the district treasurer aforesaid moneys theretofore collected or received by him on account of said district.

C. The district treasurer aforesaid shall pay out of said bond fund when due the interest and principal of said bonds of said district, at the time and place specified in said bonds. The district treasurer shall pay out of said contract fund all payments as they become due to the United States under a reclamation contract at the time and in the manner provided in said contract. The district treasurer shall pay out of said operation and maintenance fund only upon warrants signed by the president and countersigned by the secretary of said district, directed to such party or parties as are due payments for operating and maintaining the irrigation and drainage systems. The district treasurer shall pay out of said general fund only upon orders signed by the president and countersigned by the secretary of said district.

D. The district treasurer on the fifteenth day of each month shall report to the board of directors of said district the amount of money in hand to the credit of the respective funds above provided. All such district taxes collected and paid to the county treasurers as aforesaid shall be received by said treasurers in their official capacity and they shall respectively be responsible for the safekeeping, disbursement and payment thereof the same as for other moneys collected by them as such treasurers.

E. Payment of ad valorem assessments levied pursuant to this act may be received and receipted for by the county treasurer either together with or separately from taxes upon real estate for state and county purposes.

F. The county assessor of each county embracing any part of the district shall from time to time as the same may be requested by or on behalf of the board of directors of the district, furnish abstracts or copies of ad valorem assessment rolls pertaining to property situated in the district. Upon receipt of a certified copy of resolution of the board of directors making the annual levy of district ad valorem assessments, said county assessor shall certify and extend the assessment and levy upon the assessment rolls.

**History:** Laws 1939, ch. 148, § 9; 1941 Comp., § 77-3109; Laws 1949, ch. 75, § 1; 1953 Comp., § 75-32-9.

**Emergency clauses.** - Laws 1949, ch. 75, § 1, makes the act effective immediately. Approved March 14, 1949.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation §§ 61, 67, 70.

94 C.J.S. Waters §§ 320, 322, 332.

## **73-18-10. Lien of assessments.**

All assessments levied to meet any indebtedness due or to become due to the United States pursuant to the reclamation law, rules and regulations, a reclamation contract or notices or statements issued by the secretary of the interior thereunder, together with all interest on all assessments and penalties for default in payment of the same, and all costs in collecting the same, shall from the date on which there is filed in the office of the assessor of the county in which is situated the property upon which such assessment is made a certified copy of the resolution of the board determining the amount of money to be raised, fixing the rate of such assessments and making a levy therefor, shall constitute a perpetual lien upon all the district real property against which such assessments shall be so levied, to which only the lien for general or special state, county, city, town, village or school taxes shall be paramount, and no sales of such property to enforce any general or special state, county, city, town, village, school tax or other lien shall extinguish the perpetual lien of such assessments nor extinguish the liability of such property to future assessment for payment of any indebtedness to the United States provided for in a reclamation contract; and every other assessment hereafter levied upon any real property within the district, under the provisions of this act [73-18-1 to 73-18-24 NMSA 1978], is and shall be a lien upon the property against which such assessment is levied. All such assessments shall be collected, and all such liens shall be enforced in the same manner as assessments of taxes for state and county purposes are collected and the liens thereof are enforced.

**History:** Laws 1939, ch. 148, § 10; 1941 Comp., § 77-3110; Laws 1947, ch. 205, § 1; 1953 Comp., § 75-32-10.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 94 C.J.S. Waters § 336.

## **73-18-11. State lands; public lands.**

A. The board of a contracting district shall cause notice to be given to the commissioner of public lands annually of the amount of assessment to become due on account of lands of the state within the district and the commissioner of public lands shall cause the same to be paid out of any funds in his hands not otherwise appropriated.

B. Public lands of the United States within any contracting district shall be subject to assessment for all purposes of this act [73-18-1 to 73-18-24 NMSA 1978] to the extent provided by the act of congress approved August 11, 1916, 39 Statutes at Large 506, upon full compliance therewith by the district.

**History:** Laws 1939, ch. 148, § 11; 1941 Comp., § 77-3111; 1953 Comp., § 75-32-11.

**Act of congress.** - The act of congress approved August 11, 1916, referred to in Subsection B, is compiled as 43 U.S.C. §§ 621 to 630.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 60.

94 C.J.S. Waters § 319(3).

### **73-18-12. Land disposal contracts authorized.**

Contracts made by contracting districts, or landowners within contracting districts, for the purpose of limiting and controlling the size of land holdings entitled to receive water and providing for the disposition of lands in excess of such holdings, and of providing the manner of application of proceeds in the case of sales of district lands, in conformance with the provisions of the reclamation law, are hereby authorized and declared to be in accordance with the public policy of this state.

**History:** Laws 1939, ch. 148, § 12; 1941 Comp., § 77-3112; 1953 Comp., § 75-32-12.

**Reclamation law.** - See same catchline in notes to 73-18-1 NMSA 1978.

**Adoption of reclamation statutes by reference** to the title of the federal Reclamation Act is not violative of N.M. Const., art. IV, § 18, where these reclamation statutes are not a necessary part of the act in which they are adopted. *Middle Rio Grande Water Users Ass'n v. Middle Rio Grande Conservancy Dist.*, 57 N.M. 287, 258 P.2d 391 (1953).

**Excess acreage limitation is not confiscation of water user's land.** *Middle Rio Grande Water Users Ass'n v. Middle Rio Grande Conservancy Dist.*, 57 N.M. 287, 258 P.2d 391 (1953).

### **73-18-13. Water applications.**

Every person desiring to receive water for use upon lands in a contracting district during the course of the year shall make application at the office of the district, furnishing therewith a statement in writing of the number of acres intended by him to be irrigated and a statement as near as may be of the crops planted or intended to be planted, which application upon its acceptance by or on behalf of the board of directors shall constitute a water service contract for the year covered thereby, subject to the reclamation law, reclamation contracts and rules and regulations thereunder, to the provisions of the Conservancy Act and this act [73-18-1 to 73-18-24 NMSA 1978]; and said application and resulting contract may provide, among other things, for tolls and charges for water which may be used in excess of the amount to which the applicant may be entitled on account of assessments and such tolls and charges shall constitute a lien upon lands upon which water is so used, and the water service contract records of a contracting district shall constitute public notice of the existence of such lien.

**History:** Laws 1939, ch. 148, § 13; 1941 Comp., § 77-3113; 1953 Comp., § 75-32-13.

**Reclamation law.** - See same catchline in notes to 73-18-1 NMSA 1978.

**Conservancy Act.** - See same catchline in notes to 73-18-1 NMSA 1978.

**Adoption of reclamation statutes by reference** to the title of the federal Reclamation Act is not violative of N.M. Const., art. IV, § 18, where these reclamation statutes are not a necessary part of the act in which they are adopted. *Middle Rio Grande Water Users Ass'n v. Middle Rio Grande Conservancy Dist.*, 57 N.M. 287, 258 P.2d 391 (1953).

**Crop approval.** - In the operation of a large irrigation district, those charged with delivery of water must know the demand and how often water must be available for the landowners. It may seem harsh to require approval of particular crops, but where the United States is preparing to put a lot of money into a district, it may require the planting of such crops as are likely to yield sufficient return to enable the landowner to pay his obligations, and to prevent the planting of such a noxious crop as Johnson grass. *Middle Rio Grande Water Users Ass'n v. Middle Rio Grande Conservancy Dist.*, 57 N.M. 287, 258 P.2d 391 (1953).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 63.

94 C.J.S. Waters § 352.

### **73-18-14. Tolls and charges; advance payment; omitted property.**

For the purpose of defraying the expenses of the district in carrying out the purposes of this act [73-18-1 to 73-18-24 NMSA 1978] and in the care, operation, management, repair and improvement of all canals, ditches, reservoirs and related works, including salaries and expenses of officers and employees, or for payment of charges to the United States for the temporary rental of water, for operation and maintenance of the irrigation and drainage system and incidental or related works or for any or all of said purposes the board may fix rates of tolls and charges and collect the same of all persons using the said irrigation and drainage system or the water supply made available thereby. Said tolls and charges shall be in addition to the assessments and levies elsewhere provided for in this act, and shall be fixed so that the revenue estimated to be derived therefrom in the year for which fixed, together with the amount of assessments for that year will be not less than the estimated obligation to come due and needs of the district for that year as determined under Section 8 A [73-18-8 A NMSA 1978] of this act; provided, that such assessments, tolls or charges for operation and maintenance of the said irrigation and drainage system or related and incidental works, or for the use of the water supply made available thereby, may be fixed in accordance with the reclamation law, and the rules and regulations of the secretary of the interior thereunder and the reclamation contract and statements and notices issued pursuant thereto.

Whenever any tolls and charges for the use of water have been fixed by the board of a contracting district it shall be lawful to make the same payable in advance and in case any such tolls and charges remain unpaid or any balances for water delivered by measurement are unpaid at the time specified for levying the annual assessment, the amount due for such tolls and charges or balances may be added to and become a part

of the assessment levied upon the land [on] which the water for which such tolls, charges or balances are unpaid, was used. Any land which may have escaped assessment for any year or years shall, in addition to the assessment for the then current year, be assessed for such year or years with the same effect and with the same penalties as are provided for the current year and any property delinquent for any year may be correctly assessed during the current year for any expenses caused to the contracting district on account of such delinquency. In the event that any land within a contracting district, subject to assessment for any of the purposes of the district, has not been assessed and does not appear upon the assessment roll as prepared for the treasurer and collector, the land so omitted shall be forthwith assessed by the treasurer upon an order of the board of directors and as so ordered a description of the property so omitted shall be written on the roll and the proper assessment levied.

**History:** Laws 1939, ch. 148, § 14; 1941 Comp., § 77-3114; 1953 Comp., § 75-32-14.

**Reclamation law.** - See same catchline in notes to 73-18-1 NMSA 1978.

**Adoption of reclamation statutes by reference** to the title of the federal Reclamation Act is not violative of N.M. Const., art. IV, § 18, where these reclamation statutes are not a necessary part of the act in which they are adopted. *Middle Rio Grande Water Users Ass'n v. Middle Rio Grande Conservancy Dist.*, 57 N.M. 287, 258 P.2d 391 (1953).

### **73-18-15. Distribution of water supply.**

All water, the right to the use of which is acquired by a district under a reclamation contract, shall be distributed and apportioned by the district in accordance with the acts of congress and rules and regulations promulgated or approved by the secretary of the interior, and the provisions of said contract in relation thereto. A contracting district may rent or lease water for use for any purpose within or without the district in pursuance of and in accordance with the provisions of said contract. The board of a contracting district may adopt rules and regulations for the distribution, apportionment and use of the district water supply, not inconsistent with those of the secretary of the interior, acts of congress or said contract and the same shall become effective when approved by the secretary of the interior.

**History:** Laws 1939, ch. 148, § 15; 1941 Comp., § 77-3115; 1953 Comp., § 75-32-15.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Right of owner of land within reclamation project in respect of which a water right was allowed upon application pursuant to Reclamation Act to a perpetual right beyond the control of the federal government for a sufficient amount beneficially to irrigate the land, 115 A.L.R. 1320.

### **73-18-16. Use of district funds to pay contract indebtedness.**

There may be used to pay indebtedness to the United States created by a reclamation contract, as the same may become due, the preliminary fund, construction fund, maintenance fund, guarantee fund or conservation and development fund, or any one or more of said funds, provided for by the Conservancy Act, of any contracting district within the provisions of Section 5 (B) [73-18-5 B NMSA 1978] of this act.

**History:** Laws 1939, ch. 148, § 16; 1941 Comp., § 77-3116; 1953 Comp., § 75-32-16.

**Cross-references.** - For preliminary, construction, maintenance and general funds, see 73-16-1 NMSA 1978.

For conservation and development fund, see 73-16-32 NMSA 1978.

For guarantee fund, see 73-16-41 NMSA 1978.

**Conservancy Act.** - See same catchline in notes to 73-18-1 NMSA 1978.

### **73-18-17. Removal of structures; passing equipment through bridge or grade and other powers.**

In pursuance of a plan or plans made by the bureau of reclamation of the department of the interior and for the accomplishment of the construction, operation or maintenance by the United States of irrigation, drainage or ancillary or incidental works beneficial to a contracting district, the rights, powers and privileges vested in the district and its officers and agents under the provisions of Section 308, Section 313, and Section 314 of Chapter 45, Session Laws of 1927 (being respectively Section 73-14-39, Section 73-14-44 and Section 73-14-45, New Mexico Statutes Annotated, 1978 Compilation), in addition and not to the exclusion of any rights, powers or privileges otherwise available to the United States, its officers, agents and employees, may be exercised by the engineer of said bureau of reclamation in charge of such works under like conditions as therein provided for the exercise of such powers by the district.

**History:** Laws 1939, ch. 148, § 17; 1941 Comp., § 77-3117; 1953 Comp., § 75-32-17.

### **73-18-18. Cumulative rights and remedies.**

In addition to all rights, remedies and securities under this act [73-18-1 to 73-18-24 NMSA 1978] or otherwise available to the United States for the security, enforcement and collection of contract indebtedness created by a reclamation contract, all provisions of the Conservancy Act applicable to the security, enforcement and collection of conservancy bonds, refunding bonds or other district obligations or indebtedness shall be available to afford the security, enforcement and collection of said contract indebtedness.

**History:** Laws 1939, ch. 148, § 18; 1941 Comp., § 77-3118; 1953 Comp., § 75-32-18.



**Conservancy Act.** - See same catchline in notes to 73-18-1 NMSA 1978.

### **73-18-19. Change in organization or boundaries of district.**

After a reclamation contract has been entered into by a contracting district, except upon the written consent thereto of the secretary of the interior, no change shall be made in the organization or boundaries of such district, either by the exclusion therefrom of district lands, by the inclusion therein of new lands, or by dissolution of the district or otherwise.

**History:** Laws 1939, ch. 148, § 19; 1941 Comp., § 77-3119; 1953 Comp., § 75-32-19.

**Interior secretary's power to classify land constitutional.** - Provision of act (73-18-1 to 73-18-24 NMSA 1978) which recognizes power of the United States secretary of interior over the classification of lands in a conservancy district does not constitute an unlawful delegation of legislative power in view of additional provision for classification by the board of directors of the district "giving due consideration" to the secretary of interior's classification and in view also of provision for judicial examination of any resolution classifying the property. In re Arch Hurley Conservancy Dist., 52 N.M. 34, 191 P.2d 338 (1948).

**No unlawful delegation of legislative powers.** - This act (73-18-1 to 73-18-24 NMSA 1978) does not constitute an unlawful delegation of legislative power to the secretary of interior because of the further provision that the action of the secretary on apportionment of assessments as between irrigable lands and others must be submitted to the conservancy court for judicial examination, confirmation and approval. In re Arch Hurley Conservancy Dist., 52 N.M. 34, 191 P.2d 338 (1948).

Power granted to the secretary of interior under the 1939 act (73-18-1 to 73-18-24 NMSA 1978) is not unconstitutional as an unwarranted delegation of legislative power since it merely extends to him the same voice that ordinarily is extended to other money lenders or mortgagees to approve or veto any change calculated to increase or diminish size of the acreage which in part, at least, constitutes the security for the money advanced. In re Arch Hurley Conservancy Dist., 52 N.M. 34, 191 P.2d 338 (1948).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 94 C.J.S. Waters §§ 316, 338.

### **73-18-20. Proceedings to determine validity.**

A. The board of any contracting district shall commence special proceedings in and by which the proceedings had for the organization and establishment of the district and in and by which the authorization, due execution and validity of a reclamation contract may be judicially examined, approved and confirmed. Such proceedings shall be brought as to any district which has heretofore executed a reclamation contract within sixty days after the effective date of this act [73-18-1 to 73-18-24 NMSA 1978] and in all other cases within sixty days after the execution of such contract. Like proceedings may and

when so required by any provision of this act shall be commenced by the board for the judicial examination, approval and confirmation of any bond issue, assessment, resolution providing for apportionment of assessments to classes of property or classifying property, order, act, proceeding or contract of such district.

B. Commencement of such proceedings shall be by the filing by the board of directors of the district in the conservancy court provided for by the provisions of the Conservancy Act of a petition praying in effect that the proceedings had for the organization of the district or the reclamation contract or other contract, bond issue, assessment, resolution providing for apportionment of assessments to classes of property, or classifying property, order, act or proceeding or any one or more thereof may be examined, approved and confirmed by the court. The petition shall state the facts, showing the proceedings had for the issue and sale of bonds of the district or the pertinent facts pertaining to a reclamation contract, bond issue, assessment, resolution providing for apportionment of assessments to classes of property or classifying property, order, act, proceeding or contract or one or more thereof, but the petition need not state the facts showing such organization of the district and it shall be sufficient that it be stated therein generally that the district was duly organized.

C. The court shall fix a time for the hearing of said petition, which time shall be not less than ten days after the last publication of notice herein provided for, and shall order the clerk of the court to give and publish a notice in form to be prescribed by the court in such order, of the filing of such petition. The notice shall be given and published in the English language once each week for four consecutive weeks in a newspaper of general circulation published in each county wherein shall be situated any lands within the district. Such notice also shall be published for a like time in Spanish in any county where publication of such notice is required to be made wherein there is a newspaper of general circulation published in the Spanish language. The notice shall state the time and place fixed for the hearing of the petition and the prayer of the petitioners and that any person interested in the organization of the district, reclamation contract, bond issue, assessment, resolution providing for apportionment of assessments to classes of property or classifying property, order, act, proceeding or contract in question may, on or before the date fixed for the hearing of said petition, demur to or answer said petition. The petition may be referred to and described in said notice as the petition of the board of directors of ..... conservancy district (giving its name), praying that the proceedings for the organization of the district, the validity of the reclamation contract, bond issue, assessment, resolution providing for apportionment of assessments to classes of property or classifying property, order, act, proceeding or contract, as the case may be, may be examined, approved and confirmed by the court.

D. Any person interested in said district or in the reclamation contract, bond issue, assessment, resolution providing for apportionment of assessments to classes of property or classifying property, order, act, proceeding or contract as may be in issue as herein provided, at any time before but not after the time for hearing as fixed in said notice, may file demurrer or answer or both to said petition. The person so demurring and answering said petition shall be the defendant to the special proceeding and the

board of directors shall be the plaintiff. Every material statement of the petition not specifically controverted by the answer shall, for the purpose of said special proceeding, be taken as true, and 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 and rules of the supreme court relating to appeals and writs of error, as the same may be in force at the time of any such appeal, which are not inconsistent with the provisions of this act are applicable to the special proceedings herein provided for; provided, appeals to the supreme court of the state, involving the special proceedings herein mentioned, shall be taken within twenty days and shall be perfected within sixty days after the granting of any such appeal.

E. Upon the hearing of such special proceeding the court shall find and determine whether the notice of the filing of the petition has been duly given and published for the time and in the manner in this act prescribed and shall have power and jurisdiction to examine and determine the legality and validity of, and approve and confirm each and all of the proceedings for the organization of said district under the provisions of the Conservancy Act from and including the petition for the organization of the district, and all other proceedings which may affect the legality or validity of said bonds and the order of the sale thereof and shall have power and jurisdiction to examine and determine the legality and validity of the reclamation contract, bond issue, assessment, resolution providing for apportionment of assessments to classes of property or classifying property, order, act, proceeding or contract as the case may be. The court, in inquiring into the regularity, legality or correctness of said proceedings, must disregard any error, irregularity or omission which does not affect the substantial rights of the parties to said special proceedings; and the court may by decree approve and confirm, in whole or in part, such proceedings and the validity thereof or of the reclamation contract, bond issue, assessment, resolution providing for apportionment of assessments to classes of property or classifying property, order, act, proceeding or contract or disapprove and declare the same illegal or invalid in whole or in part. The cost of the special proceedings may be allowed and apportioned between the parties in the discretion of the court. A judgment when finally made and entered shall be res judicata in all cases arising in connection with the organization of the district, classification of real property within the district, apportionment of assessments and the collection of taxes for payment of the principal and interest of bonds or for payment of monies to the United States, required by a reclamation contract.

F. The procedure in this section and each and every subsection thereof provided shall govern in the absence of any supreme court rule governing the subject matter of this section, but the provisions of this section shall be subject to the rule-making power of the supreme court.

**History:** Laws 1939, ch. 148, § 20; 1941 Comp., § 77-3120; 1953 Comp., § 75-32-20.

**Cross-references.** - For definition of conservancy court, see 73-14-3 G NMSA 1978.

For legal newspapers, see 14-11-2 NMSA 1978.

For rule-making power of supreme court, see 38-1-1 NMSA 1978.

For Rules of Civil Procedure for the District Courts, see Judicial Pamphlet 1.

For Rules of Appellate Procedure, see Judicial Pamphlet 12.

For abolition of demurrers, see Rule 1-007 C SCRA 1986.

**Effective dates.** - Laws 1939, ch. 148, contains no effective date provision, but was enacted at a session which adjourned on March 11, 1939. See N.M. Const., art. IV, § 23.

**Conservancy Act.** - See same catchline in notes to 73-18-1 NMSA 1978.

**Special proceeding.** - A proceeding to determine the validity of a reclamation contract between the United States and a conservancy district is a special proceeding, and the lower court is limited in its jurisdiction in passing upon the contract to a determination of whether the applicable statute (73-18-1 to 73-18-24 NMSA 1978) authorizes the appellee to enter into the contract as written; whether the appellee abused its discretion in so doing; and whether such statute is constitutional and valid. The supreme court's review is limited by the same yardstick. *Middle Rio Grande Water Users Ass'n v. Middle Rio Grande Conservancy Dist.*, 57 N.M. 287, 258 P.2d 391 (1953).

### **73-18-21. Contracts validated.**

Any reclamation contract heretofore entered into by any district with the United States for any of the purposes enumerated in Section two [73-18-2 NMSA 1978] hereof, together with any and all action taken by or on behalf of a contracting district in pursuance thereof, is hereby ratified, validated and confirmed and such contract is hereby declared to be and the same shall remain a valid and subsisting obligation of the contracting district and all the real property within the contracting district shall be and remain liable to be assessed in the manner in this act [73-18-1 to 73-18-24 NMSA 1978] provided, for payments to become due to the United States under such contract until fully paid.

**History:** Laws 1939, ch. 148, § 21; 1941 Comp., § 77-3121; 1953 Comp., § 75-32-21.

**Effective dates.** - Laws 1939, ch. 148, contains no effective date provision, but was enacted at a session which adjourned on March 11, 1939. See N.M. Const., art. IV, § 23.

### **73-18-22. Scope of act.**

The provisions of Section 2 B [73-18-2 B NMSA 1978] and Section 3 to Section 25 [73-18-3 to 73-18-24 NMSA 1978], inclusive, of this act shall apply only to conservancy districts heretofore or hereafter organized or existing under the Conservancy Act and

which heretofore or hereafter shall have entered into a contract with the United States under the reclamation law.

**History:** Laws 1939, ch. 148, § 22; 1941 Comp., § 77-3122; 1953 Comp., § 75-32-22.

**Effective dates.** - Laws 1939, ch. 148, contains no effective date provision, but was enacted at a session which adjourned on March 11, 1939. See N.M. Const., art. IV, § 23.

**Conservancy Act.** - See same catchline in notes to 73-18-1 NMSA 1978.

**Reclamation law.** - See same catchline in notes to 73-18-1 NMSA 1978.

### **73-18-23. [Repeal.]**

All acts and parts of acts inconsistent with the provisions of this act [73-18-1 to 73-18-24 NMSA 1978] are hereby repealed; but nothing herein contained shall be construed to repeal any provision of the Conservancy Act, except as the provisions thereof, in their application to a contracting district, may conflict with the provisions hereof.

**History:** Laws 1939, ch. 148, § 23; 1941 Comp., § 77-3123; 1953 Comp., § 75-32-23.

**Severability clauses.** - Laws 1939, ch. 148, § 24, provides for the severability of the act if any part or application thereof is held invalid.

**Conservancy Act.** - See same catchline in notes to 73-18-1 NMSA 1978.

### **73-18-24. Designation of act.**

This act [73-18-1 to 73-18-24 NMSA 1978] may be cited as "The Conservancy District-Reclamation Contract Act."

**History:** Laws 1939, ch. 148, § 25; 1941 Comp., § 77-3124; 1953 Comp., § 75-32-24.

### **73-18-25. Conservancy districts to which act applies.**

This act [73-18-25 to 73-18-43 NMSA 1978] shall apply to conservancy districts organized under the laws of the state of New Mexico and having a contract with the United States of America under the reclamation laws of the United States, as provided under Chapter 73, Article 18, New Mexico Statutes Annotated, 1978 Compilation, and to those and only those districts which have an area of land of all classes within the exterior boundaries of the district of more than 100,000 acres and less than 125,000 acres.

**History:** 1953 Comp., § 75-32-25, enacted by Laws 1955, ch. 281, § 1.

### **73-18-26. Division of district into election precincts.**

In all counties in this state in which there shall exist a conservancy district within the classification mentioned in Section 1 [73-18-25 NMSA 1978] in this act, or a major portion by area of such a conservancy district, the board of county commissioners of said county shall, on the first Monday in August of the year 1955, by resolution to be made a part of the minutes of said board of county commissioners, divide said conservancy district into election precincts. If there be a municipality or municipalities within such district, such municipality or municipalities shall constitute one such election precinct, and the area of such conservancy district outside of said municipality or municipalities shall be divided into four [three] election precincts, each of which election precincts shall have approximately equal acreage of irrigable land. Forthwith, after such action by such board of county commissioners, the clerk of said board of county commissioners shall transmit to the clerk of the conservancy district within such county, or the major portion of which is within such county, as aforesaid, a certified copy of the resolution dividing such conservancy district into election precincts. Such board of county commissioners shall redivide such district in the same manner in each sixth year after 1955.

Immediately after such resolution shall be adopted, the clerk of the board of county commissioners shall file a certified copy of the resolution of said board of county commissioners in the office of the county clerk of said county.

**History:** 1953 Comp., § 75-32-26, enacted by Laws 1955, ch. 281, § 2.

**Compiler's note.** - The bracketed word "three" was inserted to conform to the decision of the New Mexico supreme court in *McKenzie v. Board of County Comm'rs*, 59 N.M. 481, 286 P.2d 596 (1955).

**Legislative intent.** - Considering the act (73-18-25 to 73-18-43 NMSA 1978) as a whole, it was the intent of the legislature that such conservancy districts be governed by a board consisting of five members and that the word "three" was intended to be used instead of the word "four" appearing in Section 2 of the act. *McKenzie v. Board of County Comm'rs*, 59 N.M. 481, 286 P.2d 596 (1955).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 94 C.J.S. Waters § 320.

### **73-18-27. Calling of first election.**

The board of directors of said conservancy district shall meet at the office of the conservancy district at 10:00 o'clock a.m., on the second Tuesday of August in the year 1955, and shall call an election in the election precincts outside of the municipality or municipalities, to be held on the second Tuesday in October of the year 1955. Said election shall be called by said board of directors, by resolution, which resolution shall fix a voting place or places for each election precinct within such district outside of the municipality or municipalities, and designate the necessary qualified electors of each

election precinct to act as judges of such election in each such precinct. In the discretion of the board of directors of such conservancy district, all of such election may be held at any place or places within the district. Women who are wives of electors shall be qualified to act as judges of elections. Judges of elections shall be paid \$5.00 per day for service. Expenses of such elections shall be paid by the district. In each odd-numbered year after 1955, elections shall be called in the same manner and at the same times as herein provided for the election of directors to succeed any directors whose terms expire in such year.

**History:** 1953 Comp., § 75-32-27, enacted by Laws 1955, ch. 281, § 3.

### **73-18-28. Director-at-large and municipal director.**

The director to represent the municipality or municipalities, and the director-at-large for the period from October, 1955, to October, 1957, shall be selected at the September, 1955, meeting by the board of directors of such conservancy district as the same exists prior to such election. Such members shall be elected from the membership of the previously existing board if there be qualified members of such board willing to serve for such additional two years. If there be no members of the existing board willing to serve for such additional period of two years or if there be only one, then said existing board may select one or both of such directors from qualified electors of the district for such position or positions as a director as no member of the existing board shall be willing to accept.

In the election to be held in October, 1957, a director to represent the municipal voting precinct shall be elected from the qualified electors of the municipality and a director-at-large shall be elected from the qualified electors of the district.

Every resident, otherwise qualified, owning real estate of any character within the district, shall have one vote for director-at-large. Each elector resident of the municipal voting precinct shall have one vote for municipal director. The right of a voter to vote for municipal director shall not be affected by such elector voting in any other election precinct in which such elector may own Class "A" land.

**History:** 1953 Comp., § 75-32-28, enacted by Laws 1955, ch. 281, § 4.

### **73-18-29. Conservancy district board; how constituted.**

After the election herein provided, boards of directors of such districts shall consist of five directors, one representing each election precinct of such district, and one director-at-large. All of such directors shall have equal powers and responsibilities. In case of vacancy through death, resignation, removal from the district or failure of any elected director to qualify, the remaining members of the board shall, by majority vote, fill such vacancy. The person selected to fill such vacancy shall hold such position until the next election of directors in such district. At the next election of directors of such district, following a vacancy, a director shall be elected to fill such vacancy.

**History:** 1953 Comp., § 75-32-29, enacted by Laws 1955, ch. 281, § 5.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 61.

94 C.J.S. Waters § 320.

### **73-18-30. Qualifications of electors.**

During the month of September, preceding a district election, the secretary of the district shall mail to each owner of irrigable land within the district, at the address of such landowner, as shown by the district records, a statement signed by said secretary of [or] assistant secretary and authenticated by the seal of the district, showing the number of acres of irrigable land owned by said landowner in each voting precinct of the district. A separate statement shall be furnished of land in each election precinct. Such statements shall be delivered to the judges of election of the proper election precinct when the elector casts his ballot. In the event of the failure of any such landowner to receive such statement, such landowner may secure such statement by request at the district office, not later than noon of the Saturday preceding the election.

The board of directors of such conservancy district shall, by resolution, adopt a plan with necessary rules and regulations by which nonresident owners of Class "A" lands or other owners of Class "A" lands who are unable to personally attend the election, may vote for directors other than municipal director and director-at-large.

Every elector who shall vote in any election provided by this act [73-18-25 to 73-18-43 NMSA 1978], shall sign a statement in writing in form to be prescribed by the board of directors of the conservancy district, showing the qualifications of such elector. The judges of elections shall keep such statements as a part of the returns of the election, but such statements shall not be attached to the ballot of the elector.

**History:** 1953 Comp., § 75-32-30, enacted by Laws 1955, ch. 281, § 6.

### **73-18-31. Ownership.**

Any person who has exclusive possession and control of irrigable land under a purchase contract, which purchase contract has been approved by the district, and in connection with which any incremented value to be paid to the United States has been paid in full, shall be considered the owner of such land for the purpose of qualifying such purchaser to vote in voting districts outside of the municipality, and the vendor of the land covered by such contract shall not be entitled to vote as the owner of such land. This section shall not apply to lessees whose lease contains an option to purchase, unless and until such option to purchase shall have been exercised.

**History:** 1953 Comp., § 75-32-31, enacted by Laws 1955, ch. 281, § 7.

### **73-18-32. Voting rights.**



In voting precincts outside of the municipality, for the director to represent such voting precinct, persons owning one acre of irrigable land shall be entitled to one vote. Persons owning more than one acre of irrigable land shall be entitled to one vote for each acre of irrigable land or major fraction thereof, owned by such person up to one hundred and sixty acres. Persons owning less than one acre of irrigable land have no vote. For the purpose of determining the votes to which a landowner is entitled, irrigable lands in different voting precincts shall be considered separately. A landowner may vote in any and all voting precincts in which he has irrigable land, entitling him to vote as hereinbefore set out, and the place of residence of a landowner shall not affect his right to vote in any voting precinct, except the municipal voting precinct.

For director-at-large, all persons who would be qualified to vote if the election were a general election for county officers, and who have been residents of the district for six months next preceding the election and who, for six months next preceding the election, have been the owners of real estate within the district, shall be entitled to one vote.

All persons shall be entitled to one vote for director representing the municipal election precinct who would be qualified to vote if such election were for city officials of any municipality within such district, and who have been the owners of real estate within any municipality within such district for more than six months preceding such election.

To qualify voters to vote for directors-at-large and for director representing the municipal voting precinct, the ownership of real estate by the husband shall be considered also ownership by the wife, and the ownership of real estate by the wife shall be considered also ownership by the husband.

**History:** 1953 Comp., § 75-32-32, enacted by Laws 1955, ch. 281, § 8.

### **73-18-33. Qualifications of directors.**

The director-at-large shall be the owner of Class "A" land within the district and shall be a resident of the district. The director for the municipal election precinct shall be a resident of the municipality and shall be the owner of real estate therein. A director representing a voting precinct outside of the municipality must be a resident of the district and the owner of irrigable land within the voting precinct for which he is a director.

**History:** 1953 Comp., § 75-32-33, enacted by Laws 1955, ch. 281, § 9.

**Cross-references.** - For classification of real property, see 73-18-6 NMSA 1978.

### **73-18-34. Becoming a candidate for director.**

Any person wishing to become a candidate for the office of director in any such district, shall, not less than twenty days before the election, file in the office of the secretary of the said district, a declaration of candidacy, stating the election precinct for which such

person is a candidate, accompanied by a petition signed by not less than ten qualified electors of the election precinct which such person is a candidate to represent. No declaration of candidacy shall be accepted by said secretary unless accompanied by such petition, signed by electors, as above stated, provided that when the time shall have passed for the filing of such declaration, as above stated, if there be any precinct in said district, outside of the municipality, for which no person has filed as a candidate for the office of director, the said secretary of the district shall accept a declaration of candidacy by any qualified elector for such election precinct without such accompanying petition. No such declaration of candidacy shall be accepted by said secretary, less than one week before the election.

**History:** 1953 Comp., § 75-32-34, enacted by Laws 1955, ch. 281, § 10.

### **73-18-35. Term of office for director.**

The regular term of office for a director shall be four (4) years, and until his successor shall have been chosen and shall have qualified. A director shall qualify by taking an oath of office. Newly elected directors shall take office at the next regular meeting of the board of directors, following the election of such director.

**History:** 1953 Comp., § 75-32-35, enacted by Laws 1955, ch. 281, § 11.

### **73-18-36. Compensation of directors.**

Each director shall receive compensation, payable out of the funds of the district, to the amount of \$40.00 per month.

**History:** 1953 Comp., § 75-32-36, enacted by Laws 1955, ch. 281, § 12.

### **73-18-37. Notice of election.**

The board of directors of said conservancy district shall issue a notice of said election. Three copies of such notice shall be posted in conspicuous places in each such election precinct for which an election is to be held and shall be published in a newspaper qualified to make legal publications in suits in the district court. Such publications shall be made once and shall be made not less than five or more than fifteen days before the election. Such notice as so published shall give the time of said election, the places at which the election will be held in the different precincts, the names of the judges who have been designated to hold the elections in each precinct and the names of all candidates who have filed declarations of candidacy, and shall show the election precinct which each candidate desires to represent.

**History:** 1953 Comp., § 75-32-37, enacted by Laws 1955, ch. 281, § 13.

**Cross-references.** - For legal newspapers, see 14-11-2 NMSA 1978.

### **73-18-38. Forms and regulations.**

The board of directors of the district, shall, by resolution, adopt all forms deemed by said board to be necessary to the operation of this act [73-18-25 to 73-18-43 NMSA 1978] and shall make such reasonable regulations to govern the administration of this act as to said board may seem proper. Such forms and regulations shall be in harmony with the purposes of this act and shall be adopted not less than thirty (30) days prior to the election and shall not be changed within thirty (30) days preceding any election. Such forms and regulations may be open to inspection by the public at the office of the district.

Copy [copies] of all regulations and forms adopted and authorized by the board of directors of such district shall be certified by the secretary of said district and authenticated by the seal of said district and filed in the office of the county clerk of said county, immediately after such regulation or forms are adopted.

**History:** 1953 Comp., § 75-32-38, enacted by Laws 1955, ch. 281, § 14.

### **73-18-39. Secretary and district board to put into effect canvass of election returns.**

It shall be the duty of the board of directors of the district to take all actions necessary to carry this act [73-18-25 to 73-18-43 NMSA 1978] into effect. The secretary of the board shall call to the attention of the district board at appropriate times, all matters which may require the attention of said board in connection with the operation of this act, but the failure of the secretary to do so shall not relieve the members of the board from responsibility for faithfully putting this act into effect and taking all steps necessary to its operation. The board of directors shall canvass the certified returns of election judges immediately following the day of any election for directors, declare the results thereof and issue certificate of election of [to] each director who has received the highest number of votes cast for the office for which he was a candidate.

**History:** 1953 Comp., § 75-32-39, enacted by Laws 1955, ch. 281, § 15.

### **73-18-40. Abolishment of appointed board; creation of elective board; powers and duties.**

Whenever under this act [73-18-25 to 73-18-43 NMSA 1978] the first members of the board of directors created by this act have been elected or selected as provided thereby and have qualified as directors, the existing appointive board of directors is abolished and the board created by this act shall succeed to the powers and duties of such appointive board, and shall be a body corporate and may sue and be sued.

**History:** 1953 Comp., § 75-32-40, enacted by Laws 1955, ch. 281, § 16.

### **73-18-41. Application of general election laws.**

In any election held under this act [73-18-25 to 73-18-43 NMSA 1978], the general election laws shall be applicable, except as otherwise provided in this act, and except as to the requirement for registration and residence in state, county or precinct as a qualification of an elector in offering to vote.

**History:** 1953 Comp., § 75-32-41, enacted by Laws 1955, ch. 281, § 17.

### **73-18-42. File of county clerk.**

The county clerk of the county shall keep a file in which shall be kept all papers received by said county clerk, in connection with such conservancy district, under the provisions of this act [73-18-25 to 73-18-43 NMSA 1978]. Such county clerk shall keep a record or index of all such instruments received for filing as the same are filed.

**History:** 1953 Comp., § 75-32-42, enacted by Laws 1955, ch. 281, § 18.

### **73-18-43. Penalties.**

The negligent failure of the secretary or of any member of the board of directors shall be punished by a fine of not to exceed \$50.00. The willful violation of this act [73-18-25 to 73-18-43 NMSA 1978] by omission or commission by the secretary or any director of said district or the willful making of a false statement by any person in connection with any election covered by this act, shall be punished by a fine not exceeding \$300. Proceedings against any such official may be instituted in any justice of the peace court [magistrate court], sitting within the district or in the district court of the county within [wherein] such district has its office.

**History:** 1953 Comp., § 75-32-43, enacted by Laws 1955, ch. 281, § 19.

**Effective dates.** - Laws 1955, ch. 281, contains no effective date provision, but was enacted at a session which adjourned on March 12, 1955. See N.M. Const., art. IV, § 23.

**Severability clauses.** - Laws 1955, ch. 281, § 20, provides for the severability of the act if any part or application thereof is held invalid.

**Jurisdiction, etc., of justices of the peace transferred.** - The office of justice of the peace has been abolished, and the jurisdiction, powers and duties have been transferred to the magistrate court. See 35-1-38 NMSA 1978.

## **ARTICLE 19**

## **TRI-STATE WATER CONSERVANCY ASSOCIATION**

### **73-19-1. [Tri-state water conservancy association created.]**

There is hereby created an organization to be known as the tri-state water conservancy association.

**History:** Laws 1937, ch. 55, § 1; 1941 Comp., § 77-3201; 1953 Comp., § 75-33-1.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 94 C.J.S. Waters § 318.

### **73-19-2. [Governing body; number; selection; eligibility.]**

That such organization shall be governed by a board of nine directors, to be selected as follows: three directors to be selected by the county commissioners of each of the counties of Quay, Curry and Roosevelt, and the directors selected to be residents, property owners and taxpayers in the counties from which they are selected.

**History:** Laws 1937, ch. 55, § 2; 1941 Comp., § 77-3202; 1953 Comp., § 75-33-2.

### **73-19-3. [Directors; gratuitous service; terms; filling vacancies.]**

That the directors, once selected, shall serve without pay, one director from each county is to serve for a period of one year from the date of his selection, one director from each county is to serve for two years from the date of his selection and one director from each county is to serve for three years from the date of his selection, and the respective successors of the first directors to serve for a period of three years; that any vacancy in said board of directors shall be filled by the board of county commissioners of the county wherein the director whose office is to be filled resided.

**History:** Laws 1937, ch. 55, § 3; 1941 Comp., § 77-3203; 1953 Comp., § 75-33-3.

### **73-19-4. [Powers of directors.]**

That said board of directors shall have the power and it shall be its duty to cooperate with the representatives of the Texas counties, or any agencies created by the state of Texas or by said counties, interested in an effort to secure funds from the United States government, its officers, bureaus and agencies, for water conservation purposes in the counties of Quay, Roosevelt and Curry, in New Mexico, and to enter into all proper and necessary negotiations and agreements with the officers and employees of the federal government for the location of federal water conservancy projects in the three counties mentioned.

**History:** Laws 1937, ch. 55, § 4; 1941 Comp., § 77-3204; 1953 Comp., § 75-33-4.

### **73-19-5. [No indebtedness to be contracted; organization; meetings; employees and agents.]**

That said directors shall not have the right to contract any indebtedness whatsoever, either on behalf of the state of New Mexico or the counties for which they are chosen. That the board of directors of said conservancy association shall select such officers, representatives and employees as they may see fit, all of whom are to serve without compensation unless compensation for their services can be arranged with the United States government or by public contributions. That they shall meet and organize within ten days after their appointment. The exact date and place of the first meeting shall be set by the county commissioners of Curry county, New Mexico, and the date and place of subsequent meetings shall be fixed by the board of directors.

**History:** Laws 1937, ch. 55, § 5; 1941 Comp., § 77-3205; 1953 Comp., § 75-33-5.

## **ARTICLE 20**

# **SOIL AND WATER AND WATERSHED CONSERVATION DISTRICTS**

### **73-20-1. Short title.**

This act may be cited as the "Watershed District Act."

**History:** 1953 Comp., § 45-5-19, enacted by Laws 1957, ch. 210, § 1.

**Meaning of "this act".** - The term "this act" refers to Laws 1957, Chapter 210, the provisions of which are presently compiled as 73-20-1 to 73-20-14 and 73-20-16 to 73-20-24 NMSA 1978. However, Laws 1961, ch. 32, § 37 enacted present 73-20-15 NMSA 1978 as part of the Watershed District Act.

**Scope of provisions.** - A careful reading of the Watershed District Act does not clearly indicate that the creation of watersheds is for the exclusive use of agricultural landowners and does not specifically exclude incorporated cities or towns within the watershed district. 1957-58 Op. Att'y Gen. No. 57-116.

**Law reviews.** - For article, "Existing Legislation and Proposed Model Flood Plain Ordinance For New Mexico Municipalities," see 9 Nat. Resources J. 629 (1969).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 78 Am. Jur. 2d Waters § 21.

94 C.J.S. Waters §§ 229, 315.

### **73-20-2. Definitions.**

As used in the Watershed District Act:

A. "directors" means directors of the watershed districts; and

B. "supervisors" means supervisors of soil and water conservation district or districts in which the watershed district is located.

**History:** 1953 Comp., § 45-5-20, enacted by Laws 1957, ch. 210, § 2; 1973, ch. 332, § 1; 1977, ch. 254, § 45.

**Watershed District Act.** - See 73-20-1 NMSA 1978 and notes thereto.

### **73-20-3. Purpose of act.**

The purpose of the Watershed District Act is to secure the federal assistance provided in Public Law 566 of the 83rd congress, and amendatory legislation, for New Mexico in its program to further the conservation, development, utilization, flood prevention and disposal of water, and thereby preserve and protect New Mexico's land and water resources.

**History:** 1953 Comp., § 45-5-21, enacted by Laws 1957, ch. 210, § 3.

**Compiler's note.** - Public Law 566 of the 83rd congress, referred to in this section, appears as 16 U.S.C. §§ 1001 to 1008 and 33 U.S.C. § 701b.

**Watershed District Act.** - See 73-20-1 NMSA 1978 and notes thereto.

**Purpose of watershed district.** - A watershed district is not a public utility organized for the purpose of supplying water to consumers. The basic purpose of the district is to "preserve and protect New Mexico's land and water resources." 1963-64 Op. Att'y Gen. No. 63-78.

**District's funds can be used to pay portion of cost of reorganizing irrigations systems.** This expenditure of funds is permissible only if the purpose of the reorganization is directly related to the conservation of water or one of the other statutory purposes for which watershed districts are established. 1963-64 Op. Att'y Gen. No. 63-78.

### **73-20-4. Watershed districts; formation.**

Watershed districts may be formed as subdistricts of soil and water conservation districts in a watershed area, as provided in the Watershed District Act, for the purpose of developing and executing plans and programs relating to any phase of conservation of water, or of water usage, including water-based recreation, flood prevention, flood control, erosion prevention and control of erosion, and floodwater and sediment damages.

**History:** 1953 Comp., § 45-5-22, enacted by Laws 1957, ch. 210, § 4; 1965, ch. 84, § 1; 1973, ch. 332, § 2; 1977, ch. 254, § 46.

**Watershed District Act.** - See 73-20-1 NMSA 1978 and notes thereto.

**District's funds can be used to pay portion of cost of reorganizing irrigations systems.** This expenditure of funds is permissible only if the purpose of the reorganization is directly related to the conservation of water or one of the other statutory purposes for which watershed districts are established. 1963-64 Op. Att'y Gen. No. 63-78.

**Construction of flood detention dam** is an authorized function of the district since the purpose of watershed districts is the development and execution of plans and programs relating to any phase of conservation of water, etc. 1963-64 Op. Att'y Gen. No. 63-78.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 94 C.J.S. Waters § 230.

### **73-20-5. Area.**

The land area embraced in districts must be contiguous and must lie within a well-defined watershed area or subwatershed areas. The districts may embrace lands lying in one or more soil and water conservation districts, or lands lying partly within and partly outside a soil and water conservation district.

**History:** 1953 Comp., § 45-5-23, enacted by Laws 1957, ch. 210, § 5; 1973, ch. 332, § 3; 1977, ch. 254, § 47.

**Federal, Indian reservation and state lands may be included in watershed district** only if the officials charged with administering such lands specifically agree to the inclusion of the lands in the district. And even if such agreement is obtained, there is yet another agreement that is a prerequisite to such inclusion; it would be necessary that the officials administering the lands in question also agree to put up a pro rata share of the district's budget, based on the value of the lands included in the district, because the assessment is to be uniform throughout the district. This amount may be difficult of computation, since in most counties property exempt from taxation is not carried on the tax rolls. And the value of the real property as indicated on the tax rolls is a determining factor in computing the assessment. 1961-62 Op. Att'y Gen. No. 61-87.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 94 C.J.S. Waters § 243.

### **73-20-6. Petitions.**

When fifty or more landowners within a proposed watershed district, or twenty percent of the landowners within the proposed district, whichever is less, desire to form a watershed district, they shall file a petition with the board of supervisors. Such petition shall define the boundaries of the proposed district, the number of acres of land involved, reasons for requesting creation of such district, the proposed name for such watershed district and other information pertinent to such proposal.



**History:** 1953 Comp., § 45-5-24, enacted by Laws 1957, ch. 210, § 6; 1975, ch. 294, § 1.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 59.

94 C.J.S. Waters § 342.

### **73-20-7. Presentation of petitions.**

If the proposed watershed district lies in more than one soil and water conservation district, the petition may be presented to the board of supervisors of any one of such districts and the supervisors of all such districts shall act as a joint board of supervisors in the formation and supervision of such a watershed district.

**History:** 1953 Comp., § 45-5-25, enacted by Laws 1957, ch. 210, § 7; 1973, ch. 332, § 4; 1977, ch. 254, § 48.

### **73-20-8. Hearing; notice.**

A. Within thirty days after the petition has been filed with the board of supervisors, it shall cause due notice to be given by publication for three consecutive weeks, once a week on the same day of each week, immediately prior to the action in a newspaper of general circulation in the area, and, if no newspaper of general circulation exists, shall post in not less than eight public places within the area, notice of a hearing upon the practicability and feasibility of creating the district. In addition to the publication provided for in this subsection, absentee landowners shall be notified by first class mail if their whereabouts can be ascertained by reasonably diligent search. All interested parties shall have the right to attend such hearing and be heard. If it shall appear at the hearing that other lands should be included or that lands included in the petition should be excluded, the board of supervisors may permit such inclusion or exclusion.

B. If it appears upon the hearing that it may be desirable to include within the proposed district, territory outside of the area within which due notice of the hearing has been given, the hearing shall be adjourned and due notice of a further hearing shall be given throughout the entire area considered for inclusion in the district and a further hearing shall be held. After final hearing, if the board of supervisors determines, upon the facts presented at the hearing and upon other available information, that there is need, in the interest of the public health, safety and welfare for such a district to function in the territory considered, it shall make and record the determination and shall define by metes and bounds or by legal subdivisions, the boundaries of the district.

C. If the board determines after the hearing that it is not feasible for such district to function in the territory considered, it shall make and record the determination and shall deny the petition.

**History:** 1953 Comp., § 45-5-26, enacted by Laws 1957, ch. 210, § 8; 1961, ch. 233, § 1; 1975, ch. 294, § 2.

**Notice required for proposed district hearing.** - All landowners who do not reside on their land within the proposed district but reside outside the district are entitled to notice by registered mail of a hearing and referendum on a proposed watershed district. 1963-64 Op. Att'y Gen. No. 63-161.

**Notice by publication constitutes constructive notice.** - Notice by publication, as provided in both Subsections A and B, constitutes constructive notice to landowners actually living in the proposed watershed district. 1963-64 Op. Att'y Gen. No. 63-161.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 2 Am. Jur. 2d Administrative Law § 398.

73A C.J.S. Public Administrative Law and Procedure §§ 130, 131.

### **73-20-9. Referendum.**

After the board of supervisors has made and recorded a determination that there is need, in the interest of the public health, safety and welfare, for creation of the proposed watershed district, it shall consider the question whether the operation of a district within the proposed boundaries with the powers conferred upon such districts in Section 73-20-13 NMSA 1978 is administratively practicable and feasible. To assist the board of supervisors in this determination, the board shall, within a reasonable time after entry of the finding that there is need for the organization of the district and the determination of the boundaries of the district, hold a referendum within the proposed district upon the proposition of the creation of the district. Due notice of the referendum shall be given as provided in Section 73-20-8 NMSA 1978, except that, notice sent to absentee landowners shall also inform them of their right to request a ballot. Such notice shall state the date of holding the referendum, the hours of opening and closing the polls and shall designate one or more places within the proposed district as polling places. The board shall appoint a polling superintendent and other necessary polling officers giving equal representation to the proponents and opponents of the question involved. Ballots shall be sent to all absentee landowners upon request and they may vote by return ballot by first class mail.

**History:** 1953 Comp., § 45-5-27, enacted by Laws 1957, ch. 210, § 9; 1975, ch. 294, § 3.

**Legislative intent** is that the board may, after the hearing and tentative decision to include additional lands, immediately conduct a referendum. Under these circumstances, a combined notice that complies with all the statutory provisions is sufficient for both the hearing and referendum. 1975 Op. Att'y Gen. No. 75-44.

### **73-20-10. Ballots.**

The question to be voted on shall be submitted by ballots upon which appear the following:

"For creation of . . . . . Watershed District []

Against creation of . . . . . Watershed District [] "

A square shall follow each proposition. The ballot shall also contain a direction to insert an "X" mark in the square following one or the other of the propositions, as the voter may favor or oppose creation of the district. The ballot shall set forth the boundaries of the proposed district as determined by the board of supervisors. Only owners of lands lying within the boundaries of the territory, as determined by the board, shall be eligible to vote in the referendum.

**History:** 1953 Comp., § 45-5-28, enacted by Laws 1957, ch. 210, § 10.

### **73-20-11. Votes; results.**

The votes shall be counted by the election officers at the close of the polls and report of the results along with the ballots delivered to the polling superintendent, who shall certify the results to the board of supervisors. If a majority of the votes cast favor creation of the district, the board of supervisors shall certify the results to the county clerk in the county involved. Upon proper recording of the action, the watershed district shall be duly created. After recording, the certification shall be filed with the forestry division of the energy, minerals and natural resources department.

**History:** 1953 Comp., § 45-5-29, enacted by Laws 1957, ch. 210, § 11; 1973, ch. 332, § 5; 1977, ch. 254, § 49; 1987, ch. 234, § 74.

**The 1987 amendment**, effective July 1, 1987, substituted "the forestry division of the energy, minerals and natural resources department" for "the soil and water conservation division" at the end of the last sentence and made minor changes in language in the second, third and fourth sentences.

### **73-20-12. Directors; election.**

A. Within thirty days after a watershed district is created, the board of supervisors of the soil and water conservation district or districts involved, shall cause an election to be held for the election of a board of directors of the watershed district. The board shall consist of five members. The first board shall determine by lot from among its membership two members to serve terms of two years, two members to serve terms of three years and one member to serve a term of four years. Thereafter, as these initial terms expire, their replacements shall be elected for terms of four years. Vacancies occurring before the expiration of a term shall be filled by the remaining members of the board for the unexpired term. The board of directors shall, under the supervision of the board of supervisors, be the governing body of the watershed district.

B. If the territory embraced within a watershed district lies within more than one soil and water conservation district, each additional soil and water conservation district having a minority of the land involved in the watershed shall be entitled to elect three additional directors. These additional directors after their election shall determine by lot one of their number to serve a term of two years, one a term of three years, and one a term of four years. Thereafter their successors shall be elected for terms of four years. The representatives of each of these minority districts shall fill vacancies in its membership for the unexpired term.

C. The board of directors shall annually elect from its membership a chairman, secretary and treasurer. The treasurer shall execute an official bond for the faithful performance of the duties of his office to be approved by the board of directors. Such bond shall be executed with at least three solvent personal sureties whose solvency must exceed the amount of the bond, or by a surety company authorized to do business in this state, and shall be in an amount determined by the board of directors. If the treasurer is required to execute a surety company bond, the premium of the bond shall be paid by the board of directors.

D. The board of directors shall prepare and submit to the department of finance and administration such reports as it may require, from among those required to be submitted by other political subdivisions.

E. Each person desiring to be a director of a watershed district shall file a nominating petition with the board of supervisors, signed by ten or more landowners within the watershed districts of the county involved, or, if less than fifty landowners are involved, a majority of such landowners. If the candidates nominated do not exceed the positions available, they shall be declared elected. No person shall be eligible to be a director of a watershed district who is not a landowner in the district in which he seeks election.

**History:** 1953 Comp., § 45-5-30, enacted by Laws 1957, ch. 210, § 12; 1973, ch. 332, § 6; 1977, ch. 254, § 50.

**Authority to cause election to be held.** - Laws 1957, ch. 210, § 12(e) (Subsection E of this section) does not provide for the possibility that more candidates could be nominated than there are positions available. Under the act, the board of supervisors of the soil conservation district (or districts) involved has the authority to cause an election to be held for the election of a board of directors of the watershed district. The board of supervisors must comply with the procedure set up by the act in all cases where there is a specific provision which can be followed. 1957-58 Op. Att'y Gen. No. 57-116.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 61.

94 C.J.S. Waters § 320.

**73-20-13. Authority.**

Subject to the approval of the board of supervisors, the board of directors of a watershed district shall have power to:

A. levy an annual assessment on the real property within the district within the limitations provided in Section 73-20-17 NMSA 1978, for administration, construction, operation and maintenance of works of improvement within and without the district as are required by the district in the performance of its functions;

B. acquire by purchase, gift, grant, bequest, devise or through condemnation proceedings in the manner provided in the Eminent Domain Code [42A-1-1 to 42A-1-33 NMSA 1978], property or rights-of-way necessary for the exercise of any authorized function of the district; provided, that no property or water rights shall be condemned for the purposes of recreation;

C. construct, improve, operate, contract [for] and maintain such structures as may be necessary for the performance of any function authorized by the Watershed District Act;

D. borrow money necessary for the purpose of acquiring rights-of-way and establishing, constructing, reconstructing, repairing, enlarging and maintaining the structures and improvements required by the district in the performance of its functions, and repay these loans with the proceeds of the annual assessment provided for in Subsection A of this section or by the issuance, negotiation and sale of its bonds as provided in Section 73-20-14 NMSA 1978; and

E. receive and grant assistance and cooperate with counties, municipalities and state and federal agencies in carrying out the provisions of the Watershed District Act.

**History:** 1953 Comp., § 45-5-31, enacted by Laws 1957, ch. 210, § 13; 1961, ch. 233, § 2; 1965, ch. 84, § 2; 1975, ch. 294, § 4; 1981, ch. 125, § 59.

**Watershed District Act.** - See 73-20-1 NMSA 1978 and notes thereto.

**Payment for costs of constructing flood detention dam.** - The district's funds, whether obtained by borrowing, issuing bonds or the levying of assessments can be used to pay a portion of the costs of constructing a flood detention dam. 1963-64 Op. Att'y Gen. No. 63-78.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 62.

94 C.J.S. Waters § 321.

### **73-20-14. Bonds.**

A. Bonds authorized by Section 73-20-13 NMSA 1978 shall not be issued until proposed by order or resolution of the board of directors, specifying the purpose for which the funds are to be used, and the proposed undertaking, the amount of bonds to

be issued, the rate of interest they are to bear, and the amount of any necessary assessment levy in excess of the maximum authorized in Section 73-20-17 NMSA 1978, to establish a sinking fund for the liquidation of bonds as provided in Section 73-20-17 NMSA 1978. A copy of the order or resolution shall be certified to the board of supervisors.

B. The board of supervisors shall conduct a hearing on the proposal after notice given pursuant to Section 73-20-8 NMSA 1978. If it appears that the proposal is within the scope and purpose of this Watershed District Act and meets all other requirements of the law, the proposal shall be submitted to the landowners of the district by referendum under supervision of the board of supervisors.

C. Provisions of Sections 73-20-8 through 73-20-11 NMSA 1978, as to notice, qualifications of voters and manner of holding referendum election in organizing a watershed district shall apply to the referendum held under this section.

D. If two-thirds of the landowners voting favor the proposal, such bonds may be issued.

**History:** 1953 Comp., § 45-5-32, enacted by Laws 1957, ch. 210, § 14; 1965, ch. 84, § 3; 1975, ch. 294, § 5.

**Watershed District Act.** - See 73-20-1 NMSA 1978 and notes thereto.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 67.

94 C.J.S. Waters §§ 322, 323.

### **73-20-15. Loans; repayments.**

A. In addition to the borrowing of money by the issuance of bonds for the purposes set out in Section 73-20-13 NMSA 1978, the district may borrow money from the United States department of agriculture or any other federal agency if the loan can be repaid according to its terms by use of the levy authorized by Section 73-20-17 NMSA 1978 and the board of supervisors has so determined.

B. The district may also borrow money from the United States department of agriculture or any other federal agency and levy an assessment not to exceed five dollars (\$5.00) on each one thousand dollars (\$1,000) of net taxable value, as that term is defined in the Property Tax Code [Chapter 7, Articles 35 to 38 NMSA 1978], of property subject to taxation by the district, in addition to others authorized by the Watershed District Act, to repay the loan if the board of directors determines the rate of the levy required and:

(1) secures the approval of the board of supervisors;

(2) a referendum on the acceptance of the loan for specified purposes is held;

(3) two-thirds of the landowners voting favor the proposal; and

(4) the procedures of Sections 73-20-8 through 73-20-11 NMSA 1978 as to notice, qualifications of voters and manner of holding referendum election are followed in the referendum held under this section.

**History:** 1953 Comp., enacted by Laws 1961, ch. 233, § 3; 1975, ch. 294, § 6; 1986, ch. 32, § 37.

**The 1986 amendment,** in Subsection A, substituted "Section 73-20-13 NMSA 1978" for "Paragraph (4) of Subsection A of Section 45-5-31 NMSA 1953" and "Section 73-20-17 NMSA 1978" for "the Watershed District Act" and deleted "five mill" preceding "levy"; in Subsection B, substituted "five dollars (\$5.00) on each one thousand dollars (\$1,000) of net taxable value, as that term is defined in the Property Tax Code, of property subject to taxation by the district" for "five mills" in the introductory paragraph and, in Paragraph (4), substituted "the procedures of Sections 73-20-8 through 73-20-11 NMSA 1978" for "the procedure of Sections 45-5-26 through 45-5-29 NMSA 1953"; and made minor stylistic changes.

**Effective dates.** - Laws 1986, ch. 32 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 21, 1986.

**Watershed District Act.** - See 73-20-1 NMSA 1978 and notes thereto.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 94 C.J.S. Waters § 321.

### **73-20-16. Per diem and mileage.**

Members of the board of directors shall receive no salaries, but such members may receive per diem and mileage for meetings and travel in the performance of their duties as approved by the board of supervisors.

**History:** 1953 Comp., § 45-5-33, enacted by Laws 1957, ch. 210, § 15.

### **73-20-17. Budgets; tax levy; limitation.**

Within the first quarter of each calendar year, the board of directors shall prepare an itemized budget of the funds needed for administration, construction, operation and maintenance of works of improvement. After approval of the budget by the board of supervisors, the board of directors shall, by order or resolution, levy an assessment sufficient to meet the budget, not to exceed five dollars (\$5.00), or any lower maximum amount required by operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978 upon the assessment authorized by this section, on each one thousand dollars (\$1,000) of net taxable value, as that term is defined in the Property Tax Code [Chapter 7, Articles 35 to 38 NMSA 1978], of all real property subject to taxation within the district, except that the limit on assessments does not apply to any levy necessary to

provide a sinking fund for retirement of bonds authorized by Section 73-20-13 NMSA 1978. A copy of the budget and order or resolution shall be certified to the county assessor of the county or counties involved by July 15 of each year.

**History:** 1953 Comp., § 45-5-34, enacted by Laws 1957, ch. 210, § 16; 1986, ch. 32, § 38.

**Cross-references.** - As to county assessor, see 4-39-1 NMSA 1978.

**The 1986 amendment** inserted "tax levy; limitation" in the catchline; substituted the language following "not to exceed" in the second sentence for "five mills per dollar of the assessed value of all real property within the district, except any levy necessary to provide a sinking fund for retirement bonds authorized by Section 13 of this act"; and inserted "by July 15 of each year" at the end of the last sentence.

**Effective dates.** - Laws 1986, ch. 32 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 21, 1986.

**Officials to agree to pro rata share of district budget where federal, Indian reservation and state lands included.** - Federal, Indian reservation and state lands may be included in a watershed district only if the officials charged with administering such lands specifically agree to the inclusion of the lands in the district. And even if such agreement is obtained, there is yet another agreement that is a prerequisite to such inclusion; it would be necessary that the officials administering the lands in question also agree to put up a pro rata share of the district's budget, based on the value of the lands included in the district, because the assessment is to be uniform throughout the district. This amount may be difficult of computation, since in most counties property exempt from taxation is not carried on the tax rolls. And the value of the real property as indicated on the tax rolls is a determining factor in computing the assessment. 1961-62 Op. Att'y Gen. No. 61-87.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 94 C.J.S. Waters § 321.

### **73-20-18. Assessment lists.**

A. The board of directors shall prepare a list of the landowners in each county involved and showing the number of acres subject to assessment and deliver it to the county assessor of the county or counties involved. The assessor shall indicate such information on the tax rolls.

B. The county assessor shall compute the assessment due the district from each landowner in accordance with the rate fixed by the board of directors and the value of the real property indicated on the tax roll. The computation shall be made on the regular tax bills in such manner as may be directed by regulation of the property tax division of the taxation and revenue department.



**History:** 1953 Comp., § 45-5-35, enacted by Laws 1957, ch. 210, § 17; 1977, ch. 249, § 28.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 70.

94 C.J.S. Waters § 334.

### **73-20-19. Collection of assessments.**

A. The county treasurer shall collect the assessment due the district at the same time and in the same manner in which he collects the state and county ad valorem tax. The county treasurer shall retain a fee for collections of the assessment equal to four percent of the assessment collected or the actual cost, whichever is less.

B. Such assessments shall be subject to the same due and delinquency date, discounts, penalties and interest as are applied to the collection of ad valorem taxes.

**History:** 1953 Comp., § 45-5-36, enacted by Laws 1957, ch. 210, § 18.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 69.

94 C.J.S. Waters § 337.

### **73-20-20. Expenditures.**

Assessment funds collected shall be transferred to and held by the treasurer of the watershed district for the specific purpose for which they have been collected. All expenditures of such funds shall be made by the board of directors upon order of the board, approved by the board of supervisors of the soil and water conservation district or districts involved.

**History:** 1953 Comp., § 45-5-37, enacted by Laws 1957, ch. 210, § 19; 1973, ch. 332, § 7; 1977, ch. 254, § 51.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 94 C.J.S. Waters § 321.

### **73-20-21. Addition of land.**

A. Any one or more owners of land may petition the board of supervisors to have their lands added to a watershed district. The petition shall define the boundaries of the land desired to be annexed, the number of acres of land involved and other information pertinent to the proposal. When the boundary described embraces lands of others than the petitioners, the petition shall so state and shall be signed by twenty-five or more of the landowners in the territory described, if fifty or more such owners are involved, or by a majority if less than fifty landowners are involved.

B. Within thirty days after the petition is filed, the board shall cause due notice to be given as provided in Section 73-20-8 NMSA 1978 of a hearing on the petition. All interested parties shall have a right to attend the hearing and be heard. The board shall determine whether the lands described in the petition or any portion of them shall be included in the district. If all the landowners in the territory involved are not petitioners, a referendum shall be held within the territory as provided in Sections 73-20-8 through 73-20-11 NMSA 1978 before making a final determination. If it is determined that the land should be added, this fact shall be certified by the board of supervisors to the county clerk in the county involved. After recording, the certification shall be filed with the forestry division of the energy, minerals and natural resources department.

**History:** 1953 Comp., § 45-5-38, enacted by Laws 1957, ch. 210, § 20; 1973, ch. 332, § 8; 1977, ch. 254, § 52; 1987, ch. 234, § 75.

**The 1987 amendment**, effective July 1, 1987, in Subsection B, in the first sentence substituted "73-20-8 NMSA 1978" for "45-5-26 NMSA 1953", in the fourth sentence substituted "73-20-8 through 73-20-11 NMSA 1978" for "45-5-26 through 45-5-29 NMSA 1953 of the Watershed District Act", in the sixth sentence substituted "the forestry division of the energy, minerals and natural resources department" for "the soil and water conservation division"; and made minor changes in language throughout the section.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 60.

### **73-20-22. Detaching land.**

The owner or owners of land which have not been, are not and cannot be benefited by their inclusion in the watershed district may petition the board of supervisors to have the lands withdrawn. The petitions shall be filed with the board of supervisors and the board of directors and shall describe the lands and state the reasons why they should be withdrawn. A hearing shall be held within thirty days after the petition is received. Due notice of the hearing as provided in Section 73-20-8 NMSA 1978 shall be given at least ten days before the hearing. If it is determined by the board of supervisors that the lands shall be withdrawn, the determination shall be certified to the county clerk of each county in which any portion of the lands lie. After recording, the certification shall be filed with the forestry division of the energy, minerals and natural resources department.

**History:** 1953 Comp., § 45-5-39, enacted by Laws 1957, ch. 210, § 21; 1973, ch. 332, § 9; 1975, ch. 294, § 7; 1977, ch. 254, § 53; 1987, ch. 234, § 76.

**The 1987 amendment**, effective July 1, 1987, in the third sentence substituted "73-20-8 NMSA 1978" for "45-5-26 NMSA 1953"; in the fifth sentence substituted "the forestry division of the energy, mineral and natural resources department" for "the soil and water conservation division" at the end; and made minor changes in language throughout the section.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 60.

### **73-20-23. Discontinuance of districts.**

A. At any time after five years from the organization of a watershed district, twenty-five or more landowners within a district, or, if less than fifty landowners are involved, a majority of the landowners in the district, may file a petition with the board of supervisors and the board of directors, requesting that the existence of the district be discontinued. The petition shall state the reasons for discontinuance and that all obligations of the district have been met.

B. After giving notice as defined in Section 73-20-8 NMSA 1978, the board of supervisors may conduct hearings on the petition as may be necessary to assist it in making a determination.

C. Within sixty days after petition is filed, a referendum shall be held under the supervision of the board of supervisors as provided in Section 73-20-14 NMSA 1978. No informalities in the conduct of the referendum or in any matters relating to the referendum shall invalidate it or its result if notice of the referendum has been given substantially as provided in Subsection B of this section.

D. If a majority of the votes cast in the referendum favor the discontinuance of the district, and it is found that all obligations have been met, the board of supervisors shall make a determination that the watershed district shall be discontinued. A copy of the determination shall be certified by the clerk of the county involved for recording. After recording, the certification shall be filed with the forestry division of the energy, minerals and natural resources department.

**History:** 1953 Comp., § 45-5-40, enacted by Laws 1957, ch. 210, § 22; 1973, ch. 332, § 10; 1975, ch. 294, § 8; 1977, ch. 254, § 54; 1987, ch. 234, § 77.

**The 1987 amendment,** effective July 1, 1987, in Subsection B, substituted "73-20-8 NMSA 1978" for "45-5-26 NMSA 1953"; in Subsection C, substituted "73-20-14 NMSA 1978" for "45-5-32 NMSA 1953" at the end; in Subsection D, substituted "the forestry division of the energy, minerals and natural resources department" for "the soil and water conservation division" at the end of the last sentence; and made minor language changes throughout the section.

### **73-20-24. Supervision by courts.**

If any supervising soil and water conservation district is discontinued, the district court of the county or counties involved shall serve in the same supervising capacity over the watershed district as the board of supervisors.

**History:** 1953 Comp., § 45-5-41, enacted by Laws 1957, ch. 210, § 23; 1973, ch. 332, § 11; 1977, ch. 254, § 55.

### **73-20-25. Short title.**

Sections 73-20-25 through 73-20-49 NMSA 1978, as amended by this and subsequent amendments, may be cited as the "Soil and Water Conservation District Act."

**History:** 1953 Comp., § 45-5-42, enacted by Laws 1965, ch. 137, § 1; 1973, ch. 324, § 1; 1977, ch. 254, § 56.

### **73-20-26. Legislative determination; purpose of act.**

A. Considered and resolved by legislative determination, it is declared that:

(1) the land, waters and other natural resources are the basic physical assets of New Mexico, and their preservation and development are necessary to protect and promote the health and general welfare of the people of the state;

(2) the improper use of land and related natural resources, soil erosion and water loss result in economic waste in New Mexico through the deterioration of the state's natural resources; and

(3) appropriate corrective and conservation practices and programs must be encouraged and executed in New Mexico to conserve and develop beneficially the soil, water and other natural resources of the state.

B. It is declared to be the policy of the legislature and the purpose of the Soil and Water Conservation District Act [73-20-25 to 73-20-49 NMSA 1978] to:

(1) control and prevent soil erosion;

(2) prevent floodwater and sediment damage;

(3) further the conservation, development, beneficial application and proper disposal of water;

(4) promote the use of impounded water for recreation, propagation of fish and wildlife, irrigation and for urban and industrial needs; and

(5) by the application of these measures, conserve and develop the natural resources of the state, provide for flood control, preserve wildlife, protect the tax base and promote the health, safety and general welfare of the people of New Mexico.

**History:** 1953 Comp., § 45-5-43, enacted by Laws 1965, ch. 137, § 2.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 3 C.J.S. Agriculture § 9; 94 C.J.S. Waters § 229.

## **73-20-27. Definitions.**

As used in the Soil and Water Conservation District Act [73-20-25 to 73-20-49 NMSA 1978]:

A. "district" means soil and water conservation district, a governmental subdivision of the state, a public body corporate and politic, organized for the purposes, granted the powers and subject to the restrictions of the Soil and Water Conservation District Act;

B. "supervisor" means a member of the governing body of a district;

C. "committee" or "commission" means the soil and water conservation commission;

D. "agencies of the United States" includes the soil and conservation service of the United States department of agriculture;

E. "landowner" includes resident and nonresident owners of natural resources as defined in the Soil and Water Conservation District Act;

F. "due notice" means the publication of the appropriate information in notice form in a newspaper or other written medium of general circulation within the affected geographical area at least twice with a period of ten or more days intervening between the first and last publication; if a newspaper of general circulation or other written medium of general circulation does not service the affected geographical area, due notice may be given by posting the appropriate information in notice form in six conspicuous public places where it is customary to post notices concerning county or municipal affairs within the affected geographical area;

G. "division" means the forestry division of the energy, minerals and natural resources department;

H. "natural resources" includes land, except the oil and gas and other minerals underlying the land, soil, water, vegetation, trees, natural beauty, scenery and open space; human resources are included where appropriate; and

I. "secretary" means the secretary of energy, minerals and natural resources.

**History:** 1953 Comp., § 45-5-44, enacted by Laws 1965, ch. 137, § 3; 1973, ch. 324, § 2; 1977, ch. 254, § 57; 1987, ch. 234, § 78.

**The 1987 amendment**, effective July 1, 1987, in Subsection G, substituted "the forestry division of the energy, minerals and natural resources department" for "the soil and water conservation division"; added Subsection I; and made a minor language change in Subsection H.

## **73-20-28. Soil and water conservation commission members.**

There is created a "soil and water conservation commission" to be composed of seven continuing members and five ex-officio members. The seven continuing commission members shall be selected by, and serve at the pleasure of the governor. Six continuing committee members shall be district supervisors and shall be selected and appointed from a panel of three candidates from each region, compiled by the districts of each region and presented by the president of the state association of soil and water conservation districts. One continuing commission member shall be selected at large and shall be a person interested and active in the conservation or development of natural resources in New Mexico. The five ex-officio commission members shall serve without vote and shall include:

A. the governor or his designee;

B. the associate director of the state cooperative extension service, New Mexico state university, or his designee;

C. the associate director of the state agricultural experiment station, New Mexico state university, or his designee;

D. the state conservationist, soil conservation service, United States department of agriculture, or his designee; and

E. the president of the state association of soil and water conservation districts, or his designee.

**History:** 1953 Comp., § 45-5-45, enacted by Laws 1965, ch. 137, § 4; 1973, ch. 324, § 3; 1977, ch. 254, § 58.

### **73-20-29. Selection of commission chairman; quorum; compensation; function.**

A. Upon the appointment of seven continuing commission members by the governor, the commission shall organize and shall select and designate a chairman, who shall serve at the pleasure of the commission.

B. In the performance of commission functions, a majority of the continuing commission members shall constitute a quorum; the concurrence of a quorum majority shall be required to carry or to determine any matter of commission business.

C. Members of the commission shall receive no compensation for their services but shall be entitled to be reimbursed for actual expenses incurred in accordance with the provisions of the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978].

**History:** 1953 Comp., § 45-5-46, enacted by Laws 1965, ch. 137, § 5; 1977, ch. 254, § 59.

**Determination of quorum.** - The rule generally is to the effect that a quorum is a certain number of the members of a body who are entitled to vote. The determination of the number for a quorum should be made on the basis of the ex-officio membership as well as the regular membership. 1959-60 Op. Att'y Gen. No. 60-13.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation § 61.

94 C.J.S. Waters § 320.

### **73-20-30. Repealed.**

#### **ANNOTATIONS**

**Repeals.** - Laws 1987, ch. 234, § 84 repeals 73-20-30 NMSA 1978, as enacted by Laws 1977, ch. 254, § 60, relating to creation of the soil and water conservation division and the appointment of a director, effective July 1, 1987. For provisions of the former section, see the 1978 original pamphlet. For present comparable provisions, see 9-5A-3 and 9-5A-7 NMSA 1978.

### **73-20-31. Powers and duties of secretary and soil and water conservation commission.**

A. The supervising officer of any state agency or institution of learning shall, within the limitations of his budget and the demands of his agency or institution, assign or detail staff or personnel, render special reports and undertake surveys or studies for the soil and water conservation bureau of the division and for the commission as requested.

B. The secretary, with the advice of the commission shall:

(1) assist districts in the development of district soil and water conservation programs and, from such programs, develop a soil and water conservation program for the state;

(2) provide information for district supervisors concerning the experience and activities of all districts and facilitate the exchange of experience and advice among districts;

(3) promote cooperation among districts and, by advice and consultation, assist in the coordination of district programs;

(4) secure and maintain the cooperation and assistance of state and federal agencies and seek to secure and maintain the cooperation and assistance of national, state and local organizations and groups interested or active in natural resource conservation and development;

(5) disseminate information throughout the state concerning district activities and programs; and

(6) encourage and, within budget limitations, render aid and assistance to district activities and facilitate and encourage the formation of new districts in areas where district organization is desirable.

C. The commission may, on its own initiative, furnish advice and recommendations to the secretary concerning any matter that in its opinion has a significant impact on or otherwise substantially affects soil and water conservation.

**History:** 1953 Comp., § 45-5-47, enacted by Laws 1978, ch. 175, § 1; 1987, ch. 234, § 79.

**Repeals and reenactments.** - Laws 1977, ch. 254, § 61, repealed a former 45-5-47, 1953 Comp., relating to the powers and duties of the former soil and water conservation commission, and enacted former § 45-5-47, 1953 Comp.

Laws 1978, ch. 175, § 1, repealed former 45-5-47, 1953 Comp. (former 73-20-31 NMSA 1978), relating to powers and duties of the soil and water conservation division, and enacted a new 73-20-31 NMSA 1978.

**The 1987 amendment,** effective July 1, 1987, deleted former Subsections A and B, concerning adoption of the seal, keeping of records, personnel, surety bonds and delegation of authority relating to the soil and water conservation division; redesignated former Subsection C as present Subsection A; in Subsection A, inserted "soil and water conservation bureau of the" preceding "division"; deleted former Subsection D, concerning rules and regulations; redesignated former Subsection E as present Subsection B; in Subsection B, in the opening clause substituted "secretary, with the advice of the commission shall" for "division shall as directed by the commission"; deleted former Subsection F, relating to the purchase and leasing of equipment and other personal property; added present Subsection C; and made minor language changes throughout the section.

**Sale of personal property of district.** - Unless the provisions of 13-6-2 NMSA 1978 are complied with, personal property of a soil conservation district (now soil and water conservation district) cannot be sold, regardless of how or from whom acquired, without first obtaining approval of the state board of finance. 1963-64 Op. Att'y Gen. No. 63-125.

**Financial aid to districts by division limited.** - If the commission directs the division to assist the districts in paying for their audits, then the division must, within its budgetary limits, render financial aid to the districts; in the absence of a commission directive, the division may not provide financial assistance to the districts for the audits. 1980 Op. Att'y Gen. No. 80-19.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 81A C.J.S. States § 138.

**73-20-32. Additional duties of division.**



In addition to all other powers and duties of the division, it shall:

A. upon request and within budget limitations, provide land use planning assistance in the areas of terrain management consisting of flood control, drainage, erosion and measures required for adapting proposed development to existing soil characteristics and topography; and

B. with the approval of the commission, divide the state into six soil and water conservation regions and assign each of the presently created soil and water conservation districts or those created in the future to one of the six geographical regions. Division and assignment may be amended from time to time with the consent of the commission as the boundaries of the districts alter or other conditions warrant.

**History:** 1953 Comp., § 45-5-47.1, enacted by Laws 1973, ch. 324, § 4; 1977, ch. 254, § 62.

### **73-20-33. Soil and water conservation districts; creation.**

A. Twenty-five landowners whose land lies within the exterior limits of a geographical area proposed to be organized into a soil and water conservation district may petition the commission for the organization of a district. The petition shall state:

(1) the proposed district name;

(2) the need for the proposed district and the manner in which it would be in the interest of the public health, safety and welfare;

(3) by accurate description, supplemented and depicted by an accurate map, the geographical area proposed to be organized into a district; and

(4) a request that:

(a) the commission define the boundaries of the proposed district;

(b) a referendum be held within the boundaries submitting, to the voters' determination, the question of creating the districts; and

(c) the commission subsequently declare the proposed district be created.

B. If any portion of the same geographical area is described in more than one petition, the commission may consolidate petitions in the manner it deems expedient.

C. Within thirty days next succeeding the filing of a petition, the commission shall cause due notice to be given to all affected persons of a hearing scheduled to determine the necessity and desirability of the proposed district, and to determine district boundaries, the propriety of the petition and any other relevant questions.

Owners of land lying within the geographical area described for the proposed district and owners of land which is being considered for addition to or inclusion in a proposed or extant district shall be given due notice of hearing; and all affected or interested persons may attend commission hearings and shall have the right to be heard. If, upon hearing, it is determined to be desirable to include in a proposed district lands not contemplated by the petition, the hearing shall adjourn, an amended petition shall be required and due notice shall be given to all owners of land proposed to be included in the new district.

D. The commission shall determine, at the conclusion of hearing, whether a proposed district is necessary and desirable. In making its determination of the necessity of a proposed district and in defining district boundaries, the commission shall consider:

(1) the need for the proposed district and its probable effect upon public health, safety and welfare;

(2) the topography and composition of soils comprising the area to be affected;

(3) the distribution of erosion within the land to be affected, and within surrounding lands;

(4) the prevailing land use practices; and

(5) the probable effect of the proposed district upon, and its relation to, watersheds, agriculturally productive lands and other extant or proposed districts. The findings of the commission and its final determination shall not be limited solely to an evaluation of the facts adduced at the hearing or those set forth in a petition, but shall be predicated upon all reliable information available to the commission, including reports, studies and other authoritative publications.

E. If the commission shall find a proposed district to be necessary and desirable, it shall approve the petition, enter and record its final determination and define the district by legal description. If the commission shall find no need for a proposed district, it shall deny the petition and enter and record its final determination. A geographical area or a substantial portion thereof may not be the subject of a petition submitted for consideration by the commission more than one time in any calendar year.

**History:** 1953 Comp., § 45-5-48, enacted by Laws 1965, ch. 137, § 7; 1977, ch. 254, § 63.

**Separate political subdivision.** - Soil conservation district (now soil and water conservation district) properly organized under laws of state is separate political subdivision thereof. 1955-56 Op. Att'y Gen. No. 6465.

**Benefits available to all landowners.** - Landowner does not join soil and conservation district; upon its formation, benefits thereof are available to all owners of land located

within boundaries of district, whether such owners have joined said district or not. 1966 Op. Att'y Gen. No. 66-48.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 94 C.J.S. Waters §§ 318, 319.

**73-20-34. Soil and water conservation districts; creation; referendum.**

A. When a final determination of the commission that a proposed district is necessary and desirable has been entered and recorded, the commission shall then determine whether the operation of the district is administratively practicable. To assist in this determination the commission shall, within a reasonable time, call for a referendum on the proposed district within the geographical boundaries of the district as defined by the commission. All owners of land lying within the proposed district shall be eligible to vote.

B. The commission shall provide for due notice of referendum within a proposed district and for the registration of eligible voters, and it shall adopt and publish rules to govern the orderly conduct of a referendum. The proposal shall be presented to the voters on ballots as follows:

**"  For the creation of a soil and water conservation district of the lands described below and lying in the county (counties) of . . . . ., . . . . ., and . . . . ."** and

**"  Against the creation of a soil and water conservation district of the lands described below and lying in the county (counties) of . . . . ., . . . . ., and . . . . ."**

A square shall be printed before the affirmative and negative of each proposition with voter instruction to mark an "X" in the square representing the position that the voter adopts on the presented proposition. The ballot shall define, in general terms and by legal description, the area encompassed within the proposed district.

C. Informalities or irregularities in the conduct of a referendum shall have no effect upon its result if due notice of referendum requirements have [has] been substantially complied with and balloting has been fairly conducted in substantial compliance with the rules adopted and published by the commission. The commission shall publish referendum results, and thereafter, shall make a final determination of whether the proposed district is administratively practicable; provided, however, in the event that approval of the proposed district is not carried by a majority of votes cast in a referendum, the commission shall deny the petition and shall enter and record its order.

D. In making its determination of the administrative practicability of the proposed district, the commission shall consider:

(1) the number and attitudes of the owners of lands lying within the defined boundaries of the proposed district;

(2) the number of votes cast in the referendum as compared to the number of eligible voters;

(3) the economic position of the owners of lands lying within the defined boundaries of the proposed district; and

(4) the probable burden and expense of a resource development program in the proposed district. If the commission shall find a proposed district not to be administratively practicable, it shall deny the petition and enter and record its final determination. If the commission shall find a proposed district to be administratively practicable, it shall record its final determination and proceed with the organization of the district.

**History:** 1953 Comp., § 45-5-49, enacted by Laws 1965, ch. 137, § 8; 1977, ch. 254, § 64.

**Benefits available to all landowners.** - Landowner does not join soil and conservation district; upon formation thereof, benefits of soil and water conservation district are available to all owners of land located within boundaries of district, whether such owners have joined said district or not. 1966 Op. Att'y Gen. No. 66-48.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 94 C.J.S. Waters § 319.

### **73-20-35. Soil and water conservation districts; organization.**

A. Upon the determination that a proposed district is necessary and administratively practicable, the commission shall appoint two interim supervisors [supervisors] within the district who shall be the governing body of the district until an election of supervisors shall be held. The two interim supervisors shall present to the secretary of state their verified application, stating:

(1) a recital of the proceedings conducted;

(2) that all proceedings were undertaken lawfully and in accordance with the provisions of the Soil and Water Conservation District Act [73-20-25 to 73-20-49 NMSA 1978];

(3) the name of the proposed district, and its geographical boundaries;

(4) the name and official residence of each applicant together with a certified copy of each appointment evidencing the applicant's right to office; and

(5) the designation of the principal office of the supervisors of the district.

The verified application of the two district interim supervisors shall be accompanied by certified copies of the commission's recorded orders of determination that the proposed district is necessary and is administratively practicable.

B. The secretary of state, upon finding the application and its supporting attachments are in substantial compliance with the provisions of this section, shall receive, file and record the application in an appropriate book of record; and he shall make and issue to the applicants, under state seal, a certificate of organization of the district. From the date of issuance of the certificate of organization by the secretary of state, the district shall be an agency and subdivision of the state. In any action or proceeding relating to a district or an act of the district the certificate of organization of the district shall be admissible in evidence as proof of its contents.

C. If the secretary of state shall find the name of a proposed district to be the same as, or substantially similar to the name of an existing organized district, he shall certify the fact to the commission; and the commission shall, with the assistance of the appointed district interim supervisors, select and submit a new name to the secretary of state.

**History:** 1953 Comp., § 45-5-50, enacted by Laws 1965, ch. 137, § 9; 1977, ch. 254, § 65.

**Separate political subdivision.** - Soil conservation district (now soil and water conservation district), properly organized under laws of state, is separate political subdivision thereof. 1955-56 Op. Att'y Gen. No. 6465.

**Benefits available to all landowners.** - Landowner does not join soil and conservation district upon formation thereof; benefits of soil and water conservation district are available to all owners of land located within boundaries of district, whether such owners have joined said district or not. 1966 Op. Att'y Gen. No. 66-48.

**District not subject to licensing.** - Former contractor's license board had no authority to license water or soil conservation district in New Mexico. 1966 Op. Att'y Gen. No. 66-48.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 94 C.J.S. Waters § 319.

### **73-20-36. Soil and water conservation districts; modification of existing districts.**

A. Petitions for including additional land within an existing organized district may be filed with the division and shall be treated in the same manner as petitions for the creation of a proposed district. If, however, such a petition is signed by two-thirds or more of the owners of the additional land proposed to be included in the district, the commission may enter its determinations without hearing or referendum.

B. Petitions for severing land from the defined geographical area of an existing organized district, or for its severance and inclusion within another existing organized district, may be filed with the division and may be treated in the same manner as petitions for the creation of a proposed district. If, however, such petition is signed by two-thirds or more of the owners of the land to be severed, or is submitted by the boards of supervisors of each district affected, the commission may enter its determinations without hearing or referendum.

C. Petitions for consolidating two or more districts or for separating an existing district into two or more districts may be filed with the division by the boards of supervisors of each district affected. After due notice a public hearing shall be held in each district affected, and no action can be taken without the majority approval of the voters present at the hearing. If petitions have been filed pursuant to this subsection and approved as herein provided, it shall not be necessary to obtain the consent of the landowners within the districts prior to the consolidation or division.

D. The commission shall give written notice to the secretary of state of any modification in the defined geographical area of any existing organized district; the notice of modification shall describe and portray by map the modified geographical area. The secretary of state shall note, file and record each modification and shall issue, under state seal, a certificate of reorganization to each district affected. Certificates of reorganization shall have the same force and effect, and shall be accorded the same dignity, as the certificates they supersede.

E. In the event a supervisor of a district is disqualified from holding office by the modification of his district, he shall be deemed to have resigned, and his successor shall be appointed to serve the unexpired term by the remaining supervisors of the district. In the event two or more supervisors are disqualified from holding office by the modification of a district, their successors shall be appointed to serve the unexpired terms by the commission.

**History:** 1953 Comp., § 45-5-51, enacted by Laws 1978, ch. 85, § 1.

**Repeals and reenactments.** - Laws 1978, ch. 85, § 1, repeals 45-5-51, 1953 Comp. (former 73-20-36 NMSA 1978), relating to modification of existing natural resource conservation districts, and enacts the above section.

### **73-20-37. District supervisors; election and appointment; new districts.**

A. The governing body of each district shall be composed of five supervisors, four of whom shall be elected, one from each zone; provided, however, two additional supervisors may be appointed to the governing body of each district by the commission in accordance with the provisions of the Soil and Water Conservation District Act [73-20-25 to 73-20-49 NMSA 1978]. A supervisor shall serve a term of three years and shall continue in office until his successor has been elected or appointed and has qualified. A

vacant unexpired term of the office of supervisor shall be filled by the appointment of the remaining supervisors of the district. Two or more vacant unexpired terms of the offices of supervisor, occurring simultaneously in the same district, shall be filled by appointment of the commission. Four elected supervisors of each district shall be owners of land within the defined geographical area of their district. One elected supervisor shall be designated supervisor-at-large and may serve the district without qualification.

B. Unless a different time is prescribed by the commission, within thirty days following the issuance of a certificate or [of] organization to the two interim supervisors of a district, nominating petitions proposing candidates for supervisor of the district may be filed with the division. Nominating petitions shall be signed by not less than ten owners of land situate within the district; landowners shall not be restricted in the number of nominating petitions which they may subscribe. The commission shall give due notice of election for the offices of five district supervisors. All owners of land situate within the district shall be eligible to vote. The commission shall adopt and prescribe regulations governing the conduct of the election, shall determine voter eligibility and supervise the election, shall bear the expenses of election and shall publish its results.

C. In the first election of supervisors to serve a newly organized district, two supervisors shall be elected for terms of one year; two supervisors shall be elected for terms of two years; and the supervisor-at-large shall be elected for a term of three years. Thereafter, each elected supervisor shall serve a term of three years.

D. Appointed interim supervisors may continue to serve as appointed supervisors at the pleasure of the commission or until their successors are otherwise appointed.

**History:** 1953 Comp., § 45-5-52, enacted by Laws 1965, ch. 137, § 11; 1973, ch. 324, § 6; 1977, ch. 254, § 67.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 94 C.J.S. Waters § 320.

### **73-20-38. District supervisors; election and appointment; organized districts.**

A. Successors to supervisors of organized districts whose terms end in a calendar year shall be elected during the period September 1 to November 1 of that year. Election dates shall be determined by the supervisors of the district and may concur with the time of annual meeting of district landowners. Elections shall be called, conducted and returned in the same manner as the first election of supervisors of a newly organized district; provided, however, that the powers conferred upon the commission in conducting the first election of supervisors in a newly organized district shall apply to, and be exercised by the supervisors of the organized district.

B. In a district election held during an annual meeting of district landowners, the nomination of a supervisor candidate may be made from the floor of the meeting as well

as by nominating petition. The district supervisors shall determine the results of a district election, shall certify and publish the results and shall give the commission notice of their canvass within seven days.

C. In the first annual election of supervisors to serve an extant organized district, following the enactment of the Soil and Water Conservation District Act [73-20-25 to 73-20-49 NMSA 1978], two supervisors shall be elected for terms of one year, two supervisors shall be elected for terms of two years and the supervisor-at-large shall be elected for a term of three years. Thereafter, each elected supervisor shall serve a term of three years.

D. Regulations promulgated by the soil and water conservation commission and the election provisions of the Soil and Water Conservation District Act shall be exclusive in the conduct of district elections. The soil and water conservation commission shall promulgate rules and regulations under the provisions of the Administrative Procedures Act [12-8-1 to 12-8-25 NMSA 1978].

E. Within forty days after an annual district election, the district supervisors shall submit to the division a list of five names of persons interested in the district and who by experience or training are qualified to serve as supervisors. The commission may appoint two persons from the list submitted to serve as district supervisors if it is the determination of the commission that the appointments are necessary or desirable and would benefit or facilitate the work and functions of the district. In the event a list is not submitted to the division by the district supervisors within forty days after an annual district election, the commission may appoint at will two district supervisors qualified to serve by training or experience. Appointed district supervisors shall serve at the pleasure of the commission and shall have the same powers, and perform the same duties as elected supervisors. Successors to appointed supervisors, or replacement appointed supervisors in the event of vacancy, shall be appointed by the commission from a list of candidates or at will in accordance with the provisions of this subsection.

**History:** 1953 Comp., § 45-5-53, enacted by Laws 1965, ch. 137, § 12; 1973, ch. 324, § 7; 1977, ch. 254, § 68.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 94 C.J.S. Waters § 320.

### **73-20-39. Election of district supervisors; district zones.**

In adopting and promulgating rules and regulations for the election of district supervisors and the registration of district voters, the commission may, to ensure proper representation of district landowners and to facilitate district functions, provide for the geographic zoning of a district. The commission shall provide for the proper and equitable representation for each faction geographically zoned in the district. If a district is divided, or if two or more districts are consolidated, the commission shall provide for the geographic zoning of the resulting district or districts within thirty days after the secretary of state issues the certificate of organization for each new district.



**History:** 1953 Comp., § 45-5-54, enacted by Laws 1965, ch. 137, § 13; 1973, ch. 324, § 8; 1977, ch. 254, § 69.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 94 C.J.S. Waters § 320.

### **73-20-40. Selection of district supervisor chairman; quorum; compensation.**

Within a reasonable time after each annual election, the supervisors of a district shall organize and shall select and designate a district chairman who shall be a supervisor and who shall serve at the pleasure of the district supervisors. In the performance of district functions, a majority of supervisors shall constitute a quorum; the concurrence of the quorum majority shall be required to carry or to determine any matter of district business. Supervisors shall receive [receive] no compensation for their services but shall be entitled to be reimbursed for actual expenses incurred in accordance with the provisions of the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978].

**History:** 1953 Comp., § 45-5-55, enacted by Laws 1965, ch. 137, § 14; 1973, ch. 324, § 9.

### **73-20-41. Powers and duties of district supervisors.**

A. District supervisors may employ a secretary and such other agents, employees and technical or professional experts as they may from time to time require, and may determine qualifications, compensation and duties applicable to any agent, employee or expert engaged. District supervisors shall require and provide for the execution of a corporate surety bond in suitable penal sum for, and to cover any person entrusted with the care or disposition of district funds or property. District supervisors may delegate their powers to one or more district supervisors or to one or more district employees, agents or experts.

B. District supervisors may call upon the district attorney of the judicial district within which all or a part of the district lands may be situate for legal services required by the district. District supervisors may invite the legislative body of any municipality or county situate within, near or comprising a part of the district, to designate a representative to advise and consult with the supervisors on matters affecting property, water distribution or other matters of interest to the municipality or county.

C. District supervisors are authorized to adopt and promulgate rules and regulations necessary for the proper execution of district duties and activities. The supervisors shall:

(1) keep a full and accurate record of all district proceedings and of all resolutions, regulations and orders issued or adopted;

(2) provide for, and submit to an annual audit of district accounts or receipts and disbursements; in the event district receipts total more than five thousand dollars (\$5,000) annually;

(3) furnish to the division a complete report of district proceedings and activities during each fiscal year, including a financial report;

(4) furnish, or make available to the division upon request, district files and copies of rules, regulations, orders, contracts, forms and other documents adopted or employed in conducting district activities; and

(5) call and give due notice of an annual meeting of the owners of land situate within the district to be held on a designated date within the period September 1 to November 1.

**History:** 1953 Comp., § 45-5-56, enacted by Laws 1965, ch. 137, § 15; 1977, ch. 254, § 70; 1981, ch. 337, § 2.

**State auditor and conservation district supervisors have statutory duty to audit district.** - Both the state auditor and the soil and water conservation district supervisors have an express statutory duty to have district financial affairs audited; the primary responsibility for having the audits performed should be borne by the district supervisors, but the ultimate responsibility lies with the state auditor, who is responsible for ensuring that every agency's financial records are examined and audited. 1980 Op. Att'y Gen. No. 80-19.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 94 C.J.S. Waters § 320.

### **73-20-42. Removal of district supervisors.**

A district supervisor may be removed from office by the commission if it shall appear to the commission after reasonable notice and impartial hearing, that the supervisor is guilty of misfeasance or malfeasance in office. A district supervisor who fails to attend three consecutive meetings of district supervisors without reasonable or acceptable excuse shall be deemed to have resigned, and his successor shall be elected or appointed as in case of any other vacancy.

**History:** 1953 Comp., § 45-5-57, enacted by Laws 1965, ch. 137, § 16; 1977, ch. 254, § 71.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 94 C.J.S. Waters § 320.

### **73-20-43. Perpetuation of districts; continuity of commission and supervisors.**

Soil conservation districts created and organized under the provisions of the Soil Conservation District Law [repealed], and continued as soil and water conservation

districts created and delineated by the Soil and Water Conservation District Act [73-20-25 to 73-20-49 NMSA 1978], and continued as natural resource districts created and delineated by the Natural Resource Conservation District Act are perpetuated and shall continue to exist as soil and water conservation districts created and delineated by the Soil and Water Conservation District Act. Members of the state soil conservation committee and supervisors of state soil conservation districts which were perpetuated in office and continued to serve as members of the state soil and water conservation committee and as supervisors of soil and water conservation districts, respectively, until their successors were elected and appointed in accordance with the provisions of the Soil and Water Conservation District Act, and were perpetuated in office and continued to serve as members of the state natural resource conservation commission and as supervisors of natural resource conservation districts respectively, until their successors were elected and appointed in accordance with the provisions of the Natural Resource Conservation District Act, are perpetuated in office and shall continue to serve as members of the soil and water conservation commission and as supervisors of soil and water conservation districts, respectively, until their successors are elected and appointed in accordance with the provisions of the Soil and Water Conservation District Act.

**History:** 1953 Comp., § 45-5-58, enacted by Laws 1965, ch. 137, § 17; 1973, ch. 324, § 10; 1977, ch. 254, § 72.

**Soil and Water Conservation District Act.** - The Soil Conservation District Law referred to in this section was repealed by Laws 1965, Chapter 137, which enacted a "Soil and Water Conservation District Act." The provisions of Laws 1965, Chapter 137 are presently compiled as 73-20-25 to 73-20-29, 73-20-33 to 73-20-49 NMSA 1978. Laws 1973, ch. 324, § 1 changed the title of the act to the "Natural Resources Conservation District Act" and included in the definition thereof present 73-20-25 to 73-20-49 NMSA 1978, inclusive. Laws 1977, ch. 254, § 56 again changed the title of the act to the "Soil and Water Conservation District Act." See 73-20-25 NMSA 1978.

#### **73-20-44. Districts defined; general powers of districts.**

A soil and water conservation district organized under, or perpetuated by the provisions of the Soil and Water Conservation District Act [73-20-25 to 73-20-49 NMSA 1978] is a governmental subdivision of the state, a public body politic and corporate. By and through its supervisors, a district may:

A. conduct research, investigations and surveys treating soil erosion and floodwater and sediment damage, concerning the conservation, development, utilization and disposal of all waters, and relating to control programs and public works necessary to facilitate conservation and development. To prevent duplication of research activities, district investigative programs shall be initiated in cooperation with a governmental unit, if any, conducting or charged with the conduct of research in the same or similar scientific field;

- B. publish and disseminate research findings and preventive and control measures relating to resource conservation and development;
- C. with the consent and cooperation of the landowner or the state agency administering the land, conduct projects upon land within the district to demonstrate by example the methods by which soil and other natural resources may be conserved, by which soil erosion in the form of blowing and washing may be controlled or prevented, and by which flood prevention and the conservation, development, utilization and disposal of water may be carried out; the projects may include, but shall not be limited to, engineering operations, methods of cultivation and variations in land use;
- D. assist, contract with and render financial aid to, district landowners and state agencies administering land within the district, and which are engaged in erosion control and prevention projects, flood prevention works or the conservation, development, utilization and disposal of water within the district;
- E. make available to district landowners, on such terms as the supervisors may prescribe, tools, machinery, equipment, fertilizer, seeds and other materials to assist the landowners in initiating and developing natural resource conservation and development projects;
- F. develop comprehensive plans for natural resource conservation and development, including flood prevention, control and prevention of soil erosion, and the development, utilization and disposal of water; the plans shall be detailed and shall specify as completely as possible the necessary or desirable acts, procedures, performances and avoidances to implement the plan, including engineering specifications, methods of cultivation, cropping programs, tilling practices and land use changes;
- G. foster, publish and promote district natural resource development plans and their adoption and development by landowners within the district;
- H. acquire or administer the project of any other governmental agency undertaken to provide for soil conservation, erosion control, erosion prevention, flood prevention or the conservation, development, utilization or disposal of water within the district;
- I. act as agent for any instrumentality or agency of the state or of the federal government in the acquisition, construction, operation or administration of a natural resource conservation or development project or program within the district; and
- J. construct, improve, operate or maintain physical projects and structures necessary or convenient for the performance of any authorized district function.

**History:** 1953 Comp., § 45-5-59, enacted by Laws 1965, ch. 137, § 18.

**Exemption from Procurement Code.** - Soil and water conservation districts are not exempt from Public Purchases Act (now Procurement Code, 13-1-28 to 13-1-199 NMSA 1978). 1967 Op. Att'y Gen. No. 67-111.

**Borrowing funds.** - Since soil and water conservation districts are political subdivisions of this state they qualify as entities to which interstate stream commission can lend money, and such district is authorized to borrow funds from the commission. 1972 Op. Att'y Gen. No. 72-54.

**Lending to members.** - Soil and water conservation district may lend funds borrowed from interstate stream commission to its members. 1972 Op. Att'y Gen. No. 72-54.

**Licensing law inapplicable.** - Water or soil conservation district located anywhere in state may undertake any type of work authorized under Soil and Water Conservation District Act; former contractors' license board had no authority to license a water or soil conservation district. 1966 Op. Att'y Gen. No. 66-48.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 94 C.J.S. Waters § 321.

### **73-20-45. Specific powers of districts.**

A soil and water conservation district, by and through its supervisors, is authorized to:

A. sue and be sued in the name of the district;

B. adopt an official seal;

C. contract, to convey and to make and execute other instruments and documents necessary or convenient to the exercise of district powers;

D. to borrow money and otherwise contract indebtedness for the purposes of the district and, without limitation of the generality of the foregoing, to borrow money and accept grants from the United States of America, or from any corporation or agency created or designated by the United States of America, and, in connection with any such loan or grant to enter into such agreements as the United States of America or such corporation or agency may require; and to issue its notes or obligations therefor and to secure the payment thereof by mortgage, pledge or deed of trust of all or any of its property, assets, rights, privileges, licenses, rights-of-way, easements, revenues or income;

E. option, as optionee and optioner, and to acquire, in any manner, real and personal property, or any right or interest therein;

F. improve, rent, lease and sell district property or any interest therein;

G. receive, invest and reinvest rents and income from district property, and to expend rents and income for district purposes; and

H. accept contributions, gifts and donations, and to expend and utilize them to further district purposes. Neither the State Purchasing Act [repealed] nor any other statute, except the Soil and Water Conservation District Act [73-20-25 to 73-20-49 NMSA 1978], shall apply to the acquisition, use or disposition of district property.

**History:** 1953 Comp., § 45-5-60, enacted by Laws 1965, ch. 137, § 19.

**State Purchasing Act.** - The State Purchasing Act, referred to in Subsection H of this section, was repealed by Laws 1967, ch. 250, § 20 and Laws 1975, ch. 163, § 12. Laws 1967, ch. 250 enacted the Public Purchases Act to replace the former State Purchasing Act. Laws 1984, ch. 65 repealed the Public Purchases Act and enacted the present Procurement Code, 13-1-28 to 13-1-199 NMSA 1978.

**Public Purchases Act.** - Soil and water conservation districts are not exempt from the Public Purchases Act (now Procurement Code, 13-1-28 to 13-1-199 NMSA 1978). 1967 Op. Att'y Gen. No. 67-111.

**Repeal by implication.** - Subsection H of this section is repealed by implication by the Public Purchases Act (now Procurement Code, 13-1-28 to 13-1-199 NMSA 1978) insofar as the two are repugnant. 1967 Op. Att'y Gen. No. 67-110.

**Borrowing authorized.** - Since soil and water conservation districts are political subdivisions of this state they qualify as entities to which interstate stream commission can lend money, and such district is authorized to borrow funds from the commission. 1972 Op. Att'y Gen. No. 72-54.

**Soil and water conservation district may lend funds** borrowed from interstate stream commission to its members. 1972 Op. Att'y Gen. No. 72-54.

**Suit by subcontractors not authorized.** - There was no statutory consent by state to suit against former soil conservation district by laborers or materialmen dealing with prime contractor rather than directly with district, and no such liability could be implied. 1957-58 Op. Att'y Gen. No. 58-148.

Contractor's creditors could not impose lien against former soil conservation district for contractor's debts. 1957-58 Op. Att'y Gen. No. 58-148.

**Collection for work done.** - District attorney was required to represent former soil conservation district in collecting for work done by district for members thereof. 1959-60 Op. Att'y Gen. No. 59-47.

### **73-20-46. District assessments.**

A. In the event a district is unable to meet or bear the expense of the duties imposed upon it by the Soil and Water Conservation District Act [73-20-25 to 73-20-49 NMSA 1978], the supervisors may adopt a resolution which, to be effective, must be approved

by referendum in the district, and which shall provide for an annual levy for a stated period of up to ten years in a stated amount not exceeding one dollar (\$1.00), or any lower maximum amount required by operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978 upon the assessment authorized by this section, on each one thousand dollars (\$1,000) of net taxable value, as that term is defined in the Property Tax Code [Chapter 7, Articles 35 to 38 NMSA 1978], of real property within the district, except that real property within incorporated cities and towns in the district may be excluded. The referendum held to approve or reject the resolution of the supervisors shall be conducted with appropriate ballot and in substantially the same manner as a referendum adopting and approving the creation of a proposed district. After the initial authorization is approved by referendum, the supervisors shall adopt a resolution in each following year authorizing the levy. To extend an assessment beyond the period of time originally authorized and approved by referendum, the supervisors shall adopt a new resolution and the district voters must approve it in a referendum. The extension shall be for the same period of time as originally approved, but the rate of the tax may be different as long as it does not exceed one dollar (\$1.00) on each one thousand dollars (\$1,000) of net taxable value of real property within the district, except that real property within incorporated municipalities in the district may be excluded. If the district is indebted to the United States or the state or any of their respective agencies or instrumentalities at the time of the expiration of the original authorization, the supervisors may renew the assessment by resolution for a period not to exceed the maturity date of the indebtedness, and no referendum for that renewal is necessary.

B. No resolution authorized under Subsection A of this section shall be effective, and neither a referendum nor a levy is authorized, unless the resolution is submitted to and approved in writing by the soil and water conservation commission created under Section 73-20-28 NMSA 1978.

C. In the event a resolution of the supervisors is adopted and approved in accordance with the provisions of Subsection A of this section, the supervisors of the district shall certify by the fifteenth of July of each year to the county assessor of each county in which there is situate land subject to the district assessment:

- (1) a copy of the resolution of the district supervisors;
- (2) the results of any referendum held in the year the certification is made; and
- (3) a list of landowners of the district and a description of the land owned by each which is subject to assessment.

D. A county assessor shall indicate the information on the tax schedules, shall compute the assessment and shall present the district assessment by regular tax bill.

E. The district assessment shall be collected by the county treasurer of each county in which taxable district land is situate in the same manner and at the same time that county ad valorem taxes are levied. The conditions, penalties and rates of interest

applicable to county ad valorem taxation apply to the levy and collection of district assessments. A county treasurer shall be entitled to a collection fee equal to the actual costs of collection or four percent of the money collected from the levy of the district assessment, whichever is the lesser.

F. District assessment funds shall be transferred to and held by the district supervisors and shall be expended for district obligations and functions. All district funds shall be expended in accordance with budgets approved by the commission and by the local government division of the department of finance and administration.

G. In the event the supervisors of a district determine that there are or will be sufficient funds available for the operation of the district for any year for which an assessment is to be levied, they shall, by resolution, direct the assessor of each county in which taxable district land is situate, by July 15 of each year, to decrease the district assessment or to delete the district assessment reflected on the tax schedules.

H. Any levy authorized by the Soil and Water Conservation District Act, and any loan or other indebtedness authorized by that act which will require a levy, shall be based exclusively on or levied exclusively on the real property in the district, except that real property within incorporated cities and towns may be included. Owners of nonagricultural land may petition the district board of supervisors to delete their real property from the tax schedules, insofar as the district assessment is concerned; provided that these lands will not benefit from the operation of the district or the project for which the loan or levy is to be made.

**History:** 1953 Comp., § 45-5-61, enacted by Laws 1965, ch. 137, § 20; 1969, ch. 164, § 1; 1977, ch. 254, § 73; 1986, ch. 32, § 39; 1989, ch. 21, § 1; 1989, ch. 273, § 1.

**Cross-references.** - As to county assessor, see 4-39-1 NMSA 1978.

As to county treasurer, see 4-43-1 NMSA 1978.

As to local government division of the department of finance and administration, see 9-6-3 NMSA 1978.

As to referendums creating soil and water conservation districts, see 73-20-34 NMSA 1978.

**The 1986 amendment,** in Subsection A, substituted the language following "not exceeding" in the first sentence for "one mill per dollar of total taxable valuation of real property, except that real property within incorporated cities and towns in the district may be excluded" and inserted "by July 15 of each year" in the second sentence; in Subsection B, inserted "by the fifteenth of July of each year" in the introductory paragraph; in Subsections C, F, and G, substituted "tax schedules" for "tax rolls"; and, in Subsection F, substituted "by July 15 of each year" for "prior to that year's county ad valorem assessment".



**The 1989 amendments.** - Identical amendments to this section were enacted by Laws 1989, ch. 21, § 1 and Laws 1989, ch. 273, § 1, both effective June 16, 1989, which, in Subsection A, substituted "the supervisors may adopt a resolution which, to be effective, must be approved by referendum in the district, and which shall provide for annual levy for a stated period of up to ten years in a stated amount" for "the supervisors, by resolution, and the district by adoption of referendum, may levy an assessment" and substituted the last four sentences for "provided, however, an assessment shall not be levied unless, by July 15 of each year the resolution of the supervisors has been adopted and approved by a majority of the district landowners voting at the referendum"; added present Subsection B and redesignated subsequent subsections accordingly; and in Subsection C, substituted "approved in accordance with the provisions of Subsection A of this section" for "approved by the voters of the district at referendum" and present Paragraph (2) for the former paragraph, which read "the results of the referendum; and". The section is set out as amended by Laws 1989, ch. 273, § 1. See 12-1-8 NMSA 1978.

**Effective dates.** - Laws 1986, ch. 32 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 21, 1986.

**Sale of personal property of district.** - Unless the provisions of 13-6-2 NMSA 1978 are complied with, personal property of a soil conservation district (now soil and water conservation district) cannot be sold, regardless of how or from whom acquired, without first obtaining approval of the state board of finance. 1963-64 Op. Att'y Gen. No. 63-125.

**Future levy.** - Supervisors of district could adopt resolution calling for future assessment of a one mill tax to be levied in the event district was unable to repay money borrowed from interstate stream commission. 1972 Op. Att'y Gen. No. 72-54.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 45 Am. Jur. 2d Irrigation §§ 70 to 72.

94 C.J.S. Waters §§ 332 to 337.

### **73-20-47. Cooperation between districts.**

The supervisors of two or more soil and water conservation districts may cooperate with each other in the exercise of any district power.

**History:** 1953 Comp., § 45-5-62, enacted by Laws 1965, ch. 137, § 21.

### **73-20-48. State agencies to cooperate.**

Agencies, instrumentalities and political subdivisions of this state having jurisdiction over, or charged with the administration of, public lands situate within the defined geographical area of any district shall cooperate to the fullest extent with the district's supervisors in effectuating district projects and programs. District supervisors shall have free access to enter and perform work upon state public lands lying within districts;

provided, however, district supervisors shall not have unqualified access to state public lands which are subject to private dominion under lease, or which are developed for, or devoted to, another public use.

**History:** 1953 Comp., § 45-5-63, enacted by Laws 1965, ch. 137, § 22.

### **73-20-49. Dissolution of districts.**

A. At any time five years after the organization of a district any twenty-five owners of land, situate within the district, may subscribe and file a petition with the division for the dissolution of the district. To assist it in its determinations, the commission may hold public hearings upon the petition. Within sixty days of its receipt of the petition, the commission shall give due notice of referendum to adopt and approve the petition of dissolution. The referendum shall be conducted with appropriate ballot and in substantially the same manner as a referendum adopting and approving the creation of a proposed district.

B. The division shall publish the results of the referendum and, if a majority of the votes cast at the referendum adopt the petition and approve the dissolution of the district, the commission shall then determine whether the continued operation of the district within its defined geographical area is administratively practicable. In making its determination, the commission shall consider:

- (1) the attitude of the owners of lands lying within the district;
- (2) the ratio of votes cast at the referendum to the number of eligible voters;
- (3) the proportion of the total number of votes cast at the referendum to the number of votes cast in favor of the dissolution of the district;
- (4) the approximate wealth and income of the landowners of the district; and
- (5) the probable expense of carrying on natural resource conservation and development within the district.

C. In the event the commission shall determine that the continued operation of the district is not administratively practicable, it shall enter and record its determination, and shall certify its determination to the district's supervisors. Upon receipt of the commission's certification, the district's supervisors shall terminate the affairs of the district, shall dispose of all district property at public auction, or by transfer to the commission or to another district, and shall certify and deliver up the proceeds of any sale, to be paid over to the commission. The district supervisors shall file a verified application for the dissolution of the district with the secretary of state; the application shall be supported by a copy of the certificate of the commission setting forth its determination that continued operation of the district is not administratively practicable and by a verified accounting of the disposition of district property and the proceeds

therefrom. Upon receipt of a proper application, the secretary of state shall issue to the district supervisors a certificate of dissolution and shall record the certificate in an appropriate book of record in his office.

D. Upon the issuance of a certificate of dissolution by the secretary of state, the district shall dissolve and cease to exist, and all regulatory acts of the district supervisors shall have no further force or effect. The commission shall be automatically substituted for the district as a party to all executory contracts and shall be entitled to enforce all rights and obligated to perform all duties thereunder to the same effect and in the same manner as the district.

E. Petitions for the dissolution of a district may not be accepted and shall not be considered by the commission more often than once in any five-year period.

**History:** 1953 Comp., § 45-5-64, enacted by Laws 1965, ch. 137, § 23; 1977, ch. 254, § 74.

## **ARTICLE 21**

### **WATER AND SANITATION DISTRICTS**

#### **73-21-1. [Declaration of purpose.]**

It is hereby declared that the organization of water and sanitation districts, having the purposes and powers provided in this act, will serve a public use and will promote the health, safety, prosperity, security and general welfare of the inhabitants of said districts.

**History:** 1941 Comp., § 77-3401, enacted by Laws 1943, ch. 80, § 1; 1953 Comp., § 75-18-1.

**Meaning of "this act".** - The term "this act" means Laws 1943, Chapter 80, which appears as 73-21-1, 73-21-3 to 73-21-14, 73-21-16 to 73-21-26, and 73-21-28 to 73-21-35 NMSA 1978. But see 73-21-2 NMSA 1978.

**Property of state college cannot be included in sanitation district,** since state property is not subject to taxation. 1945-46 Op. Att'y Gen. No. 4948.

**Public service commission.** - Water and sanitation districts organized pursuant to this act are subject to regulation by public service commission only in matter of approving rates, tolls and charges. 1971 Op. Att'y Gen. No. 71-56.

**Water and sanitation districts subject to audit.** - Water and sanitation districts created pursuant to this article are subject to audit under the Audit Act (12-6-1 NMSA 1978 et seq.). 1990 Op. Att'y Gen. No. 90-30.

## **73-21-2. Short title.**

Sections 73-21-1 through 73-21-54 NMSA 1978 may be cited as the "Water and Sanitation District Act."

**History:** 1953 Comp., § 75-18-1.1, enacted by Laws 1977, ch. 345, § 1.

## **73-21-3. Purpose of water and sanitation districts.**

Water and sanitation districts may be created for the purpose of:

A. purchasing, acquiring, establishing or constructing waterworks to supply water for domestic, commercial and industrial purposes by any available means to persons within and without the boundaries of the district, and for this purpose any district shall have power to extend its water lines outside of the boundaries of the district for the purpose of securing a source of water supply or for the purpose of supplying such water to any lands of the United States, state of New Mexico or Indian reservations for use by any person, firm or corporation;

B. purchasing, acquiring, establishing or constructing sanitary sewers or a system or systems of sewage disposal, garbage or refuse disposal; or

C. purchasing, acquiring, establishing or constructing streets and street improvements including without limitation grades, regrades, gravel, oiling, surfacing, macadamizing, paving, crosswalks, sidewalks, driveway approaches, curbs, gutters, culverts, drains, sewers, manholes, inlets, outlets, retaining walls, bridges, overpasses, tunnels, underpasses, approaches, artificial lights and lighting equipment, parkways, grade separators, traffic separators and traffic control equipment, and all appurtenances and incidentals or any combination thereof, including real and other property therefor; or

D. establishing or constructing park and recreational improvements; or

E. all of such improvements in Subsections A through D of this section or any combination thereof within or without the district.

**History:** 1941 Comp., § 77-3402, enacted by Laws 1943, ch. 80, § 2; 1953 Comp., § 75-18-2; Laws 1963, ch. 261, § 1; 1975, ch. 219, § 1; 1977, ch. 345, § 2.

**County Improvement Law.** - References in County Improvement Law (now County Improvement District Act, 4-55A-1 NMSA 1978 et seq.) to purposes of that law should be interpreted as referring instead to this section when the improvement district is one that has been formed by a water and sanitation district. 1976 Op. Att'y Gen. No. 76-1.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 78 Am. Jur. 2d Waterworks and Water Companies § 4.

39A C.J.S. Health and Environment § 8.

### **73-21-4. Definitions.**

As used in the Water and Sanitation District Act [73-21-1 to 73-21-54 NMSA 1978]:

A. "sewage disposal" includes all constructions for collection, transportation, pumping, treatment and final disposition of sewage;

B. a district may be entirely within or partly within and partly without one or more counties, provided those parts or parcels of the district lying in two or more counties are contiguous with one another, and further provided, a district created pursuant to a petition signed by the board of county commissioners of a county shall be entirely within that county;

C. "board" means the board of directors of a district;

D. "taxpaying elector of a district" means a person, qualified to vote at general elections in the state, who either has paid or incurred a general tax liability on real property within the district in the twelve months immediately preceding a designated time or event or who is purchasing real property within the district under a real estate contract where a property tax has been paid or incurred on the real property in the twelve months immediately preceding a designated time or event;

E. "publication" means once a week for three consecutive weeks in at least one newspaper of general circulation in the county in which all or the major portion of the district is located. It is not necessary that publication be made on the same day of the week in each of the three weeks, but not less than fourteen days, excluding the day of first publication, shall intervene between the first publication and the last publication, and publication shall be complete on the date of the last publication; and

F. "county" means any class A county or any class B county with an official population shown by the most recent federal decennial census to be greater than ninety thousand.

**History:** 1941 Comp., § 77-3403, enacted by Laws 1943, ch. 80, § 3; 1953 Comp., § 75-18-3; Laws 1963, ch. 261, § 2; 1977, ch. 345, § 3; 1985, ch. 155, § 1.

**Cross-references.** - As to county classification, see 4-44-1 NMSA 1978.

As to publication of legal notice, see 14-11-1 NMSA 1978 et seq.

**"County".** - Since Taos County, a class B county with a population of approximately 19,000, does not fit the definition of "county" in Subsection F, requiring a population of over 90,000, Taos County is not considered a county for purposes of the Water and Sanitation District Act (this article), and the district court for that county does not have jurisdiction to establish a water and sanitation district. 1988 Op. Att'y Gen. No. 88-54.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 39A C.J.S. Health and Environment § 8.

### **73-21-5. Organization of district.**

Subject to the procedures set forth in the Special District Procedures Act [4-53-1 to 4-53-11 NMSA 1978], where applicable, the district court sitting in and for any county in this state may establish districts which may be entirely within or partly within and partly without the judicial district in which the court is located; provided, any part or parcels of the district lying in two or more counties shall be contiguous with one another.

**History:** 1941 Comp., § 77-3404, enacted by Laws 1943, ch. 80, § 4; 1953 Comp., § 75-18-4; Laws 1977, ch. 345, § 4.

**Water and sanitation districts are creatures of district courts** and are established in accordance with specific statutory procedure; such districts become governmental subdivisions of the state and bodies corporate with powers of public or quasi-municipal corporation. 1971 Op. Att'y Gen. No. 71-56.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 39A C.J.S. Health and Environment § 7.

### **73-21-6. Petition.**

A. The organization of a district shall be initiated by a petition filed in the office of the clerk of the court vested with jurisdiction in a county in which all or part of the real property in the proposed district is situated. The petition shall be signed by not less than twenty-five percent of the taxpaying electors of the district, none of whom shall be an officer, director or shareholder of any business entity with an economic interest in the subdivision and sale of land within the district, provided that at the option of a county and, after adoption of a resolution by the county authorizing the filing of a petition, that county may file a petition which shall be signed by the chairman of the board of county commissioners. The petition and all other instruments relating to the formation of such districts shall be filed with the county clerk of the county in which all or the major portion of the proposed district is located.

B. The petition shall set forth:

(1) the name of the proposed district consisting of a chosen name preceding the words "water and sanitation district";

(2) a general description of the improvements to be constructed or installed within and for the district;

(3) the estimated overall cost of the proposed improvements to be constructed or installed within and for the district;

(4) an estimated time table for the completion of all intended improvements;

(5) the need for the creation of the district and the construction or installation of improvements, stating the nature and extent of the anticipated use of the improvements by persons presently residing on land within the district, and the nature and extent of the anticipated use of the improvements due to future development;

(6) a general description of the boundaries of the district or the territory to be included in it, with such certainty as to enable a property owner to determine whether or not his property is within the district;

(7) the salary, if any, that the members of the board shall receive for their services; provided, however, that no member of the board shall receive a salary in excess of five dollars (\$5.00) per day for each day while in actual attendance upon his duties; and

(8) a request for the organization of the district.

C. No petition with the requisite signatures shall be declared void on account of alleged defects, but the court may at any time permit the petition to be amended to conform to the facts by correcting any errors in the description of the territory or in any other particular. Similar petitions or duplicate copies of the same petition for the organization of the same district may be filed and shall together be regarded as one petition. All such petitions filed prior to the hearing on the first petition filed shall be considered by the court the same as though filed with the first petition placed on file.

**History:** 1941 Comp., § 77-3405, enacted by Laws 1943, ch. 80, § 5; 1953 Comp., § 75-18-5; Laws 1977, ch. 345, § 5; 1985, ch. 155, § 2.

**Procedure for creation of district not violation of equal protection.** - The legislature may properly determine that, in order to protect taxpayers, any petition for the creation of a district must be approved by at least 25 percent of the tax-paying electors of the district without denying equal protection. Lower Valley Water & San. Dist. v. Public Serv. Co., 96 N.M. 532, 632 P.2d 1170 (1981).

**District performs general governmental function.** - As 73-21-17 NMSA 1978 gives a water and sewer district the authority to impose ad valorem taxes, such district performs a general governmental function involving the administration of sanitation and health services and is not of special proprietary interest. Lower Valley Water & San. Dist. v. Public Serv. Co., 96 N.M. 532, 632 P.2d 1170 (1981).

**No jurisdiction over non-county.** - Since Taos County, a class B county with a population of approximately 19,000, does not fit the definition of "county" in 73-21-4F NMSA 1978, requiring a population of over 90,000, Taos County is not considered a county for purposes of the Water and Sanitation District Act (this article), and the district court for that county does not have jurisdiction to establish a water and sanitation district. 1988 Op. Att'y Gen. No. 88-54.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 39A C.J.S. Health and Environment § 7.

### **73-21-7. Bond of petitioners.**

At the time of filing the petition or at any time subsequent to it and prior to the time of hearing on the petition, a bond shall be filed, with security approved by the court, sufficient to pay all expenses connected with the proceedings in case the organization of the district is not effected, provided that no bond shall be required in connection with a petition signed by the chairman of the board of county commissioners of a county after adoption of a resolution authorizing the filing of such petition. If at any time during the proceeding, the court is satisfied that the bond first executed is insufficient in amount, it may require the execution of an additional bond within a time to be fixed in not less than ten days, and upon failure of the petitioner to execute the additional bond, the petition shall be dismissed.

**History:** 1941 Comp., § 77-3406, enacted by Laws 1943, ch. 80, § 6; 1953 Comp., § 75-18-6; Laws 1985, ch. 155, § 3.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 94 C.J.S. Waters § 319.

### **73-21-8. Notice of hearing on petition.**

Upon approval of the county special district commission as provided in the Special District Procedures Act [4-53-1 to 4-53-11 NMSA 1978], where applicable, the court shall fix a place and time, not less than twenty days nor more than forty days after receipt of the decision of the county special district commission, for hearing thereon and thereupon the clerk of the court shall cause notice by publication to be made of the pendency of the petition and of the time and place of hearing thereon; the clerk of the court shall also forthwith cause a copy of the notice to be mailed by United States registered mail to the board of county commissioners of each of the several counties, and shall notify the attorney general and the health and social services department of the hearing to be held for the creation of the district by mailing notice addressed to the same, such notice to be deposited in the mail not less than ten days prior to the date set for the hearing, and the attorney general and the health and social services department [health and environment department] may appear and be heard at the hearings.

**History:** 1941 Comp., § 77-3407, enacted by Laws 1943, ch. 80, § 7; 1953 Comp., § 75-18-7; Laws 1977, ch. 345, § 6.

**Health and social services department.** - Laws 1977, ch. 253, § 5, abolished the health and social services department. Section 4 of that act established the health and environment department, consisting of several divisions, including the health services division, the behavioral health services division and the environmental improvement division. Laws 1991, ch. 25, § 16 repeals former 9-7-4 NMSA 1978, relating to the health and environment department and enacts a new 9-7-4 NMSA 1978, creating the department of health. Laws 1991, ch. 25, § 4 creates the department of environment.

### **73-21-9. Hearing on petitions; election for organization and officers.**



A. On the day fixed for the hearing or at an adjournment of it, the court shall ascertain from the tax rolls of the county in which the district is located or into which it extends, from the last official registry list and from any other evidence which may be adduced, the total number of taxpaying electors residing within the proposed district.

B. If the court finds that no petition has been signed and presented in conformity with the Water and Sanitation District Act [73-21-1 to 73-21-54 NMSA 1978], or that the material facts are not as set forth in the petition filed, it shall dismiss the proceedings and adjudge the costs against the signers of the petition or, if applicable, the board of county commissioners of a county, in the proportion as it deems just and equitable. No appeal or suit of error shall lie from an order dismissing the proceedings; but nothing in that act shall prevent the filing of a subsequent petition for similar improvements or for a similar district, and the right to renew the proceeding is expressly granted and authorized.

C. At any time after the filing of the petition for the organization of a district and before the day fixed for the hearing on it, the owner of any taxable property within the proposed district may file a petition with the court stating reasons why the property should not be included in the district and requesting that the property be excluded from it. The petition shall be verified and shall describe the property sought to be excluded. The court shall hear the petition and all objections to it at the time of the hearing on the petition for organization and shall determine whether the property should be excluded or included in the district.

D. In determining whether or not the petition for the creation of a water and sanitation district shall be granted, the district court shall consult and request an opinion from:

(1) the state engineer to determine whether the proposed district has adequate water rights to implement the proposed improvements; and

(2) the environmental improvement division to determine, as to the technological feasibility of the proposed improvements, whether the water proposed to be supplied is of an acceptable quality to conform with the state regulations and whether the liquid and solid waste disposal proposals can conform with state regulations.

E. The court may deny the petition or may order the petition to be modified, if the court, after hearing on the petition, finds that:

(1) the proposed water and sewage improvements cannot conform with the state regulations;

(2) the water and sewage improvements cannot be implemented within a reasonable time taking into consideration applications for state and federal grants;

(3) there is lacking an actual or impending need for the water and sewage improvements proposed; or

(4) the boundaries of the proposed district contain land that has no actual or impending need for the water and sewage improvements or cannot be reasonably expected to utilize the water and sewage improvements, unless the land is otherwise required to be included in the proposed district by rule or regulation of a federal agency.

F. Upon the hearing, if it appears that a petition for the organization of a district has been properly signed and presented and that the allegations of the petition are true, the court shall order that the question of the organization of the district be submitted to the taxpaying electors residing within the boundaries of the district as set forth in the petition, as the boundaries were modified by the court in determining that only property to be benefited by the proposed improvements should be included within the boundaries of the district, at an election to be held for that purpose, and the order shall designate one or more polling places within the district, and for each polling place so designated, shall appoint three taxpaying electors of the district as judges of the election and two taxpaying electors of the district as clerks of the election. The clerk of the court having jurisdiction shall give published notice of the time and place of an election to be held in the district not less than twenty days after the first publication of the notice.

G. The election shall be held and conducted as nearly as possible in the same manner as general elections in this state. No special registration for the election is required, but for the purpose of determining qualifications of electors, the judges may use the last official registry lists of electors residing in the district, and, in addition, they may require the execution of an affidavit concerning the qualifications of any elector.

H. At the election, the taxpaying electors shall vote for or against the organization of the district, and if in favor thereof, shall vote for three taxpaying electors of the district who shall constitute the board of directors of the district, one to act until the first biennial election, one until two years and one until four years after the election, except that at the election in a county where the petition for the district was signed by the chairman of the board of county commissioners, the taxpaying electors shall vote only for or against the organization of the district.

I. The judges of election shall certify the returns of the election to the district court having jurisdiction. If a majority of the votes cast at the election are in favor of the organization, the district court shall declare the district organized and give it a corporate name by which, in all proceedings, it shall thereafter be known, and designate the first board of directors elected, except that a district created pursuant to a petition signed by the chairman of the board of county commissioners of a county shall appoint the first board of directors as provided in Section 73-21-15.1 NMSA 1978. Thereupon the district shall be a governmental subdivision of the state, except a district created pursuant to a petition signed by the chairman of the board of county commissioners of a county, which district shall be a subdivision of the county. Every district shall be a body corporate with all the powers of a public or quasi-municipal corporation.

J. If an order is entered establishing the district, the order is final and no appeal or writ of error shall lie therefrom, and the entry of the order shall finally and conclusively

establish the regular organization of the district against all persons except the state, in an action in the nature of a writ of quo warranto, commenced by the attorney general within thirty days after the decree declaring the district organized. The organization of the district shall not be directly or collaterally questioned in any suit, action or proceeding except as expressly authorized in the Water and Sanitation District Act.

**History:** 1941 Comp., § 77-3408, enacted by Laws 1943, ch. 80, § 8; 1953 Comp., § 75-18-8; Laws 1963, ch. 261, § 3; 1977, ch. 345, § 7; 1985, ch. 155, § 4.

**Cross-references.** - For Election Code, see Chapter 1 NMSA 1978.

As to publication of legal notice, see 14-11-1 NMSA 1978 et seq.

As to quo warranto, see 44-3-1 NMSA 1978.

As to the state engineer, see 72-2-1 NMSA 1978.

**Purpose of limitation.** - Reason for making order establishing district final, subject only to attack by state through quo warranto during a period of 30 days, is to make possible borrowing of money with assurance to lenders that they are dealing with qualified borrower which, in turn, would have effect of reducing interest rate to be paid on money obtained for public improvements. State ex rel. Speer v. District Court, 79 N.M. 216, 441 P.2d 745 (1968).

**Quo warranto exclusive remedy.** - Quo warranto commenced by attorney general is only method for getting review and determination of court's action in entering order hereunder; no exception is made for claims of fraud, nor may organization of district be directly or collaterally brought into question. State ex rel. Speer v. District Court, 79 N.M. 216, 441 P.2d 745 (1968).

Attack alleging fraud in organization of a district, brought some seven years after the district was organized, should not be considered as it is beyond trial court's jurisdiction, and such action was properly prohibited by supreme court. State ex rel. Speer v. District Court, 79 N.M. 216, 441 P.2d 745 (1968).

**Section controls over court rule.** - Limitation in Subsection J was intended to apply even though fraud might be asserted at some later date; its provisions take precedence over any right preserved in the rules of civil procedure to make an attack for fraud upon court without limitations as to time. State ex rel. Speer v. District Court, 79 N.M. 216, 441 P.2d 745 (1968).

**Court order modifying a petition is final and therefore appealable.** Lower Valley Water & San. Dist. v. Public Serv. Co., 96 N.M. 532, 632 P.2d 1170 (1981).

**Subsection D agencies have right to present views in court.** - The legislature intended that the specific agencies mentioned in Subsection D have an opportunity to

present their views to the district court. Failure to afford this opportunity is reversible error. *Lower Valley Water & San. Dist. v. Public Serv. Co.*, 96 N.M. 532, 632 P.2d 1170 (1981).

**Subsection E conditions cannot be overridden by community considerations.** - Subsection E specifies the conditions which permit a district court to modify or deny a petition, and broad considerations of community health and welfare cannot be invoked to override these considerations. *Lower Valley Water & San. Dist. v. Public Serv. Co.*, 96 N.M. 532, 632 P.2d 1170 (1981).

**Appeals from water and sanitation district proceedings to be brought in district court.** - Protests or appeal from proceedings conducted by officials of special districts, including water and sanitation districts, must first be brought in district court. *Taos Ski Valley, Inc. v. Public Serv. Comm'n*, 101 N.M. 738, 688 P.2d 775 (1984).

**Annexation not authorized.** - Although water and sanitation district is a "body corporate with all the powers of a public or quasi-municipal corporation," it may not annex territory under the municipal code; public or quasi-municipal corporation is not a municipality for purposes of state law. 1976 Op. Att'y Gen. No. 76-33.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 81A C.J.S. States § 136.

### **73-21-10. Filing decree.**

Within thirty days after the said district has been declared a corporation by the court, the clerk of the court shall transmit to the county clerk and recorder in each of the counties in which the district or a part thereof may be or extend, copies of the findings and the decree of the court incorporating said district. The same shall be filed in the same manner as articles of incorporation are now required to be filed under the general laws concerning corporations; and the clerk and recorder in each county shall receive a fee of one dollar (\$1.00) for filing and preserving the same.

**History:** 1941 Comp., § 77-3409, enacted by Laws 1943, ch. 80, § 9; 1953 Comp., § 75-18-9.

**Cross-references.** - For filing of articles of incorporation under general corporation law, see 53-12-3 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 81A C.J.S. States § 136.

### **73-21-11. [Board of directors; qualification; bond.]**

Whenever a district has been declared duly organized, the members of the board shall qualify by filing with the clerk of court their oaths of office, and corporate surety bonds at the expense of the district in an amount not to exceed \$1,000 each, the form thereof to

be fixed and approved by the court, conditioned for the faithful performance of their duties as directors.

**History:** 1941 Comp., § 77-3410, enacted by Laws 1943, ch. 80, § 10; 1953 Comp., § 75-18-10.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 81A C.J.S. States § 136.

### **73-21-12. Organization of board; meetings; vacancies; election of officers [; removal of directors].**

After taking oath and filing bonds, the board shall choose one of its members as chairman of the board and president of the district, and shall elect a secretary and a treasurer of the board and of the district, who may or may not be members of the board. The secretary and treasurer may be one person. Such board shall adopt a seal and the secretary shall keep, in a well-bound book, a record of all of its proceedings, minutes of all meetings, certificates, contracts, bonds given by employees and all corporate acts which shall be open to inspection of all owners of real property in the district, as well as to all other interested parties.

The treasurer shall keep strict and accurate accounts of all money received by and disbursed for and on behalf of the district, in permanent records. He shall file with the clerk of court, at the expense of the district, a corporate fidelity bond in an amount not less than \$5,000, conditioned on the faithful performance of the duties of his office.

The members of the board shall serve without compensation unless otherwise provided by the petition and order creating the district. Members shall be allowed their actual and necessary expenses incurred in performance of their duties.

The court having jurisdiction of the district shall have the power to remove directors for cause shown, on petition, notice and hearing.

**History:** 1941 Comp., § 77-3411, enacted by Laws 1943, ch. 80, § 11; 1953 Comp., § 75-18-11.

### **73-21-13. Meetings.**

The board shall meet once each month at a time and place to be designated by the board. Special meetings may be held as often as the needs of the district require on notice to each member of the board. A majority of the board shall constitute a quorum at any meeting. Any vacancy on a board elected by taxpaying electors of the district shall be filled by the remaining members or member of the board, the appointee to act until the next biennial election when the vacancy shall be filled by election. Any vacancy on a board appointed by a board of county commissioners shall be filled in the same manner as original appointments, in accordance with Section 73-21-15.1 NMSA 1978, the appointee to act until the end of the term of the member creating the vacancy. If the

board or a board of county commissioners fails to fill any vacancy within thirty days after it occurs, the court having jurisdiction shall fill the vacancy.

**History:** 1941 Comp., § 77-3412, enacted by Laws 1943, ch. 80, § 12; 1953 Comp., § 75-18-12; Laws 1977, ch. 326, § 1; 1985, ch. 155, § 5.

### **73-21-14. Elections.**

A. In any district, except a district created pursuant to a petition signed by the chairman of the board of county commissioners of a county, on the second Tuesday of January in the second calendar year after the organization of the district and on the second Tuesday of January every second year thereafter, there shall be elected by the taxpaying electors of the district one member of the board to serve for a term of six years, except that if the district elects to adopt four-year terms, the member shall serve for a term of four years.

B. In any district created pursuant to a petition signed by the chairman of the board of county commissioners of a county, one year after the organization of the district and every second year thereafter, there shall be elected by the taxpaying electors of the district at least two, but no more than three, members of the board to serve for a term of two years.

C. Not later than thirty days before any election pursuant to Subsections [Subsection] A or B of this section, nominations may be filed with the secretary of the board, and, if a nominee does not withdraw his name before the first publication of the notice of election, his name shall be placed on the ballot. The board shall provide for holding such election and shall appoint judges to conduct it. The secretary of the district shall give notice of election by publication and shall arrange such other details in connection therewith as the board may direct. The returns of the election shall be certified to and shall be canvassed and declared by the board. The candidate receiving the most votes shall be elected. Any new member of the board shall qualify in the same manner as members of the first board qualify.

**History:** 1941 Comp., § 77-3413, enacted by Laws 1943, ch. 80, § 13; 1953 Comp., § 75-18-13; Laws 1984, ch. 14, § 1; 1985, ch. 155, § 6.

**Cross-references.** - As to publication of legal notice, see 14-11-1 NMSA 1978 et seq.

As to qualification of board members, see 73-21-11 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 81A C.J.S. States § 136.

### **73-21-15. Board increase; special election.**

A. In any district where members of the board are elected by the taxpaying electors of the district, within six months of July 1, 1981, the board may upon its own motion or

upon petition to the board by two-thirds of the qualified electors of the district shall call a special election for the purpose of deciding whether to increase the membership of the board to five members.

B. If at the special election a majority of the qualified electors vote in favor of the proposal, the board shall appoint two members who shall serve until the next regularly scheduled election of the district when the two appointed positions shall be filled by election. Of the two new board vacancies, one person shall be elected for a term of two years and one person shall be elected for a term of four years. The successors of these two board members shall be elected for four-year terms.

**History:** 1953 Comp., § 75-18-13.1, enacted by Laws 1977, ch. 326, § 2; 1981, ch. 35, § 1; 1984, ch. 14, § 2; 1985, ch. 155, § 7.

### **73-21-15.1. Board; district created by a board of county commissioners.**

Notwithstanding any other provision of the Water and Sanitation District Act [73-21-1 to 73-21-54 NMSA 1978] relating to election of the board, all members of the first board of any district created pursuant to a petition signed by the chairman of the board of county commissioners of a county shall be appointed by the board of county commissioners. The board shall consist of five directors who are residents of the district appointed for staggered terms so that the terms of two directors expire in one year and the terms of three directors expire in two years. Thereafter, all directors shall be elected to two-year terms pursuant to the provisions of the Water and Sanitation District Act. Any director appointed by any board of county commissioners shall be eligible for election, provided that no member of a board shall serve more than two consecutive terms.

**History:** 1978 Comp., § 73-21-15.1, enacted by Laws 1985, ch. 155, § 8.

### **73-21-16. General powers.**

For and on behalf of the district, the board shall have the following powers:

A. to have perpetual existence;

B. to have and use a corporate seal;

C. to sue and be sued and be a party to suits, actions and proceedings;

D. except as otherwise provided in the Water and Sanitation District Act [73-21-1 to 73-21-54 NMSA 1978] to enter into contracts and agreements affecting the affairs of the district, including contracts with the United States and any of its agencies or instrumentalities. Except in cases in which a district will receive aid from a governmental agency, a notice shall be published for bids on all construction contracts for work or material or both involving an expense of five thousand dollars (\$5,000) or more. The

district may reject any and all bids, and, if it appears that the district can perform the work or secure material for less than the lowest bid, it may proceed to do so;

E. to borrow money and incur indebtedness and evidence the indebtedness by certificates, notes or debentures and to issue bonds in accordance with the provisions of that act;

F. to acquire, dispose of and encumber real and personal property, water rights, water and sewer works and plants and any interest in them, including leases and easements;

G. to refund any bonded indebtedness or revenue bonds of the district without an election in accordance with the provisions of that act;

H. to have the management, control and supervision of all the business and affairs of the district and the construction, installation, operation and maintenance of district improvements;

I. to hire and retain agents, employees, engineers and attorneys;

J. to have and exercise the power of eminent domain and dominant eminent domain and, in the manner provided by law for the condemnation of private property for public use, to take any property necessary to the exercise of the powers granted in that act, both within and without the district;

K. to construct and maintain works and establish and maintain facilities across or along any public street or highway and in, upon or over any vacant public lands, which public lands are now or may become the property of the state, and to construct works and establish and maintain facilities across any stream of water or watercourse; provided, however, that the district shall promptly restore any such street or highway to its former state of usefulness as nearly as may be and shall not use the street or highway in such manner as to completely or unnecessarily impair its usefulness;

L. to fix and from time to time to increase or decrease water and sewer rates, tolls or charges for services or facilities furnished or made available by the district, including, without limiting the generality of the foregoing, standby charges for both water and sewers, and to pledge that revenue for the payment of any indebtedness of the district. Until paid, all rates, tolls or charges constitute a perpetual lien on and against the property served, and any such lien may be foreclosed in the same manner as provided by the laws of New Mexico for the foreclosure of real estate mortgages. The board shall shut off or discontinue service for delinquencies in the payment of the rates, tolls or charges or in the payment of taxes levied pursuant to the Water and Sanitation District Act and prescribe and enforce rules and regulations for the connection with and the disconnection from properties of the facilities of the district. For health and sanitary purposes, the board shall have the power to compel the owners of inhabited property within a sanitation district to connect their property with the sewer system of the district, and, upon a failure so to connect within sixty days after written notice by the board, the



board may cause the connection to be made and a lien to be filed against the property for the expense incurred in making the connection; provided, however, that no owner shall be compelled to connect his property with such system unless a service line is brought by the district to a point within four hundred feet of his dwelling place;

M. to adopt and amend bylaws not in conflict with the constitution and laws of the state for carrying on the business, objects and affairs of the board and of the district; and

N. to have and exercise all rights and powers necessary or incidental to or implied from the specific powers granted in this section. Such specific powers shall not be considered as a limitation upon any power necessary or appropriate to carry out the purposes and intent of that act.

**History:** 1941 Comp., § 77-3414, enacted by Laws 1943, ch. 80, § 14; 1953 Comp., § 75-18-14; Laws 1967, ch. 187, § 1; 1985, ch. 166, § 1.

**Cross-references.** - As to foreclosure of mortgages, see 39-5-1 NMSA 1978 et seq.

As to exercise of power of eminent domain, see 42A-1-1 NMSA 1978 et seq.

**Appeals from water and sanitation district proceedings to be brought in district court.** - Protests or appeals from proceedings conducted by officials of special districts, including water and sanitation districts, must first be brought in district court. Taos Ski Valley, Inc. v. Public Serv. Comm'n, 101 N.M. 738, 688 P.2d 775 (1984).

**Public service commission.** - Absent further legislation, water and sanitation districts organized pursuant to 73-21-1 NMSA 1978 et seq. are subject to regulation by the public service commission only in the matter of approving rates, tolls and charges by the district. 1971 Op. Att'y Gen. No. 71-56.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 81A C.J.S. States § 136.

## **73-21-17. Taxes.**

In addition to the other means of providing revenue for such districts as herein provided, the board shall have power and authority to levy and collect ad valorem taxes on and against all taxable property within the district.

**History:** 1941 Comp., § 77-3415, enacted by Laws 1943, ch. 80, § 15; 1953 Comp., § 75-18-15.

**District performs general governmental function.** - As this section gives a water and sewer district the authority to impose ad valorem taxes, such district performs a general governmental function involving the administration of sanitation and health services and is not of special proprietary interest. Lower Valley Water & San. Dist. v. Public Serv. Co., 96 N.M. 532, 632 P.2d 1170 (1981).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 78 Am. Jur. 2d Waterworks and Water Companies § 4.

94 C.J.S. Waters § 243.

### **73-21-18. Levy and collection of taxes.**

To levy and collect taxes, the board shall, in each year, determine the amount of money necessary to be raised by taxation, taking into consideration other sources of revenue of the district, and shall fix a rate of levy which, when levied upon every dollar of assessed valuation of taxable property within the district, and with other revenues will raise the amount required by the district annually, to supply funds for paying expenses of organization and the costs of construction [constructing], operating and maintaining the works and equipment of the district, and promptly to pay in full, when due, all interest on and principal of bonds and other obligations of the district, and in the event of accruing defaults or deficiencies, an additional levy may be made as provided in Section 73-21-19 NMSA 1978. The board shall, on or before October 1 of each year, certify to the board of county commissioners of each county within the district, or having a portion of its territory within the district, the rate so fixed with directions that at the time and in the manner required by law for levying of taxes for county purposes, the board of county commissioners shall levy the tax upon [the] assessed valuation of all taxable property within the district, in addition to other taxes as may be levied by the board of county commissioners at the rate so fixed and determined.

**History:** 1941 Comp., § 77-3416, enacted by Laws 1943, ch. 80, § 16; 1953 Comp., § 75-18-16; Laws 1963, ch. 261, § 4.

**Interest on bonds.** - Interest may be collected after date of maturity of general obligation bond of sanitation district; holder is entitled to interest at rate stated from issuance of bond, until he receives payment. *Dexter v. Lakeshore City San. Dist.*, 82 N.M. 556, 484 P.2d 1266 (1971).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 78 Am. Jur. 2d Waterworks and Water Companies § 4.

94 C.J.S. Waters § 243.

### **73-21-19. Levies to cover defaults and deficiencies.**

The board in certifying annual levies as herein provided, shall take into account the maturing indebtedness for the ensuing year as provided in its contracts, maturing bonds and interest on bonds, and deficiencies and defaults of prior years, and shall make ample provision for the payment thereof. In case the moneys produced from such levies, together with other revenues of the district, are not sufficient punctually to pay the annual installments on its contracts or bonds, and interest thereon, and to pay defaults and deficiencies, then the board shall make such additional levies of taxes as

may be necessary for such purposes, and notwithstanding any limitations, such taxes shall be made and continue to be levied until the indebtedness of the district shall be fully paid.

**History:** 1941 Comp., § 77-3417, enacted by Laws 1943, ch. 80, § 17; 1953 Comp., § 75-18-17.

**Interest on bonds.** - Interest may be collected after date of maturity of general obligation bond of sanitation district; holder is entitled to interest at rate stated from issuance of bond until he receives payment. *Dexter v. Lakeshore City San. Dist.*, 82 N.M. 556, 484 P.2d 1266 (1971).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 78 Am. Jur. 2d Waterworks and Water Companies § 4.

94 C.J.S. Waters § 243.

### **73-21-20. Officers levy and collect taxes.**

It shall be the duty of the body having authority to levy taxes within each county, to levy taxes provided in this act and it shall be the duty of all officials charged with the duty of collecting taxes to collect such taxes at the time and in the form and manner and with like interest and penalties as other taxes are collected and when collected to pay the same to the districts ordering its levy and collection, and the payment of such collections shall be made monthly to the treasurer of the district and paid into the depository thereof to the credit of the district. All taxes levied under this act, together with interest thereon and penalties for default in payment thereof, and all costs of collecting the same, shall, until paid, constitute a perpetual lien on and against the property taxed, and such lien shall be on a parity with the tax lien of general taxes.

**History:** 1941 Comp., § 77-3418, enacted by Laws 1943, ch. 80, § 18; 1953 Comp., § 75-18-18.

**Meaning of "this act".** - See same catchline in notes following 73-21-1 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 94 C.J.S. Waters § 243.

### **73-21-21. Sale for delinquencies; purchase by district.**

If the taxes levied are not paid as herein provided, then delinquent real property shall be sold at the regular tax sale for the payment of the taxes, interest and penalties, in the manner provided by law for selling property for the nonpayment of general taxes. The board of directors may purchase, in the name of the district, any property which may be sold for delinquent taxes within the boundaries of the district and the board may take title to the lands in the name of the district and sell and convey the lands at a price not

less than the taxes, penalty and interest accrued thereon. Delinquent personal property shall be distrained and sold as provided by law.

**History:** 1941 Comp., § 77-3419, enacted by Laws 1943, ch. 80, § 19; 1953 Comp., § 75-18-19; Laws 1963, ch. 261, § 5.

**Cross-references.** - As to sale of personalty for delinquent property taxes, see 7-38-53 NMSA 1978 et seq.

As to sale of real property for delinquent property taxes, see 7-38-65 NMSA 1978 et seq.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 94 C.J.S. Waters § 243.

### **73-21-22. Sinking fund.**

Whenever any indebtedness has been incurred by a district, it shall be lawful for the board to levy taxes and collect revenue for the purpose of creating a reserve fund in such amount as the board may determine, which may be used to meet the obligations of the district, for maintenance and operating charges and depreciation, and provide extensions of and betterments to the improvements of the district.

**History:** 1941 Comp., § 77-3420, enacted by Laws 1943, ch. 80, § 20; 1953 Comp., § 75-18-20.

### **73-21-23. Inclusion [of additional property].**

The boundaries of any district organized under the provisions of this act may be changed in the manner herein prescribed, but the change of boundaries of the district shall not impair or affect its organization or its rights in or to property, or any of its rights or privileges whatsoever; nor shall it affect or impair or discharge any contract, obligation, lien or charge for or upon which it might be liable or chargeable had any such change of boundaries not been made. The owners of real property may file with the board a petition, in writing, praying that such real property be included in the district. The petition shall prescribe the property owned by the petitioners, and such petition shall be deemed to give assent of the petitioners to the inclusion in said district of the property described in the petition, and such petition must be acknowledged in the same manner that conveyances of land are required to be acknowledged. The secretary of the board shall cause notice of filing of such petition to be given and published in the county in which the property is situated, which notice shall state the filing of such petition, names of petitioners, descriptions of lands mentioned and the prayer of said petitioners; giving notice to all persons interested to appear at the office of the board at the time named in said notice and show cause in writing, if any they have, why the petition should not be granted. The board shall at the time and place mentioned or at such time or times at which the hearing may be adjourned, proceed to hear the petition and all objections thereto, presented, in writing, by any person showing cause why said

petition should not be granted. The failure of any person interested to show cause in writing shall be deemed and held and taken as an assent on his part to the inclusion of such lands in the district as prayed for in the petition. If the petition is granted, the board shall make an order to that effect and file same with the clerk of the court and upon order of the court said property shall be included in the district.

**History:** 1941 Comp., § 77-3421, enacted by Laws 1943, ch. 80, § 21; 1953 Comp., § 75-18-21.

**Cross-references.** - As to publication of legal notice, see 14-11-1 NMSA 1978 et seq.

As to acknowledgments, see 14-13-1 to 14-13-24 NMSA 1978.

**Meaning of "this act".** - See same catchline in notes following 73-21-1 NMSA 1978.

**Municipal Code inapplicable.** - Language of this section cannot be construed to allow water and sanitation district to use provisions of Municipal Code [Chapter 3 NMSA 1978]. 1976 Op. Att'y Gen. No. 76-33.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 94 C.J.S. Waters § 243.

### **73-21-24. Exclusion [from district].**

The owner or owners in fee of any real property constituting a portion of the district may file with the board a petition praying that such lands be excluded and taken from said district. Petition shall describe the property which the petitioners desire to have excluded. Such petition must be acknowledged in the same manner and form as required in case of a conveyance of land and be accompanied by a deposit of money sufficient to pay all costs of the exclusion proceedings. The secretary of the board shall cause a notice of filing of such petition to be published in the county in which said property or the major portion thereof, is located. The notice shall state the filing of such petition, the names of petitioners, description of the property mentioned in said petition and the prayer of said petitioners; and it shall notify all persons interested to appear at the office of said board at the time named in said notice, showing cause in writing, if any they have, why said petition should not be granted. The board at the time and place mentioned in the notice, or at the time or times at which the hearing of said petition may be adjourned, shall proceed to hear the petition and all objections thereto, presented in writing by any person showing cause as aforesaid, why the prayer of the petition should not be granted. The filing of such petition shall be deemed and taken as an assent by each and all such petitioners to the exclusion from the district of the property mentioned in the petition, or any part thereof. The board, if it deems it not for the best interests of the district that the property mentioned in the petition, or portion thereof, shall be excluded from the district, shall order that said petition be denied; but if it deems it for the best interest of the district that the property mentioned in the petition, or some portion thereof, be excluded from the district, then the board may order the property mentioned in the petition or some portion thereof, excluded from the district. Upon

allowance of such petition, the board shall file a certified copy of the order of the board making such change with the clerk of the court and upon order of the court said property shall be excluded from the district.

**History:** 1941 Comp., § 77-3422, enacted by Laws 1943, ch. 80, § 22; 1953 Comp., § 75-18-22.

**Cross-references.** - As to publication of legal notice, see 14-11-1 NMSA 1978 et seq.

As to acknowledgments, see 14-13-1 to 14-13-24 NMSA 1978.

### **73-21-25. Liability of property included or excluded.**

All taxable property annexed to a district shall thereafter be subject to the levy of taxes for the payment of any indebtedness of the district outstanding at the time of the annexation. Real property excluded from a district shall thereafter be subject to the levy of taxes for the payment of any indebtedness of the district outstanding at the time of its exclusion in the same manner and to the same extent as if such property had not been excluded from the district.

**History:** 1941 Comp., § 77-3423, enacted by Laws 1943, ch. 80, § 23; 1953 Comp., § 75-18-23; Laws 1963, ch. 261, § 6.

### **73-21-26. Bonds; interest; form.**

To carry out the purposes of the Water and Sanitation District Act [73-21-1 to 73-21-54 NMSA 1978], the board may issue bonds of the district upon approval of the majority of the taxpaying electors of the district voting on the question. Bonds shall bear interest payable semiannually and shall be due and payable serially, either annually or semiannually, commencing not later than three years and extending not more than twenty years from date. The form and terms of the bonds, including provisions for their payment and redemption, shall be determined by the board. If the board so determines, the bonds may be redeemable prior to maturity upon payment of a premium, not exceeding three percent of the principal thereof. The bonds, except for bonds issued in book entry or similar form without the delivery of physical securities, shall be executed in the name of and on behalf of the district and signed by the chairman of the board, with the seal of the district affixed thereto, and attested to by the secretary of the board. The bonds shall be sold and shall be in such denominations as the board determines, and the bonds and the attached coupons, if any, shall be payable to the bearer or registered as to principal or as to principal and interest. Interest coupons, if any, shall bear the original or facsimile signature of the chairman of the board.

**History:** 1941 Comp., § 77-3424, enacted by Laws 1943, ch. 80, § 24; 1953 Comp., § 75-18-24; Laws 1963, ch. 261, § 7; 1977, ch. 345, § 8; 1983, ch. 265, § 61.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 94 C.J.S. Waters §§ 241, 243.

### **73-21-27. Community Service District Act provisions apply.**

With respect to the issuance of any negotiable securities representing an indebtedness of the water and sanitation district, the provisions and procedures set forth in the Community Service District Act [4-54-1 to 4-54-5 NMSA 1978] shall apply.

**History:** 1953 Comp., § 75-18-24.1, enacted by Laws 1977, ch. 345, § 9.

### **73-21-28. [Resolution of board; creation of indebtedness; election.]**

Whenever any board shall, by resolution, determine that the interest of said district and the public interest or necessity demand the acquisition, construction, installation or completion of any works or other improvements or facilities, or the making of any contract with the United States or other persons or corporations, to carry out the objects or purposes of said district, requiring the creation of an indebtedness of \$5,000 or more, said board shall order the submission of the proposition of issuing such obligations or bonds, or creating other indebtedness to the qualified taxpaying electors of the district at an election held for that purpose. Any such election may be held separately, or may be consolidated or held concurrently with any other election authorized by this act. The declaration of public interest or necessity herein required and the provision for the holding of such election may be included within one and the same resolution, which resolution, in addition to such declaration of public interest or necessity, shall recite the objects and purposes for which the indebtedness is proposed to be incurred, the estimated cost of the works or improvements, as the case may be, the amount of principal of the indebtedness to be incurred therefor and the maximum rate of interest to be paid on such indebtedness. Such resolution shall also fix the date upon which such election shall be held and the manner of holding the same and the method of voting for or against the incurring of the proposed indebtedness. Such resolution shall also fix the compensation to be paid the officers of the election and shall designate the polling place or places and shall appoint, for each polling place from the electors of the district, the officers of such election consisting of three judges, one of whom shall act as clerk.

**History:** 1941 Comp., § 77-3425, enacted by Laws 1943, ch. 80, § 25; 1953 Comp., § 75-18-25.

**Meaning of "this act".** - See same catchline in notes following 73-21-1 NMSA 1978.

**County improvements.** - Issuance by water and sanitation district of bonds pursuant to provisions of County Improvements Law (now County Improvement District Act, 4-55A-1 NMSA 1978 et seq.) would not require election specified in this section. 1976 Op. Att'y Gen. No. 76-1.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 39A C.J.S. Health and Environment § 56.

### **73-21-29. Notice of election.**

The board shall prescribe the form of the notice of election, and direct the publication of the same, the first publication of said notice to be not less than twenty (20) days prior to the election.

**History:** 1941 Comp., § 77-3426, enacted by Laws 1943, ch. 80, § 26; 1953 Comp., § 75-18-26.

**Cross-references.** - As to publication of legal notice, see 14-11-1 NMSA 1978 et seq.

### **73-21-30. Conduct of election; canvass of returns.**

The election board or boards shall conduct the election in the manner prescribed by law for the holding of general elections, and shall make their returns to the secretary of the district. At any regular or special meeting of the board held within five days following the date of such election, the returns thereof shall be canvassed and the results thereof declared.

**History:** 1941 Comp., § 77-3427, enacted by Laws 1943, ch. 80, § 27; 1953 Comp., § 75-18-27.

**Cross-references.** - For Election Code, see Chapter 1 NMSA 1978.

### **73-21-31. Effect of election; subsequent elections.**

In the event that it shall appear from said returns that a majority of said qualified taxpaying electors of the district who shall have voted on any proposition submitted hereunder at such election voted in favor of such proposition, the district shall thereupon be authorized to incur such indebtedness or obligations, enter into such contract or issue and sell such bonds of the district, as the case may be, all for the purpose or purposes and object or objects provided for in the proposition submitted hereunder and in the resolution therefor, and in the amount so provided and at a rate of interest not exceeding the rate of interest recited in such resolution. Submission of the proposition of incurring such obligations or bonded or other indebtedness at such an election shall not prevent or prohibit submission of the same or other propositions at subsequent election or elections called for such purpose.

**History:** 1941 Comp., § 77-3428, enacted by Laws 1943, ch. 80, § 28; 1953 Comp., § 75-18-28.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 39A C.J.S. Health and Environment § 56.

### **73-21-32. Correction of faulty notices.**

In any and every case where a notice is provided for in this act, if the court finds any reason that due notice was not given, the court shall not thereby lose jurisdiction, and the proceeding in question shall not thereby be void or be abated, but the court shall in



that case order due notice to be given, and shall continue the hearing until such time as notice shall be properly given, and thereupon shall proceed as though notice has [had] been properly given in the first instance.

**History:** 1941 Comp., § 77-3429, enacted by Laws 1943, ch. 80, § 29; 1953 Comp., § 75-18-29.

**Cross-references.** - For provision making order establishing district final, and reviewable only by writ of quo warranto commenced by attorney general within 30 days, see 73-21-9 NMSA 1978.

**Meaning of "this act".** - See same catchline in notes following 73-21-1 NMSA 1978.

### **73-21-33. Early hearings.**

All cases in which there may arise a question of the validity of the organization of a district, or a question of the validity of any proceeding under this act shall be advanced as a matter of immediate public interest and concern, and heard at the earliest practicable moment. The courts shall be open at all times for the purposes of this act.

**History:** 1941 Comp., § 77-3430, enacted by Laws 1943, ch. 80, § 30; 1953 Comp., § 75-18-30.

**Cross-references.** - For provision making order establishing district final, and reviewable only by writ of quo warranto commenced by attorney general within 30 days, see 73-21-9 NMSA 1978.

**Meaning of "this act".** - See same catchline in notes following 73-21-1 NMSA 1978.

### **73-21-34. Liberal construction.**

This act being necessary to secure and preserve the public health, safety, convenience and welfare, it shall be liberally construed to effect its purposes.

**History:** 1941 Comp., § 77-3431, enacted by Laws 1943, ch. 80, § 31; 1953 Comp., § 75-18-31.

**Meaning of "this act".** - See same catchline in notes following 73-21-1 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 39A C.J.S. Health and Environment § 5.

### **73-21-35. Character of act.**

No part of this act shall repeal or affect any other act or any part thereof, it being intended that this act shall provide a separate method of accomplishing its objects, and not an exclusive one.

**History:** 1941 Comp., § 77-3432, enacted by Laws 1943, ch. 80, § 33; 1953 Comp., § 75-18-32.

**Meaning of "this act".** - See same catchline in notes following 73-21-1 NMSA 1978.

### **73-21-36. [Acquisition, construction or improvement of systems; joint revenue bonds.]**

Whenever the board of directors of any water and sanitation district shall, by resolution, determine that the interest or necessity demand [demands] the acquisition, construction, repair, extension, improvement or betterment of any water or sewer system, water and sanitation districts are hereby authorized to make and issue revenue bonds, payable solely out of the net income, to be derived from the operation of publicly owned water or sewer systems, and to pledge, irrevocably, such income to the payment thereof, the proceeds thereof to be used solely for the purchasing, acquiring, constructing, and of making [making of] necessary improvements, extensions, repairs and betterments of said water and sewer system, or for the purchase and acquiring of wells, cisterns, reservoirs or other sources of water supply and pumping plants, sewage disposal plants or other machinery necessary for the operation thereof, and the land and real estate upon which the same are situated or to be situated: provided, however, that joint revenue bonds may be issued for the acquisition, construction, extension, enlargement or betterment of a joint water and sewer system, and the income of either or both of such utilities may be pledged to secure the repayment of such joint bonds.

**History:** 1941 Comp., § 77-3433, enacted by Laws 1951, ch. 195, § 1; 1953 Comp., § 75-18-33.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 39A C.J.S. Health and Environment § 56.

### **73-21-37. Interest; maturity; form; method of sale.**

A. Revenue bonds issued under the provisions of this act [73-21-36 to 73-21-42 NMSA 1978] shall bear interest at not to exceed six percent per annum, payable annually or semiannually, shall be payable at the option of such water and sanitation district, at the end of ten years from the date thereof; and due by their terms in not more than twenty years from date hereof; as determined by the water and sanitation district, shall be serial in form and maturity and numbered from one upward, consecutively, or may consist of one bond payable at one time or in installments, and shall be sold for cash, at not less than par, and at either public or private sale.

B. All prior revenue bond issues of water and sanitation districts where one bond was issued in lieu of multiple bonds are hereby validated.

**History:** 1941 Comp., § 77-3434, enacted by Laws 1951, ch. 195, § 2; 1953 Comp., § 75-18-34; Laws 1980, ch. 79, § 1.

### **73-21-38. [Resolution for issuance of revenue bonds.]**

The board of directors of any water and sanitation district issuing revenue bonds, under the provisions of this act [73-21-36 to 73-21-42 NMSA 1978], may authorize the issuance thereof, by resolution adopted by the affirmative vote of two-thirds of all of the members of such board of directors, at a regular or special meeting called for that purpose, wherein the necessity thereof shall be declared, and, when issued, shall be signed by the president of said board of directors, attested by the secretary thereof, with the seal of such district affixed thereto.

**History:** 1941 Comp., § 77-3435, enacted by Laws 1951, ch. 195, § 3; 1953 Comp., § 75-18-35.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 78 Am. Jur. 2d Waterworks and Water Companies §§ 3, 4.

94 C.J.S. Waters § 290.

### **73-21-39. [Bonds collectible from operating revenues.]**

It is hereby declared that revenue bonds, issued under the provisions of this act [73-21-36 to 73-21-42 NMSA 1978] shall not be considered or held to be general obligations of the water and sanitation district issuing them, shall be collectible only out of the net revenues derived from the operation of the water or sewer system, or joint water and sewer system whose income is so pledged, and each of the bonds of any issue of revenue bonds so issued under the provisions of this act shall recite on its face that it is payable and collectible solely from the revenues derived from the operations of the water or sewer system or joint water and sewer system, the income of which is so pledged, and that the holders thereof may not look to any general or other fund for the payment of principal and interest of such obligation.

**History:** 1941 Comp., § 77-3436, enacted by Laws 1951, ch. 195, § 4; 1953 Comp., § 75-18-36.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 94 C.J.S. Waters § 241.

### **73-21-40. Rates; bondholders' remedy and taxpayer elector.**

It is made mandatory upon boards of directors of water and sanitation districts issuing water and sewer revenue bonds under the provisions of the Water and Sanitation District Act [73-21-1 to 73-21-54 NMSA 1978] to establish such rates for services rendered by the water or sewer system, or joint water and sewer system, as will create an income sufficient to pay all reasonable expenses of operation and create a net revenue which shall be sufficient to pay interest coupons on the revenue bonds, as they mature, and to provide a sinking fund which shall be adequate to discharge the bonds as and when they mature. It is their duty to maintain the rates continuously until the

bond issue has been fully liquidated. In the event of their failure or refusal so to do, all the members of the boards of directors are liable to the penalties provided in Section 73-21-42 NMSA 1978, and any bondholder or a number of taxpayer electors of the district amounting to twenty-five persons or five percent of the electors, whichever is less, has the right to apply to the district court of the county where a water and sanitation district is located for a mandatory order requiring the establishment by a board of directors of rates which shall be adequate to meet the requirements of that act.

**History:** 1941 Comp., § 77-3437, enacted by Laws 1951, ch. 195, § 5; 1953 Comp., § 75-18-37; Laws 1985, ch. 166, § 2.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 78 Am. Jur. 2d Waterworks and Water Companies §§ 3, 4.

Discrimination between property within and that outside municipality or other governmental district as to rates for use of sewers, 4 A.L.R.2d 610.

39A C.J.S. Health and Environment § 52; 94 C.J.S. Waters §§ 284 to 308.

### **73-21-41. [Restricted use of bond funds.]**

Whenever, under the provisions of the laws of this state, any water or sanitation district shall obtain, or has obtained, any moneys or credits by means of the issue of its bonds, or other evidence of indebtedness, for the purpose of the purchase, construction or extension or repair of any water or sewer system or joint water and sewer system, in said water and sanitation district, it shall be unlawful to divert, use or expend any of said money or credits in the purchase, construction or extension or repair of any other water or sewer system, or for any purpose other than that for which the same was or shall be obtained.

**History:** 1941 Comp., § 77-3438, enacted by Laws 1951, ch. 195, § 6; 1953 Comp., § 75-18-38.

### **73-21-42. [Violation of act; penalties.]**

The members of any board of directors and any officer or agent of any water and sanitation district violating the provisions of this act [73-21-36 to 73-21-42 NMSA 1978] shall be deemed guilty of a misdemeanor and upon conviction thereof, in the district court, shall be subject to a fine not to exceed five hundred dollars (\$500.00), or by imprisonment in the county jail, not to exceed six months, or both, in the discretion of the court trying the case.

**History:** 1941 Comp., § 77-3439, enacted by Laws 1951, ch. 195, § 7; 1953 Comp., § 75-18-39.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 78 Am. Jur. 2d Waterworks and Water Companies § 61.

94 C.J.S. Waters § 243.

### **73-21-43. Validation; existing districts.**

All districts heretofore created under the provisions of Section [Sections] 73-21-1 through 73-21-42 NMSA 1978 and all proceedings heretofore taken by such districts, including any elections which may have been held therein on the question of the issuance of bonds and which have carried, are validated, ratified and confirmed. Due investigation having been made, it is expressly found and recited that all property in such districts taxable for the payment of the bonds of such districts under the provisions of Sections 73-21-1 through 73-21-42 NMSA 1978 will be adequately benefited by the construction of the improvements and facilities to be acquired with the proceeds of such bonds. Where, in any such district, bonds have been heretofore voted but not yet issued, such bonds may be issued under the provisions of Sections 73-21-1 through 73-21-21 NMSA 1978 and where such bonds are to be general obligations of the issuing district the bonds shall be payable from taxes to be levied on all taxable property in such district as required by Sections 73-21-1 through 73-21-21 NMSA 1978 and all bonds so voted and hereafter issued shall, when issued, constitute valid, binding and enforceable obligations of such districts in accordance with their terms.

**History:** 1953 Comp., § 75-18-40, enacted by Laws 1963, ch. 261, § 8.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 94 C.J.S. Waters § 243.

### **73-21-44. Sale of system; escrow of proceeds.**

Any district may sell or otherwise dispose of all or any part of its water facilities, sewer facilities or both, including both real and personal property, without an election. Any such sale or other disposition shall be authorized by resolution adopted by the affirmative vote of not less than a majority of all members of the board. Any district may immediately apply the proceeds derived from any such sale or other disposition of its facilities to the retirement of any outstanding bonds or place such proceeds in escrow in a commercial bank or trust company, either a state or national banking institution, which possesses and is exercising trust powers, which is located within New Mexico and which is a member of the federal deposit insurance corporation to be applied to the payment of any outstanding bonds upon their presentation therefor. Any such escrow is not necessarily limited to proceeds of such sale or other disposal, but may include other moneys available for its purpose. Any proceeds in escrow, pending such use, may be invested or reinvested in bills, certificates of indebtedness, notes or bonds which are direct obligations of, or the principal and interest of which obligations are unconditionally guaranteed by the United States or any other legal investment. Such proceeds and investments in escrow, together with any interest to be derived from any such investment, shall be used only to pay any charges of the escrow agent which are

expressly made payable from such escrow and to pay as many bonds as possible as they become due at their respective maturities or due at any designated prior redemption date or dates in connection with which the board shall exercise a prior redemption option. Any purchaser of any facilities which may be sold or otherwise disposed of shall in no manner be responsible for the application of the proceeds thereof by the district or any of its officers, agents or employees. Nothing in this section shall be construed as changing or modifying any contractual agreement or covenant concerning any outstanding bonds as may be provided in the proceedings authorizing any outstanding bonds or otherwise appertaining thereto.

**History:** 1953 Comp., § 75-18-41, enacted by Laws 1967, ch. 187, § 2.

### **73-21-45. Refunding bonds.**

Any bonds issued by any district may be refunded without an election, by the district issuing them, or any successor thereof, in the name of the district issuing the bonds being refunded, by the issuance of bonds to refund, pay and discharge all or any part of such outstanding bonds, including any interest on the bonds in arrears or about to become due within three years from the date of the refunding bonds and for the purpose of avoiding or terminating any default in the payment of interest on and principal of the bonds, of reducing interest costs or effecting other economies, or of modifying or eliminating restrictive contractual limitations appertaining to the issuance of additional bonds or to any system appertaining thereto, or for any combination of the foregoing purposes. Refunding bonds shall be authorized by a resolution adopted by the affirmative vote of not less than a majority of all members of the board. Any bonds which are refunded under the provisions of this section shall be paid at maturity or on any permitted prior redemption date in the amounts, at the times and places and, if called prior to maturity, in accordance with any applicable notice provisions, all as provided in the proceedings authorizing the issuance of said refunded bonds or otherwise appertaining thereto, except for any such bond which is voluntarily surrendered for exchange or payment by the holder. Refunding bonds may be delivered in exchange for the outstanding bonds refunded or may be sold at either public or private sale. The provisions of Sections 4-54-2 and 4-54-3 NMSA 1978, as hereafter amended from time to time, shall not apply to any refunding bonds of any district.

**History:** 1953 Comp., § 75-18-42, enacted by Laws 1967, ch. 187, § 3.

### **73-21-46. Limitations upon issuance.**

No bonds may be refunded under Sections 73-21-45 through 73-21-54 NMSA 1978, as hereafter amended from time to time, unless said bonds either mature or are callable for prior redemption under their terms within ten years from the date of issuance of the refunding bonds, or unless the holders thereof voluntarily surrender them for exchange or payment. Provision shall be made for paying the bonds refunded within said period of time. Interest on any bond may be increased but it may not be increased to any rate or rates exceeding six percent a year. The principal amount of the refunding bonds may

exceed the principal amount of the refunded bonds, but only to the extent that any costs incidental to the refunding bonds or any interest on the bonds refunded in arrears or about to become due within three years from the date of the refunding bonds, or both said incidental costs and interest, are capitalized with the proceeds of refunding bonds. The principal amount of the refunding bonds may also exceed the principal amount of the refunded bonds if the aggregate principal and interest costs of the refunding bonds do not exceed such unaccrued costs of the bonds refunded. The principal amount of the refunding bonds may also be less than or the same as the principal amount of the bonds being refunded so long as provision is duly and sufficiently made for the payment of the refunded bonds.

**History:** 1953 Comp., § 75-18-43, enacted by Laws 1967, ch. 187, § 4.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 94 C.J.S. Waters § 234.

### **73-21-47. Proceeds of refunding bonds.**

The proceeds of refunding bonds shall either be immediately applied to the retirement of the bonds being refunded or be placed in escrow in a commercial bank or trust company, either a state or national banking institution, which possesses and is exercising trust powers, which is located within New Mexico and which is a member of the federal deposit insurance corporation, to be applied to the payment of the bonds being refunded upon their presentation therefor; provided, to the extent any incidental expenses have been capitalized, such refunding bond proceeds may be used to defray such expenses; and any accrued interest and any premium appertaining to a sale of refunding bonds may be applied to the payment of the interest thereon and the principal thereof, or both interest and principal, or may be deposited in a reserve therefor, as the board may determine. Nothing herein requires the establishment of an escrow if the refunded bonds become due and payable within one year from the date of the refunding bonds and if the amount necessary to retire the refunded bonds within that time is deposited with the paying agent for said refunded bonds. Any such escrow shall not necessarily be limited to proceeds of refunding bonds but may include other moneys available for its purpose. Any proceeds in escrow, pending such use, may be invested or reinvested in bills, certificates of indebtedness, notes or bonds which are direct obligations of, or the principal and interest of which obligations are unconditionally guaranteed by, the United States. Such proceeds and investments in escrow, together with any interest derived from any such investment, shall be in an amount at all times sufficient as to principal, interest, any prior redemption premium due and any charges of the escrow agent payable therefrom, to pay the bonds being refunded as they become due at their respective maturities or due at any designated prior redemption date or dates in connection with which the board shall exercise a prior redemption option. Any purchaser of any refunding bond issued under Sections 73-21-45 through 73-21-54 NMSA 1978, as hereafter amended from time to time, shall in no manner be responsible for the application of the proceeds thereof by the district or any of its officers, agents or employees.

**History:** 1953 Comp., § 75-18-44, enacted by Laws 1967, ch. 187, § 5.

### **73-21-48. Refunding bonds; detail; form.**

Refunding bonds shall bear interest payable annually or semiannually, and such refunding bonds shall be due and payable either as term or serial bonds as determined by the board; provided that no refunding bond shall mature more than twenty-five years from the date of said refunding bond. The form and terms of the refunding bonds, including provisions for their payment and redemption shall be determined by the board. If the board so determines in the authorizing resolution, the refunding bonds may be redeemable prior to maturity without or with the payment of a premium which may be in any amount determined by the board.

**History:** 1953 Comp., § 75-18-45, enacted by Laws 1967, ch. 187, § 6.

### **73-21-49. Combination of issues.**

Bonds for refunding one or more issues originally authorized for one or more purposes, and bonds for any other purpose or purposes authorized in Article 18, New Mexico Statutes Annotated, 1953 Compilation, may be issued separately or issued in combination in one series or more by any district. Bonds payable solely from revenues of any water facilities or sewer facilities, or both, may not be refunded by general obligation bonds which are payable from general ad valorem property taxes unless authorized at an election as provided in Sections 73-21-28 through 73-21-33 NMSA 1978, as hereafter amended from time to time.

**History:** 1953 Comp., § 75-18-46, enacted by Laws 1967, ch. 187, § 7.

**Meaning of "Article 18, New Mexico Statutes Annotated, 1953 Compilation".** - The words "Article 18, New Mexico Statutes Annotated, 1953 Compilation," refer to Article 18 of Chapter 75, 1953 Comp., which consists of sections now compiled as 73-21-1, 73-21-3 to 73-21-14, 73-21-16 to 73-21-26, 73-21-28 to 73-21-51 and 73-21-54 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 94 C.J.S. Waters § 234.

### **73-21-50. Tax levy for general obligation refunding bonds.**

For the purpose of paying the principal of, any interest on or any prior redemption premium in connection with, any of the district's general obligation refunding bonds, the board may levy and collect general ad valorem taxes on and against all taxable property within the district in the same manner as other general ad valorem taxes. Any such tax levy shall be made without limitation as to rate or amount if made to pay the principal of, interest on or any prior redemption premium in connection with:



A. any general obligation refunding bonds, issued at any time, which refund any of the district's general obligation bonds issued prior to April 2, 1965;

B. any general obligation refunding bonds, issued at any time, which refund any outstanding general obligation refunding bonds which previously refunded any other general obligation bonds, so long as the general obligation bonds originally refunded were issued prior to April 2, 1965. Except as otherwise provided in its section, any such tax levy shall be subject to the tax limitation imposed by Section 4-54-4 NMSA 1978, as hereafter amended from time to time, if made to pay the principal of, interest on or any prior redemption premium in connection with:

(1) any general obligation refunding bonds which refund any of the district's bonds which were issued on or after April 2, 1965, and for a purpose or purposes other than refunding; or

(2) any general obligation refunding bonds which refund any outstanding general obligation refunding bonds which previously refunded any other general obligation bonds where the general obligation bonds originally refunded were issued on or after April 2, 1965, and for a purpose or purposes other than refunding.

**History:** 1953 Comp., § 75-18-47, enacted by Laws 1967, ch. 187, § 8.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 94 C.J.S. Waters § 243.

### **73-21-51. Applicability of other bond provisions.**

Except as otherwise provided in Sections 73-21-45 through 73-21-50 NMSA 1978, as hereafter amended from time to time, the limitations appertaining to the issuance and the terms and conditions of refunding bonds shall be the same as those provided in Sections 73-21-1 through 73-21-54 NMSA 1978, as hereafter amended from time to time, for an original issue of bonds.

**History:** 1953 Comp., § 75-18-48, enacted by Laws 1967, ch. 187, § 9.

### **73-21-52. Duties of local government division.**

The local government division of the department of finance and administration shall approve all budgets of water and sanitation districts and shall from time to time review fiscal policies of such districts and report to the legislature and the governor any actions or policies of the districts deemed to be in violation of the law or the best interest of the people of New Mexico. The district shall submit annually to the local government division its budget for approval in the manner required by regulation of the division. The district shall submit any other information or data concerning the operation of the district, as deemed necessary by the local government division. Violation of the provisions of this section by the board of any water and sanitation district or any officer

thereof shall be deemed cause for removal or suspension in the manner as provided by law for county officers.

**History:** 1953 Comp., § 75-18-48.1, enacted by Laws 1977, ch. 345, § 10.

**Cross-references.** - As to removal and suspension of local public officers, see 10-4-1 NMSA 1978 et seq.

### **73-21-53. Use of bond proceeds restricted.**

Proceeds from any bonds issued pursuant to the provisions of the Water and Sanitation District Act [73-21-1 to 73-21-54 NMSA 1978] shall not be used by the board on any project constructed in fulfillment or partial fulfillment of requirements made of a subdivider by the provisions of the Land Subdivision Act [47-5-1 to 47-5-8 NMSA 1978] or the New Mexico Subdivision Act.

**History:** 1953 Comp., § 75-18-48.2, enacted by Laws 1977, ch. 345, § 11.

**New Mexico Subdivision Act.** - See 47-6-1 NMSA 1978 and notes thereto.

### **73-21-54. Board's determination final.**

The determination of the board that the limitations under Sections 73-21-45 through 73-21-51 NMSA 1978, as hereafter amended from time to time, imposed upon the issuance of refunding bonds have been met, shall be conclusive in the absence of fraud to the contrary.

**History:** 1953 Comp., § 75-18-49, enacted by Laws 1967, ch. 187, § 10.

### **73-21-55. Districts not subject to utility laws; option to submit to regulation.**

A. No district organized under the provisions of Sections 73-21-1 through 73-21-54 NMSA 1978 is subject to the jurisdiction of the New Mexico public service commission or the terms and provisions of the Public Utility Act, as amended, except as provided in Subsections B and C of this section.

B. Any district organized under the provisions of Sections 73-21-1 through 73-21-54 NMSA 1978 may elect by resolution adopted by its board of directors to become subject to the jurisdiction of the New Mexico public service commission and to the terms and provisions of the Public Utility Act, as amended; provided, however, that in no event shall Sections 62-9-1 through 62-9-6 NMSA 1978 apply to any district making such an election.

C. If the board of directors has not elected to become subject to the jurisdiction of the New Mexico public service commission under Subsection B of this section, it shall nevertheless file with the commission any rates, tolls and charges proposed by the board which shall be subject to approval by the New Mexico public service commission if twenty-five of the taxpayer-electors or five percent of the taxpayer-electors of the district, whichever is less, file a petition protesting the rates, tolls or charges with the commission within thirty days after the board proposes the rates. Upon the filing of such a petition, the commission shall hold a hearing pursuant to rules that it shall promulgate to implement this subsection.

**History:** 1978 Comp., § 73-21-55, enacted by Laws 1985, ch. 166, § 3.

**Cross-references.** - As to the New Mexico public service commission, see 62-5-1 NMSA 1978.

**Public Utility Act.** - See 62-13-1 NMSA 1978 and notes thereto.

## **ARTICLE 22**

### **WIND EROSION DISTRICTS**

#### **73-22-1. Short title; purpose of act.**

This act [73-22-1 to 73-22-5 NMSA 1978] may be cited as the "New Mexico Wind Erosion Act, 1955." To prevent damage to and loss of topsoils essential to the growing of agricultural crops and forage for livestock and to promote the general welfare of the people of the state of New Mexico, this act recognizes that certain prompt and effective preventive measures of an emergency nature must be taken against wind erosion and for such purpose wind erosion districts as herein provided may be established.

**History:** 1953 Comp., § 45-6-22, enacted by Laws 1955, ch. 241, § 1.

**Law reviews.** - For note, "Gabaldon v. Sanchez: New Developments in the Law of Nuisance, Negligence and Trespass," see 9 N.M.L. Rev. 367 (1979).

#### **73-22-2. Procedure for establishment of countywide erosion districts.**

A. Freeholders owning in the aggregate in any county 25 percent of the total land area thereof may petition the board of county commissioners for the establishment of a wind erosion district coextensive with the boundaries of the county. Resident entrymen of federal public lands and lessees of state agricultural lands shall be considered as freeholders for the purposes of this act [73-22-1 to 73-22-5 NMSA 1978] and shall share all of the privileges and obligations thereof.

B. The board of county commissioners after determining that any such petition is in conformity with the requirements of Subsection A of this section and upon payment by the petitioners of a sufficient sum to defray the cost shall order an election to be called on the question of the establishment of [such] wind erosion district.

**History:** 1953 Comp., § 45-6-23, enacted by Laws 1955, ch. 241, § 2.

### **73-22-3. Notice of election, qualification of electors and conduct of election.**

A. The board of county commissioners shall, after an election has been ordered as provided in Section 2B [73-22-2B NMSA 1978] of this act, cause notice, embodying the order in substance, signed by the chairman of such board and attested by the clerk thereof, to be issued, giving public notice of such election, the time and place thereof and the matter submitted to the vote of the electors, said notice to be published in English in some newspaper published and having general circulation in said county, or if there be no such paper, then in some newspaper having general circulation therein, at least once a week for two (2) consecutive weeks, the last insertion of such notice to be not less than thirty (30) days prior to said election.

B. At said election held under the provisions of this act [73-22-1 to 73-22-5 NMSA 1978], the following persons, and no others, shall be deemed electors:

1. all persons who are owners of agricultural lands within the district, or have evidence of title to such lands, or who are purchasers under contract of lands within the district;
2. all resident entrymen of federal public [lands] and lessees of state agricultural lands within such district;
3. any authorized officer or agent of a corporation owning land within such proposed district may cast the ballot of such corporation in all wind erosion district elections;
4. all minors who are the owners of agricultural land within such district, entitled to vote at any election shall cast their vote by their father, mother or duly appointed guardian in the order named, and if they have no father, mother or duly appointed guardian, such minors may cast their own vote;
5. any owner of agricultural lands in said district shall have the right to cast his vote at any election by any other person entitled to vote at such election whom he may so appoint as his proxy for that purpose in writing duly signed by him. Such proxy in writing shall be attached to and deposited with the ballot cast by such designated proxy and such ballot shall be signed by the name of the voter by the proxy, who shall also sign his name as such. Such written proxy shall be acknowledged before some person authorized by the laws of New Mexico to take acknowledgments.

C. Insofar as applicable, the general election laws of this state, except the requirements for registration under Section 3-2-49 and residence in state, county and precinct under Section 3-2-51 New Mexico Statutes Annotated, 1953 Compilation, and except as in this act otherwise provided, shall govern all elections under this act.

D. The board of county commissioners shall furnish sufficient printed ballots for all voters at each election. The ballots for the election shall contain, a place for the elector to vote for or against the formation of the proposed wind erosion district. Each elector shall sign his name on a line to be provided at the bottom of the ballot for that purpose before voting or casting such ballot.

E. Any qualified elector, as defined in this act, desiring to vote by mail, may do so by preparing his ballot in the manner prescribed by this act, affixing his signature thereto and mailing or sending the same, in a sealed envelope, to the judges of election of the voting district, division or polling place in which he is entitled to vote as designated in the notice of election, provided that such ballot must reach the judges of election therein not later than six o'clock p.m., on the day of such election.

F. The board of directors or board of supervisors, as the case may be, shall furnish each elector immediately upon request, personally or by mail, with a copy of such printed ballot for his use in voting if he will not be present at the polling place on the day of election. Such ballots shall be printed and ready for distribution at least thirty (30) days before any election. The form of ballot for the first election shall be substantially as follows:

BALLOT

On Question of Formation of..... Wind  
Erosion District

(Place "X" in one of boxes below)

For Wind Erosion District

Against Wind Erosion District

G. The judges of such election, after the polls have closed, shall count and tally the ballots cast, and the clerk shall certify the result of said election and send such certificate together with all the ballots cast at such election and all written proxies to the county clerk of the county, who shall deliver the same to the board of county commissioners, by which body such votes and returns shall be canvassed. The certificate of said election clerk shall also set forth the number of ballots received; the total number of ballots and votes cast; that the said ballots were duly received and voted within the

time fixed; that the same are all of the ballots and votes cast and received and that they are in the same condition as when received. After the board of county commissioners has received such certificate, together with the ballots and pollbooks and proxies of such election and has made its canvass, it shall declare and enter of record the results of such election, which shall be done at the next regular or called meeting of such board succeeding said election.

No votes of an elector cast at any election shall be counted unless the ballot has been signed as provided herein.

H. The board of county commissioners shall cause the petition herein provided for, all notices of publication and all orders of said board to be duly entered and recorded in the records of the board of county commissioners.

I. The expense of carrying out the provisions of this act shall be paid by said board of county commissioners out of the general funds of said county.

**History:** 1953 Comp., § 45-6-24, enacted by Laws 1955, ch. 241, § 3.

**Cross-references.** - For Election Code, see Chapter 1 NMSA 1978.

As to publication of legal notice, see 14-11-1 NMSA 1978 et seq.

As to acknowledgments, see 14-13-1 NMSA 1978 et seq.

**Compiler's note.** - Sections 3-2-49 and 3-2-51, 1953 Comp., cited in Subsection C of this section, were repealed by Laws 1969, ch. 240, § 451. For comparable provisions in the Election Code, see 1-1-4, 1-4-1 and 1-4-2 NMSA 1978.

**Polling places.** - Under former 3-2-3.4, 1953 Comp., being part of election laws and therefore governing manner in which elections for creation of wind erosion districts were to be held, a polling place was to be placed in each and every precinct in the area wherein the election was to be held. 1955-56 Op. Att'y Gen. No. 6352.

**Nonpartisan election.** - In this type of election notice to the chairmen of the dominant political parties need not be given because the election is nonpartisan, in the sense that political parties as such are not involved. 1955-56 Op. Att'y Gen. No. 6352.

#### **73-22-4. Governing body of wind erosion district.**

Whenever a wind erosion district is established under this act [73-22-1 to 73-22-5 NMSA 1978], the board of county commissioners shall be the governing body of such

district. The district attorney of the county shall be the legal advisor to the governing body and the county treasurer and the county clerk shall be the treasurer and clerk, respectively, of such district.

**History:** 1953 Comp., § 45-6-25, enacted by Laws 1955, ch. 241, § 4.

### **73-22-5. Powers and duties of governing body of wind erosion district.**

A. When a complaint in writing is filed with the governing body by any freeholder of the district or his duly authorized agent, complaining that his lands are being damaged by the effects of wind erosion on lands of an adjoining freeholder and after investigation, it appears that such damage may be minimized or avoided by preventive measures being taken against such wind erosion, it [the governing body] shall notify the owner of the land on which such measures need to be taken to put into effect within a reasonable time the preventive measure against wind erosion as specified in the notice to such owner.

B. If the owner fails to accomplish the work specified in the notice to him within the time prescribed therein, the governing body shall have such work done forthwith charging the cost thereof to the county general fund but such fund shall be reimbursed upon receipt of payment of such cost as provided in Subsection C of this section.

C. The cost of the work performed by the governing body under Subsection B of this section shall be assessed against the land in which the work was performed. Such assessment shall be treated as a special ad valorem assessment and shall be subject to payment, interest, penalties and enforcement in the same manner and to the same extent as county and state taxes.

D. Any person aggrieved may, within thirty days after the filing of the notice of assessment in the office of the county treasurer, appeal to the district court.

**History:** 1953 Comp., § 45-6-26, enacted by Laws 1955, ch. 241, § 5.

**Cross-references.** - For Tax Administration Act, see 7-1-1 NMSA 1978 et seq.

As to administration and enforcement of Property Tax Code, see 7-38-1 NMSA 1978 et seq.

## **ARTICLE 23 RESOURCE AND TRANSPORTATION DEVELOPMENT**

### **73-23-1. Short title.**

Chapter 73, Article 23 NMSA 1978 may be cited as the "Resource Transportation and Passenger Transportation Development Act".

**History:** Laws 1985 (1st S.S.), ch. 14, § 1; 1989, ch. 339, § 1.

**The 1989 amendment**, effective June 16, 1989, substituted "Chapter 73, Article 23 NMSA 1978" for "This act" and "'Resource Transportation and Passenger Transportation Development Act'" for "'Resource and Transportation Development Act'".

### **73-23-2. Findings and purpose.**

A. The legislature finds that optimal development of natural and mineral resources has been hindered by the inadequacy of transportation facilities in the state. The legislature also finds that there is a lack of coordination among the state and local governments and private entities in the development of natural resources transportation and passenger transportation facilities in the state. The lack of development of resources and transportation facilities for natural resources and passengers is detrimental to the continued economic development of the state.

B. The purpose of the Resource Transportation and Passenger Transportation Development Act [this article] is to promote the development of natural resources transportation and passenger transportation facilities for those resources and passengers in the state by creating a state transportation authority and empowering local governments to create transportation development districts.

**History:** Laws 1985 (1st S.S.), ch. 14, § 2; 1989, ch. 339, § 2.

**The 1989 amendment**, effective June 16, 1989, inserted "and passenger transportation" and "and passengers" throughout Subsections A and B; in Subsection A, substituted "for natural resources and passengers is detrimental" for "for those resources is detrimental" in the last sentence; in Subsection B, substituted "Resource Transportation and Passenger Transportation Development Act" for "Resource and Transportation Development Act"; and made minor stylistic changes throughout the section.

### **73-23-3. Creation of state transportation authority; members; compensation; organization.**

A. There is created the "state transportation authority", a body politic and corporate, subject to the oversight of the legislature, consisting of the following members:

- (1) the secretary of highway and transportation or his designee;
- (2) the secretary of economic development or his designee;
- (3) the commissioner of public lands or his designee;



(4) the director of the environmental improvement division of the health and environment department [department of environment] or his designee;

(5) one native American representative appointed by the governor with the advice and consent of the senate;

(6) two representatives of the transportation and mining industries appointed by the governor with the advice and consent of the senate; and

(7) three representatives of the public at large, at least one of whom shall represent a recognized environmental group, appointed by the governor with the advice and consent of the senate.

B. The members of the state transportation authority appointed by the governor shall serve for five-year terms. Any vacancy occurring in the governor's appointed membership of the authority shall be filled by appointment by the governor for the unexpired term of the member. Members serving by virtue of their offices shall serve terms coextensive with their terms in that office, and their successors in office shall automatically succeed them.

C. The members of the state transportation authority shall elect a chairman and a secretary.

D. Actions of the authority shall be taken only by a majority of the entire membership.

E. The state highway and transportation department, the economic development department, the state land office, the environmental improvement division of the health and environment department [department of environment] and other executive departments of the state shall provide adequate staff for the state transportation authority to carry out its duties.

F. The state transportation authority shall meet quarterly and at such other times as the chairman may designate.

G. The attorney general's office shall provide legal advice to the state transportation authority when requested.

H. The appointed members of the state transportation authority shall receive compensation for their services as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978].

**History:** Laws 1985 (1st S.S.), ch. 14, § 3; 1987, ch. 268, § 40; 1989, ch. 339, § 3; 1991, ch. 21, § 42.

**Bracketed material.** - The bracketed reference to the department of environment was inserted by the compiler, as Laws 1991, ch. 25, § 4 establishes the department of

environment and provides that all references to the environmental improvement division of the health and environment department shall be construed to mean the department of environment. The bracketed material was not enacted by the legislature and is not part of the law.

**The 1987 amendment**, effective July 1, 1987, in Subsection A(1), inserted "highway and" preceding "transportation" and, in Subsection E, inserted "state highway and" preceding "transportation department".

**The 1989 amendment**, effective June 16, 1989, in Subsection A, added present Paragraph (2) and redesignated former Paragraphs (2) to (6) as present Paragraphs (3) to (7); in Subsection E, inserted "the economic development and tourism department"; and made minor stylistic changes.

**The 1991 amendment**, effective March 27, 1991, deleted "and tourism" following "development" in Paragraph (2) of Subsection A and in Subsection E.

#### **73-23-4. State transportation authority; powers and duties.**

A. The state transportation authority shall have the power to develop and administer a grant program to assist transportation development districts with local project planning studies.

B. The state transportation authority may enter into cooperative procurement contracts with and receive grants and funding assistance from other state agencies and institutions.

C. The state transportation authority shall have the power of eminent domain for use in acquiring property, after compliance with the provisions of Subsection G of this section. Any exercise of the power shall be in accordance with Chapter 42A NMSA 1978.

D. The state transportation authority shall have the power to take all actions necessary to carry out the provisions of the Resource Transportation and Passenger Transportation Development Act [this article], including the power to adopt rules and regulations as necessary to carry out its functions and excluding those powers reserved to the state highway commission over state highways, the state highway program and other department policy matters, pursuant to Section 67-3-2 NMSA 1978.

E. The state transportation authority shall have the duty to:

(1) conduct research to determine where transportation systems are most needed in the state and for what purposes;

(2) conduct research to ascertain the most feasible routes for transportation systems in the state;

(3) advise, assist and provide information to private entities and transportation development districts to facilitate the development of worthwhile transportation systems;

(4) seek advice and counsel from other affected and interested state agencies where appropriate;

(5) consult with and seek concurrence with affected native American tribal or pueblo governments when considering a proposal to develop or acquire access to natural resources on Indian lands; and

(6) consult with affected federal land management agencies.

F. Before any project is undertaken by the authority or a transportation development district, the state transportation authority shall consider:

(1) the economic feasibility of the proposed transportation system;

(2) the necessity of the proposed system;

(3) alternatives to the proposed system and the environmental or economic benefit of such alternatives; and

(4) the environmental impact of the proposed system, including consideration of possible threats to air quality, water quality, wildlife and aesthetic values in the area of the proposed transportation system.

G. If the state transportation authority finds that a transportation system is needed in an area of the state, it shall give notice of its finding to all entities eligible to form transportation development districts which the authority, in its sole discretion, believes have an interest in the need. The authority shall also give notice to all persons the authority finds, in its sole discretion, to be interested or affected by the transportation or development of the resource or people giving rise to the need. The authority shall specify the manner of notice under this subsection by regulation. If after six months from the notice the authority finds that the need still exists, persons capable of meeting the need have not acted or proposed to act in a manner capable of meeting the need and either no entities have acted or that the entities so acting do not have the capability to meet the need, the authority may proceed under Sections 73-23-9 through 73-23-13 NMSA 1978 and shall have the following powers:

(1) to hire appropriate administrative, research and planning staff to achieve the purposes for which it was created;

(2) to enter into contracts with planning, engineering, design, construction and other firms for the planning, construction and operation of approved transportation facilities;

(3) to operate and maintain the transportation facilities which it constructs;

(4) to acquire property by purchase, lease, gift or devise for the purpose of constructing transportation facilities; and

(5) to enter into such contracts and agreements as necessary to carry out the provisions of the Resource Transportation and Passenger Transportation Development Act.

**History:** Laws 1985 (1st S.S.), ch. 14, § 4; 1989, ch. 67, § 2; 1989, ch. 339, § 4; 1991, ch. 107, § 1.

**The 1989 amendments.** - Laws 1989, ch. 67, § 2, effective June 16, 1989, adding all of the language of Subsection B beginning with "and excluding" and making minor stylistic changes in the last sentence of the introductory paragraph of Subsection E, was approved on March 16, 1989. However, Laws 1989, ch. 339, § 4, also effective June 16, 1989, in Subsection B, inserting "and Passenger Transportation" and adding the language at the end of the subsection beginning with "and excluding"; and in Subsection E, in the second sentence, inserting "or people", in the fourth sentence, substituting "Sections 73-23-9 through 73-23-13 NMSA 1978" for "Sections 9 through 13 of the Resource and Transportation Development Act", and, in Paragraph (5), substituting "Resource Transportation and Passenger Transportation Development Act" for "Resource and Transportation Development Act", was approved on April 7, 1989. The section is set out as amended by Laws 1989, ch. 339, § 4. See 12-1-8 NMSA 1978.

**The 1991 amendment,** effective July 1, 1991, added present Subsections A and B; redesignated former Subsections A to E as present Subsections C to G; and made a related change in Subsection C.

### **73-23-5. Transportation authority; powers of eminent domain.**

A. The state transportation authority shall have the power to acquire property by purchase, lease, gift or devise for the purposes of construction of transportation systems by a private entity or transportation development district.

B. The power to acquire property for the purposes listed in Subsection A of this section shall be construed broadly and shall include the power to acquire property for the construction and maintenance of communication and transportation structures and other facilities necessary for the operation of the transportation systems listed in Subsection A of this section.

C. The state transportation authority shall have the authority to negotiate for the acquisition of property from any person, governmental entity, Indian tribe or Indian pueblo for any of the purposes set forth in the Resource Transportation and Passenger Transportation Development Act [this article].

**History:** Laws 1985 (1st S.S.), ch. 14, § 5; 1989, ch. 339, § 5.

**The 1989 amendment**, effective June 16, 1989, in Subsection C, substituted "Resource Transportation and Passenger Transportation Development Act" for "Resource and Transportation Development Act".

### **73-23-6. Transportation development districts; authority of local governments to create.**

For the purpose of financing the planning and construction of transportation systems to meet regional and local needs for transporting passengers or developing natural resources, including coal, other energy resources and agricultural or other industrial products, one or more counties, municipalities, Indian pueblos or Indian tribes may create a transportation development district to develop transportation facilities within their boundaries.

**History:** Laws 1985 (1st S.S.), ch. 14, § 6; 1989, ch. 339, § 6; 1991, ch. 107, § 2.

**The 1989 amendment**, effective June 16, 1989, inserted "or to transport passengers" near the middle of the section.

**The 1991 amendment**, effective July 1, 1991, substituted "and local needs for transporting passengers or developing natural resources, including coal, other energy resources and agricultural or other industrial products" for "needs for developing coal or other energy resources or to transport agricultural or industrial products or to transport passengers".

### **73-23-7. Transportation development districts; directors; organization.**

A. A transportation development district shall be governed by a board of directors comprised of not less than seven nor more than fifteen members. The directors shall be elected by the governing body or bodies of the entity or entities which created the transportation development district.

B. The members of the board of directors shall serve five-year terms. Any vacancy on the board shall be filled by election of a new member of the governing body or bodies of the entity or entities which created the transportation development district.

C. A majority vote of all the directors shall be required to make any decision properly before the board.

D. Staff for the transportation development districts shall be supplied by the entity or entities which created the districts; provided that when a district is comprised of two or more entities, the entities may pool money to hire a staff for the single district.

**History:** Laws 1985 (1st S.S.), ch. 14, § 7; 1991, ch. 107, § 3.

**The 1991 amendment**, effective July 1, 1991, substituted "not less than seven nor more than fifteen members" for "seven members" in the first sentence in Subsection A and deleted the former second sentence in Subsection C, which read "Five members of the board shall constitute a quorum".

### **73-23-8. Powers.**

A transportation development district shall have the power to:

A. hire appropriate administrative, research and planning staff to achieve the purposes for which it was created;

B. enter into contracts with planning, engineering, design, construction and other firms for the planning, construction and operation of approved transportation facilities;

C. operate and maintain the transportation facilities which it constructs;

D. acquire property by purchase, lease, gift or devise for the purpose of constructing transportation facilities;

E. enter into such contracts and agreements as necessary to carry out the provisions of the Resource Transportation and Passenger Transportation Development Act [this article]; and

F. issue revenue bonds, at public or private sale, for the purposes of constructing transportation facilities. The terms and conditions of any bonds, notes or other obligation of the transportation development districts shall be determined by the board of directors and shall not be in conflict with the requirements imposed by law upon the member municipalities and counties. No bonds, notes or other forms of debt shall be issued pursuant to this section without the prior approval of the state transportation authority.

**History:** Laws 1985 (1st S.S.), ch. 14, § 8; 1989, ch. 339, § 7.

**The 1989 amendment**, effective June 16, 1989, in Subsection E, substituted "Resource Transportation and Passenger Transportation Development Act" for "Resource and Transportation Development Act".

### **73-23-9. Resource and passenger transportation bonds.**

A. After the notice procedures set forth in Subsection E [G] of Section 73-23-4 NMSA 1978 have been complied with and whenever the authority by resolution determines that the interest or necessity demands the issuance of revenue bonds for the funding of a project to meet the need for the transportation system, it may, pursuant to such resolution, make and issue state revenue bonds which shall be known as "resource and passenger transportation bonds". Such bonds shall be payable solely out of the net

income to be derived from the operation of the project and shall pledge, irrevocably, such income to the payment of those bonds. The state board of finance may require such other guarantees as it deems necessary. The bonds shall never become the general obligation of the state or any political subdivision.

B. The proceeds from the sale of resource and passenger transportation bonds shall be used solely for the purposes specified in the resolution and for which they were issued.

**History:** Laws 1985 (1st S.S.), ch. 14, § 9; 1989, ch. 339, § 8.

**Cross-references.** - As to the state board of finance, see 6-1-1 NMSA 1978.

**Bracketed material.** - The bracketed reference in Subsection A was inserted by the compiler to correct an apparently erroneous reference. The bracketed material was not enacted by the legislature and is not part of the law.

**The 1989 amendment,** effective June 16, 1989, in Subsection A, substituted "Section 73-23-4 NMSA 1978" for "Section 4 of the Resource and Transportation Development Act" and, in both subsections, inserted "and passenger" in the first sentence.

### **73-23-10. Resource and passenger transportation bonds; terms.**

Resource and passenger transportation bonds issued by the authority:

A. shall bear interest which at the time of commitment shall be equal to the market return on comparable investments but shall not be less than the average rate of interest or return on all the investments of the severance tax permanent fund for the immediately preceding fiscal year minus two percentage points previous to their issue;

B. shall be payable at such times as the authority may provide and shall be fully registered as to principal and interest;

C. may be subject to prior redemption at the authority's option at such time and upon such terms and conditions, with or without payment of premiums, as may be provided in the resolution of the authority;

D. may mature at any time not exceeding fifty years after the date of issuance;

E. may be serial in form and maturity and may consist of one bond payable at one time or in installments;

F. shall be sold for cash at, above or below par and at the effective interest rate permitted in this section; and

G. may be sold at a public or private sale.

**History:** Laws 1985 (1st S.S.), ch. 14, § 10; 1989, ch. 339, § 9.

**Cross-references.** - As to the severance tax permanent fund, see 7-27-3 NMSA 1978.

**The 1989 amendment,** effective June 16, 1989, in the catchline and near the beginning of the text, inserted "and passenger".

### **73-23-11. Refunding bonds.**

A. Resource and passenger transportation bonds issued pursuant to the provisions of the Resource Transportation and Passenger Transportation Development Act [this article] which are outstanding may at any time and from time to time be refunded by the authority upon the adoption of a resolution providing for such issuance and by the issuance of refunding bonds in such amount as the authority determines to refund the principal of the resource and passenger transportation bonds, all unpaid accrued and unaccrued interest thereon to the normal maturity date of such bonds or to selected prior redemption dates thereof, any redemption premiums, any commission and all estimated costs incidental to the issuance of such bonds and to such refunding as may be determined by the authority.

B. The principal amount of any such refunding bonds may be equal to, less than or greater than the principal amount of the bonds so refunded.

C. Any such refunding may be effected, whether the bonds to be refunded have then matured or thereafter mature, either by sale of the refunding bonds and the application of the proceeds thereof for the payment of the bonds to be refunded thereby or by exchange of the refunding bonds for the bonds to be refunded thereby; provided that the bonds to be so refunded shall not be canceled without the consent of the holders to surrender their bonds for payment or exchange prior to the date on which they are payable or if they are called for redemption prior to the date on which they are by their terms subject to redemption.

D. Any refunding bonds issued pursuant to this section shall be payable solely from the revenues out of which resource and passenger transportation bonds may be payable or solely from those amounts derived from an escrow as provided in this section, including amounts derived from the investment of refunding bond proceeds and other legally available amounts also provided in this section or from any combination of the foregoing sources.

E. Proceeds of refunding bonds shall either be applied immediately to the retirement of the bonds being refunded or be placed in escrow in a commercial bank or trust company which possesses and is exercising trust powers. Notwithstanding any statute to the contrary, such escrowed proceeds may be invested in short-term securities, long-term securities or both.

**History:** Laws 1985 (1st S.S.), ch. 14, § 11; 1989, ch. 339, § 10.



**The 1989 amendment**, effective June 16, 1989, in Subsection A, inserted "and passenger" in two places and substituted "Resource Transportation and Passenger Transportation Development Act" for "Resource and Transportation Development Act"; and, in Subsection D, inserted "and passenger".

### **73-23-12. Bonds eligible for investment.**

Bonds issued by the authority under the provisions of the Resource Transportation and Passenger Transportation Development Act [this article] are hereby made securities in which all public officers and public bodies of this state and its political subdivisions and all insurance companies, trust companies, banking associations, investment companies, executors, administrators, trustees and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Such bonds are hereby made securities which may properly and legally be deposited with and be received by any state or political subdivision officer for which the deposit of bonds or obligations of the state is authorized by law. The bonds may be deemed by the state transportation authority, with the approval of the state board of finance, certificates of deposit for purposes of the investment of state monies, in which case the authority shall be deemed a New Mexico savings and loan association for these purposes only; provided that the state board of finance may waive all collateralization and other requirements as long as it finds the bonds to be comparable in safety to other investments of state funds. No bonds, whether issued by the authority or a transportation development district, shall be eligible for investment or deposit by or with the state or any of its political subdivisions unless they have been rated AA or higher by an independent nationally recognized bond rating service based solely on the security of the bonds as investments without resort to any collateral guarantees. No such bonds shall be eligible for investment or deposit by or with the state or any of its political subdivisions unless the issuing authority has filed with the legislative finance committee its decision to issue the bonds and all of its findings and reasons in support of the decision and one complete regular session of the legislature has intervened since the filing.

**History:** Laws 1985 (1st S.S.), ch. 14, § 12; 1989, ch. 339, § 11.

**Cross-references.** - As to the legislative finance committee, see 2-5-1 NMSA 1978.

**The 1989 amendment**, effective June 16, 1989, near the beginning of the first sentence, substituted "Resource Transportation and Passenger Transportation Development Act" for "Resource and Transportation Development Act".

### **73-23-13. Exemption from taxation.**

The exercise of the powers granted under the Resource Transportation and Passenger Transportation Development Act [this article] will be in all respects for the benefit of the people of the state, for the increase in their commerce and prosperity and for the improvement of the economy of the state and its political subdivisions, and since the construction, operation and maintenance of any project by the authority will constitute

the performance of an essential governmental function, any bonds issued under the Resource Transportation and Passenger Transportation Development Act, their transfer and the income therefrom, including any profit made on the sale thereof, shall at all times be free from taxation by the state and by its political subdivisions.

**History:** Laws 1985 (1st S.S.), ch. 14, § 13; 1989, ch. 339, § 12.

**The 1989 amendment,** effective June 16, 1989, substituted "Resource Transportation and Passenger Transportation Development Act" for "Resource and Transportation Development Act" in two places.