

TITLE 42
IRRIGATION AND DRAINAGE -- WATER RIGHTS AND RECLAMATION

CHAPTER 28
COUNTY IRRIGATION, DRAINAGE, AND RECLAMATION PROJECTS

42-2801. BOARD OF COUNTY COMMISSIONERS -- AUTHORITY IN IRRIGATION AND DRAINAGE PROCEEDINGS. The boards of county commissioners of the several counties of the state of Idaho are hereby authorized and empowered to make all necessary orders for and cause to be constructed and maintained public drainage or irrigation systems, reservoirs, drains and ditches and other irrigation or drainage works for the irrigation or drainage of lands lying in said counties, and for such purposes, to enter into contracts for the construction or use of reservoirs and other irrigation or drainage works, constructed or to be constructed by the United States under the provisions of the federal reclamation laws, or for such works built or to be built by other parties or agencies and to take all steps and do all acts necessary or proper to secure an ample water supply for the lands in the county requiring irrigation and adequate drainage works for the lands requiring drainage, and to promote the beneficial use of the public waters of the state and the health and general welfare of the county by means of such works: provided, that nothing herein contained shall be construed to give such board of county commissioners authority over irrigation works except those acquired or constructed by the several counties under the provisions of this chapter: provided, also, that no county bonds shall be issued or sold for such purposes until such indebtedness has been authorized by two-thirds (2/3) of the electors of the county (having the qualifications provided in section 42-2803, Idaho Code,) voting at an election to be held, subject to the provisions of section 34-106, Idaho Code, for such purpose.

[(42-2801) 1921, ch. 222, sec. 1, p. 492; I.C.A., sec. 41-2401; am. 1995, ch. 118, sec. 59, p. 474.]

42-2802. ENLARGEMENT OF EXISTING WORKS -- PURCHASE AND COMPLETION OF INCOMPLETE WORKS -- PURCHASE AND COMPLETION OF PAYMENTS ON PARTIALLY PAID STORAGE RIGHTS. The board of county commissioners may enlarge, improve or extend existing reservoirs, canals and other irrigation and drainage works to provide for the irrigation or drainage of additional lands in such county, or to improve the water supply or drainage for such lands, and may contract with the owners of existing irrigation or drainage works to provide for such enlargement, improvement or extensions, and may purchase and complete incomplete irrigation or drainage works and may purchase assignments of partially paid reservoir or storage rights and the assignment of such contracts, and may complete payment thereon and acquire such storage and reservoir rights for the reclamation or more complete irrigation of lands in such county, and in so doing shall proceed in similar manner as in the case of entirely new works but subject to the same condition as to approval of the bond issue by the electors of the county.

[(42-2802) 1921, ch. 222, sec. 2, p. 492; I.C.A., sec. 41-2402.]

42-2803. ELECTION PROCEDURE SAME AS IN OTHER COUNTY BOND ELECTIONS. In calling and holding such elections and canvassing the vote and in all other proceedings not otherwise provided herein, the board of county commissioners shall follow the procedure prescribed by law for county bond elections,

and at such elections to authorize indebtedness, the electors shall have the qualifications prescribed by section 31-1903[, Idaho Code,] for other county bond elections, and in addition thereto must be taxpayers in said county.

[(42-2803) 1921, ch. 222, sec. 3, p. 492; I.C.A., sec. 41-2403.]

42-2804. PETITION -- DEPOSIT OF PETITIONERS. Before any public irrigation or drainage work specified in this chapter shall be established, a petition signed by one hundred (100), or twenty-five per cent (25%) of the owners of the land described in such petition, as the land proposed to be benefited, setting forth the necessity therefor, that the same will be a public benefit and will promote the public welfare or public health, the description of the proposed irrigation or drainage works in general terms, together with a description of the land intended to be benefited thereby, shall be filed with the county auditor. Upon the filing of such petition, one or more of such petitioners shall deposit with the county treasurer of such county from time to time sums of money in an amount to be determined and fixed by the board of county commissioners to be used by them to defray all costs and expenses incurred under the provisions of this chapter to and including all expenses of the bond election and until such time as funds for said work are otherwise available: provided, that the amount of such deposits shall be included in the cost of the works in the event the indebtedness for the same shall be authorized at such election and reimbursement shall thereafter be made to the parties depositing the same.

[(42-2804) 1921, ch. 222, sec. 4, p. 492; I.C.A., sec. 41-2404.]

42-2805. DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES -- EXAMINATION AND REPORT ON PRACTICABILITY OF PLAN -- CALLING OF ELECTION -- PROCEDURE UPON APPROVAL OF BOND ISSUE -- APPEAL. Upon the filing of the petition, and the making of the cash deposit, as herein provided, the board of county commissioners shall within thirty (30) days thereafter file a copy of said petition with the director of the department of water resources of the state of Idaho, and request him to examine into and report to said board, all matters necessary and essential to disclose the practicability, necessity or advisability of the construction of the proposed works or improvement, or the proposed contract for the use or benefit of the works constructed, and thereupon said director of the department of water resources shall, without delay, proceed and examine all matters named and referred to in said petition and make such survey of the territory likely to be affected by the proposed improvement as will enable him to fully determine whether the same is necessary or practicable, and report accordingly, and if some other or different plan than that described in the petition is found practicable, said director of the department of water resources shall so report giving such details and information as will be necessary to fully inform the board of county commissioners on all matters pertaining to the practicability or feasibility of the proposed plan, either as outlined in said petition, or according to some other or different plan that may be designated and recommended by said director of the department of water resources, but it shall be his duty to outline and designate all changes, whether by extension, enlargement, additions, or otherwise, that may be necessary to make the plan of the proposed improvement practicable and feasible, showing the probable size, character and cost of such proposed work, and if he finds the improvement petitioned for is feasible, he shall include in his report a map of the proposed improvement and also

give the description of the tracts of land which he deems would be benefited thereby, and the probable area that is likely to be irrigated or drained or provided with a supplemental water supply, or otherwise affected by the proposed improvement, and such other information as the board may request. The director of the department of water resources is authorized to employ such assistance as the character of the work requested of him may require, but before incurring any expense he shall file with the county commissioners an estimate of the amount of money required to perform such work and upon the approval by the county commissioners of such estimate, said amount shall be required to be deposited with the county treasurer as other deposits are herein required, the same to be used in paying the expense incurred by said director of the department of water resources in the performance of said work. Upon the filing of the report of the director of the department of water resources as herein provided, and upon receipt of notice of approval of the project by the director of the department of water resources said board shall within ten (10) days proceed in like manner as provided by law for the procedure of the board of county commissioners in calling and conducting other county bond elections, and in like manner as provided in the laws governing county bond elections for other purposes, shall canvass the returns of said election, and if two-thirds (2/3) of the qualified electors, as in this chapter provided, voting at such election shall be found to have voted in favor of authorizing such indebtedness or bond issue, then the board of county commissioners shall make and file for record in the office of the county recorder an order establishing such county irrigation or drainage project; shall proceed to apportion and assess the benefits of such proposed irrigation or drainage works or such proposed contract, to the lands to be benefited thereby and in making such apportionment of benefits shall proceed in like manner as provided by law for the proceedings of the directors of irrigation districts in apportioning benefits in irrigation districts, and in like manner as in the case of similar proceedings in irrigation districts shall file a petition in the district court for the confirmation of the apportionment of benefits, and the validity of the bond issue or contract, and the proceedings in connection with the holding of the election, and the apportionment of benefits; whereupon the district court shall proceed to set such petition for hearing and to hear the evidence in connection therewith and to decide the same in like manner and with like effect as provided by statute in the case of similar proceedings in irrigation districts. The said petition and decree may be either for the confirmation of all of said proceedings in one (1) decree or there may be separate and successive petitions and decrees for confirmation of any part of said proceedings and if the court finds the apportionment as made by the board of county commissioners to be equitable and just the court shall confirm the same and if the court finds the said apportionment or any part thereof to be inequitable or unjust the court shall itself make an equitable and just apportionment and file a decree confirming the same. An appeal may be taken from such decision of the district court to the Supreme Court either by the board of county commissioners or any of protesting landowners who have appeared in said proceedings in the district court in like manner as in similar cases in irrigation districts. The said decree of the district court may not be collaterally attacked, and if not set aside or modified by the Supreme Court, shall be final and conclusive as to the validity of the bond issue and the apportionment of benefits so confirmed, and the regularity and validity of all proceedings in connection with or leading up to the same.

[(42-2805) 1921, ch. 222, sec. 5, p. 492; I.C.A., sec. 41-2405.]

42-2806. CONTRACTS -- PROCEDURE FOR MAKING SIMILAR TO THAT IN IRRIGATION DISTRICTS -- EXCEPTION -- APPROVAL OF DIRECTOR. In making contracts for the construction or purchase of irrigation or drainage works or the right to the use of works constructed or to be constructed, the county commissioners shall proceed in similar manner as provided by law for the making of similar contracts by irrigation districts, but no election shall be required to authorize any such contract: provided, however, that the aggregate of all contracts entered into for the purchase or construction of works on any project under the provisions of this chapter shall provide for the ultimate completion of the project in accordance with the approved plans referred to herein at a total cost not exceeding the total sum of money derived from the sale of bonds issued for such project, and the contractor or contractors (except in cases where the United States government is the contractor) shall give the bond required by section 45-502.

The plans and specifications and all contracts for construction work contracted for by boards of county commissioners under this chapter shall first be approved by the director of the department of water resources, and any construction contract entered into by such boards shall by its terms provide that such construction work shall be completed in accordance with such plans and specifications to the approval of the director of the department of water resources except in the case of contracts with the United States government. It shall be the duty of the director of the department of water resources, upon the completion of the work under any contract entered into under the provisions of this chapter to issue a certificate of such completion to the board or boards of county commissioners.

[(42-2806) 1921, ch. 222, sec. 6, p. 492; I.C.A., sec. 41-2406.]

42-2807. LANDS ASSESSED -- STATE LANDS. All lands directly benefitted by any irrigation or drainage project, or any irrigation or drainage works established under this chapter, and all public or corporate roads or railroads so benefitted in whole or in part, shall be assessed in proportion to the benefits for the construction thereof. All lands owned by the state of Idaho benefitted by such project may be assessed for such benefit the same as taxable land, provided a notice of the filing of the petition and of the time and place of hearing and notice of hearing shall have first been served on the state agency responsible for the management of such state owned lands: provided, that instead of paying the said assessments so levied against the state lands, the state may promptly offer said state lands for sale at public sale in the manner provided by law, and as rapidly as permitted by the provisions of the state constitution, until the entire acreage of state land in such project shall have been sold and if the state does not make appropriations for the payment of such assessments against such state lands, then the sale of such state land, when made, shall be made under contract requiring the purchaser as a condition to receiving title to such lands from the state, or to receiving any contract right or interest therein, to pay all assessments duly levied against such lands under the provisions of this chapter, and to pay to the proper county officer at the time of such sale such annual assessments as may have come due prior to the time of such sale, with interest thereon as hereinafter provided, and to continue the payment of such assessments until title passes from the state to such purchaser, which conveyance

shall be made from the state to the purchaser subject to the liens herein provided for.

[(42-2807) 1921, ch. 222, sec. 7, p. 492; I.C.A., sec. 41-2407; am. 1994, ch. 180, sec. 86, p. 485; am. 2003, ch. 32, sec. 24, p. 131.]

42-2808. COOPERATION WITH STATE UNDER CAREY ACT. All counties in which irrigation projects shall be established under the provisions of this chapter by order of the board of county commissioners and all counties containing part or portion of the lands to be irrigated or reclaimed under any such project, are hereby authorized to cooperate with the state of Idaho and with the national government under the provisions of the Carey Act laws of the United States and of the state of Idaho, and all such counties are authorized and empowered to exercise and do all acts granted or authorized to irrigation districts under the provisions of chapter 17 of title 43, and sections 43-1701 to 43-1712 inclusive, of the Idaho Code, and the board of county commissioners of every such county is authorized and empowered to exercise all powers granted under said chapter and sections to the boards of directors of irrigation districts in providing for the irrigation and reclamation of lands segregated under the Carey Act, and the collection and enforcement of the liens provided for such purpose.

[(42-2808) 1921, ch. 222, sec. 8, p. 492; I.C.A., sec. 41-2408.]

42-2809. COUNTIES AUTHORIZED TO ACT AS IRRIGATION DISTRICT. For the purpose of performing the acts and exercising the powers granted by section 43-1801 of the Idaho Code and the act of Congress of August 11, 1916, entitled "An Act to Promote Reclamation of Arid Lands," (39 Stat. 506), counties in which irrigation projects have been duly established by order of the board of county commissioners under the provisions of this chapter, shall be considered to be irrigation districts of the state of Idaho and vested with all the powers and authority granted to irrigation districts by said section 43-1801 of the Idaho Code, and by the said act of Congress of August 11, 1916, entitled "An Act to Promote the Reclamation of Arid Lands," and the board of county commissioners of such counties are authorized to act as the directors of such district for such purpose and to exercise all the powers granted to the directors of irrigation districts.

[(42-2809) 1921, ch. 222, sec. 9, p. 492; I.C.A., sec. 41-2409.]

42-2810. COOPERATION WITH FEDERAL GOVERNMENT UNDER FEDERAL RECLAMATION LAWS. Any county in which any irrigation or drainage project shall have been established under the provisions of this chapter by order of the board of county commissioners, or which contains any part of the irrigable lands of such projects so established, is hereby authorized to cooperate with the United States and the officers of the interior department and reclamation service for the purpose of furnishing irrigation or drainage, or a more complete or ample water supply by means of reservoirs, canals, or other works, to lands in such county, is authorized to exercise all powers which are granted by chapter 18 of title 43, sections 43-1803 to 43-1828 inclusive of the Idaho Code to irrigation districts, and the board of county commissioners of such county are granted all powers and authorized to do all acts granted or authorized under said sections to be done, exercised or performed by the board of directors of an irrigation district.

[(42-2810) 1921, ch. 222, sec. 10, p. 492; I.C.A., sec. 41-2410.]

42-2811. BONDS TO BE ISSUED AFTER LIEN STATEMENT FILED -- DIRECT OBLIGATION OF COUNTY -- FORM, TERMS, AND CONDITIONS -- PROVISIONS FOR PAYMENT. The board of county commissioners of each and every county wherein any irrigation or drainage projects are proposed to be wholly or partially located and established, or wherein lands are located which are assessed for benefits by reason of the construction thereof, is hereby authorized after the filing of the decree of the district court confirming the election and other proceedings authorizing a bond issue of said county, to issue the bonds of their respective counties, and to be designed as "... county improvement bonds" in such amounts as may be necessary to fully meet and discharge the expenses authorized by this chapter. All such bonds shall be the direct and primary obligations of the county for the full principal and interest thereof. The faith, credit, and all taxable property within the limits of the county, as constituted at the time of such issue, are, and must continue, pledged to the payment of said bonds. All such bonds shall be in the form provided in section 3524 of the Idaho Compiled Statutes and shall be sold negotiated as provided in section 3525 of the Idaho Compiled Statutes, and the board of county commissioners shall provide for the payment of such bonds and interest thereon in like manner as in the case of other county bonds and as set out and provided in section 3522 of the Idaho Compiled Statutes, but shall reimburse the county by enforcing all liens and collecting all assessments from the lands against which benefits have been assessed or apportioned under the provisions of this chapter. The word "expenses" shall be construed to mean and cover every item of cost of said irrigation or drainage project from the filing of the petition to the completion of work and all fees and expenses to be incurred in pursuance thereof. Such bonds shall be payable at such time or times not to exceed twenty (20) years from their date and shall bear such rate of interest payable annually or semiannually as the board of county commissioners shall by resolution determine. Each bond shall contain a recital that it is issued by authority of and in conformity with the provisions of this chapter and such bond may otherwise be in such form as the board of county commissioners may determine, but not in conflict with the requirements of section 3524 of the Idaho Compiled Statutes. Said board of county commissioners shall have power to sell and negotiate said bonds as hereinbefore provided. The proceeds from the sale of all such bonds shall be placed in a general reclamation fund which is hereby created in the county treasury. The county auditor shall keep a separate account with each irrigation or drainage project so established in such county, which account shall be credited with all moneys arising from the sale of bonds, all moneys received as interest or penalties upon liens, charges, assessments, and all other sources on account of such irrigation or drainage system, and which account shall be debited with every item of expenditure made on account of such irrigation or drainage project. Such board of county commissioners shall provide moneys for the payment of principal and interest of said bonds as they severally mature, which money shall be placed in the general reclamation fund into which fund it may transfer any surplus moneys remaining in the general revenue fund, or other funds of the county, which can be properly used for the purpose of this chapter, into which fund shall be paid all moneys received from the payment of any liens created under the provisions of this chapter, and such board is hereby authorized to pay such bonds issued under the provisions of this chapter, or the interest thereon, out of any available funds in the county treasury when the moneys on hand in the general reclamation fund of the treasury are insufficient to

meet the payment of the bonds issued in irrigation or drainage proceedings under this chapter when the same mature. But the fund from which such moneys have been taken or used for the payment of bonds after they mature, shall be replenished with interest from the collections of unpaid assessments for irrigation or drainage works constructed under any proceedings had hereunder, as authorized in this chapter.

[(42-2811) 1921, ch. 222, sec. 11, p. 492; I.C.A., sec. 41-2411; am. 1970, ch. 176, sec. 2, p. 508.]

42-2812. SINKING FUND. The board of county commissioners of any county in which any irrigation or drainage project is established under this chapter are authorized to provide by resolution for a sinking fund for the payment of the bonds issued under the provisions of this chapter and for such purpose and in order to provide a fund to meet all payments of the principal and interest on such bonds as the same come due and to cover deficiencies or delays in collections shall provide an assessment each year, ten per cent (10%) in excess of the amount of the principal and interest coming due the following year on the bonds issued by such county under this chapter until such time as a reserve fund shall have been accumulated in the county treasury from such excess assessments to an amount of at least ten per cent (10%) of the bonds issued by such county for such irrigation or drainage project.

[(42-2812) 1921, ch. 222, sec. 12, p. 492; I.C.A., sec. 41-2412.]

42-2813. LIEN STATEMENT -- CONTENTS. At the earliest practicable time after the letting of the contract for the construction or use of any irrigation or drainage works as herein provided, the auditor of each county affected thereby shall make in tabular form a list and statement showing the following facts and in the order named, viz:

1. The names of the owners of all lands and the names of all public or corporate roads or railroads within their respective counties benefited by the construction of such proposed work as appears from the apportionment of benefits made by the board of county commissioners modified (if at all) by the order of confirmation of the district court.

2. The description of said lands as the same appears in such apportionment of benefits so affected, together with the total number of acres in each tract according to the assessment rolls or tax lists of such county.

3. The estimated number of acres benefited in each tract of said land as shown as aforesaid.

4. The amount that each of said tracts of land and that each of said corporate roads or railroads so benefited will be liable for and must pay into the treasury of each county for the said works.

[(42-2813) 1921, ch. 222, sec. 13, p. 492; I.C.A., sec. 41-2413.]

42-2814. LIEN STATEMENT -- EXECUTION -- FILING -- EFFECT. Such statement shall then be signed by the county auditor in the presence of two (2) attesting witnesses and be duly acknowledged by him, and shall then be duly filed and recorded by the county recorder of such county. The amount which each tract of land and each public or corporate road, or railroad, will be liable for and the interest thereon as hereinafter provided, shall be and remain the first and paramount lien on such land, public or corporate roads or railroads until fully paid, and shall take precedence of all mortgages, charges, encumbrances or other liens whatsoever. Such payments may be made as hereinafter provided. Such findings shall be deemed notice to all parties

interested of the existence of such lien. The fees of such county recorder for such recording shall be paid by the county on the allowance of the board of county commissioners and said statement after the same has been recorded shall be returned to the county auditor to be by him placed with the other papers relating to such project and carefully preserved by him.

[(42-2814) 1921, ch. 222, sec. 14, p. 492; I.C.A., sec. 41-2414.]

42-2815. INTEREST -- PREMIUM ON BONDS. The amount that each tract of land, public or corporate road or railroad shall be liable for on account of the establishment of any irrigation or drainage project under the provisions of this chapter shall bear interest from the date of the filing of the auditor's statement in the county recorder's office at a rate of interest not exceeding six per cent (6%) per annum until paid, such rate of interest to be fixed and determined by the board of county commissioners at the time of establishing such project: provided, that when bonds are issued by the county for the construction or establishment of such project, the same rate of interest shall be charged as said bonds so issued bear: provided, further, that in any case and at any time after the establishment of any project and in the event there is not sufficient money in the sinking fund for the purpose the board of county commissioners may upon such notice as shall be ordered and upon a showing of the necessity to provide funds to meet payments due or maturing on the bonds issued under this chapter, either change or modify any order previously made fixing and determining a rate of interest or fix the rate of interest in the case the same has not been previously fixed or change the existing rate of interest, the same to remain in effect until such time as the amount in the sinking fund is sufficient for such purpose. All interest shall constitute an additional lien on said land or lots until fully paid, which said interest when about to be paid shall be computed by the county auditor. If bonds are sold at a premium, such premium shall become a part of the sinking fund herein provided.

[(42-2815) 1921, ch. 222, sec. 15, p. 492; I.C.A., sec. 41-2415.]

42-2816. LIENS -- HOW PAID -- TAXES. The payment of such liens shall be made to the same county officer to whom other county taxes are required by law to be paid and become due and delinquent on the same day of the year as other county taxes. The date of the maturity of said lien shall be fixed by resolution of the county commissioners at the time of the issue of said bonds, and shall correspond to the maturity of said bonds. The said principal lien shall bear interest at a rate not to exceed six per cent (6%) per annum, payable annually on the same day of the year provided by law for the payment of the other county taxes, such interest to be reckoned from the date of the filing of the lien statement in the office of the county recorder and interest on the whole of the principal of such lien remaining from time to time unpaid shall be paid annually on the same day of each year except as hereinafter in this section otherwise provided. In case bonds shall be issued by the county then the lien shall bear the same rate of interest as such bonds. On or before the first day of October next following such filing of the lien in the office of the county recorder, the county auditor shall for the purpose of enforcing payment of such lien, enter on a project lien record of said county the whole amount of such lien remaining unpaid against each respective tract of land subject thereto, and shall at the same time, or before tax lists or tax rolls are turned over to the county tax collector, compute interest as in this chapter provided on such unpaid amount to the first

day of July following and shall enter such interest on the tax list and tax rolls for such year and the instalments of such lien and interest thereon together with such amount as may be required for the sinking fund as herein provided shall be collected in the same manner as real estate taxes for that year on the tract in question are collected, and the county auditor shall in the same manner each year thereafter compute interest on the amount of such lien remaining unpaid and not previously entered on the tax rolls of prior year, or years, together with interest to the first of July and enter the same together with the instalment, if any, together with such amount as may be required for the sinking fund as herein provided then due on the tax lists and tax rolls, said instalment, interest and sinking fund to be collected in like manner as the first payment until the whole amount of any such lien and accumulated interest shall have been so entered on the tax rolls and tax lists of such county, and all of the provisions of law now or hereafter existing in relation to the collection of real estate taxes so far as applicable hereto are hereby adopted for the purpose of enforcing payment of such liens and instalments thereof and of the interest thereon, and each of the same shall be subject to the same penalties for delinquency in payment as provided by law for other county taxes. When payment of the full amount of such liens with accumulated interest shall thus, or at any one time, be made, the auditor upon presentation of a receipt from the treasurer to that effect, shall issue under his hand and official seal a certificate of such payment and the same when recorded in the office of the county recorder shall release and discharge said lien of record. If any item of cost of an irrigation or drainage project established under this chapter from the inception of such project to its completion has been, or shall be omitted from the original tabular statement for assessments made and filed by the auditor with the county recorder, then a supplementary statement or assessment shall be made by said auditor in the same form and manner as the original statement so far as practicable showing such omitted costs, which supplementary statement or assessment shall be filed for record in the office of the county recorder and shall be due and payable and collectible in the same manner, time and form as if a part of the last annual instalment of the original assessment.

[(42-2816) 1921, ch. 222, sec. 16, p. 492; I.C.A., sec. 41-2416.]

42-2817. LIENS AND PAYMENTS -- SUBDIVISIONS OF LIEN. In all cases in which a lien has been established against any tract or tracts of land comprising more than one government lot or forty-acre subdivision by reason of benefits assessed thereon in any irrigation or drainage project established under this chapter, and no instalment of such assessment or interest thereon shall be in default, any person or corporation having an interest in said land, or any part thereof, may petition the district court of the county wherein such land is situated to have such lien apportioned between or among specified portions of such tract or tracts. Upon the filing of such petition the court shall by its order fix a time and place at which said petition shall be heard and requiring personal service of a notice of such hearing to be served upon the county auditor, the occupants of such premises and on all parties having an interest in said premises as shown by the records in the office of the county recorder of such county at least ten (10) days before such hearing, or if for any reason personal service cannot be made upon all of said persons, notice shall be given by two (2) weeks publication in a newspaper published in said county in lieu of personal service. At the time and place appointed by the court for hearing upon such petition, or

at the time to which such hearing may have been adjourned, the court shall hear any and all evidence bearing upon the matters set out in said petition and as to what will be a proper and equitable apportionment of said lien between or among the portions of such original tract which it is desired shall be encumbered by separate liens, and shall thereafter by its order apportion such lien among such tracts, but in no case shall the aggregate of said separate liens be different from the amount of the unpaid portion of the original lien. A certified copy of the order apportioning said lien shall be recorded in the office of the county recorder of such county and filed in the office of the clerk of the district court, which shall operate as a division and apportionment of such original lien between such various tracts of land originally covered thereby, and shall operate as a release of each of said tracts from said lien, except the amount so apportioned against it and thereafter the amount apportioned to each of such respective tracts shall be entered separately against such tract upon the tax list and tax roll and so reported to the proper county officer for collection and no reduction or abatement of the amount so apportioned shall be thereafter made.

[(42-2817) 1921, ch. 222, sec. 17, p. 492; I.C.A., sec. 41-2417.]

42-2818. REPAIRS -- ASSESSMENTS -- LANDS IN OTHER COUNTIES. After the construction of any such public drainage or irrigation project within the state of Idaho under this chapter, and until the board of county commissioners shall have made a suitable contract with some existing irrigation or drainage district, or ditch or irrigation company for the operation and maintenance of said project, and in the case of irrigation projects for the distribution of the water supply made available from the reservoirs or other irrigation structure constructed or provided under this chapter to the lands in said county assessed for the benefits of such improvement, or in case no such contract is made with such district or company to act as the agency of the county for the distribution of the water and the maintenance and operation of the works, then until such time as the operating district herein provided for shall have taken over the operation and maintenance of said works in the distribution of water therefrom in the case of irrigation works and shall have provided the necessary funds for such operation, maintenance and distribution, the board of county commissioners of the county in which the lands assessed for the benefits of such irrigation or drainage project are located shall keep such works and all parts thereof in proper repair and shall make proper contracts and take all necessary steps to maintain and operate the same and pay the cost of such maintenance and operation, and in the case of irrigation projects to distribute the water made available by such works and provide for and pay the cost of such maintenance and operation, and in case there are public funds to the credit of the drainage or irrigation project so to be operated or maintained, to make such repairs and pay for such maintenance and operation, such fund may be expended by the board of county commissioners for such purpose without further assessment. In case there are no public funds to the credit of such irrigation or drainage project so to be operated and maintained, then except as hereinafter otherwise provided, the board of county commissioners shall pay for the same out of the general revenue funds of the county, and to raise the necessary money to reimburse that fund it is hereby authorized to apportion and assess the cost thereof upon all lands originally assessed for benefits by reason of the construction of said project, said apportionment and assessment to be in the same proportion as was the original assessment for benefits. Such board of

county commissioners shall make a written statement of such assessment and deliver the same to the auditor of the county, who shall put the same upon the next succeeding tax record and tax roll of said county and who shall make and file in the office of the county recorder the lien statement covering the cost and expenses of such operation, maintenance and repair, and such assessment shall be a first and paramount lien upon the lands affected, the same as state and county taxes and shall be collected in like manner as the liens for the construction of the project, except that the same shall not be payable in instalments, but such operation and maintenance expense shall be provided for in each year's assessments. In case such assessment, or any part thereof is chargeable against lands in another county, then the amount thereof chargeable against such other county shall be the board of county commissioners of the county which has paid the same, be certified to the county auditor of such other county chargeable therewith, and such last-mentioned county auditor shall thereupon draw his warrant therefor in favor of and deliver the same to the county treasurer of the county which has paid the same, and such auditor drawing such warrant shall thereupon apportion and assess and file for the amount thereof upon all lands in said county originally assessed for benefits by reason of the construction of said project in the same proportion as was the original assessment of benefits.

[(42-2818) 1921, ch. 222, sec. 18, p. 492; I.C.A., sec. 41-2418.]

42-2819. DISTRIBUTION OF RESERVOIR OR OTHER WATER THROUGH EXISTING CANAL SYSTEMS -- COOPERATION WITH COMPANIES AND DISTRICTS. In all cases where the lands assessed for any water supply or any reservoir or reservoir capacity constructed or made available under the provisions of this chapter lie in whole or in part under any existing canal system, or are so located that the same can be irrigated through such canal system or any part or extension or enlargement thereof, the board of county commissioners of the county in which such lands, or any part thereof, are located are authorized to enter into a contract on behalf of such county, with the company, irrigation district, or individual owning or operating any such canal system under which such district, company or individual shall become the agency of the county for the distribution and delivery of such reservoir or other water to the lands of such county lying under or so located that they can be irrigated from such existing canal system, and as such agent of the county to provide for the operation and maintenance and repair of the irrigation works constructed or made available under the provisions of this chapter and authorizing such canal owners or operators to collect from the landowners under said canal system an operation and maintenance charge, toll, fee or assessment sufficient to pay the cost of such operation, maintenance and distribution including the cost of operating and maintaining the reservoir or the proportionate part thereof properly chargeable to such land, and to require the payment of such operation and maintenance charges as a condition to the delivery of such reservoir or other water supply and to withhold delivery of such reservoir or other water until all such operation and maintenance charges for past years have been paid, and when so provided in the contract between such canal owner and the county or when so ordered by the board of county commissioners, shall withhold the delivery of such water supply so provided or made available by the county under the provisions of this chapter, from any lands on which any instalment of the principal, or interest of the said liens provided for in this chapter, or the amount due the sinking fund as herein provided, or any assessment levied by the county

for the purpose of paying any such instalment or annual interest charge or sinking fund remains delinquent, delivery to such lands, however, to be resumed upon payment of all assessments then due and payable or delinquent, but no part of the water supply provided or made available by the county under the provisions of this chapter shall be delivered to lands against which benefits have not been assessed.

[(42-2819) 1921, ch. 222, sec. 19, p. 492; I.C.A., sec. 41-2419.]

42-2820. OPERATING DISTRICTS -- WHEN CREATED -- VESTED WITH POWERS OF IRRIGATION DISTRICTS -- BOARD OF DIRECTORS. The lands assessed for benefits of any irrigation or drainage project established under this chapter and not lying under or within the area capable of irrigation from an existing canal system with the owners of which system the board of county commissioners of the county or counties in which such lands are located shall within one year after the establishment of such project by order of the board of county commissioners have made an operation and maintenance contract pursuant to the provisions of the preceding section of this chapter, shall be and become upon the expiration of said year an operating district, and such operating district shall be and is hereby vested with all the powers and authority and charged with all the duties of an irrigation district organized under the laws of the state of Idaho and shall have the power and duty to act as the agency of the county for the operation, repair and maintenance of such project, and in the case of irrigation works also for the distribution and delivery of the water made available thereby, and to enter into contracts with the board or boards of county commissioners for such purposes, and to provide for the cost of such operation, maintenance and repair of such works, and the distribution of the waters thereof by levying and collecting tolls, charges or assessments upon the lands of such operating district in like manner and with like effect as in the case of irrigation districts under the laws of this state and the board of directors of such operating district shall have all the powers and authority of a board of directors of an irrigation district and shall be elected in like manner and follow a like procedure as provided by the laws of this state relating to directors of irrigation districts, except that the first board of directors shall be appointed by the governor who shall designate in his appointments which of such directors is appointed for the one (1) year, which the two (2) year, and which the three (3) year term, said directors to be each a resident respectively of one (1) of the three (3) divisions of the district, which divisions shall also be established by the order of the governor at or prior to the time of said appointments.

[(42-2820) 1921, ch. 222, sec. 20, p. 492; I.C.A., sec. 41-2420.]

42-2821. PAYMENT OF INTEREST FOR FIVE YEARS OUT OF PROCEEDS OF SALE OF BONDS. The board of county commissioners, by a suitable order duly made and recorded in the office of the county recorder, may, when they deem it advisable, provide for payment of interest on such county bonds for a period of not to exceed five (5) years out of the proceeds of the sale of such bonds and in that event no assessments need be collected for the payment of such interest charges until the expiration of said period of not to exceed five (5) years, and in such event the amount of the estimates, and the liens, instalments to be paid, and bonds to be issued and sold, shall be increased to a sufficient extent to provide for such funding of interest and to provide the funds required for such interest payments as well as for construction purposes and

for payment of the amounts due or to become due on contracts entered into in pursuance hereof. But such order for the payment of interest for not to exceed five (5) years out of the proceeds of the sale of bonds shall be conditional upon there being available in the county treasury a sufficient amount of money from the proceeds of such bond sales to complete the construction of the proposed work, in addition to the amounts to be paid out for such interest payments and should the funds available in the county treasury for the sale of such bonds be insufficient to make such interest payments, and also complete the proposed construction and the payments of the county's obligations on its contract or contracts in connection with such project, then, notwithstanding any such order or orders for payment of interest out of the proceeds of the sale of bonds, the county officers shall proceed to collect by taxation and the enforcement of liens as provided in this chapter, the funds necessary to make interest payments and shall use the funds derived from the sale of bonds for the purpose of completing the project and completing payment of the county's contract obligations insofar as the proceeds of the sale of bonds may be required for such purpose.

[(42-2821) 1921, ch. 222, sec. 21, p. 492; I.C.A., sec. 41-2421.]

42-2822. ASSESSMENT OF STATE LANDS -- SEPARABLE PORTION OF CHAPTER. The provisions of this chapter providing for the assessment of state lands shall be considered a separable portion of this chapter, and it is hereby declared to be the intention of the legislature that the remainder of this chapter remain in full force and effect, even if the said provisions in regard to assessment of state lands should be held unconstitutional.

[(42-2822) 1921, ch. 222, sec. 22, p. 492; I.C.A., sec. 41-2422.]

42-2823. COMPENSATION OF COUNTY COMMISSIONERS -- EMPLOYMENT OF ASSISTANCE. The county commissioners in addition to their compensation otherwise provided by law shall be entitled to compensation for their services required under this chapter at the rate of five dollars (\$5.00) per day for each and every day necessarily spent in the performance thereof, and shall be paid out of the funds provided for by this chapter and be a part of the expense as herein provided. The county commissioners shall have the power to employ such assistance and fix the rate of pay therefor in the performance of their duties under this chapter as the nature of the work may require the same to be a part of the expense herein provided for.

[(42-2823) 1921, ch. 222, sec. 23, p. 492; I.C.A., sec. 41-2423.]