

**Irrigation Districts, Creation Of. Board of County Commissioners, Action on Petition, Irrigation Districts.**

1. In the matter submitted the Board of County Commissioners are concerned only with the sufficiency of the petition filed, and as to what lands should be considered in the creation of the district.

2. Sections 1 and 2 of the Act state what must be included in the petition.

3. The boundaries of the district are limited only by the lands which are susceptible of irrigation from the source of water supply and system of irrigation works, which will belong to the association when the district is created.

4. Only the tracts of land which are susceptible of irrigation should be included in the district, though these tracts are non-contiguous.

5. The district when created has the same right as an individual to change the point of diversion so long as such change does not interfere with other appropriators of the waters.

Helena, Montana, April 20, 1907.

Hon. John A. Matthews,  
County Attorney,  
Townsend, Montana.

Dear Sir:—

I am in receipt of your letter of April 10th, asking certain questions relative to the law enacted by the Tenth Legislative Assembly (Chapter 70) which provides for the creation and organization of irrigation districts.

The only matters here with which the county commissioners are concerned regarding the creation of such districts are to determine whether the petition filed states the jurisdictional facts, and also to determine what land should be considered in the creation of the district.

Sections 1 and 2 of the Act answer this first question. The four principal things required to be stated in the petition are (a) The boundaries of the district, (b) Sources of water supply, (c) Character of works, and (d) Prayer for the creation of the district. This petition shall be

addressed to the Board of County Commissioners and shall be signed by a "majority in number of the holders of title or evidence of title to lands susceptible of irrigation from a common source and by the same system of works, such holders of title or evidence of title representing a majority in acreage of said land."

The boundaries of the district, by the terms of the Act, are limited only by the lands which are susceptible of irrigation from the source of water supply and system of irrigation works which will belong to the association when the district is created, and in determining what lands are susceptible of irrigation the board should take into account only those tracts of land which can be irrigated. For example, if only forty acres out of a one hundred and sixty acre tract can be irrigated, only that forty acres should be counted, the other one hundred and twenty acres which, cannot be irrigated is not considered as included within the district, though it may be within the exterior boundaries thereof. And where the district consists of non-contiguous tracts of land, about the only manner of determining the boundaries is by giving a description of the particular tracts of land which may be irrigated. The petition should state somewhat specifically, the particular sources of water supply and the points of diversion, in order that the board may determine therefrom what lands are susceptible of irrigation or may be made so by the construction of proper ditches and laterals. This may not be a specific requirement to be inserted in a petition, but it will be an aid to the board if it is so inserted. The board, at the hearing, will have to determine from the evidence or from any knowledge which it may have from any source, as to what tracts of land may be irrigated and when it has once determined this question, it can easily ascertain from the assessment rolls for the year last preceding whether a majority of the holders of title and representing a majority in acreage have signed the petition. These questions of fact are largely within the discretion of the board.

I understand one of the questions submitted by you to be as to the right of the board to take into consideration lands lying above the main canal but which may be irrigated from a stream which is crossed by the main canal. If this stream so crossed is one of the sources of water supply and the company owns any water from that stream, either by appropriation or by purchase with stock, or otherwise, it may then use that water, diverting it from any point on this stream necessary to conduct the water to the land desired to be irrigated, and such lands may then become a part of the district. In these matters the district would have the same right as an individual to change the place of diversion to a point higher up the stream when necessary, so long as it did not interfere with the rights of other appropriators.

The form of petition attached to your letter (the one consisting of two pages) states all of the jurisdictional facts when the boundaries are inserted but we would suggest that, for the purpose of aiding the board, that in the first paragraph on the second page of the petition, you name the tributaries or streams which will be crossed by the canal

and which are to constitute a source of water supply.

Yours very truly,

ALBERT J. GALEN,

Attorney General.