



# HANDBOOK

Ohio County Commissioners

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## CHAPTER 29

# DRAINAGE AND DITCHES

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### 29.01 GENERAL INFORMATION

Ohio's drainage laws are very broad in nature and detailed in the procedure necessary to bring a project to completion. Ohio Revised Code Chapter 6131, the single county ditch law, is the law most frequently used in agricultural areas, and is commonly known as the "petition ditch law." Other chapters of the Ohio Revised Code that are important include Chapter 6133, Joint County Ditches; Chapter 6135, Interstate County Ditches; and, Chapter 6137, Ditch Maintenance Fund. Chapter 1515 contains a drainage procedure under the Soil and Water Commission which has been widely used. Chapter 6151, watercourses, contains useful provisions for dealing with live streams and removing obstructions.

While this chapter will primarily deal with petition ditches and maintenance of petition ditches, drainage improvements can also be achieved under the "mutual agreement" procedure and through the Soil Conservation Service (SCS). A simplified "ditch repair procedure" is also possible for small projects.

Mutual agreement ditches are usually the most cost effective method to make improvements. In these projects property owners voluntarily join together to pay for the costs of the improvement. The county is marginally involved in the project, but the landowners contract for the construction. It is useful, however, only when property owners are in total agreement on the project and its cost.

SCS projects also involve less county involvement than petition ditches. Engineering work is done by SCS, although commissioners do hold hearings on these projects.

Finally, ditch repairs can be made if a ditch is of record, but is not on permanent maintenance. These ditch repairs may only be requested if the cost is less than \$4,000. While a hearing is not required, most counties usually hold hearings to be sure property owners know they will have to pay for the work.

## **29.02 TYPES OF IMPROVEMENTS**

Various types of improvements are possible under Ohio's petition ditch law. The following is a general summary of the possible improvements:

1. The location, construction, reconstruction, reconditioning (cleaning) widening, deepening, straightening, altering, boxing, tiling, filling, walling, arching, or any change in the course, location or terminus of any ditch, drain, watercourse or floodway.
2. The deepening, widening, straightening, or any change in the course, location, or terminus of a river, creek, or run.
3. The construction of a wall, levee, embankment, jetty, dike, dam, sluice, revetment, reservoir, holding basin, control gate, breakwater, or other structure for the protection of lands from the overflow of any stream, lake, or pond, or for the protection of any outlet, or for the storage or control of water.
4. The removal of obstructions such as silt bars, log jams, debris and drift from any ditch, drain, watercourse, floodway, river, creek, or run.
5. The vacating of a ditch or drain.

Some years ago, Chapter 6141 of the Revised Code, dealing with the cleaning of ditches, was repealed, and many of its provisions were incorporated into Chapter 6131 of the Revised Code. The term "reconditioning" contained in Section 6131.01(C)(1) probably means the same thing as cleaning in Section 6131.04. The significance of terms can be important because a cleaning or reconditioning project may not constitute a taking of land for which damages may need to be paid. Projects that are true improvements, on the other hand, usually involve a taking of land for which compensation usually must be paid.

## **29.03 SINGLE COUNTY PETITION DITCHES**

The following sections discuss the procedures required to make improvements under Chapter 6131 of the Revised Code. Any owner or public body who will benefit may file a petition with the county commissioners to initiate the legal steps necessary to finance, construct, and maintain an improvement.

## **29.04 THE PETITION**

Petitions are filed with the commissioners' clerk with the help of the county engineer. Although the petition needs the signature of only one property owner, it is desirable to involve as many as possible. Cities, villages, townships, and even the county may petition for an improvement. If the county is the petitioner, however, the petition is filed with the court of common pleas who then hears the petition. The petition must include the following information or statements:

1. That the improvement is necessary.
2. That the improvement will benefit the petitioner.
3. That the improvement will be conducive to the general welfare.
4. The location, source, and terminus of the improvement and any branches, spurs or laterals.
5. That all costs of engineering, construction and future maintenance will be assessed to benefiting parcels of land.
6. A list of names and addresses of all owners of land that the petitioner or county engineer claims will be damaged or benefited.

The petition may be amended at any time if any benefiting property owner files a written application with the commissioners' clerk. The application must include all the information required in the original petition including the names and addresses of additional owners that the petitioner or county engineer claims will benefit or be damaged by the improvement.

## **29.05 FILING OF BOND**

A \$500 bond must be filed with the petition, plus \$2 for each parcel of land in excess of 200 listed in the petition as benefiting from the proposed improvement. The bond may be made in the following ways:

1. By two freeholders of the county who own property.
2. By a surety or bonding company.
3. With cash.

The bond is made payable to the general drainage improvement fund and is conditioned to pay the costs of notices and other incidental expenses. The bond can also be used to pay for the county engineer's preliminary reports if the petition is later dismissed. A municipality, township, the state or other public corporations are exempt from the bond

requirement. The bond is released 21 days after the first hearing or at the termination of any appeal.

### **29.06 ESTABLISHMENT OF DATE OF VIEW AND FIRST HEARING**

The date, hour, and place where the view will start must be set by the county commissioners. The date must be 25 to 90 days after the petition is filed. At this same time the commissioners must set the date, time, and place of the first hearing on the petition. This hearing must take place between 10 and 90 days after the viewing date. The view gives the commissioners and the county engineer an opportunity to gather field information about the proposed improvement. Any owner may also present proof of how he will be affected by the proposed improvement.

### **29.07 NOTICE OF VIEW AND HEARING**

Written notice of the view and the first hearing must be sent to owners named in the petition as of the date the petition was filed. The following guidelines apply to the written notices:

1. The notice must be sent at least 20 days before the date of the view.
2. The written notice must set forth the pendency, substance, and prayer of the petition; that all costs of engineering, construction and future maintenance will be assessed to the benefiting parcels of land; the date, hour, and starting place of the view; and, the date, hour, and location of the first hearing.
3. The written notice must be mailed to each owner by certified mail, return receipt requested, or by first class mail in a five day return envelope. The words "legal notice" must be printed in plain view on the face of the envelope.
4. For a corporation, partnership, association, non-profit organization, etc. the written notice should be mailed to the chief officer or managing person at the usual place of business in the county. If there is no place of business in the county it is mailed to the nearest regular place of business.
5. The written notice must be served upon a railroad company by addressing the notice to any regular ticket or freight agent of the railroad located in the county. If no location exists within the county, it is sent to the nearest regular ticket or freight agent.

In addition to the mailed notices the commissioners' clerk must publish a legal notice in one newspaper of general circulation stating the name and number, if any, of the proposed improvement; the location and nature of the work proposed in the petition; and, the date, time, and location of the view and first hearing.

If the mailed notices were sent by certified mail, the notice must be published once and not less than 13 days before the view.

If the mailed notices were sent by first class mail the notice must be published twice. The notice must also include a list of owners whose first class notice was returned undelivered. The first notice must be published not less than 13 days before the view, and the second notice must be published not less than six days before the view.

The commissioners' clerk must obtain an affidavit from the newspaper showing publication was made. The clerk must also prepare a certificate showing that written notices were actually mailed to the owners. Both the affidavit from the newspaper and the certificate of mailing must be filed with the commissioners' clerk no later than the first hearing date. Any written notices which are returned undelivered or unclaimed as well as the certified mail receipts showing delivery must all be kept on file as part of the permanent record of the project.

### **29.08 WRITTEN COMMENTS FROM OWNERS**

Landowners who did not sign the petition, but are in favor of the improvement or cleaning, may file applications requesting that the petition be granted and stating their reasons. Owners opposed may file their complaints stating their reasons. These written statements in favor of or against the project may be filed with the commissioners clerk at any time before the commissioners make a final order confirming the assessments and ordering the letting of contracts for the construction, or before a final order is made dismissing the petition.

### **29.09 RESPONSIBILITIES OF COUNTY ENGINEER**

When the county engineer is notified that a ditch petition was filed he must:

1. Prepare a preliminary estimate of the costs of the proposed improvement or cleaning.
2. File, at the first hearing, a preliminary report including a preliminary cost estimate, comments on project feasibility, and a statement as to whether benefits from the project are likely to exceed estimated costs.
3. The preliminary report must list all factors, favorable and unfavorable, apparent to the engineer.
4. In addition to the preliminary report on the improvement as petitioned, the engineer may submit alternate proposals.
5. The commissioners may require the engineer to provide and file any additional reports deemed useful.

6. The engineer's cost in making the preliminary reports may be paid from the bond of the petitioner if the petition is dismissed at the first hearing. Any amount in excess of the bond is paid from county funds. If the engineer's costs are not paid from the bond, they must be paid from county funds. The commissioners must specify whether the bond is to be used to pay the engineer's costs if the petition is dismissed.

#### **29.10 THE VIEW**

At the date and time fixed for the view the commissioners must meet at the designated place for the view and at the time hear proof offered by any owner affected by the project. The commissioners and the county engineer must go over and along the line of the proposed improvement and each branch, lateral, or spur mentioned in the petition. When the view is completed the commissioners adjourn the proceedings until the first hearing.

#### **29.11 THE FIRST HEARING**

The date and hour of the first hearing must be given in the notice announcing the view. It must be from 10 to 90 days after the date of the view. At the first hearing the commissioners continue hearings on the petition that actually started at the view and consider any written comments. The commissioners also hear the engineer's preliminary report and any evidence offered by any owner for or against the improvement. If, after the view, an application is filed for branches, laterals, or change of route the commissioners must fix a time to view the change and then view the change.

The first hearing may be adjourned from day to day for whatever time is reasonable and needed so that all interested owners have an opportunity to be heard. No change can be made in the nature of the work proposed after the first hearing is completed, except upon application of an interested owner affected by the proposed improvement, and upon notice given to all owners affected by the change.

#### **29.12 APPROVAL OR DENIAL OF PETITION**

The county commissioners may grant the petition if they find, at the first hearing:

1. That an improvement is necessary,
2. That the proposed improvement will be conducive to the public welfare, and
3. That the cost of the proposed improvement, with reasonable certainty, will be less than the benefits.

The county commissioners must also consider any adverse impacts on environmentally significant areas and give consideration to alternative plans to provide protection to such areas. In making the decision on whether to proceed to a second hearing, the opinion of the county engineer should be of primary importance.

When the petition is granted the commissioners must determine the route and terminus of the project and of the branches, spurs and laterals and the manner of construction. The commissioners may change either the route or the terminus of the proposed improvement if they find the change is needed.

If the petition is granted the commissioners must order the transfer from the general fund to the general drainage improvement fund an amount up to 25 percent of the engineer's preliminary estimated cost. After the 21 day appeal period has expired and after the transfer of funds has been authorized, the commissioners order the engineer to prepare his reports, plans, and schedules and set a date for their submission.

The petition must be dismissed if the commissioners find that the improvement is not necessary, will not be conducive to the public welfare, or if the costs will exceed the benefits.

Any owner affected by the dismissal may appeal to the common pleas court within 21 days pursuant to Section 6131.25 of the Revised Code. If no appeal is filed the petitioner pays all the costs of the proceedings and the bond is released.

### **29.13 PLANS, ENGINEERING AND COST ESTIMATES**

If the petition is granted, the county engineer is responsible to make surveys, develop plans and estimate the cost of construction, of rights-of-way, of engineering, and of notices, publication, and other incidental expenses. The plans are then reviewed by the Department of Natural Resources, the Department of Transportation (where a state highway is affected), and the board of Directors of any conservancy district if any lands or streams in the district are affected.

The plans must provide for spreading and leveling of spoil banks and for erosion and sediment control through the establishment of a sod or seeded strip not less than four or more than 15 feet wide. The strip shall be provided on both sides of the ditch, except where suitable vegetative cover exists. The strip or other erosion and sediment control measures shall be considered a part of the permanent improvement. Owners shall be compensated for sod or seeded strips wider than four feet by their removal from the tax duplicate.

### **29.14 BENEFITS AND DAMAGES**

The county engineer estimates the benefits accruing to public corporations; any department, office, or institution of the state; and to private owners. "Benefit" or "benefits" means advantages to land and owners, to public corporations as entities, and to the state, resulting from drainage, conservation, and control and management of water and environmental, wildlife, and recreational improvements. In determining benefits, consideration must be given to:

1. The watershed or entire land area drained or affected by the improvement.
2. The total volume of water draining into or through the improvement, and the amount of water contributed by each land owner.
3. The use to be made of the improvement by any owner, public corporation, or the state.

Benefits also include any or all of the following factors:

1. Elimination or reduction of damage from flood.
2. Removal of water conditions that jeopardize public health, safety, or welfare.
3. Increased value of land resulting from the improvement.
4. Use of water for irrigation, storage, regulation of stream flow, soil conservation, water supply, or any other incidental purpose.
5. Providing an outlet for the accelerated runoff from artificial drainage whenever the stream, watercourse, channel, or ditch under improvement is called upon to discharge functions for which it was not designed by nature. It is the legislative intent that uplands which have been removed from their natural state by deforestation, cultivation, artificial drainage, urban development, or other manmade causes will be considered as benefited by an improvement required to dispose of the accelerated flow of water from these areas.

The county engineer gives primary consideration to the potential increase in productivity of the land, the location of the land relative to the project; the portion of the project through which drainage from the land flows; the value of the project to the watershed; and, the quantity of drainage contributed.

The county engineer must also estimate the value of land or other property necessary to be taken, as well as the damages to be sustained by any owner as a result of the construction of the proposed improvement and the subsequent maintenance of the improvement. The total of these damages is included as part of the total cost of construction.

### **29.15 PROPERTY TAX LEVY**

As an alternative to the schedule of assessments, the county commissioners may pass a resolution to levy a tax on all the property listed and assessed for taxation in the county. The resolution must be certified to the board of elections 75 days before the election upon which it will be voted. The levy may be for a period up to five years except when it is for payment of debt charges when the levy shall be for the life of the indebtedness.



At least 60 days prior to passage of the resolution to levy a tax for construction and maintenance of a drainage improvement, the county commissioners must file with the county auditor and board of elections an accurate map showing the locations and types of any proposed improvements, the areas to be benefited and the existing system of drainage improvements that is to be maintained. The resolution may designate all or part of the county as a drainage improvement district and the proceeds of the levy shall be used only within the district.

#### **29.16 ESTABLISHMENT OF FINAL HEARING DATE**

After the county engineer files his reports and schedules, the county commissioners fix a date for a final hearing on the improvement. This hearing must be from 25 to 90 days after the plans and schedules are filed with the commissioners.

#### **29.17 NOTICE OF FINAL HEARING**

The clerk must give notice of the hearing by certified mail, return receipt requested, or by first class mail in a five day return envelope with the words "legal notice" printed in plain view on the face of the envelope. The notice must be sent to all owners whose names appear in the engineer's schedule of assessments and damages.

The mailed notices must include the date of the final hearing on the report of the engineer; the assessment or the estimated damages; and compensation for any land or other property that must be taken. It also includes notification that all claims for compensation or damages must be filed before the date fixed for the final hearing.

The mailed notice must also state that if bonds or notes are to be issued the owner must give written notice to the commissioners' clerk within 21 days after the final hearing if the owner intends to pay in cash. The clerk must include with the legal notice to the owner a form that can be used to notify the commissioners of the owners intention to pay in cash.

The clerk must also publish a legal notice in one newspaper of general circulation stating the name and number, if any, of the proposed improvement, location and nature of the work proposed in the petition, and the date, time and location of the final hearing. The publication must be made once if the mailed notices were sent by certified mail at least 13 days before the final hearing.

If the mailed notices were sent by first class mail the newspaper notice must be published twice. This notice must also include a list of names of those who were notified by first class mail whose notices were returned undelivered. This notice must also be published at least 13 days before the final hearing. The law is silent as to whether this 13 day requirement applies to the first or second publication.

Proof of publication must be verified by affidavit of the newspaper, and the clerk must prepare a certificate showing the service of the written notices. Both the newspaper affidavit and the clerk's certificate must be filed with the commissioners on or before the

day of the final hearing. Certified mail notices returned undelivered and certified mail receipts showing delivery must be kept on file as a permanent record of the improvement.

### **29.18 OBJECTIONS TO ASSESSMENTS**

An owner may accept the estimated assessment, the estimated damages, or the estimated compensation in the engineer's schedules or may acquiesce to the engineer's failure to estimate damages or award compensation in his favor. Such acceptance or acquiescence is conclusively presumed unless the owner files exception to the schedules or files a claim for damages or compensation on or before the date of the final hearing.

All exceptions to the schedule of assessments and damages; all claims for compensation for property to be taken; and, all claims for damages not listed in the engineer's schedule of damages, must be filed with the commissioners clerk on or before the date of the final hearing. All exceptions filed by the owners must describe the land they claim will be taken or damaged, and must describe the nature and reasons for the claim.

### **29.19 THE FINAL HEARING**

At the final hearing the commissioners hear all evidence offered and consider the schedules and reports filed by the county engineer. It will either reaffirm its former order granting the petition or it will set aside the former order and dismiss the petition.

In addition, the commissioners must hear evidence offered by the owners on the engineer's estimate of damages and upon any claim filed for compensation or damages. After hearing the evidence and reviewing the engineer's schedule of estimated damages and a view of the premises if needed, the commissioners determine the amount of damages and the fair market value of any property to be taken.

Commissioners must then authorize the county auditor to pay from the general drainage improvement fund the amounts determined before any work on the project is done. An owner may appeal the commissioners determination refusing compensation or damages. The may also appeal the amount of the compensation or damages or the value of any property taken.

The commissioners must also hear any application filed for a change of the route or course of the project. The commissioners may also hear any application to make any change in the nature, kind, or extent of the work to be performed. If the commissioners find that such changes better accomplish the purpose of the project they may make such change.

If such a change is made or if the damages and compensation allowed by the commissioners exceeds the estimate of damages filed by the engineer that increases the project costs, the final hearing is continued until the engineer revises the schedules. Before proceeding to make such changes all affected owners must be notified again.

## **29.20 FINAL ACTION ON THE PETITION**

After hearing all the evidence and reviewing all the schedules, plans, and reports of the engineer, the commissioners must reconsider the former order and either confirm it and proceed to confirm the assessments and order the letting of the contract or must set aside its former order and dismiss the petition.

If the commissioners find that the costs will equal or exceed the benefits, that the improvement is not necessary, that the improvement will not be conducive to public welfare the commissioners must set aside its former approval and dismiss the petition. A dismissal may be appealed to the common pleas court.

If the commissioners dismiss the petition all costs for the proceedings including the costs of the engineer in making surveys, plans, reports, and schedules, may be distributed to the benefiting landowners in the same ratio as determined by the engineer in the final estimated assessments presented at the final hearing.

If the petition is not dismissed the commissioners hear evidence offered for or against the proposed assessments and evidence on the question of benefits. From the evidence and the view of the premises the commissioners must amend and correct the assessments as needed.

That part of the project assessed to the general public and conducive to public welfare is paid from the general fund. That part of the assessment that benefits state roads or highways is assessed against the state and payable from motor vehicle revenues. That part of the assessment that benefits county roads or highways is assessed against the county and payable from motor vehicle revenues. That part of the assessment that benefits the public corporation or political subdivisions of the state is assessed against the public corporation or political subdivision and paid out of the general fund or motor vehicle revenues of the public corporation or political subdivision.

The commissioners then approve and confirm the assessments and order the engineer to receive bids for the construction of the project. They also set the date, time, and place for the receiving of bids which must be at least 25 days after the order. Commissioners also determine when the assessments must be paid and whether bonds or notes will be issued.

The commissioner's clerk must immediately transmit to the auditor the schedules listing all assessments as approved by the commissioners. Any owner opposed to the petition, the project, or who claims his assessment is excessive may appeal.

## **29.21 ASSESSMENTS**

Assessments are levied on each parcel of land benefited, to pay for construction and maintenance. These assessments are paid in semiannual installments when taxes are paid. If bonds or notes are issued, the installments will include interest at the rate the bonds or notes bear. Any owner may avoid paying interest by paying the estimated

assessment on his land in cash within 30 days after the final hearing. Notice of intent to pay in cash must be given within 21 days after the final hearing.

If the estimated cost of the improvement is less than \$500, no more than two semiannual installments will be allowed. If the estimated cost of the improvement exceeds \$500, the commissioners may determine the number of installments, not to exceed ten. If an assessment is \$25 or less, or whenever the unpaid balance of any such assessment is \$25 or less, the assessment must be paid in full when the next installment is due.

Upon completion of the improvement, the assessments are reduced pro rata by the difference between the estimated cost and the final cost. The assessment includes the cost of location, engineering, compensation, damages, contingencies and a maintenance assessment for one year.

The original schedule of assessments must be maintained by the county auditor as the permanent base for maintenance assessments. Annual maintenance assessments are made when the improvement is substantially completed and on July 1 each year. Assessments will be placed on the next succeeding tax duplicate, to be collected and paid as special assessments. Maintenance assessments are levied annually as a percentage of the estimated benefits. At no time may the maintenance fund have an unencumbered balance greater than 20 percent of the construction cost of the improvement. The minimum maintenance assessment is \$2.

After six annual maintenance fund assessments have been made, the commissioners must review the permanent base for maintenance fund assessments and may increase or decrease the respective benefit apportionments in accordance with changes in benefits which have occurred during the past six years. When changes are made, the owners must be notified, and a hearing held.

Notice must be sent to each affected owner by either certified mail, return receipt requested, or by first class mail in a five day return envelope. The words "legal notice" must be printed in plain view on the face of the envelope. The notice must include the amount of the present base for the maintenance assessment, the new proposed base, and the date of the hearing on the proposed change. The hearing must take place not less than 20 nor more than 30 days after the adoption of the changes.

At the end of six years from the date of the first review of the permanent base of maintenance assessments, and every six years thereafter, the commissioners review the permanent base for assessments.

Owners along a drainage improvement may form any advisory committee for the purpose of notifying the county engineer of needed repair and maintenance work. Any recommendations shall be submitted to the engineer by May 1 of the year work is needed.

In lieu of the permanent base, the county commissioners may levy assessments apportioned according to the taxable value of benefited property. Prior to changing to this

method of assessment for maintenance, the county commissioners must give at least 10 days notice in a newspaper of general circulation of the time and place where the change will be considered. Any owner so assessed may appeal to the court of common pleas the question of whether any such assessment is levied according to benefits. Any increase or reduction of the assessments levied in this manner must be made at the regular sexennial reappraisal.

## **29.22 APPEALS**

Any owner opposed to the granting of the petition; any owner opposed to further proceedings in the improvement; or any owner who claims that the assessment levied against him is excessive or is not in proportion to benefits, may appeal to the court of common pleas. This appeal must be filed 21 days after the final approval of the petition. No further action is taken on the petition until the 21 day appeal time has passed. If the order is in favor of granting the improvement, the commissioners proceed with the improvement in compliance with the final court order, from the point at which they were terminated by the appeal.

## **29.23 MAINTENANCE**

The county commissioners must establish and maintain a fund for the repair, upkeep, and permanent maintenance of each improvement constructed. Whenever the county has reason to believe the improvement is in need of repair or maintenance, it will make an inspection and if it finds a need for repair or maintenance, it will make an estimate of the cost of the necessary work and material. The commissioners will determine the most economic and expeditious method of maintenance and repair. This authority may be delegated to the county engineer.

The county engineer has general charge and supervision for repair and maintenance. He must make an inspection of the drainage improvements, and on or before June 1 each year, must report to the commissioners on the condition of drainage improvements and his estimate of the amount of funds required to repair and maintain them. Persons who perform maintenance may go upon land abutting or adjoining drainage improvements, and within the permanent easement, as necessary. In the case of open ditches, the area used must be not more than 25 feet from the top of the bank except in an emergency where 75 feet may be used. For closed ditches not more than 80 feet from the center of the ditch may be used.

When maintenance requires the damage of existing crops beyond the permanently established sod or seeded strip, the owner of the crops shall be granted damages equal to market value, to be paid from the permanent maintenance fund established for the improvement.

Any owner may make application for reduction in his maintenance assessment due to work he proposes to perform on any portion of a public ditch, watercourse, or other improvement. An application must be filed with the county engineer on or before May 1,

and must state the nature of the work. The county engineer recommends the percent reduction of maintenance assessment to be granted, if any. The commissioners must then either confirm or reject the allowances recommended by the county engineer.

The commissioners may grant a reduction of not more than 50 percent of his annual maintenance assessment to any owner who files a certificate of the board of supervisors of the soil and water conservation district certifying that he is following practices in the cultivation or management of agricultural land that will reduce the runoff of surface water and the erosion of sediment and silt into drainage channels. This certificate is filed with the county engineer who has the right to inspect the premises, and may ask the soil and water conservation district to review any certificate on file.

If the cleaning or repair of an improvement becomes necessary by the negligent acts of any owner, the commissioners, after a hearing and notice, may increase the maintenance assessment in an amount sufficient to rectify the damage.

The county engineer and county commissioners share the responsibility for maintenance of all ditches petitioned after August 23, 1957. Section 6137.051 covers ditches petitioned prior to August 23, 1957. It provides for repairs costing up to \$4,000 on these improvements. This section can be a helpful tool for very small projects.

## **29.24 MULTI-COUNTY PETITION DITCHES**

The primary difference between making improvements in one versus two or more counties is that a joint board of county commissioners conducts the proceedings. The procedures for the petitioners are essentially the same.

The petition for an improvement that is proposed to be located in, or benefits or damages land in, two or more counties may be filed with the commissioners' clerk of the county with the majority of the proposed improvements.

The proceedings are conducted by a joint board of county commissioners consisting of the members of the boards of the several counties. One member of the joint board is elected president. The commissioners' clerk of the county where the petition is filed acts as clerk of the joint board.

A majority of the joint board constitutes a quorum. All decisions of the joint board require a vote of a majority of the county commissioners on the joint board.

The Director of the Ohio Department of Natural Resources is an ex-officio member of the joint board. The Director may attend in person or through a designated representative. He may vote only in the case of a tie.

The commissioners' clerk from the county where the petition is filed calls a meeting of the joint board within 30 days after the petition is filed. The meeting is held in the county in which the petition is filed.

The joint board designates the county engineer of the county where the petition is filed to do the field work necessary to plan the improvement. The engineer of each county interested must assist in making the reports and schedules, and must sign and approve them.

All applications, remonstrances, claims for compensation or damage, reports, schedules, certificates, statements, contracts, bonds, and other papers must be filed with the commissioners' clerk from the county where the petition is filed.

## **29.25 INTERSTATE PROCEDURES**

Improvements may involve land in adjoining states. The county commissioners in Ohio may cooperate with the proper authorities in the adjoining state to carry out interstate improvements if their state has authorized such participation.

## **29.26 MUTUAL AGREEMENT DITCHES**

Where property owners agree to voluntarily join in the construction of an improvement and are willing to pay the cost of construction, the following steps should be followed:

1. The owners involved must submit to the commissioners clerk the mutual agreement, surveys, and schedules of construction for the improvement. These are reviewed by the county engineer. He must approve them or require amendments prior to approval.
2. The county engineer makes benefit assessment schedules for maintenance purposes. These assessments may include the cost of preparing the schedules.
3. The commissioners hold a hearing on the maintenance assessment schedules. The hearing must be held between 25 and 90 days after the engineer files the maintenance assessment schedule. Notice must be given to property owners. They hear evidence and amend, correct, and approve the schedules.
4. The owners contract for the construction and pay the cost as provided in the mutual agreement. This cost includes the estimated cost of maintenance for one year which is certified into the county maintenance fund.
5. The construction is inspected and certified to be in accordance with the plans. This must be done in a manner acceptable to the county engineer.
6. The improvements are maintained by the county commissioners and county engineer with funds obtained by an annual assessment upon the benefited owners.

These projects may also involve "cost-sharing" through the USDA's Agricultural Stabilization and Conservation Service (ASCS).

## **29.27 OTHER SOURCES OF INFORMATION**

OSU Extension has available three very informative publications that supplement this chapter of the handbook. Extension Bulletin #482, entitled "The Ohio Drainage Law Petition Procedure" is a very informative and readable summary of the law. Extension Bulletin #606, "Conservation Improvement Projects through Soil and Water Conservation Districts" deals with Chapter 1525 projects. Finally, Extension Bulletin #822, "Ohio's Drainage Laws - An Overview", includes a summary of water rights problems related to drainage. For further information contact CCAO, your county engineer, or your county extension office.