§ 15-1939. Special apportionment of cost.

1. The special apportionment of the cost of a construction project, be it new construction, enlargement, repair or maintenance, must be based on the benefits derived from the work. This will conform to that part of the general apportionment applicable to the particular ditch or part of a ditch under consideration unless the department shall determine otherwise. It is the intent of title 19 of this article that in the interest of justice and equity and best to meet the needs and desires of the owners of the property affected, the department may exercise some latitude in the application of the rules herein set forth and, without excluding other departures therefrom, the following are required or authorized:

a. If a parcel previously has been assessed for drainage improvements which will continue to be useful for the drainage thereof due allowance shall be made therefor. The apportionment of the cost of previous work, already made, will be used for this purpose, but may be modified to give due consideration to actual records of cost, if such can be discovered. If the present owner of such parcel has contributed labor, materials, or money to any such drainage work the department may make such allowances therefor as it finds to be just and proper.

b. If any parcel is uncleared or otherwise not immediately fit for the raising of crops, the department may make a reasonable adjustment based on the minimum time required with all due diligence to fit such parcel for such use.

2. Except by special request of the owner the capital cost of all past and future work serving a parcel shall not exceed the total drainage enhancement of that parcel.

3. Any ditch may on due petition therefor be excavated to less than full size if certain groups of properties eventually to be served by it do not desire at that time to share in the cost thereof. In that case it shall be unlawful for such properties to be drained until the owners thereof have had suitable enlargements of the outlet ditches made at

their expense. If the petition shall so ask, a ditch, in the cost of which only a part of the properties eventually to be served asked to participate, may be made to full dimensions and the cost apportioned on the participating lands only, provided that the petition clearly so states and is signed by at least two-thirds of the owners of the lands to share in the cost representing at least two-thirds of the total enhancements to such lands. In that case the lands not sharing in the cost shall not be drained until the owners thereof have asked that their share of the cost be apportioned to them and such apportionment has been made as provided above and the department shall have made suitable provision for reimbursement or credit to the persons at that time owning the property which bore the cost of such improvement in the first instance.

4. The costs of making such special apportionment of cost and proceedings thereupon shall be included in the cost of the work, or should the work be delayed or not carried out, they shall be assessed on one assessment roll on the participating lands in accordance with the apportionment made.