Drain Code Basics:
A Little-Known Law with a Large Impact

Michigan Water Environment Association
91st Annual Conference
June 19-22, 2016

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From my observation, the Territory appears to be not worth defending, and merely a den for Indians and traitors. The banks of the Detroit River are handsome, but *nine-tenths of the land in the Territory is unfit for cultivation.*

- General Duncan McArthur
  Fort Detroit, 1814
Michigan - The Land Before Drains

- Tiffin Report: “Michigan apparently consisted of swamps, lakes, and poor, sandy soil not worth the cost of surveying. Not more than one acre in a hundred, or perhaps a thousand, could be cultivated.” (1816)
- Lansing under “several feet” of water when the first settlers arrived (1835)
- “Intermittent fever” and typhoid forced the abandonment of Fort Saginaw. (1823)
- Cholera outbreaks in 1832, 1834, 1849.
  - In 1834, 7% of Detroit’s population died from cholera.
    - “Don’t go to Michigan, that land of ills; The word means ague, fever, and chills”
History of Drainage and Drain Statutes

- Swamp Land Act (Sept 1850)

THIRTY-FIRST CONGRESS. 2d Sess. 1. Ch. 54, 55, 56, 1552.

Sec. 1. Enacted, be it further enacted, That the portion of the act so described as unoccupied, and that territory bounded upon each of the other portions of the same, which is within the limits of the States of Missouri and Iowa, shall be open to settlement and surveyed, and surveys shall be made of the same, as appears by reference to the act of September twenty-fourth, eighteen hundred and forty-five, and the land so surveyed shall be subject to the act of March twenty-third, eighteen hundred and forty-three, as amended by the act of March twenty-ninth, eighteen hundred and forty-eight.

Sec. 2. And be it further enacted, That the said surveys shall be made in such manner as the Secretary of the Interior shall determine, and the surveys shall be made on the most advantageous terms, and the said surveys shall be made on the most advantageous terms, and the said surveys shall be made on the most advantageous terms, and the said surveys shall be made on the most advantageous terms, and the said surveys shall be made on the most advantageous terms.

Sec. 3. And be it further enacted, That in case any land be surveyed and not settled within the time hereinbefore prescribed, such land shall be set apart for the use of the public, and the same shall be surveyed, and the said surveys shall be made on the most advantageous terms, and the said surveys shall be made on the most advantageous terms, and the said surveys shall be made on the most advantageous terms, and the said surveys shall be made on the most advantageous terms, and the said surveys shall be made on the most advantageous terms, and the said surveys shall be made on the most advantageous terms, and the said surveys shall be made on the most advantageous terms, and the said surveys shall be made on the most advantageous terms.
History of Drainage and Drain Statutes

- **Sanitary Sewage Systems**
  - 1880s-1900: Disposal of sanitary sewage by dilution (i.e. discharging into rivers, streams, and lakes) commonplace in large cities along the Great Lakes
    - 1887: “Dilution-as-Solution-to-Pollution” by Dr. Rudolph Hering
  - Proper sewer systems were constructed under the drain law beginning in 1929.
  - Odor nuisances and other concerns from raw sewage discharge persisted into 1941 when it was finally prohibited.
History of Drainage and Drain Statutes

- Great Depression and the Works Progress Administration
  - Authorized projects included drainage, irrigation, and roadside drainage
  - Over 1.7 million culverts nationwide
  - Over 162,000 miles of roadside drainage ditch and pipe
  - Over 250,000 miles of total ditch and pipe, including mosquito control and military air base improvements
Monroe County
Early Drainage Techniques
Crooked Streams are a menace to life and crops in the areas bordering on their banks.

DYNAMITE may be used most efficiently and economically in taking the kinks out of a crooked stream.

Du Pont Dynamite has straightened many thousands of miles of crooked streams.

Dynamite can help you do other jobs, too. It can help you build highways, dams; fight soil erosion; work quarries. Du Pont has an explosive for every purpose.
Evolution of the Drain Code

- Michigan Drain Code of 1956
  - 1923 code reorganized 19 chapters
  - Increasing complexity of drainage required a recodification
  - Over 200 amendments since the 1956 codification
  - Despite many attempts, no major recodification of the Drain Code since 1956
Modern Evolution

- Anderson-Rockwell Environmental Protection Act of 1970
- Clean Water Act of 1972
  - Enacted over President Nixon’s Veto
- Other Michigan Statutes
  - Inland Lakes and Streams Act (1972)
  - Soil Erosion and Sedimentation Control Act (1972)
  - Goemaere-Anderson Wetlands Protection Act (1979)
  - Natural Resources and Environmental Protection Act (NREPA) passed to shelter the various environmental laws (1995)
The Red Cedar River
Balancing the Modern Role

- DRAINAGE
- Wildlife / Fisheries
- Water Quality
- Costs / Assessments
- Other Statutory Duties
- Agriculture
- Economic Development

Drain Commissioner
Inside the Drain Office: How a Petitioned Project Works

- Petition
- Engineering and Scoping Decisions
- Bid Letting
- Project Construction

- Board of Determination
- Final Order of Determination
- Day of Review
Inside the Drain Office: How a Petitioned Project Works

- Who can petition a project?
  - Five property owners in the drainage district
  - A city, village, or township
  - A Road Commission/Road Department
  - MDOT
Inside the Drain Office: How a Petitioned Project Works

- **Board of Determination**
  - Three disinterested property owners selected by the Drain Commissioner
  - No specific project scope determined
  - No cost estimate at this point
  - Determines necessity for public health (whether there are “at-large” assessments to townships, cities, villages)
  - Decision can be appealed
Inside the Drain Office: How a Petitioned Project Works

Drain Commissioner Decides Scope and Design

- Engineering
- Property Acquisition
- Input from Municipalities, Road Commissions, MDOT
- Other Stakeholder Input
- Permits
Non-Petitioned Maintenance

- No petition needed if maintenance costs are under $5,000 per mile of established drain, per year
  - Maintenance only, not for improvements
- $5,000 per mile does not apply to engineering, legal, or administrative costs
- $5,000 per mile does not apply in an emergency
- Municipality resolutions can allow the Drain Commissioner to exceed this amount
Drain Assessments

- Based on benefits derived (%)
- Apportionments across the drainage district must always equal 100%
  - If the Drain Commissioner reduces someone’s percentage, someone else’s must increase to reach 100%
- The assessment levied is the percent apportioned, multiplied by the project cost
Drain Assessments: Factors for Calculating Benefit

- Townships, Cities, Villages:
  - Public Health
- MDOT:
  - Runoff from state highways
- Counties and Road Commissions:
  - Benefit to Public Roads
- Property Owners
  - “Benefits derived”
    - Acreage, zoning or property use, proximity to work performed, runoff, flooding relief
Revising Drainage District Boundaries

- Public Act 261 of 2013
- Allows Drain Commissioners to update drainage district with engineering recommendation
  - Lands can be added or removed from drainage district
Revising Drainage District Boundaries

- Revisions required due to:
  - Previous districts based on large parcels that are now split
  - Drainage pattern changes
    - Roads
    - Development
  - More accurate surveying technology
Revising Drainage District Boundaries
Revising Drainage District Boundaries

- Drain Commissioner holds hearing to review boundary changes
- Appeals must be within 10 days to Circuit Court
- Boundary revisions require new apportionment
Questions and Answers