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To - Members of 2010 Drainage Interim Study Committee

I want to speak briefly today about the Five Island Lake assessment issue in Palo Alto County. Let me start out by saying that from the perspective of an outsider looking in on this case, the best characterization I can use to describe how this case appears to me is puzzling. I truly have difficulty understanding how we got to where we are today.

As I understand it, the Palo Alto County Board of Supervisors, acting a drainage district trustees for Drainage District 80 sought to assess landowners for improvements that were going to be made. Five Island Lake would benefit from these improvements. The state is the owner of Five Island Lake. Notices were prepared by a drainage attorney and sent to all affected landowners – as required by law. The amount of the state assessment was \$96,633.83 – a number determined by formulas and procedures that have been in place for decades. The notice was sent to the Department of Natural Resources as the entity having jurisdiction over state owned lakes. The DNR did not file any objections to the notice from the county. So, the county treasurer billed the state for the \$96,633.83 of drainage taxes and subsequently the treasurer sent notice of interest due on the delinquent taxes. None of the facts I have stated so far are in dispute.

This is when it starts to get complicated. The DNR then claimed that it never received the notices from the county or that the notices, if received, did not reach the right person. The state took the matter to court. In a court decision that I still find curious, the judge sided with the state. The judge had competing testimony on the perceived benefits to the lake and sided with the state's expert witness who claimed that the lake received no benefit. The judge also took issue with the notice that was provided to the DNR. The judge stated that since the notice was just mailed to DNR, "there is no way of knowing how many people in the IDNR office would have received this notice. Had it been addressed to the Director, it could be presumed that it was delivered to the director."

This court decision was issued in late 2007. I first became aware of the situation when I was approached by the Palo Alto County board of supervisors early in 2008. I first of all assumed that the reason that DNR had objected to the cost of the drainage project was that it would come out of DNR's budget. On that basis, I could understand the

opposition to the project. But, I then found out that the assessment would not come out of DNR's budget but out of the state general fund. So, that was the second thing that was puzzling.

In the summer of 2008, Senator Kibbie held a meeting in his office with all the interested parties. At that time, one of the possible solutions suggested to the county – I believe by Bill Angrick - was to try and get the matter before the State Executive Council.

We then heard that the Attorney General's office would not permit the matter to go on the agenda of the Executive Council despite the fact that at least one member of the Council wanted it taken up. Again, puzzling.

Since that time, other meetings have been held on the issue. This year, IDDA requested a bill draft through Representative Mertz for the 2010 session that would have paid the assessment out of the Environment First Fund. That bill got no traction whatsoever given the tenuous nature of state finances at the time and the fact that the Environment First Fund had new fiscal pressures on it.

So, here we are today – three plus years later - still talking about Five Island Lake. There is very little disagreement – the state's "expert" witness aside, that the lake would be benefitted by this project. And I would point out to the committee that this amount is not some program that the state can decide to fund or de-fund. It is a bill – due a payable to the county whose supervisors are the legally constituted trustees of the drainage district. I mean I guess it is OK to argue that "we never got the bill" or, "that it went to the wrong person and he/she did not know what to do with it" but I think that is akin to the dog ate my homework excuse.

So, what do we do now? I am hopeful of course that the state, acting through the legislature, will see fit to appropriate the money to satisfy this assessment. I know money is tight but it IS the right thing to do. I think Mr. Adkisson has also drafted some language to clarify the notice provisions of the law. I think it is fine to have that clarified.

Secondly, we need to remember the big picture too. This is certainly not the last time that state owned property will be asked to pay a drainage assessment. The state needs to understand that is their responsibility to do so, just as it would be for any other landowner.

There are many people here today more intimately involved in this case than I was. I have given you a "layperson's" perspective. I am not an attorney and I am not a drainage engineer. I am sure that the AG's office or DNR will find reason to take issue with at least some of what I have said. I hope however that we can find an appropriate resolution to this issue.

Thank you for your time.

John Torbert,
IDDA Executive Director