

## Statement to the Committee

Early farmers settling in Northern Iowa were blessed and cursed by the black heavy soils deposited by the three stages of glaciation. The glacial drift also created a relatively flat landscape. The Iowa DNR describes the Des Moines glacier as the last glacier to enter Iowa, leaving behind a poorly drained landscape. (IDNR Geological and Water Survey)

To best utilize these heavy soils, farmers joined together to build a network of levees, open ditches, and underground tiles. The U.S. Census Bureau estimated that as early as 1920 approximately nine million acres of Iowa farm ground had been artificially drained or needed to be. Currently, there are over 3000 drainage districts within the Des Moines Lob.

Originally drainage was essential to the success of the local farmer. In today's economy, the farm ground served by these districts drives our national economy. Lower food costs are possible only because agricultural drainage allows for efficient use of inputs and farm ground. By comparison, tilled land increases soybean yields by 22.6 %, wheat by 36.4 % and corn by 39.8 %.

One specific drainage district is Palo Alto County Drainage Ditch 80. It was established in 1914, consisting of an upper and lower main ditch and several laterals. In total, it benefits 25,000 acres and over 200 landowners. In 2005 the drainage district proposed to annex an additional 1,045.98 acres into the district. Of this amount, 1,032.35 acres consisted of Five Island Lake and its islands.

The Palo Alto Auditor, on behalf of Drainage District 80, sent notice of the proposed annexation proceedings to the Department of Natural Resources. This is the customary procedure when the DNR is involved in drainage assessments. The notice was not returned to the auditor's office, and the Palo Alto Auditor affirmed, by a sworn affidavit, the notice was sent.

The DNR challenged in court the Five Island Lakes annexation and assessment. The DNR claimed it did not receive the notice sent to its office in the Wallace Building. However, Drainage District 80 also published a notice in the local newspaper. The district court Judge noted however that "the published notice was insufficient because the notice failed to advise affected landowners of the consequences of their failure to timely object." Note the problem was not the method of notifying the DNR, rather, it was the failure to inform the DNR of the consequences of the failure to respond.

The DNR is not a naive landowner, uninformed about drainage assessments, or the procedures concerning assessments, or the amount of an assessment. DNR has general staff and legal staff and they are knowledgeable of the workings and the methods available to protect the treasury of the State of Iowa. Unfortunately, in this situation, the department choose to use legal technicalities to avoid paying a lawful assessment against Five Island Lake, and therefore benefit from the improvements without paying anything, and consequently, transferring \$96,633.83 to the private landowners in the district, not including the above referenced costs of litigation.

There is no question that Five Island Lake benefits from the drainage provided by

Drainage District 80. The pictures in the power point illustrate water coming into the lake from the surrounding lands and water being discharged from Five Island Lake into the Drainage District 80 outlet. Without this outlet, the wildlife habitat and recreation provided by the lake, would be substantially reduced.

A drainage district is actually a form of local government much like a school district. The managers of the drainage district are called trustees. They are often the supervisors of the county wherein the drainage district is located, however, occasionally the landowners select their own trustees.

The voters in this local government are the landowners, and the taxpayers paying for the improvements are also the landowners.

The boundaries of a drainage district are generally established by the topography of the area. Essentially the watershed is the boundary. All lands within the watershed are assumed by law to receive a benefit, however not all receive the same benefit.

The Iowa Code says the drainage of surface waters from agricultural lands or the protection of such lands from overflow is presumed to be a public benefit and conducive to the public health, convenience and welfare. Appraisers, appointed by the trustees, inspect each tract of land. Their task is to determine the benefits received by reason of the construction of the improvement, as it affords an outlet to the drainage of their lands, or brings an outlet nearer or relieves the land from overflow and relieves and protects the same from drainage erosion.

In another drainage district, the DNR objected to the assessment concerning an improvement to Rush Lake. The DNR argued these points:

- 1.) The lake is not land.
- 2.) If it is to be assessed, the amount of assessment is unreasonable, arbitrary and excessive.
- 3.) The lake is assessed 2.65 times higher per acre than an average acre.

The Judge concluded the threshold question was, "Is this property (Rush Lake) in the category of land that authorizes classification and assessment. The court summarized the history of assessing lakes, identifying the 1985 amendment which eliminated drainage assessments against natural lakes, and the 1997 amendment which repealed the prohibition against assessing benefits to property below the ordinary high water mark.

The Judge concluded: in the case of State of Iowa v. Joint Drainage District 77 that Rush Lake should be considered land for the purposes of classification and assessment.

Blacks Law Dictionary states; LAND, in the most general sense, comprehends any

ground, soil, or earth whatsoever; as fields, meadows, pastures, woods, moors, waters, marshes, furzes and heath.

In the Drainage District 80 litigation, which has brought us together today the DNR argued six points:

- 1.) Assigning drainage benefits to a natural lake is contrary to the statutory purposes of a Drainage District.
- 2.) Failure to comply with notice statutes is jurisdictional and strict compliance should be required.
- 3.) Notice to the DNR is not authorized by the Iowa Code.
4. The notice to DNR was not consistent with the statute waiving sovereign immunity.
- 5.) Publication of a Drainage District notice is not adequate.
- 6.) §468.43 does not authorize payment of interest.

The drainage district replied as follows:

- 1.) The auditor stated under oath that he sent a notice to DNR about the annexation, and he published the notice as required by §468.14.
- 2.) During the district court trial the DNR expert, Mr. Russen, opined that drainage district repairs have no impact on the rate or volume of flow in or out of the lake. He stated the lake receives no benefit from the drainage facilities, ignoring physical evidence and Iowa Code §468.43.
- 3.) Five Island Lake is not agricultural ground, but the lake does benefit. There are other properties in Drainage District 80, that are not agricultural, which pay drainage assessments. Examples are parking lots, roofs and playgrounds.

The Judge stated in his opinion, "No surface water exists to be drained." Judges are wise and strive to always render an opinion that is sound in fact and law. However, the opinion of a Judge still cannot, even through a well reasoned opinion, change the laws of nature.

Likewise, the DNR, cannot through regulation or legislation stop the waters of Five Island Lake from flowing into the Drainage District 80 open ditch when the lake level rises above the high water mark.

Section of the Iowa Code §468.92, says it shall not be competent to show that any lands within a district is not benefitted in some degree by the proposed improvement.

Thank you on behalf of Palo Alto County Drainage District 80 and its Landowners.

Robert W. Brinton

**Appropriations for Capital Projects**

An ACT relating to and making appropriations to state agencies for capital projects and providing that part of the ACT takes effect upon publication.

Section 1. There is appropriated from the general fund.....

1. Department of Human Services
2. Iowa State Historical Department
3. State Conservation Commission
4. Department of General Services
5. Commission for the Blind

Section 2. There is appropriated from the general fund of the state of the state conservation commission on the effective date of this Act the sum of \_\_\_\_\_, or so much is necessary to pay the drainage assessment and interest for the repairs and improvements or Palo Alto Drainage District 80, unpaid by the Iowa Department of Natural Resources. An amount equal to the amount expended pursuant to the section shall be subtracted from the funds appropriated to the state conservation commission under 201\_\_ Iowa Acts, House file \_\_\_\_, Section, subsection \_\_\_\_, paragraph \_\_\_\_, and deposited in the general fund of the state by the state comptroller.

In addition to the actual drainage work, which cost \$771,216.19 the litigation has cost the district additional engineering fees of \$34,132.62 and additional legal fees of \$49,287.98. Also, interest accumulates at the rate of 8%, which totaled \$35, 922.79 as of July 1, 2010.