



**Presentation Before the Levee and
Drainage District Law Study Committee**

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**Five Island Lake
Drainage District
Assessments Avoided
by the State of Iowa**

Five Island Lake





Brief History of Assessment Avoidance Issues

- June 18, 2003 Annexation Hearing For Jt. Drainage District No. 77. Rush Lake is Included in Annexation. **IDNR Does not Appear or File Objection**
- April 12, 2005 Notices of Hearings on Drainage District No. 80 Annexation and Reclassification Hearings Mailed.



Brief History of Assessment Avoidance Issues

- May 3, 2005 Drainage District No. 80 Hearings Convened. **IDNR Does Not Appear or File Objection(s)**. In Addition to Other IDNR Lands, Five Island Lake and Islands is Formally Annexed and an Assessment of \$96,633.83 is Approved.



Brief History of Assessment Avoidance Issues

- June, 2005 Statutory Deadline to Appeal from Board's Final Decisions in DD#80 Hearings Passes.
- July 1, 2005 DD#80 Assessments Levied, Notice Given, Installment Payments Allowed. Due By Sept 30, 2005



Brief History of Assessment Avoidance Issues

- January 2006 Delinquent Notice Issued to IDNR for DD#80 Assessment
- May 31, 2006 Letter to Engineer from Greg Jones, IDNR Requesting Information that Completely Describes the Basis for the July 1, 2005 DD#80 Tax Levy so as to Help Make Payment Recommendation to the Executive Council.



Brief History of Assessment Avoidance Issues

- June 9, 2006 Engineer's Requested Informational Letter on DD#80 Mailed to Greg Jones, IDNR.
- October 10, 2006 State Petitions District Court for Declaratory Judgment with Regard to the Annexation and Classification of Five Island Lake by Board of Supervisors for DD#80.



Brief History of Assessment Avoidance Issues

- March 14, 2007 Ohrtman Etal v Board of Supervisors Case Challenging DD#80 Annexation Brought to Trial.
- April 26, 2007 Notice of Hearing on Classification and Assessments for Jt. DD#77 Mailed.



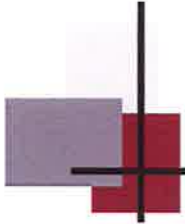
Brief History of Assessment Avoidance Issues

- May 17, 2007 Hearing on Classification and Assessments for Joint Drainage District No. 77 including Rush Lake. **IDNR Representatives Appear and File Written Objections**
- June 29, 2007 State Files Petition for Relief From Jt DD#77 Classification and Assessment in District Court.



Brief History of Assessment Avoidance Issues

- October 22, 2007 District Court Decision in Ohrtman Favors Board of Supervisors. Annexed Lands to DD#80 are Found to Benefit. **It is Appealed.**
- November 20, 2007 State v Board of Supervisors Challenging Five Island Lake Assessment Brought to Trial.



Brief History of Assessment Avoidance Issues

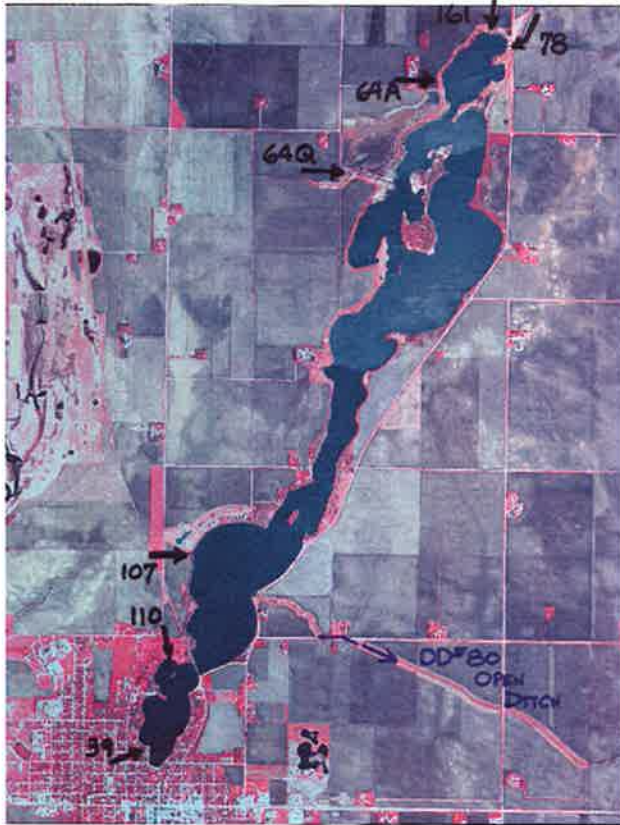
- February 29, 2008 State v Joint Boards of Supervisors Challenging Rush Lake Assessment Brought to Trial
- April 28, 2008 District Court Decision in State v Joint Boards of Supervisors in Rush Lake Assessment Favors the Joint Boards. **It is Not Appealed.**



Brief History of Assessment Avoidance Issues

- December 17, 2008 Court of Appeals Reverses District Court Decision in Ohrtman Finding No Material Benefit.
- January 14, 2009 District Court Decision in Five Island Lake Filed. Notice Found Defective. Lake Found to Have no Benefit. **It is Not Appealed.**

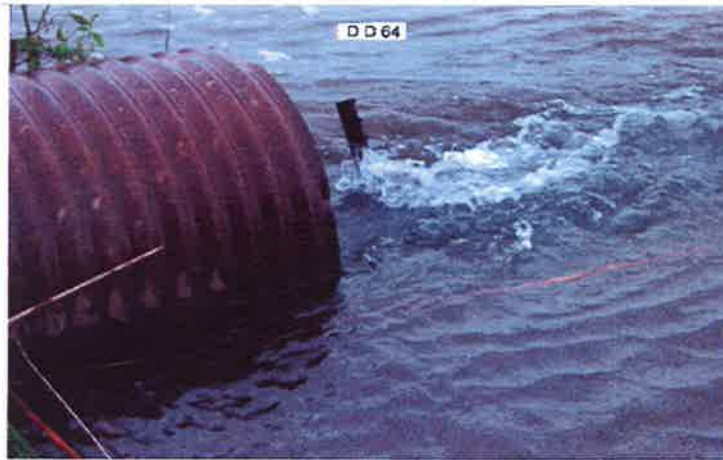
Evidence of Benefit by Five Island Lake



- All of the Lands in the Lake Watershed Are Assessed for Benefit
- Surface Runoff from the Watershed Enters the Lake
- Seven Drainage District Tile Systems Drain to the Lake (Shown)
- Numerous Private Tile Systems Drain to the Lake

Evidence of Benefit by Five Island Lake

Subsurface Tile Drains that Discharge to the Lake



Evidence of Benefit by Five Island Lake

City Storm Sewers that Discharge to the Lake



Evidence of Benefit by Five Island Lake

The Lake Requires an Outlet for its Overflow

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Evidence of Benefit by Five Island Lake

Area History

- 1) There is a common anecdotal understanding in Emmetsburg that prior to the dredging of 1911-13 a high water overflow was to the south thru the city.
- 2) In 1889 the lake outlet was raised. This actually created the Fifth Island. A higher lake would have overflowed more frequently to the south.
- 3) Life-long resident C.J. Stillman (c.1890-1980) wrote in 1972 that a second outlet at the SW of the Lake became active in high water times.

From Saving the Glacier's Creation, Dr. James Coffey, 2003



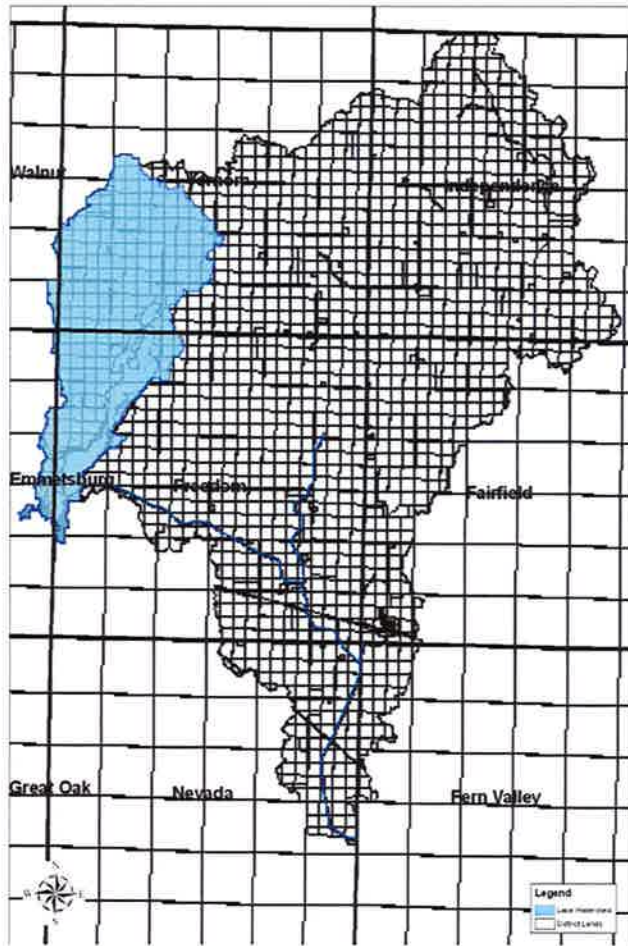
Evidence of Benefit by Five Island Lake

Area History

- 1) 1914 was unusually wet. With the south overflow outlet recently blocked by the dredging project all the overflow was forced to the primary outlet. In that same year owners of land along the outlet ditch petitioned for the establishment of DD#80.
- 2) In 1915 Drainage Engineer Guy Campbell, at the insistence of the locals, amended his report to recommend that the DD#80 Open Ditch be extended an additional 6,100 feet to handle the lake overflow.

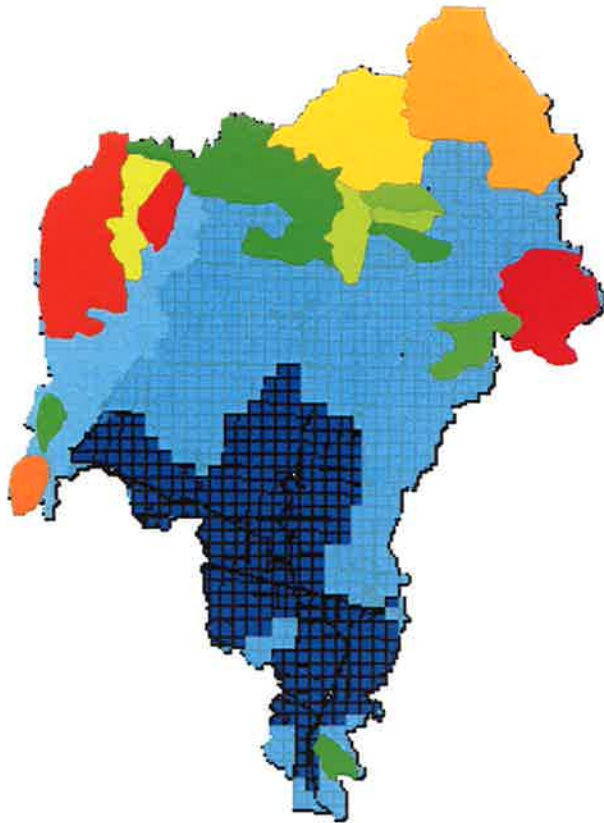
Source: The records of DD#80 in the County Auditor's Office

Five Island Lake Watershed



- Originally high water generated by surface runoff from the lake and watershed overflowed the lake via a secondary outlet to the south. This secondary outlet was blocked in c. 1913.
- The DD#80 Open Ditch was designed to receive and pass surface runoff from the entire watershed, including Five Island Lake.

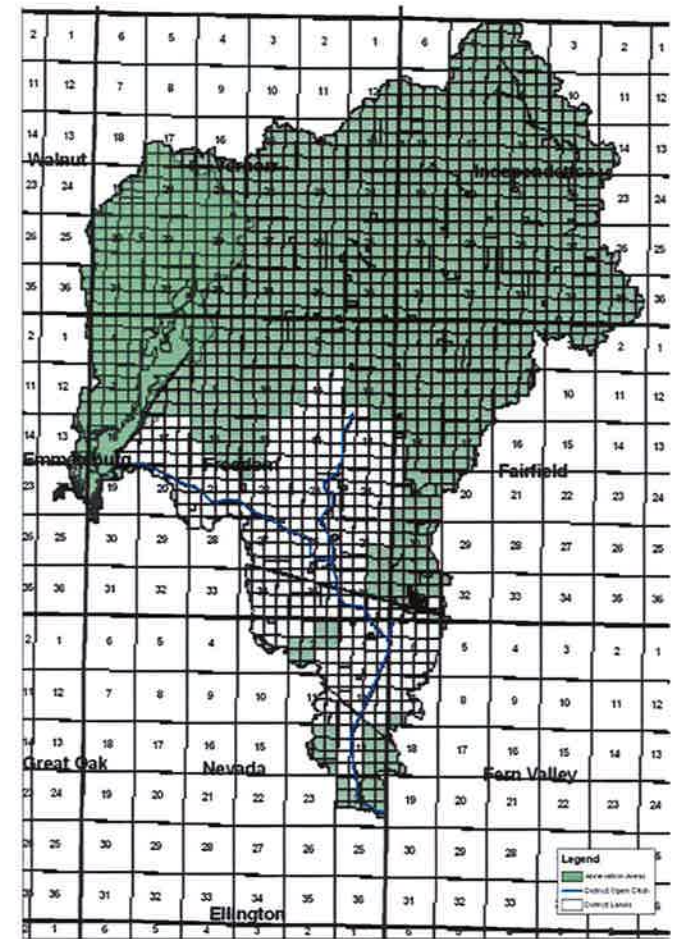
Drainage Developments in DD#80 & Lake Watershed



- 16 Organized Drainage Districts
- More than 70% of the land is artificially drained
- More than 90% of the land is intensively farmed

DD#80 Annexation Recommended in 2005

- Watershed: 57,000 Acres
- Included Lake Watershed of 8,500 Acres
- Land Area then Assessed by DD#80: 12,000 Acres
- Total Annexation: 45,000 Acres
- Some Private Lands & Five Island Lake Avoided Annexation





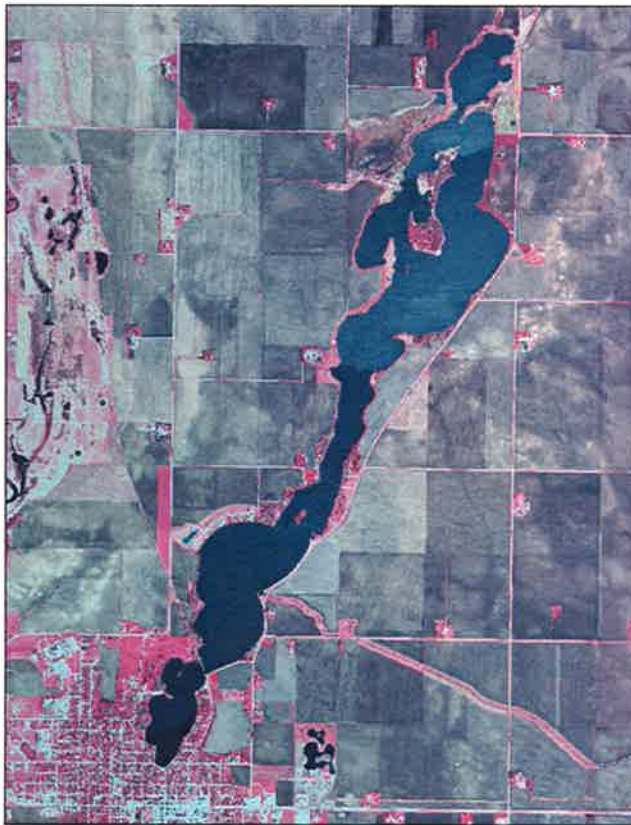
Was Five Island Lake Unfairly Assessed?

**The Lake was Not Singled Out – All Lands Were Annexed.
Only One of These Public Entities Avoided Assessment**

- State of Iowa Primary Roads (IDOT)
- Palo Alto County Secondary Roads
- Palo Alto County Other Lands
- *State of Iowa Five Island Lake & Islands (IDNR)*
- State of Iowa Other Lands (IDNR)
- City of Emmetsburg Streets and Alleys
- City of Cylinder Streets & Wastewater Lagoon
- Iowa, Chicago & Eastern Railroad Company

Was Five Island Lake Unfairly Assessed? Following Slides Compare to Rush Lake

Five Island Lake



Rush Lake





Was Five Island Lake Unfairly Assessed?

The Benefit Classification Method was the Same for Rush Lake (JDD#77) and for Five Island Lake (DD#80). Common Factors Used are as Follows

- Benefited Acres
- Soil Wetness
- Proximity to Outlet
- Facility Use & Need Factors
- Elevation Factor
- Runoff Volume Factor
- Peak Flow Attenuation



Was Five Island Lake Unfairly Assessed?

5 Island Lake Data

- Acres – 1,032.35
- Wet Factor – 70
- Runoff Volume – 2.8
- Peak Flow Adjust – 0.5
- Facility Use/Need – 100
- Elevation – 100
- Proximity – Near 100%

Rush Lake Data

- Acres – 460
- Wet Factor – 100
- Runoff Volume – 2.4
- Peak Flow Adjust – 0.6
- Non-Crop Saturated – 0.7
- Facility Use/Need – 100
- Elevation – 100
- Proximity – Near 35%



Was Five Island Lake Unfairly Assessed?

Reasons Why Five Island Lake's Assessment was Substantially More Than Rush Lake's Assessment

- Five Island is 2.25 times the size of Rush Lake
 - Five Island Lake is Only ¼ mile from the DD#80 Open Ditch -- Rush Lake is many miles of unimproved stream from the DD#77 Open Ditch
 - The Average Assessments were \$23/Acre for DD#80 and \$16/Acre for JDD#77
 - Proximity Factor was thrice that used for Rush Lake
- Frankly, considering the distance to the open ditch the \$14,392 assessment upon Rush Lake was less tenable.**



Was Five Island Lake Unfairly Assessed?

**What if Rush Lake and Five Island Lake Swapped
Locations and Were Assessed in the Other District**

Five Island Lake

- In Drainage District No. 80 \$96,634
- In Jt. Drainage District No. 77 \$32,299

Rush Lake

- In Jt. Drainage District No. 77 \$14,392
- In Drainage District No. 80 \$43,059

**The size and location of Five Island Lake were the only
reasons for the relatively high assessment.**



Was Five Island Lake Unfairly Assessed?

The Assessment Compares Favorably to the Highest Assessed Privately Owned Parcels in DD#80 Upper Main

- Assessment Rates – Lake \$17.54/Acre; Highest Urban \$17.72/Acre; Highest Rural \$15.32/Acre
- Lake produces more than twice the unit runoff during peak ditch flow times than does the highest assessed rural parcel. The ditch depth is sized to pass this.
- The owner of an upland paved lot could make the claim that the ditch was not dug to drain his lot and that he does not need it. Yet, like Five Island Lake, his lot produces far more than the average runoff which runoff is received by the DD#80 open ditch.



Was Five Island Lake Unfairly Assessed?

What if the Lake had been drained and sold and was a 1,032-acre private farm producing corn and soybeans?

- Assuming no ditch modifications beyond the existing, a cropped lake bed would have a benefit classification 43% more than that assigned the lake.
- If the upper 6,100 feet of the open ditch had been deepened to enable the efficient draining of the lake for crop production the benefit classification increase would be about 70%.
- If the deepened ditch were extended to the upper end of the drained and cropped lake the benefit classification increase would be about 125%.



What are the Consequences of the Avoided Assessment?

The Bill Has to be Paid. The State's Successful Assessment Avoidance Impacts DD#80 Lands as Follows

- The Lower Main Assessment Increase is 3.20%
 - Highest Benefited Rural Parcel Pays \$26.15 More
 - Highest Benefited Urban Parcel Pays \$8.14 More

- The Upper Main Assessment Increase is 22.12%
 - Highest Benefited Rural Parcel Pays \$1,111.72 More
 - Highest Benefited Urban Parcel Pays \$10.23 More

- \$96,634 (included in above)+ Interest + Attorney Bills were paid by the DD#80 landowners.



Is it Fair for the DD#80 Landowners to Pay the Avoided Assessment?

The Short Answer – No!

- The IDNR's own mismanagement resulted in a failure to respond to the public hearings notices. If an objection had been posted the opportunity to consider adjustments could have been made before the matter escalated to an extended court battle. This failure has happened before—in Wright County—and the legislature bailed out the IDNR by paying the assessment.



Is it Fair for the DD#80 Landowners to Pay the Avoided Assessment?

The Short Answer – No!

- The State cited a 28-year-old case that had nothing to do with drainage districts to claim that the notice was improper because it did not advise the consequences of not objecting
- Surely the IDNR knew the consequences
- In a century of legal notices issued by 3,000+ drainage districts in Iowa it is likely that not a single notice has ever advised of the consequences of not objecting.



Is it Fair for the DD#80 Landowners to Pay the Avoided Assessment?

The Short Answer – No!

- The Court said that if the notice had been mailed to the “Director, Department of Natural Resources” rather than simply to “Department of Natural Resources” it would have been more proper.
- However, the latter is the same address used for decades by all area counties
- The IDNR continues to receive and process notices mailed to that improper address.



Is it Fair for the DD#80 Landowners to Pay the Avoided Assessment?

The Short Answer – No!

- The State made the choice to challenge the DD#80 notice using obscure case law.
- The State made the choice to seek to avoid all the assessment. An unjust financial burden upon a few innocent citizens resulted.
- The Board of Supervisors ask that the Legislature appropriate \$96,633.83 for the benefit of DD#80. It would be appropriate for these funds to come from IDNR funds.