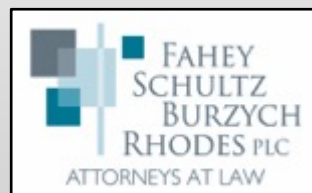




2017 Wetlands Conference
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The Evolving Role of Drain Commissioners

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“ The Drain Code of 1956 is an exceedingly complex statute, the provisions of which apparently are known by few in the profession and understood by far fewer. ”

Justice Stephen Markman

Elba Township v Gratiot Co Drain Comm'r

493 Mich 265, 269; 831 NW2d 204 (2013)

Michigan – The Land Before Drains

- War of 1812
 - Congress provided veterans with 2 million acres of land as a reward for their service
- Tiffin Report of 1816
 - Edward Tiffin, surveyor general of the US, sent surveyors into Michigan in the fall of 1815 to see whether the land there was suitable
 - Report to President Madison in 1816 stated that “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.”
 - As a result, Congress designated lands in Illinois and Missouri for the veterans instead

1819

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Michigan – The Land Before Drains

- Lewis Cass Campaign

- Appointed governor of Michigan Territory by President Madison in 1813 (served for 18 years)
- Helped undo Michigan’s bad publicity from the Tiffin Report
 - Stated that Tiffin “grossly misrepresented” Michigan
 - Insisted that Tiffin send his surveyors back into Michigan to take a second look at the land
- Secured new surveyor in 1819
 - Built roads and speeded the work of surveying tracts for settlers

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History of Drainage and Drain Statutes

- 1819: Authorized highway supervisors to construct drains to protect the roadways
- 1827: Established procedure to resolve land drainage conflict between property owners
- 1839: Michigan codifies the territorial drain writs as State statutes
- 1846: Drain laws justified on the basis of public health
- 1847: 3 Drain Commissioners appointed in Lenawee County
- 1850: Swamp Land Act

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History of Drainage and Drain Statutes

Swamp Land Act (Sept 1850)



THIRTY-FIRST CONGRESS. Sess. I. Ch. 82, 83, 84. 1850. 519

CHAP. LXXXII.—*An Act to authorize the Appointment of Indian Agents in California.* Sept. 28, 1850.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President be authorized to appoint, with the advice and consent of the Senate, not more than three agents for the Indian tribes within the State of California. Such agents shall perform the duties now prescribed by law to Indian agents, and shall receive an annual compensation of three thousand dollars each.
APPROVED, September 28, 1850.

CHAP. LXXXIII.—*An Act for the Payment of a Company of Indian Volunteers.* Sept. 28, 1850.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of War be, and he is hereby, authorized and required to cause to be paid to the spy company of Indian mounted volunteers (Shawnees and Delawares) called and mustered into the service of the United States by Colonel W. S. Harney, United States army, on the first day of June, eighteen hundred and forty-six, and discharged the thirty-first day of August, eighteen hundred and forty-six, one day's pay and allowances for every day held in service under said muster, and the usual travelling allowances, according to rates established for volunteers under existing laws; and the sum of four thousand dollars is hereby appropriated for this object, out of any monies in the treasury not otherwise appropriated.
APPROVED, September 28, 1850.

CHAP. LXXXIV.—*An Act to enable the State of Arkansas and other States to reclaim the "Swamp Lands" within their limits.* Sept. 28, 1850.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That to enable the State of Arkansas to construct, the necessary levees and drains to reclaim the swamp and overflowed lands therein, the whole of those swamp and overflowed lands, made unit thereby for cultivation, which shall remain unsold at the passage of this act, shall be, and the same are hereby, granted to said State.
Sec. 2. *And be it further enacted,* That it shall be the duty of the Secretary of the Interior, as soon as may be practicable after the passage of this act, to make out an accurate list and plats of the lands described as aforesaid, and transmit the same to the governor of the State of Arkansas, and, at the request of said governor, cause a patent to be issued to the State therefor; and on that patent, the fee simple to said lands shall rest in the said State of Arkansas, subject to the disposal of the legislature thereof: *Provided, however,* That the proceeds of said lands, whether from sale or by direct appropriation in kind, shall be applied, exclusively, as far as necessary, to the purpose of reclaiming said lands by means of the levees and drains aforesaid.
Sec. 3. *And be it further enacted,* That in making out a list and plats of the land aforesaid, all legal subdivisions, the greater part of which is wet and unfit for cultivation,¹ shall be included in said list and plats; but when the greater part of a subdivision is not of that character, it shall be excluded therefrom.

520 THIRTY-FIRST CONGRESS. Sess. I. Ch. 85. 1850.

Provisions of this act extended to other States possessing such lands.
Sec. 4. *And be it further enacted,* That the provisions of this act be extended to, and their benefits be conferred upon, each of the other States of the Union in which such swamp and overflowed lands, known as designated as aforesaid, may be situated.
APPROVED, September 28, 1850.

Sept. 28, 1850. CHAP. LXXXV.—*An Act granting Bounty Land to certain Officers and Soldiers who have been engaged in the Military Service of the United States.* 1852, ch. 19.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That each of the following classes of persons in the military service of the United States during the war of 1812, the war with Mexico, or Indian wars, or their widows or minor children entitled to bounty in proportion to certain periods of service:
Certain classes of persons in the military service of the United States during the war of 1812, the war with Mexico, or Indian wars, or their widows or minor children entitled to bounty in proportion to certain periods of service.

Provided, That wherever any officer or soldier was honorably discharged in consequence of disability in the service, before the expiration of his period of service, he shall receive the amount to which he would have been entitled if he had served the full period for which he had engaged to serve: *Provided,* The person so having been in service shall not receive said land, or any part thereof, if it shall appear, by the muster rolls of his regiment or corps, that he deserted, or was dishonorably discharged from service, or if he has received, or is entitled to, any military land bounty under any act of Congress heretofore passed.

Sec. 2. And be it further enacted, That the period during which any officer or soldier may have remained in captivity with the enemy shall be estimated and added to the period of his actual service, and the person so retained in captivity shall receive land under the provisions of this act in the same manner that he would be entitled in case he had entered the service for the whole term made up by the addition of the time of his captivity, and had served during such time.

Sec. 3. And be it further enacted, That every commissioned and non-commissioned officer, musician, or private, for whom provision is made by the first section hereof, shall receive a certificate or warrant from the Department of the Interior for the quantity of land to which he may be entitled, and which may be located by the warrantee or his heirs at law, at any land office of the United States, in one body and in conformity to the legal subdivisions of the public lands, upon any of the public lands in such district then subject to private entry; and upon the return of such certificate or warrant, with evidence of the location thereof having been legally made to the general land office, a patent shall be issued therefor. In the event of the death of any commissioned or non-commissioned officer, musician, or private, prior or subsequent to the passage of this act, who shall have served as aforesaid, and who shall not have received bounty land for said services, a like certificate or warrant shall be issued in favor, and enure to the benefit of his heirs at law.

Sec. 4. And be it further enacted, That every commissioned and non-commissioned officer, musician, or private, for whom provision is made by the first section hereof, shall receive a certificate or warrant from the Department of the Interior for the quantity of land to which he may be entitled, and which may be located by the warrantee or his heirs at law, at any land office of the United States, in one body and in conformity to the legal subdivisions of the public lands, upon any of the public lands in such district then subject to private entry; and upon the return of such certificate or warrant, with evidence of the location thereof having been legally made to the general land office, a patent shall be issued therefor. In the event of the death of any commissioned or non-commissioned officer, musician, or private, prior or subsequent to the passage of this act, who shall have served as aforesaid, and who shall not have received bounty land for said services, a like certificate or warrant shall be issued in favor, and enure to the benefit of his heirs at law.

1819 1827 1899 1846 1897 1923 1956

History of Drainage and Drain Statutes

- Federal effort to make swamp and overflowed land suitable for agriculture
- Granted wetlands to the states, who could then transfer them to individuals who drained the land
- 14 states participated, including Michigan, Arkansas, California, Florida, Illinois, Indiana, Ohio, and Wisconsin.
 - Between 55 and 64 million acres transferred under the act.
- **6,000,000 acres transferred in Michigan**
 - 29,552 acres in St. Clair County
 - 10,000+ acres in Livingston County
 - 12,800+ acres in Shiawassee & Clinton Counties

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History of Drainage and Drain Statutes

- 1857: County level commissioner structure introduced maintenance of authorized drains for the first time
- 1897: Township DC abolished and authority was consolidated at the county level
- 1919: Michigan Geological & Biological Study
- 1923: Drainage district introduced and last major codification of the late 1800 and early 1900 period

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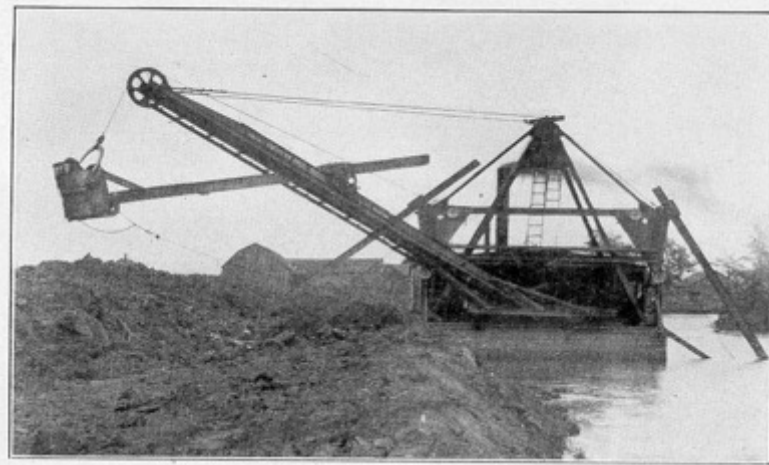
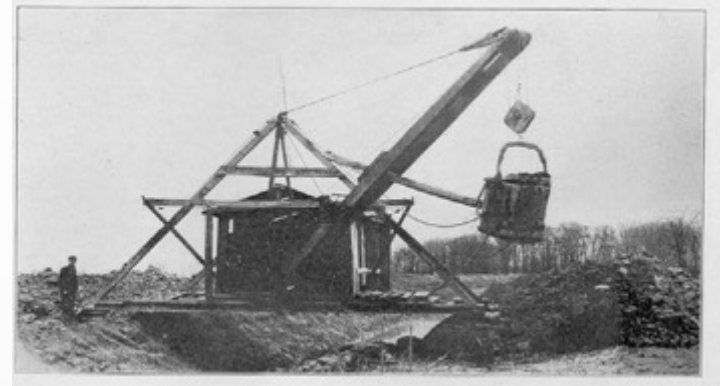
1956

History of Drainage and Drain Statutes

- Great Depression and the Works Progress Administration (WPA)
 - 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



Early Drainage Techniques



Early Drainage Techniques

How DYNAMITE *streamlines streams*



Straightening of Pecon River in New Jersey by CCC workers stopped its yearly floods. Excavation of site indicated to work on right. Start temporary dam at left to provide volume of water for scoring blasted channel.

Explosion of dynamite through preparation excavates new channel.

Immediately after explosion, water is entering new channel, whose banks will be smoothed and "stream-lined" by the regular flow of water.



CROOKED STREAMS are a menace to life and crops in the areas bordering their banks. The twisting and turning of the channel reduces the flow and reduces the capacity of the stream to handle large volumes of water. Floods result. Crops are ruined. Lives are lost. Homes are undermined, causing owners that great valuable thing.

In many instances straightening out a stream has doubled its capacity for disposing of run-off water.

DYNAMITE may be used most efficiently and economically in taking the kinks out of a crooked stream. The dynamite is loaded along the length of "cut-off" channel. When fired, the dirt and other debris is blown high in the air and is scattered over the adjoining territory—leaving practically no spoil-banks. In addition to the straightening of the stream, the dirt is scattered and is later scattered out by the water which runs swiftly through the straightened channel.

Du Pont Dynamite has straightened many thousands of miles of crooked streams. Du Pont engineers have worked for years to develop the best blasting methods for the raising, cutting and straightening of streams. All their data is in a 48-page book, "Digging with Dynamite." It is for your use. Write for it.

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.



E. I. du Pont de Nemours & Co., Inc.
Explosives Department
4107 du Pont Building
Wilmington, Del.

- 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 and dams; fight soil erosion; work quarries. Du Pont has an explosive for every purpose.

History of Drainage and Drain Statutes

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

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“ That the Code is based on these early statutes is likely also one of the reasons why the Code constitutes one of the more arcane portions of Michigan statutory law. ”

Justice Stephen Markman

Elba Township v Gratiot Co Drain Comm’r
493 Mich 265, 269; 831 NW2d 204 (2013)

Modern Evolution

- Anderson-Rockwell Environmental Protection Act of 1970
- Clean Water Act (CWA) 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)
- National Pollutant Discharge Elimination System (NPDES) Phase II
 - Promulgated under Section 402 of CWA
 - Applied at the state level under Part 31 of NREPA

Drain / Water Resources Commissioner

- Statutory “Hats”
 - County Enforcing Agency for Soil and Sedimentation Control (Part 91)
 - Delegated Authority regarding inland lake levels (Part 307)
 - County Parks and Recreation Commission
 - Great Lakes Irrigation Board, Chairperson
 - County Board of Public Works
 - Lake Improvement Boards (Part 309)
 - Land Division and Plats

Balancing the Modern Role



What Does the Future Hold?

- Watershed Management
- Regional Detention
- Water Quality Improvements/Best Management Practices

Questions?



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