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Principles of Iowa Drainage Law

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Principles of Iowa Drainage Law

Abstract

This provides a snapshot of Iowa laws pertaining to draining excessive moisture from the land - what landowners can do on their property with regard to collecting, channeling or diverting surface flow of water.

Disciplines

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mere increase in the amount of water received will not satisfy this burden.

This principle establishes that the party that brings the suit, whether it is the dominant or servient estate owner, has the burden of proving their case. It also emphasizes that where a servient estate landowner complains of drainage causing damage to their land, they must prove substantial injury is occurring. Its not enough to merely prove the drainage is causing an increase in the amount of water received.

10. The formation of a drainage district does not preclude the owner of a dominant estate located within the district from exercising natural drainage rights to drain land, through natural or long-established artificial watercourses, across servient land.

Iowa has statutes that allow for the establishment and creation of Drainage Districts and mechanisms whereby a landowner can obtain the right to construct drains across the lands of another landowner. This principle tells us the existence of a drainage district does not affect a dominant landowners right to drain their land.

11. A servient estate must maintain a watercourse in which a dominant estate has a drainage easement, but the cost of such maintenance is shared in proportion to the benefit received.

In cases where an easement exists, the owner of the servient estate is responsible for sharing in the maintenance to the degree for which they receive a benefit. Thus, if the servient estate receives no benefit from the watercourse, all of the maintenance falls on the dominant owner. The servient owner does have to allow the dominant owner access for maintenance.

12. Section 468.621, while of some value in cases involving constructed drains, does not limit the application of the judicially developed principles determining the rights of dominant and servient estates as to issues involving natural surface drainage.

The statute referred to in this principle codifies the common law rule that dominant estate owners are only liable for damages that result from drainage that “increases the quantity of water or changes the manner of discharge on the land of another.” Iowa’s courts have seldom referred to this law except for cases involving tile line agreements between two

parties, and the common law principles discussed above are still applicable to drainage disputes.

IV. IMPORTANT CONTACTS

The Iowa Drainage District Association’s website is available at www.iowadrainage.org or they can be reached at (515) 221-1961.

The Natural Resources Conservation Service (NRCS) offers financial and technical assistance for reestablishing wetlands. They’re on the web at www.ia.nrcs.usda.gov or can be contacted at (515) 284-6655.

V. ADDITIONAL RESOURCES

The Iowa Drainage Law Manual is available at www.ctre.iastate.edu/pubs/drainage_law/title_page.pdf from the Center for Transportation Research and Education at Iowa State University. The manual summarizes Iowa’s drainage statutes, case law, and regulations, but does focus on the role of and impact on transportation rather than agriculture.

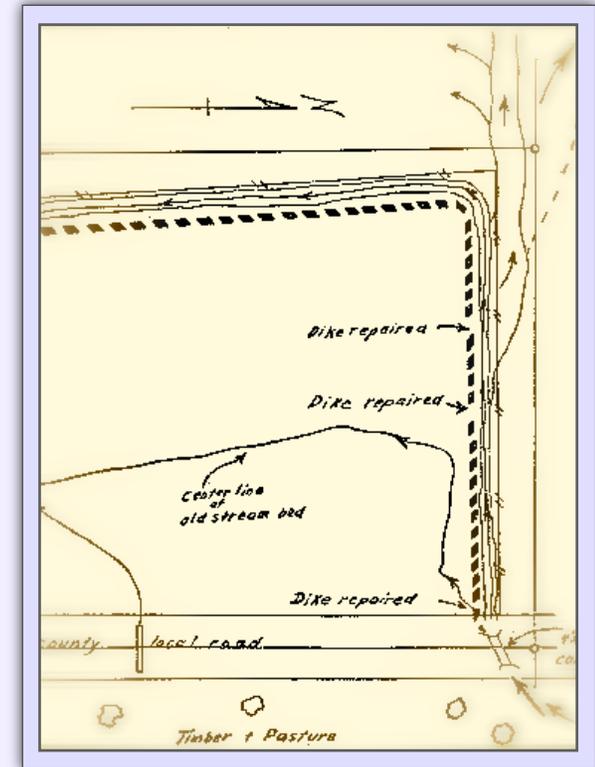
The Drake Agricultural Law Center is internationally recognized for providing opportunities to study how the legal system shapes our food system and influences the ability of the agricultural sector to produce, market and utilize agricultural products.

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PRINCIPLES OF IOWA DRAINAGE LAW

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LESSON PLAN

- I. A Brief History of Iowa Drainage Law
- II. Important Terms and Concepts
- III. The Twelve Principles of Iowa Drainage Law
- IV. Important Contacts
- V. Additional Resources

I. A BRIEF HISTORY

Iowa's landscape has been significantly modified to allow for the productivity and wealth that's derived from the state's agricultural land. This includes draining excessive moisture from the land. While allowing for intensive agriculture, drainage can create problems for adjacent land, in terms of increased moisture as well as soil erosion. However, Iowa's courts and legislature have adopted laws that attempt to balance the removal of water and agricultural productivity with protecting adjacent land.

Iowa has recently experienced multiple years of extreme rainfall events, both in terms of frequency and intensity. This means more water coming off the land in less time. The devastating effects of increased volume and velocity have received a good deal of attention on a regional and national scale, but what is the impact of additional drainage onto a neighbor's land and what legal remedies are available if the land is damaged?

It's also worth noting that government programs exist to assist landowners in reestablishing wetlands - retaining water that might otherwise increase the frequency and velocity of flooding downstream.

II. IMPORTANT TERMS AND CONCEPTS

Dominant Estate: An estate that benefits from an easement. In relation to drainage it is land at a higher elevation in relation to an adjacent piece of land.

Easement: An interest in land owned by another person, consisting of the right to use or control the land for a specific limited purpose.

Servient Estate: An estate that is burdened by an easement. In relation to drainage it is land at a lower elevation in relation to an adjacent piece of land.

Surface Water: Water on the surface of the ground following no definite course and that is lost by percolation into the soil and by evaporation.

Watercourse: A body of water flowing in a reasonably definite channel with bed and banks.

Watershed: The area of land where all of the water that is under it or drains off of it goes into the same place.

III. THE TWELVE PRINCIPLES OF IOWA DRAINAGE LAW

The following principles provide insight into the rights of landowners seeking to cast off excessive moisture and valuable guidance for landowners wishing to protect their land from the powerful force of flowing water. The

principles were originally set forth by Professor Neil Hamilton, in his article, "Iowa Surface Drainage Law and Groundwater Quality Protection: Is There a Potential Landowner Liability for Plugging Agricultural Drainage Wells and Sinkholes?"

1. The dominant estate has a servitude to drain surface water onto the servient estate in the natural course of drainage.

This means one landowner has the right to drain surface water onto the land of another.

2. The dominant landowner, as determined by relative elevation, has the right to collect and remove surface water in the course of natural drainage onto the servient estate.

The dominant estate is the land that is situated at a higher elevation and the servient estate is the lower lying land, which must accept the water being drained from the higher, dominant, land.

3. While the servient estate must accept natural surface drainage, the dominant estate cannot increase the amount or alter the manner of natural drainage if the servient estate will be substantially damaged. The "natural flow" doctrine is subject to an overriding requirement to use ordinary care.

Thus, the owner of higher land cannot drain water from their land onto that of a neighbor in any manner they choose. An alteration in the amount or manner must not cause substantial damage and reasonable care must be used. In determining whether substantial damage and ordinary care have occurred a court will look at all of the circumstances in the case to determine if the drainage is reasonable.

4. The dominant estate may obtain expanded drainage rights in the form of an easement by express agreement, prescription if for the required period, or implication.

This means the owners of the servient estate can lose the right to stop drainage that exceeds the limits established in the last principle. This can happen if there has been an agreement or contract made that allows excess drainage, the drainage was established when the land was owned by the same person or entity and was later divided, or the drainage has been occurring for a period of years that exceeds the statute of limitations.

5. Dominant estate owners may, through express or implied agreement or by estoppel or abandonment, lose their drainage servitude such that the servient estate may acquire a counter easement to turn water back onto the dominant estate.

This is similar to the last principle but is applied against the higher land. The Iowa Supreme Court has held that if a landowner maintains a barrier that repels the surface water flowing from adjacent land for 10 years or more, and with the knowledge and consent of the adjacent owner, they are no longer legally bound to allow the natural flow of water onto the property.

6. A landowner may collect and divert the flow of surface water around rather than across the land where it would naturally flow, as long as the amount sent onto the servient estate is not increased, the water is not from property that would not normally drain to it, and the water is not drained onto adjacent land that would not normally receive the drainage.

This means that landowners can channel or change the location of drainage but they can't drain water onto adjacent land where the water would not have drained onto the neighboring land without an alteration in the drainage. This in part means that landowners can't take water from one watershed and drain it onto land in a different watershed.

7. For drainage purposes, no distinction is made between surface waters or natural watercourses; the focus is the natural flow of the water.

This principle tells us that the manner in which the water flows doesn't matter. The water can flow gradually across a wide swath of land or it can flow rapidly in a stream or river, and it results in the same legal rights.

8. Classification of a watercourse as natural or artificial is not a primary consideration as long as the drainage flows in the natural direction and amounts; but an artificial watercourse, if used for the prescriptive period in lieu of the natural channel, may become a natural watercourse.

This means that it also doesn't matter a great deal whether a watercourse is naturally or artificially occurring, provided, again, that it follows the natural flow. It's important to note that the portion relating to the transition of an artificial watercourse to a natural watercourse relates only to the rights of the landowner on whose land the artificial watercourse exists. If the artificial watercourse alters its course and flows onto land where it would not have flowed previously, the adjacent landowner is not obligated to receive the drainage.

9. The plaintiff in a surface drainage dispute carries the burden of proof: the owner of a dominant estate must establish a right to unimpeded natural drainage; or the owner of a servient estate must establish the property has or will experience substantial injury, the