

# **DRAIN LAW – for Michigan Landowners**

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**This Bulletin summarizes** in non-technical language the most relevant parts of *the Michigan Drain Code* and the applicable common law of drainage. It will acquaint the reader with the drain procedures in a general way so he may better understand how the drain law affects him.

PART I discusses *property rights and responsibilities* (common law rules).

PART II discusses *group organization for drainage*. A table is included which summarizes the legal procedures for establishing new drainage districts and improving existing drains. Other sections of the Michigan Drain Code also are discussed.

PART III discusses some of *the financial and technical assistance available for drainage improvements*.

## **I. Property Rights and Responsibilities**

First, what does the law say about property rights and responsibilities as they are affected by drainage? If a conflict arises in the disposal of excess water, what will the courts interpret as a legal and reasonable action and what is illegal and unreasonable? Much of the law in this area has been developed over the years by the courts as they have settled specific disputes. The following summarizations concerning drainage are not written in the statute books and are called common law.

### **NATURAL FLOW RIGHTS**

The Michigan courts have accepted the general rule to natural flow. This means that *natural surface waters created by rain or snow must be allowed to flow unrestricted on to lower land holdings over the natural water courses*. As a general rule, *landowners may not artificially concentrate or increase the velocity of surface waters*. Likewise, landowners may not dam up a water course and force natural water flows to back up and to flood other land holdings. A farmer, may however, use normal farming methods which presumably include practices such as terracing, contour farming and filling in sag holes. Landowners have the responsibility of providing for abnormal flows of water produced by their actions. Costs of providing for the abnormal flows within the lower drainage system must be borne by the individuals who benefit from the drainage improvement. The foregoing common law rules and responsibilities generally apply whether drain improvements are carried on by individuals, private groups, or by landowners organized into public drainage districts.

### **PRESCRIPTIVE RIGHTS**

The natural flow rights may be lost in certain cases. *A prescriptive right to change the natural flow may be recognized by the courts if the artificial drainage has not been protested by the affected landowners for a period of 15 years*. This then becomes a permanent right to continue the artificial drainage in the manner it was made during this 15 year period.

The above description of property rights indicated some of the general rules governing disputes between landowners over the disposal of excess surface water. For information on a specific case it would be well to consult a lawyer. Most drainage conflicts are settled informally but in the final analysis, rights cannot be determined except by a court of law.

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