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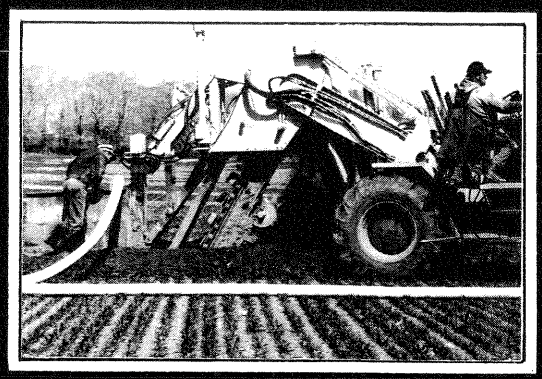

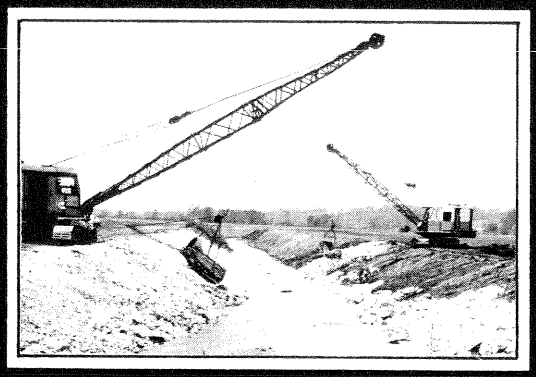

THE OHIO DRAINAGE LAWS PETITION PROCEDURE

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THE OHIO DRAINAGE LAWS PETITION PROCEDURE

By Byron H. Nolte
Extension Agricultural Engineer

Ohio drainage laws are very broad in scope and apply to a wide variety of improvements. They are administered by the boards of county commissioners and their purpose is to provide for the better utilization of Ohio's soil and water resources.

WORK THAT MAY BE DONE

The improvements possible under the drainage laws include:

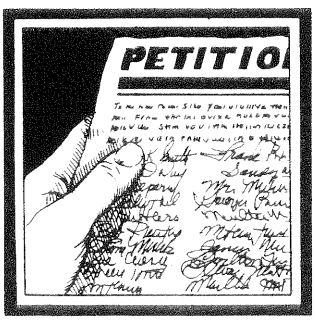
- The location, construction, reconstruction, reconditioning, widening, deepening, straightening, alternating, boxing, tiling, filling, walling, arching, or any change in the course, location or terminus of any ditch, drain, watercourse or floodway.
- The deepening, widening, straightening, or any change in the course, location, or terminus of a river, creek, or run.
- A levee, or any wall, embankment, jetty, dike, dam, sluice, revetment, reservoir, holding basin, control gate, breakwater, or other structure for the protection of lands from any stream, lake, or pond, or for the protection of any outlet, or for the storage or control of water.
- The removal of obstructions such as silt bars, log jams, debris, and drift from any ditch, drain, watercourse, floodway, river, creek, or run.
- The vacating of a ditch or drain.

Improvements may be planned, financed, and constructed using the petition procedure or the mutual agreement procedure. In either case permanent maintenance is provided.

The area affected by an improvement may include all or a part of one or more counties.

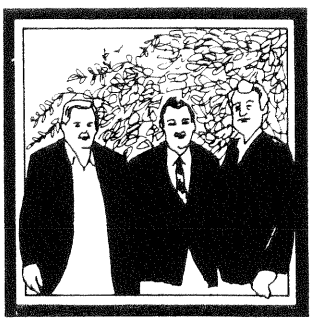
SINGLE COUNTY PETITION PROCEDURES

Summary of steps necessary to make improvements:



1.

A petition is filed by an owner or a public body.



2.

The proposed improvement is viewed by the board of county commissioners, the county engineer, and other interested people.

3.

The first hearing is held and the county engineer files his preliminary reports, including a statement of his opinion as to whether benefits from the project are likely to exceed the estimated cost.

4.

The county engineer makes surveys, plans, and specifications for the improvements; prepares a schedule of assessments of benefits and damages; and files this information with the clerk of the board of county commissioners.

5.

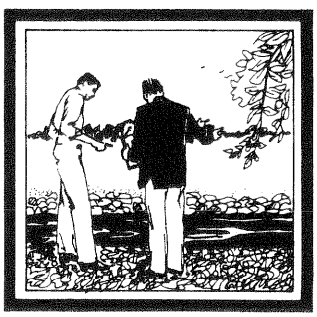
The final hearing is held. Any exceptions to the engineer's schedules of benefits and damages must be filed on or before the date of the final hearing. The board hears evidence, amends, corrects, and approves assessments, and orders the engineer to let the contracts for construction.

6.

The engineer receives bids at the time fixed, if no appeal has been taken to the court of common pleas.

7.

Upon completion of the contracts, the assessments are adjusted pro rata from the estimated to the final cost. This assessment, plus the maintenance for one year based upon estimated cost, is levied upon each parcel of land as stated in the schedules.



8.

The improvement is maintained by the county with funds obtained by an annual assessment upon the benefited owners.

Who May Petition

Any benefiting owner(s) may file a petition with the board of county commissioners to begin the legal steps necessary to finance, construct, and maintain an improvement.

"Owner" means any owner of any right, title, estate, or interest in or to any real property. "Owner" also includes any public corporation and the director of any department, office, or institution of the state affected by an improvement, not owning any right, title, estate, or interest in or to any real property.

Filing the Petition

Petitions are filed with the clerk of the board of county commissioners. The petition must state that the construction of the improvement is necessary and will be conducive to the public welfare. It also must state the nature and location of the work petitioned for. It must contain a list of the names and addresses, where known, of all the owners of the land which the petitioner or county engineer claims will be benefited or damaged by the construction of the proposed improvement. The petition must be signed by one or more owners as petitioners.

A 750-dollar bond must be filed with the petition plus two dollars for each parcel of land in excess of 200 listed in the petition as being benefited. The bond is released 21 days after the first hearing or at the termination of any appeal; however, if the petition is dismissed the bond is used to pay the cost of notices and any other incidental expenses and it may be used to pay the cost of the preliminary engineering report. If the petition is filed by a public body, no bond is required.

The petition may be amended upon written application of any benefiting owner filed with the clerk of the board of county commissioners, provided the board approves the application.

The View

The date, hour, and place where the view will start must be set by the board of county commissioners. The date shall be 25 to 90 days after the date on which the petition was filed.

A notice giving the date, hour, place of view and content of the petition must be sent by certified mail with return receipt requested to the owners named in the petition and of legal record on the date the petition was filed.

The view gives the board of county commissioners and the county engineer an opportunity to gather field information about the proposed improvement. Also, any owner may present proof of how he will be affected by the proposed improvement.

The First Hearing

The date and hour of the first hearing will be given on the notice announcing the view. It must be from 10 to 90 days after the date set for the view.

At the first hearing the county engineer must file a preliminary report including his estimate of cost, comments on feasibiliy of the project, and a statement of his opinion as to whether benefits from the project are likely to exceed the estimated cost.

The board of county commissioners shall hear any evidence offered by any owner for or against the granting of the proposed improvement, or for or against any proposed changes in the improvement.

No change shall be made in the nature of the work proposed after the first hearing is completed, except upon application of an interested owner affected by the proposed improvement, and upon notice given to all owners affected by such change.

If the board of county commissioners finds:

- That an improvement is necessary:
  (a) for disposal or removal of surplus water,
  (b) for controlled drainage of any land,
  (c) for irrigation,
  (d) for storage of water to regulate stream flow,
  (e) for prevention of overflow of any land in the county, or
  (f) for water conservation,
- That the construction of the improvement will be conducive to the public welfare, and
- That the cost of the proposed improvement will be less than the benefits conferred by its construction, it will grant the petition.

When deciding whether to grant the petition, consideration shall be given to the protection of environmentally significant areas.

If the petition is not granted, it will be dismissed. Any owner who is affected by the dismissal may appeal to the court of common pleas of the county in which said petition was filed. If no appeal is filed within 21 days, the petitioner must pay all the costs incurred in such proceedings, and the bond will be released.

Plans and Benefits

The county engineer is responsible for making surveys, developing plans and estimating the cost of construction. Bridges and culverts are evaluated. The cost of construction includes the actual cost of construction, the cost of rights-of-way, the cost of engineering, and the cost of notices, publication, and other incidental expenses.

Plans are reviewed by the director of the Ohio Department of Natural Resources, the Ohio Department of Transportation (where a state highway is affected), and the board of directors of any conservancy district within which any part of the lands or streams affected by the proposed improvement may lie.

The plans shall provide for spreading and leveling of spoil banks and shall provide for erosion and sediment conrol through the establishment of a sod or seeded strip not less than four or more than 15 feet wide. The strip shall be provided on both sides of the ditch, except where suitable vegetative cover exists. The strip or other erosion and sediment control measures shall be considered a part of the permanent improvement. Owners shall be compensated for sod or seeded strips wider than four feet by their removal from the taxable valuation of the property of which they are a part.

The county engineer shall estimate the benefits accruing to public corporations, any department, office, or institution of the state of Ohio and to private owners.

In determining the estimated drainage assessments for a parcel, the county engineer shall give primary consideration to the potential increase in productivity that the parcel may experience as a result of the improvement and shall also give consideration to the quantity of drainage contributed, the relative location of the property to the project, the portion of the project through which the drainage from the parcel flows, the value of the project to the watershed, and benefits as defined below.

"Benefit" or "benefits" means advantages to land and owners, to public corporations as entities, and to the state of Ohio, resulting from drainage, conservation, control and management of water and environmental, wildlife, and recreational improvements. Factors relevant to whether such advantages result include:

- The watershed or entire land area drained or affected by the improvement.
- The total volume of water draining into or through the improvement, and the amount of water contributed by each land owner.
- The use to be made of the improvement by any owner, public corporation, or the state of Ohio.

Also, benefits include any or all of the following factors:

- Elimination or reduction of damage from flood.
- Removal of water conditions that jeopardize public health, safety, or welfare.
- Increased value of land resulting from the improvement.
- Use of water for irrigation, storage, regulation of stream flow, soil conservation, water supply, or any other purpose incidental thereto.
- Providing an outlet for the accelerated runoff from artificial drainage whenever the stream, watercourse, channel, or ditch under improvement is called upon to discharge functions for which it was not designed by nature; it being the legislative intent that uplands which have been removed from their natural state by deforestation, cultivation, artificial drainage, urban development, or other man-made causes will be considered as benefited by an improvement required to dispose of the accelerated flow of water from said uplands.

The county engineer must estimate the value of land or other property necessary to be taken and the damages to be sustained by any owner as a result of the construction of the proposed improvement and subsequent maintenance of such improvement. The total of these damages and valuations is included as part of the total cost of constructing the improvement.

As an alternative to the schedule of assessments, the board of county commissioners may pass a resolution to levy a tax on all the property listed and assessed for taxation in the county. The resolution must be certified to the board of elections 60 days before the election upon which it will be voted. The levy may be for a period up to 5 years except when it is for payment of debt charges the levy shall be for the life of the indebtedness.

At least 60 days prior to passage of the resolution to levy a tax for construction and maintenance of a drainage improvement, the board of county commissioners shall file with the county auditor and county board of elections an accurate map showing the locations and types of any proposed improvements, the areas to be benefited and the existing system of drainage improvements that is to be maintained. The resolution may designate all or part of the county as a drainage improvement district and the proceeds of the levy shall only be used within the district. The drainage improvement district designation shall be based on the location of the system of improvements and the areas to be benefited by that system.

The Final Hearing

Upon the filing by the county engineer of his reports and schedules, the board of county commissioners must fix a date from 25 to 90 days thereafter for the final hearing. The clerk of the county commissioners must give notice of the hearing by certified mail to all owners whose names appear in the engineer's schedule of assessments and damages.

The notice must include the date of the final hearing on the report of the engineer, the assessment or the estimated damages, if any, and compensation for any land or other property necessary to be taken. It also includes notification that all claims for compensations or damages must be filed with the clerk of the board of county commissioners before the date fixed for the final hearing.

At the final hearing the board of county commissioners will hear all evidence offered and consider all schedules and reports filed by the county engineer. It will reaffirm its former order granting the petition or it shall set aside the former order and dismiss the petition.

If the petition is dismissed at the final hearing, all the costs in said proceedings, including the cost made by the engineer in making his surveys, reports, and schedules, may be distributed to the benefiting owners or they may be paid from county funds. The petitioner, or any owner in favor of the improvement, may appeal within 21 days to the court of common pleas from such order of dismissal.

If the petition is not dismissed, the board of county commissioners will hear any evidence offered for or against the assessment proposed to be levied against any owner, or any land, as shown by the schedule of assessments filed by the county engineer and will hear any competent evidence on the question of benefits. The board, from the evidence offered and from an actual view of the premises, will amend and correct the assessments, and the assessment so amended or corrected will be approved by the board.

The board of county commissioners must determine when the assessments are to be paid and whether bonds are to be issued. Also, they will order the county engineer to let the contracts.

Assessments

Assessments are levied on each parcel of land benefited, to pay the cost of construction and maintenance of improvements. These assessments are paid in semi-annual installments as taxes are paid. When the county general funds are used to pay for the improvement the assessment shall not exceed ten semi-annual installments.

If bonds or notes are issued, the installments will include interest added at the rate of interest the bonds or notes bear. The bond repayment period may not exceed 16 semi-annual installments.

Any owner may pay the estimated assessment on his land in cash within 30 days after the final hearing without paying any interest. Notice of intent to pay in cash must be given within 21 days after the final hearing.

If the estimated cost of the improvement does not exceed 500 dollars, not more than two semi-annual installments, as taxes are paid, will be given to owners of lands benefited to pay the assessments that are made for such improvements. If the estimated cost of the improvement exceeds 500 dollars, the board may determine the number of installments in which the assessments are to be paid, not to exceed 10 semi-annual installments.

If an assessment is 25 dollars or less, or whenever the unpaid balance of any such assessment is 25 dollars or less, the same will be paid in full, and not in installments, at the time the first or next installment would otherwise be due.

Upon completion of the works of improvement, the assessments are reduced pro rata by the difference between the estimated cost and the final cost. The assessment will include the cost of location, engineering, compensation, damages, contingency, and the assessment for maintenance for one year. The minimum construction assessment is 10 dollars and the minimum maintenance assessment is two dollars.

The original schedule of benefit assessments upon owners for the construction of any improvement must be maintained by the county auditor as the permanent base for maintenance assessments.

In lieu of the permanent base, the county commissioners may by resolution levy assessments apportioned according to tax value of benefited property. Prior to adopting the resolution, the county commissioners shall give at least 10 days notice in a newspaper of general circulation of the time and place where the resolution will be considered. The commissioners shall hear all persons concerning the proposed levy, make any necessary adjustments and may then pass a resolution levying an assessment on benefited property. Any owner so assesed may appeal to the court of common pleas the question of whether any such assessment is levied according to benefits. Any increase or reduction of the assessments levied in this manner shall be made at the regular six-year reappraisal of all property in the county.

The legislative authority of a political subdivision may choose to pay the assessment of all parcels within the subdivision.

Maintenance assessments will be made as needed by the board of county commissioners upon substantial completion of an improvement and on or before the first day of July, in each year thereafter. Assessments will be placed on the next succeeding tax duplicate, to be collected and paid as other special assessments are collected and paid.

Such maintenance assessment are to represent a percentage of estimated benefits as estimated by the engineer and found adequate by the board or joint board; except that in any year when a maintenance fund has an unencumbered balance equal to 20 per cent of the construction costs, the annual maintenance assessment is to be omitted.

After six such annual maintenance fund assessments have been made upon the owners benefiting from an improvement, the board of county commissioners must review the permanent base for maintenance fund assessments and may increase or decrease the respective benefit apportionments in accordance with changes in benefits that have occurred during the intervening six years. When changes are made, the owners will be notified, and a hearing will be held.

At the end of six years from the date of the first review of the permanent base of maintenance assessments, and at six-year intervals thereafter, the board of county commissioners will again review such permanent base.

Owners along a drainage improvement may form any advisory committee for the purpose of notifying the county engineer of needed repair and maintenance work. Any recommendations shall be submitted to the engineer by May 1 of the year work is needed. The engineer shall consider the committee's recommendations.

Appeals

Any owner opposed to the granting of the petition, or any owner opposed to further proceedings in the improvement, or any owner who claims that the assessment levied against him is excessive, or is not in proportion to benefits, may take an appeal to the court of common pleas. The minimum appeal bond is 500 plus two dollars for each parcel over 200.

If an appeal has been taken to the court of common pleas, no further steps will be taken until the final judgement, order, or decree upon any appeal is rendered by the court of common pleas.

If the judgement, order, or decree is in favor of the granting of the improvement, the board will proceed with said improvement proceedings in compliance with such final judgement, order, or decree, from the point at which they were terminated by such appeal, or from the point at which the court orders the board to proceed.

Construction

If no appeal has been taken to the court of common pleas, the engineer must proceed to receive the bids, determine the successful bidder and enter into contract for the construction of the improvement.

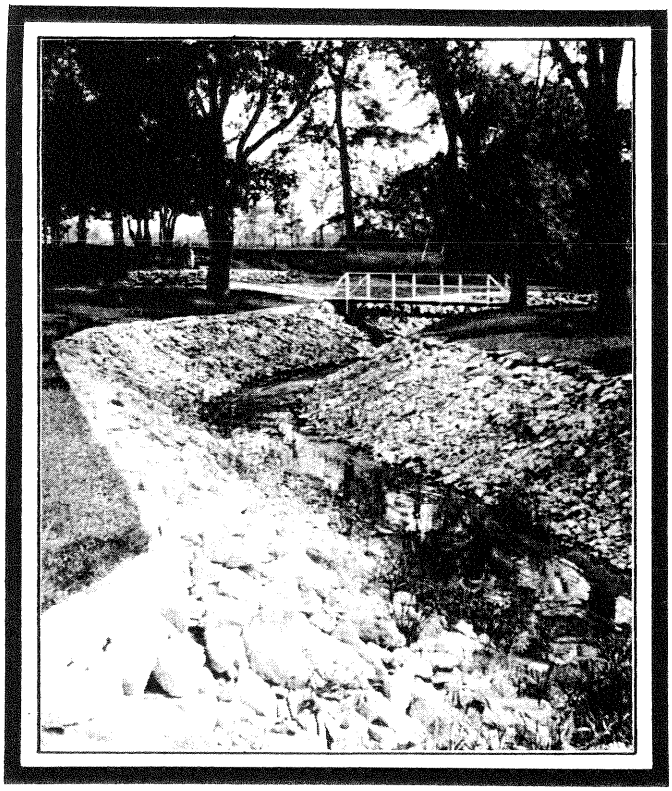
If appeals have been taken to the court of common pleas, they must be settled before construction can begin.

Upon acceptance of the contract work, the engineer shall file with the county recorder a property plat showing the general location of the improvement and a statement describing the width of the permanent easement for maintenance.

Maintenance

The board of county commissioners must establish and maintain a fund for the repair, upkeep, and permanent maintenance of each improvement constructed under the provisions of the drainage laws.

Whenever the board from its own observation or the recommendation of the county engineer, or on the written complaint of any of the owners of lands subject to said maintenance assessment, has reason to believe such improvement is in need of repair or maintenance, it will, as a board or by the county engineer, make an inspection of the condition, and if it finds such need to exist, it will make an estimate of the cost of the necessary work and material required for the purpose.



A completed drainage ditch.

The board will determine the most economic and expeditious method of maintenance and repair, and cause the work to be done.

The county engineer has general charge and supervision of the repair and maintenance. He must make an inspection of the drainage improvements, and on or before the first day of June, in each year, must report to the board of county commissioners the condition of said drainage improvements and his estimate of the probable amount of funds required to repair and maintain them.

Persons who perform maintenance may go upon land abutting or adjoining drainage improvements as necessary. In the case of open ditches the area used must be not more than 25 feet from the top of the bank, except in an emergency up to 75 feet may be used. For closed ditches (tile or pipe), not more than 80 feet centered on the ditch may be used.

When the performance of maintenance requires the damage of existing crops beyond the permanently established sod or seeded strip, the owner of the crops shall be granted damages equal to market value, to be paid from the permanent maintenance fund established for the improvement.

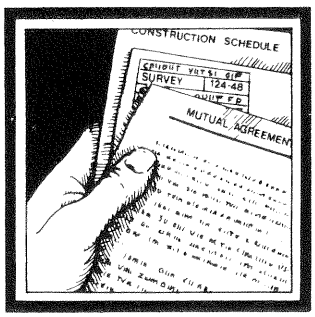
Any owner may make application for reduction in his maintenance assessment due to work he proposes on any portion of a public ditch, watercourse, or other improvement. Such application must be filed with the county engineer on or before the first day of May, in any year and must state the nature of the work to be done. The county engineer must recommend the per cent reduction of maintenance assessment to be granted, if any. The board must either confirm or reject the allowances recommended by the county engineer.

The board of county commissioners may grant to any owner a reduction of not more than 50 per cent of his annual maintenance assessment if such owner has filed with the county engineer a certificate of the board of supervisors of the soil and water conservation district of the county in which the land is located, certifying that he is following practices in the cultivation or management of agricultural land that will reduce the runoff of surface water and the erosion of sediment and silt into drainage channels. Such certificate will remain in effect until cancelled by the board of county commissioners. The county engineer will have the right to inspect the premises of any owner claiming assessment reduction due to soil and water conservation and to ask the soil and water conservation district for review of any certificate on file.

If the cleaning out or repair of an improvement is made necessary in whole or in part by the negligent acts or ommissions of any owner, the board of county commissioners, after a hearing in accordance with provisions of the law, may add to the maintenance assessment of such negligent owner an additional repair assessment in an amount sufficient to rectify the damage.

MUTUAL AGREEMENT PROCEDURE

The mutual agreement procedure applies when one or more owners desire to join in the construction of an improvement and are willing to pay the cost of construction. There are several steps necessary to make an improvement.



1.

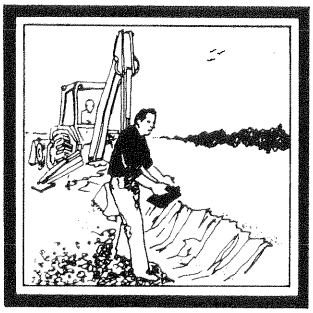
The owner(s) involved submit to the clerk of the board of county commissioners the mutual agreement, plans approved by a registered professional engineer and schedules of construction for the improvement. These are reviewed by the county engineer. He may approve them or require amendments prior to approval.

2.

The county engineer makes benefit assessment schedules for maintenance purposes. These assessments may include the cost of preparing the schedules.

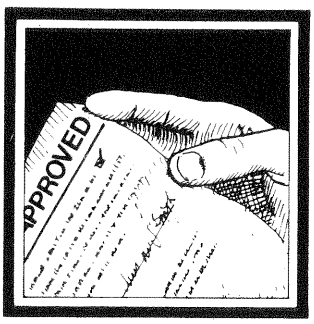
3.

The board of county commissioners holds a hearing on the maintenance assessment schedules. They hear evidence and may amend and correct and shall approve the schedules.



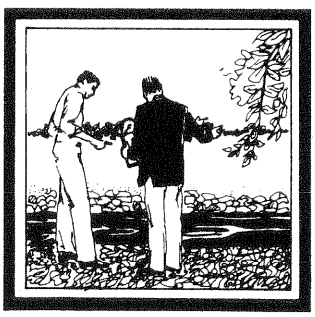
4.

The owners contract for the construction and pay the cost as provided in their mutual agreement. This cost includes the estimated cost of maintenance for one year.



5.

The construction is inspected and certified to be in accordance with the plans. This must be done in a manner acceptable to the county engineer.



6.

The improvements are maintained by the board of county commissioners with funds obtained by an annual assessment upon the benefited owners.

MULTI-COUNTY PROCEDURE

The primary difference between making improvements in one and in two or more counties is in the group that conducts the proceedings. The procedure for the owner is essentially the same.

The petition for an improvement that is proposed to be located in, or benefits or damages land in, two or more counties may be filed with the clerk of the board of county commissioners of the county with the majority of the proposed improvements.

The proceedings are conducted by a joint board of county commissioners consisting of the members of the boards of the several counties. One member of the joint board is elected president. The clerk of the board of county commissioners where the petition is filed acts as clerk of the joint board.

A majority of the joint board constitutes a quorum. All decisions of the joint board require a vote of a majority of the county commissioners on the joint board.

The director of the Ohio Department of Natural Resources is an ex-officio member of the joint board. He may attend in person or through a designated representative. He may vote only in the case of a tie.

The clerk of the board of county commissioners with whom the petition is filed, calls a meeting of the joint board within 30 days after the petition is filed. The meeting is held in the county in which the petition is filed.

The joint board designates the engineer of the county with the majority of the improvement to do the field work necessary to plan the improvement. The engineer of each county interested must assist in making the reports and schedules, and must sign and approve them.

All applications, remonstrances, claims for compensation or damage, reports, schedules, certificates, statements, contracts, bonds, and other papers must be filed with the clerk with whom the petition is filed.

INTERSTATE PROCEDURES

Improvements may involve land in an adjoining states. The board of county commissioners in Ohio may cooperate with the proper authorities in the adjoining state to carry out interstate improvements.

OUTSIDE ASSISTANCE

Federal and state laws provide for financial assistance on certain types of improvements. These require approval prior to construction. Application for assistance must be made well in advance in order to coordinate local action with the federal program.

Improvements may be planned and constructed in cooperation with federal and state agencies. If the regulations or procedures of the cooperating agency are in conflict with the Ohio drainage laws, the board of county commissioners may adopt the agency regulations or procedures and proceed with the improvement.

The board of county commissioners, with the advice of the county engineer, may enter into agreements with local soil and water conservation districts for the purpose of planning, constructing, or maintaining drainage improvements.

NOTE

This bulletin outlines the main provisions of the Ohio drainage laws. It is not a complete legal guide. In specific cases direct reference should be made to the Ohio Revised Code Chapters 6131, 6133, 6135, and 6137. In many instances the help of a qualified attorney will be necessary.

PHOTO CREDITS: U.S. Soil Conservation Service; M. L. Palmer, Cooperative Extension Service, Ohio State University; and County Engineers Association of Ohio.

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