Assessing Drainage Ditch Benefits

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I want to assure you that it was not my idea that I be assigned this subject. The job was wished on me. I have made hundreds of assessments over a period of about 40 years and during all that time, only five remonstrances were filed against assessments. But viewing all that work in retrospect, I realize now that some of the assessments were not equitable, even though sincere attempts were made at the time to make them so.

During the last 10 years, one of my duties has been checking and reporting on ditch proceedings in which state highways are affected and assessed. Therefore, I am viewing this subject now as an interested party.

The state is not opposed to drainage projects, as is apparently the belief of a minority of those interested in promoting and providing these facilities. On the contrary, the state favors good drainage and recognizes the fact that many highways cannot be maintained to preserve the original investment unless outlets for necessary highway drainage are constructed and maintained outside the right-of-way limits. This can be accomplished only by a community effort.

The state receives many complaints from land owners adjacent to, or in the immediate vicinity of, state routes concerning incorrect drainage conditions or lack of drainage, which affect their lands adversely. In many cases, correction or improvement cannot be made without the co-operation of other interested parties. In such cases, we advise and encourage the filing of petitions in court to accomplish the desired result. This advice often is acted upon and thus we can participate in the proceedings and pay an assessment commensurate with our responsibility. Each land owner shares his just proportion of the expense.

Usually the state does not sign a petition for neighborhood drainage, nor sign a remonstrance against such a petition. The state is content to go along with necessary drainage petitioned for by

interested farmers, unless the construction, as petitioned for, would evidently cause unnecessary damage to the highway or its structures.

I know of no magic formula which can be used unerringly for arriving at the correct amount to assess the state in each and every instance. It is difficult to understand how an arbitrary rule of fixing the benefit to a state highway as always being equal to, or any number of times greater than, that of adjacent farm land can produce the correct amount of benefits in all proceedings, regardless of conditions and facts involved.

The drainage laws contemplate that all assessments for benefits or damages against all lands, including highways and other rights-of-way within the drainage area, shall be made on the basis of benefits to be received or damages incurred by reason of the construction of the proposed project. It would seem a fair and equitable apportionment of the cost on that basis depends on the good judgment and experience of the official making the apportionment. Good judgment and experience are valuable assets to the engineer here, just as in all other engineering work. You don't learn how to do this in a class room. An arbitrary rule will not be a safe guide within itself, without consideration of all angles which affect the particular project. An experienced surveyor, with good judgment, will consider each project as a separate problem and fix the assessment at an equitable amount, giving a good and sufficient reason, if need be, for his decision, and being able to defend his action.

In a court hearing, the amount of benefit to real estate involved has been defined as the difference between the value of lands before the proposed drainage is effected and after the same is completed. I know of no better definition. Making assessments against state highways is no different than making other assessments. They should be made according to benefits to be derived.

It is not necessarily true that the highest type highways always receive the greatest benefits from drainage projects. Often a secondary or low-type road may be benefited to a greater degree. This is obviously true when you consider the benefits in light of the above definition. It all depends upon the necessity for drainage improvement. This is also true when applied to farm lands, town lots or other rights-of-way.

All real estate within the drainage area is affected and subject to assessments for benefits or damage. But there are instances where benefits to farm lands and rights-of-way are more theoretical than real, being confined to the fact that water falls on the entire area

and all should assist in providing or improving facilities for the removal of the surplus.

The state is not interested in special storm sewer systems designed to service basements or for other special uses other than ordinary surface drainage. It objects to assessments for drainage projects which are often much greater than assessments of property which receives the full benefit the sewer was designed to provide. Such drainage may, and often does, cost several times more than to care adequately for surface drainage only. The state's assessments in such projects should be no greater than for a drain designed to care for adequate surface drainage only.

There are many inherited bridges on secondary state roads which are of poor quality and need to be replaced as quickly as funds are available. Many of them are on rights-of-way of from 30 to 50 feet. We lose some of them after ditch dredging is completed. Some of them are at locations that will be abandoned when the highway is permanently improved, which makes the expense of replacing them almost a total loss to the department. It is well to make provisions in the specifications to protect them, if possible, and prolong their life for a period of time, as all of such structures cannot be replaced for many years.

In the Greenfield District of the State Highway System (which comprises approximately one-sixth of the state, or all or a portion of about 20 counties) we have not experienced great difficulty with excessive ditch assessments. We have made extra efforts to cooperate with surveyors of several counties in drainage projects which affected any portion of the highway system. This district is fortunate in having many county surveyors of long experience who know drainage and who are conscientious and capable in judging benefits and in determining assessments accordingly.

Our greatest difficulty is with procedure. It is the responsibility of the attorney for the petitioners to serve most of the legal notices necessary to provide an unbroken chain of steps in the proceeding. But we can reach surveyors easier than we can attorneys. For that reason, I wish to mention some of the notices. I hope you will impress upon the attorneys their importance, if the project is to move smoothly to conclusion.

The notice of the filing of a petition for drainage wherein the state is an interested party, should be accompanied by a copy of the petition, as provided in the Acts of the 1945 General Assembly, page 7. This act was amended (Acts of 1947, page 638) but the amend-

ment did not affect the original act as to ditch petitions. The act is as follows:

> "Whenever any suit, action, counter claim, *petition* or cross-complaint is filed in any court in this State in which the State of Indiana or any board, bureau, commission, department, division, agency or officer of the State of Indiana is a party defendant when the attorney general is required or authorized to appear or defend, or when the attorney general is required or authorized to appear or defend, or when the attorney general is entitled to be heard, a copy of the complaint, cross-complaint, *petition,* bill, or pleading shall be served on the attorney general and such action, cross action or proceeding shall not be deemed to be commenced as to the State or any such board, bureau, commission, department, division, agency or officer until such service. Whenever the attorney general has appeared in any suit, action or proceeding, copies of all motions, demurrers, petitions and pleadings filed therein shall be served upon the attorney general by the party filing the same.
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> "Whenever service on the attorney general is required by this Act, such service may be made by handing it to the attorney general, or any deputy attorney general, or by mailing the same to the attorney general by registered mail return receipt requested.
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> "This Act shall in no way affect or apply to the service of summons or process as not provided by law but the requirements herein are in addition thereto."

If all other procedure is legal, and the state's assessment is nominal, the attorney general sometimes overlooks this failure, but it is dangerous to neglect it. Proceedings may be, and some of them in the state have been, halted by this neglect by the attorney. Another stumbling block to the smooth movement of the project through the court is the failure, in some instances, to follow the statute in regard to hearing on assessments.

Often the state is not mentioned in the petition as being an interested party, but is brought in by the engineer and viewers in their report. In this event the law requires that the omitted party be notified by registered mail, with return card, which brings the omitted party into court. In case the state is the omitted party, a copy of the petition should accompany this notice.

Where all notices are served as provided in the statutes, we do not have difficulty in co-operating in drainage work by prompt payment of our assessments.