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Ohio Drainage Laws

Law of Reasonable Use

Until the 1980s, Ohio landowners had the legal right to rid their property of surface water, regardless of the damages it caused to other lands. Thankfully, now there are laws in place to protect Ohioans from unreasonable amounts of water being shed onto them – the law of reasonable use. The reasonable use doctrine allows a landowner to drain surface water from their property, but only to the point that it is reasonable. If the drainage becomes unreasonable, the landowner could be held liable for any of the resulting damages. Simply stated, a landowner's use of surface water must be reasonable, and may not unreasonably interfere with another property.

Reasonable Use Explained

In Ohio, everyone has the right to make reasonable use of the water that flows across their land as long as the water is returned to its natural water course. This can include ponding water behind a dam for personal use or making drainage improvements to protect structures. For example, agricultural drainage, such as subsurface clay or tile drains, is considered a natural water course *IF* it has been installed for more than 21 years. Additionally, a ditch, drain or water course is considered to be a public water course if it has been established and constructed or used for 7 years or more.

Since all landowners are granted reasonable use of the water on their property, all landowners must also accept the water that flows onto their property, so long as the use is reasonable, and that no additional water from another watershed has been added to such flow. When returning water back to its natural course, a landowner is generally obligated to outlet a natural water course onto his/her downstream neighbor at the same point the water left the property prior to any development of the site.

Existing storm drainage facilities, including pipes, drains, and swales, cannot be closed, obstructed, or altered in a way which would reduce the capacity for conveying the storm water across or onto private property. A property owner may be liable for damage to the upstream or downstream property owners for failure to responsibly manage storm drainage facilities on or across his/her property.

Reasonable Use Considerations

Below are some of the factors to consider in determining reasonable vs. unreasonable use.

- 1) Purpose. What is the purpose of the drainage; is the drainage suited for the area; what are the economic, cultural, and social value(s) of the land; what is the use of the land; and what is the natural drainage of the area?
- 2) Severity. What is the extent of harm; how serious is the damage that has been or is being caused to the affected or harmed property?
- 3) Necessary. Can this harm be avoided; how easily could alternative drainage be provided to result in less harm to another?



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Resolving Conflicts Between Property Owners

The ideal method of resolving issues between neighboring properties is for the two landowners to come to an agreement on a remedy to prevent and reduce the damage(s) being done. If the landowners are unable to come to an agreement, they may consider to seek legal counsel to draft agreements, paperwork, etc. Regardless of whether legal counsel is consulted, it is recommended that agreements, resolutions, and terms and conditions be documented and that each individual involved be provided a copy.

Stark Soil and Water Conservation District is available to help Stark County residents with their drainage issues. District staff is equipped to provide guidance, technical assistance, and resources to aid in resolving drainage issues for individual landowners. This is a completely free service offered to Stark County residents only. However, the district will not mediate conflicts between neighboring landowners.

No village, city, township, or county holds the authority to resolve conflicts over water rights or drainage problems between neighbors. The exception to this would be drainage or storm water ordinances. In this case, ordinances would be enforced through the municipality. In the case that such ordinance does not exist, the appropriate authority to issue orders or resolve conflicts regarding water rights or drainage problems between neighbors lies with the common pleas court.

If a landowner believes a use of water to be unreasonable, the landowner must prove in court that the other party is violating the law of reasonable use. If successful, the harmed party may receive compensation for damages caused by the drainage interference and may ask the court to order the offending property owner to cease the drainage use.

Alternatively, you may consider filing a claim in the small claims division of the county court. Small claims court is a fairly inexpensive and simpler method of resolving minor disputes in which parties represent themselves without an attorney. For more information on small claims court, check with the county court.

Lastly, Stark County Commissioners offer a petition process for resolving drainage issues. The petition ditch process provides a mechanism for landowners to cooperate with the Stark County Commissioners to solve drainage problems. Improvements, construction, maintenance, continued maintenance, and the other expenses necessary for this process is paid for by assessing the property owners within the watershed according to benefits received. Residents may initiate this process on their own or in collaboration with Stark Soil & Water.

Key Concepts

As you can see, Ohio laws governing water rights are complex and not easily summarized and because the laws surrounding water rights are determined by case law, they are constantly evolving. However, here are the key takeaways:

- A landowner is entitled to the reasonable use of the water that flows across his/her land as long as the water is returned to its natural water course.



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- A landowner is generally required to accept the water that flows onto his/her property in a natural water course, so long as no additional water from another watershed has been added to such flow.
- A landowner is generally obligated to outlet a natural water course onto his/her downstream neighbor at the same point the water left the property prior to any development of the site.
- Changing the flow of water in a manner that causes damage to an upstream or downstream neighbor may result in legal liabilities for those damages.
- For disputes between neighboring landowners, the preferred method of resolution when dealing with unreasonable water usage is for the two landowners to come to an agreement on a remedy to prevent or reduce the damage(s) being done.
- Stark Soil & Water Conservation District is equipped to provide guidance on drainage issues for individual landowners. However, the District will not mediate conflicts between neighboring landowners.
- The county petition ditch process provides a mechanism for landowners to cooperate with the Stark County Commissioners to solve drainage problems. The landowners in a watershed pay for the construction and continued maintenance based on their acres of benefits derived from the drainage improvement.
- The authority to issue orders or resolve conflicts over water rights or drainage problems between neighbors lies with the common pleas court. The exception may be the few cities which have drainage or storm water ordinances.
- Some cases may be resolved in the small claims court division of the county court. Check with the county court for more information about small claims court.

Resources and References

- This is a brief summary of "Water Rights in Ohio", Wright, Paul L., et al. AGDEX 817/557, a bulletin available through OSU Extension Offices.
- "Law Notes: from the OSU Agricultural & Resource Law Program", Hall, Peggy K. published by OSU Extension Office.
- The same information is found Bulletin 822, "Ohio Drainage Laws: A Brief Overview", Brown, Larry C. and Stearns, Jodi L. published by OSU Extension Office. To get a copy and more information check their website at www.ohioline.ag.ohio-state.edu or call (614) 462-6700.
- *McGlashan v. Spade Rockledge Terrace Condo Dev. Corp.*, 62 Ohio St. 2d 55, 402 N.E.2d 1196
- *Cline v American Aggregates*, (1984), 15 Ohio St.3d 384
- Ohio Revised Code, Sections 152.17, 6131, 6133, 6135, and 6137