

# The Ohio Drainage Laws Petition Procedures ORC 6131/6137

DELAWARE SOIL & WATER CONSERVATION DISTRICT  
DELAWARE COUNTY ENGINEER'S OFFICE

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## Contact Information

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## Why are we here?

- Landowners contacted SWCD seeking assistance with solving drainage problems
- The likely solution to the known drainage problems would require work on more than just a single property
- No project has been proposed and any potential scope is not known at this time
- This meeting is strictly informational in nature

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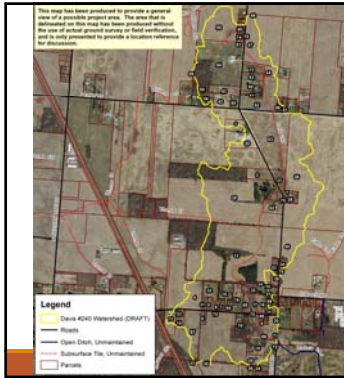
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Davis #240 Watershed

- Watershed area = 557 acres
- Work has been performed on various parts of the system through the ORC 6131 petition process in 1903, 1913, 1920 and 1929
- No comprehensive maintenance on any part of the drainage system

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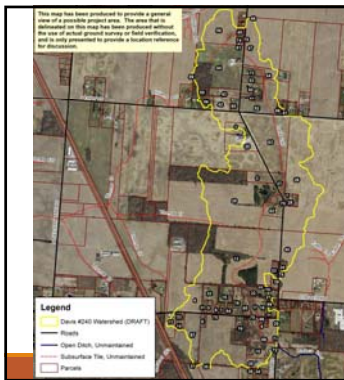
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Davis #240 Watershed

- Watershed area determined by remote sensing and GIS tools
- Not surveyed or field verified
- Final watershed determination is part of the engineering process

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What are the options for addressing drainage problems?

- The State of Ohio treats drainage on private property as a civil matter between landowners – Precedent case law governs, No “Drainage Police”
- To solve a drainage problem requires:
  1. Access
  2. Funding Source

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What are the options for addressing drainage problems?

1. Landowners work together on a cooperative basis to enact a solution.
2. File a civil lawsuit
  - Usually done to recover damages from negligence
  - Neglect is not usually considered negligence
  - Doesn't necessarily provide a fix for a problem
3. Utilize the ORC 6131 petition procedure

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What are the options for addressing drainage problems?

- \*ORC 6131 and its companion statutes are the only sections within the Revised Code that speak to drainage on private property
- \*It is the only section of Ohio law that gives any unit of government the authority to undertake drainage projects to benefit private properties
- \*It provides the Access and the Funding

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ORC Chapter 6131

- \*Commonly known as the County Ditch Petition Law, enacted in the mid to late 1800s
- \*Was formulated in response to soldiers returning from the Civil War
- \*First project in Delaware County was constructed in 1869, over 600 historical projects constructed between 1869 - 1957
- \*There was a separate ORC section allowing petitions to Townships that was repealed in 1981

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### ORC Chapter 6131

- Intended for multi-property, watershed scale drainage improvements
- Provides a means for all landowners receiving benefits from a drainage improvement project to share in the construction and maintenance costs of the project
- There are separate sections that address multi-county (6133) and multi-state (6135) projects
- Only deals with construction, not maintenance, of an improvement

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### ORC Chapter 6131

- Is an entirely landowner driven, landowner funded process
- County is reactive to a petition request, we do not initiate a project (although Townships may and have)
- County Commissioners, County Engineer, and SWCD all have roles in the process as outlined in the statute

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### ORC 6131: What improvements may be requested?

- Construction, reconstruction, or any change in the course, location, or terminus of any ditch, drain, subsurface drain, watercourse, or floodway
- The removal of obstructions such as silt bars, log jams, debris, and drift from any ditch, drain, watercourse, floodway, river, creek, or run

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### ORC 6131: What cannot be requested?

- Breaking watershed
- Punitive actions
- Parcel-specific improvements
- Making a jurisdictional stream straighter-deeper-wider (but we can do logjam removal)

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### ORC 6131: Single County Petition Procedures

1. Petition filed by landowners or public body
2. View
3. 1<sup>st</sup> Hearing
4. Preparation of plans and assessment schedule
5. 2<sup>nd</sup> Hearing
6. Bidding & Construction
7. Levying of Assessments
8. Maintenance

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### ORC 6131: Filing the Petition

- Filed with the Clerk of the Board of County Commissioners
- Requires a \$500 bond (plus \$2 for every parcel over 200 parcels), can be split between landowners
- May be amended up until the close of the 1<sup>st</sup> Hearing
- Consultation with SWCD and County Engineer recommended prior to filing any petition
- The petition request is a big factor in setting the scope of a project

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**Delaware County Drain Petition**  
ORC 6131.01, 6131.02

High County: 1  
 Adm. County: 1

RECEIVED  
 MAY 6 2019

To the Board of County Commissioners of Delaware County, Ohio

The undersigned hereby petition your honorable body to: (1) create, alter, amend, improve, raise, remove, relocate, deepen, broaden, widen, extend, etc., or (2) amend or alter

To the extent practicable and feasible

The expenditures of the improvement, if necessary, will benefit the petitioner(s), and will be conducive to the public welfare.

The following is the nature and extent of said proposed improvement, to wit:  
Engineering: In Delaware County, Brown & South Twp within English RR Watershed and generally following, but not limited to the course and tenor of the existing improvement

All cost of engineering, construction, and before maintenance will be assessed to the benefiting parcel of land, except as ordered, under Article 10, Section 2 of the Revised Code.

The following is the nature of the work petitioned for:

to generally improve the drainage, both surface and subsurface, to a good and sufficient outlet, by restoring, modifying or altering the existing improvements as required and/or creating new surface and subsurface drainage means or systems as requested, by this petition.

A list of the names and addresses, when known, of all the owners of the land which the petitioner or the County Engineer claims will be benefited or damaged by the construction of the proposed improvement is as follows:

(See Attached Sheet)

Number of copies of the filing of this petition shall be obtained by phone from "Printing services and publications" as provided by Sec. 6131.07(B, C, 1)

(See Attached Sheet)

Petitioners:

Name	Address
[Signature]	[Address]
[Signature]	[Address]
[Signature]	[Address]
[Signature]	[Address]
[Signature]	[Address]
[Signature]	[Address]
[Signature]	[Address]

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### ORC 6131: Petition Scope

- Landowners set the upstream extent of a petition project, engineering sets the downstream extent
- Only by signing the petition can a landowner specifically request for the improvement to be brought to their property
- Signing the petition as a show of support is permitted
- Signing the petition does not obligate you to testify in favor of the petition if you change your mind

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### ORC 6131: Petition Filed

- Commissioners formally accept the petition
- View is scheduled not less than 25 nor more than 90 days after the date the petition is filed
- 1<sup>st</sup> Hearing is scheduled not less than 10 nor more than 90 days following the View
- Notices are sent via certified mail and official legal notice placed in the Delaware Gazette
- Notices are sent to address on record with County Auditor

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### ORC 6131: View

- View allows Commissioners, Engineers, and interested land owners to gather field information on the project
- Typically is held somewhere in the project area, but has been done by drone video as well
- Is considered a formal meeting of the Commissioners
- Questions can be asked but no testimony is taken
- Landowners are permitted to point out specific points of interest

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### ORC 6131: 1<sup>st</sup> Hearing

- County Engineer files a preliminary report which includes a cost estimate, statement of feasibility, and general cost/benefit analysis
- Testimony is taken by those both for and against the petition
- Commissioners vote to approve or dismiss the petition

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### ORC 6131: 1<sup>st</sup> Hearing

- Bond is returned if the project is approved at the 1<sup>st</sup> Hearing
- No changes may be made to the petition or the scope of a project after the 1<sup>st</sup> Hearing – Landowners have until the close of the hearing to add their name to the petition or amend the petition request

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### ORC 6131: Preparation of Plans

- County Engineer, or their representative (SWCD), surveys and develops plans and cost estimates for the project
- Engineering done per specifications of the USDA Natural Resources Conservation Service and the Ohio Department of Transportation
- Petition request determines the upstream extent of a project, engineering standards determine the downstream extent
- Goal is to develop the “Best, Least-cost solution” that meets the request of the petition

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### ORC 6131: Preparation of Plans

- Watershed is looked at in more detail as part of survey and design
- Important for proper engineering as well as schedule of assessments
- We use all and any available sources of data including consultation with landowners

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### ORC 6131: Schedule of Assessments

- Each parcel in the watershed is assessed a portion of the cost of constructing and maintaining the proposed improvement
- Determined on a parcel-specific basis
- Only assessed for improvement which is downstream
- All parcels assessed including road rights-of-way, those owned by local or state government, utilities, schools, churches, etc.
- Parcels assessed for the amount of benefit that will be received from the project

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ORC 6131: Benefits

- “advantages to land and owners,...,resulting from drainage, conservation, control and management of water, and environmental, wildlife, and recreational improvements.”
- “Uplands which have been removed from their natural state by deforestation, cultivation, artificial drainage, urban development, or other man-made causes **shall** be considered as benefited by an improvement required to dispose of the accelerated flow of water from the uplands.”

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ORC 6131: Benefits

According to the Ohio Revised Code

**BENEFIT = USE**

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Delaware County Model for Assessments

- ORC does not specify the methodology for calculating assessments, only that the assessments be reflective of the benefits
- Delaware County uses a 4-factor method widely used throughout the state
- Acres Benefited, Land Use, Percent Use, Remoteness
- Factors applied on a parcel-specific basis

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### Delaware County Model: Acres Benefited

- Parcel A: 24 Ac, all in the watershed
- Parcel B: 25 Ac, but only 12 in the watershed
- Parcel C: 22 Ac, 20 of which are in the watershed



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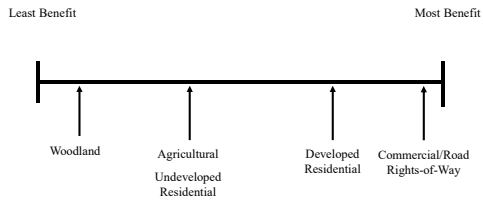
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### Delaware County Model: Land Use



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### Delaware County Model: Land Use

- Parcel C: 20 Ac benefited
- 5 Acres Homesite
  - 1 Ac Developed Residential
  - 4 Ac Undeveloped Residential
- 11 Acres Agricultural
- 4 Acres Woods



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Delaware County Model:  
% Use

- Parcel A uses 100% of the improvement
- Parcel C uses 70% based on their downstream property line
- Parcel B's drainage enters further downstream thus it only uses 30% of the total improvement




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Delaware County Model:  
Remoteness Factor

- Gives a reduction in assessments for parcels located further away from the constructed improvement
  - Assigned in 1/2 mile increments
- 0 – 0.5 miles: Remote = 1.0  
 0.5 – 1.0 miles: Remote = 0.9  
 1.0 – 1.5 miles: Remote = 0.8




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Delaware County Model: Assessment Formula

Acres Benefited x Landuse Factor x % Use x Remote Factor =  
Parcel Assessment Factor

Parcel Assessment Factor / Total of Assessment Factors = % Share

Parcel Assessment = % Share x Total Cost

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### ORC 6131: 2<sup>nd</sup> (Final) Hearing

- Commissioners hear all information, plans, and reports submitted by the County Engineer
- Testimony is again taken from those both for and against the project
- Commissioners vote to either approve the proposed improvement, including the project plans and schedule of assessments, or to set aside their original order and dismiss the petition
- Commissioners are the “judge and jury” – there is no vote taken among the land owners

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### ORC 6131: 2<sup>nd</sup> Hearing

Commissioners decision is based on 3 factors specified in the ORC:

- Is the project necessary?
  - (Is it needed, can it be solved without the petition process?)
- Is the project conducive to the public welfare?
  - (Is there a community benefit to be accomplished by improving the drainage)
- Do the benefits of the project outweigh the costs?

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### ORC 6131: Appeals

- Any owner opposed to the decision of the Commissioners may appeal that decision to the Court of Common Pleas
- An attorney is often employed for an appeal

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ORC 6131: Bidding & Construction

- County Engineer advertises for public bid
- Contract awarded to lowest and best bid
- County Engineer, or their representative (SWCD) supervises the construction of the project to certify that it is being completed according to the approved plans and specifications

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ORC 6131: Bidding & Construction

- Projects are not allowed, by law, to exceed the estimate presented at the 2<sup>nd</sup> Hearing
- Projects are not typically subject to prevailing wage
- Upon completion, the approved schedule of assessments is reduced pro rata by the difference between the estimated and actual cost

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ORC 6131: Paying Assessments

- Can be paid in full up-front within 30 days of the 2<sup>nd</sup> Hearing
- Commissioners can extend payments up to 15 years – typically the repayment period in Delaware County is 8 years
- If they choose to use bonds to pay for the project, interest, financing fees, and Auditor/Treasurer collection fees are applied to any assessment not paid up-front

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### ORC 6131: Paying Assessments

•Why the 30-day period to pay upfront?

1. It's what the law tells us to do.
2. Allows the Commissioners to know the amount of Bond or General Funds needed to build the project.

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### ORC 6137: Drainage Maintenance

•ORC 6137 enacted in 1957

•All projects completed under ORC 6131 are placed on the County's Drainage Maintenance program following completion and easements for maintenance are created by Commissioners' resolution and recorded

•County Engineer has general charge and supervision of the Maintenance program

•Maintenance assessments are levied annually and are based on the final schedule of assessments for the constructed project – generally 3-5% of construction assessment

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### ORC 6137: Drainage Maintenance

•Maintenance funds are project-specific

•All projects on Drainage Maintenance are inspected annually (or more frequently if needed)

•Land owners may make requests to the Drainage Maintenance Program

•SWCD handles design, construction, and maintenance in partnership with the County Commissioners and County Engineer

•Purpose of Drainage Maintenance is to keep the project operating at its original design capacity

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ORC 6131/6137: Summary

- No petition request has been made at this point
- A cost estimate of a potential project cannot be made yet
- The petition process is entirely landowner-driven and landowner-funded
- One signature and the \$500 bond is required to initiate the petition process
- Public participation is needed and encouraged throughout the process

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ORC 6131/6137: Summary

- Signing the petition allows for improvements to be designed to a property
- Signing the petition does not obligate you to testify for a petition nor prohibit you from testifying against a petition
- All parcels are assessed regardless of whether they have signed the petition
- SWCD/County Engineer will not advocate for or against a project

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ORC 6131/6137: Summary

***How long does the process take?***

- It depends on the complexity of the project, but on average 2-3 years
- Typically 6 months from the time a petition is filed to the 1<sup>st</sup> Hearing
- Engineering averages 2 years based on workload
- Petitions are generally addressed on a first-come, first-served basis

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## ORC 6131/6137: QUESTIONS?

This presentation has outlined the main provisions of the Ohio Drainage Laws Petition Procedure. It is not intended to be a complete transcript of Ohio Revised Code 6131 or 6137. In specific cases, direct reference should be made to ORC 6131, 6133, 6135, and 6137. In many instances, the assistance of a qualified attorney may be necessary.

*Sources:*

*The Ohio Drainage Laws Petition Procedure: Bulletin #428, The Ohio State University Cooperative Extension Service, Nolte, Byron H., Revised April 1985.*

*Ohio Revised Code, Sections 6131, 6133 and 6137*

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