

4-6-2021

To the Le Sueur County Ditch Authority

My name is Charles Prosocki. I am a 2<sup>nd</sup> district resident/property owner. My property is in section 21 of Lexington Township. It is parcel #08.021.0230. I purchased this property in 1989 with all assigned legal property rights/value and easements. My property is at the highest or top end of Co. Ditch #43 on the northwesterly side.

Here we are again attempting to address the failure of maintaining Co. Ditch #43. The Le Sueur County Ditch Authority is and has the sole authority over Co. Ditch #43. I/We as a private property owners have no to authority to address the maintenance of said ditch. I/We are not able to seek bids or contract for the proper maintenance of drainage ditch #43. Again that authority lies with Le Sueur County Ditch Authority. With that authority there is the “Duty and Responsibility” to maintain the condition of the ditch per the stated purpose when it was legally proposed, approve and constructed in 1916.

It is evident due to the current state and condition of the ditch that the Le Sueur County Ditch Authority over the years has been negligent and breached the contract to fulfill that Duty and Responsibility.

I will restate the “purpose of the ditch” found in in the original purposed ditch document.

The purposed ditch is for the purpose of removing the water from the adjacent land in order to reclaim the said adjacent lands, to make them more productive and add value; in addition to be of great value, utility, convenience and welfare to the public in concern to the adjacent public highways. (I.e. County Road #11) This drainage ditch was established of such width and depth as to ensure “effectual and permanent drainage” of said adjacent lands.

Was this in the engineer’s report? If it was not why wasn’t it?

It does not take a rocket scientist to determine where the bottle neck exists in Co. Ditch #43. It is Lake Tyler. This is a (privately owned lake per GIS). The ingress and egress to Lake Tyler have become dammed up due to erosion and lack of maintenance. The water cannot flow at its original depth. The original depth per 2 different documents states "Lake Tyler DRAINED". This would be the establish depth of Co Ditch #43.

The following is transcribe from a deed to August Ehmke describing Lake Tyler.

The Southeast Quarter of the Southeast Quarter (SE 1/4 of the SE1/4) of section Sixteen (16) and the East One-Half (E 1/2) of the Northeast Quarter (NE 1/4) of Section Twenty –One (21) that lies Northerly of the center line of the main ditch of County Ditch Number 43 which said premises includes Government Lot- Two (2) in said Section Sixteen (16) and Government Lot- One (1) in Section Twenty –One (21) and

***the bed of Tyler Lake "drained"***

conveyed to August Ehmke as contained in that certain deed filed in the Office of the Register of Deeds in and for the said County and State in Book 66 of Deeds on page 208, all in Township One Hundred Eleven(111) North, Range Twenty-Four (24) West, Le Sueur, County, Minnesota. Subject to all easements of record. Said description being in accordance with recorded maps and plats thereof on file and of record in the office of the County Recorder in and for Le Sueur County, Minnesota.

The highlighted area in the 1928 Plat Map below indicates the same as above ***Tyler Lake "drained"*** .

In a 1975 application permit to work in {public waters?} under a bullet point #3 it states that the ORIGINAL GRADE of County Ditch #43 was below the bed of Lake Tyler.

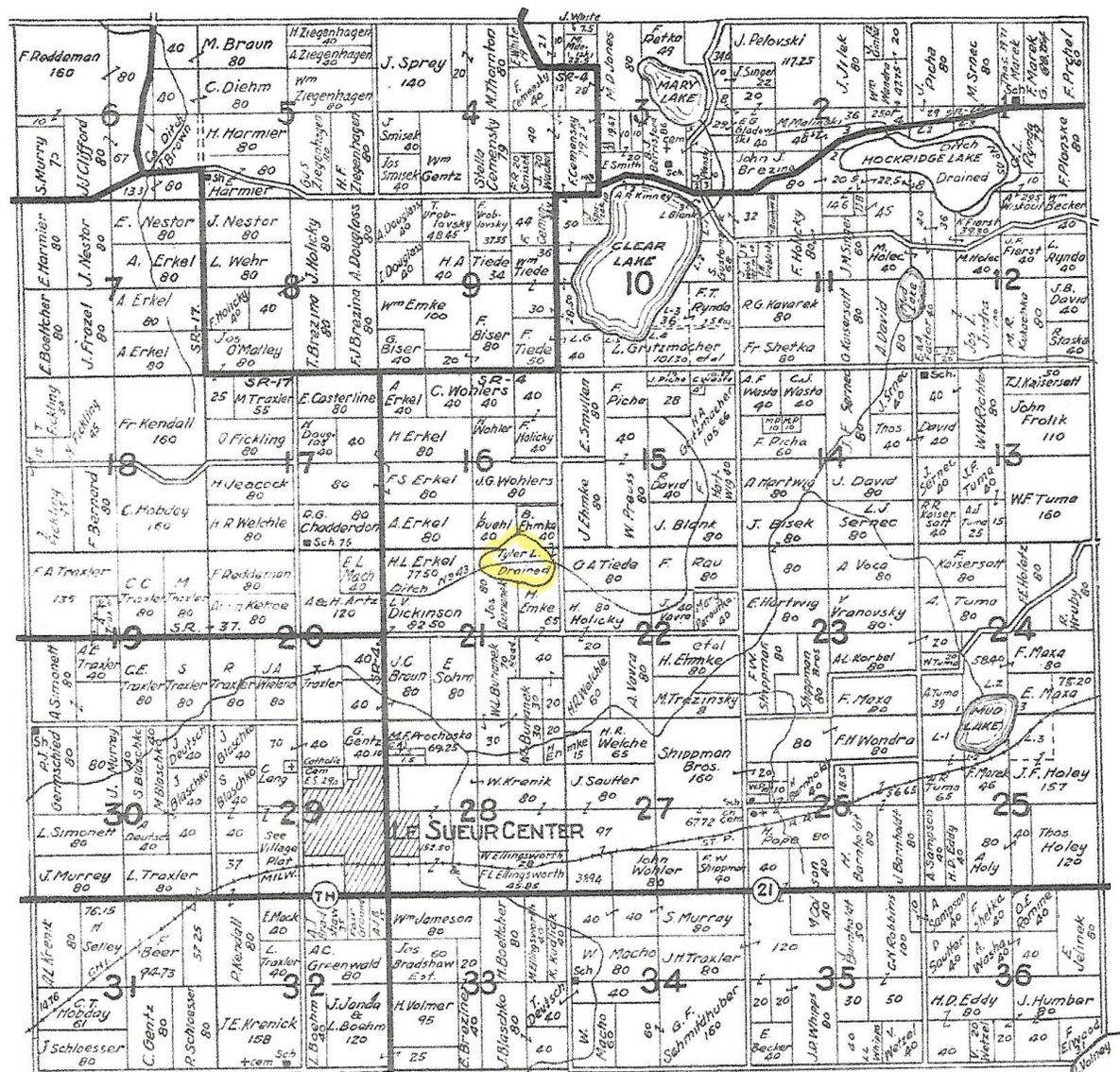
Was this in the engineer's report? If it was not why wasn't it?

# PLAT OF LEXINGTON

Scale 2 Inches to the Mile

Township 111 North. Range 24 West

of the 3rd Principal Meridian



The information below is from the DNR website.

## Definition of public waters

Public waters are designated as such to indicate which lakes, wetlands, and watercourses over which DNR Waters has regulatory jurisdiction. The statutory definition of public waters includes public waters and public waters wetlands.

### Minnesota Statute 103G.005, Subdivision 15

1. *Public Waters* means:
  - a. water basins assigned a shoreline management classification by the commissioner, under sections 103F.201 to 103F.221, except wetlands less than 80 acres in size that are classified as natural environment lakes;
  - b. waters of the state which have been finally determined to be public waters or navigable waters by a court of competent jurisdiction;
  - c. meandered lakes, excluding lakes that have been legally drained;

On the DNR website

### Under--Frequently asked questions about lakes

Why is the water level so high or so low and what is the DNR going to do about it?

The DNR does not control the water level elevation of lakes. In general, the water level of a lake is entirely dependent upon the amount of snowfall and precipitation that an area receives, how much of the resultant moisture is contributed by runoff into the lake, how much water is recharged to or discharged from the lake through ground water and how much water evaporates from the lake. In some instances, the water level is controlled by illegal human activity or beaver activity. See also the [DNR Lake Level Minnesota Program](#), for information about lake gage measurements and lake levels.

It seems evident that the Le Sueur County Ditch Authority and the engineer's report are accepting the premise that the DNR has the authority to dictate a water elevation for Tyler Lake (a privately owned- previously legally drained lake). Based on the evidence/information above this would seem to be a false premise.

Therefore the proposed water elevation of elevation of 1021.19 feet for Tyler Lake is false and arbitrary based on historical documentation and runs contrary to the stated purpose of Co Ditch #43 **"effectual and permanent drainage" of said adjacent lands.**

This truly seems to be another over-reach of authority, by an unelected, unaccountable governmental entity.

I would repeat the stated purpose of Co Ditch #43 **"effectual and permanent drainage" of said adjacent lands**, not satisfying the wants or bucket list of the DNR to maintain a wildlife habitat, fulfilling the DNR's objective.

All of this is extremely frustrating even angering, as I/We property owners have witnessed our property and property rights being taken, even stolen from us in a most unjust and costly way!

Board members please try to imagine this happening to you.

I would use this example:

Imagine our 2<sup>nd</sup> district board member having an unelected, unaccountable government entity come to your business demanding and taking 40% of your walk-in cooler. In addition to that, demand that you replace and upgrade the entire cooler to their standards at your expense! That is where I/We property owner are at.

So often "John Q Public" has seen hearings and meetings like this as a procedural formality with a predetermined outcome. I would hope that our local commissioners, the "Ditch Authority" would be representing and defending the tax paying land owners - **Property Rights and Concerns.**

The original 2005 and 2018 County Ditch #43 Cleanout Petition was just that – to **Clean Out the Ditch!** It was NOT to research and do study for the construction of a retaining dam at the East end of Lake Tyler to maintain a wildlife habitat, fulfilling the DNR’s objective. The monies already spent and are proposed to be spent, have and will, created a heavy and even an exorbitant financial burden on the property owners.

I/We cannot get away from the fact that this current state of affairs is due to historical mismanagement of the maintenance responsibility!

This burdensome financial cost is now being dumped on current land owners in the watershed. How is this right or just? , if timely and proper maintenance occurred, we would not be spending our time and money having this discussion.

There have been statutory required meetings for public input, but neither I nor other land owners adjacent to the ditch who are most impacted by losses/damages and expense, have been asked by the board in a face to face meeting; with let’s say our 2<sup>nd</sup> district commissioner for our input about our concerns. This would go a long way answering questions and how we might even reach some compromise with concerns.

I would request that any decision to move forward with additional expenditures be tabled before the previously stated questions and concerns be addressed in a type of meeting suggested above.

Thank you for your consideration

Respectfully

Charles Prosocki

