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DRAINAGE... and the law

By G. A. Robertson, Commissioner of Soil Conservation

Drainage is being increasingly used in Western Australia as an attempted cure for land salinisation and waterlogging. This is not surprising as drainage is a technical approach that has, in some cases, improved saline land and reduced the effects of waterlogging. However, drainage is not always successful or cost-effective. A detailed site assessment is required before any large or costly drainage system is attempted. Articles in this issue of the Journal of Agriculture discuss that aspect in detail.

Drainage of land can have significant deleterious off-site effects. When considering draining his land a land user must be aware of his obligations and responsibilities to neighbours and the general community.

There are several Acts and legal requirements that must be considered before undertaking drainage work.

Common Law

Under Common Law there is a strong tradition giving land holders the right to take legal action where a nuisance or damage to their land results from a neighbour’s activities on his land. The test as to whether such an action is appropriate is whether the neighbour’s activities are a normal or usual use of the land. In some cases the drainage of land would not be considered in Western Australia a normal or usual activity. If as a result of that drainage, neighbouring land is flooded, waterlogged or eroded, or the land use on that land is inconvenienced, there would appear to be grounds for legal action.

Rights in Water and Irrigation Act

The Rights in Water and Irrigation Act, administered by the Western Australian Water Authority, is designed to protect the water use rights of the community and individuals. Under the legislation there is provision to ‘declare’ catchments of river systems and to prevent the diversion of water from or into the specific water courses without prior approval. Many catchments in Western Australia are ‘declared’ and it may be necessary to obtain approval for drainage works in them. Proposed drainage associated with major water courses, or stream training work, should be referred to the Water Authority. The declared river systems include the Greenough, Hill, Moore, Gingin, Avon, Serpentine, Dandalup, Murray, Brunswick, Ferguson, Preston, Ongerup, Capel, Margaret, Donnelly, Warren, and Collie.

Land Drainage Act

Under the Land Drainage Act the Water Authority can undertake district or regional community benefit work. The Water Authority can proclaim a district and then rate land users in the district to cover the cost of drainage. This Act has been applied in urban areas, semi-urban areas and 14 drainage schemes servicing agricultural land from Mundijong to Albany.

Soil and Land Conservation Act

The Soil and Land Conservation Act can be implicated in drainage in three major ways:

Control of effluent

Under the Soil and Land Conservation Act any action by a land user that results in land...
degradation can be constrained by the use of a Soil Conservation Notice. As the increase of salinity in water is considered land degradation, any drainage system that results in increasing salinity in a stream or water supply could be restrained by a Notice under the Act. Similarly, flooding is included as land degradation. Any drainage scheme causing downstream flooding can be prevented by the issue of a Notice.

Control of erosion
Some drainage design in Western Australia over recent years has taken little account of erosion control. Many drainage systems have greatly accelerated erosion because of inadequate surface water control, failure to revegetate disturbed areas and placing drains in unstable soil types.

The Soil and Land Conservation Act has power to control drainage where it causes or is likely to cause significant erosion. It will undoubtedly be used to reduce the amount of severe erosion coming from drainage.

Planning
Under the Soil and Land Conservation Act, Soil Conservation Districts can be established. More than 50 such districts are formed or are being formed in the State. These districts provide an ideal framework for planning large drainage projects and for ensuring that legal and environmental obligations of land users are met.

Other legislation
Off-site damage resulting from ill-conceived and poorly designed drainage can harm the environment. Wildlife habitats can be affected, such as by draining wetlands or by changing water quality and quantity. Agencies involved with protecting the environment are becoming increasingly aware of the effects of drainage.

Land users intending to drain land should ensure that this off-site environmental damage is minimal. Where the effluent is likely to enter or pass through specific reserves approval of the authority in which the land is vested must be obtained.

Drainage can also affect off-site structures such as roads, culverts, railways and buildings. Proposed schemes should be discussed with the organisations responsible for any structures likely to be affected.

Seek advice first
Land drainage is an extremely useful way to improve the quality of particular land. However, it is a complex process involving detailed on-site and off-site assessment, planning and often permission. Land users intending to drain land must prepare careful plans and seek appropriate advice before undertaking any drainage scheme.