

STACY L. HISSONG

[shissong@fsbriaw.com](mailto:shissong@fsbriaw.com)

517.381.3204 direct

517.381.3178 fax

517.974.2304 cell



**NORTH BRANCH OF MILL CREEK INTERCOUNTY DRAIN**

*(Lapeer, St. Clair and Sanilac Counties)*

Legal Opinion

Date Prepared: October 3, 2017

To: Brady Harrington, Drainage Board Chair

From: Stacy L. Hissong, *Esq.*

Date: October 3, 2017

Re: North Branch of Mill Creek Intercounty Drain

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**Municipalities Involved**

Lapeer: Arcadia Township, Attica Township, Burnside Township, Goodland Township, Imlay Township

St. Clair: Lynn Township

Sanilac: Maple Valley Township

**Establishment of Drain**

*Year:* 1895

*Chapter:* 6

**Jurisdiction of Drain**

- Drain/Public Works Commissioner
- Drainage Board
- Other: \_\_\_\_\_

**Files Reviewed**

- MDARD
- Sanilac County
- Lapeer County
- St. Clair County

### **Petitioned Projects**

#### ***Date/Type: 1893-1896 Establishment Proceedings***

##### ***Lapeer County Files/St. Clair County Liber 3, Pages 252-269; Liber 14, Pages 316-578***

Application to Locate and Establish a Drain dated November 10, 1893 (filed with St. Clair County refers to Lapeer, Sanilac and St. Clair Counties)

Survey of Drain

First Order of Determination dated February 15, 1894 (signed by Lapeer and St. Clair Counties; includes reference that drain traverses Lapeer and St. Clair Counties and benefits lands in Sanilac County)

Releases of Right of Way

Final Order of Determination dated January 19, 1895 (signed by Lapeer and St. Clair Counties)

Notice of Letting dated January 19, 1895

Contract After Letting dated February 27, 1895

Certificate of Drain Commissioners dated January 27, 1896 (signed by Lapeer and St. Clair Counties)

Apportionment of Benefit

Special Assessment Roll

#### ***Date/Type: 1946 Maintenance and Improvement Proceedings***

##### ***Lapeer County Files***

Petition for maintenance and improvement dated January 17, 1946

Petition Protest (Various 1946 dates)

#### ***Date/Type: 1960 Maintenance and Improvement Proceedings***

##### ***St. Clair County Files – Packet 741A/Sanilac County Files***

Petition for maintenance and improvement dated July 13, 1960 (filed with St. Clair County; refers to Lapeer, Sanilac and St. Clair Counties)

Order of Practicableness dated August 25, 1960 (signed by Drainage Board – includes Sanilac County)

No Further Records

#### ***Date/Type: 1963-1964 Maintenance and Improvement Proceedings***

##### ***Lapeer County Files/Sanilac County Files***

Petition for maintenance and improvement dated February 21, 1963 (filed with Lapeer County; refers to Lapeer, Sanilac and St. Clair Counties)

Order of Practicableness dated April 18, 1963 (signed by Drainage Board – includes Sanilac County)

Order of Necessity dated May 8, 1963 (signed by Drainage Board – includes Sanilac County)

First Order of Determination dated May 23, 1963 (signed by Drainage Board Chair; Lapeer – 78.45%; St. Clair – 19.25%; Sanilac – 2.3%)

Recorded Releases of Right of Way

Return of Special Commissioners dated March 6, 1964

Order Confirming Award of Special Commissioners dated March 17, 1964

Final Order of Determination dated May 1, 1964 (signed by Drainage Board Chair)

Notice of Letting and Day of Review dated May 28, 1964

Intercounty Contract After Letting dated July 7, 1964

Addenda to Contract dated August 13, 1964

Apportionment of Benefits

Special Assessment Roll

### **Miscellaneous Proceedings**

#### ***Date/Type: 1967 Court Proceedings (Blue Water Excavating Company, Inc. v. South Branch of Cass River ICD & North Branch of Mill Creek ICD)***

##### ***MDARD Files***

Complaint dated October 9, 1967 alleging nonpayment for additional contract activities

No Further Records

***Date/Type: 1979-1982 Court Proceedings (James L. Hulet v Mill Creek Drainage Board for the North Branch Drain and Drainage District, et al; File No. 79-004949-CH)***

***St. Clair County Files – Packet 807/Sanilac County Files***

Complaint dated December 17, 1979 (re: easement obtained in 1964 Return of Special Commissioners did not include flooding in scope, only conveyed easement for temporary construction)

Circuit Court Order (no copy in file; referred to in COA opinion; re: claim barred by statute of limitations)

Court of Appeals Opinion (COA Case No. 57354) dated July 15, 1982 (holding that claim is barred by statute of limitations, equitable doctrine of laches)

***Date/Type: 2015 Warranty Deed***

***Lapeer/MDARD Files***

Warranty Deed dated November 13, 2015 (recorded at Lapeer County Records Liber 2797, Page 887)

**Current Status of Drain**

- Abandoned
- Relinquished
- Under Jurisdiction of Intercounty Drainage Board

**Comments**

1. Based on the information provided, the North Branch of Mill Creek Intercounty Drain is an established intercounty drain under the jurisdiction of the North Branch of Mill Creek Intercounty Drain Drainage Board, consisting of the Lapeer County Drain Commissioner, Sanilac County Drain Commissioner, St. Clair County Drain Commissioner and the Director of the Department of Agriculture and Rural Development.