

SOUTH BRANCH OF MILL CREEK INTERCOUNTY DRAIN

(Lapeer, St. Clair, and Sanilac Counties)

Legal Opinion

Date Prepared: September 3, 2019

TO: Brady Harrington, Drainage Board Chair
FROM: Stacy L. Hissong, Esq.
DATE: September 3, 2019
RE: South Branch of Mill Creek Intercounty Drain

Municipalities Involved

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

St. Clair: Lynn Township, Emmet Township, Brockway Township, Mussey Township

Sanilac: Maple Valley Township

Establishment of Drain

Year: 1894

Chapter: 6

Jurisdiction of Drain

- Drain Commissioner
 Drainage Board
 Other: _____

Files Reviewed

- MDARD
 Lapeer County
 St. Clair County
 Sanilac County (N/A)



Petitioned Projects

Date/Type: 1893-1896 Establishment Proceedings (Lapeer and St. Clair Counties)

Lapeer County Files/St. Clair County Liber 14, Pages 1-235; Liber 3, Pages 231-251

Application to Locate and Establish a Drain dated September 8, 1893 (filed with Lapeer County)

Survey of Drain

Commissioner's Certificate dated November 11, 1893 (signed by St. Clair County)

First Order of Determination dated March 14, 1894 (signed by Lapeer and St. Clair Counties)

Releases of Rights of Way

Final Order of Determination dated August 10, 1894 (signed by Lapeer and St. Clair Counties)

Apportionment of Benefits

Notice of Letting dated August 10, 1894

Contract After Letting dated September 6, 1894

Special Assessment Roll

Certificate of Drain Commissioners upon Acceptance of Drain dated January 6, 1896 (signed by Lapeer and St. Clair Counties)

Date/Type: 1913-1917 Maintenance and Improvement Proceedings

St. Clair County Liber 28, Pages 103-149

Petition for maintenance and improvement dated November 21, 1913 (filed with St. Clair County; refers to Lapeer and St. Clair Counties)

Opinion of Drain Commissioners dated June 25, 1914 (signed by Lapeer, Sanilac and St. Clair Counties)

Survey of Drain

First Order of Determination dated July 13, 1917 (signed by Lapeer, Sanilac and St. Clair Counties)

Releases of Rights of Way

Date/Type: 1925 Establishment Proceedings

Lapeer County Files

Application to Lay Out and Designate a Drainage District dated May 23, 1925 (filed with St. Clair County; refers to Lapeer and St. Clair Counties)

No Further Records

Date/Type: 1929-1931 Establishment Proceedings

MDARD Files

Application to Lay Out and Designate a Drainage District dated November 26, 1929

Order of Practicableness dated January 3, 1930

Order Laying Out and Designating a Drainage District dated February 26, 1930 (signed by Drainage Board Chair)

Petition to Locate, Establish and Construct a Drain dated April 14, 1930 (filed with St. Clair County; refers to Lapeer, Sanilac and St. Clair Counties)

First Order of Determination dated May 22, 1930 (Sanilac – 0.34%; St. Clair – 69.66%; Lapeer – 30%; signed by Drainage Board Chair)

Final Order of Determination dated January 15, 1931 (signed by Drainage Board Chair)

Date/Type: 1937 Maintenance and Improvement Proceedings (St. Clair County only)

St. Clair County Liber 30, Pages 427-443; 497-498

Petition for maintenance and improvement dated April 9, 1937

Order of Necessity dated May 12, 1937

Notice of Letting and Day of Review dated June 30, 1937

Special Assessment Roll

Contract After Letting dated July 26, 1937

Date/Type: 1946 Maintenance and Improvement Proceedings

MDARD Files

Petition for maintenance and improvement dated January 17, 1946 (filed with Lapeer, St. Clair and Sanilac Counties)

Order of Practicableness dated April 16, 1946 (not signed)

Date/Type: 1954-1957 Maintenance and Improvement Proceedings

Lapeer County Files/St. Clair County Liber 68

Petition for maintenance and improvement dated February 9, 1954 (filed with St. Clair County; refers to Lapeer and St. Clair Counties)

Petition for maintenance and improvement dated February 18, 1954 (filed with St. Clair County; refers to Lapeer and St. Clair Counties)

Petition for maintenance and improvement dated February 20, 1954 (filed with St. Clair County; refers to Lapeer and St. Clair Counties)

Petition for maintenance and improvement dated March 15, 1954 (filed with St. Clair County; refers to Lapeer and St. Clair Counties)

Petition for maintenance and improvement dated March 27, 1954 (filed with St. Clair County; refers to Lapeer and St. Clair Counties)

Order of Practicableness dated May 12, 1954 (signed by Drainage Board)

Attorney General Opinion No. 2342 dated November 21, 1955 (re: no legal procedure to add lands from a new county (Sanilac County) to intercounty drainage district nor to add Sanilac County Drain Commissioner as a member of the Drainage Board)

Order of Necessity dated January 24, 1956 (signed by Drainage Board)

First Order of Determination dated January 24, 1956 (signed by Drainage Board Chair; Lapeer – 38.48%; St. Clair – 61.52%)

Survey of Drain

Releases of Rights of Way (St. Clair County)

Return of Special Commissioners dated September 17, 1957

Final Order of Determination dated September 24, 1957 (signed by Drainage Board Chair)

Notice of Letting and Day of Review dated October 24, 1957

Intercounty Contract After Letting dated December 12, 1957

Apportionment of Benefits

Special Assessment Roll

Date/Type: 1961 Maintenance and Improvement Proceedings

St. Clair County Liber 90, Pages 954-980

Petition for maintenance and improvement dated June 12, 1961 (filed with St. Clair County; refers to Lapeer, Sanilac and St. Clair Counties)

No Further Records

Date/Type: 1978-1979 Maintenance/Improvement Proceedings

Lapeer County Records

Petition for Maintenance and Improvement – Extending a County Drain (Branch No. 1 South Branch Mill Creek) dated October 5, 1978

Order of Necessity dated January 24, 1979

First Order of Determination dated February 27, 1979

Branch No. 1 of South Branch Mill Creek Notice of Letting dated April 24, 1979

Final Order of Determination dated April 24, 1979

Computation of Costs dated May 17, 1979

Contract After Letting dated May 21, 1979

Apportionment of Benefits dated May 30, 1979

Releases of Rights of Way

Special Assessment Roll dated September 10, 1979

Date/Type: 1989-2006 Maintenance and Improvement Proceedings

Lapeer County Files/St. Clair County Liber 11, Pages 159-838

Petition for maintenance and improvement dated August 16, 1989 (filed with St. Clair and Lapeer Counties)

Order of Practicableness dated January 9, 1990 (signed by Drainage Board)

Petitions for maintenance and improvement dated January 11, 1990 (filed with St. Clair and Lapeer Counties)

Order of Practicableness dated June 7, 1990 (signed by Drainage Board)

Order of Necessity dated January 23, 1992 (signed by Drainage Board, includes Sanilac County)

Order Adding Lands to Drainage District dated January 23, 1992 (portions of Maple Valley Township and Speaker Township in Sanilac County, portions of Brockway Township in St. Clair County; signed by Drainage Board)

Arbitration Board Meeting dated February 25, 1998 (Lapeer – 36%; St. Clair – 64%)

First Order of Determination dated July 5, 2006 (signed by Drainage Board Chair; St. Clair – 61%; Lapeer – 39%)

Final Order of Determination dated August 14, 2006 (signed by Drainage Board Chair)

Notice of Letting and Day of Review dated August 28, 2006

Miscellaneous Proceedings

Date/Type: 1992-1995 Court Proceedings (Mill Creek Coalition v South Branch of Mill Creek Intercounty Drainage District, et al; File No. D-92000243-CE; Court of Appeals No. 158973)

Verified Complaint and Request for Injunctive Relief dated February 3, 1992 (alleging violations of Wetland Protection Act, Inland Lakes & Streams Act, Water Resource Commission Act and Endangered Species Act)

Motion for Preliminary Injunction dated February 3, 1992

Plaintiff's Brief dated February 3, 1992

Answer to Complaint and Affirmative Defenses dated March 4, 1992

Stipulation and Order dated March 11, 1992 (to adjourn Plaintiff's Motion for Preliminary Injunction)

Demand for Jury Trial dated April 10, 1992

Motion to Preserve Jury Demand dated June 5, 1992

Answer to Motion to Preserve Jury Demand dated June 23, 1992

Defendants' Brief in Support of Order of Necessity and Determination for the Addition of Lands dated July 29, 1992
Stipulation and Order dated November 6, 1992 (sustaining Order of Necessity issued on January 23, 1992)
Claim of Appeal dated November 24, 1992
Stipulated Order of Dismissal dated December 14, 1992 (of claims not subject of appeal to Court of Appeals)
Plaintiffs-Appellants Appeal Brief dated September 10, 1993
Order Denying Oral Argument dated October 4, 1993
Defendants-Appellees' Appeal Brief dated October 14, 1993
Court of Appeals Decision dated May 12, 1995 (reversing Order Adding Lands to Drainage District, but upholding determination of necessity)

Date/Type: 1998-1999 Court Proceedings (Brockway Twp, et al v South Branch of Mill Creek Intercounty Drain Drainage District; No. 98-000910-AZ)

Summons and Complaint dated March 18, 1998 (alleging the project scope exceeds Drainage Board authority, OMA violations, MEPA violations and challenge to the apportionments)
Answer and Affirmative Defenses dated April 7, 1998
Defendant's Motion to Disqualify Freeman McKenzie, P.C. and Timothy Lozen dated May 1, 1998
Defendant's Motion for Preliminary Injunction & Brief in Support dated May 1, 1998
Defendant's Objection & Motion for Protective Order dated May 1, 1998
Stipulation and Order to Hold Matters in Abeyance dated May 27, 1998
Motion for Disqualification of Attorney Seidlein & Brief in Support dated November 5, 1998
Agreement to perform Interim Maintenance and Order to Dismiss dated February 19, 1999

Date/Type: 1998 Court Proceedings (St. Clair County Drain Commissioner v. Seidlein; No. 98-0012420-AZ)

Verified Complaint and Ex-Parte Motion for Order to Show Cause dated April 17, 1998 (alleging conflict with Seidlein serving as counsel to Drainage Board in above matter)
Order to Show Cause dated April 17, 1998
Brief in Response to Order to Show Cause dated May 5, 1998
Answer and Affirmative Defenses dated June 12, 1998
Defendants' Brief in Support for Motion for Summary Disposition dated August 6, 1998

Date/Type: 2001-2003 Court Proceedings (Doug Nemecek v Intercounty Drain Board for the South Branch of Mill Creek, et al.; No. D-01-001612)

Petition and Application for Writ of Mandamus to Clean Out South Branch of Mill Creek Intercounty Drain dated June 11, 2001
Respondents' Pre-Hearing Brief dated October 9, 2002
Order Dismissing Petition and Application for Writ of Mandamus dated February 5, 2003

Date/Type: 2018 197(3) Proceedings

Order Adding Sanilac County to Drainage District dated March 9, 2018

Current Status of Drain

- Abandoned
 Relinquished
 Under Jurisdiction of Intercounty Drainage Board

Comments

1. Based on the information provided, the South Branch of Mill Creek Intercounty Drain is an established intercounty drain under the jurisdiction of the South Branch of Mill Creek Intercounty Drain Drainage Board, consisting of the Lapeer County Drain Commissioner, St. Clair County Drain Commissioner, the Sanilac County Drain Commissioner, and the Director of the Department of Agriculture and Rural Development.
2. The Branch No. 1 South Branch Mill Creek Drain is not a separate drain and is part of the South Branch of Mill Creek Intercounty Drain.