

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF TUSCOLA

IN RE MURPHY LAKE, LOCATED IN
TUSCOLA COUNTY, MICHIGAN

PETITION TO AMEND LAKE
LEVEL ORDER, ESTABLISH
SPECIAL ASSESSMENT
DISTRICT, AND CONFIRM
SPECIAL ASSESSMENT
DISTRICT BOUNDARIES

Hon. Amy Grace Gierhart

Case No. 19- -CZ

Stacy L. Hissong (P55922)
Kyle A. O'Meara (P83075)
FAHEY SCHULTZ BURZYCH RHODES PLC
Attorneys for Tuscola County Drain Commissioner
4151 Okemos Road
Okemos, Michigan 48864
Tel: (517) 381-0100

**PETITION TO AMEND LAKE LEVEL ORDER, ESTABLISH SPECIAL ASSESSMENT
DISTRICT, AND CONFIRM SPECIAL ASSESSMENT DISTRICT BOUNDARIES**

NOW COMES TUSCOLA COUNTY, by and through the TUSCOLA COUNTY DRAIN COMMISSIONER, as the delegated authority under the provisions of Part 307 of the Natural Resources and Environmental Protection Act, MCL 324.30701 *et seq.*, ("Part 307") through his attorneys, FAHEY SCHULTZ BURZYCH RHODES PLC, and files this Petition on behalf of the Board of Commissioners of Tuscola County, Michigan, and respectfully states as follows:

1. Murphy Lake is an inland lake, located in Millington and Watertown Townships, Tuscola County, Michigan.

2. On February 27, 2009, this Court entered an Order amending the legal lake level for Murphy Lake during a winter maintenance period (“2009 Order”). The 2009 Order states “said winter lake level to continue to be set at Seven Hundred Forty-five and one-half feet (745.5’), but amended as to maintenance time period from the dates of September 1 through March 10 or Ice Out, whichever occurs first, to the dates of October 15 through March 10 or Ice Out, each year, effective immediately.” The 2009 Order is attached as **Exhibit 1**.

3. The 2009 Order also states that the Court confirmed a special assessment district determined by the Tuscola County Drain Commissioner to maintain the legal lake level.

4. There are no records in the proceedings or in the office of the Tuscola County Drain Commissioner indicating that a special assessment district has ever been formally established or confirmed consistent with Part 307 to levy assessments for the costs associated with maintaining Murphy Lake’s legal lake level.

5. Upon resolution of the county board of commissioners, MCL 324.30704 allows designated legal counsel to initiate a petition to amend a lake level and establish a special assessment district if a county board of commissioners determines that one is necessary. MCL 324.30707(5) gives this Court the authority to confirm a special assessment district’s boundary.

6. On March 28, 2019, the Tuscola County Board of Commissioners adopted a resolution directing their designated legal counsel to institute circuit court proceedings to amend the 2009 Order to: (1) clarify that the winter maintenance lake level time period is October 15 through March 10 or Ice Out, whichever occurs *later* and (2) establish a special assessment district for Murphy Lake to fund work necessary to maintain its legal lake level. The Resolution is attached as **Exhibit 2**.

7. The Tuscola County Drain Commissioner retained the engineering firm Spicer Group, Inc. to prepare a recommendation for the lake level winter maintenance time period and to prepare

recommendations for a special assessment district. A copy of an opinion letter prepared by Spicer Group Inc. regarding the winter maintenance time period is attached as **Exhibit 3**. A copy of the map depicting Spicer Group, Inc.'s recommended special assessment district and the recommended special assessment roll are attached as **Exhibit 4**.

WHEREFORE, Petitioner requests that this Honorable Court take the following actions:

1. Fix a date for a public hearing on this Petition pursuant to MCL 324.30707 and direct Petitioner to give notice of the hearing as provided by law. **See Exhibit 5 Proposed Order Setting Hearing**; and

2. Following the hearing, enter an Order Amending the 2009 Lake Level Order and Establishing the Special Assessment District for Murphy Lake and Confirming the Special Assessment District Boundaries.

Respectfully submitted,

FAHEY SCHULTZ BURZYCH RHODES PLC
Attorneys for Tuscola County Drain
Commissioner



Dated: December 3, 2019

Stacy L. Hissong (P55922)
Kyle A. O'Meara (P83075)
4151 Okemos Road
Okemos, Michigan 48864
Tel: (517) 381-0100

Exhibit 1

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF TUSCOLA

In the Matter of the Petition of the Board of
Commissioners of said County to Amend the
Order of this Court Dated November 8, 1985
in said County

File No. 84-6205-CH

Hon. Patrick R. Joslyn
Circuit Court Judge

_____/

MARK E. REENE (P47247)
Prosecuting Attorney
440 N. State Street
Caro, Michigan 48723
(989) 672-3900

_____/

**ORDER GRANTING PETITION TO AMEND THE MAINTENANCE PERIOD FOR
THE WINTER LAKE LEVEL OF MURPHY LAKE
AND
APPROVING THE SPECIAL ASSESSMENT DISTRICT DETERMINED BY THE
TUSCOLA COUNTY DRAIN COMMISSIONER**

At a session of said Court held in the Courtroom, Village
of Caro, Michigan, on the 27th day of February, 2009.

PRESENT: HONORABLE PATRICK R. JOSLYN
Circuit Court Judge

This matter having come on to be heard on the Petitioner's petition to change the
maintenance period for the winter lake level set for Murphy Lake and the request for Court
approval of the special assessment district determined by the Tuscola County Drain
Commissioner, and the Court having considered the Petition and the testimony at evidentiary
hearing held on February 27, 2009, and the Court being fully advised:

winter
IT IS HEREBY ORDERED, that the original order entered by this Court on November
8, 1985 is hereby amended as to the maintenance period for the winter lake level set for Murphy
Lake, said winter lake level to continue to be set at Seven Hundred Forty-five and one-half feet
(745.5'), but amended as to maintenance time period from the dates of September 1 through
March 10 or Ice Out, whichever occurs first, to the dates of October 15 through March 10 or Ice
Out, each year, effective immediately.

TRUE COPY
MARGIE WHITE-CORMIER

IT IS FURTHER ORDERED, that the actions authorized under this order, when implemented, shall, to the best of ability, be done in a manner consistent with the Michigan Department of Natural Resources' request to assure and maintain a minimum of "run of river" discharge to be maintained throughout the year for Goodings Creek.

IT IS FURTHER ORDERED, under the authority given under 146 PA 1961, the Inland Lake Levels Act, MCL 324.30701, *et seq*, that the Court hereby confirms the special assessment district as determined by the Tuscola County Drain Commissioner, as needed, to defray all costs of the project associated with this Petition.

IT IS FURTHER ORDERED, that all other terms and conditions as previously ordered by this Honorable Court on November 8, 1985 (as amended from the order dated December 1, 1958), shall continue in full force and effect.

Dated: 3/10/09

S/PATRICK R. JOSLYN

Honorable Patrick R. Joslyn (P15613)
Circuit Court Judge

Prepared By:

Tuscola County Prosecuting Attorney's Office
440 North State Street
Caro, Michigan 48723

Exhibit 2

RESOLUTION OF THE TUSCOLA COUNTY BOARD OF COMMISSIONERS

MURPHY LAKE

WHEREAS, the Tuscola County Circuit Court entered an Order on November 26, 1958, establishing the inland lake level for Murphy Lake, located in the Townships of Millington and Watertown, Tuscola County, at a summer elevation of 747.0 feet above sea level and a winter elevation of 746.5 feet above sea level; and

WHEREAS, subsequent to the Court's November 26, 1958, Order, the Drain Commissioner entered a Final Order on May 8, 1962, setting the Murphy Lake Special Assessment District;

WHEREAS, the Tuscola County Circuit Court entered an Order dated December 14, 1984, stating that "the Winter Level of Murphy Lake shall be seven hundred forty-six (746.0) above sea level. Said level shall be established immediately and shall hereafter and be maintained between October 1 and Ice Out;"

WHEREAS, the Tuscola County Circuit Court entered an Order dated November 8, 1985, stating that "the Winter Level of Murphy Lake shall be seven hundred forty-five and one-half (745.5) feet above sea level. Said level shall be established immediately hereafter and be maintained between September 1 and Ice Out, or March 10, next, which occurs first, each year;"

WHEREAS, the Tuscola County Circuit Court entered an Order dated February 27, 2009, revising the time periods between the winter and summer levels, and also approving the Special Assessment District boundaries determined by the Tuscola County Drain Commissioner, however, no Special Assessment District boundaries were set by the Drain Commissioner as a result of the February 27, 2009 Order; and

WHEREAS, the special assessment district requires updating to include additional lands consistent with the Court's Order;

WHEREAS, the Order dated February 27, 2009, amended the winter level maintenance time period from the dates of September 1, through March 10 or Ice Out, whichever occurs first, to the dates of October 15 through March 10, or Ice Out, each year, effective immediately."

WHEREAS, the Tuscola County Board of Commissioners, deems it necessary to clarify that the winter level maintenance time period is October 15 through March 10 or Ice Out, whichever occurs later.

WHEREAS, the Tuscola County Board of Commissioners deems it necessary to revise the special assessment district boundaries pursuant to Part 307 of the Natural Resources and Environmental Protection Act, MCL 324.30701 et seq. ("Part 307");

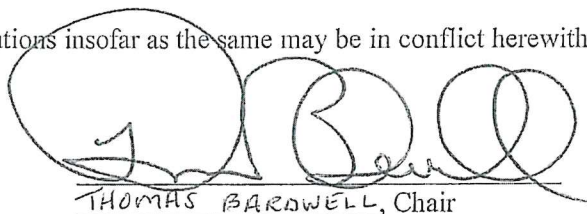
WHEREAS, the Tuscola County Drain Commissioner has authority to expend up to Ten Thousand (\$10,000.00) Dollars in any one year for the maintenance and repair of the lake level project, and where it is estimated that expenditures exceeding this amount are necessary, those amounts may not be expended until approved by Resolution of the Tuscola County Board of Commissioners; and

WHEREAS, the Tuscola County Drain Commissioner has advised the Board of Commissioners for the County of Tuscola that it will be necessary to expend funds in excess of Ten Thousand (\$10,000.00) Dollars for the maintenance and repair of the lake level project; and

NOW, THEREFORE, BE IT RESOLVED:

1. The Board of Commissioners confirms that the Tuscola County Drain Commissioner is the delegated authority under Part 307.
2. The Board directs the Drain Commissioner to appoint legal counsel to institute proceedings in the Tuscola County Circuit Court to revise and confirm the special assessment district boundaries for the established lake level of Murphy Lake, and all costs to do so shall be borne by the special assessment district.
3. The Board directs the Drain Commissioner to retain an engineering firm to assist with the preparation of the special assessment district and any other information necessary to revise the Court's Order dated February 27, 2009 (including clarifying that the winter level maintenance time period is October 15 through March 10 or Ice Out, whichever occurs later), and all costs to do so shall be borne by the special assessment district.
4. The Board does hereby determine that the whole cost of the project to revise and confirm special assessment district boundaries for the lake level for Murphy Lake shall be defrayed by special assessments against privately owned parcels of land, State-owned lands that are under the jurisdiction and control of the Michigan Department of Natural Resources, and political subdivisions of the State that are benefited by the project in accordance with procedures set forth in Part 307.
5. After the revision and confirmation of the special assessment district for Murphy Lake, the Drain Commissioner, as delegated authority, shall prepare a computation of cost and prepare a special assessment roll consistent with the requirements of Part 307.
6. The Board hereby authorizes the Tuscola County Drain Commissioner to expend money for the maintenance and repair of the lake level project in excess of Ten Thousand (\$10,000.00) Dollars pursuant to the requirements of Part 307.
7. The Tuscola County Drain Commissioner shall retain the services of a licensed professional engineer to compute the cost of the project, prepare a special assessment roll and hold a public hearing pursuant to Part 307.
8. All resolutions and parts of resolutions insofar as the same may be in conflict herewith are hereby rescinded.

Dated: March 28, 2019



THOMAS BARWELL, Chair

Tuscola County Board of Commissioners

Motion by Minshaw, Seconded by Young to approve the Murphy Lake Water Level Resolution.

Yeas: *Young, Minshaw, Barwell*

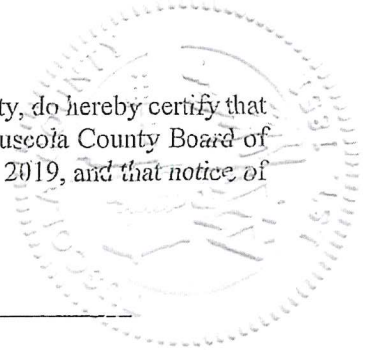
Nays: *Vaughan, Jansen*

Abstain: *none*

Absent: *none*

Resolution Number _____

I, the undersigned, being duly qualified and acting Clerk of Tuscola County, do hereby certify that the foregoing is a true and complete copy of certain proceedings taken by the Tuscola County Board of Commissioners at a regular meeting held on the 28th day of March, 2019, and that notice of said meeting was given in accordance with the Open Meetings Act.



Dated: March 28, 2019

Jodi Jetting
Jodi Jetting, Clerk
Tuscola County



Exhibit 3

November 19, 2019

Robert Mantey
Tuscola County Drain Commissioner
125 W. Lincoln Street, Suite 100
Caro, MI 48723

RE: Amended Lake Level Order of 2009
Murphy Lake, Millington and Watertown Townships

Dear Mr. Mantey;

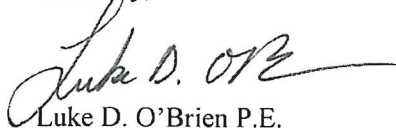
This letter is in reference to the legal lake level for Murphy Lake, located in Tuscola County's Millington and Watertown Townships. The amended lake level order of February 27, 2009 states:
That the original order entered by this Court on November 8, 1985 is hereby amended as to the maintenance period for the winter lake level set for Murphy Lake, said winter lake level to continue to be set at Seven Hundred Forty-five and one-half feet (745.5'), but amended as to the maintenance time period from dates of September 1 through March 10 or Ice Out, whichever occurs "first", to dates of October 15 through March 10 or Ice Out, each year, effective immediately.

In reviewing this statement and the wording, of "whichever occurs first" this can potentially lead to some problems at the outlet for Murphy Lake. Over the past several years, Murphy Lake has been almost completely frozen over on the March 10th date and Ice Out has occurred later in March or early April. The outlet of Murphy Lake is a lake level control structure, which acts to moderate outflow to maintain the lake level. If ice is still present in the lake by March 10, adding stop logs to adjust the lake level may cause an ice jam at the outlet structure which could, among other things, raise the lake to a dangerous level for the existing dam.

We have spoken to Jeff Jolly, fisheries biologist for the MDNR's Saginaw Bay District and he advised that he has no issues with the extending the winter lake level through Ice Out.

Therefore, the lake level order should be amended to have the winter maintenance level extend through Ice Out to protect the health, safety, and welfare of residents near Murphy Lake.

Sincerely,



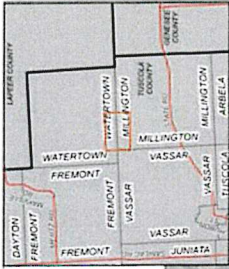
Luke D. O'Brien P.E.
Project Manager
Spicer Group, Inc.
lukeo@spicergroup.com
Cell: 989-280-2109

Q/proj2019/126874SG2019-Murphy Lake Dam/corresp/20191022_Lake Level

Exhibit 4

TENTATIVE SPECIAL ASSESSMENT DISTRICT BOUNDARY MURPHY LAKE LEGAL LAKE LEVEL

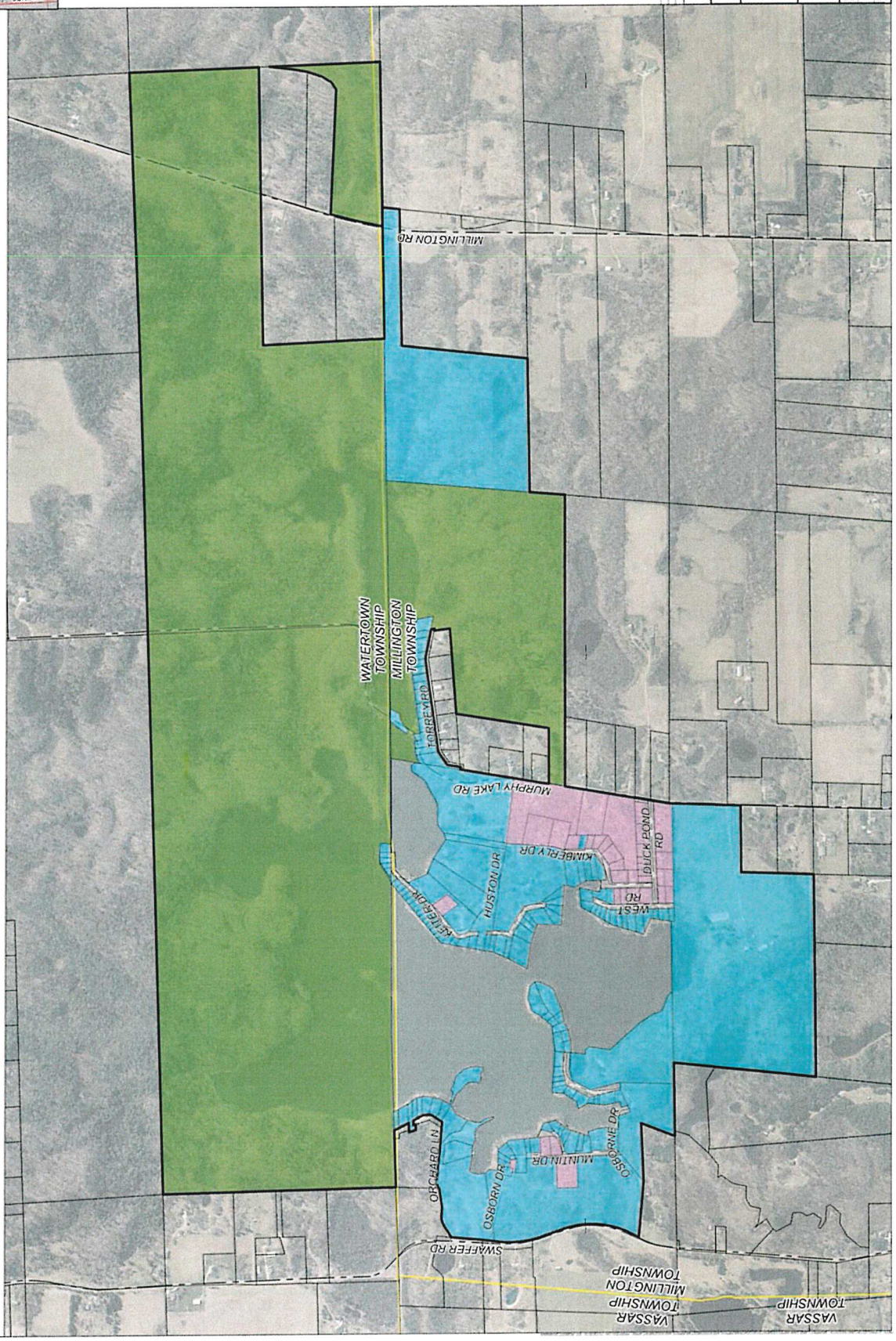
TUSCOLA COUNTY, MICHIGAN



TUSCOLA COUNTY AREA MAP
NOT TO SCALE



- LEGEND
- NON-LAKE FRONT WITH PRIVATE LAKE ACCESS
 - LAKE FRONT PARCELS
 - OWN PARCELS
 - MUNICIPAL BOUNDARIES
 - SPECIAL ASSESSMENT DISTRICT
 - STATE ROADS
 - COUNTY ROADS
 - LOCAL ROADS



MURPHY LAKE
TUSCOLA COUNTY, MICHIGAN

TENTATIVE SPECIAL ASSESSMENT
DISTRICT BOUNDARY

spicer group

1000 W. WASHINGTON ST.
TUSCOLA, MI 49783
TEL: 517.853.1234
WWW.SPICERGROUP.COM

DATE: 10/20/2014
SCALE: AS SHOWN
FILE NO: 14-001
SHEET 1 OF 1
DR 1

Exhibit 5

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF TUSCOLA

**IN RE MURPHY LAKE, LOCATED IN
TUSCOLA COUNTY, MICHIGAN**

**ORDER SETTING HEARING
TO AMEND LAKE LEVEL
ORDER, ESTABLISH SPECIAL
ASSESSMENT DISTRICT, AND
CONFIRM SPECIAL
ASSESSMENT DISTRICT
BOUNDARIES**

Hon. Amy Grace Gierhart

Case No. 19- -CZ

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4151 Okemos Road
Okemos, Michigan 48864
Tel: (517) 381-0100

**ORDER SETTING HEARING TO AMEND
LAKE LEVEL ORDER, ESTABLISH
SPECIAL ASSESSMENT DISTRICT, AND
CONFIRM SPECIAL ASSESSMENT
DISTRICT BOUNDARIES**

At a session of said Court, held in the Tuscola
County Circuit Court, State of Michigan, this ____
day of _____, _____.

PRESENT: Honorable Amy Grace Gierhart, Circuit Judge

On reading of the filed Petition to Amend Lake Level Order, Establish Special Assessment
District, and Confirm Special Assessment District Boundaries for Murphy Lake:

IT IS HEREBY ORDERED that a hearing shall take place before this Court in the courtrooms located at 440 North State Street, Caro, MI 48723, at 10:00 a.m. on March 23, 2020, to receive evidence for amending the lake level order, establishing a special assessment district, and confirming the special assessment district's boundaries for Murphy Lake in Millington and Watertown Townships, Tuscola County, Michigan, consistent with the provisions of MCL 324.30707.

IT IS FURTHER ORDERED that the Tuscola County Drain Commissioner shall give notice of this hearing by publication in one or more newspapers of general circulation in Tuscola County, and the notice shall be published at least once each week for three successive weeks before the date set for the hearing as provided in MCL 324.30707(1).

IT IS FURTHER ORDERED that the Tuscola County Drain Commissioner shall serve a copy of the published notice of hearing by first-class mail at least three weeks prior to the date set for the hearing to each person whose name appears upon the latest township tax assessment roll as owning land within the tentative special assessment district at the address shown on the roll and to the county and each township included in the tentative special assessment district as provided in MCL 324.30707(2).

IT IS FURTHER ORDERED that the Tuscola County Drain Commissioner provide notice of the hearing to the Michigan Department of Environment, Great Lakes, and Energy at least twenty-one days prior to the hearing as provided in MCL 324.30707(3).

Hon. Amy Grace Gierhart, Circuit Court Judge

Order prepared by:
Stacy L. Hisson (P55922)
FAHEY SCHULTZ BURZYCH RHODES PLC
4151 Okemos Road
Okemos, MI 48864
Tel: (517) 381-0100