

**Mutual Drainage  
Considerations in Indiana**

PRESENTED BY:  
INDIANA FARM BUREAU, INC.  
MARK THORNBERG, LEGAL AFFAIRS DIRECTOR  
[MTHORNBERG@INFB.ORG](mailto:MTHORNBERG@INFB.ORG)  
317-692-7849

---

---

---

---

---

---

---

---

**County Drainage Board**

- The Indiana Code provides that each county must have a drainage board.
- Marion county is exempt from some drainage code provisions because it has within its borders a consolidated city.
- The board is either the county commissioners or is made up of 3 or 5 members with a least (1) being a county commissioner. The other members of the board are appointed by the county commissioners.
- Joint boards can be established between counties when a drain serves more than 1 county.

---

---

---

---

---

---

---

---

**Mutual Drain Caw Law**

- *Frazee v. Skees*, 30 N.E.3d 22 (Ind. Ct. App. 2015)
- *Johnson v. Kosciusko County Drainage Board*, 594 N.E.2d 789 (Ind. Ct. App. 1992)
- *Crowel v. Marshall County Drainage Board*, 971 N.E.2d 638 (Ind. 2012)
- *Romine v. Gagle*, 782 N.E.2d 369 (Ind. App. 2003)

---

---

---

---

---

---

---

---

### Ways to Create a Mutual Drain

- Absent evidence of no consent, mutual drain established by the mutual consent of all affected owners at the time of placement
- Once a private drain on a common estate, now land is subdivided into different estates. *Johnson v. Kosciusko County Drainage Board*, 594 N.E.2d 789 (Ind. Ct. App. 1992)
- Express easement
- Prescriptive easement

---

---

---

---

---

---

---

---

### *Fraze v. Skees*, 30 N.E.3d 22 (Ind. Ct. App. 2015)

- Frazee and the Skeeses were neighboring landowners whose properties shared a subsurface mutual drain with a clay tile. The drain was installed approximately seventy to eighty years before this dispute.
- In 2011, the Skeeses' sewage was found on the Frazee property. At the direction of the Tippecanoe Health Department, the Skeeses replaced their septic system and installed a sump pump.
- Even after installation, Frazee found sewage on her property. In response, Frazee unplugged the sump pump, which caused a flooding in the Skeeses' basement.
- The Health Department created a perimeter drain based solution that severed the Skeeses' basement connection to the mutual drain but reconnected to the drain at a later spot.
- Throughout the duration of the sewage issue, Frazee altered and repaired parts of the mutual drain but for her own convenience and benefit, not for the mutual benefit of the two landowners.

---

---

---

---

---

---

---

---

### *Fraze v. Skees*

#### • Creation and Consent

- "It is reasonable to conclude that a nonregulated, subsurface drain that predates the current, diverse ownership of the serviced parcels was, when placed, either 1) a mutual drain established by the mutual consent of **all affected** owners or 2) a private drain on a common estate." *Fraze* at 35.

---

---

---

---

---

---

---

---

### Frazee on who may pay for removal or repairs

- Applies the holding in *Crowel*, which deals with regulated drains, to mutual drains
  - No duty mandated in the mutual drainage code (Ind. Code 36-9-27.4)
  - Ind. Code 36-9-27-112 factors may be applied by a trial court to a mutual drain
    - All the property in a watershed is benefited when a drain serving that area is reconstructed...intent to spread the assessment across all of those benefitted properties. *Crowel* at 646.
  - Apportioning costs for mutual drains is within the purview of a trial court. *Frazee* at 38.
  - If only one landowner benefits from repairs made for a particular landowner's convenience, then that specific landowner is accountable for the cost of the repairs. *Frazee* at 38.
- Landowners in a regulated drain watershed may be held responsible even if the regulated drain isn't on their property if they benefit from the repairs.
  - *Frazee* extends this to mutual drains. *Frazee* at 38.

---

---

---

---

---

---

---

---

### Maintenance Costs Cont.

- Assessments must be based on benefits accruing to each tract of land.
  - Factors to consider are listed in Ind. Code §36-9-27-112 and include:
    - The watershed affected
    - The number of acres in each tract
    - The land use
    - The total volume of water draining into the drain
    - Etc.
- Cases:
  - *Frazee v. Skees*, 30 N.E.2d 22 (Ind. App. 2015). Extends the assessment of cost appropriation used in regulated drains to costs in mutual drains.
  - *Whitley, Noble and Allen Joint Drainage Bd. v. Tschantz*, 461 N.E.2d 1146 (Ind. App. 1984). Ruled that uniform assessments were arbitrary because the board limited itself to only considering indirect benefits that accrue to all landowners in a watershed instead of examining the benefits to each tract of land.
  - *Clouse v. Noble Cnty. Drainage Bd.*, 809 N.E.2d 849 (Ind. App. 2004). Uniform assessment was allowable because while the board did not look directly to 112 factors, they looked at all relevant factors to examine the benefits to each tract of land.

---

---

---

---

---

---

---

---

### Questions?

---

---

---

---

---

---

---

---