

Gregg
Miller
Nash

PLUMBROOK DRAIN & BRANCHES
INTER-COUNTY DRAINAGE BOARD
FEBRUARY 26, 2019
10:30 A.M.
AGENDA

	Page
1. Call of meeting to order and roll call	
2. Approval of Agenda	
3. Public Participation	
4. Approval of Minutes of meeting of January 22, 2019	4
5. Plumbrook Intercounty / Gibson Drain Legal Review Proposal and Discussion of Cost Allocation among cities – Jeff Bednar/Daryl Gapshes	7
6. Old Business	
7. New Business	
8. Adjourn	

PLUMBROOK DRAIN (INTERCOUNTY) - OPEN

CLINTON TOWNSHIP/SHELBY TOWNSHIP/STERLING HEIGHTS/UTICA - CHAPTER 21



- Legend**
- Plumbrook Drain
 - Major Roads

Drain Length (Feet/Miles):
53,656.80 / 10.16

A meeting of the Inter-County Drainage Board for the **PLUMBROOK DRAIN AND BRANCHES** was held in the Office of the Macomb County Public Works Commissioner, 21777 Dunham Road, Clinton Township, Michigan on January 22, 2019.

PRESENT: Michael Greg, Chairman
Michigan Department of Agriculture & Rural Development

Brian Baker, Acting Secretary
Chief Deputy, Macomb County Public Works Commissioner

Jim Nash, Member
Oakland County Water Resources Commissioner

ALSO PRESENT: Jeff Bednar P.E., Environmental Resources Manager, Bruce Manning, Financial Manager, Daryl Gapshes, Plan Review Manager, Wes Jonik, Engineer I, Tom Stockel, Construction Engineer, Madison Tanghe, Senior Secretary, Macomb County Public Works; Anne Vaara, Chief Deputy, Steve Korth P.E., Manager, Office of Oakland County Water Resources; Brady Harrington, Michigan Department of Agriculture & Rural Development; Sal Conigliaro, Mike MacDonald, Brad Shepler, P.E., Hubbell, Roth & Clark; Scott Finlay, City of Troy; Brent Bashaw, City of Sterling Heights; Tim Pollizzi, City of Rochester Hills

The Chairman called the meeting to order at 11:34 a.m.

A motion was made by Mr. Nash, supported by Mr. Baker to approve the agenda as presented.

Adopted: YEAS: 3
NAYS: 0

The meeting was open to public participation, then closed, there being no comments from the public.

It was agreed to receive and file the presented minutes of the October 17, 2005 meeting.

Mr. Gapshes stated there was a sediment buildup in the south lake which was cleaned out in 2003. Troy and Sterling Heights agreed to split the approximately \$800,000 cost. This prompted discussion on how best to maintain this drain going forward. Petitions and resolutions were approved by Sterling Heights and Troy in 2006 which were sent to the Michigan Department of Agriculture. The sediment has again built up and the two communities are looking to again establish the Gibson as a Chapter 21, which would allow all who contribute flow to the district to pay for maintenance, including the County roads, and Rochester Hills.

Mr. Gregg informed the Board this meeting is convened as the Plumbrook Inter-County Drain Board because Plumbrook is an established drain district, though no improvement project was ever undertaken. The proposed Gibson Drain is the upper part of the Plumbrook watershed. The state takes its lead from the counties if they want to move forward and implement a project. He suspects there was no interest by the Counties at the time once the short term solution of sediment dredging was completed. Implementing procedures legally and under the drain code is an arduous process, so he suspects there wasn't the will to follow through. We are now convened to either make a commitment to move forward and undertake that process through its completion or continue to operate as it has in the past with the communities agreeing to share the costs. The petitions filed back in 2006 are now stale and could be challenged. If there is a renewed

commitment from all, we can restart the process whether it is the Gibson as a separate drain district, the two Lakes and the sediment, or the entire Plumbrook Creek which is the direct outlet.

Mr. MacDonald (HRC) presented the Board with an outline of the background on the Gibson Drain. The two lakes were constructed originally in the 1970's as part of residential developments. In the 1980's, Sterling Heights through the Macomb County Public Works Office expanded the north lake, did some work on the channel between Dequindre Road and the outlet end of the south lake. In 2003, they had to come back and perform the first sediment clean out because the island in the south lake had grown and accumulated sediment due to the south lake being the outlet of the open channel. It is pretty evident that the issue is trapped sediment within the flow itself and the drain and once it hits that large body of water it just settles out. If nothing was changed, the sediment would need to be removed with some regularity and this inter-county agreement would be beneficial. Anything we can also do to change the sediment removal location could reduce the cost significantly.

Mr. Bednar recommended looking into a sediment transport and channel stability analysis of the portions upstream to determine the most cost effective long-term maintenance approach. Mr. MacDonald stated Brad Shepler and HRC's environmental group walked the Gibson drain through the Troy it did not appear the sediment was caused by bank erosion. Mr. Bednar asked about trying to separate the drain partially and move the bedload around the lakes and if that is something benefiting the entire district or something that is especially benefiting the people who have drain rights to that lake. It may be easier to hug one shore of the drain during higher floods and the bedload can be carried through that area.

Mr. Gregg stated that there is no doubt the inter-governmental agreement process would be far more expedient than engaging this as a new petition project. Expediency aside, the Chapter 21 process has the benefit of creating a district where all who contribute flowage to it will receive an assessment, including for future maintenance needs. It could take several years to work our way through the process to obtain the necessary easements, financing, hearings. At the end there is no guarantee that a petition would be found necessary or be approved. Other questions include figuring out the cause of the sediment, its impact to these recreational lakes, if the sediment is impeding flow, and any environmental issues from future dredging. Mr. Gregg pointed out that if we were to be petition, this Board would undertake that exercise and create the engineering analysis that would support the process moving forward and determine future maintenance needs.

Mr. Baker noted that another approach would be an inter-local agreement between the three communities, however that would need to be set up every 10 years when an issue arose.

Mr. Pollizzi mentioned that Rochester Hills' flow is contributing to this matter, but they are going to have to review the impact of recent drain improvements they have made that may have mitigated some of these issues.

Mr. Gregg suggested before we would spend money on engineering, he recommends we conduct a legal analysis first to determine the jurisdiction of both the Plumbrook as inter-county, the Gibson/Nelson as county drains, and if we want to create a Gibson inter-county drain.

Mr. Baker asked if the three communities would be willing to go to their boards and get funding for a legal analysis. He noted that Sterling Heights needs to let him know if they still want to continue with the Chapter 21 process or take another look at the inter-local agreement. Mr.

Bashaw stated they prefer Chapter 21 process. They went through this 10 years ago and requests that part of the legal review look to see if the petitions and resolutions are still valid.

The communities agreed to ask their boards for funding for a legal review and to discuss themselves how to split these costs estimated at not to exceed \$20,000. Mr. Gregg added in the interim this board could solicit a legal services proposal to get a true cost with a timeframe to get back to the board within 30 days.


A motion was made by Ms. Vaara, supported by Mr. Baker to have the Secretary seek a proposal from Fahey Schultz Burzych Rhodes, PLC for a legal analysis of both the Plumbrook and the Gibson drains in time for consideration at the next meeting on February 26, 2019.

Adopted: YEAS: 3
NAYS: 0

There being no further business it was moved by Ms. Vaara, supported by Mr. Baker that the meeting of the Plumbrook Drain and Branches Inter-County Drainage Board be adjourned.

Adopted: YEAS: 3
NAYS: 0

The meeting was adjourned at approximately 1:05 p.m.



Brian Baker, Acting Secretary
Plumbrook Drain and Branches Inter-County Drainage Board

STATE OF MICHIGAN
COUNTY OF MACOMB

I certify that the foregoing is a true and correct copy of proceedings taken by the Inter-County Drainage Board for the Drainage District shown on the attached set of Minutes, on January 22, 2019. The original of which is on file in the Public Works Commissioner's Office. Public notice of the meeting was given pursuant to Act No. 267, Public Acts of Michigan, 1975, including, in the case of a special or rescheduled meeting or a meeting secured for more than 36 hours, notice by posting at least 18 hours prior to the time set for the meeting.



Brian Baker, Acting Secretary
Plumbrook Drain and Branches Inter-County Drainage Board

7DATED: 1/23/19

**CONFIDENTIAL LEGAL OPINION:
SUBJECT TO ATTORNEY-CLIENT PRIVILEGE**

February 20, 2019

Jeff Bednar, PE, CFM
Environmental Resources Manager
Office of Macomb County Public Works Commissioner
21777 Dunham Road
Clinton Township, MI 48036

Via Email

Mr. Bednar:

Re: Plumbrook Intercounty/Gibson Drain Reviews

You have requested a proposal to perform legal reviews of the Plumbrook Intercounty Drain and the Gibson and Nelson Drains. I have consulted with Michael MacDonald from Hubbell, Roth & Clark, Inc., and in coordination with HRC, Inc., I offer a proposal not to exceed \$20,000 for the following services:

- FSBR will review the Plumbrook ICD files at the Michigan Department of Agriculture and Rural Development, the Office of the Oakland County Water Resources Commissioner, and the Office of the Macomb County Public Water Resources Commissioner and prepare a legal opinion outlining the procedural history of the Plumbrook ICD, as well as our opinion as to the jurisdiction of the Drainage Board.
- FSBR will review the Gibson Drain files at the Office of the Macomb County Public Works Commissioner, and also review the Nelson Drain files at the Office of the Oakland County Water Resources Commissioner. FSBR will then prepare a legal opinion for each drain outlining the procedural history and our opinion as to the jurisdiction of each drain. The legal opinion for the Gibson Drain will specifically address whether there is jurisdiction to remove sediment from the Gibson Drain North and South Lake by the Public Works Commissioner or a Drainage Board.
- HRC will review files and plot points of beginning and points of ending from each petitioned project for the Plumbrook ICD as well as the Gibson Drain to assist in determining the routes and courses of these drains. It is anticipated that the Oakland WRC engineering staff will plot the points of beginning and ending for the Nelson Drain. If a route and course



description in the form of a certificate is desired, a separate proposal for this work can be provided.

- A representative from FSBR and HRC will attend a Drainage Board meeting to present the findings for each of the drains.

It is my understanding that there are several additional Chapter 4 and Chapter 20 drains in Macomb County that are tributary to the Plumbrook Intercounty Drain within Sterling Heights, including:

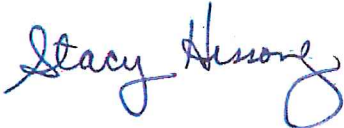
- Hawken Drain (Chapter 20)
- Crissman Drain (Chapter 4)
- Green Drain Enclosure (Chapter 20)
- Green M59 Relief Drain (Chapter 20 with a small portion possibly under Chapter 4)
- Merrill Drain (Chapter 20)
- LRW Retention Basin (Chapter 4)
- Burr Drain (Chapter 4)
- Burr Relief #2 Drain (Chapter 4)
- Ledwidge Enclosure Drain (Chapter 4)
- Seventeen Mile Road Drain and Branches (Chapter 20)
- Lockwood Drain (Chapter 4)
- Moore Drain (Chapter 4)
- Moore-Ledwidge Drain (Chapter 4)
- Schiebel Drain (Chapter 4)
- Moore Drain Enclosure (Chapter 20)
- Seventeen Mile Extension Drain (Chapter 20)
- Sixteen and One Half Mile Road Drain (Chapter 20)
- Berger Drain (Chapter 4)
- McInerney Drain (Chapter 4)

This proposal does not include a legal review of these drains for jurisdictional purposes. Additional scope of work performed by FSBR will be at an hourly rate not to exceed \$235/hour. A rate schedule for HRC for additional scope of work is attached.

Upon review of the legal opinions for the Plumbrook Intercounty Drain, the Gibson Drain and the Nelson Drain, the Drainage Board may wish to seek petitions to a) transition the Plumbrook Intercounty Drain into a Chapter 21 Drain (if it is found that it is not already under Chapter 21; b) decide whether to consolidate the Gibson and/or Nelson Drains with the Plumbrook Intercounty Drain; or c) if not consolidated, then decide whether to convert the Gibson Drain or the Gibson/Nelson Drain into a separate Chapter 21 Drain. Moreover, it is possible to also consolidate the intracounty drains that are tributary to the Plumbrook Intercounty Drain within the same petition, a review of legal review (with points of beginning and points of ending) is highly recommended before initiating any proceedings to do so.

FSBR, with the assistance of HRC, looks forward to working with your staff to provide the Drainage Board with the above described legal review to provide the Board with the best information available to aid in future decision making. Should you require any further information relating to the scope of work for our proposal, please contact me at your earliest convenience.

Sincerely,

A handwritten signature in blue ink that reads "Stacy Hissong". The signature is written in a cursive style with a large, looping "S" and "H".

STACY L. HISSONG
MEMBER

Direct: 517.381.3204

shissong@fsbrlaw.com

SLH/tnd

Enclosure

cc: Michael MacDonald, P.E., Hubbell, Roth & Clark, Inc.

Hubbell, Roth & Clark, Inc.

2019 Estimated Hourly Rate Schedule

Prepared for:

Macomb County Public Works

<u>Category</u>	<u>Billable Rates</u>
Principal	191.00 - 191.00
Sr. Associate/Managing Engineer	170.00 - 191.00
Associate/Managing Engineer	138.00 - 169.00
Department Manager	127.00 - 164.00
Manager	126.00 - 130.00
Sr. Project Engineer/Architect	118.00 - 159.00
Project Engineer/Architect	99.00 - 141.00
Staff Engineer/Architect	95.00 - 115.00
Graduate Engineer/Architect I/II	84.00 - 99.00
Transportation Specialist	133.00 - 133.00
GIS Specialist	72.00 - 99.00
Right of Way Specialist	144.00 - 144.00
Environmental Analyst	80.00 - 104.00
Sr. Designer	130.00 - 159.00
Designer	93.00 - 135.00
Sr. Cadd Technician	97.00 - 111.00
Survey Office Supervisor	131.00 - 131.00
Registered Surveyor	107.00 - 107.00
Survey Technician	100.00 - 101.00
Survey Party Chief	81.00 - 116.00
Survey - Instrument Person	77.00 - 77.00
Survey - Survey Assistant	60.00 - 60.00
Supervisors- Construction Observation	112.00 - 117.00
Field Project Representatives	97.00 - 134.00
Construction - Office Technician	54.00 - 68.00
Sr. Construction Observer	78.00 - 95.00
Construction Observer I/II	46.00 - 80.00
Construction Engineer	97.00 - 141.00
Testing Technician	54.00 - 99.00
Administrative Support**	54.00 - 116.00

*Wage rates shown above are estimated for 2019.

Billable rates for Hubbell, Roth & Clark, Inc. include Unemployment and Payroll taxes, contributions for Social Security, Retirement benefits, Medical and Life insurance benefits, normal printing cost, telephones, fax, computer time, mileage, other overhead costs and profit.

Allowable Reimbursable expenses will be invoiced at our cost which is defined as the direct costs plus 5% .

** This Category includes Computer, Reproduction and Administrative Staff.

