

SHARKEY RELIEF
INTER-COUNTY DRAINAGE BOARD
JUNE 27, 2018
10:00 a.m.
AGENDA

	<u>Page</u>
1. Call meeting to order and roll call	
2. Approval of Agenda	
3. Public participation	
4. Approval of minutes of meeting of May 23, 2018	3
5. SAW Grant Update – Jeff Bednar	5
6. Engagement Letter – Fahey, Schultz, Burzych, Rhodes, PLC	8
7. Consideration of approval of invoice:	12
See attached spreadsheet	
8. Financial Update – Bruce Manning	13
9. Old Business	
Liability Insurance Coverage Proposal Update – Stephen Saph	14
10. New Business	
11. Adjourn	

SHARKEY RELIEF WARREN/OAKLAND COUNTY



Drain Length (Feet/Miles):
21,297.20 / 4.03

Legend

- | | |
|---|---|
| Enclosed Gravity | Open Channel |
| — < 60" Dia | Ditch |
| ≥ 60" Dia | Pond |
| Inverted Siphon | Culvert |

A meeting of the Inter-County Drainage Board for the **SHARKEY RELIEF DRAIN** was held in the Office of the Macomb County Public Works Commissioner, 21777 Dunham Road, Clinton Township, Michigan on May 23, 2018.

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

Brian Baker, Acting Secretary
Macomb County Public Works Commissioner

Anne Vaara, Member
Oakland County Water Resources Commissioner

ALSO PRESENT: Bruce Manning, Financial Manager, Jeff Bednar, P.E., CFM, Environmental Engineer, Tom Stockel, Construction Engineer, Barbara Delecke, Administrative Services, Office of Macomb County Public Works Commissioner; Steve Korth, P.E., Manager, Office of Oakland County Water Resources Commissioner; Erik Skurda, Sterling Heights Dept. of Public Works

The Chairman called the meeting to order at 11:45 a.m.

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

Adopted: YEAS: 3
NAYS: 0

The minutes of the meeting of April 25, 2018 were presented. A motion was made by Mr. Baker, supported by Ms. Vaara to approve the minutes as presented.

Adopted: YEAS: 3
NAYS: 0

Fahey, Schultz, Burzych, Rhodes, PLC will be at the Macomb County Public Works' Office to begin its district delineation at the end of May. Doetsch will confirm sediment depth at the syphon locations on I-696, while performing the inspections on the Bear Creek Drain – Warren Branch.

A motion was made by Ms. Vaara, supported by Mr. Baker to receive and file the project update given by Mr. Bednar.

Adopted: YEAS: 3
NAYS: 0

The Chairman presented the invoice totaling \$870.00 as provided to the Board for review and approval.

A motion was made by Ms. Vaara, supported by Mr. Baker to approve the invoice as presented.

Adopted: Yeas: 3
Nays: 0

A motion was made by Ms. Vaara, supported by Mr. Baker to receive and file the financial report presented by Mr. Manning.

Adopted: YEAS: 3
NAYS: 0

A motion was made by Mr. Baker, supported by Ms. Vaara to authorize Macomb County to consult with Fahey, Schultz, Burzych, Rhodes, PLC on the legalities of assessing the district for insurance and to table the Liability Insurance Coverage Proposal until June.

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 Sharkey Relief Inter-County Drainage Board be adjourned.

Adopted: YEAS: 3
NAYS: 0

The meeting was adjourned at approximately 11:49 a.m.



Brian Baker, Acting Secretary
Sharkey Relief 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 May 23, 2018, 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
Sharkey Relief Inter-County Drainage Board

DATED: 5/24/18

9263.bd

PROGRESS UPDATE

PROJECT: Sharkey Drain SAW Grant

SAW GRANT NO. 1404-01

UPDATE BY: Sydney Kanan

DATE: June 19, 2018

PROJECT BACKGROUND AND SUMMARY

Third Round SAW:	Awarded: December 2016 Due to MDEQ: October 2019
Stormwater Asset Management:	\$289,000. \$260,100 Grant, \$28,900 Match
Spent to Date:	\$87,317.36 (March 4, 2018)
Remaining Budget:	\$201,682.64

INVENTORY AND CONDITION ASSESSMENT

Manhole and Catch Basin GPS – COMPLETE
Manhole and Catch Basin Inspection – COMPLETE
Sewer Televising – COMPLETE
CCTV Review – COMPLETE
Siphon Inspection – *Doetsch has probed for sediment depth, AEW to review results.*

NOTE: District delineation may result in additional storm sewer for which GPS, structure inspection, sewer televising and CCTV review would need to be conducted.

DISTRICT DELINEATION

Document Investigation – FSBR reviewed documents at MCPWO on May 31st. AEW to incorporate results upon receiving legal opinion.
Document Analysis – AEW to incorporate legal opinion, once it becomes available, to prepare map sets, easement inventory and route and course description.

GIS

GIS Checkout – *On going throughout project*
Schema Update – COMPLETE
Asset Naming – COMPLETE
GIS Database Update – *AEW to update database when condition assessments have been completed*

CRITICALITY

Probability of Failure – *AEW to begin after district delineation is complete*
Consequence of Failure – *AEW to begin after district delineation is complete*
BRE – *AEW to begin after district delineation is complete*

REHABILITATION

Options for Rehabilitation being considered – *AEW to determine after condition assessment is complete*
Associated Costs – *AEW to determine after condition assessment is complete*

Level of Service – *AEW to determine after condition assessment is complete*

GREEN INFRASTRUCTURE

Status to Date – *AEW has been advised by MCPWO to hold off on the GI report until the scope is determined.*

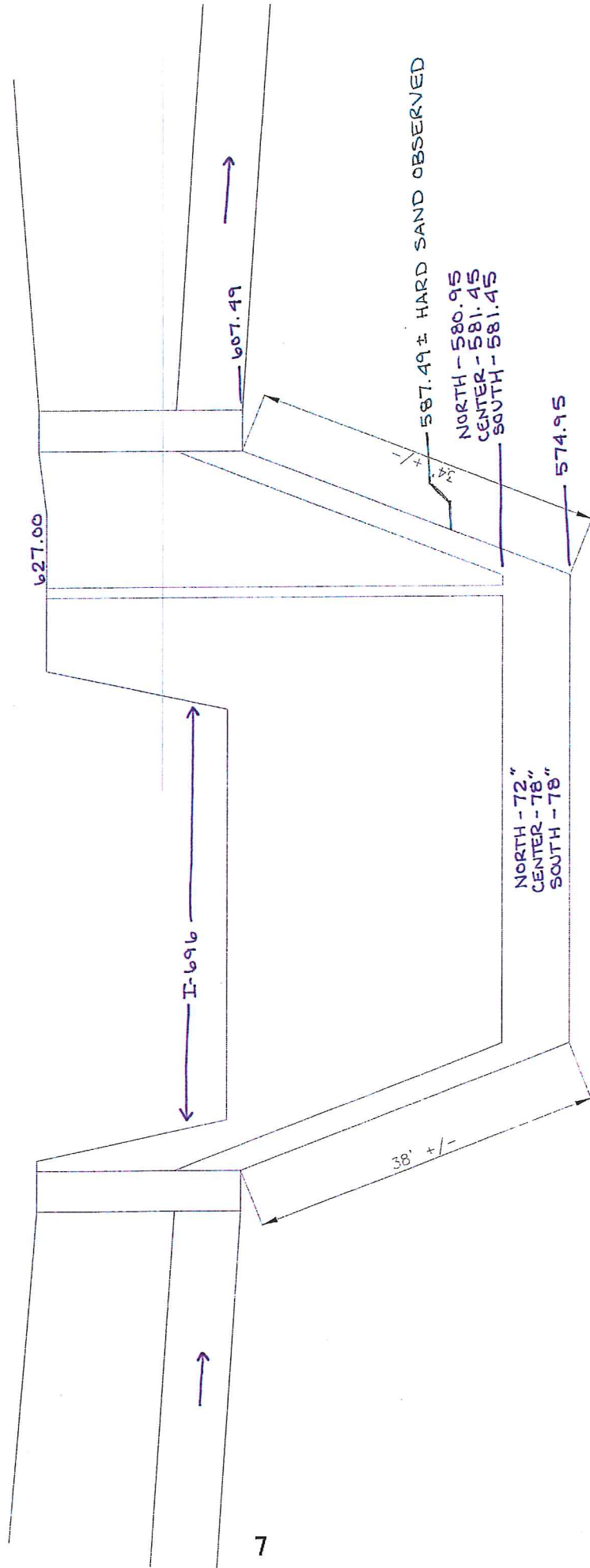
Needed Info – *TBD*

NEEDED FROM MCPWO OR OCWRC

- MCPWO to engage FSBR to begin preparing legal opinion for district delineation.

NOT TO SCALE

SHARKEY DRAIN
SIPHON PROFILE



NOTE: ALL ELEVATIONS WERE TAKEN FROM RECORD PLANS AND ARE AN APPROXIMATION.

Fahey Schultz Burzych Rhodes

4151 OKEHOS ROAD
CREMOS, MI 48824 USA
SHISSONG@FSBRLAW.COM

OFFICE: 517.381.2104
MOBILE: 517.974.2304
DIRECT FAX: 517.381.3178

May 23, 2018

Michael Gregg
Michigan Department of Agriculture
and Rural Development
525 W. Allegan Street
P.O. Box 30017
Lansing, MI 48909

Via Email

Dear Mr. Gregg:

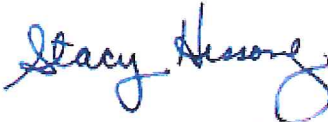
Re: Representation regarding Sharkey Intercounty Drain

Thank you for selecting Fahey Schultz Burzych Rhodes PLC to represent the Sharkey Intercounty Drain. The scope of our engagement includes legal services as needed. We will do our best to provide timely legal advice and representation within the scope of the engagement. This letter confirms the terms of our agreement to represent the Sharkey Intercounty Drain Drainage Board.

You will be our primary contact in this engagement and I will be the primary attorney responsible for this engagement. Our time and costs will be charged as described in the enclosed Standard Terms, which are incorporated in this letter. My current hourly rate is \$235. We reserve the right to revise this rate with thirty (30) days' notice to you.

We appreciate the confidence you have in us and look forward to working with you. If you have any questions about this letter, please do not hesitate to call me. If you agree with the above, please return a signed copy of this letter so we can officially begin to represent the Drainage Board's interest.

Very truly yours,



STACY L. HISSONG
MEMBER

Enclosure



AGREED:

By: Michael R. Gregg
Michael Gregg, Chairman
Sharkey Intercounty Drain Drainage Board

Dated: June 7, 2018

Fahey Schultz Burzych Rhodes

ATTORNEYS AT LAW

4151 CREMOS ROAD
CREMOS, MI 48864 USA

FSBRLAW.COM

TEL: 517.381.0100
FAX: 517.381.5051

STANDARD TERMS OF ENGAGEMENT

Thank you for retaining **Fahey Schultz Burzych Rhodes PLC** ("Firm") for legal services. These **Standard Terms** govern our engagement unless otherwise stated in your engagement letter or by the Rules of Professional Conduct. Please review these **Standard Terms** carefully and retain them in your files. If you have any questions about our legal representation or invoices, please contact your primary attorney promptly.

1. SCOPE OF OUR SERVICES. Our engagement letter states specific matter(s) where we represent you and the scope of our services, which can only be varied by express written agreement. Our services do not include tax advice unless specified in the engagement letter. If you request opinions of law or outcomes, our opinions are limited by known facts and law at the time our opinion is rendered, subject to factors unknown or beyond our control. We use our best professional judgment, but cannot guarantee any outcome.

2. PRIMARY ATTORNEY. The primary attorney responsible for your representation may use other attorneys, paralegals or non-legal professionals with the Firm in the exercise of professional judgment. Attorneys outside the Firm may be consulted to serve as legal advisors to the Firm based on their licensed status in other jurisdictions or expertise in particular legal specialties.

3. CLIENT. The Firm will provide representation only to the person(s) or entity identified in our engagement letter. In matters for corporations, partnerships and other legal entities, unless otherwise agreed in writing, our representation does not extend to officers, directors, employees, shareholders, partners, members, individuals or any affiliates (such as parent, sister or subsidiary corporations).

4. OUR FEES. Unless other arrangements are made, we will bill for our legal services at our standard hourly rates, which are available on request. Hourly rates are subject to periodic review and adjustment at least annually. On request, we provide estimates of our anticipated fees on a matter when, in our professional judgment, they can be made; but unless we agree in writing to perform a specific service for a fixed fee, an estimate will not represent a maximum, minimum or agreed fee. We may also consider the following factors as appropriate to submit invoices in excess of our standard hourly rates: novelty and difficulty of the question involved; skill requisite to perform the legal services; likelihood that acceptance of a particular matter will preclude other representation; fee customarily charged in the locality for similar services; risk assumed by the Firm in performing certain types of work; amount involved and results obtained; and any time limitations imposed by the Client or by other circumstances.

5. COSTS. In addition to hourly rates, you must reimburse us for costs such as filing and recording, experts and expert witnesses, deposition transcripts, overnight or special delivery service, certified mail, mileage exceeding twenty-five (25) miles from our office and lodging (all without any mark-up). These costs will not include copies we make in-house, regular US postage, faxes or other costs that we typically consider as overhead. We submit costs in excess of \$1,500.00 by third parties to you for direct payment.

6. INVOICES. We will invoice you at the beginning of each month for hourly rates and costs. Payment within 30 days is expected, and we may charge you interest of 1% per month on accounts not paid within 30 days. Invoices can be paid by check (to Fahey Schultz Burzych Rhodes PLC), cash, money order or electronic transfer (ACH). If you have questions on any invoice, contact your primary attorney as soon as possible.



CONFIDENTIAL AND PRIVILEGED

7. RETAINERS. Unless otherwise stated in the engagement letter, we may withdraw amounts from a retainer at any time as necessary to satisfy unpaid invoices. If the retainer becomes insufficient to cover past due invoices or falls below the agreed amount, you will be required to replenish the retainer. Any portion of the retainer remaining after all legal services have been paid for will be refunded to you.

8. CONFLICTS OF INTEREST. We try to identify existing and potential conflicts at the outset of any engagement. We may ask you to sign a conflict waiver prior to an engagement. Other clients or prospective clients may ask us to seek a conflict waiver from you to represent them, but that doesn't mean we will represent you less zealously. If a conflict arises or appears after we begin an engagement, we will do our best to address and resolve the conflict consistent with our professional responsibilities. We will not represent any other client on a matter where we represent you unless you expressly agree and we can do so under the Rules of Professional Conduct. We may represent another client who is one of your market competitors.

9. INSURANCE COVERAGE. You must determine if you are covered by insurance for liability or legal expenses. Please notify your insurer(s) of any claim or potential claim and our involvement as soon as possible. Please inform us if you have insurance coverage for the matter(s) for which we are retained. With your approval and cooperation of your insurer(s), we can work with or serve as assigned insurance counsel as appropriate.

10. TERMINATION OF REPRESENTATION. You may terminate our representation at any time, with or without cause. We may terminate your representation if you fail to pay us any amount invoiced, fail to cooperate with us, or we determine that your representation would violate the Rules of Professional Responsibility or be impractical. Termination of the representation does not relieve you of the obligation to pay for legal services we provided prior to termination or need to provide for orderly transfer to your new counsel. On termination of representation for any reason, we will return your papers, documents and other property to you at your request, but may retain a copy for our own files. If any unpaid invoices are owed to us, we may retain your documents if they are subject to a lien. When we complete the work for which you retained us, our representation will end. Any further or additional work will be subject to these **Standard Terms** unless otherwise expressly agreed in writing.

11. RECORDS RETENTION. Subject to the above, we will return your materials at the end of the engagement. After the engagement, in accordance with these **Standard Terms**, applicable law and the Rules of Professional Conduct, we will hold your files for seven (7) years, when they may be destroyed. We will attempt to notify you before destroying any files and may charge you to dispose of or retain your files.

12. ELECTRONIC DATA COMMUNICATION AND STORAGE. We may communicate with you and others by email or fax, send data over the Internet, store electronic data via computer software applications hosted remotely on the Internet, or allow access to data through third-party vendors' secured portals or clouds. Electronic data confidential to your matters(s) may be transmitted or stored using these methods. In using these data communication and storage methods, the Firm will make a reasonable effort to keep such communications and data secure in accordance with our obligations under applicable laws and professional standards. You agree that we have no control over the unauthorized interception or breach of any communications or data once it has been sent or has been subject to unauthorized access, notwithstanding all reasonable security measures employed by us or our third-party vendors.

Please contact your primary attorney if you have any questions regarding these **Standard Terms**.

SHARKEY RELIEF DRAIN - 5/23/18

<u>Funding Source</u>	<u>Apportionment</u>	<u>Manager</u>	<u>Vendor</u>	<u>Amount</u>	<u>Invoice Detail</u>	<u>Project Summary</u>	<u>Project Balance</u>
Sharkey Relief Drain	Chapter 21 Macomb County - .81% Oakland County - 10.00% Warren - 30.12% Madison Heights - 59.07% SAW Grant 1404-01 (Closing date 11/27/19)	Bednar	Anderson, Eckstein & Westrick, Inc.	\$1,958.55	Invoice #0117731 - 5/17/18 Engineering Services - 4/2/18 - 4/29/18	Engineering Oversight, Survey, CCTV Investigation	\$150,665.05
Total				\$ 1,958.55			

YTD Trial Balance

Fund: Sharkey Relief

As of Fiscal Period: Oct 1, 2017-May 31, 2018

	O&M Balance 9/30/2017	O&M	Total 5/31/2018
Cash - Operating	641,739	586	642,325
Accounts Receivable			0
Assets			0
Liabilities			0
Revenues		586	586
Expenditures			0
			0
Equity	641,739		642,325
	0.00		0.00

NOTES

	Grant	Match	Total
SAW 1404-01	260,100	28,900	289,000
YTD	(124,501)	(13,834)	(138,335)
Remaining	135,599	15,066	150,665



NICKEL & SAPH, INC.

INSURANCE SINCE 1929

MAILING ADDRESS:

P.O. BOX 46907
MT. CLEMENS, MI 48046-6907

OFFICE ADDRESS:

44 MACOMB PLACE
MT. CLEMENS, MI 48043
(586) 463-4573 • (810) 765-8885
1-800-657-7373
FAX: (586) 463-3135

April 27, 2018

Commissioner Candice S. Miller
Macomb County Public Works
21777 Dunham Road
Clinton Twp., MI 48036

Re: Defense and Indemnification

Dear Commissioner Miller:

In light of recent discussions regarding risk management and exposure to certain third-party liability claims related to the various inter-county drains drainage districts, it is strongly recommended that each board member determine what liability insurance coverage is afforded to a member by each member's appointed community or organization.

The inquiry by the individual board members to their representative communities or organizations should specifically address **1)** defense and **2)** indemnification. Defense relates to the expense to administer a defense against a claim or allegation, including legal fees. It is common for an allegation to be concluded without the payment of third-party damages, but expenses for defense are expected with any manner of claim made by a third-party. Indemnification relates to the cost of a monetary settlement paid to a claimant, a third-party, which a board member is legally obligated to pay.

When considering both defense and indemnification, it should be made clear that the representative communities will respond to both **1)** general liability (property damage and bodily injury) and **2)** public officials' liability (wrongful acts) claims or allegations.

Depending on the manner in which the representative communities address their specific insurance and risk management needs, the inquiry may need to be presented to more than one party. By needs, we refer to either a self-insured format or a deductible format. Under a self-insured format, the representative community is responsible for the defense and indemnification of claims or allegations for a defined dollar amount; no insurance carrier or insurance pool is responsible or involved with claims within the self-insured amount. Individual drainage board members should obtain confirmation from their representative communities or organizations that the communities or organizations will defend and indemnify the individual members for expenses and losses within the self-insured amount. Under a deductible format, the representative community secures insurance from an insurance company or insurance pool. Claims within the deductible are administered by the affording insurance provider. Confirmation from the insurance provider should be obtained that **1)** acknowledges the exposure related to the drainage districts and **2)** confirms that the coverages secured by the representative

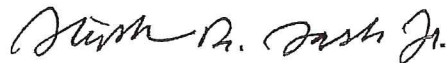
community will extend to the individual drain board member for actions performed on the drainage district's behalf.

Next, it should be disclosed that each drainage district is defined as separate and unique by state statute and does not enjoy "funding unit" status from any other entities. Finally, with the exception of the Oakland-Macomb Interceptor Drain (OMID), none of the inter-county drains drainage districts have in the past or now secure any manner of liability insurance coverage; the districts are entirely self-insured.

In closing, no known incidents or claims have occurred or have been reported to any representative of any of the inter-county drains drainage districts. This inquiry resulted from the various drain boards exploring the possibility of securing insurance or continuing to maintain the existing fully self-insured status.

Should you or any parties from the representative communities have any questions or concerns, please feel free to contact me. If needed, I will be happy to attend the next set of meetings of the inter-county districts. Thank you.

Sincerely,

A handwritten signature in cursive script, appearing to read "Stephen R. Saph Jr.", written in black ink.

Stephen R. Saph Jr.
Agent

Macomb County Inter-County Drains and Drainage Districts

Responding Insurance Carrier Proposals:

Trident Public Risk Solutions presenting **Argonaut Insurance Company**

Rating – A XIII Stable, Admitted

General Liability, Non-Owned Automobile Liability, and Public Officials' Liability – all afforded on an Occurrence basis excess of a retained limit.

The retained limit is applicable to both defense costs and the payment of third-party damages.

Defense expenses are outside of the limits of liability afforded by the carrier (payment of defense expenses will not reduce the available limits of liability).

An aggregate does not apply to the Automobile Liability coverage.

Excludes Employment Practices Liability.

Separate limits are afforded for each line of coverage (general liability, public officials', and automobile liability). Payment of damages for one line of coverage will not impact or reduce the limits available and dedicated to the remaining lines of coverage.

Each Occurrence Limit –	11,000,000
Aggregate Limit –	12,000,000
Retained Limit -	250,000
Annual Premium (excluding Terrorism) -	68,375
Additional Premium for Terrorism -	1,805
Total Annual Premium -	70,180

Stephen R. Saph Jr.

Nickel & Saph, Inc. Insurance Agency

586-463-4573

586-747-9315 – cell

586-463-3135 – fax

stephenjr@nickelsaph.com

March 13, 2018

Chapter 21
Liability Insurance
Apportionment Options

DRAIN	EXPENSES-YEAR ENDING 9/30/2017			PAST 5 YEAR AVERAGE EXPENSES		
	EXPENSES	PERCENT	COST	EXPENSES	PERCENT	COST
Bear Creek	262,884	16.88%	11,846	216,293	17.14%	12,032
Clinton River Spillway	1,130,918	72.62%	50,962	780,500	61.87%	43,418
McCoy Relief	4,462	0.29%	201	2,668	0.21%	148
McCoy Relief Warren Branches	1	0.00%	0	6	0.00%	0
Red Run (all) ¹	53,017	3.40%	2,389	169,013	13.40%	9,402
Sharkey Relief	37,876	2.43%	1,707	17,930	1.42%	997
Sharkey Ryan Branches	48	0.00%	2	100	0.01%	6
Gibson (St Hgt-Troy) ²	0	0.00%	0	0	0.00%	0
Crapau Creek	0	0.00%	0	2,197	0.17%	122
Richmond-Columbus	68,178	4.38%	3,072	72,885	5.78%	4,054
Totals	1,557,384	100.00%	70,180	1,261,592	100.00%	70,180

DRAIN	WITHOUT GRANTS & BONDS			MILES		
	EXPENSES	PERCENT	COST	MILES	PERCENT	COST
Bear Creek	50,784	43.93%	30,829	11.01	27.39%	19,222
Clinton River Spillway	59,493	51.46%	36,116	2.14	4.98%	3,493
McCoy Relief	4,462	3.86%	2,709	3.54	8.23%	5,779
McCoy Relief Warren Branches	1	0.00%	0	3.28	7.63%	5,355
Red Run (all) ¹	57	0.05%	35	11.79	29.20%	20,495
Sharkey Relief	149	0.13%	90	4.03	9.37%	6,579
Sharkey Ryan Branches	48	0.04%	29	0.28	0.65%	457
Gibson (St Hgt-Troy) ²	0	0.00%	0	1.53	0.00%	0
Crapau Creek	0	0.00%	0	3.18	7.40%	5,191
Richmond-Columbus	611	0.53%	371	2.21	5.14%	3,608
Totals	115,605	100.00%	70,180	42.99	100.00%	70,180

DRAIN	AVAILABLE FUNDS
Bear Creek	\$ 1,019,060
Clinton River Spillway	\$ 74,689
McCoy Relief	\$ 270,214
McCoy Relief Warren Branches	\$ 52,655
Red Run (all) ¹	\$ 382,198
Sharkey Relief	\$ 650,221
Sharkey Ryan Branches	\$ 15,050
Gibson (St Hgt-Troy) ²	0
Crapau Creek	\$ 12,794
Richmond-Columbus	\$ 50,454

Total Insurance Premium	70,180.00
-------------------------	-----------

¹All Red Run mileages and available funds are combined

²The Gibson drain has been inactive for years and has no available funds. Because the flow connects with Red Run and Bear Creek, Gibson's portions has been divided between Red Run and Bear Creek for mileage apportionment