

Gregg  
Miller  
Nash  
Suma  
Wiley

CLINTON RIVER SPILLWAY  
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. NOAA/EPA Habitat Restoration Grant Update – Jeff Bednar	7
6. Recommendation to award quote for mowing of drain sites to Marino’s Landscape (next lowest bidder) for \$30,581 – Jeff Bednar	11
Motion: To award the quote from Marino’s Landscape (next lowest Bidder) in the amount of \$30,581 for mowing of Public Works drain sites, with the Clinton River Spillway share of cost at \$7,150	
7. Consideration for approval of invoices:	14
See attached spreadsheet	
8. Financial Update/10-Year Expense Analysis – Bruce Manning	15
9. Old Business	
Fahey, Schultz, Burzych, Rhodes, PLC Legal Discussion – Jeff Bednar	
Liability Insurance Coverage Proposal Update – Stephen Saph	
10. New Business	20
11. Adjourn	

# CLINTON RIVER SPILLWAY

## LAPEER, MACOMB, OAKLAND, & ST CLAIR COUNTIES



Drain Length (Feet/Miles):  
11,281.34 / 2.14

### Legend

Open Channel

Ditch

Pond

A meeting of the Inter-County Drainage Board for the **CLINTON RIVER SPILLWAY 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  
Chief Deputy, Macomb County Public Works Commissioner

Anne Vaara, Member  
Chief Deputy, Oakland County Water Resources Commissioner

Robert Wiley, Member  
St. Clair County Drain Commissioner

ABSENT: Joe Suma, Member  
Lapeer County Drain 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, Kelsey Cooke, Senior Attorney, Sonia Lopez, Law Clerk, Office of Oakland County Water Resources Commissioner; Albert Mickalich, Hubbell, Roth & Clark, Inc.; Stephen Saph, Nickel & Saph, Inc.; Erik Skurda, Sterling Heights Dept. of Public Works

The Chairman called the meeting to order at 10:04 a.m.

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

Adopted: YEAS: 4  
NAYS: 0

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

Adopted: YEAS: 4  
NAYS: 0

Mr. Mickalich updated the Board on the NOAA portion of the grant. There is approximately \$140,000 funds available for additional work. The goal is to establish more vegetation in existing project areas, including the east side of Jefferson. Mr. Mickalich provided drawings showing where an additional 21 trees, 2" in diameter will be planted. The smaller trees were being destroyed by vandals. The vegetation is doing well enough that the Harrison Township Park can be opened to the public after the trees are planted. Mr. Mickalich would like signs installed asking people to stay off the grass. Ms. Vaara would like the contractor to address the poor soil conditions before planting the trees. Mr. Mickalich explained that when the staging area was constructed, the top soil was used to create the bank where the trees will be planted. Signage should be installed for trespassing so that there can be police enforcement.

A motion was made by Mr. Wiley, supported by Ms. Vaara to authorize Macomb County to post up to 10 signs, at the district's expense, that state the ordinance and that violators will be ticketed.

Adopted: YEAS: 4  
NAYS: 0

Ms. Vaara asked if trash receptacles and fishing line tubes have been installed at the site. Once construction is complete and an operations and maintenance plan is in place, these items can be considered. An additional 78 trees, 358 shrubs and wetland seed mix are proposed for areas between the islands, off-line pools and Spillway proper. Approximately 11 full sized trees will be planted in the water to create underwater habitat. The fish shocking was done in April. There was a larger quantity of the predator fish and fewer smaller fish. An analysis of the fish shocking will be provided to the Board at the next meeting.

The original project plan called for step pools, which were removed to maximize the size of the off-line pools. With approximately \$50,000 in additional monies now available through the EPA grant, vegetation can be added in the off-line pool areas and near the fishing pier. Evergreens and shrubs can be planted by the vehicle entrance. A change order for the additional work will be submitted to the EPA and NOAA and then the Board for final approval.

A motion was made by Mr. Wiley, supported by Mr. Baker to approve the concept for the proposed additional plantings in the NOAA/EPA grant and authorize Hubbell, Roth & Clark, Inc. and the Macomb County Public Works staff to proceed with plans.

Adopted: YEAS: 4  
NAYS: 0

A comprehensive operations and maintenance plan for the Spillway will be developed over the coming months, which will include the weir, fishing pier and the overall Clinton River Spillway easements. The U.S. Army Corps of Engineers, on its recent drain walk, felt that it has a responsibility to update operations and maintenance plans and are willing to work with the counties and municipalities to develop the plan.

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

Adopted: YEAS: 4  
NAYS: 0

Requests for Qualifications were published on MITN for grass mowing on the Spillway, but did not include the Sheffield property. The lowest bid came from Green Meadows Landscape in the amount of \$29,785, with the Spillway share of cost at \$6,500. Clinton Township has agreed to mow two to three acres of the Sheffield property, while deciding internally whether the township will continue to mow throughout the season.

A motion was made by Mr. Baker, supported by Ms. Vaara to award the quote from Green Meadows Landscape in the amount of \$29,785 for mowing of Public Works drain sites, with the Clinton River Spillway share of cost at \$6,500.

Adopted: YEAS: 4  
NAYS: 0

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

Adopted: YEAS: 4  
NAYS: 0

Macomb County's Corporation Counsel determined that the Public Works Commissioner is covered under the county's insurance, but the drainage district is a separate entity and not covered. Oakland County has an employee indemnification defense policy that would cover the Water Resources Commissioner, but not the drainage district. St. Clair County has the same coverage as long as there is no gross negligence. The Attorney General provided the same coverage for the Department of Agriculture & Rural Development. The district itself, in terms of liability issues, would not be insured through the respective counties.

AIG is the insurance carrier for OMIDDD. They will not allow for the other inter-county drains to come under their insurance policy. The drainage districts would have to demonstrate a history of coverage through another insurance carrier for three to five years. There is currently no funding mechanism in place to cover the cost of insurance. The proposed liability insurance for the inter-county drains has a \$250,000 self-insured deductible.

A motion was made by Ms. Vaara, supported by Mr. Wiley 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: 4  
NAYS: 0

There being no further business, it was moved by Mr. Wiley, supported by Ms. Vaara, that the meeting of the Clinton River Spillway Inter-County Drainage Board be adjourned.

Adopted: YEAS: 4  
NAYS: 0

The meeting was adjourned at approximately 11:20 a.m.

  
\_\_\_\_\_  
Brian Baker, Acting Secretary  
Clinton River Spillway 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  
Clinton River Spillway Inter-County Drainage Board

DATED: 5/23/18

9261.bd

**PRINCIPALS**

Daniel W. Mitchell  
Nancy M.D. Faught  
Keith D. McCormack  
Jesse B. VanDeCreek  
Roland N. Alix  
Michael C. MacDonald  
James F. Burton  
Charles E. Hart

**SENIOR ASSOCIATES**

Gary J. Tressel  
Randal L. Ford  
William R. Davis  
Dennis J. Benoit  
Robert F. DeFrain  
Thomas D. LaCross  
Albert P. Mickalich  
Timothy H. Sullivan  
Thomas G. Maxwell

**ASSOCIATES**

Marvin A. Olane  
Marshall J. Grazioli  
Donna M. Martin  
Colleen L. Hill-Stramsak  
Bradley W. Shepler  
Karyn M. Stickel  
Jane M. Graham  
Todd J. Sneathen  
Aaron A. Uranga  
Salvatore Conigliaro

Spillway:  
June 21, 2018

**NOAA & EPA:**

- Soil erosion measures shall continue to be monitored.
- Post monitoring.
- Additional improvements to off-line pools has been quoted and being evaluated prior to submittal to EPA.
- NOAA Progress Report will be re-submitted.
- East Jefferson area has been re-evaluated.
- Additional improvements to off-line pools has been quoted and being evaluated prior to submittal to NOAA.

Albert Mickalich  
Senior Associate  
Project Manager



Brian Baker &lt;brian.baker@macombgov.org&gt;

---

**Fwd: Eagle project**

1 message

---

**Claudette Wizniuk** <claudette.wizniuk@macombgov.org>

Mon, Jun 4, 2018 at 9:34 AM

To: Jeff Bednar &lt;jeff.bednar@macombgov.org&gt;

Cc: Brian Baker &lt;Brian.Baker@macombgov.org&gt;

Brian has approved putting the Eagle Service Project for Graham Selegan, along the spillway, on the June 27, Chapter 21 Drain Board meeting. I will ask Graham to put together a write up of what the bench will look like and what location at the pier he is suggesting. I will inform him that the meeting is not until the end of this month, so a decision will not be made until then.

----- Forwarded message -----

From: **Jason Bins** <grayham2000@gmail.com>

Date: Sat, Jun 2, 2018 at 5:04 PM

Subject: Eagle project

To: "claudette.wizniuk@macombgov.org" &lt;claudette.wizniuk@macombgov.org&gt;

Greetings, my name is Graham Selegan. I am a member of troop 1407 and a resident of Clinton township. On my quest to achieve the eagle rank I must complete an eagle service project. I am interested in building a bench next to the new pier on the Clinton river spill way. I hear that you are the person to talk to for permission and would like to hear what you think of this idea.

Your constituent, Graham Selegan

--

Claudette Wizniuk

[claudette.wizniuk@macombgov.org](mailto:claudette.wizniuk@macombgov.org)

Environmental Educator

Macomb County Public Works Office

21777 Dunham Road

Clinton Twp, MI 48036

Office Phone (586) 307-8269

Cell Phone (586) 557-3271

PUBLIC WORKS MAIN PHONE (586) 469-5325

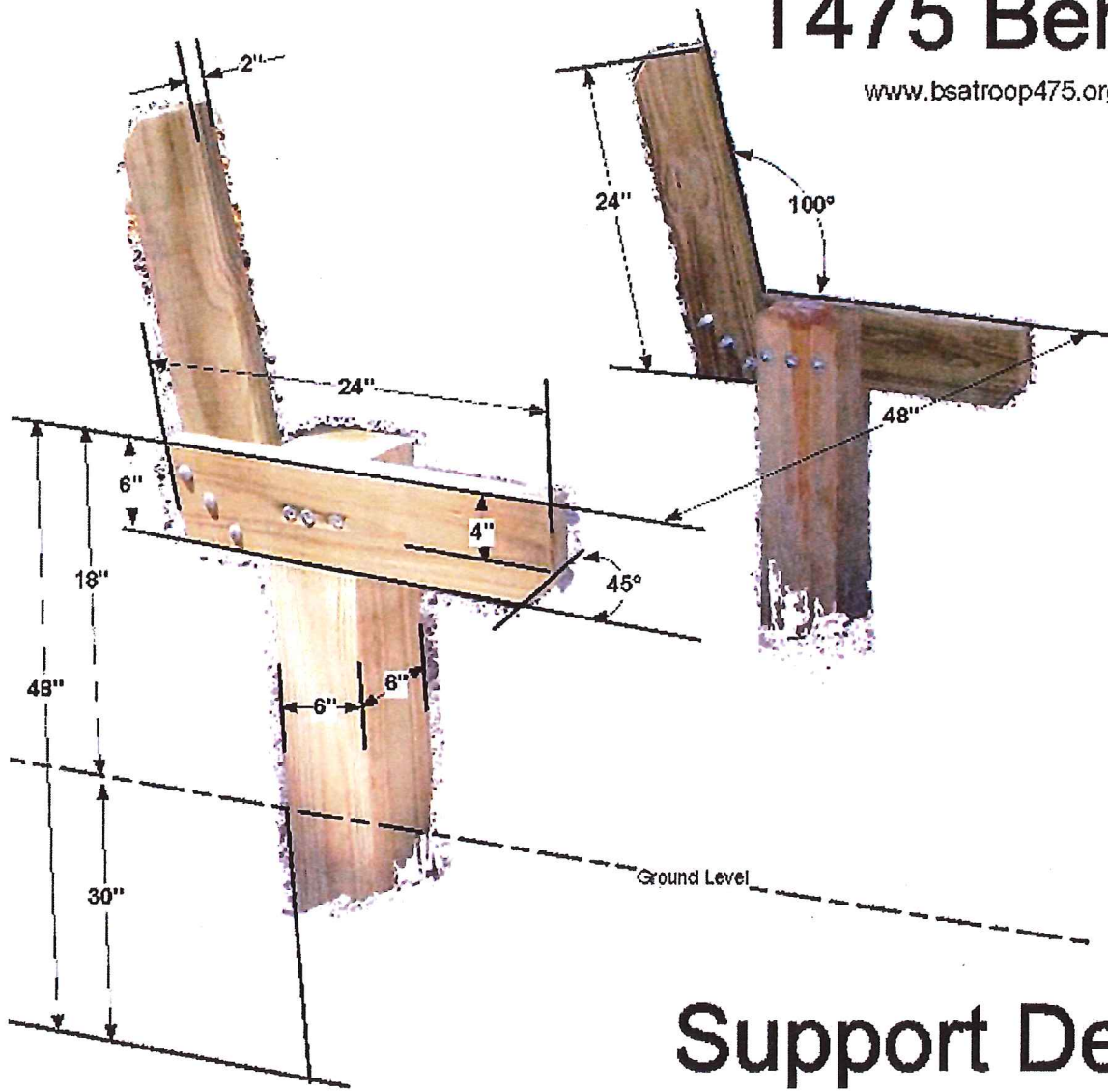
Fax (586) 469-5933

PRIVACY NOTICE: This message is intended only for the individual or entity to which it is addressed. It may contain privileged, confidential information, which is exempt from disclosure under applicable laws. If you are not the intended recipient, please note that you are strictly prohibited from disseminating or distributing this information (other than to the intended recipient) or copying this information. If you have received this communication in error, please notify me immediately by the email address or telephone number listed above. Thank you.



# T475 Bench

[www.bsatroop475.org](http://www.bsatroop475.org)



## Support Detail

# Troop 475 Bench

[www.beatroop475.org](http://www.beatroop475.org)



Quantity	Size	Description
2	6" x 6" x 4'	Posts - Pressure Treated
4	2" x 6" x 2'	Bench Supports - Pressure Treated
6	2" x 6" x 6'	Bench Seat & Back - Pressure Treated
6	3/8" x 7"	Carriage Bolts to Secure Bench Supports to Posts
6	3/8" x 5"	Carriage Bolts for Bench Supports
12	3/8 x 1" Dia	Flatwasher for bolts
12	3/8"	Lockwashers for bolts
12	3/8"	Nuts for bolts
24	1 1/2" #10	Galvanized Wood Screws to Secure Seat & Back to Supports
4	80lb	Bags Quikrete - 2 Bags / Post

## 2018 Lawn Maintenance RFQ Summary & Cost Comparison

A Request for Quotation (RFQ) was published on MITN for Lawn Maintenance at locations identified in Table 2. The RFQ was posted from March 28<sup>th</sup> to April 12<sup>th</sup>, with 39 contractors downloading documents during the posting period. On April 12<sup>th</sup> there were 6 proposals received, which are summarized in Table 1.

The contractors were directed to provide pricing to perform lawn maintenance service from May 1<sup>st</sup> through October 31<sup>st</sup>. Green Meadows Lawnscape is the low bidder for the sites described in the RFQ. However, Green Meadows Lawnscape advised our office that they cannot take on the additional work load this season. As a result, the next lowest bidder, Marino's Landscape located in Shelby Township has accepted the project.

The cost per cut, frequency of cut, season total for each site and each drainage district is illustrated in Table 2 and Table 3.

Table 1

	<b>Contractor</b>	<b>Cost</b>
1	Green Meadows Lawnscape	\$29,785.00
2	Marino's Landscape	\$33,451.00
3	Expert Lawn and Snow	\$37,000.00
4	Premier Group Associates	\$39,675.00
5	Ultimate Lawn Service	\$47,120.00
6	Premier Professional Landscape	\$73,632.00

The total cost for Marino's Landscape to maintain all sites listed in Table 2 is \$30,581. The net difference between Green Meadows Lawnscape and Marino's Landscape is only \$796.00, which is negligible at the cost increase for each drainage district.

## Marino's Landscape Cost Breakdown

Table 2

No.	Drainage District	Name/Location	Cut	Trim	Frequency	# of Cuts	Cost Per Cut	Total Cost for Season
1	Clinton River Spillway	Clinton River Spillway	Yes	No	Twice a Month	13	\$550.00	\$7,150.00
2	Roseville Consolidated	Roseville Consolidated	Yes	No	Twice a Month	13	\$65.00	\$845.00
3	Bridgewood	Bridgewood	Yes	Yes	Twice a Month	13	\$30.00	\$390.00
4	Hildebrandt	Hildebrandt	Yes	Yes	Twice a Month	13	\$135.00	\$1,755.00
5	MIDDD	Sewage Flow Meter Site CH-S-1	Yes	Yes	Twice a Month	13	\$25.00	\$325.00
6	MIDDD	Sewage Flow Meter Site CH-S-2	Yes	No	Twice a Month	13	\$25.00	\$325.00
7	Shanahan Drain	Shanahan Drain Property	Yes	No	Twice a Month	13	\$95.00	\$1,235.00
8	MIDDD	Bio Filter	Yes	Yes	Once a Week	27	\$45.00	\$1,215.00
9	MIDDD	Sewage Meter Facility SY-S-3	Yes	Yes	Twice a Month	13	\$30.00	\$390.00
10	MIDDD	Sewage Meter Facility ST-S-3	Yes	Yes	Twice a Month	13	\$30.00	\$390.00
11	MIDDD	North Gratiot Pump Station	Yes	Yes	Once a Week	27	\$45.00	\$1,215.00
12	MIDDD	Clintondale Pump Station	Yes	Yes	Once a Week	27	\$45.00	\$1,215.00
13	MIDDD	Sewage Flow Meter Site NH-S-1	Yes	Yes	Twice a Month	13	\$30.00	\$390.00
14	MIDDD	ARV Vaults – 23 locations	Yes	Yes	Once a Month	7	\$345.00	\$2,415.00
15	11 ½ Mile Relief	11 ½ Mile Relief Property	Yes	Yes	Twice a Month	13	\$55.00	\$715.00
16	SEMCWDS	Bon Huer Pump Station	Yes	Yes	Once a Week	27	\$30.00	\$810.00
17	SEMCWDS	Violet Pump Station	Yes	Yes	Once a Week	27	\$30.00	\$810.00
18	8 ½ Mile Relief	Chapaton Retention Treatment Basin	Yes	Yes	Once a Week	27	\$275.00	\$7,425.00
19	8 ½ Mile Relief	Vacant Lot on Gaukler Street	Yes	Yes	Once a Week	27	\$28.00	\$756.00
20	Martin Sanitary Diversion	Martin Retention Treatment Basin	Yes	Yes	Once a Week	27	\$30.00	\$810.00

The total cost allocated to the respective drainage districts is summarized in Table 3. The contractor awarded this work would be required to execute a contract with each of the 10 drainage districts.

Table 3

No.	Drainage District	Drain Chapter	Total Cost
1	MIDDD	20	\$7,880.00
2	8 ½ Mile Relief	20	\$8,181.00
3	Martin Sanitary Diversion	20	\$810.00
4	SEMCWDS	342	\$1,620.00
5	Clinton River Spillway	21	\$7,150.00
6	Roseville Consolidated	20	\$845.00
7	Bridgewood	4	\$390.00
8	Hildebrandt	4	\$1,755.00
9	Shanahan Drain	20	\$1,235.00
10	11 ½ Mile Relief	20	\$715.00
<b>TOTAL</b>			<b>\$30,581.00</b>

Table 4 compares the cost incurred during the 2017 season versus 2018 costs for six locations using Marino's Landscape.

Table 4

No.	Drain	2017 Cost Per cut	2018 Cost Per cut	Savings Per cut	Total Savings for Season
1	Clinton River Spillway	\$980.00	\$550.00	\$430.00	\$5,590.00
2	MIDDD ARV Vaults	\$920.00	\$345.00	\$460.00	\$4,025.00
3	Bridgewood	\$520.00	\$30.00	\$490.00	\$6,370.00
4	Hildebrandt	\$520.00	\$135.00	\$385.00	\$5,005.00
5	Roseville Consolidated	\$520.00	\$65.00	\$455.00	\$5,915.00
6	Shanahan Drain	\$520.00	\$95.00	\$425.00	\$5,525.00
<b>TOTAL SAVINGS</b>					<b>\$32,430.00</b>

Further, if we spend a \$15,320 of the \$32,470 savings generated by contracting Marino's Landscape to maintain sites previously maintained by our MIDDD and Chapaton staff, we can redirect our full-time staff to more important and skilled tasks such as cleaning out the Air Relief Valves which we now pay a contractor \$120,000 per year, providing additional savings.

Marino's Landscape is less expensive than hiring part-time seasonal staff to cut grass, as they can cut all of our sites (absent Sterling Relief) for less than \$30,000 per year.

CLINTON RIVER SPILLWAY - 6/27/18

<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>
Clinton River Spillway	Chapter 21						
	EPA Grant (Closing date 12/2018)	Bednar	Hubbell, Roth & Clark, Inc.	\$ 7,969.60	Invoice #0160524 - 5/5/18 Engineering Services - ending 4/7/18	Habitat Restoration Oversight	\$ 1,603,779.89
	EPA Grant (Closing date 12/2018)	Bednar	Hubbell, Roth & Clark, Inc.	\$ 5,314.30	Invoice #0161194 - 5/31/18 Engineering Services - ending 5/19/18	Habitat Restoration Oversight	\$ 1,597,465.59
	NOAA Grant (Closing date 12/2018)	Bednar	Hubbell, Roth & Clark, Inc.	\$ 31,031.01	Invoice #0160525 - 5/5/18 Engineering Services - ending 4/7/18	Habitat Restoration Oversight	\$ 403,243.40
	NOAA Grant (Closing date 12/2018)	Bednar	Hubbell, Roth & Clark, Inc.	\$ 8,781.00	Invoice #0161195 - 5/31/18 Engineering Services - ending 5/19/18	Habitat Restoration Oversight	\$ 394,462.40
<b>Total</b>				<b>\$ 53,095.91</b>			

**YTD Trial Balance**

**Fund: Clinton River Spillway**

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

	<b>O&amp;M Balance 9/30/2017</b>	<b>O&amp;M</b>	<b>TOTAL 5/31/2018</b>
<b>Cash - Operating</b>	254,515	(12,299)	242,216
<b>Accounts Receivable</b>			0
<b>Assets</b>			0
<b>Liabilities</b>		250	250
<b>Revenues</b>		505	505
<b>Expenditures</b>		13,054	13,054
<b>Equity</b>	254,515		241,966

**NOTES**

Remaining balance-NOAA Grant	394,462	
Remaining balance-EPA Grant(Total)	1,234,557	Total shows amount remaining for
Both grants require no match		Partridge Creek, McBride and Spillway projects

Clinton River Spillway  
2008-2018 Expenses

Contractor Payments <sup>1</sup>	\$ 53,315.00
Drain Maint Personnel Expense/Overhead	\$ 39,434.57
Operating Supplies	\$ 519.43
Building & Grounds Repair/Maint	\$ 13,731.67
Engineering <sup>2</sup>	\$ 47,290.45
Attorney	\$ 3,390.90
Publishing	\$ 5,317.09
Utility Expense-Electricity	\$ 3,714.02
Equipment Repair/Maintenance	\$ 1,914.06
Equipment- Rental	\$ 647.50
Land	\$ 3,910.00
Equipment-Other	\$ 478.93
<b>Grand Total</b>	<b>\$ 173,663.62</b>

<sup>1</sup>Majority expense was Clinton River Sink Hole Repair

<sup>2</sup>Majority expense was Apportionment Study



powers and duties of the drain commissioner, under this act, shall be performed by a person or persons designated in accordance with the county's charter.

**History:** Add. 1989, Act 134, Imd. Eff. June 29, 1989.

**Popular name:** Act 40

#### **280.22 Drain commissioner; establishment of office.**

Sec. 22. All commissioners holding such office when this act takes effect shall continue to be such commissioners until their respective successors are elected and qualified in accordance with the provisions of the foregoing section. The majority of the board of county commissioners may establish or reestablish the office of county drain commissioner in counties not having a county drain commissioner by resolution of a majority of members elect.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1970, Act 111, Eff. Apr. 1, 1971.

**Popular name:** Act 40

#### **280.23 Drain commissioner; jurisdiction; drains in more than one county; outlet only in another county.**

Sec. 23. The commissioner shall have jurisdiction over all drains within his county, including those heretofore established and now in process of construction. Drains extending into more than 1 county, or affecting lands in more than 1 county, shall be established and constructed in accordance with the provisions of this act regulating the establishment and construction of drains traversing more than 1 county or affecting lands in more than 1 county. Nothing in this act shall be construed as depriving a drain commissioner of jurisdiction or as making any drain an intercounty drain, merely because a drain extends into another county for the purpose of securing a proper outlet and not for the purpose of draining any lands in the other county: Provided, such extension is approved by the drain commissioners and the board of supervisors of each affected county. The portion of any such drain extending into another county shall not be considered in determining the number of signers required to a petition to locate, establish and construct.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1958, Act 64, Imd. Eff. Apr. 11, 1958.

**Popular name:** Act 40

#### **280.24 Deputy commissioners; appointment; revocation; bond; powers and duties.**

Sec. 24. A commissioner may appoint a deputy or deputies, if the county board of commissioners approves, and may revoke the appointment at pleasure. The appointment shall be made in writing and filed with the clerk of the county. If the commissioner is unable to execute the duties of office, the deputy or deputies shall execute or assist in the execution of the duties of the county drain commissioner assigned by the county drain commissioner. As determined by the county board of commissioners, the deputy or deputies, either shall be covered by a blanket bond or shall file a bond with and to be approved by the commissioner in a sum not to exceed \$5,000.00, conditioned upon the faithful discharge of the deputy's or deputies' duties. If the commissioner dies during his or her term, the deputy commissioner shall have all of the powers and be charged with all of the duties of a commissioner until a commissioner is appointed or elected.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1963, Act 209, Eff. Sept. 6, 1963;—Am. 1978, Act 633, Imd. Eff. Jan. 8, 1979.

**Popular name:** Act 40

#### **280.25 Deputy drain commissioner; liability of commissioner and bondsmen; liability of drainage district; public liability or other insurance.**

Sec. 25. The commissioner and his bondsmen shall be liable for all the acts and defaults of the deputy or deputies when appointed as herein provided. After entry of the order designating drainage districts as provided in section 54 and section 105 of this act, the drainage district as designated shall be responsible for and liable for all acts and defaults of such commissioner and his deputy or deputies, except for acts of malfeasance or misfeasance.

The board of supervisors may adopt resolutions providing that public liability or other insurance may be purchased at the expense of the county to cover such potential liabilities of the various drainage districts under the supervision of the county drain commissioner.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1962, Act 152, Imd. Eff. May 9, 1962.

**Popular name:** Act 40

#### **280.26 Deputy drain commissioner; salary, expenses, reports to drain commissioner.**

Sec. 26. Each deputy commissioner shall receive such salary or compensation as the board of supervisors

**THE DRAIN CODE OF 1956 (EXCERPT)**

**Act 40 of 1956**

CHAPTER 21.

INTERCOUNTY DRAINS; PUBLIC CORPORATIONS.

**280.511 Definitions.**

Sec. 511. Whenever used in this chapter, except when otherwise indicated by the context:

(a) "State" means this state.

(b) "Public corporation" includes this state, counties, cities, villages, townships, metropolitan districts and authorities created by or pursuant to state statutes.

(c) "Agencies" includes those officers, boards, commissions and other bodies created by public corporations or by the federal government, which are authorized to act in their own names.

(d) "Director of agriculture" means the director of the state department of agriculture.

(e) "Intercounty drain" means any drain, irrespective of size, carrying drainage water or sewage originating in more than 1 county, and includes drains located, established and constructed by a county drain commissioner or drainage board, by a city, village or township.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1971, Act 60, Imd. Eff. July 20, 1971.

**Popular name:** Act 40

**280.512 Public health; assessment against public corporations.**

Sec. 512. Intercounty drains which are necessary for the public health may be located, established and constructed under the provisions of this chapter where the cost thereof is to be assessed wholly against public corporations.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956.

**Popular name:** Act 40

**280.513 Petition to locate, establish, and construct intercounty drain; determination; filing and contents of petition; notice; certified copy of resolution; authorizing execution; order of determination.**

Sec. 513. (1) Before filing a petition under this section, the legislative body of a public corporation shall first determine whether the drain project contemplated may necessitate the levy of a special assessment, fee, or charge under section 539. If the legislative body determines that a special assessment, fee, or charge may be made under section 539, before filing a petition under this section, the legislative body shall proceed as prescribed in section 538a.

(2) If it is necessary for the public health to locate, establish, and construct an intercounty drain, a petition for that purpose may be filed with the director of the department of agriculture signed by 2 or more public corporations which will be subject to assessments to pay the cost of the drain. The petition shall state that it is filed pursuant to this chapter and shall describe the location and route of the proposed drain sufficiently to determine with reasonable certainty the areas to be serviced by the drain.

(3) Not more than 20 days after the petition is filed, the director of the department of agriculture shall notify all public corporations in which any of the areas to be drained are located, as described in the petition, that a petition has been filed which may affect drainage in the public corporation.

(4) A certified copy of the resolution of the governing body of each signer authorizing the affixing of the signature of the governing body to the petition shall be attached to the petition. The petition may be filed in more than 1 counterpart. For a petition filed by a county, the county board of commissioners shall authorize the execution, and for a petition filed by the state, the state transportation commission shall authorize the execution of the petition. As provided in section 423, an order of determination of the water resources commission shall also serve as a petition made pursuant to this chapter.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1968, Act 333, Imd. Eff. July 14, 1968;—Am. 1973, Act 208, Imd. Eff. Jan. 11, 1974;—Am. 1979, Act 135, Eff. Mar. 27, 1980.

**Popular name:** Act 40

**280.514 Drainage board; membership; chairperson; appointee; exception.**

Sec. 514. (1) A drainage board is created for each project petitioned for under this chapter. Except as otherwise provided in subsection (3), the drainage board shall consist of the director of the department of agriculture and the drain commissioner of each county involved in the project.

(2) The director of the department of agriculture shall be the chairperson of the drainage board. The

limitation as to rate or amount for the payment of the assessments in anticipation of which bonds are issued, which taxes shall be in addition to any taxes that the public corporation may otherwise be authorized to levy but not more than the rate or amount sufficient therefor.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1959, Act 77, Imd. Eff. June 29, 1959;—Am. 1973, Act 208, Imd. Eff. Jan. 11, 1974.

**Popular name:** Act 40

**280.528 Bonds; issuance; maturity; mandatory redemption; signatures; collection of assessments.**

Sec. 528. The drainage board may issue 1 or more series of bonds for and on behalf of the drainage district, in anticipation of the collection of any or all installments of assessments, and pledge the full faith and credit of the drainage district for the prompt payment of the principal of and interest on the bonds. The bonds shall mature or be subject to mandatory redemption with the last maturity not later than 2 1/2 years after the due date of the last installment of the assessments and there may be more than 1 principal maturity or mandatory redemption date during any 12-month period. The bonds shall be signed by the chairperson and secretary of the drainage board, who shall cause their facsimile signatures to be affixed to the interest coupons attached thereto. Collections of both principal and interest on all installments of assessments in anticipation of which bonds shall have been issued shall be kept in a separate bank account by the treasurer for the drainage board and used for no other purpose than the payment of principal and interest on the bonds until the full payment of the principal and interest on the bonds.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1963, Act 215, Imd. Eff. May 17, 1963;—Am. 2016, Act 27, Imd. Eff. Mar. 1, 2016.

**Popular name:** Act 40

**280.529 Additional assessment; apportionment.**

Sec. 529. If for any reason the original assessments shall not be sufficient to pay the principal and interest on bonds issued in anticipation of the collection thereof, then the drainage board shall make such additional assessments therefor as may be necessary, apportioned as in the first instance, it being the intention hereof that the collections on assessments shall under all circumstances be sufficient to pay said principal and interest.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956.

**Popular name:** Act 40

**280.530 Drainage board; continuation; responsibility; expenses; relinquishment; moneys, disposition; consent.**

Sec. 530. The drainage board for each project shall continue in existence with such changes in personnel as shall result from changes in the offices of director of agriculture and drain commissioners. It shall be responsible for the operation and maintenance of the drain, Any necessary expenses incurred in administration and in the operation and maintenance of the drain and not covered by contract shall be paid by the several public corporations assessed for the cost of the drain. The assessments shall be in the same proportion as the cost of the drain was assessed unless the drainage board establishes a different proportion for the assessments after notice and hearing as provided in section 521. The drainage board, by resolution duly adopted by it, may relinquish jurisdiction and control over any part of a drain or drain project at any time when there is no outstanding indebtedness or contract liability of its drainage district, to the county, township, city or village in which the part of the drain or drain project is wholly located, if the county, township, city or village requests or consents to the relinquishment of jurisdiction and control by resolution duly adopted by its governing body. Indebtedness or contract liability of any drainage district which will be paid in full at the time of consummation of relinquishment of jurisdiction and control shall not be deemed to be outstanding. If relinquishment of jurisdiction and control is to a county, the resolution of the governing body of the county shall specify the county agency, such as board of public works, drain commissioner, board of county road commissioners, or parks and recreation commission, which shall be thereafter responsible for exercise of such jurisdiction and control. Any moneys in the drain fund of any drain, over any part of which jurisdiction and control is relinquished, shall be used to pay any indebtedness or contract liability of its drainage district, and the balance shall be turned over to the county, township, city or village to be used solely with respect to the drain, all or part thereof, over which jurisdiction and control is assumed. If the relinquishment of jurisdiction and control and the turnover of drain fund relates to a part of a drain or drain project, such relinquishment and turnover shall not become effective until consented to by resolution of the governing body of each public corporation which has paid a part of the cost of the drain or drain project, and for this purpose the board of



**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

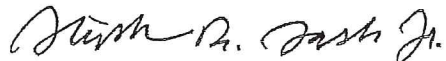
community will extend to the individual drain board member for actions performed on the drainage district's behalf.

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,



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
<b>Total Annual Premium -</b>	<b>70,180</b>

Stephen R. Saph Jr.

**Nickel & Saph, Inc. Insurance Agency**

586-463-4573

586-747-9315 – cell

586-463-3135 – fax

[stephenjr@nickelsaph.com](mailto: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) <sup>1</sup>	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) <sup>2</sup>	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) <sup>1</sup>	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) <sup>2</sup>	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) <sup>1</sup>	\$ 382,198
Sharkey Relief	\$ 650,221
Sharkey Ryan Branches	\$ 15,050
Gibson (St Hgt-Troy) <sup>2</sup>	0
Crapau Creek	\$ 12,794
Richmond-Columbus	\$ 50,454

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

<sup>1</sup>All Red Run mileages and available funds are combined

<sup>2</sup>The 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