

Gregg  
Miller  
Nash

BEAR CREEK  
INTER-COUNTY DRAINAGE BOARD  
MAY 24, 2017  
10:00 a.m.  
AGENDA

1. Call meeting to order and roll call
2. Approval of Agenda
3. Public participation
4. Approval of minutes of meeting of April 26, 2017
5. Consideration of approval of invoices:  

See attached spreadsheet
6. Letter of Engagement – Fahey, Schultz, Burzych, Rhodes, PLC
7. SAW Grant Update – Anderson, Eckstein & Westrick, Inc.
8. Financial Update – Bruce Manning
9. Old Business
10. New Business
11. Adjourn

A meeting of the Inter-County Drainage Board for the **BEAR CREEK DRAIN** was held in the Office of the Macomb County Public Works Commissioner, 21777 Dunham Road, Clinton Township, Michigan on April 26, 2017.

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

Candice Miller, Secretary  
Macomb County Public Works Commissioner

Jim Nash, Member  
Oakland County Water Resources Commissioner

ALSO PRESENT: Brian Baker, Chief Deputy, Karen Czernel, Deputy, Keith Graboske, P.E., Chief Engineer, Dan Heaton, Public Relations Manager, Bruce Manning, Acting Financial Manager, Lynne Seymour, P.E., Environmental Engineer, Barbara Delecke, Administrative Services, Office of Macomb County Public Works Commissioner; Steve Korth, Manager, Anne Vaara, Chief Deputy, Office of Oakland County Water Resources Commissioner; Gordon Wilson, P.E., Sydney Kanan, Graduate Engineer, Anderson, Eckstein & Westrick (AEW)

The Chairman called the meeting to order at 11:07 a.m.

A motion was made by Ms. Miller, supported by Mr. Nash and unanimously carried to approve the agenda as presented.

The minutes of the meeting of March 29, 2017 were presented. A motion was made by Mr. Nash, supported by Ms. Miller and unanimously carried to approve the minutes as presented.

The Chairman presented the invoices totaling \$35,017.90 as provided to the board for review and approval.

Motion was made by Ms. Miller, supported by Mr. Nash to approve the invoices as presented.

AYES: Miller, Nash and Gregg

NAYS: None

Motion approved.

A trial balance sheet for the Bear Creek Drain was presented to the board for review. There is an O&M Balance of \$255,603.07 in the account. There is a remaining balance on the SAW Grant of \$135,015.00. A summary of cash balances for all Bear Creek Drains was provided as part of the report. The use of the money is dependent on the origin of the various projects in terms of the petition process and under what jurisdiction the board undertook those activities to collect revenues which will then determine how you can utilize the money today. Steps will have to be taken to change that policy. Once the asset management plan is completed, there should be a better understanding of what the needs are and what portion of the money is available to address these needs. Mr. Gregg felt that having the fund reserve in place was a wise use in the event of a catastrophic failure needing immediate action.

A motion to receive and file the Bear Creek Trial Balance, dated October 1, 2016 – March 31, 2017 as submitted was made by Mr. Nash, supported by Ms. Miller.

AYES: Nash, Miller and Gregg

NAYS: None

Motion approved.

Ms. Kanan, Anderson, Eckstein & Westrick, Inc. (AEW) provided an update on the asset management plan. The deliverables are being compiled on structural assets and stormwater management. There were some pipes that could not be CCTV'd because of debris. Doetsch was hired to clean the pipes and re-TV them for a better condition assessment. A verbal confirmation was given that there are no structural deficiencies. Approximately \$500,000 in repairs have been recommended based on the asset management plan, which traverses from Dequindre to Mound. The ratings are based on structural and operation and maintenance. On the rating scale, a 5 means failure or failure likely; a 4 is failure within the next 10 years. There were a couple of 4's and 5's found, but are isolated and not considered to be immediate catastrophic failures. There is one 36-inch culvert that has dropped creating a 4-foot differential in grade where it flows into the drain. Cost to repair the culvert is approximately \$45,000. Ms. Seymour provided an update with pictures. More perspective digitally and with location will be provided. There is 8 ½ miles of enclosed drain and approximately 2 miles of open drain. Ms. Seymour clarified that stormwater SAW grants do not require implementation of corrections within a specified time period. If applying for a design grant, then you are required to follow through with implementation. Mr. Gregg informed the Board that the report provides evidence of maintenance activities or deficiencies that should there be a failure that results in a P.A. 222 claim, the drainage district would be liable. There is a compelling reason to undertake the recommended actions. Mr. Gregg reiterated that the issue of whether or not there are really five different drainage districts or is it just one drain needs to be resolved. This will give a better picture of what the financial assets are so that some of the deficiencies can be addressed. This SAW Grant simply states that you understand your system, you understand the deficiencies in the system and have a financing mechanism in place that can take corrective measures. Specific locations of needed repairs will be available, but not specific to a drainage district.

A motion to receive and file the Anderson, Eckstein & Westrick, Inc. report was made by Ms. Miller, supported by Mr. Nash.

AYES: Miller, Nash, Gregg

NAYS: None

Motion approved.

A motion was made by Ms. Miller, supported by Mr. Nash to have Candice Miller sign the Certification of Project Completeness on behalf of the Bear Creek Inter-County Drainage Board for submittal to the Michigan Department of Environmental Quality.

AYES: Miller, Nash, Gregg

NAYS: None

Motion approved.

Ms. Seymour provided a memorandum explaining the location of the Bear Creek Enclosure. Oakland and Macomb Counties are working together to figure where each of the five inter-county drains are located. The Bear Creek Drain was established in 1955. In 1960, the City of Warren petitioned the Bear Creek Inter-County Drain Board to enclose a portion of the Bear

Creek Drain. This enclosure is where the Bear Creek Enclosure Drain exists today from Dequindre to Mound Road. It is not clear why this portion of the drain became a separate drainage district. The assessments are very similar, but separate. If the Bear Creek Enclosure is part of the Bear Creek Drain, then the \$700,000 fund balance could be used for the entire district. Mr. Korth suggested hiring a legal expert in the drain code to make a determination to the Board which would help decide how to handle the funding. There is another drain called the Bear Creek 12 Mile Enclosure, which has its own separate set of apportionments. There is also a Bear Creek – GM Enclosure, which does not have a history of apportionments. The drainage district was a fiduciary for a project for General Motors to enclose a portion of the drain. General Motors gave the drainage board \$500,000 for the project. Mr. Korth was unable to find anything on the Bear Creek – Warren Branches. AEW has determined that most of the repairs needed are in the Bear Creek Enclosure. It is imperative that the drainage districts be sorted out because of the liability in a highly urbanized area if flooding or another catastrophic event should occur. The funds would have to be declared surplus before they could be used on repair projects. Accountability would have to be provided to the City of Warren as to why and where the monies are being spent. In order to begin some of the repairs, a separate services agreement would be entered into with AEW. AEW will provide an engineering proposal for the next meeting on the Bear Creek Enclosure. Oakland County has a blanket contract with Fahey, Schultz for legal counsel on drain code matters. They are considered experts in the field of drain code law. Woodworth & Associates is another legal firm capable of performing this work.

A motion to authorize Anderson, Eckstein & Westrick, Inc. to work with Oakland and Macomb Counties to provide a recommendation on a scope of work for the Board's consideration under the Bear Creek Enclosure was made by Ms. Miller, supported by Mr. Nash.

AYES: Miller, Nash, Gregg  
NAYS: None  
Motion approved.

Cost estimates will be obtained from Fahey, Schultz, Burzych, Rhodes, PLC and Woodworth & Associates to get a legal opinion on the five separate drainage districts.

A motion to engage legal counsel to determine actual drainage district boundaries was made by Ms. Miller, supported by Mr. Nash.

AYES: Miller, Nash, Gregg  
NAYS: None  
Motion approved.

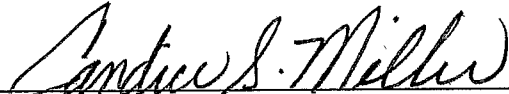
The next meeting was scheduled for May 24, 2017.

There being no further business coming before the Board, the meeting was adjourned at 12:05 p.m. by Mr. Gregg on a motion by Mr. Nash, supported by Ms. Miller and unanimously approved.

  
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Candice Miller, Secretary  
Bear Creek 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 April 26, 2017, 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.

  
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Candice Miller Secretary  
Bear Creek Inter-County Drainage Board

DATED: 5/9/17

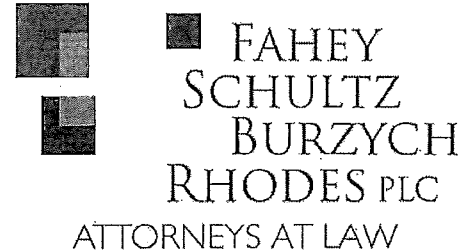
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Bear Creek Drain - 5/24/17

<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>
Bear Creek	Chapter 21 SAW Grant 1407-01	Seymour	Anderson, Eckstein & Westrick, Inc.	\$ 27,673.00	Invoice #0113641 -4/19/17 Engineering Services - 3/6/17 - 4/2/17	Engineering Oversight, Manhole/CB Inspections, GIS Mapping/Surveying, CCTV Coordination	\$ 34,528.32
	SAW Grant 1407-01	Seymour	Fishbeck, Thompson, Carr & Huber, Inc.	\$ 3,400.00	Invoice #366736 - 5/3/17 Engineering Services - ending 4/21/17	Bear Creek SAW Grant oversight	
<b>Total</b>				\$ 31,073.00			

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May 11, 2017

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

Dear Mr. Gregg:

***Re: Representation regarding Bear Creek Intercounty Drain***

We are pleased that you have contacted us to represent the Bear Creek Intercounty Drain. This engagement letter is to confirm our representation of your interests. This letter serves as an agreement about the nature and scope of our relationship for this matter. Our representation will officially commence and we will serve as your counsel for this matter when we are in receipt of a copy of this letter signed by you.

The firm is dedicated to the highest ethical standards. Although I do not believe that your interests are directly adverse to interests of another client, if such circumstances were to arise, the firm could withdraw from representing you. The firm also may represent existing or new clients in any matter that is not substantially related to our work for you.

We will hold strictly confidential all sensitive or proprietary information you give us during the course of our dealings. We will not reveal your confidences or secrets without your consent. If the firm, through its representation of you, obtains confidential information that conceivably could be used by another client to your material disadvantage, we may withdraw from representing you or that other client in order to avoid a conflict of interest.

Our responsibility in representing you is, of course, to do so in a manner that is consistent with the customary professional practices and requirements for handling matters of this sort. In turn, we will need your full and timely cooperation. This will likely include providing us with written materials relating to the matter for which you are retaining us.

The firm and I will pursue this matter on your behalf conscientiously and without delay, but with regard for the firm's workload and the nature of the legal system. I will keep you reasonably informed about the status of this matter, and I welcome requests for information at any time.

We hope to establish a mutually rewarding and enduring relationship with you, and hope that, in the end, you will be pleased with our service. Nevertheless, you are free to terminate our services at any time by written notice to us to that effect. We may also terminate our services to you by written notice to that effect if you unreasonably fail to cooperate with us, if you fail to pay our invoices in a timely manner, or if we determine that our continued representation of you would

Michael Gregg  
Michigan Department of Agriculture  
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violate the rules of professional responsibility applicable to lawyers or would otherwise be impractical. Clearly, I do not expect any of that to be the case, however.

In the interest of assuring that you are fully aware of our anticipated services and how you will be charged for these services, our services will be rendered on an as-needed hourly basis. Although our standard hourly rates range from \$100 to \$310, depending on qualifications, experience and expertise, for the Bear Creek Intercounty Drain we currently cap our hourly rates at \$220 per hour. In other words, if the timekeeper's standard rate is less than \$220, you receive the lower rate, but if their standard rate is more than \$220, you will not be billed more than \$220 per hour. This rate cap may be revised from time to time with 30 days' prior written notice you. We will also bill you and you will be required to pay any cost items we incur in your representation. Invoices not paid within sixty (60) days will be charged interest of 1% per month from the date of the invoice.

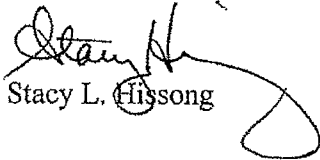
At the conclusion of this matter, we will retain your legal files for a period of seven (7) years after we close our file. At the expiration of the 7-year period, we will destroy these files unless you notify us in writing that you wish to take possession of them. We reserve the right to charge administrative fees and costs associated with researching, retrieving, copying, and delivering such files.

Although this letter is intended to deal with the captioned matter, it will also govern any other legal services that you may request in the future, unless we mutually agree in writing to a different arrangement with respect to future matters. To the extent we can help you in some other way, we would be happy to do so.

Should you have any questions about this letter, please do not hesitate to call me. If you agree with the above, please sign and return this letter so we can officially begin to represent your interests. I look forward to working with you.

Very truly yours,

FAHEY SCHULTZ BURZYCH RHODES PLC

  
Stacy L. Hissong

AGREED:

By: \_\_\_\_\_  
Michael Gregg, Chairman  
Bear Creek Intercounty Drain  
Drainage Board

Dated: \_\_\_\_\_, 2017



**YTD Trial Balance**

**Fund: Bear Creek**

**As of Fiscal Period: Oct 1, 2016-Apr 30, 2017**

	O&M Balance 9/30/2016	O&M	Total 4/30/2017
Cash - Operating <sup>(1)</sup>	250,354.35	5,281.06	255,635.41
Accounts Receivable			0.00
Assets			0.00
Liabilities			0.00
Revenues		5,281.06	5,281.06
Expenditures			0.00
Equity	250,354.35		255,635.41
	0.00		0.00

**NOTES**

1) O&M cash balance reflects the 10% match required for the grant

Remaining Balance-SAW 1407-01      103,499.00

<b>OTHER BEAR CREEK AVAILABLE CASH BALANCES</b>	<b>4/30/2017</b>
Bear Creek Enclosure	810,519.73
Bear Creek GM Enclosure	3,135.83
Bear Creek Warren Branches	120,456.56
Bear Creek Warren Branches #2	134,191.50
<b>TOTAL ALL BEAR CREEK</b>	<b>1,323,939.03</b>