

**MILK RIVER INTERCOUNTY DRAIN DRAINAGE DISTRICT
DRAINAGE BOARD MEETING MINUTES
DECEMBER 19, 2019**

A meeting of the Milk River Intercounty Drain Drainage Board was held on Thursday, December 19, 2019, at the St. Clair Shores City Hall, Geer Conference Room, located at 27600 Jefferson Avenue, St. Clair Shores, Michigan 48081.

Members Present

Michael R. Gregg, Chair, Michigan Dept. of Agriculture & Rural Development, State of Michigan
Elmeka N. Steele, Esq., Wayne County Drain Commissioner, Wayne County
Bryan Babcock, P.E., Director of Public Works/Water, City of St. Clair Shores
Brian Baker, Chief Deputy, Public Works Office, Macomb County
Joe Rheker, City Manager, City of Harper Woods

Others Present

Kyle Seidel, Anderson, Eckstein and Westrick
Brett McDonald, Southeast Macomb Sanitary District
Lori Hicks, Southeast Macomb Sanitary District
Bruce Smith, City of Grosse Pointe Woods
Frank Schulte, City of Grosse Pointe Woods
John Brennan, Fahey, Schultz, Burzych & Rhodes
Elizabeth Barrera, Wayne County
Greg Tupancy, Wayne County
Russ Strassburg, Tetra Tech
Joseph Colaianne, Clark Hill

1. Call to Order

Mr. Gregg called the meeting to order at 10:13 a.m.

2. Approval of Agenda

Ms. Steele moved to approve the agenda with the addition to add to New Business: (c) Discussion of Title Transfer for the 2014 Ford Transit Connect Van from Wayne County to SEMSD, (d) Discussion of Harper Woods Litigation, and (e) Discussion/Approval of Tetra Tech 2020 Engineering Services Contract; and add Closed Session as item number 10. The motion was supported by Mr. Babcock. Motion adopted.

3. Approval of the Minutes for November 21, 2019, Milk River Intercounty Drain Drainage Board Meeting

Mr. Baker moved to approve the November 21, 2019, minutes of Milk River Intercounty Drain Drainage District Board Meeting. The motion was supported by Mr. Babcock. Motion adopted.

4. Reports

a. Operations and Maintenance (O&M)

The Operations and Maintenance (O&M) update was presented by Kyle Seidel and Brett McDonald. Mr. Seidel presented a Revised Administrative Consent Order (ACO 000114) reflecting new milestone dates and completion dates under ACO Amendment 1. Mr. Seidel suggested the dates be reviewed and emailed to EGLE for their records.

Mr. Tupancy commented that the dates have not been approved yet. This is part of Tetra Tech's contract and they agreed to update Dennis Ryan, EGLE.

Mr. McDonald commented that there is an annual update to the Milk River Operation and Maintenance Plan due at the end of the calendar year to EGLE. This update has not been done at this point. The 2019 Discharge Summary Report is due to EGLE by January 10, 2020. He reported that there have been no discharges since the last Board Meeting. SEMSD has been working on household cleaning and regular maintenance duties. Mr. McDonald will be working with the contractor to temporarily lower Milk River to perform work on aeration flow.

Mr. Gregg asked if there have been any resident complaints.

Mr. McDonald contacted the larger residents (i.e., the Ford House) regarding lowering the Milk River water level and there have been no residential complaints to date.

Mr. Babcock commented that there have been no complaints from the SCS residents along the Milk River.

Mr. Seidel reviewed next summer's Lake St. Clair water level projections.

Mr. Babcock moved to receive and file the Operations and Maintenance Report. The motion was supported by Ms. Steele. Motion adopted.

b. Priority 1B and Select Improvements Project – Construction Update

The Drainage District Board received a financial report of available funds for the construction account from Elizabeth Barrera, Deputy Wayne County Drain Commissioner. She commented that there is a balance of \$2,986,957.00 in the construction account which includes pre-funding and the collection of supplemental funding on the budget.

Mr. Tupancy commented that Spence Brothers received the insurance report from the failure of the basin temporary wall and are reviewing the report now. The damage was larger than anticipated and approximately 80% of the wall needs to be replaced. There has been one resident complaint regarding the noise but the contractor is working within their allowable timeframe. There has been miscellaneous work done, such as handrails along the basin, and transfer of pumps from the old electrical system to the new electrical system.

Mr. Strassburg commented that one pump is already out of service and when they move the other pump to the new electrical system, they will have two pumps out at the same time.

Mr. McDonald commented that SEMSD will need to have an increased presence and awareness onsite since the SCADA system will not be working during the electrical transition.

Mr. Baker asked when Basin Two will be repaired.

Mr. Seidel replied that they were waiting to review the insurance report before the contractor will begin repairs.

Mr. Gregg asked if the Drainage Board will receive a copy of the report.

Ms. Steele believes that under the contract, the Board would have a right to receive a copy of the insurance report.

Mr. Tupancy reviewed the Engineering Services and Construction Contract Status Report as of December 11, 2019, as well as the Summary of SRF Loan Costs Reports.

Mr. Baker asked if there is a projection of how much additional money is needed from the communities. He also requested a summary every month of potential increases.

Mr. Tupancy replied that he can provide a monthly summary.

Mr. Gregg asked about pay item number 95, Drilled Pier Obstruction Claim listed on the report.

Mr. Tupancy replied that the pay item number 95 claim was due to debris found at the Recirculation Station while boring down. The credit on pay item number 102 is from a markup of sales tax, which was incorrect.

Mr. Smith asked how many more pumps still need to be done.

Mr. Tupancy replied that there are two more pumps after the current pump is completed.

Mr. Rheker moved to receive and file the Construction Reports. The motion was supported by Mr. Baker. Motion adopted.

5. New Business

a. Discussion of Notice of 2020 Drainage Board Meetings

Mr. Gregg commented that there is a conflict with the January 16, 2020, Drainage Board Meeting and asked if the meeting could be moved to January 17, 2020, at 1:00 p.m.

The Board Members agreed to hold the January meeting on January 17, 2020, at 1:00 p.m.

Mr. Gregg asked Ms. Hicks to prepare a list of 2020 Board Meeting dates for review at the January 17, 2020, Drainage Board meeting.

b. Milk River Hydraulic Modeling Proposals

Mr. Gregg distributed the AEW and Tetra Tech Hydraulic Modeling proposals to the Board Members.

Mr. Seidel reviewed the AEW hydraulic modeling proposal which was separated by the survey quote and the modeling, reporting and mapping quote. Also included in the quote was a survey to be completed (if requested) after the completion of the hydraulic model and mapping to refine the potential flooding locations.

Mr. Strassburg introduced Justin Voss, Tetra Tech Senior Hydraulics Engineer, who gave an overview of the Tetra Tech Hydraulic Modeling Engineering Services proposal. This proposal includes an individual to go out and evaluate the site. A variety of lake levels and pumping situations could be run through the model when complete.

Mr. Babcock is concerned that if the weir is extending for the Retention Treatment Basin, would the upstream communities have a problem.

Mr. Voss responded that should not impact the communities upstream.

Mr. McDonald commented that next year, Milk River will be down one to two pumps and the modeling could show peak lake levels utilizing six pumps, five, or four, etc. If the opening is not large enough to outlet into the river, the Retention Treatment Basin could become a pressurized system.

Mr. Gregg asked Ms. Barrera how the Board would fund this hydraulic modeling project.

Ms. Barrera replied that there is \$341,000 in a reserve account that could be utilized.

Mr. Baker asked if Tetra Tech was offering more services than AEW in the proposals.

Mr. Seidel replied that he is a Michigan Certified Flood Plain Manager and will go out to physically survey the bridges and openings, and then map it out. Once it is mapped, different scenarios could then be run.

Mr. Babcock commented that there is a benefit to having an individual who operates the station readily available during an emergency (i.e., Brett, Brent, or Kyle at the SEMSD office).

Mr. Gregg asked if a report will be prepared for the model findings.

Mr. Seidel replied that a report of the model findings, mapping of the various flooding events and recommend preventative flooding countermeasure options would be prepared.

Mr. Babcock moved to proceed with Phase 1 of the AEW Milk River Hydraulic Modeling Study Proposal. The motion was supported by Mr. Rheker. Motion adopted.

Mr. Gregg asked Mr. Seidel how long it would take to complete Phase 1.

Mr. Seidel replied that he should have a preliminary report in March 2020 and will bring updates if the lake levels continue to rise.

c. Discussion of Transfer of Vehicle Title for 2014 Ford Transit Connect Van

Mr. McDonald commented that Wayne County utilized a 2014 Ford Transit Connect Van for Milk River. SEMSD now has the van and Mr. McDonald would like to add it to the insurance so it can be utilized at Milk River.

Ms. Steele asked since SEMSD is now operating Milk River, should Wayne County transfer the title so it is owned and maintained by SEMSD. The process is simple and the title can be transferred quickly.

Mr. Gregg asked if the maintenance of the van would be included in the operation and maintenance charges.

Mr. McDonald replied that if SEMSD owns the van for use at Milk River, he suggested it be included in the SEMSD budget.

Mr. Rheker asked if the van was originally purchased with Drainage funds, why would the Cities be charged again.

Ms. Steele replied that the liability would be under SEMSD if it is owned by SEMSD. She believes this is the best option in regard to liability.

Mr. Brennan commented that if the van transfers to the Drainage Board, the Board would need to update insurance and assume liability. He suggested a standalone agreement with SEMSD outlining what would happen if the van is sold, disposed of, traded in, etc.

Mr. Seidel suggested that the van be included in the SEMSD fleet.

Ms. Steele suggested finding out what the van is worth today and show it as a credit against the fleet services O&M charge. Wayne County could also auction off the van and credit the Board.

Mr. McDonald commented that SEMSD would like the van since it is needed.

Ms. Steele suggested presenting the value of the van at the January Drainage Board meeting.

Ms. Steele moved that the value of the 2014 Ford Transit Connect Van be presented, reviewed, and if there is an agreed-upon price be approved to transfer the vehicle title from Wayne County to SEMSD at the January 17, 2020, Drainage Board Meeting. The motion was supported by Mr. Rheker. Motion adopted.

d. Harper Woods Litigation Update

Mr. Joseph Colaianne, Clark Hill Attorney for Harper Woods, gave an overview of the Harper Woods litigation alleging the stormwater utility fee is an illegal tax. Mr. Colaianne commented they did not win the last court case but are planning to appeal the decision.

e. Review of 2020 Engineering Services Contract

Mr. Strassburg presented the 2020 Tetra Tech Engineering Services Contract for review and approval. The budget numbers include an increase in staff salaries.

Mr. Baker asked what is the percentage for the staff increase.

Mr. Strassburg replied that it is 3.5% across the board. The work is billed on a time and material basis.

Mr. Rheker moved to approve the 2020 Tetra Tech Engineering Services Contract as amended. The motion was supported by Ms. Steele. Motion adopted.

6. Unfinished Business

a. Proposed Work Plan to be Submitted to EGLE

Mr. Strassburg spoke to Dennis Ryan, EGLE, who would like a letter outlining a work plan on how to get the hydraulic profiles up to date. It was decided that SEMSD should respond and Mr. Strassburg will work with Mr. McDonald to prepare a draft response to EGLE.

7. Approval of the SEMSD Operations and Maintenance Invoice

The SEMSD Operations and Maintenance (O&M) Invoice for November 2019 was reviewed. The November 2019 O&M 11-2019 invoice totaled \$51,985.75. The total amount billed included November's O&M invoice and the reimbursable pass-through costs.

Mr. Baker moved to authorize the payment of SEMSD Invoice O&M 11-2019. The motion was supported by Mr. Rheker. Motion adopted.

8. Public Comment

None

9. Next Drainage Board Meeting

The next regularly scheduled meeting is Friday, January 17, 2020, at 1:00 p.m. located at St. Clair Shores City Hall, Geer Conference Room, 27600 Jefferson Avenue, St. Clair Shores, MI 48081.

10. Mediation Update

Mr. Brennan gave a brief overview of the last mediation session regarding general condition costs. Spence Brothers presented a proposal with completion dates for non-pump work, which is October 15, 2020, and they would claim approximately \$1.4 million in general condition costs. They discussed how much of the delay was in their wheelhouse, however, there was not much agreement on this topic. Spence's legal position has been that there was a substantial completion date in the contract. The pump owners made it impossible for them to meet that date, and that date refers to the entire system; all the work. They believe they are not in breach of the contract for that purpose since the pump motors are part of the critical path. The Boards' position has been that they must mitigate their damages.

Mr. Brennan prepared a written attorney opinion letter to be reviewed by the Drainage Board. He recommended entering closed session for the purposes under Section 8 of the Open Meetings Act, including 8(h), for the purpose of continued discussion of the confidential written opinion of legal counsel.

Mr. Baker moved to enter closed session. The motion was supported by Ms. Steele. A roll call vote of the Drainage District Board to enter closed session was as follows:

Mr. Gregg:	Yes
Ms. Steele:	Yes
Mr. Babcock:	Yes
Mr. Rheker:	Yes
Mr. Baker:	Yes

Motion adopted. A closed session began at 12:13 p.m. and ended at 12:56 p.m.

11. Adjournment

Mr. Rheker moved to adjourn the meeting. The motion was supported by Ms. Steele. Motion adopted.

There was no further discussion to come before the Drainage Board. The meeting was adjourned at 12:57 p.m.

Brian Baker, Chief Deputy Macomb County Public Works Commissioner

NOTE: The foregoing minutes are subject to Milk River Intercounty Drain Drainage Board approval.