

Options for Local Government Funding of Water Quality Activities

April 2003

SEMCOG . . . Local Governments Advancing Southeast Michigan

Mission

SEMCOG's mission is solving regional planning problems — improving the efficiency and effectiveness of the region's local governments as well as the quality of life in Southeast Michigan. Essential functions are:

- providing a forum for addressing issues which extend beyond individual governmental boundaries by fostering collaborative regional planning, and
- facilitating intergovernmental relations among local governments and state and federal agencies.

As a regional planning partnership in Southeast Michigan, SEMCOG is accountable to local governments who join as members. Membership is open to all counties, cities, villages, townships, intermediate school districts, and community colleges in Livingston, Macomb, Monroe, Oakland, St. Clair, Washtenaw, and Wayne Counties.

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SEMCOG's principle activities support local planning through use of SEMCOG's technical, data, and intergovernmental resources. In collaboration with local governments, SEMCOG has responsibility for adopting regionwide plans and policies for community and economic development, water and air quality, land use, and transportation, including approval of state and federal transportation projects. Funding for SEMCOG is provided by federal and state grants, contracts, and membership fees.

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Prior to policy adoption, technical advisory councils provide the structure for gaining input on transportation, environment, community and economic development, data analysis, and education. This deliberative process includes broad-based representation from local governments, the business community, environmental organizations, and other special interest citizen groups.

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Abstract

This report summarizes the types of local water quality programs in need of funding, the options available for raising the locally derived revenue, and some advantages and disadvantages for local officials to consider. Users of this report include local elected officials and local government agencies responsible for water quality management and subwatershed planning groups.

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This report is intended to provide local governments with general information regarding many (not all) alternatives for funding local water quality activities. It is not legal advice or an endorsement of any particular funding alternative. Users of this report need to consult with their legal and financial advisors as part of evaluating options prior to implementing any funding mechanism.

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Purpose

The first 20 years of laws and rules requiring local government implementation of programs to improve water quality were accompanied by massive state and federal funding support. This funding support was a key to program implementation and water quality improvement. It provided municipalities the ability to implement expensive programs (mostly sanitary sewer collection and treatment infrastructure) to comply with an iteratively expanding list of laws and rules.

Now, new federal and state laws and rules are rarely accompanied with money to help support implementation. In fact, funding support has steadily declined and consistent efforts to reverse that trend have met with little to no success.

At the same time funding has declined, demands placed on local governments to meet new requirements are increasing. Municipalities are faced with meeting new and expanded mandates independent of state and federal assistance forcing them to develop long-term, stable sources of locally derived revenue. A key question is: “what is the best mechanism(s) for raising that locally derived revenue.” Local officials need good information on their range of choices to assist them in answering that question as part of the decision making process.

Thus, the primary purpose of this report is to identify and describe the various choices available to municipalities for funding water quality activities. The information in this report is not exhaustive. The focus is on the enabling statutory provisions most likely to be used. While many communities are likely to focus on programs related to the new regulations for addressing pollution from storm water, the information in this report includes other water quality initiatives.

Introduction

Thirty years after the adoption of the Clean Water Act we have seen significant improvements in water quality across the country and in Southeast Michigan. These earlier achievements are primarily the result of controls placed on point source discharges through National Pollutant Discharge Elimination System (NPDES) permits. There are still significant needs with regard to sanitary sewer systems, particularly aging systems experiencing sanitary sewer overflows. And, pending Capacity, Management, Operation, and Maintenance regulations will, in all likelihood, require municipal sewer systems to fund additional maintenance and rehabilitation programs.

In recent years there has also been an acknowledgment that control of point sources alone will not bring about the water quality improvements and protection needed to reach Clean Water Act goals. As a result, regulatory emphasis has been shifting to controlling nonpoint sources of pollution, including storm water runoff. The *Water Quality Management Plan for Southeast Michigan* recommends that municipalities participate in locally driven watershed management planning efforts as a means of cooperatively and efficiently addressing nonpoint/storm water pollution problems within their jurisdictions.

The most obvious example of the need for new locally derived revenue is for the approximately 170 municipalities in Southeast Michigan that are now required to comply with the new Phase II Storm Water permit program. Compliance with this new permit program requires that local governments develop and implement a range of new water quality protection programs. Some of these programs may not entail significant expenditures on the part of local governments (i.e., amendments to existing ordinances or adding public education materials to an existing web site). However, other programs, such as illicit discharge elimination programs, could require a major new financial commitment. In many cases, if not most, existing program and staff resources are not likely to be sufficient to meet the funding needs.

The remainder of this report focuses on summarizing the types of programs in need of funding, the options available for raising the locally derived revenue, and some advantages and disadvantages for local officials to consider. It should be noted that the list of advantages and disadvantages is intended to represent the range of perspectives likely to be expressed and need to be considered in the evaluation phase. It does not represent any value judgment by SEMCOG or others that assisted in preparation of this report. Local governments need to seek advice from consultants, legal, and financial advisors in evaluating options as part of the decision making process.

It is clear that there is a growing tension between the costs of water quality programs which local governments are obliged to provide and the legal authority to adequately and reliably raise money to pay for those costs. More frequently than ever, local governments are being required to develop and implement new and expanded regulatory programs. Yet, the funding needed to do so seldom accompanies the regulatory mandate. State legislative action to provide additional authority for funding mechanisms may be appropriate. Likewise, judicial clarification of current issues over the means of implementing certain funding mechanisms is desirable. These issues are beyond this report's scope, though they are relevant public policy concerns.

Water Quality Activities: What Needs To Be Paid For?

Local governments are now faced with implementing a wide range of water quality activities. While many of these are related to compliance with the new Phase II Storm Water NPDES Permit¹ program, others, such as total maximum daily loads (TMDLs), are not. With the recognition that land use activities directly impact water quality, local governments in Michigan are now faced with a broad range of new water quality responsibilities, particularly those communities that are experiencing significant development pressure.

For purposes of this report, the different water quality activities likely to be undertaken by local governments are grouped into two categories: 1) planning and program implementation activities and 2) capital projects. The first category includes activities such as development of a watershed or storm water management plan and implementation of non-capital programs (e.g. public education programs and ordinance development and enforcement). Planning and program implementation activities are on-going in nature, and, for the most part, do not require the outlay of large financial resources. Nonetheless, they do require a commitment to long-term, stable sources of funding. Capital projects, on the other hand, are usually short-term construction projects that often require borrowing and a long-term commitment of dedicated funding to repay the loan.

Planning and Program Implementation Activities

Many of the water quality activities that municipalities are now undertaking go beyond the technical and financial capability of individual communities. Additionally, there are significant cost efficiencies that may be realized by developing programs that meet the need of several communities instead of a collection of independent programs. Therefore, many Southeast Michigan municipalities are opting to participate in locally driven watershed initiatives. This is particularly true with those municipalities that are included in the Storm Water Phase II permit program. This requires that they work closely with other communities, usually in subwatershed groups. While this may provide for cost efficiencies in many planning and program implementation activities, there will still be new financial obligations associated with compliance. For example, while sharing the cost of developing specific public education materials with other communities can provide a savings, there will still be printing and distribution costs incurred by individual municipalities.

Municipalities that choose the jurisdictional permit option to comply with the Storm Water Phase II requirements are not be required to prepare a watershed plan. However, they are required to develop a storm water management plan that incorporates the Storm Water Phase II six minimum measures. These include: public education, public involvement & participation, illicit discharge detection and elimination,

¹ Michigan communities have two permit options available to meet the federal Phase II requirements, jurisdictional and watershed-based permits. Under the jurisdictional permit, the community must develop a Storm Water Management Plan (SWMP) that contains six minimum measures. The watershed-based permit addresses the same basic requirements as the jurisdictional permit option, but provides greater flexibility in how these basic requirements are selected and implemented. The watershed-based permit also requires cooperative interaction with other public bodies outside the permittee's jurisdiction. This cooperative approach is designed to accomplish storm water quality improvements watershed-wide, and provides an added benefit of cost sharing for some storm water controls.

construction site runoff control, post-construction storm water management, and pollution prevention and good housekeeping².

Regardless of which permit option they choose (watershed or jurisdictional), municipalities may find it advantageous to contract with other government agencies for specific planning and program implementation activities. For example, the county public works department, health department, or drain office may provide on-site septic inspections or an illicit discharge detection program.

Examples of additional water quality planning and program implementation activities that may require new funding include:

- Ordinance review, adoption, and enforcement,
- Revisions to Master Plans,
- Operation and maintenance of water quality infrastructure,
- Water quality monitoring,
- Illicit discharge detection and elimination programs,
- On-site sewage disposal system inspections,
- Public education programs for residents and businesses,
- Soil erosion and bank stabilization programs, and
- Catch basin cleaning and street sweeping.

Capital Projects

Capital projects to address water quality concerns, such as extension of sanitary sewer service or the construction of septage receiving facilities, have traditionally been the responsibility of local governments. These projects usually require a significant investment over a short period of time with a repayment schedule that can extend several years beyond the actual construction schedule. Municipalities that own or operate wastewater collection and/or treatment systems are required to develop capital improvement plans (CIP), usually on an annual basis. The CIP identifies the major capital projects expected in the next several (5 to 10) years, as well as the anticipated funding mechanism.

Capital projects are paid through some combination of either a pay-as-you-go basis as revenues are available or from the proceeds of indebtedness (bonds), with revenues dedicated to debt retirement. In either case, the revenues supporting the CIP may include some or all of tax revenues, user rates and charges, special assessments, connection fees, and capital reserve funds.

² Detailed descriptions and information on the six minimum measures is available from the United States Environmental Protection Agency's web page at <<http://cfpub.epa.gov/npdes/stormwater/swfinal.cfm>>

Available Alternatives for Funding Water Quality Activities

The costs that will be incurred by communities in undertaking required water quality activities will likely go well beyond their capacity to absorb them into existing budgets. Therefore, municipalities need to look at the various alternatives available for funding water quality activities and choose the best approach for their circumstances.

Funding Sources

Regardless of whether or not a community participates with others in a watershed plan or acts independently, funding these programs will require new and additional financial resources. Generally, municipalities have the ability to obtain funding in the following ways:

1. Ad valorem (property) taxes,
2. Income taxes,
3. Special assessments,
4. User fees/charges,
5. Grants, and/or
6. Bonds/Loans (repaid from the foregoing revenue sources.)

Additionally, municipalities can receive tax revenue from the state and federal governments in the form of revenue sharing. Much of this money is used to pay for core municipal services such as police and fire protection. They can also receive grants and loans to carry out specific programs/projects from the state or federal governments or private foundations.

In the course of evaluating the merits of alternative funding mechanisms, at least three criteria should be considered: administerability, adequacy, and equity. Put in the form of questions: What is ease of administering the funding mechanism? Will the funding raised be adequate to cover costs? How fair (equitable) is the funding mechanism in comparison to other alternatives?

Ad valorem taxes

Ad valorem taxes are property taxes levied against real estate and personal property at the local level. They are determined by multiplying the taxable value of the property by the local millage rate. Ad valorem taxes allow a community to distribute the costs of their water quality programs over the entire tax base.

However, property tax limitations imposed by the Michigan Constitution restrict the ability of communities to increase property taxes without first receiving voter approval. Only those taxes authorized to be levied prior to approval of the Headlee Amendment (1978) are exempt from this restriction. Additionally, a recent SEMCOG study (*Land Use Change in Southeast Michigan: Causes and Consequences*, March 2003) has shown that because Proposal A limits taxable value increases for properties remaining in the same ownership to five percent or the rate of inflation, whichever is less, communities without much land available for development are severely limited in taxable value growth. Without new construction to bring more State Equalized Valuation (SEV) and its full taxable value, municipal revenues from ad valorem taxes often do not keep pace with increases in SEV.

Advantages – 1) Revenues increase as taxable values increase. 2) Cost is spread across all sectors of the community (residential, commercial, industrial). 3) Because ad valorem taxes are levied against

properties across the municipality, the revenue raised can be significant. 4) Uses existing billing and collection process. 5) Property tax revenues historically are stable and predictable.

Disadvantages – 1) Millage elections are often uncertain. 2) Ad valorem taxes are based on property value, so will be considered inequitable by some (two similar properties, in terms of lot size and imperviousness, may have very different taxable values). 3) Property taxes are the primary source of most local government revenues, therefore, there are many programs and services that need to be funded from the limited millage available. 4) Some facilities which consume water or contribute to water quality treatment needs are exempt from taxation, thus the burden of costs would be borne by non-exempt parties.

Income taxes

In Michigan, only the state and cities are authorized to levy income taxes. Income taxes are levied on income earnings and are based on federal adjusted gross income. Nonresident rates can not exceed one-half of the resident rate and are based only on earnings from within the taxing city. Currently, 22 Michigan cities levy a local income tax, the majority of which are 1% (resident rate) and 0.5% for non-residents. Revenues collected from a local income tax are deposited in the city's general fund.

Advantages – 1) Revenues increase as income increases. 2) Revenues are also collected from non-residents and corporations that derive income from within the city.

Disadvantages – 1) Some facilities which consume water or contribute to water quality treatment needs are exempt from taxation, thus the burden of costs would be borne by non-exempt parties. 2) Most Michigan cities with an income tax are at their legal limit and would require a voter approval for any increases. 3) May be difficult to institute a local income tax if not already in place.

Special assessments

Special assessments are levied against individual properties benefiting from the program/project through the establishment of a special assessment district (SAD) to cover the cost of specific activities/improvements. While the authority to establish special assessment districts varies by the type of governmental unit, special assessments must always be directly related and proportional to the benefit received from the improvement and funds can only be used to pay for the cost of the improvement.

Advantages – 1) Equitable because of direct relationship between benefit to property and assessment. 2) Not an ad valorem tax, so not subject to property tax limitations. 3) Assessments are against all properties within the assessment district. This may be especially important in municipalities where tax exempt entities have significant land holdings³.

Disadvantages – 1) Municipality may incur additional administrative costs. 2) May be difficult to achieve consensus for the allocation of benefits.

User fees/charges

User fees and charges are financial charges for services provided or activities undertaken, such as sewer rate charges or sewer connection fees, which provide a benefit to the ratepayer and not the general public. User fees, however, have been the subject of recent litigation and must meet the criteria established by Michigan law so as not to be determined a tax: a user fee must serve a regulatory purpose (not a revenue raising purpose), be proportional to the cost of the service provided, and be voluntary (the user must be able to limit or avoid the use of the service in order to reduce or avoid paying the fee). Appendix A contains a detailed discussion of a 1998 Michigan Supreme Court decision, *Bolt v Lansing*, which established the criteria used to distinguish a "fee" from a "tax."

³ Certain tax-exempt entities, including governmental entities, are also exempted by the General Property Tax Act from paying special assessments.

Advantages – 1) Equitable because of direct relationship between cost and service. 2) User can limit or avoid the fee. 3) Not a tax, so not subject to Headlee limitations. 4) Can include capital cost recovery. 5) Fees and charges are paid by all system users. This may be especially important in municipalities where tax exempt entities have significant land holdings.

Disadvantages – 1) The *Bolt* decision has cast a cloud over traditional means of setting and imposing user fees. 2) Can be administratively complex. 3) Risk of financial liability for refunds in the event a user fee is determined later to be a tax.

Mechanisms for Funding Water Quality Activities

Below is a brief discussion and a list of some advantages/disadvantages associated with the various legal and institutional mechanisms that municipalities can use to fund water quality activities.

Storm water utilities

Storm water utilities are commonly used by municipalities across the country for funding storm water related activities. Michigan law since 1990 has enabled municipalities to create storm water utilities. Like other utilities, storm water utilities are established to charge a fee for providing a service, and typically are accounted for as an enterprise fund. This fund is used to cover the operation and maintenance of the storm water system and, in some cases, finance capital improvements. Fees are paid periodically, often quarterly, and included on the water and sewer billing. Fee structures often include a flat rate charge and a land area charge, generally with a minimum per parcel fee. The land area charge may vary, based on such factors as the parcel's total impervious area, ratio of impervious to pervious surface area, the ratio of retention to impervious surface, or the installation of approved best management practices (BMPs).

The validity of imposing a user fee to fund a storm water utility in Michigan, however, has been substantially altered by the Michigan Supreme Court's decision in *Bolt v Lansing*. The court there held that a storm water utility fee was a tax because it did not meet the three-part criteria for distinguishing a user fee from a tax. The court invalidated the fee and its collection. Moreover, subsequent proceedings determined that a user fee challenged and found to be a tax is subject to refund from the later of its first collection or December 28, 1998. Appendix A includes a brief discussion of the issues related to *Bolt* that a municipality should carefully consider prior to choosing to use a fee-based storm water utility system.

Advantages – 1) The fee is based on storm water runoff and directly related to benefit received, not property value and therefore, is equitable. 2) Quarterly billings provide a consistent funding stream. 3) Use of the existing water and sewer billing system reduces administrative costs. 4) Fee can be reduced through implementation of approved BMPs. 4) The municipality operating the storm water utility has the ability to contract with other governmental units for specific services. 5) Fees are assessed against all properties served by the utility. This may be especially important in municipalities where tax exempt entities have significant land holdings.

Disadvantages – 1) The utility must be set up in a way that will withstand challenges under *Bolt*. This may add to the complexity of the utility and result in additional administrative costs. 2) Determining the ratio of impervious to pervious surface area for individual parcels may be difficult/costly. 3) Risk of financial liability for refunds in the event a user fee is determined later to be a tax.

Sewer rates

Sewer rates are simply charges to residents and businesses for services associated with being connected to the municipal sewer systems. Sewer charges must be attributable to the service provided. Typically, sewer rates include the cost of operating and maintaining the infrastructure necessary to collect and treat the sewage, along with debt service for capital projects and, in some cases, funding for future capital projects

identified in the capital improvement plan. Connection fees are commonly used as a means of funding the capital expenditures needed to provide new or expanded sewer service. Sewer rates and charges, like other user fees, must be established so as not to be a tax.

Advantages – 1) Equitable because of direct relationship between cost and service provided. 2) Use of an enterprise fund assures rates relate directly to the cost of providing the services. 3) Users have some control over the costs they incur. 4) Rates are charged for the service provided, regardless of property ownership. This may be especially important in municipalities where tax exempt entities have significant land holdings.

Disadvantages – 1) Can be difficult to set rates sufficient to meet future capital improvement needs. 2) Difficult to include storm water and other nonpoint source activities.

Public Acts Related to Individual Borrowing

There are several laws in Michigan that allow municipalities to borrow money to construct facilities and improvements that will improve or protect water quality. While each of these laws authorizes borrowings for specific purposes to improve or protect water quality, each also has limitations that should be considered.

Natural Resources and Environmental Protection Act (PA 451, 1994)

Part 43 of the Natural Resources and Environmental Protection Act authorizes cities, villages and townships to borrow to pay the cost of improvements to waterworks systems or sewage systems in those instances in which the DEQ, State Department of Public Health or a court of competent jurisdiction has ordered the installation, construction and/or improvement of such systems or the DEQ has issued a permit for the installation, construction, alteration, improvement or operation of such a system and the plans for such improvements or system have been prepared and approved by the State department or agency having the authority to grant such approval.

Advantages – 1) Municipality can borrow in response to court or regulatory order with respect to water quality.

Disadvantages – 1) Borrowing is subject to a right of referendum; 2) Borrowing is limited to the purpose set forth in the order.

Revised Municipal Finance Act (PA 34, 2001)

Section 517 of the Revised Municipal Finance Act authorizes counties, cities, villages and townships to borrow for capital improvement items that will improve or protect water quality.

Advantages – 1) Municipality can use more than one funding mechanism to pay debt; 2) no need to have DEQ or court order to borrow.

Disadvantages – 1) Borrowing is subject to a right of referendum; 2) total amount of outstanding borrowings under Section 517 is limited to 5% of municipality's SEV.

Public Acts Related to Multi-Municipal Programs

There are several laws in Michigan that allow municipalities to create or participate in multi-municipal agencies, such as sewer authorities, or contract with other municipal agencies, such as counties, acting through their authorized agencies or departments of public works, in order to provide water quality protection activities and services. While each of these laws allows the undertaking of specific types of activities, each also has limitations that may impede its use for certain water quality activities.

Drain Code (PA 40, 1956)

Chapters 20 and 21 of the Drain Code permit the establishment of drainage districts for the purpose of protecting public health. While the Drain Code has primarily been used to generate funding for capital improvement projects, it may provide a funding mechanism for on-going water quality programs.

Interagency agreements, established pursuant to sections 471 or 491 (as provided in Appendix B) can be used in conjunction with the drainage district petition to define the responsibilities of each party involved in the district. These agreements can identify what work will be performed and by whom, how it will be paid for, and the steps necessary to expand or limit the authorities of parties. Agreements similar to these can be used to address the concerns about decision making and control over a project that are often raised by local governments and citizens with regard to drainage projects. An example of how these interagency agreements might work follows.

The watershed drainage district created under chapter 20 could include an area within a single municipality or more than one municipality, depending upon the type of agreement to be used. A watershed drainage district established under the Drain Code petition process can be accompanied by a contract between the municipality and the Drainage Board through the execution of an agreement under section 471 or 491 (see Appendix B for sample petitions and agreements). These agreements would describe the services the Drainage Board would provide for each community in the drainage district, identify the process of assessing charges for those services, and establish a mechanism for identifying and approving needed projects. In the case of the sample section 471 agreement, a watershed committee would be established with a representative from each municipality in the drainage district. Before a proposed project could go to the Drainage Board for consideration, it would need the approval of the watershed committee.

Each municipality in the watershed drainage district would be apportioned their share of the cost of the projects. Municipalities could cover their costs either through their general fund or levy those costs to the individual properties within the drainage district through ad valorem taxes, rates/fees, or special assessments.

Advantages – 1) Gives the municipality flexibility in how it pays for its apportioned share (property taxes, rates/fees, special assessments, or general fund). If the municipality chooses to levy a property tax, it may not be subject to the Headlee provisions of the Constitution. 2) Interagency agreements (e.g.: agreements under section 471) can be used to define the scope of the work to be performed and the responsibilities and active participation by local governments and the various agencies involved. Can also allow for use of in-kind services in lieu of cash payments.

Disadvantages – 1) Petition to establish a Drainage District needs to be carefully drafted to include implementation activities. 2) The process of reaching an interagency agreement with multiple municipalities can be difficult and time consuming. 3) Absent companion agreements, may limit the role of local government in decision making.

Public Works Act (PA 185, 1957)

County departments of public works established under PA 185 have broad authority to provide a range of services, including the collection and transport of storm water. These county departments may also contract with other units of government to provide specific facilities or services. Funding mechanisms for these services includes property taxes, special assessments, and user charges/rates.

Advantages – 1) Allows use of various funding mechanisms.

Disadvantages – 1) Absent companion agreements, may limit the role of local government in decision making.

County Public Improvement Act (PA 342, 1939)

For purposes of water quality activities, this legislation is similar to the Public Works Act. It authorizes the County Board of Commissioners to designate a county agency to provide specific services, including the collection and transport of storm water. County agencies eligible to serve as the designated agency include the Board of Public Works, Road Commission, or Drain Commissioner. Rates, charges, or assessments are paid based on the facilities or services provided and the agency can contract with other units of government for the cost of such facilities or services. Again, property taxes, special assessments, and user charges/rates can be used by the contracting governments to pay for the facilities or services they receive.

Advantages – 1) Allows use of various funding mechanisms.

Disadvantages – 1) Absent companion agreements, may limit the role of local government in decision making. 2) Contracts between the county and participating municipality(ies) are subject to a right of referendum.

Inter-Municipal Committee Act (PA 200, 1957)

This act allows participating municipalities to adopt resolutions for the establishment of a study committee. Funding is provided by the participating municipalities and can used to conduct the necessary studies. However, activities of the committee are limited to study and planning. Construction, operation, or maintenance of facilities or implementation of projects beyond studies are not permitted under this legislation.

Advantages – 1) Simple to start. 2) Municipal support can be funds or in-kind services, equipment, etc.

Disadvantages – 1) For study purposes only.

Municipal Sewer and Water Authorities (PA 233, 1955)

Municipalities can jointly create an Authority which then contracts with individual municipalities to provide specific facilities or services. Once established, activities of the Authority are limited to those related to owning and operating a sewage disposal system, including storm sewers. Contracting municipalities use a variety of mechanisms to pay for the facilities or services they receive from the Authority, including property taxes, special assessments, and user charges/rates. PA 233 authorities can issue bonds for capital improvements.

Advantages – 1) Allows use of various funding mechanisms. 2) Can provide services to non-member municipalities at same or greater fee.

Disadvantages – 1) Creates a separate authority. 2) Primarily intended for water and wastewater services, but can include storm water. 3) Contracts between the county and participating municipality(ies) are subject to a right of referendum.

Other Funding Sources

Special assessment districts

There are several statutes in Michigan that grant authority to local governments to establish special assessment districts. While there are some differences, depending upon the governmental unit involved or the type of district being created, there are common elements to all special assessments. Primarily, special assessments are levied against land and are based on the property assessed deriving special benefit from the improvement.

Once established, the assessment is placed on the tax rolls and becomes part of the property owner's tax bill. However, special assessments are not property taxes and therefore, not subject to the Headlee provisions of the state constitution.

Advantages – 1) Equitable because of direct relationship between cost and service provided. 2) Uses existing billing system. 3) Not subject to Headlee amendment.

Disadvantages – 1) Cost or scope of the improvement may be so large that it is not feasible to assess costs only to the benefiting property owners.

Voter-approved bonds

Michigan municipalities are authorized to seek voter approval for borrowing money and issuing bonds for capital improvement projects. Obtaining voter approval of the bonds carries with it the approval to levy ad valorem taxes in sufficient amounts to retire the debt. Such taxes are outside of charter, statutory and constitutional limitations and therefore a separate stream of revenues. Voter-approved bonds also are considered the most secure by the marketplace, resulting in lower interest costs compared to bonds issued without voter approval.

Advantages – 1) Independent source of property tax revenue.

Disadvantages – 1) Cannot be reliably assured since voter approval is required. 2) Limited to funding capital projects; bond proceeds and millage may not be used for operations.

Impact fees

Impact fees are charges authorized in a number of states. Fees are imposed against new development to ensure it pays its "fair share" of the infrastructure costs necessary to accommodate the added growth. For example, if a vacant parcel is to be developed as a commercial/industrial park, the developer could be assessed a fee sufficient to pay for widening and upgrading roads to the site, installing traffic control devices, or installing water and sewer lines to the property. However, since there is no statutory authorization in Michigan to allow local governments to levy impact fees as a condition of zoning changes or site plan approval, any agreements between a developer and a local government for off-site improvements could later be determined unenforceable by the courts.

Advantages – 1) Ensures new development pays the costs for needed infrastructure improvements.

Disadvantages – 1) No statutory authority for impact fees in Michigan.

State and Federal Loans and Grants

Additionally, the state and federal governments have made various loans and grants available to local governments. They are generally competitive programs and cannot be relied upon as a long-term funding source for program implementation. However, many local governments have been able to secure loans or grants to assist with initial planning efforts and/or capital projects.

Clean Water State Revolving Fund (SRF) loans

Because capital projects are often very expensive, the state and federal governments have made limited financial assistance available to municipalities. Municipalities can obtain low-interest loans through the state revolving fund (SRF). In order to obtain a loan, the municipality issues bonds which are sold to the Michigan Municipal Bond Authority in amounts approved by the MDEQ. All of the applicable procedures and requirements for issuing bonds under state and federal law continue to apply. One further condition of these loans is a demonstration that the municipality has the ability to repay the loan.

Used almost exclusively in Michigan to finance large sewer treatment works and sewer separation projects, the loan repayments are financed through a combination of rates, connection fees, special assessments, and property taxes.

Other state grant and loan programs

The Michigan Department of Environmental Quality administers a range of grant and loan programs aimed at assisting local governments develop and implement pollution abatement programs. Information on MDEQ grant and loan programs can be obtained from the MDEQ Assistance and Support Services.

Summary

In summary, the range of water quality activities communities are responsible for implementing has expanded greatly. There are a variety of alternatives for funding these activities that need to be evaluated in choosing a course of action for any particular activity.

Table 1 lists a number of water quality activities communities are expected to implement and the institutional mechanisms available for funding them. This table was prepared to use as a tool to compare and contrast the desirability of the different mechanisms with respect to any particular activity. For example, communities could use this table to rank the alternatives low, medium, or high as part of narrowing options and focusing discussion in the decision making process.

Table 1
 Alternatives for Funding Water Quality Activities

	Drain Code ¹	Public Works Act	County Public Improvement Act	Inter-Municipal Committee Act	Municipal Sewer and Water Authorities	Special Assessment Districts	Storm Water Utilities	Sewer Rates	NREPA	Revised Municipal Finance Act
Planning & Implementation Activities²										
Watershed/Storm Water Management Plan	X	X	X	X	X		X	X		
Illicit Discharge Elimination Plans	X	X	X	X	X		X	X		
Public Education	X	X	X	X	X		X	X		
Public Involvement	X	X	X	X	X		X	X		
Pollution Prevention/Good Housekeeping	X	X	X	X	X		X	X		
Construction Control	X	X	X		X		X	X		
Post Construction Storm Water Management	X	X	X		X		X	X		
Catch basin cleaning and street sweeping	X	X	X		X		X	X		
Water quality monitoring	X	X	X		X		X	X		
Ordinance review, development, enforcement	X	X	X		X		X	X		
Capital Projects										
Storm Water Control Facilities	X	X	X		X	X	X	X	X	X
Sanitary Sewer Overflow Control	X	X	X		X	X	X	X	X	X
Combined Sewer Overflow Control	X	X	X		X	X	X	X	X	X
Sewer Rehabilitation	X	X	X		X	X	X	X	X	X
Sewer Extension	X	X	X		X	X	X	X	X	X
¹ While the Drain Code is primarily used for generating funding for capital projects, other activities can be funded if included in a petition and inter-municipal agreements										
² All of these activities will include both a planning and an implementation component, either separately or as an element of a watershed/storm water management plan e.g.: an illicit discharge elimination program will require developing a plan, which may include new ordinances, periodic assessment of program effectiveness, etc, as well as implementation activities, such as surveying commercial/industrial facilities to identify cross-connections or inspecting residential septic systems on a periodic basis.										

Case Studies

Following are case studies of the different funding mechanisms for water quality activities used by local governments. Because of the benefits and limitations of different funding mechanisms, most local governments will likely use a mix of funding sources for their water quality activities.

Drain Code

Huron River Pollution Abatement Project: The objective of the Huron River Pollution Abatement Project (HRPAP) was to eliminate nonpoint source pollution entering the Huron River from illicit sewer connections and accidental spills. The project was begun in 1987 and ran through 1992.

The HRPAP was established using the Michigan Drain Code and included the cities of Ann Arbor and Ypsilanti, as well as portions of Ann Arbor, Pittsfield, Scio, Superior, and Ypsilanti townships. Special assessments were levied annually against individual properties within the district, with the exception of the City of Ann Arbor, which paid its apportionment at large. Authority for the HRPAP was derived from a variety of statutes, including the Michigan Drain Code and local building codes.

Under the HRPAP, a five-pronged approach to eliminating pollution from storm water was developed. The primary focus of the project was the identification and elimination of illicit connections to storm drains. Other program elements included: surveys of chemical storage; water quality monitoring; a complaint/spill response program; and, public education.

The Washtenaw County Department of Environmental Health conducted dye-testing of some 4,000 target facilities and discovered more than 10% of the facilities were improperly connected to storm drains. Building owners were informed of the options available to them for correcting the problem. If the necessary corrections were not made voluntarily, the municipality was notified of the violation and local building/plumbing codes were used as the primary mechanism to require facility owners make the necessary corrections. The result of the project was a 75% decrease in fecal coliform levels in the Huron River.

For more information, contact Janis Bobrin, Washtenaw County Drain Commissioner at 734-994-2525.

Act 342

Genesee County Storm Water Management System: Acting pursuant to Act 342, the Board of Commissioners of Genesee County established a system of storm water management services to be known as the "Genesee County Storm Water Management System" and designated the Genesee County Drain Commissioner as the county agency for the system, with the power to manage and operate the System in accordance with Act 342. The services to be provided by the System are to include, but not be limited to, such services as are necessary to enable the county and the cities, villages and townships within the county to comply with the Phase II Storm Water Regulations promulgated by the United States Environmental Protection Agency and to engage in other watershed management activities that are deemed necessary to the public health and welfare of the residents of such cities, villages and townships.

Following the establishment of the system, the county and twenty-eight cities, villages and townships within the county entered into a contract pursuant to which the county agreed to provide several services. These services are necessary to assist the county and the contracting municipalities in complying with the requirements of the Phase II Regulations and in other related watershed management activities within the contracting municipalities. These include, but are not limited to, applying for NPDES permit coverage and planning for and implementing best management practices with respect to the minimum control measures set forth in the Phase II Regulations.

The contract provides for the creation of a Phase II Storm Water Advisory Committee, consisting of the County Drain Commissioner and one representative from each contracting municipality. The Committee is required to meet at least once each month and advise, consult with, and make recommendations to the Drain Commissioner in connection with the management and operation of the System.

The contract contains a budget for the services to be provided by the County pursuant to the contract and sets forth the amount required to be paid to the County and each of the contracting municipalities for such services. Contracting municipalities paid their share of the cost of the services at the time they entered into the contract and are not responsible for paying for any services that exceed the budgeted amount set forth in the contract unless the additional costs are approved by a majority of the members of the Phase II Storm Water Advisory Committee.

For more information, contact Jeff Wright, Genesee County Drain Commissioner, at 810-732-1590.

Storm water utility

During the late 80s and early 90s, the City of St. Clair Shores faced the problem of funding a pavement replacement program. The pavement replacement program was administered by the Engineering Department and funded by the Department of Public Works. During the review of the costs involved in a pavement replacement program it was noted that one of the driving forces behind the need for pavement replacement was the deterioration of storm sewers and related structures. In order to address the storm sewer problems, the city looked at alternate methods of funding a storm water program.

One alternative that was investigated was the City of Ann Arbor storm water utility ordinance. The ordinance was based on fees charged to all properties utilizing the storm system, including properties with tax exempt status.

The City of St. Clair Shores retained a consultant to assist with the development of an ordinance to establish a storm water utility, based on the Ann Arbor example. City Council agreed that the ordinance would be fair if 1) it applied to all property within the city, 2) good drainage engineering principles would be followed, and 3) all money collected would be dedicated to storm sewer projects. They approved the ordinance on July 26, 1993.

Implementation of the Storm Water Utility was carried out by city personnel, with assistance from the consultant. The largest task was to compute the land areas for each parcel other than single family homes. The Engineering Department accomplished this task by working with the Assessing Department, the Building Department, the Planning Department and the Water Department. The Department of Community Services coordinated the process, including the preparation of the water/sewer quarterly bill.

A separate enterprise fund and budget was created for the operation of the storm water utility. The Utility generates funds and thus can provide funds for construction and maintenance of a storm sewer system. Since this is an enterprise fund, the use of this fund is restricted to storm water projects only.

As a result of the *Bolt v Lansing* case, the Storm Water Utility Ordinance was amended in 2000. The Appeals process of the ordinance was revised to ensure conformance with both the Headlee Amendment and the *Bolt* case. The City of St. Clair Shores continues to utilize its Storm Water Utility Ordinance as a vehicle to fund storm water projects.

For more information, contact R. Marlin Sumner, P.E. at 586-228-9618.

Information Sources

Michigan Public Acts

Michigan Public Acts, as included in the Michigan Compiled Laws (MCL), can be accessed online from the Michigan Legislature's Web page by doing a search of the act number and year. Be sure to use the search option: **Public Act Search - As it exists in Michigan Compiled Law**. This will ensure that you get the law as it exists today, including any amendments since it was originally adopted. The Michigan Legislature's Public Acts search page can be found at:

www.michiganlegislature.org/mileg.asp?page=PublicActs

Also, a search for Public Acts can be performed using the MCL section number, statute number, or popular name. The Michigan Legislature's MCL search page can be found at:

www.michiganlegislature.org/mileg.asp?page=MCLBasicSearch

Phase II Storm Water Permits

Information concerning the Storm Water Phase II NPDES Program is available online at:

The Southeast Michigan Phase II Storm Water Information Clearinghouse at:

www.crowc.org/projects/phase2/phase2home.html

US EPA Storm Water Web page:

cfpub.epa.gov/npdes/home.cfm?program_id=6

Detailed descriptions and information on the six minimum measures is available from the United States Environmental Protection Agency's web page at:

cfpub.epa.gov/npdes/stormwater/swfinal.cfm

State Revolving Fund (SRF) Loans

Information on the Michigan State Revolving Fund loan program is available online at:

www.michigan.gov/deq

Appendix A

Issues Related to *Bolt v Lansing*

The following is presented for information only. It is not definitive and should not be considered to be legal advice or interpreted as a recommendation or endorsement of imposing storm water utility fees. Readers of this report should consult with their own legal and financial advisors prior to implementing any such fee-based system.

If a community chooses to use a fee-based financing system, there are several issues to take into consideration as the program is being developed.

First, the population of property owners or ratepayers upon whom the rate is imposed should be the same population which uses the service provided. That is, if the sewers are being separated in one-half of the city, then a rate to recover the cost of that sewer separation may be imposed on that half of the city only.

Second, following from the first point, any general rate system must permit ratepayers to avoid paying for services that they do not use.

Third, the rate may not generate revenue which, over time, exceeds actual costs which include direct and indirect costs of the improvement. Many governmental units use utility funds, also called enterprise or proprietary funds, which are “independent accounting entit[ies] with a self-balancing set of accounts, created for the purpose of carrying on a specific activity. [Such a fund] has accounts for assets, liabilities, reserves, equities, and revenue and expenditures.@ (See Michigan Department of Treasury, Uniform Accounting Procedures Manual.) A fund operated according to this principle will by definition have expenditures (including reserves and sinking funds, if any) offsetting revenues over time and thus will involve fees reasonably related to the cost of providing services.

Fourth, following from the third, rates may not be used to fully amortize projects having useful service lives substantially greater than the amortization period. Thus rates to repay a 20-year bond to finance an improvement with a 20-year life are not a tax; rates imposed to repay a 30-year bond to finance a 50-year improvement may be a tax to the extent that the rates recover improvement costs faster than the improvement depreciates. A capital improvement program can be segregated into projects with lives substantially matching the financing period, and those which have substantially longer lives. The shorter-lived projects can be bond financed and repaid entirely by rates. It is not clear whether the *Bolt* decision will permit rates to be used to pay a portion of the bond issue for projects with longer lives in an amount commensurate with the decline of the project’s useful service life, with general revenues or a millage being used to pay the balance.

Fifth, with regard to storm water projects, it is important to make a record of the public benefits of separating sanitary and storm flows and, if the project does not involve treatment, to clearly document how the environmental benefits occur and why treatment is not essential to achieve the desired benefit.

Appendix B

Sample Draft Section 471 Petition

RESOLUTION

At a regular meeting of the _____ Board/Council/Commission of the _____ of _____, _____ County, Michigan, held on the ____ day of _____, 2003.

PRESENT: _____

ABSENT _____

The following resolution was offered by _____ and seconded by _____:

NOW THEREFORE, BE IT RESOLVED BY THE _____ BOARD/COUNCIL/COMMISSION OF THE _____, as follows:

1. The _____ (the "City/Village/Township") shall make and cause to be filed with the _____ County Drain Commissioner a petition in form substantially as follows:

P E T I T I O N

TO THE DRAINAGE BOARD FOR THE
HEREINAFTER MENTIONED _____
COUNTY, MICHIGAN DRAIN PROJECT

WHEREAS, pursuant to Chapter 20 of the Drain Code of 1956, as amended, MCL 280.461. et seq., ("Chapter 20") and as a matter of public health, the undersigned corporation petitions the Drainage Board for the County of _____ for the establishment, construction, operation and maintenance of an intra-county drain for the purpose of comprehensively addressing the public health concerns associated with pollution resulting from storm water runoff, and to assist _____ County communities within the watershed in complying with United States Environmental Protection Agency's (USEPA) regulations pertaining to stormwater discharges, commonly referred to as Phase II Stormwater regulations, within the watershed known as the Rouge River;

Sample Draft Section 471 Petition

WHEREAS, the purpose of this drain will be to study, identify and eliminate the sources of pollution, flooding and other environmental impacts within the watershed;

WHEREAS, the purpose of this drain will be to plan, design, construct, and maintain water quality best management practices (BMPs) to address sources of non-point source pollution entering in to the waters of the State;

WHEREAS, Chapter 20 of the Drain Code authorizes two or more public corporations to petition the Drainage Board to clean out, relocate, widen, deepen, straighten, extend, tile, interconnect or otherwise improve, or add branches or connections to pre-existing drains, when necessary for the public health, in the same manner as a county drain may be located, established and constructed under this chapter;

WHEREAS the proposed drain will address public health, water quality and stormwater issues that include soil erosion and sedimentation control assistance, stormwater design standards and engineering, watershed drainage, operations and maintenance, and the detection and elimination of pollutants carried by stormwater; and

WHEREAS the administration of the drain will address the Phase II requirements that include sub-watershed/ stormwater planning assistance, Public Education-Outreach, and Illicit Discharge Detection and Elimination.

NOW THEREFORE, the undersigned public corporation hereby petitions for the location, construction and establishment of an intra-county drain (the "Relief Drain") comprising of the _____ Watershed for the purposes herein described, and for the relief of existing drains (the "Existing Drains") and any future drains that serve the lands located in the [Charter Township of _____, City of _____, Village of _____] and which lands drain to the Rouge River, the Existing Drains identified in Exhibit A, and the Relief Drain shall be located approximately as set forth in the Route Description attached hereto as Exhibit B.

IMPROVEMENTS

The proposed improvements to be constructed shall comprehensively address the public health concerns associated with pollution resulting from stormwater runoff, and will assist _____ County communities within the watershed in complying with United States Environmental Protection Agency (USEPA) regulations pertaining to stormwater discharges, commonly referred to as Phase II Stormwater regulations, within the watershed known as the Rouge River;

The proposed improvements will include studying, identifying and elimination of the sources of pollution, flooding and other environmental impacts within watershed;

The proposed improvements will be designed to plan, design, construct and maintain water quality best management practices (BMPs) to improve water quality and to address the sources of non-

Sample Draft Section 471 Petition

point source pollution, such as construction and acquiring drain facilities, where necessary, to purify the flow of discharges entering in to the waters of the State;

which Relief Drain is necessary for the public health and will carry drainage water originating in the County of _____ only.

Pursuant to the authority set forth in Section 482 of the Drain Code, any one or more of the Existing Drains or any future drains or any portion thereof, now or hereafter existing, may be cleaned out, relocated, widened, deepened, straightened, extended, tiled, interconnected or otherwise improved, or branches added or connected thereto, when necessary for the public health.

Pursuant to the authority set forth in Section 478, and the drainage board's obligations under Section 423 of the drain code, the construction, operation and maintenance of the Relief Drain shall be carried out in such manner as to comprehensively address the public health and water quality concerns associated with pollution resulting from storm water runoff, and to assist the undersigned public corporation(s) in its compliance with United States Environmental Protection Agency's (USEPA) regulations pertaining to stormwater discharges, commonly referred to as Phase II Stormwater Regulations.

Because two or more public corporations, constituting as a whole contiguous territory, are served by 1 or more of the Existing Drains, and it is necessary for the public health to supplement the Existing Drains by constructing the Relief Drain, which may consist of new drains and branches and connections thereto or extensions, enlargements, branches, connections or improvements, described in section 482 of the Drain Code, to the Existing Drains, or any combination thereof, then pursuant to Section 485 of the Drain Code the Relief Drain shall be constructed as a whole and the word "Relief Drain" set forth in this petition shall be deemed to include such a project.

This petition is filed pursuant to the provisions of Section 463 of Chapter 20 of Act No. 40 of the Public Acts of 1956, as amended.

It is understood and agreed that the cost of the Relief Drain is to be assessed against this petitioner only for benefits related to the drainage of county roads and against all other public corporations that benefit from the Relief Drain project and contribute to the conditions that make the Relief Drain project necessary, including the State of Michigan for benefits related to the drainage of State highways, if any.

A certified copy of the resolution of the governing body of the public corporation executing this petition authorizing its execution is attached hereto.

Sample Draft Section 471 Petition

[City/ Village/ Township]

By: _____

_____ Supervisor

By: _____

Clerk

2. The Supervisor and Clerk are authorized and directed to execute this petition for and on behalf of the [CVT] and to file the same with the Drain Commissioner of the County of _____.
3. Based upon the presentations made by the _____ County Drain Commissioner and members of his staff at the meeting of the Township Board on September 10, 2001, the [CVT] [Board/Council/Commission] concludes that construction of the Relief Drain is necessary to provide for the public health and safety for the reasons set forth in the form of petition as described in paragraph 1 hereof.
4. The [CVT] consents to the assessment of its share of the entire cost of the Relief Drain and future study (except for assessments against the County of _____ and the State of Michigan for benefits related to the drainage of County and State highways, if any) against the [CVT].
5. The [CVT] agrees that it will pay its share of the costs incurred by the _____ County Drain Commissioner or by the Drainage District in the event the Relief Drain or any portion thereof, for any reason, is not constructed.
6. The [CVT] Clerk is authorized to file with the Michigan Department of Treasury a notice of intent to issue an obligation in connection with the bonds to be issued by the Drainage District to be established pursuant to the petition herein authorized.
7. The Supervisor, the Clerk and the Treasurer are authorized to approve the circulation of a preliminary and final official statement for the bonds to be issued by the Drainage District, to cause the preparation of those portions of the preliminary and final official statement that pertain to the [CVT], and to do all other things necessary for compliance with Rule 15c2-12 issued under the Securities Exchange Act of 1934, as amended (the "Rule"). The Supervisor, the Clerk or the Treasurer are authorized to execute and deliver such certificates and to do all other things that are necessary to effectuate the sale and delivery of the bonds.
8. The Supervisor, the Clerk and the Treasurer are authorized to execute a certificate of the [CVT], constituting an undertaking to provide ongoing disclosure about the [CVT], for the benefit of the holders of the bonds to be issued by the Drainage District as required under paragraph (b)(5) of the Rule, and amendments to such certificate from time to time in accordance with the terms of the certificate (the certificate and any amendments thereto are collectively referred to herein as the "Continuing Disclosure Certificate"). The [CVT] covenants and agrees that it will comply with and carry out all of the provisions of the Continuing Disclosure Certificate.

ADOPTED: Yeas _____

Nays _____

Appendix B

Sample Draft Agreement under Section 471

CHAPTER 20 SECTION 471 AGREEMENT

This Agreement dated the _____, 2002 by and between the Drainage Board for the _____ Drainage District, a statutory public corporation established under Chapter 20 of the Drain Code of 1956, as amended, MCL 280.1 et seq., and having its principal offices located at the Office of the _____ County Drain Commissioner, One Public Works Drive, Waterford, Michigan ("Drainage Board") and the following public corporations: [Charter Township _____, City of _____, Village of _____, and (the "Public Corporations")]:

WHEREAS by March 8, 2003 _____ County, and most of the _____ County communities will be required to seek coverage under a general permit to comply with the U.S. Environmental Protection Agency's proposed Phase II Storm Water Regulations ("Phase II") under the federal Clean Water Act; and

WHEREAS, the _____ County Drain Commissioner (OCDC) proposes to facilitate a program ("watershed management program") coordinated through Chapter 20 of the Drain Code of 1956, as amended, MCL 280.461. et seq., ("Chapter 20"), that will provide assistance to _____ County communities located within the _____ Watershed in meeting the requirements under Phase II; and

WHEREAS, pursuant to Chapter 20 and as a matter of public health, the _____ Drainage District ("Drainage District") was established pursuant to petitions filed by _____ and _____ for the purpose

Sample Draft Agreement under Section 471

of studying, identifying and eliminating the sources of pollution, flooding and other environmental impacts within the watershed, known as the _____ River;

WHEREAS, the purpose of the Drainage District will be to comprehensively address the public health concerns associated with pollution resulting from storm water runoff, and to assist the _____ County communities within the watershed in complying with United States Environmental Protection Agency's (USEPA) regulations pertaining to stormwater discharges, commonly referred to as Phase II Stormwater regulations;

WHEREAS, the purpose of the Drainage District will be designed to utilize water quality best management practices (BMPs) to address the sources of non-point source pollution, such as construction and acquiring drain facilities, where necessary, to purify the flow of discharges entering into the waters of the State;

WHEREAS, the watershed management program will address other water quality and stormwater issues that includes soil erosion and sedimentation control assistance, stormwater design standards and engineering, watershed drainage, and operations and maintenance; and,

WHEREAS, the watershed management program will correlate with the general permit requirements that include sub-watershed/stormwater planning assistance, Public Education-Outreach, Illicit Discharge Detection and Elimination, and stormwater monitoring; and,

WHEREAS, the watershed management program will focus on facilitation and coordination of both existing and newly developed programs to maximize efficiencies that would not be possible at the local level; and,

Sample Draft Agreement under Section 471

WHEREAS the present circumstances present a unique opportunity for the Drainage Board and the Public Corporations to work cooperatively to achieve compliance with the requirements of Phase II and the NPDES; and

WHEREAS this Agreement is entered into pursuant to the authority extended in MCL 280.471 of Chapter 20 of the Drain Code ("Section 471 Agreement"); and

WHEREAS the Drainage Board and Public Corporations acknowledge that the underlying purpose of this Section 471 Agreement is to enhance communication by and among the Drainage Board, the _____ County Drain Commissioner and the Public Corporations; and to cooperatively work toward discharging the financial responsibility by maintaining necessary and reasonable costs in the course of implementing the project(s); and to carry out the fiduciary responsibility to the taxpayers in this County that costs will be kept at necessary and reasonable levels; and

WHEREAS the Drainage Board and Public Corporations recognize that the success of the commitments set forth in this Section 471 Agreement are dependent upon a complete, timely and open disclosure of information by and among the Drainage Board, the _____ County Drain Commissioner and the Public Corporations; and

WHEREAS, the goals that are enunciated herein can best be achieved by a cooperative working relationship between the Drainage Board, the _____ County Drain Commissioner and the Public Corporations throughout the course of the project(s) with an appreciation of the views and goals of the Public Corporations in keeping all costs necessary and reasonable; and

Sample Draft Agreement under Section 471

WHEREAS, the parties recognize that by working together they can implement a cost-effective approach and a more efficient means of achieving compliance with the Phase II and NPDES Permit(s).

NOW, THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. There shall be a _____ Watershed Committee ("Committee") consisting of one member appointed by each Public Corporation. The Committee, by vote of a majority of the members of the Public Corporations, shall select a Chairperson who shall serve for _____ year term(s).
2. The meetings of the Committee shall precede each meeting of the Drainage Board by at least one week so that any issues that arise can be presented to the Drainage Board in sufficient time to apprise its members of the facts and circumstances regarding those matters. The Chairperson, pursuant to the Open Meetings Act, MCL 15.261 et seq, may call meetings.
3. Except as otherwise provided in this Agreement, no action on the items listed in Paragraph 7 of this Agreement, shall be undertaken by the Drainage Board until first approved by the Committee. An action is approved when a majority of the Committee representatives of the Public Corporations affected or benefiting from a particular project agree to undertake the particular project. Approved Actions by the Committee shall be made by the Public Corporations Chairperson or his/her designee to the Drainage Board. The Drainage Board shall either approve or deny Approved Actions by the Committee at its next regularly scheduled meeting, or meeting specifically called for that purpose. Within ten (10) days following the Drainage Board's denial of action approved previously by a majority of the

Sample Draft Agreement under Section 471

4. members of the Committee, the Committee may override a denial by a vote of 2/3 of the members of the Committee.
5. In the event that that an action presented to the Committee for consideration does not receive support of a majority of the Committee members of the Public Corporations affected or benefiting from a particular project, such action may then be presented to the Drainage Board for its approval or denial. If the Drainage Board approves the action, then within ten (10) days following the Drainage Board's approval of the action, the Committee may override an approval by a vote of 2/3 of the members of the Committee.
6. Notwithstanding any provision contained in this Agreement, Committee's approval of an action shall not be a prerequisite to resolving an emergency situation, as determined by the Drainage Board. However, in event of an emergency situation, the Committee Chairperson, or his designee, shall be notified of the meeting on which action may be taken by the Drainage Board.
7. The Committee, or any member, may request that an item not set forth on the proposed agenda for the next meeting of the Drainage Board, shall be added to that agenda and any member of the Committee may appear at the Drainage Board meeting to express his or her views on the issue raised.
8. The Committee, after receipt of timely and complete information from the _____ County Drain Commissioner, may review and make recommendations on the aspects of the project(s), consisting of the following:
 - A. The development of bid documents for any aspect of the project(s).

Sample Draft Agreement under Section 471

- B. The breakdown of the estimated and actual cost of the project(s).
 - C. The procurement process for all aspects of projects including but not limited to: engineers, financial consultants, legal counsel, construction contractors and other professional services.
 - D. The financing for project(s).
 - E. Any change orders and assessment of responsibility to third parties for change orders for projects.
9. Committee's approval of the following shall not be a prerequisite to Drainage Board action:
- A. Continued operation and maintenance of projects undertaken by the Drainage District.
 - B. Apportionment of Costs, which shall follow the statutory procedures on apportionment of costs for projects pursuant to Chapter 20.
10. Project contracts for any work or services, except for professional services, shall be competitively bid and awarded to the lowest, responsible, responsive bidder. Project contracts for professional services shall be awarded based on a review of qualifications and price.
11. The Drainage Board shall maintain, when necessary and available, appropriate insurance coverage for projects after consideration of the "recommendations" of the Committee. The insurance premiums for policies secured by the Drain Board for the Project shall become a cost to the district.

Sample Draft Agreement under Section 471

12. In the event the amount of any judgment, arbitration award or settlement, including litigation costs, are payable by the Drain Board which exceed any insurance proceeds paid, such amount shall be a Project Cost.

DRAINAGE BOARD for the

_____ Drain

By: _____

Its: _____

By: _____

Its: _____

Charter Township of _____.

By: _____

Its: _____

By: _____

Its: _____

City of _____.

By: _____

Its: _____

By: _____

Its: _____

Sample Draft Agreement under Section 471

Village of _____

Its: _____

By: _____

Its: _____

Appendix B

Sample Draft Section 491 Petition

COUNTY OF OAKLAND

SECTION 491 PETITION FOR A CHAPTER 20 DRAINAGE PROJECT FOR STREAM MONITORING TO LOCATE AND IDENTIFY SOURCES OF POLLUTION

WHEREAS, the Rouge Program Office, the Michigan Department of Environmental Quality, the Oakland County Drain Commissioner and the Oakland County Health Department have conducted various initiatives and programs to identify and eliminate sources of pollution to the Rouge River and

WHEREAS, these efforts have been effective in identifying various sources of pollution to the Rouge River, and have resulted in a reduction of the discharge of chemicals, human waste and other pollutants to portions of the Rouge River; and

WHEREAS, the municipalities in the County of Oakland are desirous of protecting the beneficial uses of the Rouge River which are afforded to the citizens of the County, and of protecting the public health and safety, by minimizing exposure to harmful chemicals and pathogenic organisms, and

WHEREAS, the contamination of the Rouge River, as a result of pollutant discharges into storm drains, including County Drains, road drains, and ditches, can be a threat to the public health, and impair the beneficial uses of the Rouge River, and

WHEREAS, Section 491 of the Michigan Drain Code of 1956 authorizes the establishment of a drainage district for the purpose of eliminating or reducing existing or threatened conditions which can cause or increase pollution or desecration of a river, creek or watershed, by assuming jurisdiction for reasons of public health over the bed, tributaries, banks and flood plain of a river, creek or water course, and

WHEREAS, by utilizing a Section 491 County Drain District, the County can develop and implement a stream monitoring program to help locate and identify sources of pollution practices that threaten the public health and safety, and reduce beneficial uses of the Rouge River for recreational, economic and aesthetic purposes, and

NOW, THEREFORE BE IT RESOLVED THAT the City Council of the City of Farmington Hills petitions the Oakland County Drain Commissioner to establish jurisdiction over any and all parts of the bed, tributaries, banks and flood plain of any water course, creek or river segments within the corporate limits of the City of Farmington Hills for a period of five years, as the Farmington Hills portion of a Rouge River Drainage District; for the purpose of developing and implementing stream monitoring program to help locate and identify sources of pollution a program which will reduce pollution that impairs the public health and safety, and impairs the beneficial uses of the Rouge River for recreational, economic and aesthetic purposes,

Sample Draft Section 491 Petition

NOW, THEREFORE, BE IT FURTHER RESOLVED, that the City of Farmington Hills, at the expiration of five years, may again petition the Oakland County Drain Commissioner to extend the jurisdiction for the said Rouge River Pollution Abatement District within the City of Farmington Hills for one or more additional fixed periods of five years to continue stream monitoring program, and

NOW, THEREFORE BE IT FURTHER RESOLVED THAT the Drain Commissioner is hereby authorized for the said fixed period of five years to undertake and manage a stream monitoring program to help locate and identify sources of pollution in the portions of the Rouge River within the corporate limits of the City of Farmington Hills and

NOW, THEREFORE BE IT FURTHER RESOLVED THAT the Drain Commissioner is requested to proceed to public notice and hearing regarding the establishment of a Chapter 20 Drainage District under Section 491 of the Michigan Drain Code as herein described.

