

B37250

STATE BOARD OF ACCOUNTS
302 West Washington Street
Room E418
INDIANAPOLIS, INDIANA 46204-2769

EXAMINATION REPORT
OF
DAMON RUN CONSERVANCY DISTRICT
PORTER COUNTY, INDIANA
January 1, 2005 to December 31, 2009



FILED
07/22/2010

TABLE OF CONTENTS

<u>Description</u>	<u>Page</u>
Officials	2
Independent Accountant's Report.....	3
Financial Information:	
Schedules of Receipts, Disbursements, and Cash and Investment Balances	4
Notes to Financial Information	5-6
Supplementary Information:	
Schedule of Long-Term Debt	7
Examination Results and Comments:	
Annual Financial Report	8
Conflict of Interest Disclosure Statement	8
Bond Anticipation Notes	8-9
Receipt Issuance and Deposits	9
Billings	9-10
Disbursements.....	10-12
Appropriations.....	12
Capital Assets.....	12-13
Official's Bond.....	13
Minutes	14
Exit Conference.....	15
Official Response	16-17

OFFICIALS

<u>Office</u>	<u>Official</u>	<u>Term</u>
Treasurer	Jennifer Beauchamp	01-01-05 to 12-31-10
President of the District Board	Bernard Madej	01-24-04 to 12-31-10



STATE OF INDIANA
AN EQUAL OPPORTUNITY EMPLOYER

STATE BOARD OF ACCOUNTS
302 WEST WASHINGTON STREET
ROOM E418
INDIANAPOLIS, INDIANA 46204-2769

Telephone: (317) 232-2513
Fax: (317) 232-4711
Web Site: www.in.gov/sboa

INDEPENDENT ACCOUNTANT'S REPORT

TO: THE OFFICIALS OF DAMON RUN CONSERVANCY DISTRICT, PORTER COUNTY, INDIANA

We have examined the financial information presented herein of Damon Run Conservancy District (District), for the period of January 1, 2005 to December 31, 2009. The District's management is responsible for the financial information presented herein. Our responsibility is to express an opinion based on our examination.

Our examination was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants and, accordingly, included examining, on a test basis, evidence supporting the financial information presented herein and performing such other procedures as we considered necessary in the circumstances. We believe that our examination provides a reasonable basis for our opinion.

In our opinion, the financial information referred to above presents fairly, in all material respects, the financial information of the District for the years ended December 31, 2005, 2006, 2007, 2008 and 2009, based on the criteria set forth in the uniform compliance guidelines established by the Indiana State Board of Accounts.

The Schedule of Capital Assets and Schedule of Long-Term Debt, as listed in the Table of Contents, are presented for additional analysis and are not required parts of the basic financial information. They have not been subjected to the examination procedures applied to the basic financial information and, accordingly, we express no opinion on them.

STATE BOARD OF ACCOUNTS

April 14, 2010

DAMON RUN CONSERVANCY DISTRICT
NOTES TO FINANCIAL INFORMATION

Note 1. Introduction

The District was established under the laws of the State of Indiana. The District provides the following services: water, sewage, and general administrative services.

The District was established by Court Order on January 24, 2004. The number of members of the Board of Directors of the District was set in the court order establishing the District. The initial Board of Directors was appointed by the Board of County Commissioners of Porter County. As the initial terms of the Board of Directors expire, vacancies are filled by elections of freeholders of the District conducted at annual meetings held each February. All current members were elected by the freeholders. The member serving as President of the Board of Directors was elected in February 2007 with his term set to expire in February 2012. The member serving as Treasurer was elected in February 2009 with her term to expire in February 2013, and the third member serving on the board was elected in February 2010 with his term to expire in February 2014. The directors currently serving as President and Treasurer are the only two who were originally appointed by the Board of County Commissioners.

Note 2. Fund Accounting

The District uses funds to report on its cash and investments and the results of its operations on a cash basis. Fund accounting is designed to demonstrate legal compliance and to aid financial management by segregating transactions related to certain governmental functions or activities.

Note 3. Budgets

The operating budget is initially prepared and approved at the local level. In addition, funds for which property taxes are levied are received are subject to final approval by the Indiana Department of Local Government Finance.

Note 4. Property Taxes

Property taxes levied are collected by the County Treasurer and are distributed to the District in June and December. State statute (IC 6-1.1-17-16) requires the Indiana Department of Local Government Finance to establish property tax rates and levies by February 15. These rates were based upon the preceding year's March 1 (lien date) assessed valuations adjusted for various tax credits. Taxable property is assessed at 100% of the true tax value (determined in accordance with rules and regulations adopted by the Indiana Department of Local Government Finance). Taxes may be paid in two equal installments which become delinquent if not paid by May 10 and November 10, respectively.

DAMON RUN CONSERVANCY DISTRICT
NOTES TO FINANCIAL INFORMATION
(Continued)

Note 5. Deposits and Investments

Deposits, made in accordance with Indiana Code 5-13, with financial institutions in the State of Indiana at year end were entirely insured by the Federal Depository Insurance Corporation or by the Indiana Public Deposit Insurance Fund. This includes any deposit accounts issued or offered by a qualifying financial institution.

State statute (IC 5-13-9) authorizes the District to invest in securities including, but not limited to, federal government securities, repurchase agreements, and certain money market mutual funds. Certain other statutory restrictions apply to all investments made by local governmental units.

Note 6. User fees

Water and sewage rates in effect during the examination period were approved by the District Board on May 17, 2006. Water and sewer rate increases were approved by the District Board on December 17, 2009, with an effective date of January 1, 2010.

Note 7. Unpaid bills

As of December 31, 2009, the District has unpaid bills totaling \$798,672.79 of which \$629,420.73 is due to entities wholly or partially owned by the District President. The District is anticipating paying the outstanding bills as operating funds become available.

DAMON RUN CONSERVANCY DISTRICT
 SUPPLEMENTARY INFORMATION
 SCHEDULE OF LONG-TERM DEBT
 December 31, 2009

The District has entered into the following debt:

Description of Debt	Ending Principal Balance	Principal and Interest Due Within One Year
Governmental activities:		
Bond Anticipation Notes		
Issue of 2005	\$ 6,500,000	\$ 345,990
Issue of 2006	4,000,000	208,861
Issue of 2006 A	<u>1,500,000</u>	<u>78,323</u>
Total governmental activities debt	<u>\$ 12,000,000</u>	<u>\$ 633,174</u>

DAMON RUN CONSERVANCY DISTRICT
EXAMINATION RESULTS AND COMMENTS

ANNUAL FINANCIAL REPORT

Annual financial reports were not filed for the years 2005 through 2008 as required.

IC 5-11-1-4 (a) stated:

"The state examiner shall require from every municipality and every state or local governmental unit, entity, or instrumentality financial reports covering the full period of each fiscal year. Except as provided by subsection (b), these reports shall be prepared, verified, and filed with the state examiner not later than thirty (30) days after the close of each fiscal year."

CONFLICT OF INTEREST DISCLOSURE STATEMENT

A Conflict of Interest Disclosure Statement was not filed for the Conservancy District President who owns or has a financial interest in various development companies and construction companies that do business with the District. During the examination period, material transactions were observed between the District and the District President, personally, and with his companies.

A public servant is not prohibited from receiving compensation for services provided as a public servant or for expenses incurred by the public servant as provided by law. [IC 35-44-1-3(b)] IC 35-44-1-3 does not prohibit a public servant from having a pecuniary interest in or deriving a profit from a contract or purchase connected with the governmental entity served under any of the following conditions:

1. If the public servant is not a member or on the staff of the governing body empowered to contract or purchase on behalf of the governmental entity; the functions and duties the public servant performs for the governmental entity are unrelated to the contract or purchase; and the public servant makes a disclosure as provided in IC 35-44-1-3(d). [IC 35-44-1-3(c)(1)]
2. If the contract or purchase involves utility services from a utility whose rate structure is regulated by the state or federal government. [IC 35-44-1-3(c)(2)]
3. If the public servant was appointed by an elected public servant and makes a disclosure under the procedures in IC 35-44-1-3(d). [IC 35-44-1-3(c)(4)] (Accounting and Uniform Compliance Guidelines Manual for Special Districts, Chapter 13)

BOND ANTICIPATION NOTES

The District issued bond anticipation notes during the examination period. Note proceeds were not handled consistently. Some note proceeds were posted to the Permit Fund, some were posted to the Debt Service Fund, and a small amount of the proceeds were not posted as receipts at all. The proceeds not posted were funds remaining not yet drawn when an interest payment was due. The remaining proceeds were used by the bank to pay a portion of the interest due, while the remaining interest due was paid from the Debt Service Fund.

DAMON RUN CONSERVANCY DISTRICT
EXAMINATION RESULTS AND COMMENTS
(Continued)

Neither claims nor checks (funds were electronically transferred) were used to document \$10,138,541 of the note proceeds spent. These proceeds were used to repay the developer and his wife, personally, as well as his development company. The developer, who serves as the District Board President was reimbursed \$4,594,353 of the \$10,138,541. The remaining \$5,544,188 retired a loan taken out by Olympia Development, LLC, a development company which is wholly owned by the District Board President and his wife. The only documentation provided to support any of the disbursements was a "Commercial Promissory Note" documenting the full amount of the line of credit between the bank and Olympia Development, LLC. All of these amounts were posted to the records as "principal paid on bonds".

IC 5-11-10-1.6 (c) states in part: "The fiscal officer of a governmental entity may not draw a warrant or check for payment of a claim unless:

- (1) there is a fully itemized invoice or bill for the claim;

All financial transactions pertaining to the governmental unit should be recorded in the records of the governmental unit. (Accounting and Uniform Compliance Guidelines Manual for Special Districts, Chapter 10)

RECEIPT ISSUANCE AND DEPOSITS

Receipts were not issued for bond anticipation note proceeds, user fee collections, or tax distributions. Receipts were only used to record collections for sewer and water permits. The receipts used were the prescribed receipt form (Form 352) obtained from a printing company; however, they were not prenumbered as required.

This form (Receipt Form 352) consists of an original and a duplicate, prenumbered by the printer, five to a page, the original perforated and the duplicate punched for post binding.

A receipt is to be issued for each cash collection. The duplicate serves as a posting medium to the Ledger of Receipts, Disbursements and Balances, Form 358. (Accounting and Uniform Compliance Guidelines Manual for Special Districts, Chapter 21)

Furthermore, receipts are not deposited daily. For example, receipts were issued on November 29, 2006, for sewer and water permits, but they were not deposited until January 25, 2007.

IC 5-13-6-1(c) states in part: "All local officers . . . who collect public funds of their respective political subdivisions shall deposit funds not later than the business day following the receipt of funds on business days of the depository in the depository or depositories selected by the . . . local boards of finance. . . ."

BILLINGS

The District contracted in 2006 through 2008 with Utility Services Corporation to provide sewage billing services. Based upon Ordinance 2006-2, residential users were to be billed \$5.22 per 1,000 gallons of water used, and a flat rate of \$8.50 for sewage works operations and disposal. Other than the \$8.50 flat rate fee, the Ordinance does not address a minimum amount to be billed; however, based upon a test of the billings users were billed \$39.00 per month if usage was under 6,000 gallons.

DAMON RUN CONSERVANCY DISTRICT
EXAMINATION RESULTS AND COMMENTS
(Continued)

Additionally, the ordinance states billings were to be monthly, based upon water usage. Water service was billed by Indiana American Water Company, who also provided the meter readings. Indiana American Water Company read the meters and billed bi-monthly. The District Treasurer indicated that Utility Services Corporation was to either adjust the meter readings or bills to account for the bi-monthly to monthly billing conversion; however, we could not substantiate how the adjustment was calculated. We noted that some residents' meter readings did not change from one month to the next, so they were billed the same amounts for two months without any adjustments made and for others, where the meter reading changed, billings were based upon the new meter reading. We could not determine how or why the readings would have changed. In some cases, the meter reading changes included changes to the beginning meter reading which, under normal billing procedures, would have been the prior billing period's ending meter reading.

We could not verify our findings to actual billings statements provided to customers or to amounts paid, as Utility Services Corporation did not provide any of this information to the District. Utility Services Corporation simply deposited the collections into the District's bank account, and the Treasurer recorded the receipt of the user fees when notified by the bank of the deposit amount. Records of payments by customer name and/or account were not provided for audit, nor were balances of amounts remaining unpaid.

In 2009, Utility Services Corporation stopped providing billing services to the district, so the district contracted with Indiana American Water Company to provide the sewage billing service as well as the water billing service. Records are provided on amounts billed, collected, and past due balances. Billings for water and sewage are performed bi-monthly; however, the Ordinance for the sewer rates has not been revised to indicate billings are performed bi-monthly.

Each governmental unit is responsible for complying with the ordinances, resolutions, and policies it adopts. (Accounting and Uniform Compliance Guidelines Manual for Special Districts, Chapter 10)

Governmental units should have internal controls in effect which provide reasonable assurance regarding the reliability of financial information and records, effectiveness and efficiency of operations, proper execution of managements' objectives, and compliance with laws and regulations. Among other things, segregation of duties, safeguarding controls over cash and all other assets and all forms of information processing are necessary for proper internal control.

Controls over the receipting, disbursing, recording, and accounting for the financial activities are necessary to avoid substantial risk of invalid transactions, inaccurate records and financial statements and incorrect decision making. (Accounting and Uniform Compliance Guidelines Manual for Special Districts, Chapter 10)

DISBURSEMENTS

The District began disbursing funds in 2005; however, claims for the funds disbursed in 2005 were not located for audit; therefore, we could not verify the validity of the money disbursed.

IC 5-15-6-3 (d) states: "No financial records or records relating thereto shall be destroyed until the earlier of the following actions:

DAMON RUN CONSERVANCY DISTRICT
EXAMINATION RESULTS AND COMMENTS
(Continued)

- (1) The audit of the records by the state board of accounts has been completed, report filed, and any exceptions set out in the report satisfied.
- (2) The financial record or records have been copied or reproduced as described in sub-section (e)."

The District could not provide written contracts for all of the service related disbursements including attorneys, accountants, and a builder (Nardo Builders) which whom the District Board President has a financial interest in, as he and his wife are the sole owners. The builder provides inspection services, as well as office support.

Payments made or received for contractual services should be supported by a written contract. Each governmental unit is responsible for complying with the provisions of its contracts. (Accounting and Uniform Compliance Guidelines Manual for Special Districts, Chapter 10)

Itemized vendor invoices were not always retained from vendors. Specifically, the engineering firm which provides substantial engineering services to the district invoices a narrative of work completed. Information regarding the number of hours worked, and hourly billing rates were not included on the invoices. Also, the billing statements from Portage Water Reclamation, which provides sewer treatment services, did not document the gallons processed or the rates per gallon processed.

IC 5-11-10-1.6(c) states in part: "The fiscal officer of a governmental entity may not draw a warrant or check for payment of a claim unless:

- (1) there is a fully itemized invoice or bill for the claim; . . . "

The same check number series is used for the two different bank accounts. Neither the claims nor the checks indicate from which fund the disbursement was to be made.

The posting media for disbursements will be the carbon copies of checks issued which should show thereon the account number and fund on which drawn. (Accounting and Uniform Compliance Guidelines for Special Districts, Chapter 21)

Controls over the receipting, disbursing, recording, and accounting for the financial activities are necessary to avoid substantial risk of invalid transactions, inaccurate records and financial statements and incorrect decision making. (Accounting and Uniform Compliance Guidelines Manual for Special Districts, Chapter 10)

Checks are prepared using a commercially distributed computer software program. The check used are not prescribed forms, nor have they been approved for use by the State Board of Accounts.

All governmental units are required by law to use the forms prescribed by this department; however, if it is desirable to use a different form or to have a prescribed form modified to conform for computer applications, a letter and three copies of the proposed form may be submitted to the State Board of Accounts for approval. No form should be printed and placed into use, other than a prescribed form, without prior approval. (Accounting and Uniform Compliance Guidelines Manual for Special Districts, Chapter 10)

Neither the cancelled checks nor optical images of the checks clearing the bank are provided by the bank for audit.

DAMON RUN CONSERVANCY DISTRICT
EXAMINATION RESULTS AND COMMENTS
(Continued)

IC 5-15-6-3 concerning optical imaging of checks states in part:

"(a) . . . 'original records' . . . includes the optical image of a check or deposit document when:

- (1) the check or deposit document is recorded, copied, or reproduced by an optical imaging process . . . ; and
- (2) the drawer of the check receives an optical image of the check after the check is processed for payment . . . "

Further, IC 26-2-8-111 states in part:

"(a) If a law requires that certain records be retained, that requirement is met by retaining an electronic record of the information in the record that:

- (1) accurately reflects the information set forth in the record after it was first generated in its final form as an electronic record or otherwise: and
- (2) remains accessible for later reference."

"(e) If a law requires retention of a check, that requirement is satisfied by retention of an electronic record of the information on the front and back of the check in accordance with subsection (a)."

Bills presented to the District prior to December 31, 2009, totaling \$798,672.79 remain unpaid as of the date of this report. Of this unpaid balance, \$629,420.73 are payments due to businesses either wholly owned or partially owned by the District Board President.

A governmental unit may not incur indebtedness unless specifically allowed by statute. (Accounting and Uniform Compliance Guidelines Manual for Special Districts, Chapter 10)

APPROPRIATIONS

For the year ended December 31, 2008, the actual disbursements of the Debt Service Fund exceeded the appropriations by \$10,786. Officials do not maintain an appropriation ledger so that they can monitor the appropriation balance.

The basic accounting ledgers required to be kept consist of the following two forms:

- (1) Ledger of Receipts, Disbursements and Balances. (Form 358)
- (2) Ledger of Appropriations, Encumbrances, Disbursements and Balances. (Form 359) (Accounting and Uniform Compliance Guidelines Manual for Special Districts, Chapter 21)

CAPITAL ASSETS

The District remitted over \$10,000,000 to the developer of the various subdivisions which comprised the District. This money was to reimburse the developer for the water and sewer lines (infrastructure) installed prior to the establishment of the District by the Court; however, no capital asset records have been established to record the value of the infrastructure or any other assets of the District.

DAMON RUN CONSERVANCY DISTRICT
EXAMINATION RESULTS AND COMMENTS
(Continued)

The District Board has not adopted a capitalization policy.

Every governmental unit should have a complete inventory of all capital assets owned which reflects their acquisition value. Such inventory should be recorded in the Capital Assets Ledger. A complete inventory should be taken at least every two years for good internal control and for verifying account balances carried in the accounting records.

The governing body should establish a capitalization policy that sets a dollar amount as a threshold to be used in determining which items will be recorded. . . .

A capital asset account for the cost of infrastructure should reflect the location of each road, bridge, tunnel, drainage system, storm water system, dam or lighting system. . . . (Accounting and Uniform compliance Guidelines Manual, Chapter 16)

OFFICIAL'S BOND

Neither the Treasurer nor any other member of the District has executed a surety bond as required by state statute.

IC 14-33-5-18 (b) states: "A financial clerk shall execute a surety bond in the manner prescribed by IC 5-4-1."

IC 5-4-1-5.1 (b) states in part:

"Every elected or appointed officer, official, deputy, or employee of a political subdivision who is required by section 18 of this chapter to file an official bond for the faithful performance of duty, except the county recorder and deputies and employees of the recorder, shall file the bond in the office of the county recorder in the county of residence of the officer, official, deputy, or employee. . . ."

IC 5-4-1-18(c) states, in part:

"Except as provided in subsections (h) and (i), the fiscal bodies of the respective units shall fix the amount of the bond of city controllers, city clerk-treasurers, town clerk-treasurers, Barrett Law fund custodians, county treasurers, county sheriffs, circuit court clerks, township trustees, and conservancy district financial clerks as follows:

- (1) The amount of annual coverage must equal thirty thousand dollars (\$30,000) for each one million dollars (\$1,000,000) of receipts of the officer's office during the last complete fiscal year before the purchase of the bond, subject to subdivision (2).
- (2) The amount of annual coverage may not be less than thirty thousand dollars (\$30,000) nor more than three hundred thousand dollars (\$300,000) unless the fiscal body approves a greater amount of annual coverage for the officer or employee.

DAMON RUN CONSERVANCY DISTRICT
EXAMINATION RESULTS AND COMMENTS
(Continued)

MINUTES

The District does not maintain a record of all meetings held. Minutes are maintained electronically, but not all minutes could be provided for examination. For the years 2004 and 2005, the only minutes that could be provided for audit were the few for which excerpts were required for the bond anticipation notes.

IC 14-33-5-20 states in part: "The board shall do the following: . . .

- (5) Keep an accurate and complete record of all district proceedings and record and file all bonds and contracts, assuming responsibility for the custody and preservation of all papers and documents of the district.

DAMON RUN CONSERVANCY DISTRICT
EXIT CONFERENCE

The contents of this report were discussed on May 6, 2010, with Bernard Madej, President of the Board; Jennifer Beauchamp, Treasurer; and William Frengren, District Attorney. The official response has been made a part of this report and may be found on pages 16 and 17.



Damon Run Conservancy District

P.O. Box 472
Valparaiso, IN 46384

Phone: 219-395-1800
Fax: 888-877-7110

May 27, 2010

Mary Jo Small, C.P.A.

Field Supervisor

State Board of Accounts

302 West Washington Street, Room E418

Indianapolis, Indiana 46204-2765

Re: Damon Run Conservancy District ("District")
State Board of Accounts ("State")
Response to Examination Results and Comments

The report prepared by the State constitutes the first review and comment by the State regarding the District. The District will utilize the information contained in the State's report to ensure compliance and offers the following responses:

Annual Financial Reports. The District will prepare annual reports every year by the Board of the District and/or its designated consultants.

Conflict of Interest Disclosure Statement. The District's concept, creation, funding, construction and operation was and is performed in compliance with Indiana law. The Porter Circuit Court ordered the establishment of the District on January 26, 2004. The funding, construction and operation was fully discussed before the Department of Local Government Finance ("DLGF"), including the President's financial interest, at public hearings and during several meetings with the DLGF. The DLGF entered an Order dated September 26, 2005 which Order specifically referenced the construction and acquisition of the District's proposed infrastructure works by a private developer. Since the matter was fully discussed with and approved by the DLGF, no conflict form was filed. All required disclosure statements will be filed forthwith.

Bond Anticipation Notes. The payments made were as contemplated by the Order entered by the DLGF on September 26, 2005. The payment amount was determined by the average of two appraisals prepared by independent engineering firms who appraised the value of the infrastructure pursuant to engineering plans for the work. Claim forms and receipts should have been filled out. The wires were noted on the District's ledgers. All incoming & outgoing funds will have a claim form and or receipt with backup invoice or paperwork.

Receipt Issuance and Deposits. Receipts will be issued for every payment received by District and deposited in the time required by law.

Billings. The District now uses Indiana American Water Company for its billings services. All billings are currently completed, subject to the bi-monthly billing amendment to the rate ordinance suggested by the State's report, in accordance with the District's rate and use ordinances and/or resolutions of the Board for the District. The District will obtain the prescribed State of Indiana forms to track income and amounts billed to ensure proper billing and no outstanding delinquencies.

Disbursements. A review of the District's 2005 ledger demonstrated there were only 9 disbursements made in 2005. During this period, the District was not aware it needed to complete claim forms. Beginning in 2006 and forward, after learning of the claim process, the District has completed the forms correctly. The District is obtaining written service agreements as specified in the State's report, including itemized billings to show the hourly rates and other fees charged. The District has ordered new checks for the Permit account starting at #5000 to keep them separate and will forthwith note from which account the payment is made. Presently the District's checks are printed from Quickbooks software. The District sent a letter to the State requesting approval to continue with printing the checks in this manner rather than handwritten checks. If the State denies the request, the District will purchase a check book to have checks written. Unpaid balances arise from expenditures arising from costs of infrastructure acquired by the District and management and operation of the District.

Appropriations. The District will forthwith track appropriations ledger and ledger of receipts and is looking for forms approved by the State.

Capital Assets. A capital assets ledger will be kept and an appropriate policy is being worked on by the District with its counsel and accountant.

Official's Bond. A Bond for the treasurer / financial clerk was ordered on May 13, 2010 through Anton Insurance. The application was completed and the bond will be issued immediately.

Minutes. As previously indicated, the District was created on January 26, 2004; however, very little activity of the District occurred from this point in time up until the end of late 2005. The reason being was the principal purpose of the District (i.e. construction, acquisition and operation of sewer and water works) was not completed until this time. From and after the date the District's purpose was able to be implemented and its infrastructure operational, board minutes have been maintained. The District's minutes are posted on its website and the District will further create a binder containing a copy of its minutes. All minutes forthwith will be signed as approved and included in the binder.

Jennifer Beauchamp, Treasurer