

MINUTES OF THE MEETING OF THE SARGENT COUNTY WATER RESOURCE BOARD HELD ON THURSDAY, FEBRUARY 16, 2012 AT 9:00 A.M., IN THE COMMISSIONERS ROOM, SARGENT COUNTY COURTHOUSE, FORMAN, NORTH DAKOTA

Managers present: Jim Bosse, Mark Breker, Chris McFarland, Richard Engst, and Roger White. Absent: None. Also present: Chad Engels, Moore Engineering, Inc.; Sean Fredricks, Ohnstad Twichell, P.C and Tom Jones, NRCS.

The meeting was called to order by Sherry Hosford, Secretary and the Board proceeded to organize for 2012.

Oaths of Office were signed by Richard Engst, Milnor for three-year terms.

Nominations for Chairman. Motion for Chris McFarland. (Bosse/Breker) Second and cast a unanimous ballot.

Nominations for Vice-Chairman. Motion for James Bosse. (Breker/White) Second and cast a unanimous ballot.

Re-appoint Sherry Hosford as Secretary. (Bosse/Breker, motion carried)

Approve 2012 meeting dates on the third Thursday of each month. All dates and times will be on file in the County Auditor's Office. (Engst/White, unanimous)

Approve January 19, 2012 minutes and January financial statement. (Bosse/Engst, unanimous).

Approve payment of the following bills: (Bosse/Engst, unanimous)

65558	James Bosse	Travel	25.50
65559	Mark Breker	Travel	24.48
65560	Richard Engst	Travel	86.70
65561	David Hoffer	Beaver removal – WC # 1	150.00
65562	Ohnstad Twichell	Attorney fees-\$1523.00 and Dr # 4	32.00 =1555.00
65563	Roger White	Travel	120.36
6772	Mark Breker	2 PD less 13.56 taxes	226.44
6773	Sherry Hosford	Salary less 17.89 taxes	298.78
6774	Richard Engst	3 PD less 20.34 taxes	339.66
6775	Roger White	3 PD less 20.85 + \$9.00 meal taxes	348.15
6776	Jim Bosse	2 PD less 13.56 taxes	226.44
6777	Chris McFarland	1 PD less 6.78 taxes	113.22
DD	Sargent County Bank	Withholding taxes	220.14

Application to Drain No. 3801 for Emeric Erickson and Calvin Erickson in the SE 1/4 of Section 2 in Dunbar Township (131-55)

The Board reviewed *Application to Drain No. 3801* dated October 2, 2011, for Emeric Erickson and Calvin Erickson. Under the application, Applicants seek to construct a surface drainage project that will include surface inlets that drain surface water into an extensive underground pipe system, all in the SE 1/4 of Section 2 in Dunbar Township, Sargent County, North Dakota. The underground pipe will convey surface water through non-perforated pipes. All water will flow through a pumped outlet that will pump water through a culvert along the southern boundary of the SE 1/4 of Section 2, through an existing culvert through the east-west township road that serves as the boundary between Sections 2 and 11. From there, the pumped water will flow directly into a slough in the NE 1/4 of Section 11; the slough currently outlets through a manmade ditch that has been in existence for several years in the NE 1/4 of Section 11. The pump outlet pumps water at a rate of 800 gallons per minute. The project may include a second pump along the township road, but the second pump is for a smaller tile project that is not subject to the tile 80-acre permitting threshold under North Dakota law.

In attendance at the meeting were Emeric Erickson, Calvin Erickson, Wendell Schutt, and Linda Schutt. The parties indicated the Erickson's previously submitted a draft flowage easement to the Schutt's for their consideration. Mr. Erickson has offered \$10,000 to the Schutt's as partial consideration for the easement. The Schutt's have requested a revision to the easement that places a ten-year sunset on the easement, as opposed to a permanent easement. Mr. Erickson is concerned about a ten-year sunset, especially in light of the fact he views this project as a multi-phase project (though Mr. Erickson indicated the application includes the entire project, but that he will construct the permitted project in phases). Sean Fredricks indicated the terms of any easement would be up to the applicants and the Schutt's, to the extent the Board requires flowage easements. This project was previously the subject of two complaints, and Mr. Emeric Erickson previously closed the project as

ordered by the Board in 2011. With that in mind, Mr. Erickson indicated he assumed the Board would require flowage easements; and, therefore, he commenced negotiations with the Schutt's.

Chad Engels reviewed the application with the Board, and the Board ultimately concluded the project will result in adverse impacts to the owners of the NE1/4 of Section 11 of Dunbar Township. More specifically, the project will result in the addition of 800 gallons per minute into the NE 1/4 of Section 11, additional water that would not normally flow onto the NE 1/4 of Section 11, at least not at that velocity. In addition, the introduction of the water into the slough in the NE 1/4 of Section 11 will adversely impact the Schutt's' ability to drain their slough through the manmade ditch on their quarter. Therefore, the Board concluded that an approved permit would have to include operating conditions, as well as a flowage easement from the owners of the NE 1/4 of Section 11.

The Board reviewed and adopted Chad Engels' proposed responses to the eight elements under 89-02-01-09.2 of the North Dakota Administrative Code. The Board further determined no hearing was necessary under 89-02-01-09.1(2) of the North Dakota Administrative Code because the Board determined the project will require an operating plan and will require applicants to obtain a flowage easement from the owners of the NE 1/4 of Section 11, landowners who will be adversely impacted by the project; in light of the conditions the Board will attach to the permit, no hearing was necessary.

According to records on file with the Sargent County Recorder's Office, Emeric Erickson and Calvin Erickson own the SE 1/4 of Section 2 of Dunbar Township; in addition, Wendell and Linda Schutt own the NE 1/4 of Section 11 of Dunbar Township.

The Board discussed proposed conditions for operation offered by Mr. Emeric Erickson. The parties agreed Mr. Erickson should not operate his pump between December 1 through April 20, and Mr. Erickson agreed that was a reasonable condition. All in attendance agreed that if the culvert through the 2/11 section line is full; Mr. Erickson should not operate his pump. With regard to the Buffalo Lake issue, the Board concluded Mr. Erickson's project would not have any impact on the levels in Buffalo Creek, so the Board determined Buffalo Creek levels would not have any impact on Mr. Erickson's obligations to turn off his pump. The Board additionally concluded a flowage easement is necessary from the Schutt's in light of the additional water on their property, the velocity of the discharge of water onto their property, and the inability of the Schutt's to adequately drain the slough on their property as a result of the additional water introduced by Mr. Erickson's project.

It was moved by Manager Breker and seconded by Manager Bosse to approve *Application to Drain No. 3801* dated October 2, 2011, for Emeric Erickson and Calvin Erickson in the SE 1/4 of Section 2 in Dunbar Township, subject to the following conditions:

- 1) That Applicants obtain and record (with the Sargent County Recorder's Office) a flowage easement (and not just a written consent) from the owners of the NE 1/4 of Section 11 of Dunbar Township;
- 2) That Applicants obtain easements from the owner of any land, besides land owned by Applicants, on which Applicants will construct the tile system;
- 3) That Applicants notify the Sargent County Water Resource District in advance of any proposed alterations to outlet locations, or addition of any outlets;
- 4) That Applicants notify the Sargent County Water Resource District in advance of any proposed improvements to the drainage system, the pump, any proposed increase in capacity to the pump, or any other improvements to the project, and, if necessary, submitting an additional permit application;
- 5) That Applicants must turn off the pump that discharges water through the township road that acts as the boundary between Sections 2 and 11 (137th Avenue) if the culvert is full;
- 6) That Applicants will not operate the pump from December 1 through April 20 every winter; and
- 7) That Applicants obtain all other necessary and requisite licenses, permits, registrations, and/or approvals from all applicable federal, state, county, and municipal governments, and any other applicable governmental entities.

Upon roll call vote, the motion carried unanimously.

The Schutt's indicated they would be willing to discuss the terms of the flowage easement with the Erickson's. Emeric Erickson indicated that if he is unable to obtain a flowage easement from the Schutt's, he would remove the surface inlet pumps and replace the project with a 79-acre tile project, with pumps, and that he would do so without first obtaining a tile permit.

Miles Johnson, Gwinner, ND met with the Board to discuss an Application to Drain No. 3960 to maintain the water level in the SE1/4-1-131-56 which is affecting his sewer system. This is a request to make this a permanent drain as it was earlier approved as an emergency drain. The Office of the State Engineer has determined that it does not involve drainage of state-wide or interdistrict significance. The Board discussed the application and Tom Jones of NRCS indicated that the elevation for wetlands has not been determined. The Board would like to inspect this area to determine whether any easements are required. Table a decision until the March meeting.

Jeff Breker, Havana provided a letter to the Board regarding his Conservation Stewardship Program (CSP) application. He was seeking confirmation from this Board for land he leases from this Board that he will have control of the land for at least five years and ensure Mr. Breker that he will have control of the land for the life of the contract. Motion to authorize the Chairman to sign with the understanding that this does not constitute a lease and the land owned by Sargent County Water Resource District and leased by Mr. Breker will be open for bids every three years. (Breker/Engst, unanimously)

Application to Install a Subsurface Drain for Joe Breker, Jeffrey Breker, and Delores Breker in the NW 1/4 and the NW 1/4 of the SW 1/4 of Section 4 in Tewaukon Township (129-54 LTL)

The Board reviewed an *Application to Install a Subsurface Drain* dated February 6, 2012, for Joe Breker, Jeffrey Breker, and Delores Breker. The Board concluded the application does not propose drainage of statewide significance, so the Board has jurisdiction to approve the permit (without forwarding to the State Engineer's Office to consider and approve). Under the application, Applicants seek to install a drain tile system in the NW 1/4 and the NW 1/4 of the SW 1/4 of Section 4 of Tewaukon Township, Sargent County, North Dakota. The project will include a pump outlet that will discharge into the South County highway #5 road ditch in the Northwest corner of the NW 1/4 of Section 4. The tile discharge will flow west in the South road ditch along the North line of Section 5 until it reaches the Frenier ditch. The Sargent County Water Resource District owns and operates the Frenier ditch as a component of the Frenier Dam. Applicants plan to install a culvert through the North-South township road along the intersection of Section 4 and Section 5.

Jeff and Joe Breker were present to discuss the project. Chad Engels reviewed the application and submitted his recommendation to the Board that, because the project will discharge into County right of way, Applicants should obtain permission from Sargent County to utilize their county road ditch. In addition, Applicants should obtain permission from Tewaukon Township to install a culvert through their township road in accordance with the North Dakota Stream Crossing Standards. Jeff and Joe Breker explained that Delores Breker owns the property adjacent to the county road where the tile discharge will flow before reaching the Frenier ditch. With that in mind, the application did not require a *Thirty-Day Notice* under N.D. Cent. Code Section 61-32-03.1, and the Board cannot require Applicants to obtain any flowage easements from downstream landowners.

According to records on file with the Sargent County Recorder's Office, Applicants own the NW 1/4 of Section 4, the NW 1/4 of the SW 1/4 of Section 4, and the N 1/2 of Section 5.

It was moved by Manager Breker and seconded by Manager White to approve *Application to Install a Subsurface Drain* dated February 6, 2012, for Joe Breker, Jeffrey Breker, and Delores Breker in the NW 1/4 of Section 4 and the NW 1/4 of the SW 1/4 of Section 4 in Tewaukon Township, subject to the following conditions:

- 1) That Applicants obtain easements from the owner of any land, besides land owned by Applicants, on which Applicants will construct the tile system;
- 2) That Applicants provide and maintain adequate erosion protection at any and all outlets into Frenier ditch (Applicants are solely responsible for any damages to Frenier ditch as a result of the tile project);
- 3) That Applicants obtain written permission from Tewaukon Township to install a culvert through its township road, in accordance with North Dakota's Stream Crossing Standards;
- 4) That Applicants obtain written permission from Sargent County to utilize any of its county highway right of way;
- 5) That Applicants notify the Sargent County Water Resource District in advance of any proposed alterations to outlet locations, or addition of any outlets;
- 6) That Applicants notify the Sargent County Water Resource District in advance of any proposed improvements to the tile system, or any proposed increase in the capacity or drainage area of the tile system and, if necessary, submitting an additional permit application; and

7) That Applicants obtain all other necessary and requisite licenses, permits, registrations, and/or approvals from all applicable federal, state, county, and municipal governments, and any other applicable governmental entities.

Upon roll call vote, the motion carried unanimously.

Application to Install a Subsurface Drain for Joe Breker and Delores Breker in the NE 1/4 of Section 5 and the NE 1/4 of the NW 1/4 of Section 5 in Tewaukon Township (129-54-LTL)

The Board reviewed an *Application to Install a Subsurface Drain* dated February 6, 2012, for Joe Breker and Delores Breker. The Board concluded the application does not propose drainage of statewide significance, so the Board has jurisdiction to approve the permit (without forwarding to the State Engineer's Office to consider and approve). Under the application, Applicants seek to install a drain tile system in the NE 1/4 of Section 4 and the NE 1/4 and the North edge of the NW 1/4 of Section 5 in Tewaukon Township, Sargent County, North Dakota. The project will include two existing gravity outlets from an existing tile system, and two new pump outlets into the Frenier ditch. One of the pumps will require installation of a pipe underneath the Frenier ditch in the E 1/2 of the W 1/2 of Section 5.

Chad Engels reviewed the application and submitted his recommendation to the Board that, because the project will discharge into the Frenier ditch, the Board should require Applicants to install and maintain erosion protection to protect the Frenier ditch. The proposed project will discharge directly into the Frenier ditch and therefore the application did not require a *Thirty-Day Notice* under N.D. Cent. Code Section 61-32-03.1, and the Board cannot require Applicants to obtain any flowage easements from downstream landowners.

According to records on file with the Sargent County Recorder's Office, Applicants own the NE 1/4 of Section 5 and that portion of the NW 1/4 of Section 5 where Applicants seek to install the tile system.

It was moved by Manager Breker and seconded by Manager Bosse to approve *Application to Install a Subsurface Drain* dated February 6, 2012, for Joe Breker and Delores Breker in the NE 1/4 of Section 5 and a portion of the NW 1/4 of Section 5 in Tewaukon Township, subject to the following conditions:

- 1) Execution of a Utility Permit by Applicants that require the pipe underneath Frenier ditch to be at least 2 feet below the bottom of the ditch;
- 2) That Applicants obtain easements from the owner of any land, besides land owned by Applicants, on which Applicants will construct the tile system;
- 3) That Applicants provide and maintain adequate erosion protection at any and all outlets into Frenier ditch (Applicants are solely responsible for any damages to Frenier ditch as a result of the tile project);
- 4) That Applicants notify the Sargent County Water Resource District in advance of any proposed alterations to outlet locations, or addition of any outlets;
- 5) That Applicants notify the Sargent County Water Resource District in advance of any proposed improvements to the tile system, or any proposed increase in the capacity or drainage area of the tile system and, if necessary, submitting an additional permit application; and
- 6) That Applicants obtain all other necessary and requisite licenses, permits, registrations, and/or approvals from all applicable federal, state, county, and municipal governments, and any other applicable governmental entities.

Upon roll call vote, the motion carried unanimously.

John Quandt, Oakes met with the Board to ask questions regarding application Nos. 3453, 3454, 3455, 3456, 3443 and 3444. These applications were acted on and approved by this Board in 2009 with certain conditions. Mr. Quandt put this project on hold until now to find out the outcome of the Riverdale Improvement Project as an outlet. Due to the uncertainty of this drain timing they would like to move forward without waiting for the outcome of Riverdale project. Changes have been made to the initial permits and he asked what easements and permissions are needed. The Board encouraged Mr. Quandt to file new application due to changes in the design. Blank forms were provided to Mr. Quandt for submission to the Board or the State Water Commission.

The North Dakota State Water Commission (NDSWC) provided two copies of an agreement between the NDSWC and this Board for cost share of the Silver Lake Dam Emergency Repairs Project. NDSWC agreed to provide cost share not to exceed \$2,800 to reimburse 65% of the actual eligible costs incurred in the Silver Lake Dam Emergency Repairs Project in the summer of 2011. Sherry Hosford, Secretary noted that she found an agreement between the Sargent County Park Board and the NDSWC dated March 15, 1967 stating that the SC Park Board shall operate and maintain the Silver Lake Dam in accordance with rules and regulations prescribed by the NDSWC. Sean Fredricks, Attorney and Board members instructed the Secretary to send a letter to the NDSWC requesting that the Agreement for Cost-Share Reimbursement of this project be changed so the agreement is between the Sargent County Park Board and the NDSWC.

Meeting adjourned.

CHRIS MCFARLAND – CHAIRMAN

ATTEST:

SHERRY HOSFORD - SECRETARY