

MINUTES OF THE MEETING OF THE SARGENT COUNTY WATER RESOURCE BOARD HELD ON THURSDAY, JULY 22, 2010 AT 7:00 P.M. IN THE COMMISSIONERS ROOM, SARGENT COUNTY COURTHOUSE, FORMAN, ND

Managers present: Jim Bosse, Richard Engst, Chris McFarland, Mark Breker, and Roger White. Absent: none.

Approve June 17, 2010 minutes as corrected and June financial statement. (White/Engst, unanimous)

Approve payment of the following bills: (McFarland/Breker, unanimous)

62828 James Bosse	Travel	149.50
62829 Mark Breker	Travel	54.00
62830 Richard Engst	Travel	75.00
62831 Jacob Haag	WET registration	250.00
62832 J & M Printing Inc.	6 Drain maps	229.64
62833 Chris McFarland	Travel	33.00
62834 Ohnstad Twichell	G-\$340.60; Drain permits - \$628.30 and Dr # 7	
\$36.00 = Total		1004.90
62835 Roger White	Travel	802.20
4709 Sherry Hosford	Sec. salary less 24.22	292.45
DD Sargent County Bank	Withholding taxes	49.39

Dennis Brezicka, Chairman, Dunbar Township Board, met with the Board to request cost share on installing three (3) 36 inch culverts - 1)Section 10 and 11; 2)Section 11 and 12; and 3) an additional culvert between Section 11 and 12. The roads have been washing out every spring and the township feels it is necessary to install additional culverts to control the flooding. Approve one-third cost share of the three 36 inch culverts. (Breker/Engst, unanimous)

The Board reviewed the 2011 budget and moved to approve \$235,100 for the General Fund and the following for the individual drains: #2-\$1,000, #4-\$2,000, #8-\$1,000, #9-\$5,000, #11-\$50,000, #12-\$10,000, Water Channel # 1-\$10,000 and Tewaukon Watershed-\$10,000. (Engst/Breker, unanimous)

Approve the following maintenance assessment amounts for each drain for 2010 taxes: Drain No. 2 - \$1.00; Drain No. 4 - \$1.00; Drain No. 8 - \$.25; Drain No. 9 - \$1.50; Drain No. 11 - \$1.00; Drain No. 12 - \$1.50; SC Water Channel Imp. District No. 1 - \$1.50; Tewaukon Watershed - \$.50. (Engst/Breker, unanimous)

Sean Fredricks, Attorney arrived at 8:30 p.m.

**Application to Drain with Drain Tile #3591 for Terrance Zimbelman**

Mr. Zimbelman and his tenant Andy Seyer explained the proposed tile project to the Board. The Board noted the applicant had not submitted a tile plan to the State Engineer's office, nor had applicant submitted one to the Board. Applicant indicated he would submit a tile plan, and the Board notified applicant that any approval would be contingent upon the Board's receipt of that plan.

The Board reviewed the information submitted by the State Engineer's office regarding Application to Drain with Drain Tile #3591. Mr. Zimbelman and his tenant intend to construct a tile system in part of the Northwest Quarter and part of the Southwest Quarter of Section 32 in Verner Township. The applicants, Terrance and Renee Zimbelman, are the record owners of those parcels. The applicant explained the outlet will basically discharge at a high point in the Southwest Quarter of the Northwest Quarter. From there, the discharge will flow into a natural drain and will ultimately empty into Lake Taayer. In addition, portions of the discharge may flow south into the Southwest Quarter of Section 32, and south into the Highway 11 road ditch. From there, any drainage will flow east into Lake Taayer (Lake Taayer has grown significantly, and is much larger than it is depicted in the plat map examined by the Board).

Applicant indicated he has spoken with the Bureau of Reclamation regarding discharge into Lake Taayer. The Bureau did not require any formal application process and did not attach any conditions to applicant's discharge into Lake Taayer. The Board indicated the applicant would be responsible for any requisite permits or other consents from the Bureau, and the applicant understood.

With regard to any potential discharge into State Highway 11 right of way, the Board indicated the applicant would be solely responsible for obtaining any permission from the Department of Transportation.

The Board's engineer had previously suggested a flowage easement from the owner of the Northwest Quarter of Section 32, if not owned by applicant. However, as shown by a Warranty Deed of record in the Sargent County Recorder's office, Terrance and Renee Zimbelman own that quarter. Since the applicant owns the property where the tile outlet and potential discharges will be located, no easements are necessary. Applicant may want to record the permit, but that is up to the applicant.

Because the tile drain will ultimately outlet into Lake Taayer, the project will not result in adverse impacts to downstream landowners at the point of discharge. The Board reviewed and adopted Chad Engels' proposed responses to the eight-point questionnaire and the eight elements under 89-02-01-09.2 of the North Dakota Administrative Code. The Board further determined no hearing was necessary under Section 89-02-01-09.1(2) of the North Dakota Administrative Code because the Board determined the applicant owns the property where the tile drain will discharge, and because the project will discharge into Lake Taayer, and not over property owned by other downstream landowners.

Manager Breker, seconded by Manager McFarland, moved to approve Application to Drain with Drain Tile #3591 for Mr. Terrance Zimbelman, subject to the following conditions:

- 11) that you submit a copy of applicant's tile plan to the Sargent County Water Resource District, the North Dakota State Engineer's office, and the North Dakota Department of Transportation;
- 2) that you obtain written permission from the owner of any land, besides land you own, on which you will construct the tilesystem;
- 3) that you obtain written consent from the North Dakota Department of Transportation regarding use of NDDOT's State Highway 11 right of way;
- 4) that you 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.
- 5) applicant has indicated the Bureau of Reclamation did not object to applicant's plans to discharge into Lake Taayer; to the extent the Bureau of Reclamation requires applicant to obtain written permission or to comply with any Bureau of Reclamation regulations, applicant is solely responsible for complying with Bureau of Reclamation directives.

The Board directed Sean Fredricks to prepare a Notice of Decision, and to provide the Notice of Decision to the State Engineer, the applicant, and other parties of record. Upon roll call vote, the motion carried unanimously.

#### **Application to Drain with Drain Tile No. 3579 for Evelyn Kraig**

Charles and Jon Anderson and Gary Thornberg appeared before the Board to present the Application. In addition to the information from the State Engineer's office regarding Application to Drain with Drain Tile No. 3579, the Board also reviewed an aerial map provided by Mr. Chad Engels, the Board's engineer. The tile project will discharge into a natural channel from the Southeast Quarter of Section 14 of Weber Township (Evelyn Kraig, Mary Beth Anderson, and Charles and Mary Beth Anderson, husband and wife, all own certain interests in the Southeast Quarter of Section 14 of Weber Township). From there, the discharge will flow along the natural channel through the Northwest Quarter of the Southwest Quarter of Section 13 in Weber Township; the Northwest Quarter of Section 13; the Northeast Quarter of Section 13; and the Southeast Quarter of the Southeast Quarter of Section 12 (a small corner in that quarter corner section). The Andersons explained the natural channel will not utilize any road ditches, that any road crossings will utilize existing culverts, and that the existing culverts through the roads can easily accommodate the extra water from the tile drainage discharge. The Board will not require written permission from Weber Township, but the Board will send a copy of the permit to Weber Township for their information. To the extent the Township believes additional permission or approvals are necessary, the Township will have to approach the applicant; the Board's standard permitting/approvals condition would then apply in that scenario (i.e., the applicant must obtain any other applicable permits, approvals, consents, etc., from other applicable entities).

The tile project will result in adverse impacts to property owners adjacent to the existing natural channel. As indicated in the engineer's responses to

the eight-point questionnaire, there will be sustained flows downstream. As a result of sustained flows, properties downstream, adjacent to the channel, will experience prolonged wetness in and adjacent to the channel, at least within the first mile downstream of the outlet. This prolonged wetness may promote the growth of cattails and make channels difficult to cross for longer periods of time. While tile projects of this nature do not typically aggravate flooding problems, the tile discharge, and potentially the water quality from the discharge, will create adverse conditions for the properties adjacent to the natural channel. Typically, those adverse conditions are negligible at the most beyond one mile downstream from the tile drain discharge.

The Board's engineer initially suggested flowage easements from the downstream properties for at least one mile, including from the owner of the Southeast Quarter of the Southeast Quarter of Section 12. However, the Andersons explained there is a culvert in that corner that will eliminate or reduce any flow over that very small portion.

The Board reviewed the proposed responses to the eight-point questionnaire prepared by Chad Engels. Because the tile will outlet into a natural channel and the natural channel will be wet for longer periods, the project will adversely impact downstream landowners. The Board adopted Chad Engels' proposed responses to the eight-point questionnaire and the eight elements under 89-02-01-09.2 of the North Dakota Administrative Code. The Board further determined no hearing was necessary under Section 89-02-01-09.1(2) of the North Dakota Administrative Code because the Board will already require flowage easements from downstream landowners.

Manager Breker, seconded by Manager White, moved to approve Application to Drain with Drain Tile No. 3579 for Ms. Evelyn Kraig, subject to the following conditions:

- 1) that applicant obtain and record (with the Sargent County Recorder's Office) flowage easements (and not just written consents) that include language permitting saline water from the owners of the Northwest Quarter of the Southwest Quarter of Section 13; the Northwest Quarter of Section 13; and the Northeast Quarter of Section 13, all in Weber Township;
- 2) that applicant obtain written permission from the owner of any land, besides land you own, on which you will construct the tile system; and
- 3) that applicant 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 Board directed Sean Fredricks to prepare a Notice of Decision, and to provide the Notice of Decision to the State Engineer, the applicant, and other parties of record.

#### **Application to Drain with Drain Tile #3576 for Julie Vculek**

The Board reviewed information from the State Engineer regarding Application to Drain with Drain Tile #3576 for Ms. Julie Vculek. Ms. Vculek intends to construct a tile system in the Northeast Quarter of Section 16 of Harlem Township. This project will include a pump outlet, and the tile will discharge into Sargent County Drain No. 11. The applicant is the record owner of the Northeast Quarter of Section 16 in Harlem Township, according to records on file with the Sargent County Recorder's office. Because the applicant owns the property where applicant seeks to install the tile, and because the tile will discharge into a legal drain owned and controlled by the Board, there will not be adverse impacts to downstream landowners, and no hearings will be necessary.

The Board reviewed the proposed responses to the eight-point questionnaire prepared by Chad Engels. The drain will outlet directly into a project owned and operated by the Sargent County Water Resource District, so no flowage easements will be necessary and no hearing will be necessary. Further, Mr. Engels concluded the project will not result in adverse impacts to downstream landowners. However, Mr. Engels did indicate to the Board that the applicant should be required to install and maintain adequate erosion protection to protect Drain 11.

The Board reviewed and adopted Chad Engels' proposed responses to the eight-point questionnaire and the eight elements under 89-02-01-09.2 of the North Dakota Administrative Code. The Board further determined no hearing was necessary under Section 89-02-01-09.1(2) of the North Dakota Administrative

Code because the Board determined there are no adverse impacts to downstream landowners since the drain will discharge into the Board's project.

Manager McFarland, seconded by Manager Engst, moved to approve Application to Drain with Drain Tile #3576 for Ms. Julie Vculek, subject to the following conditions:

- 1) that applicant obtains written permission from the owner of any land, besides land you own, on which you will construct, the tile system;
- 2) that applicant provides and maintains adequate erosion protection at the outlet(s) into Sargent County Drain No. 11;
- 3) that applicant 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 Board directed Sean Fredricks to prepare a Notice of Decision, and to provide the Notice of Decision to the State Engineer, the applicant, and other parties of record.

Applications to Drain were also received from Milton McLaen, Gary Thornberg and Gerald Woytassek but were tabled until the August meeting due to late arrival prior to the meeting.

Mr. Tom Jones, DC NRCS presented the CPA O & M Inspection Annual Report. The inspection was held on June 21, 2010 with the following attending: Tom Jones, DC; Roger White, Richard Engst, Mark Breker, Chris McFarland and Jim Bosse. No structural or safety issues were identified. The only issues involved noxious weeds, beavers, and tree removal. 1) The **Bergh-McLaen CAT** - all structures look good. **Tewaukon - Channel Improvement No. 1** - Drain has recently been cleaned in Sec. 11 and 15. Area is stable and in good shape. **Tewaukon - Channel Improvement No. 2** - no problems are observed. **Nelson Dam** - fence was replaced last year. Good limited grazing. **Brummond-Lubke Dam** - Wormwood Sage and trees present on the embankment. Area should be sprayed to control noxious weeds and trees should be removed and controlled to avoid possible structure failure. Mr. Jones recommends that the trees be cut down and stumps treated. **Frenier Dam** - Good grass cover, leafy spurge is under control. **Silver Lake Recreation Development** - All facilities and structures are being well maintained, all are in good condition. **Tewaukon Channel Improvement No. 3** - No problems observed. **Wild Rice Creek - Channel 9** - Section 31 - all corner and "no cultivation" signs are in place. Some beaver activity present that needs to be addressed. Board indicated they would be getting a state trapper involved and cleaning with a backhoe. Willow areas should be treated chemically and a few cottonwoods should be removed from the mitigation ponds to allow them to better fulfill their mission while limited attractiveness to beavers. All legal drains were inspected and noted that several areas have damage from excessive rains and are sloughing in. These areas will be reported to FEMA.

Mr. Jones would also like to receive a copy of the Board's agenda so he can arrange his schedule to attend meetings when issues are being discussed which concerns his office.

Tom Jones, Sargent County's NRCS agent, offered a proposal for the Board's consideration. Ms. Patricia Adams is interested in signing up for the NRCS' WPA program. However, Sargent County Drain No. 16 (aka Drain No 11) runs across the parcel. The Board has a "through and across" easement over Ms. Adams' parcel; in other words, the Board's drain easement across Ms. Adams' property covers and encumbers the entire quarter, and not just the actual drain right of way. Under NRCS rules, Ms. Adams cannot enroll in WPA unless the Board is willing to release their existing "through and across" easement in exchange for a more defined easement, with a metes and bounds description. Otherwise, Ms. Adams will not be eligible for WPA.

Mr. Jones indicated the landowner or NRCS will pay for the requisite survey. He would only need to know how wide the Board will require its drain right of way. The Board assumed 100-150 feet would be sufficient, but the Board would like its engineer, Chad Engels, to indicate how wide their easement should be.

Once Chad indicates how wide the easement is, he and Sean can let Tom Jones know, and Mr. Jones will get the survey completed, at no cost to the Board. Then, Mr. Jones will provide the metes and bounds description to Sean and Chad. Sean will prepare a release of the existing easement, and a new easement with the new metes and bounds description. The Board will review and consider at their next meeting.

Mr. Jones also discussed another project involving Bruns Slough and WRP at the north end of Drain No. 11 and the possibility of dike construction.

Jacob Haag, Instructor at Sargent Central informed the Board that he would be attending the ND Central Missouri River Watershed Institute (WET). Mr. Haag inquired about a \$250 scholarship from local water districts to cover the \$250 registration fee. The Board had approved attendance of any Sargent County teacher including reimbursement of \$250 registration fee on October 15, 2009.

Meeting adjourned at 11:35 p.m.

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JAMES BOSSE - CHAIRMAN

ATTEST:

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SHERRY HOSFORD - SECRETARY