

MINUTES OF THE MEETING OF THE SARGENT COUNTY WATER RESOURCE BOARD
HELD ON THURSDAY, AUGUST 19, 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. Also present: Sean Fredricks, Attorney

Approve July 22, 2010 minutes as corrected and July financial statement. (McFarland/Engst,
unanimous)

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

62968 Jim Bosse	Travel	74.00
62969 Mark Breker	Travel	64.00
62970 Richard Engst	Travel	36.00
62971 Johnston Fargo Culvert	Culvert N of Gwinner/Whitestone Hill	2336.24
62972 Chris McFarland	Travel	48.50
62973 Moore Engineering, Inc.	3 Tile permit applications	472.50
62974 Quill Corporation	File folders	16.71
62975 Roger White	Travel	45.00
62976 USDA-APHIS-Wildlife Services	Dr # 9 beaver dam removal	200.00
4816 Mark Breker	6 PD less 55.08 taxes	664.92
4817 Sherry Hosford	Sec. salary less 24.22 taxes	292.45
4818 Richard Engst	6 PD less 55.08 taxes	664.92
4819 Roger White	10 PD less 105.22 taxes	1094.78
4820 Jim Bosse	15 PD less 222.12 taxes	1577.88
4821 Chris McFarland	6 PD less 55.08 taxes	664.92
DD Sargent County Bank	Payroll taxes	936.71

Discussed kiosk at Frenier Dam and Mark will check on getting it installed before fall. Jim Bosse called Dave Titus and discussed tree removal on Drain No. 9. Mr. Don Glarum confirmed that the Sargent County Board could retain a contractor to enter upon the property to burn, bury, or otherwise dispose of the tree piles. The Board will likely retain Dave Titus Excavation in the near future, when conditions are somewhat drier. Discussed replacing tile in the Cogswell drain between the NE1/4 and the NW1/4-14-130-57 and Dave Titus could also complete this project. The project to clean the natural drain in Section 22-129-55 was also discussed as a possible project for Dave Titus. The Secretary was instructed to verify the easement that the Board has in the NE1/4-22-129-55.

1 **Application to Drain with Drain Tile No. 3617 for Milton McLaen**

The Board reviewed information from the State Engineer regarding Application to Drain with Drain Tile No. 3617 for Mr. Milton McLaen. Milt McLaen and Joe Breker were present to discuss the application. The Board also reviewed an aerial map provided by Mr. Chad Engels, the Board's engineer. The applicant seeks to install a tile system in Section 18-129-54 in Weber Township, with discharges in the northeast corner. According to records on file with the Sargent County Recorder's Office, Mr. McLaen is the record owner of Section 18 where he proposes to construct the tile system. The Wild Rice main stem is approximately one mile downstream from the outlets. The tile would discharge into an existing channel between the tile outlets and the Wild Rice River main stem that meanders across a portion of the Southeast portion of Section 7-129-54 in Weber Township before flowing across all four quarter-sections in Section 36-129-55-LTL of Tewaukon Township in Sargent County. Mr. McLaen and Joe Breker explained there would be four different outlets; the first outlet would discharge through an existing culvert through Sargent County Highway No. 5 and into the existing channel in Section 7-129-54, and the other three outlets would discharge directly into the existing channel; all four discharge into the existing channel, and ultimately flow into the Wild Rice main stem. According to Mr. McLaen, the discharge through the County culvert would not drop/discharge directly into County right of way; however, the Board will require written permission from Sargent County to utilize its right of way and culvert regarding County Highway 5.

The Board's engineer recommended easements from the discharge points to where the tile would ultimately discharge into the Wild Rice. The discharge would flow across the Southeast portion of Section 7-129-54 in Weber Township before flowing into Tewaukon Township, across all four quarter-sections in Section 36-129-55-LTL. The Board indicated to Mr. McLaen and Mr. Breker it will require easements from the owners of those parcels.

The tile project will result in adverse impacts to property owners between the outlets and the Wild Rice main stem in Section 7-129-54 of Weber and Section 36-129-55-LTL of Tewaukon. As indicated in the engineer's responses to the eight-point questionnaire, there will be an increase in the total volume of water in the existing channel that will result in longer periods of wet conditions in and along the channel. While tile projects of this nature do not typically aggravate flooding problems, the additional water, 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. In this case, anything downstream from the discharge of the existing channel into the Wild Rice main stem would not suffer any adverse impacts.

The Board reviewed the proposed responses to the eight-point questionnaire prepared by Chad Engels. Because the tile will outlet into an existing channel and the channel will be wet for longer periods, the project will adversely impact downstream landowners. However, the Board concluded no hearing is necessary since the Board will already require flowage easements from those downstream landowners. The Board agreed with the engineer's recommendations that the Board should require erosion protection at all outlets to prevent erosion.

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, and written permission from Sargent County to utilize its highway right of way.

Manager Breker, seconded by Manager White, moved to approve Application to Drain with Drain Tile No. 3617 for Mr. Milton McLaen, 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 following parcels in Sargent County, North Dakota:

- a. South Half of Section 7-129-54, Weber Township;
- b. Southeast Quarter of Section 36-129-55-LTL, Tewaukon Township;
- c. Southwest Quarter of Section 36-129-55-LTL, Tewaukon Township;
- d. Northeast Quarter of Section 36-129-55-LTL, Tewaukon Township; and
- e. Northwest Quarter of Section 36-129-55-LTL, Tewaukon Township.

2) that applicant obtains written permission from the owner of any land, besides land you own, on which you will construct the tile system;

3) that applicant obtains written consent from the Sargent County Commission to utilize any of its highway right of way;

4) that applicant provide and maintain adequate erosion protection at all four outlets; and

5) 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.

1 **Applications to Drain with Drain Tile #3601 and #3602 for Gary Thornberg**

The Board reviewed information from the State Engineer regarding Applications to Drain with Drain Tile #3601 and #3602 for Mr. Gary Thornberg. Mr. Thornberg intends to construct a tile system in the West Half of Section 24; the Northwest Quarter of Section 23; and the North Half of the Northeast Quarter of Section 23, Weber Township all 129-55. According to records on file with the Sargent County Recorder's Office, Gary and Mary Ann Thornberg are the record owners of the property where applicant proposes to construct the tile system. Mr. Thornberg was present and discussed the project with the Board. The projects proposed under No. 3601 would actually flow over the McLaen property, the property subject to Tile Permit No. 3617 for Mr. Milton McLaen. These projects will both ultimately flow into the Wild Rice River main stem; however, any downstream impacts will dissipate at approximately the Weber Township and Tewaukon Township line.

The Board reviewed correspondence from its engineer, Mr. Chad Engels. With regard to No. 3601, Mr. Engels recommended downstream flowage easements from the owners of the Southeast Quarter of Section 13; the Southwest Quarter of Section 18; the Northwest Quarter of Section 18; all in Weber Township-(129-55) and the South Half of Section 7-129-54. According to records on file with the Sargent County Recorder's Office, Gary and Mary Ann Thornberg are the record owners of the Southeast Quarter of Section 13-129-55. Therefore, no easement is necessary in that quarter-section,

but the Board recommended to Mr. Thornberg that he record his final permit with the Sargent County Recorder's Office to put all future owners on notice of the permit. With regard to the West Half of Section 18-129-54 and the South Half of Section 7-129-54, flowage easements are necessary.

With regard to No. 3602, Mr. Engels recommended downstream flowage easements from the owners of the Southeast Quarter of Section 14; the Northwest Quarter of the Southwest Quarter of Section 13; the Northwest Quarter of Section 13; the Northeast Quarter of Section 13; the Southeast corner of Section 12; all in Weber Township (129-55) and the South Half of Section 7-129-54. According to records on file with the Sargent County Recorder's Office, Gary and Mary Ann Thornberg are the record owners of the Northwest Quarter of the Southwest Quarter of Section 13-129-55. Therefore, no easement is necessary for that parcel, but the Board recommended to Mr. Thornberg that he record his final permit with the Sargent County Recorder's Office to put all future owners on notice of the permit. With regard to the following parcels, flowage easements are necessary: Southeast Quarter of Section 14; the Northwest Quarter of Section 13; the Northeast Quarter of Section 13; the Southeast corner of Section 12 all in 129-55 and the South Half of Section 7-129-54.

The tile projects will result in adverse impacts to property owners between the outlets and at approximately the Weber Township and Tewaukon Township line. As indicated in the engineer's responses to the eight-point questionnaire, there will be an increase in the total volume of water downstream of the outlets that will result in longer periods of wet conditions. While tile projects of this nature do not typically aggravate flooding problems, the additional water, and potentially the water quality from the discharge, will create adverse conditions for the properties downstream. Typically, those adverse conditions are negligible at the most beyond one mile downstream from the tile drain discharge. In this case, anything downstream further than the Weber/Tewaukon line would not suffer any adverse impacts.

To the extent the projects will utilize township and county road ditches, the applicant should obtain written permission from the road authorities (Weber Township Board and Sargent County Commission).

The Board reviewed the proposed responses to the eight-point questionnaires prepared by Chad Engels. The project will adversely impact downstream landowners. However, the Board concluded no hearing is necessary since the Board will already require flowage easements from those downstream landowners. The Board agreed with the engineer's recommendations that the Board should require erosion protection at all outlets to prevent erosion and further adverse impacts downstream.

The Board adopted Chad Engels' proposed responses to the eight-point questionnaires and the eight elements under 89-02-01-09.2 of the North Dakota Administrative Code. The Board further determined no hearings were 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, and written permission from Sargent County to utilize its highway right of way.

Manager McFarland, seconded by Manager Engst, moved to approve Application to Drain with Drain Tile No. 3601 for Mr. Gary Thornberg, 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 following parcels in Weber Township, Sargent County, North Dakota:

- a. Southwest Quarter of Section 18-129-54, Weber Township
- b. Northwest Quarter of Section 18-129-54 Weber Township, and
- c. South Half of Section 7-129-54, Weber Township.

2) that applicant obtain written permission from the owner of any land, besides land owned by applicant, on which applicant will construct the tile system;

3) that applicant obtains written consent from the Weber Township Board of Township Supervisors to utilize any of its township road right of way;

4) that applicant obtains written consent from the Sargent County Commission to utilize any of its highway right of way;

5) that applicant provide and maintain adequate erosion protection at all outlets; and

6) 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.

Manager Breker, seconded by Manager White, moved to approve Application to Drain with Drain Tile No. 3602 for Mr. Gary Thornberg, 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 following parcels in Weber Township, Sargent County, North Dakota:

- a. Southeast Quarter of Section 14-129-55, Weber Township;
- b. Northeast Quarter of Section 13-129-55, Weber Township;
- c. Northwest Quarter of Section 13-129-55, Weber Township;
- d. Southeast corner of Section 12-129-55, Weber Township; and
- e. South Half of Section 7-129-54, Weber Township.

2) that applicant obtain written permission from the owner of any land, besides land owned by applicant, on which applicant will construct the tile system;

3) that applicant obtains written consent from the Weber Township Board of Township Supervisors to utilize any of its township road right of way;

4) that applicant obtains written consent from the Sargent County Commission to utilize any of its highway right of way;

5) that applicant provide and maintain adequate erosion protection at all outlets; and

6) 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 No. 3616 for Gerald Woytassek

The Board reviewed information from the State Engineer regarding Application to Drain with Drain Tile #3616 for Mr. Gerald Woytassek. Mr. Woytassek and Mr. Jeff Breker, permittee under Permit No. 3544, were present to discuss the project, and Mr. Breker's project, with the Board.

Mr. Woytassek intends to construct a tile system in the Southwest Quarter of the Northwest Quarter (SW1/4NW1/4) of Section 8, Tewaukon Township LTL. According to records on file with the Sargent County Recorder's Office, the applicant owns the Southwest Quarter of the Northwest Quarter of Section 8-129-54 LTL, where the applicant seeks to install the tile system. The proposed tile system would connect directly to Mr. Breker's permitted tile system (Permit No. 3544, previously approved by the Board), and would, therefore, share Mr. Breker's outlet. The outlet from Permit No. 3544 will discharge directly into a project owned and operated by the Sargent County Water Resource District; Mr. Woytassek's project would, therefore, also discharge directly into the Sargent County Water Resource District's project. Under Permit No. 3544, the Board required Mr. Breker to construct adequate erosion protection to protect the project owned and operated by the Sargent County Water Resource District. The same requirement will apply in this instance.

The Sargent County Water Resource District owns the Northeast Quarter of the Northwest Quarter (NE1/4NW1/4) of Section 8-129-54 LTL. Under Permit No. 3544, the Board required Mr. Breker to obtain written permission from the owner of any land upon which he intended to construct his tile system. Mr. Breker intends to construct a portion of his tile system across the Northeast Quarter of the Northwest Quarter of Section 8-129-54 LTL; the Board and Mr. Breker are currently negotiating a lease agreement for those purposes. The same requirement will apply regarding Mr. Woytassek's permit since it will share a discharge with Mr. Breker's tile system, and will share that portion of Mr. Woytassek's tile system located on the Board's property. Therefore, the parties will enter into a single lease agreement, to cover both permits (3544 and 3616). In addition, Mr. Woytassek should supply written consent from Mr. Breker to discharge into Mr. Breker's tile system under Permit No. 3544; Mr. Breker provided verbal consent at the meeting and indicated he would provide Mr. Woytassek written consent for purposes of the permit.

Jeff Breker and the Board are parties to an existing cash rent agreement (dated June 22, 2009) under which the Board granted to Mr. Breker the right to farm certain parcels owned by the Board, including the Northeast Quarter of the Northwest Quarter of Section 8-129-54 LTL of Tewaukon Township. The parties' cash rent agreement expires on October 1, 2012. In this situation, the Board will require a written lease agreement with both Mr. Jeff Breker and Mr. Gerald Woytassek for purposes of providing the two permittees rights to construct and maintain their shared tile system on the Board's property (NE ¼ of NW ¼ of Section 8-129-54 LTL). Under the new lease, the Board will not have any maintenance obligations regarding the tile system itself or the outlet; Mr. Breker and Mr. Woytassek will be solely responsible for operation and maintenance of the tile and the outlet, at their sole expense. The Board will enter into a ten-year lease with the parties. At the end of the lease term, the parties can negotiate a new lease. However, if the parties do not negotiate a new lease, the tile system will automatically become the Board's property at the expiration of the initial ten-year lease.

The tiled area on the Board's property will be approximately 17 acres. Rather than requiring Mr. Breker and Mr. Woytassek to provide a metes and bounds legal description, Mr. Breker and Mr. Woytassek will provide the Board a detailed as-built drawing following their construction of the tile system on the NE ¼ of NW ¼ of Section 8-129-54 LTL, to attach as an exhibit to the parties' lease.

Mr. Woytassek and Mr. Breker agreed the lease proposal (a lease separate from Mr. Breker's existing cash rent lease with the Board) specifically for purposes of constructing and maintaining the tile system on the Board's property was an acceptable arrangement, including the ten-year term. Sean Fredricks will prepare a draft lease for the parties.

The Board reviewed and adopted the proposed responses to the eight-point questionnaire and the eight elements under 89-02-01-09.2 of the North Dakota Administrative Code, as prepared by Chad Engels. Because the drain will connect directly into the tile system under Permit No. 3544, and the projects will outlet into a project owned and operated by the Board, there will not be adverse impacts for other downstream landowners, and no flowage easements are necessary. The Board is requiring the applicant to obtain written consent from Mr. Breker to connect with Mr. Breker's tile system under Permit No. 3544, and the Board is already requiring the parties to enter into a lease agreement with the Board regarding their construction and maintenance of a portion of their shared tile system and outlet on the Board's property. Therefore, the Board concluded no hearing is necessary under Section 89-02-01-09.1(2) of the North Dakota Administrative Code. Further, Mr. Engels concluded the project will not result in adverse impacts to downstream landowners (since the joint tile project will discharge into a project owned and operated by the Sargent County Water Resource District).

Manager Engst, seconded by Manager McFarland, moved to approve Application to Drain with Drain Tile #3616 for Mr. Gerald Woytassek, subject to the following conditions:

- 1) that applicant obtain written consent from Mr. Jeff Breker to discharge into Mr. Breker's tile system under Permit No. 3544 (the Board is not requiring, but recommends for applicant's own purposes, that applicant obtain an easement to satisfy the Board's "written consent" condition);
- 2) that applicant must obtain written permission from the owner of any land, besides land owned by applicant, on which applicant will construct the tile system (including a written lease agreement with the Sargent County Water Resource District regarding applicant's right to construct and maintain portions of the tile system contemplated under Permit Nos. 3544 and 3616 on property owned by the Board in the NE ¼ of NW ¼ of Section 8-129-54 LTL, Tewaukon Township);
- 3) that applicant provide and maintain adequate erosion protection at the outlet(s); and
- 4) that applicant must 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.

Sean Fredricks presented a lease agreement between the Board and Jeff Breker for a 10 year lease to farm the NE1/4 of the NW1/4-8-129-54 LTL and install a tile project on said property owned by the Sargent County Water Board. Mr. Breker would like the Farm Contract that he now has with the Board to continue for the ten years. The Board's intention is to grant Mr. Breker a renewal to expire in 2020. Authorize Sean Fredricks to prepare a lease agreement for adoption by this Board and allow Jeff Breker to install the tile. (McFarland/Engst, unanimous). This lease would be separate from the existing Farm Contract.

The Board received and filed letters from the ND Dept, of Health regarding the Wild Rice River Fecal Coliform Bacteria TMDL report and the Shortfoot Creek Fecal Coliform Bacteria TMDL report for review and comment. No comments were submitted by the Board. Also read a request from the Red River Basin Commission entitled ND Counties Water Resource District Survey Flood Damage Project Inventory. No information was submitted for said survey.

A letter was received from the Sargent County Commission to the State Engineer regarding License for Emergency Drainage #3523 (drainage channel east of Buffalo Lake). The county commission has requested an extension on this emergency drain and the State Engineer will consider this request in September. Attorney Sean Fredrick's assured the Board that they have no obligation or liability regarding the County's permit, however, any project constructed within the geographic boundaries is in the Water Board's jurisdiction that simply means if the County violated any of the permit's conditions, this Board has some enforcement capabilities.

Gwinner City presented a request for 1/3 cost share on a replacement culvert located just north of Highway 13 on 130th Ave SE. The culvert will be 36 inches in diameter and 80 feet long. The existing culvert has trusted out and is in pretty bad shape. Approve cost share for said culvert. (McFarland/Breker, unanimous)

Jim Bosse and Mark Breker met with Stephen Perry, FEMA representative to inspect the Texas Crossing. Mr. Perry will prepare a Project Worksheet for this site and submit it to Bismarck for review.

Tom Jones, NRCS, discussed briefly the request for land owned by Patricia Adams (NE1/4-11-130-57) regarding discharge of the existing "through and across" easement for Drain No. 11. Documents were presented that the Board has a Right-of Way Deed on this property. Attorney Sean Fredricks will review the documents and inform the Board of what action is necessary for Mr. Jones' request.

Meeting adjourned at 10:00 p.m.

JAMES BOSSE – CHAIRMAN

ATTEST:

SHERRY HOSFORD - SECRETARY