

TIPPECANOE COUNTY DRAINAGE BOARD

March 2, 2022

**Moses Baker Regulated Drain #114
Reconstruction Hearing**

Those present were:

Tippecanoe County Drainage Board President Tracy A. Brown, Vice President Thomas P. Murtaugh, member David S. Byers, County Surveyor Zachariah Beasley, Drainage Board Attorney Doug Masson, and Drainage Board Executive Administrator Melisa Gipson. James Butcher, Surveyor Office Project Manager; Spencer Willem, Survey/Drainage Coordinator; and Tim Walters, Surveyor's Office GIS Technician were also in attendance.

President Tracy Brown opened the Drainage Board Hearing for the Moses Baker Regulated Drain #114 Reconstruction. He referred to the Surveyor for his report.

The Surveyor read his report as follows: Moses Baker Regulated Drain #114 Reconstruction Report dated October 25, 2021. The Moses Baker Drain was originally established in Tippecanoe County Circuit Court, Case Number 2878 in 1883 and rebuilt and extended to and through the E.M. Platt Ditch in 1938. The drain and its watershed are located in Sections 5 through 10, 15 through 18, 21 and 22 in Township 21 North, Range 3 West and Sections 12 and 13 in Township 21 North, Range 4 West in the political township of Lauramie, Tippecanoe County, Indiana. The Moses Baker Drain Maintenance Fund was established by the Tippecanoe County Drainage Board on the 21st day of May 2003. An additional Maintenance Hearing was held on April 18, 2017 to bring in under maintenance the Headwall, Osborn, South, Stockwell and Berninger Branches of the Moses Baker Regulated Drain. Since the creation of the maintenance fund in 2003 the entire length of the open ditch has received clearing, dredging and bank reshaping. The purpose of this reconstruction hearing is to set a reconstruction rate so that the much-needed tile replacement can move forward on the Berninger and the South branches. The Moses Baker watershed consists of 3178.93 acres. Currently the drain has 25,300 lineal feet of open ditch and 15,552 lineal feet of tile that includes all five (5) branches previously listed. It is the judgement of the Tippecanoe County Surveyor that a sum of approximately \$335,000 is needed to reconstruct the Berninger and South Branches. A reconstruction assessment rate of \$21.00 per acre and a \$50.00 minimum over a five (5) year period is recommended. This will generate \$338,245.29 over a five (5) year period. Assuming the reconstruction and improvements as outlined are completed and the General Drain Improvement Fund has been repaid after the five (5) year period, the Tippecanoe County Surveyor recommends a maintenance rate of \$7.00 per acre and a \$30.00 minimum be set with an eight (8) year collection total. It is the professional opinion of the Tippecanoe County Surveyor these rates proposed will ensure monies will be generated for future maintenance on this system. Respectfully submitted by Zach Beasley.

The Surveyor stated that the money that has been paid into the maintenance fund since 2003 has been used to dredge, clear, and reshape the open ditch. This work began at the downstream end where the open ditch flows into East Branch Wea Creek just west of CR 500 E and continued upstream to the headwall just north of SR 28. He explained that the next step is to reconstruct the branch tiles that feed into the open ditch. All five branches are in poor condition, and the Surveyor gave the landowners the option of reconstructing all five branches at the same time. However, the landowner consensus was to reconstruct only the two branches in the worst condition and reconstruct the other three branches in the future. The Berninger Branch and the South Branch are the two branches in the worst condition; they are clay/concrete tiles that are filled with debris and tree roots in some sections and collapsing in other sections. The Surveyor stated that water sometimes backs up and covers SR 28 where the South Branch tile crosses that road and creates a public safety issue. The Surveyor also explained how the reconstruction assessments are billed and the payment process.

President Brown asked for public comment. Greg Gilbert (9320 S 100 E) asked if the Surveyor could elaborate on the reconstruction process and how reconstruction payments work. The Surveyor explained that if the Drainage Board approves the reconstruction, then the Surveyor's office would finalize the reconstruction plans and request quotes from contractors. The project would be awarded to the lowest bidder and construction would begin shortly afterwards. The treasurer's office will send reconstruction bills to the benefited landowners once the project is completed. The Surveyor clarified that these bills will be separate from the maintenance fund assessments that appear on landowners' property tax statements. Per the Indiana Drainage Code (IC 36-9-27), the reconstruction assessments shall be paid back within 5 years. However, there is a 10% annual interest rate charged on any balance remaining after the first year. No interest is charged if the entire reconstruction assessment is paid within the first year. The Surveyor mentioned that the county has a contract that landowners can enter into with the Drainage Board that has a 5% annual interest rate instead of a 10% interest rate.

Jeff Skinner (9620 S 575 E) stated that the report that the entire open ditch has been dredged is not accurate because the open ditch east of CR 575 E has only been cleared and has not been dredged.

Tom Osborn (8536 E 1000 S) stated that he is in favor of the reconstruction. Mr. Osborn mentioned that he is surprised at how much it costs to replace tile, but he expects costs are only going to increase in the future, so he would rather get the reconstruction completed sooner rather than later. The Surveyor explained that that if all the bids are more than 10% greater than the Surveyor's estimate, then the Indiana Drainage Code requires the Drainage Board to dismiss the reconstruction proceedings.

Josh Cox (5435 S 800 E) stated that he is a tenant farmer for a landowner in the watershed and that this landowner is in favor of the reconstruction.

President Brown referred to the Attorney for the Findings and Order.

Attorney Masson read his recommended order to the Board as follows:

Before the Tippecanoe County Drainage Board, in the matter of the Moses Baker #114 Regulated Drain. "Findings and Order Reconstruction and Annual Maintenance":

This matter came to be heard upon the reconstruction report and schedule of assessments prepared by the Tippecanoe County Surveyor and filed on **October 25, 2021**. The Certificate of Mailing of notice of time and place of hearing, to all affected landowners was filed. Notice of publication of time and place of hearing in the Journal and Courier, Lafayette Indiana was filed. Objections were filed. Evidence was presented by the Tippecanoe County Surveyor and landowners affected were present. A list of those present is filed herewith.

After consideration of all the evidence, the Board does now FIND THAT:

- (1) The reconstruction report of the Tippecanoe County Surveyor and schedule of assessments were filed in the office of the Surveyor on October 25, 2021.
- (2) Notice of filing of the reconstruction report and the schedule of assessments and their availability for inspection and the time and place of this hearing was mailed to all those landowners affected more than thirty (30) and less than forty (40) days before the date of this hearing.
- (3) Notice of the time and place of this hearing was given by publication in the Journal & Courier newspaper of general circulation in Tippecanoe County, Indiana more than ten (10) days prior to this hearing.
- (4) The legal drain consists of 25,300 lineal feet of open ditch and 15,552 lineal feet of tile that includes all five (5) branches: Cox Branch and Headwall Branches: Osborn, Smith, Stockwell and Berninger branches.
- (5) The present condition of the ditch is in need of tile repair.
- (6) The ditch needs the following reconstruction at present: Tile replacement for the main and branch tiles as listed in the Surveyor's Report.
- (7) There is now \$115,312.18 owed to the General Drain Fund for past maintenance on this ditch.
- (8) The ditch drains 3,178.93 acres total.
- (9) Estimated annual cost of reconstruction is \$21.00 per acre with a \$50.00 minimum for a period of five (5) years. Estimated annual cost of maintenance will be \$7.00 per acre with a \$30.00 minimum cost for a collection period of eight (8) years..
- (10) Estimated benefits to the land exceed repair and reconstruction costs.
- (11) A fund for reconstruction should be established. A fund for annual maintenance has already been established.
- (12) In order to provide the necessary reconstruction funding, the annual assessment per acre and lot benefited should be: \$21.00 with \$50.00 minimum for a period of five (5) years. Assuming the reconstruction costs and improvements have been repaid after the five (5) year period, a maintenance rate of \$7.00 per acre with a \$30.00 minimum should be collected for 8 years.
- (13) The assessment list filed herewith should not be amended
- (14) The assessment list filed herewith is fair and equitable and should be adopted.
- (15) The assessment should be collected with the May 20, 2023 taxes.

NOW, THEREFORE, IT IS ORDERED THAT:

- (1) **A reconstruction fund shall be established for the Moses Baker Regulated Drain #114. The maintenance fund for said drain shall be retained. The reconstruction fund is established at the annual rate of \$21 per acre and a \$50 minimum and the maintenance fund is established at the annual rate of \$7 per acre and \$30 minimum for an Eight (8) year collection period. Maintenance assessments should start AFTER the five (5) year period of reconstruction is complete.**
- (2) The Schedule of Assessments filed herewith are adopted and made a part thereof.


(3) The first annual assessment shall be collected with the **May 10, 2023** taxes.

Vice President Thomas Murtaugh made a motion to approve the Findings and Order as recommended by the Attorney. David Byers seconded the motion. Motion carried.

David Byers made a motion to adjourn. The Hearing was adjourned.



Tracy A. Brown, President



Thomas P. Murtaugh, Vice President



David S. Byers, Member



Melisa Gipson, Executive Administrator