MINUTES OF THE EDDY COUNTY WATER RESOURCE BOARD
February 7, 2017

. regular meeting of the Eddy County Water Resource Board was held on February 7, 2017 at 10:00 AM in the Eddy County Courthouse. Present were Mike Tweed, Peter Larson, Kenny Reis and Travis S. Peterson, Secretary/Treasurer. Also in attendance were Eddy County landowners, Roger Duda, Paul Skadberg and Monty Schaefer; and Mandar Nangare, PE, of Barr Engineering. Aaron Carranza, P.E., State Water Commission/Office of State Engineer also attended part of the meeting telephonically.

The minutes of the January 5, 2017 regular meeting were presented. Reis made a motion to approve the minutes. Second by Tweed. Motion carried.

The Treasurer's Report was presented and reviewed. Tweed made a motion to approve the report. Second by Larson. Motion carried.

Correspondence: Various correspondence was reviewed. Except as otherwise set forth in these minutes, no action is required.

Old Business:

Ron Schaefer/BNSF Main Line Culvert: Peterson informed the Board that he again called Rick Randle at BNSF. Peterson informed Randle that nobody from BNSF has contacted Peterson or any other member of the ECWB. Randle suggested that Peterson send a letter to Lane Gilliland, Structure Supervisor. Peterson mailed that letter on February 6, 2017.

Roger Duda Obstruction Complaint regarding Paul Skadberg: This matter was further discussed and considered. After again reviewing the facts, the Office of the State Engineer ("OSE") Watershed Determination, and the applicable law, Reis made a motion to dismiss Duda's obstruction complaint. Second by Tweed. After discussion Reis and Tweed voted to approve. Larson opposed.

Paul Skadberg Drainage Complaint against Roger Duda: This matter was further discussed and considered. After again reviewing the facts, the Office of the State Engineer ("OSE") Watershed Determination, and the applicable law, Larson made a motion to dismiss Skadberg's drainage complaint. Second by Reis. After discussion the motion was unanimously approved.

Doug Skadberg/Monty Schaefer Matter: Since the January 5, 2017 meeting, Peterson had email and telephone correspondence with Aaron Carranza, PE, State Water Commission/Office of State Engineer. At this point in the meeting Peterson called Aaron Carranza to participate in the discussion of this matter.

Carranza explained that he was provided a copy of the ECWB's December 21, 2016 minutes. Based on those minutes the SWC/OSE was concerned with the intent of the ECWB's December 21, 2016 motion. The SWC/OSE was concerned that ECWB intended to disregard the SWC/OSE finding that the Rosefield Slough Dam modification/construction was unauthorized due to lack of obtaining a construction permit prior to the modification/construction. Carranza explained that the SWC/OSE finding is final and that the options currently available to remedy the situation are: 1) breach and/or remove the dam; or 2) demand that the elevation of the dam be lowered to an elevation such that the dam impounds less than 50 acre feet of water (and thereby removing the lam from the jurisdiction from the SWC/OSE).

Carranza explained that to pursue option #2 above the ECWB will need to work with an engineer to determine the

level at which the Rosefield Slough Dam impounds less than 50 acre feet of water. The elevation of the top of the dam must then be lowered to that elevation (or lower). Unless this is done, the dam must be breached/removed. f the dam is breached/removed then the ECWB should complete the Notice to Breach Dam/Structure form that is available on the SWC/OSE website. This does not require the approval the SWC/OSE but is only an informational document that will cause the SWC/OSE to update its records.

There is one other option and that is to now obtain the necessary permit from the SWC/OSE. As Carranza explained it, to obtain a permit now is difficult and likely very costly. Because the dam is likely higher than 10 feet, professional engineering services are required to complete the application. The PE must be able to express an opinion that the dam is properly constructed and safe. This will require geo-technical borings and other extensive PE services. This option may be cost prohibitive.

Members and guests present then asked Carranza various questions. Mike Tweed asked whether it is certain that the dam is in violation of the SWC/OSE permitting requirements. Carranza replied that, in the opinion of the OSE, the dam is in violation of the permitting requirements. Tweed then asked how much higher the dam is now compared to the original elevation. Carranza responded that the top of the elevation in 1955 (relying on 1929 datum) was 1540 and according to 2011 Lidar data that likely predated the most recent modification the elevation was just over 1540. Asked by Tweed how much more than 50 acre feet does the dam impound, Carranza indicated that the OSE did not make this calculation.

Monty Schaefer stated that the elevation of the dam is equal to or less than the County Road at 62nd Ave NE so the dam cannot adversely impact upstream land owners. Schaefer asserts that the County Road at 62nd Ave NE and/or the culverts in the County Road create a greater restriction then the Rosefield Slough Dam and spillway. Further, the County Road is constructed in compliance with the ND stream crossing standards so the current elevation of the dam should not be an issue. Carranza responded that the stream crossing standards and the dam permitting procedures apply to different circumstances and the stream crossing standards have no application to the Rosefield Slough Dam issues.

In closing, Carranza reiterated that the ball in ECWB's Court and ECWB must address and deal with the non-complying dam. Again, Carranza indicated that the most feasible options to do this are: 1) breach and/or remove; or 2) require that the dam elevation be lowered to an elevation such that the dam impounds less than 50 acre feet of water.

Bureau of Reclamation/Garrison Diversion Conservancy District/New Rockford Canal: There has been no communication between the Bureau of Reclamation/GDCD and ECWB. Tweed did indicate that there was discussion by the ND Irrigation Association as to whether or not the New Rockford Canal may present irrigation opportunities if abandoned by the Bureau of Reclamation/GDCD.

Kittleson Crossing/Foster and Wells County Water Boards: Peterson reported to the Board that he received a phone call from Doug Zink. Zink informed Peterson that an engineering study regarding culvert size for the two culverts downstream from Kittleson Crossing would cost around $9,300. No action was taken.

Upper Sheyenne River Joint Water Resource Board: Larson informed the Board that there has been no meeting since the last Eddy County Water Board meeting. The next meeting is scheduled for 9 am at the Pizza Ranch in Carrington on February 15, 2017.

Devils Lake Basin Joint Water Resource Board: Tweed informed the Board that the Devils Lake Basin Joint Water Resource Board met on January 11, 2017 at 9 am at the Ramsey County Courthouse. The next meeting is scheduled for February 8, 2017 at 9 AM at the Ramsey County Courthouse.

Next Meeting: The next regular meeting of the Eddy County Water Resource Board will be held on March 7, 2017 at 10:00 a.m. in the Eddy County Courthouse.

There being no further business the meeting was adjourned.

Respectfully submitted,

Travis S. Peterson, Recording Secretary

APPROVED:

Kenneth Reis, Chairman