

MINUTES OF THE EDDY COUNTY WATER RESOURCE BOARD  
June 4, 2019

A regular meeting of the Eddy County Water Resource Board was held on June 4, 2019 at 9:00 AM in the Eddy County Courthouse. Present were Kenny Reis, Michael Tweed, Peter Larson and Travis S. Peterson, Secretary/Treasurer. Also present were the following Eddy County landowners and/or members of the public: Monty Schaefer, Doug Skadberg, Kris Skadberg, Tori Schaefer, Andrew Schaefer, Darlene Daugherty, Leonard Jacobson, Dan Shroyer, Scott Stafford, Tom Anderson, Jamie Risovi, Senator Joan Heckaman and Amy Wobbema of the New Rockford Transcript. Stopping in for portions of the meeting were Eddy County Commissioners Glenda Collier and Neal Rud. Attorneys Kale Van Bruggen and Bennett Johnson appeared telephonically for that portion of the meeting concerning Rosefield Dam.

The minutes of the May 7, 2019 regular meeting were presented. Reis made a motion to approve the minutes. Second by Larson. Motion carried.

The minutes of the May 13, 2019 special meeting were presented. Reis made a motion to approve the minutes. Second by Tweed. Motion carried.

The Treasurer's Report was presented and reviewed. Reis made a motion to approve the treasurer's report. Second by Tweed. Motion carried. The following bills were presented for payment:

Kenneth Reis (January- June stipend and mileage)	\$851.04
Peter Larson (January - June stipend and mileage)	\$1,150.80
Mike Tweed (January - June stipend and mileage)	\$1,968.40
Peterson Law Offices PC (January-June fees and costs)	\$5,850.00

Reis made a motion to pay said bills. Second by Larson. Motion carried.

**Correspondence:** Various correspondence was reviewed. Except as otherwise noted herein, no specific action required.

**Old Business:**

**Doug Skadberg/Monty Schaefer/Rosefield Dam Matter:** There being a large crowd in attendance and interested in the outcome of the Rosefield Dam, the Board opened the floor for comment.

Kris Skadberg presented a letter outlining at least nine (9) different points in support of the Skadberg position. Also provided with the letter were various exhibits and a June 3, 2019 "Rosefield Dam Elevation Analysis" prepared by Apex Engineering. Kale Van Bruggen also spoke on Skadberg's behalf noting that: 1) Schaefer withdrew his appeal to the North Dakota Supreme Court; 2) the District Court upheld the Eddy County Water Resource Board decision of May 1, 2018; and 3) Eddy County Water Resource Board has a continuing obligation to maintain and operate the Rosefield Dam and with this obligation comes liability. Van Bruggen stated that the appropriate course of action is for the Water Board to proceed to remove the Rosefield Dam and spillway consistent with its prior decision.

Monty Schaefer then spoke. Schaefer indicated that the OSE relied on flawed information when making its original determination that a construction permit was required. Because the OSE reversed its decision,

it is proper for the Water Board to reverse its decision. Attorney Bennett Johnson, appearing telephonically on Schaefer's behalf, reiterated Schaefer's comments.

There was much discussion back and forth between the Skadbergs and Schaefer.

The following comments were also offered by people in attendance:

1) Senator Joan Heckaman suggested there were other issues with OSE determinations around the time the original OSE determination in this case was made; and current OSE administration has made an effort to rectify previous determinations that were problematic. The goal is to make things right.

2) Dan Shroyer doesn't believe the Rosefield Dam adversely affects anyone. The spillway is so low that the dam has no impact. He also believes the dam has not changed.

3) Tom Anderson discussed the family history of the land. He is of the opinion that Schaefer did not add to the dam's elevation. He is adamant that any water causing problems comes from the extensive draining done in Wells County; and that to remove the Rosefield Dam will do nothing to improve Skadberg's problem.

Larson made a motion to rescind the May 1, 2018 Order requiring complete removal of the dam and spillway. Second by Reis. The Board discussed the motion. Larson explained the reasons for his motion: 1) the May 1, 2018 Order to remove dam and spillway was largely based on the OSE's previous determination and resulting directives that either a construction permit be obtained or the dam/spillway be removed; 2) the OSE has now reversed its decision and acknowledges that the dam was not modified and a construction permit was not required; and 3) the Board, on September 2, 2014, made this same determination – that the dam was not altered or modified and didn't require a construction permit. So, rescinding the May 1, 2018 Order requiring removal of the dam will put the parties in the same position as they were after the September 2, 2014 hearing and resulting decision. Further, if water does back up on Skadberg's land, the Rosefield Dam is less likely the cause than the culverts in County Road 16 (62<sup>nd</sup> Ave NE). Larson also pointed out that retention and maintenance of the dam/spillway will require a maintenance agreement between Eddy County Water Resource District and Schaefer; and, because the dam remains the property of the Eddy County Water Resource District, the Board may remove the dam in the future if there are changed circumstances or other issues that require removal.

Tweed indicated that he has concerns with adverse down stream consequences that may result from removal of the dam.

A roll call vote was taken. Larson: yes; Tweed: no; Reis: yes. Motion to rescind the May 1, 2018 Order to Remove Rosefield Dam and Spillway is approved. Peterson will prepare and serve upon the interested parties a Notice of Decision.

**Beaver Dam:** Tweed reported that he identified a beaver dam north and about 100 yards east of the Warwick Dam. It is located in a pasture and does not appear to be affecting anything. At this time the Board does not intend to take any action to remove the beaver dam. But, Peterson will discuss it with James Myhre, Warden, ND Game and Fish, to learn the identity of the local trapper.

**ND SWC Dam Inventory Survey:** Peterson updated the Board on the NDSWC's May 2, 2019 Dam Inventory Survey. Peterson informed the Board that the SWC already lists the known low-head dams in

Eddy County. Peterson informed the board that he will forward the information to SWC representatives.

**Upper Sheyenne Joint Water Resource District:** Larson did not attend the May 9, 2019 meeting. The next meeting is scheduled for June 18, 2019 at 7 PM in Devils Lake, North Dakota. The June meeting is held in conjunction with the Devils Lake Basin Tour activities.

**Devils Lake Basin Joint Water Resource Board:** Tweed summarized the business conducted at the last meeting held on May 8, 2019 at the Ramsey County Courthouse. Among other things, details of the Devils Lake Basin Tour were discussed. This year's tour will focus on the northern portion of the basin. Tweed also informed the board that the Devils Lake Basin Outlet Advisory Committee meet on May 9, 2019. The pumps will continue to run.

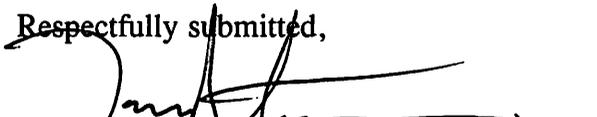
**New Business:**

**Beaver Dam at Warsing Dam:** Larson indicated that beavers have built a significant dam at the Warsing Dam. According to the State Water Commission dam inventory, the Warsing Dam may be under the jurisdiction of the ND Game and Fish. It was agreed that Peterson would discuss the beavers at Warsing Dam with James Myhre, Game Warden, North Dakota Game and Fish, to see if this is something they will address.

**Next Meeting:** The next regularly scheduled meeting will be July 2, 2019 at 9 AM in the Eddy County Courthouse.

There being no further business the meeting was adjourned.

Respectfully submitted,

  
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Travis S. Peterson, Recording Secretary

APPROVED:

  
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Kenneth Reis, Chairman