

**Minutes of Wednesday, February 7, 2018**  
North Delta Water Agency Board of Directors Meeting  
14120 Grand Ave. (Walnut Grove Community Church), Walnut Grove

**Call to Order**

Chairman Mello called the board of directors meeting to order at 9:32 a.m. on Wednesday, February 7, 2018. A quorum was determined at that time. Those present:

Directors

Steve Mello, Division 1  
Topper van Loben Sels, Division 2  
Jack Kuechler, Division 3  
Tom Hester, Division 5

Staff

Melinda Terry, Manager  
Cindy Tiffany, Assistant Manager  
Kevin O'Brien, Downey Brand  
Gary Kienlen, MBK Engineers

Others

See attached sign-in sheet.

**Approval of the Minutes**

No additions or corrections were made to the December 6, 2017 minutes.

**MOTION** by Director van Loben Sels to approve the December 6, 2017 minutes as presented. Seconded by Director Hester, and unanimously approved by a voice vote. (AYES: Mello, van Loben Sels, and Hester. ABSENT: Kuechler and Mahoney)

**Annual Election and Appointment of Officers**

*Oath of Office*

Cindy Tiffany administered the Oath of office to Director Steve Mello of Division 1, Director Tom Hester of Division 5, and Director Jack Kuechler of Division 3.

*Annual Election*

Governing statutes require annual election of Chairman and Vice Chairman, and board also appoints Treasurer.

**MOTION** by Director Hester to nominate Director Mello as Chairman and Director Kuechler as Vice Chairman. Seconded by Director van Loben Sels, and unanimously approved by voice vote. (AYES: Mello, van Loben Sels, and Hester. ABSENT: Mahoney, Kuechler)

**MOTION** by Director Mello to appoint Director Hester as Treasurer. Seconded by Director van Loben Sels, and unanimously approved by voice vote. (AYES: Mello, van Loben Sels, and Hester. ABSENT: Mahoney, Kuechler)

**Financial Report**

Cindy Tiffany reported that she finally received payment from the CA Department of Fish and Wildlife for their 2017-18 assessment amount, however it did not include payment of penalty and interest due for being late. She then reviewed the Agency's current Financial Statements noting expenses are on track for half way through the year, but still waiting for the Yolo County roll payment which is usually submitted by the end of February.

Cindy presented the list of small parcels currently on the roll list that are less than .05 acres. Per NDWA Resolution 2011-01 these parcels are not to be assessed and she asked the board entertain a motion to remove the parcels from the Agency's assessment roll.

**MOTION** by Director van Loben Sels to remove the list of small parcels less than .05 acres from the

NDWA assessment roll effective at the start of the new fiscal year 2018-19 in July. Seconded by Director Hester and unanimously approved by voice vote. (AYES: Mello, van Loben Sels, Kuechler, and Hester. ABSENT: Mahoney)

### **Engineering Report**

Gary Kienlen distributed water quality graphs, noting salinity levels are currently well within the Contract criteria at all NDWA monitoring locations. Once Bulletin 120 for February is completed MBK can calculate the Contract criteria for the month based on the forecast for the Four –River index.

### **Legal Report**

#### *Waterfix Change Petition*

Kevin O’Brien reported that the start of Part 2 of the petition hearings was postponed to allow time for the hearing officers to consider several motions asserting illegal ex parte communications and raising concerns with potential change in project description downsizing to one tunnel. The hearing officers denied the motions; therefore the hearings will resume tomorrow morning, including Melinda reading a NDWA policy statement. Kevin expects lawsuits to be filed in regards to the denied motions.

#### *Waterfix 2081 Permit*

The 2081 permit lawsuit has been assigned to a judge in the Sacramento County Superior Court, but he previously worked for Downey Brand so DWR may request a change.

#### *Waterfix CEQA*

The CEQA lawsuit has been assigned to a judge in Sacramento County Superior Court, but it will take time for DWR to put the administrative record together. The schedule could be extended if the EIR is revised and supplemental EIR released once the project is changed to single tunnel.

### **Manager Report**

Melinda Terry discussed the scoping comment letter submitted by the Agency on USBR proposal to maximize CVP Delta exports. She reported the Governor appointed Karla Nemeth as new DWR Director because Grant Davis resigned after serving only four months. Nemeth has been working on WaterFix as deputy secretary and senior advisor for water policy at the California Natural Resources Agency since 2014.

In response to a question about impact of Oroville spillway repair costs on the Delta Rate, Melinda said the Agency would object to any attempt by DWR to include flood damage or flood facility maintenance costs in future negotiations because they are not related to water supply benefits of the Contract.

### **Delta Activities Report**

#### *SWRCB/Delta Water Master*

John Collins with the Office of the Delta Water Master reported on status of several issues. The staff has been busy categorizing water rights submitted by water users in 2015 and the Delta Water Master will be releasing the information on February 20th. A consortium continues to work with water users on methodologies for measuring water diversions, including developments of consumptive use calculation. The deadline to comply with the water measurement requirement is January 2019. He also handed out a flyer searching for farmers interested in volunteering to fallow at least 90 acres as part of a comparative analysis in the consumptive use study.

#### *SWP Water Supply Contracts*

A few years ago the CVP and the SWP initiated early renewal of water supply contracts in order to facilitate payment for the WaterFix project. The negotiations, which are required to be conducted in a public forum, have

been stalled since 2015 but are scheduled to reconvene on February 13th.

### **Public Comment**

Mark Wilson asked about possibility of water contractors taking over operation of the SWP and WaterFix facilities through creation of a Joint Powers Authority (JPA). Melinda responded that the prior version of the JPA Agreement gave the contractors authority over design and construction of the WaterFix project, but not the operation. However, privatizing the SWP has been proposed several times over the years so is a possibility. Transferring operational authority from the State (DWR) to State Water Contractors would require passage of legislation.

### **Closed Session**

The Board convened into Closed Session with legal counsel at 10:48 a.m. to discuss the following five items:

- i. State Water Resources Control Board adjudicatory proceeding regarding Petition for Changes in Water Rights of the Department of Water Resources and U.S. Bureau of Reclamation for the California WaterFix Project (Gov. Code 54956.9(d)(1)).
- ii. Government Claims Act recovery of delinquent assessments, penalties, and interest against California Department of Fish and Wildlife (Gov. Code 54956.9(d)(1),(4))
- iii. Litigation regarding WaterFix 2081 ESA permit. (Gov. Code 54956.9(d)(1)).
- iv. Litigation regarding WaterFix Environmental Impact Report under CEQA. (Gov. Code 54956.9(d)(1)).
- v. Anticipated litigation pursuant Government Code section 54956.9(d)(4): one case.

The board reconvened in open session at 11:26 am and Chairman Mello announced there were no reportable actions taken during closed session

### **Adjournment**

Chairman Mello adjourned the meeting at 11:27am

Respectfully submitted by Cindy Tiffany, Assistant Manager