

Minutes of Tuesday July 27, 2021

North Delta Water Agency Special Board of Directors Meeting
Remote Meeting Held Via Teleconference

Call to Order

Chairman Mello called the special board of directors meeting to order at 9:33 a.m. on Tuesday July 27, 2021. Held remotely via teleconferencing. Those present on the call:

Directors

Steve Mello, Division 1
Justin van Loben Sels, Division 2
Jack Kuechler, Division 3
Mark van Loben Sels, Division 4
Tom Slater, Division 5

Staff

Melinda Terry, Manager
Cindy Tiffany, Assistant Manager
Gary Kienlen, MBK Engineer

Others

Ben Peters	Harvey Correia	Osha Meserve
Bryan Busch	K Wilson	Topper van Loben Sels
David Ogilvie	Lindsay Kammeier	
Erk Vink	Mike Hardesty	
Happy Calis	Misty Kaltreider	

Review of Historical Drought Condition

Gary Kienlen, MBK Engineers, reviewed historical flow and reservoir storage data, noting 2021 is the third driest on record and Oroville is only at 26% of capacity. Current conditions show that they are similar to storage availability in 1976 and 1977. Chairman Mello pointed out that the State has a higher percentage of environmental requirement then in 1976-77 since the COA was renegotiated.

He compared current conditions to those in prior droughts, showing a graph with Four River Index sorted by water type lowest to highest. He also showed exceedances of salinity criteria at both Three Mile Slough and Rio Vista monitoring locations in late June and early July 2021, with comparisons to prior drought years. The trending shows we are on the same track as in prior years in terms of increased salinity levels, but high EC is happening earlier in the year. We have also not had exceedances at Rio Vista in prior years.

Harvey Correia reported problems with monitoring stations going offline. Gary responded he is aware DWR did have some problems trying to transmit data due to vegetation and equipment issues. Gary asked Harvey to contact him directly if a monitoring station is offline, so he can immediately communicate the problem directly to DWR for repair.

Review of Historical NDWA Drought Actions

Melinda Terry gave a presentation highlighting some key actions taken by NDWA in past droughts in: 1976-1977; 1987-1992; and 2012-2016. Melinda noted that in the 76-77 drought the Agency did not have the Contract, but in August of 1976 NDWA entered a Memorandum of Permit with DWR regarding the installation of a temporary drought barrier on Sutter Slough. The Agreement provided assurances and specified pre-survey work, water quality criteria, and mitigation measure to be in place during the closure of Sutter Slough once drought barrier was installed. DWR also agreed to reimburse NDWA for all legal, engineering, and manager

costs associated with the barrier and to hold the Agency harmless from liability. There were also interim drought agreements between NDWA, DWR and RD 341 between March 1977 and June 1977.

In the 87-92 drought, the 1981 Contract was not officially triggered, but DWR implemented Special Claims Procedures defined in Art. 4(b)(iv) pursuant to stipulated agreements in 1992 and 1995. These agreements were preceded by NDWA letter requesting DWR to comply with Art. 12 Remedies to stop storing or exporting water, reducing Contract payment to DWR, a petition filed with the SWRCB requesting it to adopt emergency regulations different than 1981 Contract salinity criteria in order to trigger the Art. 4 Claims Process, and written requests to DWR for implementation of a Claims Process due to ongoing water quality exceedances. Gary stated that he knows claims were filed in 1992, but not sure how many.

Due to the issuance of curtailment notices by the SWRCB and a proposal by DWR for installation of drought barriers on Steamboat Slough in 2014 and 2015, the NDWA held informational drought briefings and sent updates on evolving drought conditions and action to Reclamation Districts within the Agency. The Agency also worked with DWR to try to execute another Memorandum of Permit agreement with DWR to define assurances and mitigation measure for potential installation of barriers on Sutter and Steamboat Sloughs. The Agency spent around \$170,000 in engineering and legal fees for these negotiations. However, no agreement was finalized, and the barrier was not installed; therefore, no reimbursement was made by DWR to NDWA for these Agency costs as was done in 1976. For the first time since the adoption of the 1981 Contract, all three components of the Art. 4 (b)(i) emergency drought provisions were triggered in 2015 and DWR established a Special Claims Process. Eight claims were submitted and paid by DWR in 2017.

Review of Temporary Drought Barriers

Melinda started her presentation with an overview of the elements of a Memorandum of Permit agreement executed between NDWA and DWR in 1976 when a temporary drought barrier was installed in Sutter Slough. She described the extensive pre-survey work done prior to installation, mitigation measures in place for water supply (pumps, power, overland pipes, etc) during channel closure, and assurances for NDWA reimbursement and protection from liability. She also discussed the adverse effects experienced during the closure as well as how successful the barrier was in helping to control salinity intrusion.

She then reviewed the experience NDWA had in 2014-15 in trying to negotiate a barrier agreement with DWR for installation in Sutter and Steamboat Sloughs. Unfortunately, DWR refused to implement similar agreement to the 1976 Permit, did not conduct any preliminary surveys of existing intakes, failed to offer any of the same water quality and availability measures from 1976, and did not reimburse NDWA for costs incurred during these negotiations. DWR ended up abandoning barrier installation in 2014 due to rain bringing stronger flows, and in 2015 Steamboat Slough barrier was not installed due to fishery concerns.

Now DWR has disclosed they are planning for possibly installing barriers on both Sutter and Steamboat Slough in 2022 if drought conditions persist. Governor Newsom's drought proclamation exempts the drought barriers from having to comply with CEQA, but DWR will have to go through process to get all regulatory permits from fishery agencies, SWRCB, Central Valley Flood Protection Board and other agencies. NDWA should once again request a Memorandum of Permit similar to 1976 to mitigate adverse impacts. At an initial meeting with DWR staff, they seemed receptive to discussing a possible permit agreement. Director Mello asked if the work the Agency prepared and paid for in 2014/15 can be used for this coming barrier discussion. Melinda said yes, but pointed out there is still extensive work that was not completed and would therefore still need to be developed

Review Impacts Experienced During 1976 Sutter Slough Closure

Topper van Loben Sels provided a personal account of what he experienced as result of the Sutter Slough

barrier being installed. There were problems with intake pumps no longer working or only working at the high tide due to the altered water elevations caused by the barrier. He wished there was more outreach to tenants and farmers at the time because he thinks many did not know about the portable pumps available to landowners or DWR's commitment to pay for higher electricity costs for existing pumps. He emphasized the importance of having all effected diversions surveyed prior to the barrier being installed and implementation of mitigation measure to make sure farmers are able to divert at the original design capacity when barriers are in place.

Questions and Public Comment

David Ogilvie asked if DWR is determined to place the Steamboat Slough barrier in the same spot as proposed in 2015, because it would be less impact if they move it up the slough. Melinda said DWR staff indicated the location for 2022 appears to be same as 2015, but DWR staff indicated they are willing to consider moving it to reduce adverse impacts on existing diversions.

Adjournment

Chairman Mello adjourned the meeting at 11:33 a.m.

Respectfully submitted by Cindy Tiffany, Assistant Manager