

**Minutes of Wednesday, August 5, 2015**  
**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 9:33 a.m. on Wednesday, August 5, 2015. A quorum was determined at that time. Those present:

Directors

Steve Mello, Division 1  
Topper van Loben Sels, Division 2  
Jack Kuechler, Division 3  
Ken Jameson, Division 4  
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.

Absent

Kuechler arrived during Agenda Item #4.

**Approval of the Minutes**

No corrections or additions were made to the July 1, 2015 minutes.

**MOTION by Director van Loben Sels to approve the July 1, 2015 minutes as presented.  
Seconded by Director Tom Hester, and unanimously approved by a voice vote. (AYES:  
Mello, van Loben Sels, Hester – Absent: Kuechler)**

**Appointment of Division 4 Director**

Resolution appointing Kenric Jameson as Director to fill vacancy in Division 4 was presented and approved.

**MOTION by Director van Loben Sels to approve Resolution #2015-07 appointing Kenric Jameson to serve as Director of Division 4 until the next Agency General Election.  
Seconded by Director Hester, and approved by a roll call vote with Directors Mello, van Loben Sels, and Hester voting AYE.**

The oath of office swearing Kenric Jameson in as the new Director for Division 4 was administered by Chairman Mello.

**Engineer Report**

Gary Kienlen distributed water quality graphs, noting salinity levels technically exceeded Contract criteria for fifteen days between July 7-21, but explained that the drought provision allows the D-1641 standards to supersede Contract criteria. However, he pointed out that DWR exceeded the D-1641 for one week as well, yet there was never any acknowledgement or enforcement of the D-1641 violation by the SWRCB. Kienlen added that salinity levels are currently in compliance with both D-1641 and the Contract criteria, and reminded everyone that the D1641 salinity standard would no longer be in effect after August 15<sup>th</sup>. The NDWA criteria is year-round however, so DWR's water quality obligations would revert back to contract criteria and he further advised that the tidal cycle expected at the end of August would probably result in higher salinity levels again, potentially above Contract criteria.

## **Legal Report**

Kevin O'Brien reported on the Special Claims Process proposed by DWR including reviewing procedures implemented in past drought agreements, and expressed frustration with the department's apparent lack of urgency in finalizing and implementing the compensation procedures despite recent failures to maintain D-1641 water quality obligations. He briefed them on the remaining outstanding issues such as who makes final decisions on claims submitted by landowners and timeline for payment. The board suggested several terms the Agency should continue pushing be incorporated into the claims process, with specific direction in regards to binding arbitration, third party decision-makers, timeline for rendering decisions, and other items for Agency's legal counsel to continue requesting.

Director van Loben Sels asked if DWR would be reimbursing NDWA for legal and engineering costs associated with negotiating both the claims process and the drought barriers as was done in the past. O'Brien responded that DWR has resisted including reimbursement in the agreement. The Board directed legal counsel to continue advocating for Agency reimbursement to be addressed in the claims agreement and also requested him to send a letter to DWR requesting reimbursement of the NDWA's legal and engineering costs associated with negotiating an agreement for the installation of temporary drought barriers in Steamboat and Sutter Sloughs.

## **Manager Report**

Melinda Terry briefed the Board on the status of work performed by consultant Margaret Sorensen on the Agency's fiscal accounts in preparation of the biannual audit which has been scheduled for mid-August. She also advised them of inquiries from landowners regarding inspections of water use by Division of Water Rights staff and submerged structures affecting flows and water quality.

## **Financial Reports**

The Board reviewed the quarterly and Fiscal Year End for 2014-15 Financial Reports.

**MOTION by Director Kuechler to accept the FYE 2014-15 and July 2015 Financial Reports as presented. Seconded by Chairman Mello, and unanimously approved by a voice vote. (AYES: Mello, van Loben Sels, Hester, Jameson, Kuechler)**

## **Delta Activities Report**

Melinda Terry briefed the Board on recent meeting that she and Kevin O'Brien had with David Okita regarding CA EcoRestore program and informed them that the deadline to comment on the CA WaterFix/BDCP EIR/EIS has been extended until October 30, 2015. She also told them about comments she made at the recent Delta Protection Commission meeting in response to Assemblyman Frazier asking SWRCB member Dee Dee D'Adamo whether the water board was taking any enforcement actions regarding DWR and USBR not being in compliance with D-1641.

## **Public Comment**

Jack Kuechler briefed the Board on a meeting that he and Steve Mello attended regarding complying with the new groundwater laws that require a groundwater management entity be formed by 2017. Kevin O'Brien asked if the Agency should participate in this new water management process. The Board requested the staff provide more information and recommendation at a future meeting. Legal counsel responded to questions from landowners regarding guidance on filing claims under the compensation process DWR is required to establish in accordance with the Contract drought provision.

**Announcements**

Melinda Terry reminded everyone that the deadline for candidate's to submit applications for NDWA Director election in Divisions 2, 3, 4, and 5 is August 14<sup>th</sup> and the next NDWA board meeting will be on October 7, 2015.

**Closed Session**

Conference with legal counsel for purposes of being briefed on Anticipated Litigation and potential for settlement regarding two cases: *H-Pond LLC v North Delta Water Agency* and *Steamboat Acres LLC v. Daniel P Whaley, North Delta Water Agency, et al.* Upon reconvening in open session, Chairman Mello announced that no reportable action was taken in closed session.

**Adjournment**

Chairman Mello adjourned the meeting at 11:12 a.m.

Respectfully submitted by Melinda Terry, Manager