

North Delta Water Agency
Board of Directors Meeting
14120 Grand Ave, Walnut Grove, CA 95690
Wednesday, June 4, 2014 at 9:30 a.m.

Minutes

Call to Order

Chair Henry Kuechler called the meeting to order at 9:32 a.m. on Wednesday, June 4, 2014. A quorum was determined at that time. Those present:

Directors

Henry Kuechler, Division 3
Steve Mello, Division 1
Topper van Loben Sels, Division 2

Absent

Neil Hamilton, Division 5
Ken Ruzich, Division 4

Staff

Melinda Terry, Manager
Colleen Flannery, Assistant Manager
Gary Kienlen, MBK Engineers
Kevin O'Brien, Downey Brand

Others

Please see attached sign-in sheet.

Approval of Minutes

Motion and second to approve the minutes of the April 9, 2014 Board meeting. Motion approved. (Yes - Kuechler, Mello, van Loben Sels)

Motion to Amend Agenda - Resignation

Members voted pursuant to Government Code Section 54954.2 (b)(2) to take action on the resignation of Neil Hamilton, based on a unanimous determination by the board that the agenda item arose after the agenda was posted. (Yes - Kuechler, Mello, van Loben Sels)

Drought Update

Chair informed attendees the board would take up Item 5, Drought Update, first and then move to Items 3 and 4 to approve annual budget and assessment rate in order to accommodate members of the public who came to the meeting to hear about the recent curtailment notices issued by the State Water Resources Control Board (SWRCB). The drought update by Kevin O'Brien and Gary Kienlen consisted of three separate items: A) information about curtailment notices that were sent out to water rights

holders throughout the Delta, including the North Delta; B) information about DWR's proposal to install drought barriers at Steamboat and Sutter Sloughs in order to keep water quality and levels in the interior delta acceptable; and C) an update as to the current salinity levels within the Agency's jurisdiction.

A. Curtailment Notices

The SWRCB has sent curtailment notices with certification forms to "post-1914" appropriative water rights holders throughout the Delta. These notices require the water rights holder to stop diverting water under that water right, but the certification forms, which must be returned to the SWRCB by landowners within 7 days, allows the water users to identify additional alternative water sources. Those who do not fill out the required forms could be subject to enforcement actions, including large monetary administrative penalties that the Water Board now has the authority to impose due to recently approved emergency legislation. Attorney O'Brien and Engineer Kienlen provided instructions and sample forms to attending NDWA landowners, instructing them to identify on their curtailment forms the 1981 NDWA Contract with DWR – as well as any other water rights they might possess – as alternative water supplies available for continued diversion and use. They provided further clarification that SWRCB sent notices to two levels of water rights. Only those who received notices beginning with the letter "A" (for appropriative rights) must fill out and return the forms. Those with forms that start with the letter "S" (for "statement") need not fill out the forms, because the notice for those water rights is simply a warning that the SWRCB may consider curtailing those more senior water rights later in the year if drought conditions persist. Attorney O'Brien explained that the Water Board has jurisdiction over the post-1914 water rights ("A" forms), because the legal system governing diversions effectively began in 1914. However, the Board is also expected to assert the right to curtail "pre-1914" and riparian water rights, ("S" forms) which would probably lead to litigation.

He reiterated that regardless of what type of water rights they hold, NDWA landowners may continue to divert water under the 1981 Contract with DWR. Landowners within the Agency may also sign and record a subcontract on their property, which will permit them to independently enforce the provisions of the subcontract.

Informing the Board about several inquiries from landowners about compensation under the Contract, Manager Melinda Terry provided additional clarification to attendees that only the drought provision of the Contract requires DWR to establish a landowner compensation process, but the three elements that define a drought under the Contract will not be triggered this year. Therefore, DWR has indicated they intend to comply with their obligations under the Contract to assure a water supply of the quality defined in the Contract to water users in the NDWA jurisdiction, thus avoiding Contract violations or compensation.

B. Drought Barriers

Attorney O'Brien announced that DWR is not going ahead with its original plan to control Delta salinity by installing barriers at Steamboat and Sutter Sloughs. However, the department is still completing a "mitigated negative declaration" that lists the proposed barriers as a "contingency project" in case of emergency to allow them to install the barriers at some future date, if necessary. Directors expressed concern about the potential change to water elevations and supply caused by the barriers and about a commitment from DWR to compensate landowners for damages caused by barrier installation.

Manager Melinda Terry explained that Agency negotiations to execute a MOU with DWR were mutually put on hold in May. At that time, there was still a significant gap regarding the terms and conditions to assure contractual water availability and quality for the installation and operation of the two barriers, and the Agency already had incurred significant costs to date. She reminded the Board that Agency's costs for negotiating a MOU are only reimbursed by DWR if the barriers are installed. Now that DWR is proposing to permit the barriers as a "contingency" project, the Agency's legal counsel has informed DWR's legal counsel reimbursement to the Agency will need to be resolved prior to reinitiating MOU negotiations.

C. Salinity Update

Attorney O'Brien and Engineer Kienlen reviewed the Temporary Urgency Change Petition (TUCP) requesting modification of the CVP/SWP operations that have been approved by the SWRCB. The order permits several changes to operations of CVP and SWP including: relaxing SWRCB's Delta outflow requirements; moving D-1641 salinity compliance from Emmaton to Three Mile Slough; and limits CVP and SWP exports to 1500 cfs for health and safety. Engineer Kienlen said MBK is keeping a close eye on the salinity monitoring stations in the NDWA Contract to assure the water quality criteria is being met at all times of the year. A landowner expressed concern about a proposal by DWR and the U.S. Bureau of Reclamation requesting the SWRCB to extend the TUCP modifications for another year, claiming it was too premature to keep these Bay-Delta water quality changes in place for so long since it may rain this fall, eliminating the drought emergency and need for continuance of the TUCP.

Resignation

Attorney O'Brien explained the legal requirements and process for filling Vice Chair Neil Hamilton's director position on the Board. If the Board wants to fill the position, it must do so within 60 days of acceptance of the resignation, which would be August 3. The Board must follow Government Code procedures for special districts, including requirements that vacancies be posted in three or more conspicuous places within Division 5, as well as the requirement to notify Solano and Yolo counties of the new director. He recommended the Board establish an *ad hoc* committee to make recommendations to fill the vacancy and schedule a board meeting on July 2, 2014 to formally appoint a replacement. Board members expressed sadness at the departure of Neil Hamilton, and gratitude for his many years of service to NDWA.

Motion and second to appoint Directors van Loben Sels and Mello to serve as an *ad hoc* committee to review replacement candidates and make recommendation to the full Board at the July 2nd board meeting. (Yes - Kuechler, Mello, van Loben Sels)

Finances

The Board received the financial reports, and inquired as to an apparent \$10,000 increase in one county's assessment charge. Assistant Manager Flannery promised to look into the assessment charge and report back to the Board.

Motion and second to accept the financial reports as presented, with the direction to Assistant Manager Flannery to follow up regarding the new charge. Motion approved. (Yes - Kuechler, Mello, van Loben Sels)

The board reviewed the proposed budget and discussed the anticipated activities and expected expenditures for the coming year. Manager Melinda Terry informed the board that legal and engineering costs associated with dealing with developing formal comments on the BDCP Plan and EIR/EIS, activities related to drought actions taken by the state including curtailment notices, and possibly for continued MOU negotiations with DWR on temporary barriers and other contractual issues were expected to at least remain at current levels. She pointed out that negotiations of the barrier MOU alone cost \$80,000 in consulting fees so far and still required significant time and money to finalize.

The Board discussed the proposed annual budget and engineer Gary Kienlen provided the minimum and maximum assessment amounts that would apply to landowners in order to collect \$1.2 million in revenues. Public comments from the audience praised the work of the Agency in protecting landowner water rights and supported paying higher assessments necessary to represent their interests in regulatory actions by the state such as the barriers and BDCP.

Motion and second to adopt the FY 2014-15 budget as proposed, including the employee compensation disclosure form. Motion unanimously approved. (Yes - Kuechler, Mello, van Loben Sels)

Motion and second to approve Resolution 2014-02 establishing the benefit assessment rates for FY 2014-15. Motion unanimously approved. (Yes - Kuechler, Mello, van Loben Sels)

Manager's Report

Manager Terry described correspondence recently received by landowners in Yolo Bypass, Ryer Island, and Sherman Island expressing concerns over water quality and supply and informed the Board that she had sent letter to H-Pond landowners denying their request for reclassification of their assessment rate, but have not received a request to appeal the decision to the Board as of yet. She also advised the Board that DWR contacted the Agency requesting copies of all subcontracts that have been recorded landowners. Additionally, the Agency received a Public Records Act request for staff and director compensation information from an organization that routinely sends these requests to state and local agencies. The Agency responded the same day by providing compensation information that it sends to the State Controller's Office.

The BDCP comment deadline has been extended to July 29, 2014, giving Agency staff and consultants additional time to continue working on writing a formal comment letter on the BDCP Plan and EIR/EIS, raising issues defined in an outline that staff will present at the next board meeting on July 2. She also informed the Board of a consultant and two science reports on BDCP presented at the last Delta Stewardship Council meeting that included concerns about adverse impacts to listed species and Delta communities if implemented as currently proposed.

Manager Terry also announced that for administrative reasons the Agency had to switch domain names which results in new email addresses for staff and a new website address, www.northdeltawater.net, and format that Assistant Manager Flannery has created and will continue to construct and update. The website already has information posted regarding the recent curtailment notices sent by SWRCB with instructions on how to report the NDWA Contract as an alternative water supply.

Engineer's Report

Engineer Kienlen distributed water quality charts and reported that although salinity levels are higher on the high tide due to drought conditions, the water quality is still within the contract's salinity criteria at this time. He reminded everyone that exceeding water quality temporarily on high tides is allowed under the contract and cannot therefore be litigated, and encouraged water users to adjust their diversion timing accordingly. Director Mello requested Gary to provide 15-minute monitoring graphs for the seven water quality monitoring stations identified in the contract at the next board meeting.

Kienlen informed everyone that water quality information including salinity data are also available to the public in "real time" on the Internet at <http://cdec.water.ca.gov/>.

Public Comment

None.

Closed Session

None.

Adjournment

The meeting was adjourned at 12:11 p.m. on Wednesday, June 4, 2014.

Respectfully Submitted,
Colleen Flannery, Assistant Manager