

Minutes of Wednesday, February 5, 2020
North Delta Water Agency Board of Directors Meeting
3050 Beacon Blvd., Ste 203, West Sacramento

Call to Order

Chairman Mello called the board of directors meeting to order at 9:34 a.m. on Wednesday, February 5, 2020. A quorum was determined at that time. Those present:

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
Kevin O'Brien, Downey Brand
Gary Kienlen, MBK Engineers
Anne Williams, MBK Engineers

Others

Sign-in sheet in NDWA office.

Closed Session

The Board convened into Closed Session with legal counsel at 9:36 a.m. to discuss the following items:

- A. Conference with Legal Counsel: Existing and Anticipated Litigation (four Cases)
 - i. Litigation regarding WaterFix Environmental Impact Report under CEQA, attorney fees recovery. (Gov. Code 54956.9(d) (1));
 - ii. Initiation of litigation pursuant to paragraph (4) of subdivision (d) of Government Code Section 54956.9 – (three Cases).

Closed Session Report

The board reconvened in open session at 10:43 am and Chairman Mello announced there was a motion made by Director Kuechler to make a finding of urgency for purposes of adding an item to the Closed Session that requires immediate discussion by the board regarding an employee matter that arose following the posting of the agenda. Seconded by Director Slater and unanimously approved via roll-call vote. (AYES: Mello, Kuechler, J. van Loben Sels, M. van Loben Sels, and Slater.). The chairman announced that there were no other reportable actions taken during closed session.

Approval of the Minutes

No additions or corrections were made to the December 4, 2019 minutes.

MOTION by Director Kuechler to approve the December 4, 2019 minutes as presented. Seconded by Director J. van Loben Sels, and unanimously approved by a voice vote. (AYES: Mello, Kuechler, J. van Loben Sels, M. van Loben Sels, and Slater.)

Appointment of Officers

Annual Election

Governing statutes require annual election of Chairman and Vice Chairman. The board also appoints a Director to serve as Treasurer.

MOTION by Director Slater to nominate Director Mello as Chairman and Director Kuechler as Vice Chairman. Seconded by Director J. van Loben Sels, and unanimously approved by voice vote. (AYES: Mello, Kuechler, J. van Loben Sels, M. van Loben Sels, and Slater.)

MOTION by Director Mello to appoint Director Slater as Treasurer. Seconded by Director J. van Loben Sels, and unanimously approved by voice vote. (AYES: Mello, Kuechler, J. van Loben Sels, M. van Loben Sels, and Slater.)

Financial Report

Cindy Tiffany presented current financials and answered question regarding intent to change where the Agency does its banking. The board must approve a resolution authorizing a change in where the Agency banks. Cindy will report back to the board regarding a recommendation on a new bank to transfer the Agency accounts and have legal prepare a resolution for the board's consideration.

MOTION by Director Slater to accept the financial statements as presented. Seconded by Director Mello and unanimously approved by voice vote. (AYES: Mello, Kuechler, J. van Loben Sels, M. van Loben Sels, and Slater.)

Engineering Report

Water Quality Update

Anne Williams distributed water quality graphs, noting salinity levels are currently well within the Contract criteria at all NDWA monitoring locations. She also distributed graphs showing the water quality during 2019. DWR has been conducting snow surveys, but the May 1 Bulletin-120 is the final water supply outlook used for calculating drought as defined in the 1981 Contract.

Legal Report

Delta Water Quality Control Plan Update

Kevin reported the Administration rolled out a "refined" Voluntary Agreement proposing to add 200,000 acre-feet of water for flows, but SWRCB is looking for 900,000 acre-feet. He will email the Governor's press release and PowerPoint presentation on the refined proposal to Melinda for distribution to the board. The proposal is not clear on where that water will come from, and water rights holders have not agreed to provide this additional water. The Administration wants to wrap up the agreements in the next 3-4 months. Melinda asked if the extra water was a result of the push back from the environmental NGO's. He responded that the final number is a political compromise, and is therefore not based on sound science. There was discussion on whether the flows were for outflow or could they be exported and how much habitat acreage identified in the new proposal. Anne with MBK said the agreement has general habitat goals of 5,000 acres rather than projects, but the modeling that was done is based on a list of projects being implemented. The Cache Slough Complex and Little Egbert are possible targets for this acreage, but there are no maps showing specifics.

The term of the agreement is 15 years and prohibits any changes until the terms are renegotiated in 15 years. State continues to express intent to eventually go after non-parties to the VA for flow contributions, which would occur during the SWRCB hearing process. In response to questions, he said deciding to participate in these VA discussion poses risks for the Agency that the board should consider and said the existing NDWA MOU on water quality has not been brought up in the VA meetings. He recommended meeting with DWR Director Karla Nemeth to start a discussion on renewing the NDWA agreement as part of the DWQCP update.

Manager Report

Administrative

Melinda reported that annual employee reviews were completed for both herself and the Assistant Manager.

Correspondence

Melinda Terry announced she is preparing scoping comments on the Notice of Preparation for the Delta Conveyance Project (DCP) that will include topics covered the comment letter the Agency submitted on the

WaterFix EIR. She will work with Downey Brand to finalize letter for submission by March 17th. John Collins of the Delta Watermasters Office passed around an informational flyer he picked up at the February 3rd public scoping meeting. Melinda commented that the DCP is substantially similar to the WaterFix, except single tunnel and two intakes instead of three, and once again only includes project alternatives with different size diversion capacities.

In addition, she and Meredith Nikkel met with Delta Watermaster Michael George on the July 2018 letter Downey Brand sent to the SWRCB inquiring about the need for DWR to obtain a diversion permit for the project to notch the Fremont Weir and install a gate operated by the State Water Project to divert 6,000-12,000 acre-feet from the Sacramento River into the Yolo Bypass. The Watermaster committed at the meeting to provide NDWA with the water board's legal basis for considering the bypass a natural flow area that doesn't need a diversion permit, and to let us review a draft of their response letter to NDWA before publicly releasing. Director Mark van Loben Sels expressed concern with DWR trying to use condemnation laws on lands that would be inundated by these diversion flows if landowners refuse to sell a flood easement on their property.

Delta Activities Report

SWRCB/Delta Water Master

John Collins, Delta Watermaster's office, announced April 1 is deadline for submitting annual diversion reports and said they expect a draft of the consumptive use report in about two weeks and the OpenET Beta model is to be released in March. He announced that the oversight committee on water rights for New Holland Tract is scheduled for February 14th.

Delta Habitat

Lookout Slough EIR comments are due February 14th.

Delta Protection Commission

Erik Vink reported he and Eddie Hard from the Divisions of Park and Waterways will be giving a preseason briefing on invasive weeds to SDWA and CDWA and if NDWA was interested to let him know. The Commission is also working on the Delta Trail, National Heritage Area planning, is updating the recreation chapter of the Economic Sustainability Plan (ESP), and will soon be restarting the update of the Land Use and Resource Management Plan (LURMP).

Delta Stewardship Council

They are currently updating Chapter 4-Ecosystem of the Delta Plan. Osha Meserve will send Melinda comments submitted by LAND.

Announcements

The Board decided to continue holding NDWA board meetings at the new office located at 3050 Beacon Blvd., Suite 203, in West Sacramento.

Public Comment

Osha Meserve stated that Governors Resiliency Portfolio proposes approval of a new climate change bond measure, but does not recommend any investment in levees or the. The administration needs to be educated on the importance of the Delta Special Projects and Levee Maintenance Subventions Program.

Adjournment

Chairman Mello adjourned the meeting at 12:09 p.m.

Respectfully submitted by Cindy Tiffany, Assistant Manager.