

**Minutes of Wednesday, July 7, 2021**  
**North Delta Water Agency Board of Directors Meeting**  
Remote Meeting Held via Teleconference

**Call to Order**

Chairman Mello called the board of directors meeting to order at 9:38 a.m. on Wednesday, July 7, 2021. Pursuant to State of California Executive Orders N-25-20 and N-29-20, members of the North Delta Water Agency Board of Directors and members of the public participated remotely by teleconference. A quorum was established at 10:22 a.m. Those present:

Directors

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  
Meredith Nikkel, Downey Brand  
Gary Kienlen, MBK Engineers

Others

Harvey Correia  
Ben Peters

Michael George

Due to lack of quorum at the start of the meeting, the chair moved to Agenda Item #4 Drought Update.

**Drought Update**

*Water Unavailability Notice*

Michael George announced the SWRCB released of a Notice of Water Unavailability for the Sacramento-San Joaquin Delta watershed on June 15, 2021. This is a preliminary informational notice of possible future curtailments, but is not a regulatory order to cease-and-desist. He acknowledged the notice may confuse recipients, but it was carefully crafted due to unresolved litigation from the 2015 Curtailment Orders. There is not much interest by SWRCB to take any enforcement action within the Delta, primarily because of riparian and NDWA Contract water rights. Another reason is that the current methodology is better than 2015, but it relies on 2018 data and is not accurate in the Delta.

To protect the seniority of water right holders, the SWRCB has directed staff to develop emergency regulations authorizing implementation of an enforceable curtailment order. This emergency draft regulation should be available on or before July 23<sup>rd</sup> with a workshop planned for July 27<sup>th</sup> and adoption by the water board at their meeting on August 4, 2021. A review of the regulations by the Office of Administrative Law then then takes two weeks, so the final curtailment order will not be effective until mid-August.

*Water Quality*

Michael reported that the SWP and CVP are having difficulty maintaining salinity objectives in the Delta. Water transfer period is open, but none are scheduled at this time. The False River Salinity barrier installation was completed in late June to help prevent salinity intrusion into Franks Tract. Due to the low water flows, the Delta is also having a higher-than-normal year of invasive weeds and large algae blooms. The Bureau of Reclamation released water from New Melones Reservoir which will help improve Delta outflow. It is likely

that another emergency TUCP will be submitted to the SWRCB for approval. Meredith Nikkel added that operations at Shasta are being watched carefully for temperature and carry over storage. According to recent presentation by DWR Director Karla Nemeth, we would need to see 130% of rainfall/snowpack this coming winter in order to get up to 100% of average storage.

At 10:22 a.m. a quorum was established when Mark van Loben Sels and Justin van Loben Sels joined the meeting.

### **Approval of Minutes**

**MOTION** by Director Kuechler to approve the June 2, 2021, minutes as presented. The motion was seconded by Director Slater and unanimously approved by a voice vote. (AYES: Kuechler, J. van Loben Sels, M. van Loben Sels and Slater, ABSENT: Mello)

### **Director Election**

Resolution 2021-03 was presented for adoption. The resolution calls for a General District Election to be held on November 2, 2021 for NDWA Divisions 1, 3, and 5.

**MOTION** by Director Kuechler to approve Resolution 2021-03. The motion was seconded by Director Slater and unanimously approved by a voice vote. (AYES: Kuechler, J. van Loben Sels, M. van Loben Sels and Slater, ABSENT: Mello)

### **Manager Compensation**

Director Kuechler spoke about the results of Melinda Terry's recent performance review, stating she has gone above and beyond what was required of her as Manager. In addition, she has decided to retire later than previously discussed in order to continue providing management on key issues of interest to the Agency over the next couple of years. For these reasons, Director Kuechler recommended the NDWA board of directors approve a one-time performance payment of \$10,000 for Melinda Terry, with \$5,000 paid in July 2021 and \$5,000 paid in October 2021 if CCVFCA does not contribute.

**MOTION** by Director Kuechler to approve a one-time performance payment of \$10,000 of which \$5,000 will be paid in July 2021 and \$5,000 paid in October 2021 if CCVFCA does not contribute. The motion was seconded by Mark van Loben Sels and unanimously approved by a voice vote. (AYES: Kuechler, J. van Loben Sels, M. van Loben Sels and Slater, ABSENT: Mello)

### **Drought Update *Continued***

#### *Delta Drought Response Plan*

The three Delta water agencies met with the State Team working on Voluntary Agreements, in an effort to expand outreach to incorporate Delta interests. Due to the serious drought conditions being experienced in the watershed, the meeting focused on addressing this current crisis. They acknowledged it is too late in the year for farmers to make any crop changes that could conserve water, but would like to work with the Delta on a plan of action for the future – a Delta Dry-Year Response Plan. Melinda reported she brought up two issues in the meeting: 1) consider implementing a financial incentive program for crop fallowing that was apparently done in 1991; and 2) the need for local agency agreements with mitigation measures if barriers are installed. She explained an agreement between DWR and NDWA was executed in 1976 when a barrier was put in at Sutter Slough and expects same to be done again. Thanks to the assistance of Michael George,

Melinda said she has a meeting scheduled on July 21<sup>st</sup> with Jacob McQuirk, the project manager for installation of emergency drought barriers in the Delta. DWR is planning to possibly install barriers on both Sutter and Steamboat Sloughs next year if drought conditions continue.

Michael George said the venue is an opportunity for the Delta to participate in defining the Delta's role in water conservation during droughts and in longer term planning for protecting Delta water quality. He added that the State Team was impressed with the unified voice of the Delta representatives.

## **Engineering Report**

### *Water Quality Update*

Gary Kienlen reported that the Contract and TUCP salinity criteria are both being exceeded at Three Mile Slough and Rio Vista monitoring locations and noted there has been higher tides in the Delta than predicted. The Bureau of Reclamation released water from Shasta yesterday and opened the Delta Cross Channel gates last weekend, but he is unsure if these actions were coordinated with DWR. The Bureau plans to leave the DCC gates open until further notice. In response to a question about how this year's conditions compare to 2015, he said the exceedances in 2015 did not happen until August and only effected the Three Mile Slough monitoring location, but not Rio Vista. DWR does not currently plan to release water from Oroville. According to trending seeing now, he expects Rio Vista location to meet contract criteria again within 8 days. As of right now, the Article 4 Emergency Drought provision in the Contract has not been triggered, because the SWRCB has not yet adopted water quality regulations different than the criteria in the Contract.

## **Legal Report**

### *Emergency Drought Provision*

Meredith Nikkel reported Kevin O'Brien has been in communication with Tripp Mizell of DWR regarding development of an agreement to implement the Special Claims Procedure described in Art. 4(b)(iv) of the Contract due to ongoing exceedance of salinity criteria. Kevin is currently working on a draft document for DWR to consider. Melinda will follow-up with Kevin and Michael George will see if he can help on his end to get this moved forward.

### *Water Quality Plan Update*

Meredith reported this appears to still be stalled due to all the drought planning efforts.

## **Manager Report**

The second installment payment was sent to DWR and she has been invited to be on a panel at the next Delta Protection Council meeting on July 15<sup>th</sup> to discuss drought issues, including installation of salinity barriers

## **Delta Activities Report**

### *SWRCB/Delta Watermaster Activities*

Michael announced the final Open ET is scheduled for a late July release.

### *Delta Habitat Projects*

The Central Valley Flood Protection Board postponed their permit discussion for Lookout Slough to July and the Delta Stewardship Council will meet on July 16<sup>th</sup> to hear an appeal filed on a certification of consistency for the Lookout Slough project.

### *Delta Protection Commission*

Erik Vink stated that at the next commission meeting he is going to request approval to write a letter. This letter will be discussing the issue that the State plans to use eminent domain for the Notch project on the Fremont Weir. Director Kuechler stated that he would get Erik Vink Ric Reinhardt, and Misty Kaltreider information because they have concerns also. DWR will be giving their presentation on this project at the next DPC meeting and following that is when he plans to request the commission the letter.

*Delta Conservancy and Delta Stewardship Council Activities*

No activities reported.

**Announcements**

Melinda requested the board consider scheduling an informational Special Board Meeting prior to our August 4<sup>th</sup> board meeting. The purpose of the meeting will be to focus on historical actions by the Agency in past droughts. She recommended either July 27<sup>th</sup> or 29<sup>th</sup>, depending on availability of board members. Cindy will follow up with board members to confirm the date.

**Public Comments**

No public comments received.

**Adjournment**

Chairman Mello adjourned the meeting at 11:51 a.m.

Respectfully submitted by Cindy Tiffany, Assistant Manager