

Minutes of Wednesday, February 2, 2022
North Delta Water Agency Board of Directors Meeting
Teleconference

Call to Order

Chairman Mello called the board of directors meeting to order at 9:31 a.m. on Wednesday, February 2, 2022. 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
Austin Cho, Downey Brand
Gary Kienlen, MBK Engineers
Anne Williams, MBK Engineers
Matt Wickersham, Alston & Bird

Others

Mike Hardesty
Lindsay Kammeier
Michael George

Closed Session

The Board convened Closed Session through teleconference at 9:34 a.m. to discuss the following two items:

1. Litigation regarding Coordinated Operations Agreement Amendments pursuant to Government Code 54956.9 (d)(1);
2. Initiation of litigation pursuant to paragraph (4) subdivision (d) of Government Code Section 54956.9 (one case).

Closed Session Report

The Board reconvened in open session at 9:47 a.m. and Chairman Mello announced that the board took no reportable action during closed session.

Approval of the Minutes

Under Drought Activities on page 2 of the December 1, 2021 minutes a change was requested in the first sentence to change the month "May" to "April".

MOTION by Director Kuechler to approve the December 1, 2021 minutes as amended in the Drought Activities section on page 2. Seconded by Director Slater and unanimously approved by a roll call vote. (AYES: Mello, Kuechler, J. van Loben Sels, M. van Loben Sels, and Slater.)

Appointment of Officers

The Agency's governing statutes require an annual election of Chairman and Vice Chairman. The board also voted to appoint a Director to serve as Treasurer.

MOTION by Director Slater to nominate Director Mello to serve as Chairman and Director Kuechler as Vice Chairman in 2022. Seconded by Director M. 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 to serve as Treasurer in 2022. Seconded by Director Kuechler 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, provided an update on the status of the FY 2021-22 Direct Bill Assessment collections, and reported that NDWA made the first Contract payment to DWR in December that included a 25% increase in the annual payment as allowed in the Contract. There was a difference in the amount owed due to our records showing less acreage owned by DWR than it claimed in their Contract payment calculation. Cindy will request a list of parcels from DWR staff to true up any differences between NDWA and DWR calculations.

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

Rick Johnston of Perry, Bunch and Johnston Inc. CPAs presented the biennial fiscal audit report for FY 2020-2021. He reviewed each section in the report, including disclosure of increase in cash assets and net pension liability, and closed by noting that the audit received a clean opinion with no recommendations.

MOTION by Director Slater to accept the biennial audit as presented. Seconded by Director Kuechler 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 reported water quality is currently within the Contract criteria at all seven monitoring locations due to storm events in the month of December, but there were exceedances of the Contract salinity criteria that occurred at the Three Mile Slough monitoring location between December 9-16th after a dry November. Melinda asked Anne about any discussions MBK had with SWP operations staff about these Contract exceedances. Anne confirmed conversations occurred when salinity levels were trending up. DWR's response was they were not planning on taking any operational actions because only minimum water supply releases occurring at Oroville and there were storms in the weather forecast they expected to improve water quality.

Director Slater asked if we submitted formal complaint about these Contract exceedances. Anne responded that NDWA sent a letter to John Leahigh in October, but never received a written reply. Gary Kienlen reminded the board that reservoir levels were at historic lows in the fall and the SWP was already operating deliveries at a minimum health and safety level. The Board discussed the exceedances and lack of response and communication from DWR staff, and recommended the Agency meet with the DWR Director about this matter. Melinda agreed to schedule a meeting Karla Nemeth to discuss this issue, but as a matter of professional protocol will first call John Leahigh to notify him of these compliance issues.

Anne reported that the snowpack in Northern California is now 90% of average. Current reservoir storage levels are as follows:

- Shasta 36% of average
- Oroville 46% of average
- Folsom 55% of average

Anne reported that DWR had previously set criteria based on the 8-River index to determine if they would

install the Northern Drought Barriers: 1) the 8-river index needs to be at 73 inches; and 2) the combined Shasta/Oroville storage needs to be 6.5 MAF. Currently, 8-River index is at 31.5 inches and the combined storage is 3.258 MAF. Despite being well below both criteria, last week DWR announced it has decided not to install the Northern Drought Barriers in 2022, but will continue planning for installation in 2023 in case drought conditions continue. Melinda commented this decision appeared to be related to their announcement two days later to withdraw their TUCP request in order to justify increasing the water contractor allocation from 0% to 15% that same day.

Legal Report

Delta Water Quality Control Plan Update

Austin Cho reported on the status of the Delta Water Quality Control Plan (D-1641) update. Voluntary agreements have stalled, but the SWRCB staff is moving forward with implementation of the San Joaquin flow amendments that were adopted in December of 2018 and development of the update of the Sacramento River flows. This has been a very contentious process due to the complexity of this system. Settlement agreements are still possible, but they are not being pushed at all.

Delta Drought Barriers Reimbursement Agreement

Austin reported on discussions with DWR legal staff to work on development a reimbursement agreement for Agency costs associated with the planning, permitting, construction, and removal of two drought barriers in the North Delta. He expressed frustration with lack of progress and recommended bringing Jacob McQuirk into the discussion so that can finalize terms of this document. He described the terms NDWA is seeking that relate to DWR's obligations in the 1981 Contract such as erosion, water surface levels, and water quality. Meeting with Jacob is scheduled next week.

Monterey Agreement Lawsuit

Austin announced that the 27 years of litigation on the Monterey Agreement has ended. The California Supreme Court denied Central Delta Water Agency's petition seeking review of the court of appeal's decision.

Manager Report

Correspondence

Included in the board packet are a NDWA comment letter on TUCP request and the Agency letter sent with the December Contract payment. Melinda announced she will be on a panel for the Delta Leadership Program this month.

Remote Meetings

To continue with remote meetings, the board needs to approve another resolution authorizing the extension of the Modified Brown Act to continue holding remote meetings during the COVID pandemic.

MOTION by Director Kuechler to approve Resolution No. 2022-01 to extend the ability to hold remote board meetings. Seconded by Director Slater and unanimously approved by voice vote. (AYES: Mello, Kuechler, J. van Loben Sels, M. van Loben Sels, and Slater.)

Drought Activities Report

Drought Barriers

Discussed prior in the meeting.

Delta Drought Response Pilot Program

Michael George announced the Delta Conservancy officially launched implementation of the Delta Drought Response Pilot Program. As of last Friday, around 30 applications have been submitted from all regions of the Delta. Two applications have already moved forward and a date is set for the review of the next group. He expects the \$10 million program will be fully subscribed based on the applications received so far. The price is set at \$900/acre which will allow enrollment of approximately 8,888 acres into the program.

2022 TUCP

As discussed previously, the Temporary Urgency Change Petition request was withdrawn by DWR.

Delta Activities Report

SWRCB/Delta Water Master

Michael George provided an update on the recently adopted emergency drought regulations and announced there currently no curtailments ordered in the Delta. The TUCP was withdrawn by DWR/USBR, but the water board is still going to hold public hearing on the objections raised.

Compliance with water use reporting in the Delta has been very good. Yesterday Michael reported to the SWRCB on the implementation of the SB 88 Delta Alternative Compliance Plan, Drought Response Pilot Program, and status of the Friant Water District complaints claiming illegal diversions in the Delta. Board Member Dee Dee D'Adamo asked if he could bring Delta leadership representatives to the next meeting to describe their involvement in these activities, so he will be reaching out to some of us regarding availability.

Lindsay Kammeier reported that the Delta Alternative Compliance Plan is open to all landowners. It is currently \$1.75/acre to enroll for the first year and estimates in future years in \$0.40/acre. The Water Board is working on developing an online interface that will be free.

SWP/CVP Allocations

SWP allocations increased from 0% to 15%.

Delta Conveyance Activities

The Delta Construction & Design Authority has ended the Stakeholder Engagement Committee established to discuss Delta Conveyance Project design.

Delta Habitat

DWR resubmitted a Certification of Consistency for the Lookout Slough Restoration Project to the DSC. Two appeals have been filed, so the Council will hold an appeal hearing.

Delta Conservancy

Currently accepting applications for the Delta Drought Response Pilot Program.

Delta Protection Commission

Erik Vink reported the EIR/EIS for the Delta Conveyance Project (tunnel) is still expected to be released for public comment in May of 2022.

Delta Stewardship Council

Melinda reported she will be participating in the flood and agricultural groups established to identify climate

change adaptation approaches as part of the Council's Delta Adapts process to create a climate resilient future. This effort is a follow up to the recent release of a Vulnerability Assessment report.

Announcements

Gary Kienlen announced that Anne Williams will be taking the lead on engineering issues for NDWA and he will be support her in that work, but not be the main point of contact anymore.

Public Comment

No public comment provided.

Adjournment

Chairman Mello adjourned the meeting at 12:26 p.m.

Respectfully submitted by Cindy Tiffany, Assistant Manager.