

Minutes of Wednesday, September 8, 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 9:31 a.m. on Wednesday, September 8, 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 the public participated remotely by teleconference. A quorum was determined at the 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

Others

Lou Biagioni
Harvey Correia
Michael George

Erik Vink
Mark Wilson

Closed Session

The Board convened Closed Session through teleconference at 9:33 a.m. to discuss the potential initiation of litigation with legal counsel on four potential cases pursuant to Government Code section 54956.9(d)(4).

Closed Session Report

The Board reconvened in open session at 10:22 a.m. and Chairman Mello announced the board gave staff direction to write a letter to DWR providing formal notice of water quality exceedances that occurred in the summer and recommend implementing a drought claims process, and to request execution of a MOU with mitigation measures for drought barrier projects proposed for installation in both Sutter and Steamboat Sloughs next year.

Approval of Minutes

Director Mello requested a change to the August 4, 2021 minutes on page 3 under the Drought Barriers Section. He recommended the wording be changed to: "There was discussion on moving the barrier location to the north side of Ryer island East of the bridge and on the Southern tip of Ryer Island across from Grand Island to prevent disruption of existing diversions."

MOTION by Director Kuechler to approve the August 4, 2021 minutes, as amended, to clarify the locally recommended location for Sutter and Steamboat Slough drought barriers. Motion seconded by Director Slater and unanimously approved by a voice vote. (AYES: Mello, Kuechler, J. van Loben Sels, M. van Loben Sels, Slater)

Financial Report

Assessments

Cindy reported the Agency submitted assessment rolls to all four counties; and all have been accepted. Next step is to prepare the Direct Billing list and mail invoices by the end of October. Melinda asked about the status of written request from the State Lands Commission requesting removal of parcels from the Agency's direct assessment. MBK Engineers is evaluating the parcels and will send a memorandum to the Manager before next month's meeting.

Manager Report

Agency Director Elections

Only one candidate application was received for each of the three Divisions up for re-election: 1, 3, and 5. Therefore, no election is required. Instead, in accordance with local agency election law, the Agency will submit a certification letter to the County Board of Supervisors requesting appointment of the unopposed incumbent Director to represent Divisions 1, 3, and 5. Cindy expects to hear back from the counties on the appointments no later than November and the three Directors will then be sworn in for the next four-year term at the December NDWA board meeting.

Correspondence

The Agency received a letter from DWR on July 27, 2021 requesting to initiate negotiation of Contract payment in accordance with Article 9(a). Melinda reported she sent a response letter on August 16, 2021, declining the request because the Art. 9 adjustment period had expired. A copy of the Agency's response letter is available on the NDWA website under the packet documents for this meeting.

Engineering Report

Water Quality Update

Gary Kienlen reported that water quality is well within NDWA Contract criteria at all monitoring locations and updated the Board on his weekly coordination meeting with State Water Project operations staff. The Delta Cross Channel gates will be opened on weekends for the foreseeable future and water transfers are being implemented. He speculated the recent downward salinity trend may be due to transport of transfer water and the operation of the Delta Cross Channel.

Legal Report

Drought Claims Procedure

Kevin O'Brien reported on recent conversation with DWR legal counsel, Tripp Mizell, regarding potential implementation of an Article 4 Drought Claims Procedure. The East Contra Costa Irrigation District (ECCID), which has a similar contract to NDWA, is also interested in executing an agreement with DWR to implement a Drought Claims Procedure. He will contact ECCID's legal counsel to see if our two organizations can coordinate on these efforts. Director Mello pointed out that all three of the criteria in the Art. 4 Emergency Drought provision have only been met once during the drought in 2015, but the Agency has executed MOUs with DWR twice to implement the Drought Claims Process during the 1990s drought due to high salinity levels.

Drought Activities

Curtailment Orders

The informational drought meeting held by the Agency August 25, 2021 was well attended, with around 100 members of the public participating. In addition to presentations by NDWA consultants on current drought conditions and drought provisions in the 1981 Contract, the Delta Watermaster, Michael George, provided information about the SWRCB's Curtailment Orders in the Sacramento-San Joaquin River watershed and the additional requirement to electronically submit compliance certification or be subject to fines and penalties. He provided wording (available on the NDWA website) for landowners to insert in the certification form that identifies the NDWA 1981 Contract as an alternative water right landowners will continue diverting under. He also announced the one-week extension of the deadline to submit the certification form to September 10, 2021 and noted that approximately 90% of those certifications had already been submitted as of September 7th.

The Watermaster acknowledged that formal objections and lawsuits have been filed against the curtailment orders, claiming the SWRCB exceeded its authority in terms of scope and attacking the reliability of the methodology that the water board used to identify those water rights that would be curtailed. Director Mello asked about lawsuits pending from 2015 filed by South and Central Delta water right holders. Michael reported the court ruled on several issues, but a few issues moved up to the appeals court, including riparian water rights.

Delta Diversion Complaints

Melinda asked the Watermaster if the SWRCB has responded to the coalition complaint letter requesting enforcement

against perceived illegal diversions in the Delta. He said the investigation is not completed yet, but he has been educating the complainants on Delta depletions and the right to continue diverting under the NDWA 1981 Contract.

Drought Barriers

Melinda reported on her communication with DWR regarding their proposal to install drought barriers on both Steamboat and Sutter Sloughs in 2022, if drought conditions continue. She informed Jacob McQuirk that NDWA requests DWR to execute a MOU like the agreement done in 1976 and expressed concern about liability exposure and NDWA incurring engineering, legal, and manager costs without reimbursement from DWR. She also encouraged dialogue with local farmers about alternative locations for the barriers to reduce adverse impacts on existing water diversions. McQuirk made it clear the projects are exempt from CEQA, but said NDWA can comment on permits DWR is still required to obtain from the SWRCB, the CA Dept. of Fish and Wildlife, and the Central Valley Flood Protection Board. He is open to an agreement to reimburse NDWA and selecting alternative locations, but did not express interest in executing an agreement with mitigation measures similar to those implemented pursuant to 1976 Memorandum of Permit. He did meet with NDWA ad-hoc committee and reclamation district representatives about alternative locations and agreed to schedule a site visit. Melinda circle back to see if DWR made a final decision on barrier locations.

Delta Dry-Year Response Plan

Melinda reported she is still involved in meetings with the State's VA Team and other two Delta Agencies to develop a Delta-Dry Year Response Plan to be implemented as a pilot project in 2022 if drought conditions continue, and if successful, may be incorporated into longer term Voluntary Agreements associated with the update of the Delta Water Quality Control Plan (D-1641). The proposal discussed so far is only conceptual and they have not yet seen what is in the other Voluntary Agreements. Per her request, DWR agreed to make a presentation at the October 6, 2021 NDWA board meeting on projected State Water Project (SWP) drought operations in 2022.

The Watermaster pointed out this is a voluntary conservation program and financial incentives will be paid by DWR, and potential water savings will be measured through Open-ET. The incentives will be paid to landowner for implementing the conservation actions identified in an agreement, and not based on the amount of water saved. The next two meetings will hopefully finalize a pilot program proposal so implementation could start in October. He expressed interest in comments made by Director Mello and committed to following up with him for more details.

Delta Activities Report

Nothing to report for Delta Stewardship Council or Delta habitat projects.

SWRCB/Delta Water Master

See Watermaster comments above in the Drought Activities section.

Delta Conservancy Activities

Conservancy still has a few million dollars in Prop 1 for habitat projects and a request for projects will come out this fall.

Delta Protection Commission

Erik Vink informed the Board of a budget trailer bill, AB 155, that includes a three-year CEQA exemption for habitat projects in the Delta that was not heard in policy committee. It is an omnibus bill full of provisions with strong report and likely to pass. Melinda reminded board that legislation is not included in today's agenda, so cannot be acted upon.

Public Comments

No public comments received.

Adjournment

Chairman Mello adjourned the meeting at 11:35 a.m.

Respectfully submitted by Cindy Tiffany, Assistant Manager