

## Minutes of Monday April 12, 2021

North Delta Water Agency Special Board of Directors Meeting  
Remote Meeting Held Via Teleconference

### Call to Order

Chairman Mello called the special board of directors meeting to order at 3:32 p.m. on Monday, April 12, 2021. Held remotely via teleconferencing, a quorum was determined at that time. Those present on the call:

#### 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

Edward Franceschi  
James Johas  
Lindsay Kammeier  
Osha Meserve  
Erik Vink  
Supv. Oscar Villegas  
K. Wilson  
Mark Wilson

### Drought Discussion

#### *Update on April 1st Water Supply Forecast*

Gary Kienlen and Anne Williams gave a presentation on current water quality and drought conditions. They started with a review of water quality plots updated with the April 1st data from Bulletin 120, showing that water quality at all NDWA monitoring locations meets Contract criteria. The next Bulletin 120 forecast is May 1<sup>st</sup>, which sets the salinity criteria under the 1981 NDWA Contract for the remainder of the year.

They moved onto drought conditions, citing that the Northern Sierra 8-Station index is well below average with snowpack at 40% of normal; making this a critically dry year following a dry designation last year. When comparing current reservoir storage to 2014 and 2015, Shasta is approaching 2014 reservoir levels and both Folsom and Oroville are below 2014 and 2015 storage levels. For a historical perspective of water quality, Gary shared a table showing recent exceedances of Contract's salinity criteria:

- 2018 – 10 days;
- 2015 – 113 days;
- 2014 – 14 days.

Gary reminded everyone the Contract criteria is based on a 14-day average, so DWR can still be in compliance with the Contract even if there are daily exceedances, and daily salinity levels also fluctuate with tidal influx. In terms of the Contract's emergency drought provision, DWR is not obligated to implement a claims process unless all three of the following conditions exist: 1) the Four Rivers Basin Index is less than an average of 9 million acre-feet in two consecutive years; 2) the water supplied to SWP agricultural contractors is reduced by at least 50% or entitlements reduced for all SWP contractors by 15% or more; and 3) the SWRCB has adopted emergency regulations that allow the SWP to maintain a lower water quality standard than the salinity criteria in the Contract.

In 2020, the Four River index flow was 9.7 million acre-feet. The average for 2021 at 50% forecast is projected to be 8.85 million acre-feet and 90% is projected to be 8.2 million acre-feet. In both those 2021 scenarios, the two-year average is less than 9 million acre-feet so we check the first box of the Contract's Article 4(b)(i)

drought provision. The SWP supplies have already been reduced down to 5% so the second component of the drought provision is also checked. What we don't know is if the SWRCB will issue any Temporary Urgency Change Petitions (TUCP) this year that would allow lowered water quality standards. As of right now, DWR says it can manage water supplies and Delta water quality without TUCP's, but that could change if drought conditions worsen and if the Governor declares a drought emergency for the Sacramento-San Joaquin Delta. The CVP/SWP Projects are required to meet D-1641 water quality objectives through mid-August, and then must meet the 1981 Contract salinity criteria after that date because the NDWA water quality criteria must be met year-round.

If the third drought provision in the 1981 Contract is triggered at some point, then DWR is required to either provide an alternative water supply of sufficient quality or to establish a claims process to compensate individual landowners for loss of net income for each acre that is either: 1) planted to a more salt-tolerant crop; 2) not planted with any crops provided the decision is deemed "reasonable"; or 3) planted but the crops experience a reduced yield from higher salinity levels due to drought conditions. Director Mello spoke about his decision to change crops in November of 2014 before knowing if compensation would be available through a Contract claims process in 2015. When DWR established the claims process once the Contract's drought provision was triggered in 2015, he was compensated for the crop changes, but emphasized that this required substantial documentation of past crop plantings on that acreage.

As of today, the water board has not issued any water rights curtailment notices, but on March 22, 2021 it did send a preliminary notice of the possibility of water shortages. Lindsay Kammeier with Delta Watermaster's office said they will not be enforcing any water rights curtailments within NDWA boundaries due to water diversion rights provided in the 1981 Contract; however, the Watermaster does suggest water users consider implementing voluntary water conservation measures.

A group of San Joaquin Valley State Legislators recently sent a letter to the Governor requesting him to declare a statewide drought emergency, but the Governor declined to issue such a proclamation at this time. Lindsay Kammeier asked if establishment of a claims process under the Contract requires a drought emergency to be declared by the Governor. Gary responded that once all three components of the Article 4(b) exist as they did in 2015, then DWR is required to either provide alternative water supply or establish a claims process, regardless of whether the Governor has issued a drought declaration or not. In addition, DWR and NDWA can mutually agree to invoke implementation of the Contract's drought emergency provision, which was done when a claims process was established in the mid-1990s.

The Board directed staff to schedule an informational meeting for the public to share the latest drought and water quality conditions, and to discuss potential for the Contract's emergency drought provision to be implemented this year; and requested staff also reach out to DWR regarding establishment of a claims process.

### **Contract Payment Calculation**

Staff provided an update on meetings with DWR to resolve billing discrepancies based on how methodology for calculating annual contract payments is done. Staff has made progress on agreeing to use the 288,000 acres of land within the Agency instead of the gross acreage. We have provided DWR with our parcel ownership information from the County Assessor's rolls in order to confirm the total of DWR's land ownership and still need to reach agreement on whether the Contract payment amount should be calculated annually based on changes in DWR ownership or if DWR ownership should only be recalculated every five years when the payment adjustment is made. Staff will continue discussions with DWR to finalize resolution of these remaining issues.

**Closed Session**

The Board convened Closed Session through teleconference at 4:57 p.m. to discuss with legal counsel the potential initiation of litigation pursuant to Government Code section 54956.9(4)(d).

**Closed Session Report**

The Board reconvened in open session at 5:05 p.m. and Chairman Mello announced the board took no reportable action.

**Public Comment**

The board did not receive any comments from the public.

**Adjournment**

Chairman Mello adjourned the meeting at 5:05 p.m.

Respectfully submitted by Cindy Tiffany, Assistant Manager