

Minutes of Wednesday, August 3, 2016
North Delta Water Agency Board of Directors Meeting
14120 Grand Ave. (Walnut Grove Community Church), Walnut Grove

Call to Order

Chairman Mello called the board of directors meeting to order at 9:30 a.m. on Wednesday, August 3, 2016. A quorum was determined at that time. Those present:

Directors

Steve Mello, Division 1
Topper van Loben Sels, Division 2
Jack Kuechler, Division 3
Tom Hester, Division 5

Staff

Melinda Terry, Manager
Cindy Tiffany, Assistant Manager
Kevin O'Brien, Downey Brand
Gary Kienlen, MBK Engineers

Others

See attached sign-in sheet.

Absent

Kenric Jameson, Division 4

Closed Session

The board adjourned into closed session to confer with legal counsel for purposes of discussing the State Water Resources Control Board adjudicatory proceeding regarding Petition for Changes in Water Rights of the Department of Water Resources and U.S. Bureau of Reclamation associated with the CA WaterFix project.

Upon reconvening in open session at 10:20 am, Chairman Mello announced that no reportable action was taken by the board during close session.

Approval of the Minutes

Melinda Terry explained that staff reviewed the April 6th sign-in sheet and confirmed that Delta Watermaster Michael George was not in attendance, therefore, the amended minutes approved at the last board meeting need to be corrected back to the original minutes presented by staff in June. No corrections or additions were made to the minutes for the board meeting on June 8, 2016 or the Special Meeting of the board of directors on July 25, 2016.

MOTION by Director Kuechler to approve the April 6, 2016 minutes revised back to their original version, and the June 8, 2016 and July 25, 2016 minutes as presented. Seconded by Director van Loben Sels, and unanimously approved by a voice vote. (AYES: Mello, van Loben Sels, Kuechler, Hester)

Alternative Compliance Plan for Measuring and Reporting Diversions

Osha Meserve and Erik Ringelberg presented an alternative compliance plan for measuring and reporting water diversions they are developing for Delta water users. They explained the new law requiring landowners to measure and report water diversions to the State Water Resources Control Board and how their methodology provides a less expensive method of complying with diversion measuring requirements than installing a meter on every diversion intake. Ideally they would like to have several diversions on each island participating in their program, so they are looking for people to volunteer to op-in. The NDWA website has a link with a form that can be completed and returned to Osha. Once the program is established, they will do measurement calculations for landowners and submit report to SWRCB for them. At this point, cost of participating in their alternative program is an estimate.

Delta Water Master Michael George acknowledged he has the discretion to approve an alternative measuring

method in lieu of installing a meter, and he is more likely to grant an extension of time for water users if they are signed up to participate in development of an alternative plan.

Engineering Report

Gary Kienlen distributed water quality graphs, noting that reservoir water releases have been steady and salinity levels are currently within the Contract criteria. He reported that MBK continues to have monthly phone conversations with DWR operation staff on SWP operations, drought conditions, and water quality.

Legal Report

Kevin O'Brien reported on the status of State Water Resources Control Board hearing on CA WaterFix diversion petition. He described the presentation of policy statements and transition into testimony by DWR/USBR witnesses and cross-examination the he and legal representatives of more than thirty other protestants conducted. DWR witnesses have deferred answering of many questions to other experts that will testify later in the process. A panel of engineers with knowledge on project design and construction will testify and be cross-examined by each protester on August 4th, followed by project operators and then the modelers.

Financial Report

Cindy Tiffany distributed and answered questions about the FY 2015-16 end of year and the quarterly FY 2016-17 financial reports. The current expenditures for WaterFix, minus the \$89,000 cost for the video, are currently \$96,714.56. Kevin O'Brien said he will provide the board an outline at the October meeting of projected legal expenses during the WaterFix hearing, so they will have a better idea of how much NDWA's participation in the petition process will cost going forward.

MOTION by Director Kuechler to accept the Financial Reports for FYE 2015-16 and QTR 2016-17 as presented. Seconded by Director van Loben Sels, and unanimously approved by a voice vote. (AYES: Mello, van Loben Sels, Kuechler, Hester)

Cindy gave an update on status of county assessment rolls. She has submitted all four county rolls. Once she receives confirmation from each county that the roll has been accepted by them, she will begin mailing assessment invoices to the remaining landowners the Agency must direct bill.

Manager Report

Assessment Reclassifications

Gary Kienlen has provided a preliminary evaluation of parcels in the assessment reclassification request submitted by Sacramento-Yolo Port. She still needs to review prior reclassification decisions to ensure consistency with similar situations before rendering a final Manager's decision.

Conflict of Interest Code

The Conflict of Interest Code amendments have been finalized and sent to FPPC, and emailed to NDWA directors for a 45-day comment period. Once that ends, FPPC will submit to the Office of Administrative Law, and if approved, send the new updated Code to NDWA.

Delta Wetlands Settlement Agreement

She reviewed a letter NDWA received from attorney for Delta Wetlands Properties notifying the Agency they had sold their Delta islands and were therefore abandoning the Delta Wetlands Project and had already cancelled related water rights petitions before the SWRCB. Due to the cancellation, the "Water Quality Assurance Agreement Between Delta Wetlands and North Delta Water Agency" (settlement agreement) is now null and void.

Schedule

The board discussed scheduling monthly board meetings during the WaterFix hearing process, but decided to continue meeting every other month. To keep the board and landowners updated, Kevin O'Brien will email monthly confidential memos to directors and provide Manager a summary of hearings to post on the Agency website. In addition, the board will schedule Special Board meetings when necessary.

Delta Activities Report

Delta Watermaster

Michael George announced there will be a consumptive use meeting on September 14th and briefly described progress made so far. He also convened a meeting of Delta water users on July 11th to help identify methodologies for determining water availability during drought conditions that was well attended. Work groups are drafting response to two questions scoped in July: 1) Are there ways to improve estimation of Net Delta Outflow?; 2) Can we improve the description/understanding of the interaction between surface water and sub-surface water in the Delta? The next meeting will be on October 3rd.

Court Rulings

Melinda described a recent court ruling that overturned lower court decision upholding complaint filed by Delta landowners that access to their property for WaterFix preliminary engineering should not be allowed under a Temporary Entry Permit (TEP) because of the invasive nature of the proposed activities. Reversing the lower court's decision, the CA Supreme Court agreed with DWR's position that use of TEP to conduct exploratory geotechnical evaluations was appropriate, rather than condemning property through eminent domain process. However, landowners did have a partial win. The Supreme Court took the extraordinary step of expanding the definition of existing statutes to provide landowners additional rights for adjudication. .

Another significant court ruling declared the Delta Plan to be invalid in June because it failed to include quantifiable targets with numerical standards for four items specified in the 2009 Delta Reform Act statutes. Effective immediately, none of the Delta Plan policies and regulations can be enforced until revisions are adopted by the DSC. The ruling was requested in order to clarify different interpretations of the original ruling issued in May. Because the Delta Plan is a CEQA project, a new EIR must be approved once the Plan is revised in accordance with the ruling. The Plan will remain invalid until it is properly revised by the Delta Stewardship Council or if the DSC decides to appeal and wins.

DPC and Habitat Projects

Melinda will be nominating Cindy Tiffany to participate in the Delta Protection Commission's 2017 Delta leadership class and briefly described a Memorandum of Understanding between several local agencies and DWR establishing expectations for cooperation and coordination on habitat projects the State is planning in Yolo/Bypass Cache Slough.

Groundwater Sustainability Act

Director van Loben Sels provided a Groundwater Management Ad-Hoc committee update. The Sacramento County Water Agency is having a meeting on August 10th, 7:00 p.m., at the Delta Conservancy office in Courtland to receive input from Delta landowners regarding the formation of GSAs in the Sacramento basin. Yolo basin boundary modifications have been accepted by DWR and the Solano basin is having a GSA meeting from 1:00-5:00 p.m. on August 4th.

Adjournment

Chairman Mello adjourned the meeting at 12:29 p.m.

Respectfully submitted by Cindy Tiffany, Assistant Manager