

**Minutes of Wednesday, December 6, 2017**  
**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 9:33 a.m. on Wednesday, December 6, 2017. A quorum was determined at that time. Those present:

Directors

Steve Mello, Division 1  
Topper van Loben Sels, Division 2  
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.

**Approval of the Minutes**

No additions or corrections were made to the October 4, 2017 minutes.

**MOTION** by Director Hester to approve the October 4, 2017 minutes as presented. Seconded by Director van Loben Sels, and unanimously approved by a voice vote. (AYES: Mello, van Loben Sels, and Hester. ABSENT: Kuechler and Mahoney)

**Fiscal Report**

Rick Johnston of Perry, Bunch and Johnston Inc., CPAs gave the biennial audit report for fiscal year end 2016 and 2017, noting that the Agency received a clean opinion from the audit with no recommendations for any changes in accounting practices.

Cindy Tiffany reported that she receive full payment from the CA Department of Fish and Wildlife for their 2016-17 assessment amount. She then presented the Agency's current Financial Statements and in response to inquiry about engineering costs agreed to properly identify those costs which were incorrectly listed under the "other" category. She will also create subcategories under the WaterFix item so that the costs for CEQA litigation and the Petition are disclosed separately.

**MOTION** by Director Hester to accept the financial statements as presented noting correction to properly identify general engineering costs. Seconded by Director van Loben Sels and approved by a voice vote. (AYES: Mello, van Loben Sels, and Hester ABSENT: Kuechler and Mahoney)

**Engineering Report**

Gary Kienlen distributed water quality graphs, noting salinity levels are currently well within the Contract criteria at all NDWA monitoring locations. In response to question about missing data for some of the monitoring stations graphs, he agreed to look into the reason, but speculated that the voids had to do with how often DWR downloads the data since some stations do not have real time telemetry. In response to Director Mello's inquiry about the total unimpaired flow for the 4 River Index in 2017, Gary reported that the total unimpaired flow for 2017 was just under 38 million acre feet. In 2016 it was 17 million acre feet, 9.2 maf in 2015, and 7.5 maf in 2014.

Gary reported that State Water Project allocations are only projected to be 15%. Delta Watermaster Michael George stated that part of the reason the initial allocations are so low is that Oroville is below required flood level due to the damaged spillway. DWR is still trying to figure out how Oroville will impact future deliveries.

## **Legal Report**

### *WaterFix CEQA Lawsuit*

Kevin O'Brien reported that on December 21st there will be a court hearing to coordinate the CEQA lawsuits on CA WaterFix project. The lawsuit will either be in Sacramento or San Francisco. It is possible that the 2081 permit lawsuit filed by NDWA against CDFW may be combined/coordinated with the CEQA Waterfix lawsuits, however, work on NDWA's CEQA lawsuit cannot begin until the administrative record is prepared, which is compiling all records and documents that DWR relied on in certifying the WaterFix EIR. DWR estimates their costs for preparing the administrative record will be \$484,000. If DWR prevails in the suit then NDWA and others filing CEQA lawsuits will have to split these costs. Submission of legal briefs will probably not occur until next year.

If DWR decides to change project to single tunnel with two intakes, then there will likely be new CEQA legal disputes if DWR asserts they do not need to do a new EIR or issue a revised supplemental EIR for public review and comment.

### *Waterfix Petition*

Part 2 of the petition hearings will begin in January and scheduled to convene five days a week through June 2018. NDWA did not submit a case-in-chief with testimony, but instead will participate in cross-examination and rebuttal to present arguments on behalf of North Delta water users. Part 2 is focused on issues related to fish, recreation, and public interest.

Kevin explained the water board decision process for water rights petitions starts with board issuing a draft order, then the board would render a ruling either approving or denying the petition. If the board approves the petition, then their decision will include specific terms and conditions that must be incorporated into the DWR/CVP water rights permits and implemented in order for the project to proceed to construction. Lawsuits will be immediately filed by parties that do not agree with the board's decisions or believe the terms and conditions placed on the permits are inadequate.

## **Manager Report**

### *Sites Reservoir Project*

Melinda Terry reminded the board of their vote at the October 2017 meeting directing staff to write a letter supporting the Sites Reservoir project and presented a draft letter for their review. No changes to the letter were recommended by the board, so she will mail the letter.

### *Delta Water Quality Plan Update*

Melinda reminded the board of prior discussions regarding ACWA request for its members to adopt resolutions promoting "functional flows" in the development of the Delta Water Quality Control Plan update. She presented a significantly revised version of a resolution that reflects the input of NDWA directors in prior meetings. Michael George reported that the PPIC recently released a public policy paper encouraging the SWRCB to change the water quality plan update from unimpaired flows to functional flows. Kevin suggested that the board table a decision on the resolution so the board could review the PPIC report and to provide him the opportunity to carefully review the wording of the revised resolution and discuss potential edits with the Manager. He will send copy of the PPIC report to NDWA directors and Manager.

### *Delta Caucus*

Melinda briefed the board on a Town Hall meeting hosted by the Delta Caucus in Walnut Grove with presentation by the State Auditor's Office on recent report disclosing findings on its investigation into the financial records of the WaterFix Project. Key findings included DWR violating state laws by hiring unqualified project manager and the need to establish better recording retention policies, but reported no

taxpayer funding was used for WaterFix planning. The Audit report recommends the Legislature pass legislation requiring better record keeping and public transparency when project costs and timelines experience significant increases.

### **Delta Activities Report**

#### *SWRCB/Delta Water Master*

Michael George reported on deadlines for installing water measurement devices, granting extensions for some, and initiating enforcement against those who are not in compliance. He will not be spending time on validating water rights in the North Delta due to the 1981 Contract, but he still encouraged landowners to go online to review how their individual water rights are being catalogued by the Division of Water Rights. He provided update on pending cease and desist order on SWP/CVP water rights permits, noting that he received formal complaint that the updated operation plan submitted by DWR and USBR is inadequate. He provided information about water allocation model being developed and announced he has hired a water resources engineer to work on diversion data and water right evidence received from land owners in 2014. Gary Kienlen said MBK will check into the model and report back to the board on whether NDWA should actively participate in this effort.

#### *Delta Protection Commission*

DPC Executive Director Erik Vink reported that the Commission is still seeking nominations for their DPC Leadership program and thanked the board for their continued financial support of this program.

### **Public Comment**

Mark Wilson asked about the level of research the board did on the Sites Reservoir project and the reasoning behind its letter of support, and expressed concern with Metropolitan Water District's role in the reservoir and that the Sites Project facilitates construction of WaterFix Tunnels.

### **Closed Session**

The board adjourned into closed session at 12:02pm to confer with legal counsel to discuss three items:

- a. 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 for the California WaterFix Project (Gov. Code 54956.9(d)(1));
- b. Government Claims Act recovery of delinquent assessments, penalties, and interest against California Department of Fish and Wildlife (Gov. Code 54956.9(d)(1),(4)); and
- c. Litigation regarding WaterFix 2081 ESA Permit (Gov. Code 54956.9(d)(1).

The board reconvened in open session at 12:23 pm and Chairman Mello announced there were no reportable actions taken during closed session

### **Adjournment**

Chairman Mello adjourned the meeting at 12:25 pm

Respectfully submitted by Cindy Tiffany, Assistant Manager