

Minutes of Wednesday, October 4, 2023
North Delta Water Agency Board of Directors Meeting
3050 Beacon Blvd Ste 203, West Sacramento, CA

Call to Order

Chairman Mello called the board of directors meeting to order at 9:32 a.m. on Wednesday, October 4, 2023. Pursuant to Government Code section 54953(b)(3), Directors Jack Kuechler and Justin van Loben Sels attended remotely via publicly accessible teleconference locations identified on the agenda. A quorum was determined at that time. Those present:

Directors

Steve Mello, Division 1
Justin van Loben Sels, Division 2
Jack Kuechler, Division 3
Tom Slater, Division 5

Staff

Melinda Terry, Manager
Cindy Tiffany, Assistant Manager
Kevin O'Brien, Downey Brand
Austin Cho, Downey Brand
Anne Williams, MBK Engineers
Gary Kienlen, MBK Engineers
Chris Connor, MBK Engineers

Others

Jay Ziegler

Closed Session

The board adjourned into closed session at 9:33 a.m. with legal counsel to discuss the following item:

- i. Initiation of litigation pursuant to paragraph (4) of subdivision (d) of Government Code Section 54956.9 (One Item)

The board reconvened in open session at 9:46 a.m. and Chairman Mello announced no reportable action was taken during Closed Session.

Approval of the Minutes

No additions or corrections were made to the minutes presented for the August 2, 2023, Board of Directors meeting or the August 28, 2023, Special Board meeting.

MOTION by Director Kuechler to approve the minutes as presented for the August 2, 2023, regular Board meeting, and the August 28, 2023, Special Board meeting. Seconded by Director Slater and unanimously approved by a voice vote. (AYES: Mello, Kuechler, J. van Loben Sels, Slater ABSENT: M. van Loben Sels)

Directors Election Process

Cindy Tiffany reported that she only received candidate applications by the deadline from the incumbents for both Division 2 and 4: Justin van Loben Sels and Mark van Loben Sels. In accordance with the election process, this means an election is unnecessary because the County Board of Directors are required to appoint the Directors if there is only a single candidate for each Division. Accordingly, she submitted letters to the appropriate County Board of Supervisors requesting the re-appointment of the two incumbents. She confirmed that both Sacramento and Yolo Counties subsequently re-appointed Justin van Loben Sels to Division 2 and Mark van Loben Sels to Division 4 for another 4-year term ending in December of 2027. Their swearing in

must be completed by the end of December 2023.

Financial Report

Cindy Tiffany presented current financial statements. In response to a question, she informed the Board that revenue received from Yolo County is the final payment for the 2023-2023 tax year from the county rolls. The county always holds a percentage of the payment back until a few months after the end of the fiscal year.

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

Assessment Parcels

Cindy reported on the status of discussions with DWR staff to resolve an attempt to confirm the entirety of parcels owned by DWR within NDWA's jurisdiction. Most discrepancies have been clarified, but parcels in Solano County along the deepwater ship channel are remaining sticking points. There are other issues that the Agency raised with DWR after it conducted an internal audit of the history of payments received from NDWA. MBK will confer with Agency legal counsel on the preparation of a MOU to memorialize the number of the parcels owned by DWR and how the annual Contract payment is calculated in accordance with Art. 10 of the 1981 Contract and a 1997 Contract Amendment. Meanwhile, the Agency has submitted the assessment rolls to each of the four counties. In addition, direct assessments billing notices were sent to landowners at the end of October, with payment due at the end of December 2023.

Engineering Report

Water Quality and Hydrologic Conditions Update

Anne provided a slide presentation on water quality conditions. We have already seen a small amount of precipitation at the beginning of the new water year that started on October 1. Currently the 14-day mean is well within the NDWA Contract salinity criteria at all seven monitoring locations. All reservoirs are at capacity for flood control, which means required releases if storm events continue. DCC gates are currently closed during the weekdays and open on the weekends. Delta Conditions are balanced and term 91 remains lifted.

Delta Cross Channel

The U.S. Bureau of Reclamation recently held a meeting in Walnut Grove on their proposal to modernize the Delta Cross Channel (DCC) gates. This modernization effort is necessary to update a facility at the end of its life expectancy and to allow for remote operation of the gates.

Legal Report

Bay-Delta Water Quality Control Plan Update

Kevin reported that the State Water Resources Control Board (SWRCB) released the Sacramento River Draft Substitute Environmental Document (SED) for public review and comment. The 6,000-page document includes seven appendices. The document identifies several alternatives with varying levels of unimpaired flow requirements and a chapter on the Voluntary Agreement proposal focusing on non-flow actions. Downey Brand is currently reviewing and will present more information to the board on the content and impacts to NDWA at the next meeting. He suggested the establishment of an ad hoc committee to review the draft SED and to re-initiate discussions with DWR to execute a new MOU on the updated Bay Delta Plan. Directors Mello and Slater volunteered for this committee. Melinda requested legal counsel to work with MBK to prepare a draft comment letter as well as a scope of work with a description of NDWA's role and estimated costs for it to engage in this process, and present this to the Board at its December meeting. The board directed her to contact SWRCB staff to request a meeting with them so the Agency can ask questions about the modeling results in the draft document. The deadline to submit written comments is December 15, 2023, but may be extended per

several requests from the public. Delta Watermaster Jay Ziegler reported the earliest this report would be adopted is probably December 2024.

Delta Lawsuits

A lawsuit filed by the U.S. Bureau of Reclamation based on discrimination pursuant to the new San Joaquin Flow Objectives adopted in 2018 for the Bay Delta Plan was dismissed. Because the new unimpaired flow requirements have not been implemented yet, the court determined the lawsuit is premature.

For the first time, the U.S. EPA accepted a Title VI civil rights lawsuit against the SWRCB submitted from a coalition of tribal, environmental, and Delta organizations. Since it's the first of its kind, the Agency should follow this legal matter to see how it progresses and whether there are any potential impacts to water users within NDWA. Jay Ziegler reported that SWRCB responded in writing, and he will forward the letter to Melinda.

Site Reservoir

Several protests were filed on the Sites Reservoir project, including by Contra Costa Water District, State Water Contractors, Central Delta Water Agency, South Delta Water Agency, and San Joaquin County. The Agency will monitor the protest process to determine if any of the terms and conditions adopted in settlement agreements may affect NDWA.

Manager Report

Report on Meetings, Presentations, and Correspondence

Cindy Tiffany reviewed a memorandum she prepared on the process for the Agency to explore alternative options for providing liability insurance for NDWA. In order to obtain quotes from other insurance companies, they require that NDWA first submit a notice of cancellation to our current provider, ACWA JPIA. If NDWA decides to stay with ACWA after considering other insurance policies, then it will need to withdraw the cancellation notice prior to July 1, 2024.

Melinda reminded the board of the letter NDWA sent to DWR requesting a status update on Article 4 Drought Claims submitted in 2022. DWR's response letter is included in the board packet. Anne Williams said three claims she has assisted the landowner in preparing have finally been deemed complete by DWR. Now DWR has until November to pay or deny these final three claims.

Succession Planning

Melinda is working on setting up a date for the joint NDWA-CCVFCA committee to hold its first meeting.

Legislative Report

Water Rights Legislation

SB 389, providing the SWRCB specific authority over senior water rights passed the Legislature and is now waiting for the Governor's approval into law or veto. If he does neither, then the bill becomes law within 30 days. Kevin said he will send a summary of the legislation prepared by Downey Brand to the Board.

Delta Activities Report

SWRCB/Delta Watermaster

Jay Ziegler reported an amended version of the Tuolumne Voluntary Agreement will require the SWRCB to review as part of the Bay Delta Plan update. This means there will be adjudication of water rights as part of the Sacramento River update.

For water use reporting, Jay said the SWRCB made changes to the form landowners must submit when there is

a change of ownership. It is available on their website. The monetary penalties for not completing the form within the 30-days required after an ownership change still apply. His staff are in the process of wrapping up the 2022 water year for water use reporting.

Delta Habitat Projects

Director Mello reported that a bioacoustics fish fence was installed at Georgina Slough.

Delta Conveyance Project

The Contra Costa Water District recently executed a new MOU with DWR on the Delta Conveyance Project. It is substantially the same as the MOU adopted for the WaterFix tunnel project. Both MOUs include language governing construction activities that could be helpful for Delta Reclamation Districts to consider seeking. The August NDWA Manager Report includes internet links to new videos on the tunnel project released by DWR. The Final EIR is expected to be released in December.

Delta Conservancy and Delta Protection Commission Activities

No additional information to report on either.

Delta Stewardship Council

A certification of consistency was filed for the Central Valley Flood Protection Plan 2022 Update. Director Slater mentioned that in July, DWR took the Council on a tour of construction areas for the Delta Conveyance Project.

CVP/SWP

The August Manager's Report includes a write up on an appeal court decision denying validation of permanent USBR water supply contract.

Announcements

Oct 26/27 - DSC meeting, 9:00 a.m.

Nov 16 – DPC Board Meeting, 5:00 p.m.

Dec 6 – NDWA Board meeting, 3050 Beacon Blvd, Ste 203, W. Sacramento, 9:30 a.m.

Public Comments

No public comments provided.

Adjournment

Chairman Mello adjourned the meeting at 12:04 p.m.

Respectfully submitted by Cindy Tiffany, Assistant Manager