

**North Delta Water Agency**  
**Regular Board of Directors Meeting Minutes**  
14120 Grand Ave, Walnut Grove, CA 95690  
Wednesday, December 10, 2014 - 9:00 a.m.

**Call to Order**

Chair Henry Kuechler called the regular board of directors meeting to order at 9:02 a.m. on Wednesday, December 10, 2014. A quorum was determined at that time. Those present:

Directors

Tom Hester, Division 5  
Henry Kuechler, Division 3  
Steve Mello, Division 1  
Ken Ruzich, Division 4  
Topper van Loben Sels, Division 2

Staff

Melinda Terry, Manager  
Colleen Flannery, Assistant Manager  
Gary Kienlen, MBK Engineers  
Sara Harper, MBK Engineers  
Steve Saxton, Downey Brand

Others

See attached sign-in sheet.

**Closed Session**

The Board convened closed session at 9:03 a.m. to discuss one item, reconvened open session regular business at 9:37 a.m., and announced no reportable action was taken in closed session.

**Approval of Minutes**

The Board reviewed the minutes for the October 9, 2014 regular board meeting and the special informational board meetings held on October 28, 2014 and November 5, 2014. Because the November 5<sup>th</sup> public meeting lacked a quorum of the Directors, the Board, with legal counsel's agreement, requested the notes from the November 5<sup>th</sup> special informational meeting be described as a "Report" instead of official board meeting "Minutes."

**Motion and second to approve the minutes of the regular October 9, 2014 and October 28, 2014 special informational board meetings, and accept the report of the special informational meeting on November 5, 2014, as corrected. Motion unanimously approved. (Yes - Kuechler, Mello, Hester, Ruzich, van Loben Sels)**

**Financial Reports**

Assistant Manager Colleen Flannery provided financial reports to the Board and responded to questions regarding budget item levels. She explained the assessment revenues are still being collected by the counties, but will be reflected in future financial reports once the counties send payment to the Agency.

Colleen also distributed a handout showing the outstanding assessments due from various public entities and utilities that are directly billed by the Agency and committed to drafting a memo for the next Board meeting with more information regarding delinquent assessments and staff recommendations (if any) for "next steps"

to consider in the collection process. Attorney Saxton suggested she look into any statutory limits on collecting old assessments.

Manager Melinda Terry provided a handout of NDWA's legal and engineering costs incurred to date, totaling more than \$90,000, for meetings and work product associated with DWR's proposal to install temporary barriers at Sutter and Steamboat Sloughs. She reminded the Board the Agency would only be reimbursed for costs associated with negotiating a memorandum of understanding (MOU) between NDWA and DWR if the barriers are actually installed. Therefore, since DWR is currently seeking permits and preparing CEQA documents that would cover installation of the drought emergency barriers for ten years, the Agency may not receive reimbursement for legal and engineering costs spent to develop the MOU until or unless the barriers are installed. Attorney Saxton said there has been some positive reception on DWR's part to the idea of reimbursement of the Agency's costs if the barriers are not installed, but no firm commitment has been made.

Gary Kienlen estimated costs of \$75,000 or \$80,000 to review DWR's modeling associated with the Delta barriers. He indicated this estimate is based on incomplete information as to the current modeling and modeling assumptions. It is difficult to estimate the actual cost until MBK is able to see the modeling and evaluate how it fits with the project as described in the Mitigated Negative Declaration which is not scheduled for release until mid-January 2015. After discussing various budgeting options described by Melinda, the Board acknowledged the importance of NDWA expending what is necessary to negotiate a MOU with DWR to ensure compliance with contractual obligations, and encouraged the consultants to define a scope of work and budget for these costs for the Board to consider and to continue pursuing reimbursement by DWR.

**Motion and second to approve the financial reports. Motion unanimously approved. (Yes – Kuechler, Mello, Van Loben Sels, Ruzich, Hester).**

### **Engineering Report**

Gary Kienlen distributed current water quality charts, noting a spike in salinity levels last week despite the Cross-Channel Gates being closed, but still within the NDWA Contract criteria. He reported the gates are scheduled to be closed through March, which should positively impact water quality in the Sacramento River downstream of the gates. He also provided an update on the weekly calls with SWP operations staff, including DWR's progress on installing new telemetry equipment at three of the Contract's compliance locations so water quality hourly data would be available on the CDEC website and allow the Agency and public to monitor conditions and Contract compliance at each location in "real time."

A discussion of DWR's CVP and SWP Drought Contingency Plan for October 15, 2014 through January 15, 2015 followed with Melinda noting its brevity and failure to mention the temporary drought barriers or operating the SWP to meet DWR's obligations in the 1981 Contract with NDWA. Gary reported the latest precipitation and initial SWP water allocation information with a reminder that it is still too early in the water year to make definitive predictions. After further discussion, the Board directed staff to send a letter to DWR requesting the January 15, 2015 Drought Contingency Plan specifically reference and describe DWR's recent barrier negotiations with the Agency and its contractual obligations to water users in the NDWA.

### **Legal Report**

Agency attorney Steve Saxton presented a legal memo to address the Board's request for further evaluation of the water rights of "similarly situated" parcels and elevation arguments raised by landowner's legal counsel at the October 9, 2014 appeal hearing on H-Pond's request for parcel reclassification on NDWA's assessment roll. After he reviewed the findings in his memo, Steve recommended a letter with the Board's decision to deny the landowner's reclassification appeal for all parcels be attached to his memo explaining the reasons for the assessment reclassification denial be sent to H-Pond property owners via their attorney.

**Motion and second to deny the reclassification appeal and transmit the Agency letter and supporting legal memo to H-Pond's attorney. Motion unanimously approved. (Yes - Kuechler, Mello, Hester, Ruzich, van Loben Sels)**

Steve Saxton transitioned to an update of discussions with DWR on the development of terms and conditions for the installation of temporary drought barriers at Sutter and Steamboat Sloughs. He reported DWR has clearly stated in recent email communications that the department intends to comply with the Contract but expressed interest in negotiating a longer term and broader scope agreement with NDWA to cover barrier installation and other possible drought impacts and remedies, including the development of a claims process in advance of potential water quality or availability damage related to drought.

He also informed the Board that DWR confirmed it is preparing a Mitigated Negative Declaration (MND) for CEQA compliance for the temporary barriers project instead of a full Environmental Impact Report (EIR) and explained the differences between the two. Melinda asked if DWR indicated whether the MND would propose a MOU with NDWA as mitigation for water quality and elevation impacts, further questioning how that works if there is no finalized NDWA-DWR Barrier MOU approved when the MND is released and emphasized that such a MOU would not cover other landowner or reclamation district impacts that require mitigation. Steve expressed concern with the MND relying on the terms in an agreement with NDWA, because a contractual document like a MOU should not be used to identify or mitigate impacts.

A member of the public, Mark Wilson, informed the Board that DWR representative Paul Marshall made a presentation on the temporary barriers at the November 20th Delta Protection Commission public meeting, where he stated the proposed locations at the mouth of Sutter and Steamboat Sloughs would not be moved. The Board discussed appointing an ad hoc committee to review barrier negotiation work products, but decided the entire Board would convene as often as needed in order to remaining apprised of the progress and be available to take action. Steve Saxton committed to following up with DWR legal staff regarding the questions raised, including the content and timing for release of the barrier MND and plan for completing a MOU with NDWA, and report back his findings to the Board.

**Manager's Report**

Manager Melinda Terry provided the Board with a proposed 2015 meeting schedule of every other month, making February 4<sup>th</sup> the next meeting date. The Board decided to add a January 14, 2015 meeting date in case more information becomes available regarding the barrier MND or other drought actions in the Delta, but agreed the meeting would be cancelled if there were no issues requiring immediate action by the Board.

She briefed the Board on recent Agency matters including the staff's superficial review of an EIR/EIS for proposed SWP and CVP long-term water transfers through the Delta that did not appear to have significant impact to North Delta water users; and a new assessment reclassification request submitted by Pete Dwyer which will require evaluation by engineering staff. A roster of RDs in the North Delta she prepared with the name, email, and phone number of point of contact for each district was distributed. She has used the list to email more frequent drought updates to each district for them to share with landowners in their jurisdiction and will continue to do so when new information is available.

Melinda provided an update of the ongoing efforts to reconcile the CA Dept. of Fish and Wildlife (CDFW) land ownership within NDWA boundaries so the Agency can finalize a new MOU with DWR waiving Contract payment for those properties. In the meantime, per agreement with Craig Trombly at DWR, the Agency continues to deduct the total CDFW assessment amount from Contract payments and recently informed Mr. Trombly via email and phone conversation of the Board's approval of an assessment rate increase in June. She discussed the draft NDWA letter staff recommends sending to DWR with the December Contract payment, which explains how the Agency recalculated the CDFW deduction amount per

the new assessment rates. Director Henry Kuechler asked why the proposed NDWA letter to DWR did not also include a deduction from the Contract payment for the amount associated with the number of days in October 2014 that DWR was not in compliance with the Contract water quality criteria. Melinda responded that no deduction for the length of time DWR was out of compliance was included because the NDWA Board has provided no such direction to staff. She added that the issue would have to be noticed as a future agenda for Board action before the Agency could send a reduced payment for DWR's failure to meet water quality criteria during that period. She also recommended the Board carefully consider legal advice on this matter before taking formal action, including the review of a prior legal memo from past NDWA attorney George Basye providing detailed analysis of this issue, particularly the specific reasons for not tying the Contract payment to DWR's compliance with water quality criteria.

Melinda concluded with informational items regarding a letter by Local Agencies of the North Delta (LAND) providing early input on the Prospect Island Tidal Habitat Restoration Project proposed by DWR and the formal announcement from DWR of organizational changes, including the departure of Paul Helliker as Deputy Director. On an interim basis, his duties will be split between Deputies Carl Torgeson and Gary Bardini, but she reported that reliable sources indicate Paul Marshall will be in charge of Delta activities including the contingency barriers project.

### **Report on Delta Activities**

Melinda reported on a recent BDCP Cooperating Agency meeting which included a limited description of the scope of work for the recirculation of the Plan and EIR/EIS for public comment planned for spring, but probably more likely in summer of 2015, and the presentation of a video depicting the physical project design changes that characterize the size and look of the new intake fish screens proposed in Conservation Measure 1. She has requested BDCP staff to make the same presentation to the NDWA board of directors and is working with them to schedule for one of the Agency's regular board meetings in early 2015. She informed the Board that the State Treasurer released a report on financing the BDCP, but has not had time to review it yet.

### **Public comment**

Mark Wilson participated in the discussion of the Mitigated Negative Declaration for the contingency barrier project and the DWR Drought Contingency Plan during the Legal Report above, including questions about the NDWA MOU with DWR on Delta barriers and the Contract's drought emergency provision.

### **Adjournment**

Meeting adjourned at 12:33 p.m.

Minutes submitted by Assistant Manager, Colleen Flannery.