

**Minutes of Wednesday, October 3, 2018**  
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, October 3, 2018. A quorum was determined at that time. Those present:

Directors

Steve Mello, Division 1  
Justin van Loben Sels, Division 2  
Jack Kuechler, Division 3  
Ryan Mahoney, Division 4  
Tom Slater, 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.

**Closed Session**

The Board convened in Closed Session with legal counsel at 9:35 a.m. to discuss the following four items:

- i. 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)).
- ii. Anticipated Litigation regarding recovery of delinquent assessments, penalties, and interest against California Department of Fish and Wildlife and the California Wildlife Conservation Board (Government Code section 54956.9(d)(4)).
- iii. Litigation regarding WaterFix 2081 ESA permit. (Gov. Code 54956.9(d)(1)).
- iv. Litigation regarding WaterFix Environmental Impact Report under CEQA. (Gov. Code 54956.9(d)(1)).

The board reconvened in open session at 9:51 a.m. and Chairman Mello announced there were no reportable actions taken during closed session.

**Approval of the Minutes**

Minutes for the August 1, 2018 regular board meeting and the August 22, 2018 special board meeting were presented. No additions or corrections were made to either set of minutes.

**MOTION** by Director Slater to approve both the August 1, 2018 and August 22, 2018 minutes as presented. Seconded by Mello and unanimously approved by a voice vote. (AYES: Mello and Slater. ABSTAIN: Mahoney ABSENT: Kuechler and van Loben Sels)

**Financial Report**

Cindy Tiffany reviewed the current financial statements and answered questions. No changes recommended.

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

Cindy presented an email from Department of Parks and Recreation requesting NDWA to waive the penalty and interest accrued because their assessment payment was inadvertently delinquent due to a one time change in their billing procedures. The total penalty and interest due is \$160.70. The board acknowledged the delinquency appeared to be an isolated and unintentional incident based on recent history of paying on time.

**MOTION** by Director Mahoney to waive both the penalty and interest of \$160.70 for the Department of Parks and Recreation. Seconded by Director Kuechler and unanimously approved by voice vote. (AYES: Mello, Kuechler, Mahoney and Slater. ABSENT: van Loben Sels)

The Board discussed the approval of Banking Authority Resolution 2018-06, which gives the Manager authority to sign all necessary financial documents for the agency.

**MOTION** by Director Kuechler to approve Resolution Number 2018-06. Seconded by Director Mahoney and unanimously approved by a voice vote. (AYES: Mello, Kuechler, Mahoney and Slater. ABSENT: van Loben Sels)

### **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 daily EC levels, he stated that none of mean daily values have gone over the contract criteria, but was not sure about the hourly data.

### **Legal Report**

#### *WaterFix Change of Diversion Petition*

Kevin O'Brien reported Part 2 of the WaterFix change petition hearing ended on October 2, 2018 with closing briefs likely due sometime in November. He speculated the water board will issue final order with water right terms and conditions before Governor Brown leaves office. Once the board issues the permit there will likely be immediate litigation and requests for restraining order to prevent start of WaterFix construction.

#### *CDFW and Wildlife Conservation Board Delinquent Assessment*

CDFW owes penalties and interest for late payment of assessment and the Wildlife Conservation Board has not paid the 2017-18 assessment or the associated penalties and interest owed. NDWA filed a State Claim against both entities, but has not received payment. Therefore, Downey Brand sent a letter to CDFW giving it 30 days to pay penalty and interest owed on parcels they own and for payment of the past due assessment, penalties and interest for the Wildlife Conservation Board parcels. Downey Brand will follow-up by contacting CDFW legal counsel to discuss payment.

### **Manager Report**

Melinda Terry said NDWA received a letter from CDFW requesting reclassification of assessment rate for several parcels. She has provided the request to Gary Kienlen for review and will render a Manager decision once he provides his written recommendation. She also briefed the board on a tour organized by the Delta Independent Science Board to see carbon farming wetland restoration areas on Twitchell and Sherman Islands.

### **Delta Activities Report**

#### *Delta Stewardship Council*

Melinda reported nine appeals were filed with the DSC on the WaterFix project certification of consistency with the Delta Plan, so the Council will hold a hearing on October 24<sup>th</sup>. Three Council members recused themselves due to conflicts of interest. The Council has 60 days to render a decision either denying the appeals or upholding them and remanding the project back to DWR for revision and resubmittal. Erik Vink said the DPC will be presenting testimony at this hearing focusing on adverse impacts to Delta as Place.

#### *SWRCB/Delta Water Master*

Michael George stated there has been much discussion internally at the water board about letter Downey Brand sent on behalf of NDWA regarding the need for the Fremont Weir notched gate project to file a point of diversion petition. They question whether NDWA has standing to make the request because legal water users

within jurisdiction are protected by the 1981. He said Downey Brand should receive a response letter soon.

He reported the SWRCB will take action on the proposed San Joaquin River Amendments to the Bay-Delta Plan on November 7<sup>th</sup>, however there is lots of push back to delay the vote. The draft framework for Phase II/Sacramento River Amendments is expected to be released for public review by the end of November.

#### *Delta Conservancy and Delta Protection Commission*

Erik Vink a reminded board that the DPC is looking for applicants to the Delta Leadership Program which begins in November and announced the Delta Conservancy is coordinating the Central Delta Corridor Partnership to guide habitat restoration on publicly owned lands. The DPC will participate as it executed a MOU in 2000 that requires DPC approval prior to transfer of the Staten Island property. In a separate matter, Dino Cortopassi filed a lawsuit against DWR for failure to properly maintain the island's levees.

#### *Delta Habitat Projects*

Director Kuechler briefed the board on a meeting he had with Solano County staff regarding two tidal restoration projects planned in the Cache Slough area that are still in the conceptual development stage: Lookout Slough and Little Egbert. The board discussed concerns regarding water quality, erosion of channel banks/levees from increased water velocities, payment of NDWA assessment, and impacts to 30-40 diverters from lowered water surface elevations and endangered species presence. Director Kuechler said the county has same concerns and recommended the Agency send a letter encouraging the county to ensure these projects and any other proposed restoration projects are designed with mitigation measures that protect water quality and availability from hydrologic changes and endangered species impacts associated with tidal restoration projects.

**MOTION** by Director Kuechler to authorize Manager to write a letter to Solano County regarding potential water user impacts from the Lookout Slough project with reference to same expectations for future restoration projects. Seconded by Director Slater and unanimously approved by voice vote. (AYES: Mello, Kuechler, Mahoney, Slater and van Loben Sels)

#### *WaterFix EIR/EIS and SWP Contract Amendments*

Melinda reported that the NDWA submitted a comment letter on the WaterFix Supplemental EIR and will submit same letter once USBR releases Supplemental EIS for public review and comment under NEPA.

The Legislature held required informational hearing on proposed SWP water supply contract amendments. The Joint Budget Committee asked tough questions and committed to holding another hearing on any additional amendments related to payment for WaterFix construction.

#### **Adjournment**

Chairman Mello adjourned the meeting at 11:38 am.

Respectfully submitted by Cindy Tiffany, Assistant Manager.