

Minutes of Wednesday, April 6, 2022

North Delta Water Agency Board of Directors Meeting Teleconference

Call to Order

Chairman Mello called the board of directors meeting to order at 9:31 a.m. on Wednesday, April 6, 2022. A quorum was determined at that time. Those present:

Directors

Steve Mello, Division 1
Justin van Loben Sels, Division 2
Mark van Loben Sels, Division 4
Tom Slater, Division 5

Staff

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

Others

Bryan Busch
Lisa Crowley
Michael George
Yuen Lenh, MBK Engineers
Erik Vink
Mark Wilson
Ben

Closed Session

The Board convened Closed Session through teleconference at 9:33 a.m. to discuss the following item:

- i. Litigation regarding WaterFix Environmental Impact Report under CEQA, attorney fee recovery. (Gov. Code 54956.9(d)(1))

Closed Session Report

The Board reconvened in open session at 9:47 a.m. and Chairman Mello announced that the board took no reportable action during closed session.

Approval of the Minutes

Under Engineering Report on page 2 of the February 2, 2022, minutes a change was requested to add the word "capacity" after average under the current reservoir storage levels.

MOTION by Director Slater to approve the February 2, 2022, minutes with amendment in the Engineering Report on page 2. Seconded by Director M. van Loben Sels and unanimously approved by a roll call vote. (AYES: Mello, J. van Loben Sels, M. van Loben Sels, and Slater. ABSENT: Kuechler)

Approval of Resolution

To continue with remote meetings, the board needs to approve another resolution authorizing the extension of the Modified Brown Act to continue holding remote meetings during the COVID pandemic.

MOTION by Director Slater to approve Resolution No. 2022-02 to extend the ability to hold remote board meetings. Seconded by Director M. van Loben Sels and unanimously approved by voice vote. (AYES: Mello, J. van Loben Sels, M. van Loben Sels, and Slater. ABSENT: Kuechler)

Financial Report

Cindy Tiffany presented current financial statements. She noted that the 1st payment of property assessments from all for counties has been received and she expects to receive the 2nd payments starting in April. She

completed a large transfer into the LAIF savings from the standard operating account. She also pointed out that we are currently over budget under the Engineering section of the budget but are under budget on legal, so we should remain on budget overall.

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

Engineering Report

Water Quality and Hydrologic Update

Anne Williams reported water quality is currently within the contract salinity criteria at all seven monitoring locations, but salinity levels are trending up. She noted the contract criteria on the graph she displayed does not extend into April yet because we are waiting for the April 1 Bulletin 120, which is used to set the criteria. March was wetter than February, but is still drier than the historical 50% exceedance so she expects the April forecast to move the Contract criteria line up (higher EC).

Because we have not received significant rain since December 2021, current reservoir storage levels have lowered:

- Shasta 38% of capacity;
- Oroville 48% of capacity;
- Folsom 61% of capacity.

Anne also provided a comparison of current storage levels at Oroville to historic drought years. Lake Shasta is currently at 1.7-million-acre feet of storage, which is the same as the much smaller Oroville reservoir. Because Shasta storage must be maintained for cold water pool conservation and will largely have a limited operation this year due to temperature management releases for fish, there will be more burden on Oroville and Folsom for meeting Delta water quality and export deliveries.

Melinda commented that last year the SWP “borrowed” water from CVP last year to keep power generation from shutting down during the gubernatorial recall election, so the SWP owes the CVP about 300,000 acre-feet of water. Anne stated that the SWP and CVP are currently in negotiations to agree on when and how this water will be paid back.

Kevin O’Brien pointed out that the Sacramento River contractors will likely only be receiving 15-18% of their contracted water, which is well below their contracted 75%, and Feather River will be considering voluntarily reducing their allocation to 50% if the reduction isn’t triggered in the settlement agreements. Feather River Exchange contractors will have their percentage decided on April 10th. Currently the San Joaquin River Exchange contractors are anticipated to receive their contracted 75% but will likely get their water supply largely from Friant and not exported from the Delta.

Los Vaqueros Expansion

Anne reported that Contra Costa Water District has proposed a Los Vaqueros Expansion Project to increase the reservoir capacity to 275,000 TAF and potentially utilize the Sacramento River Freeport Facility to convey water. Melinda will reach out to CCWD to see if they are willing to give a presentation on the project.

Drought Activities Report

2022 TUCP

A new Temporary Urgency Change Petition (TUCP) was submitted by DWR and USBR on March 18th and has been conditionally approved and will be effective through June 30th. NDWA submitted a comment letter on the TUCP that were due at noon today and there will be a public workshop on April 19th. The new TUCP has a provision to relocate the Western Delta agriculture compliance point from Emmaton to Three-Mile Slough (TMS). If this change is implemented, then it may trigger the emergency drought provision in Article 4 of the 1981 Contract. This compliance change to TMS only occurs if the CVP/SWP Projects are no longer storing water, otherwise they must maintain the standard at Emmaton. Currently the Delta Cross Channel gates are closed and there is nothing included in this TUCP on any changes to gate operations. Director Slater asked the Watermaster if the 1981 Contract was considered in the approval of the most recent TUCP. Michael said he didn't think so, but the SWRCB does plan to adaptively manage the TUCP, including making adjustments in response to comments received. He also expects there will be a new TUCP submitted to guide CVP/SWP operations between for July 1st and September 30th and reminded the board that the December 2021 TUCP is still being litigated.

Review Potential Implementation of Contract Art. 4

Anne spoke about what would trigger article 4 of the 1981 Contract. Three things have to happen: 1) Four River Basin has to be less than an average of 9 MAF in two consecutive years; 2) SWRCB has have emergency regulation in effect that changes water quality requirement to something different than what the 1981 Contract requires; 3) SWP Ag. Allocations are less than 50%. So far 1, and 3 are triggered for this year. Number 2 could be triggered with the approval of the most recent TUCP and the NDWA contract criteria for April (which will be calculated using the hydrology data in the April 1st Bulletin 120 to be released next week). If MBK determines Article 4 is triggered, then the Agency will need to schedule an informational drought meeting to inform landowners. Melinda will email John Leahigh at DWR to inform him about the possibility of the Contract's emergency drought provision being triggered next week, which means DWR will need to establish a special claims process pursuant to Art. 4. DWR will also need to have a public meeting in order to explain the special claims application requirements and process.

Drought Barriers

The notch in the West False River Barrier is currently being filled back in and should be completed by mid-April. No drought barriers will be installed in the North Delta region this year, but are being planned potentially for 2023.

Delta Drought Response Pilot Program

Michael George reported that the Dry-Year Response Pilot Program to fund water consumption reduction actions received 85 applicants covering 8,500 acres throughout the Delta and is now fully subscribed. The program will run through the end of September 2022 and the data will be collected by OpenET. DWR is already considering the funding of this program again for next year. In addition, DWR notified their tenants on Sherman and Twitchell Islands that they expect them to reduce water use and Metropolitan Water District plans to also do the same on the four Delta islands they own.

Legal Report

Delta Water Quality Control Plan Update

Kevin reported that voluntary agreements have been signed by the State and a number of water agencies. Still waiting for a copy of the final signed MOU, but he will distribute a copy once he receives it. In theory the voluntary agreements, if adopted into the plan, would be alternatives to the adjudication of water rights. These agreements will require the SWRCB to not just look at flows to meet the plan but use different projects to meet the plan objectives. Some of these habitat projects will be within the Delta and the NDWA board may need to decide if the Agency will be part of these projects. Melinda commented that it appears to be a non-binding MOU and if additional agencies can still sign on. Kevin responded that other users can be added to the voluntary agreements. He will provide a more detailed briefing at the May meeting.

Michael George agreed that most of the habitat projects would be in the North Delta with lots of state and federal funding and encouraged the Agency to be involved in these continuing voluntary agreement discussions.

Delta Drought Barriers Reimbursement Agreement

Kevin reported that an outline agreement has been sent to DWR, but we have not received a response yet. Austin Cho of Downey Brand will continue to push DWR on this.

Manager Report

Correspondence, meetings, and presentations

A copy of NDWA's comment letter on the TUCP is included in the board packet. Melinda and Director Mello have been invited to be panelists at a Salinity Management Workshop hosted by the Delta Science Program in April. They will work with Anne on talking points.

Melinda reported she is finalizing potential dates for a meeting with DWR Director Karla Nemeth to discuss compliance with salinity criteria in the 1981 Contract. She also had a conversation with John Leahigh regarding the Agency's goals for the meeting.

Board Meeting Schedule

Due to ongoing drought conditions, Melinda recommended the Agency return to monthly meetings. The Board agreed and announced the next meeting will be on Wednesday, May 4, 2022. She is considering having a hybrid meeting of in-person and online, but needs to confirm with legal counsel this is allowed. She will also work on scheduling in informational drought briefing in late May.

Delta Activities Report

SWRCB/Delta Watermaster

Michael George introduced Lisa Crowley as the newest member of the Delta Watermaster Office and updated the board on drought activities. The Governor issued a new drought proclamation extending all previous orders. Currently, Term 91 is not in effect and the only curtailments within the Delta are the CVP and SWP projects. The Division of Water Rights meets every Thursday to update the status of curtailments and he expects the Division of Water Rights to revise their methodology. All licenses will likely be curtailed by May or early June and post 1914 soon after, with pre-1914 probably being curtailed in June also, but not riparian. Melinda asked if the Division of Water Rights will issue a notice of availability prior to pre-1914 curtailment like last year. He said there is no need for the notice of availability this year due to recent adoption of emergency drought regulations. In addition, he is still working on the investigation for the illegal water use complaint filed last year by Friant Water District. He expects to release his findings by June, but will share a draft with the three Delta agencies in May.

SWP/CVP Water Supply Allocations

CVP Allocations South of Delta are at 0%.

SWP allocations were recently reduced from 15% down to 5%.

Delta Conveyance Activities

Melinda reported the release of an EIR for the Delta Conveyance Project is expected in May, but will probably be in summer. In the meantime, DWR is creating a new public outreach and engagement plan. Also, the North Bay Aqueduct is moving forward with their effort to construct a new diversion point on the Sacramento River, with supporting resolution being adopted by the Solano County Water Agency in February.

Delta Habitat

An appeal hearing on the consistency of the Lookout Slough habitat project with the Delta Plan is scheduled this month at the Delta Stewardship Council (DSC).

Delta Conservancy

Nothing to report.

Delta Protection Commission

Erik Vink reported they are still looking for people to fill several positions on the Delta Advisory Committee. The Commission is hosting a reception for the Leadership Program participants on April 22nd at the Bogle Winery and hopes NDWA representatives will attend. In addition, the DPC is leading an effort to highlight historic and cultural landscapes in the Army Corp of Engineers review of the Delta Conveyance Project.

Delta Stewardship Council

The DSC in conjunction with Delta Science Program IS hosting a 2-day workshop on Salinity Management.

Announcements

Kevin announced he will not be available to attend the May 4th meeting, but Austin Cho will cover the meeting in his place.

Public Comment

No public comment provided.

Adjournment

Chairman Mello adjourned the meeting at 11:54 a.m.

Respectfully submitted by Cindy Tiffany, Assistant Manager.