

Minutes of Wednesday, February 6, 2019
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 9:38 a.m. on Wednesday, February 6, 2019. 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
Gary Kienlen, MBK Engineers

Others

See attached sign-in sheet.

Approval of the Minutes

No additions or corrections were made to the December 5, 2018 minutes.

MOTION by Director Kuechler to approve the December 5, 2018 minutes as presented. Seconded by Director Slater, and unanimously approved by a voice vote. (AYES: Mello, Kuechler, van Loben Sels, and Slater. ABSENT: Mahoney)

Appointment of Officers

Annual Election

Governing statutes require annual election of Chairman and Vice Chairman, and board also appoints Treasurer.

MOTION by Director Slater to elect Director Mello as Chairman and Director Kuechler as Vice Chairman. Seconded by Director van Loben Sels, and unanimously approved by voice vote. (AYES: Mello, Kuechler, van Loben Sels, and Slater. ABSENT: Mahoney)

MOTION by Director Mello to appoint Director Slater as Treasurer. Seconded by Director Kuechler, and unanimously approved by voice vote. (AYES: Mello, Kuechler, van Loben Sels, and Slater. ABSENT: Kuechler)

Closed Session

The Board convened into Closed Session with legal counsel at 9:43 a.m. to discuss the following 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. Government Claims Act recovery of delinquent assessments, penalties, and interest against California Department of Fish and Wildlife (Gov. Code 54956.9(d)(1),(4)) – (Two Cases)
- 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)).
- v. Initiation of litigation pursuant to paragraph (4) of subdivision (d) of Government Code Section 54956.9 – (Two Cases).

The board reconvened in open session at 10:01 am and Chairman Mello announced there were no reportable actions taken during closed session and the board would be reconvening closed session later in the meeting.

Financial Report

Cindy Tiffany presented current financials and answered questions.

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

Cindy informed the board that the 2018-19 direct bill assessments were due on December 31st, 2018. On January 15th she mailed delinquent notices to landowners for those assessments that have not been paid. Those delinquencies will be due in March and Cindy will update the board on their status at the April Board meeting.

Presentation on NDGSA

Osha Meserve provided an update on the Northern Delta Groundwater Sustainability Agency (NDGSA), formed in 2018 pursuant to a Joint Powers Agreement signed by 17 reclamation/drainage districts that are each individual GSAs. The NDGSA petitioned DWR to create a new Northern Delta groundwater sub-basin, but the request was not approved. They will now work with the counties and other GSAs in the four sub-basins to ensure the Delta GSAs are covered in the Groundwater Sustainability Plan (GSP) developed for each sub-basin. The NDGSA conducted a Prop 218 election and landowners approved a \$2.77 per acre assessment, which will probably be reduced once GSP is developed. Director Kuechler asked if they will get another opportunity to form a separate sub-basin. Meserve said DWR may offer another opportunity again in 5 years, but there is currently no future date set.

Engineering Report

Water Quality Update

Gary Kienlen distributed water quality graphs, noting salinity levels are currently well within the Contract criteria at all NDWA monitoring locations. He also distributed a graph showing water quality levels over the entire year. Gary reminded the board that the contract criteria through January 31, 2019 is based on four-river index as of May 2018. New criteria will be set once the February 1st Bulletin 120 is released by DWR. The board discussed DWR being out of compliance with NDWA contract criteria at the Three-Mile Slough monitoring location for eleven days in November of 2018.

Presentation on COA

Gary Kienlen and Anne Williams with MBK Engineers provided a presentation describing an overview of elements contained in the newly amended Coordinated Operation Agreement (COA) for the SWP/CVP and No Harm Agreements that were recently signed between DWR and the U.S. Bureau of Reclamation. The major change is increasing the responsibility for releases from SWP (Oroville Reservoir) and decreasing releases from CVP (Shasta and Folsom Reservoirs) to meet Delta water quality standards (D-1641) in dry and critically dry water years. Staff will post a copy of MBK's presentation on the NDWA website.

Legal Report

Waterfix Change Petition

Kevin O'Brien reported there is no schedule for closing briefs on the Waterfix Change Petition. We are in a holding pattern until the current administration decides what to do.

Delta Water Quality Control Plan Update

The State Water Resources Control Board adopted Lower San Joaquin River amendments to the DWQCP, which was immediately followed by multiple lawsuits. Natural Resource Secretary Wade Crowfoot and CalEPA Secretary Jared Blumenfeld are supporting development of Voluntary Settlement Agreements that

would offer alternatives to the unimpaired flows being recommended by SWRCB staff for the San Joaquin and Sacramento Rivers. Michael George reported there is currently no plan for how to implement or enforce new unimpaired flow requirements, so there are still many details that would need to be defined. The SWRCB wants the Delta to be more involved in the VSA process, but feels it does not have a united voice. Kevin O'Brien reminded the board that if voluntary agreements do not happen then the SWRCB will have to adopt unimpaired flows that would require water right holders to provide the extra water. The last time the DWQCP was updated DWR signed a MOU with NDWA that declares any obligation to curtail or modify diversions in the North Delta to meet new D-1641 flow or salinity objectives is the responsibility of DWR pursuant to the 1981 Contract, but it is necessary to sign a new MOU once an amended DWQCP is adopted for the Sacramento River.

Waterfix CEQA Litigation

DWR is still preparing the record for the CEQA lawsuit. There is an issue with post EIR modeling prepared by DWR for other permits, and whether it will be included in the record. If it is not, then the Agency may want to consider filing a motion with the court to request its inclusion in the record.

Manager Report

Melinda Terry reviewed items in the monthly manager reports for November and December 2018, and January 2019, including submission of a NDWA letter to Solano County regarding water supply and quality impacts associated with implementation of proposed Lookout Slough habitat restoration project. She reminded the board about her vacation the first week of April. The board directed her to move the next board meeting to Wednesday, April 2019.

She announced the Delta Protection Commission has a new chair, Yolo County Supervisor Oscar Villegas. Mike Hardesty commented that the Delta is at a disadvantage with a new DPC representative on the DSC being changed every two years. Erik Vink of the DPC stated this rotation is in statute, so would require legislation to change it.

Ad-hoc Committee on Employee Benefits

Director Kuechler reported that the ad hoc committee (Directors Kuechler and van Loben Sels) held a conference call meeting with staff to review health, retirement, and vacation/sick leave benefits provided to employees. They instructed staff to develop job descriptions and an employee handbook. Director Kuechler recommended that performance reviews for staff be conducted annually. The committee will confer with the Central Valley Flood Control Association regarding any potential changes in employee benefits.

Delta Activities Report

SWRCB/Delta Water Master

Michael George announced the appointment of a new SWRCB member, Sean Maguire, to fill the sanitary engineer position. He formerly worked in the Division of Water Rights. The attorney position held by Felicia Marcus expires on January 15th, which will require the Governor to designate a new chair.

Delta Protection Commission

Delta Protection Commission has scheduled three public meetings in Stockton, Oakley and Walnut Grove to receive input on the updates to its Land Use and Resources Management Plan (LURMP) which contains enforceable policies designed to protect the Primary Zone. The DPC is also working on a Delta Anthology and is accepting any writings about the Delta. Erik Vink thanked the board for the sponsorship of the Delta Leadership program, and invited them to reception on March 15th at Bogle Winery.

Delta Stewardship Council

Melinda reported the DSC is convening a work group on climate change and has invited Gilbert Cosio with MBK to participate.

Closed Session

The Board reconvened into Closed Session with legal counsel at 12:25 p.m. to discuss the following 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. Government Claims Act recovery of delinquent assessments, penalties, and interest against California Department of Fish and Wildlife (Gov. Code 54956.9(d)(1),(4)) – (Two Cases)
- iii. Litigation regarding WaterFix 2081 ESA permit. (Gov. Code 54956.9(d)(1)).
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The board reconvened in open session at 1:07pm and Chairman Mello reported that board created an ad-hoc committee to hire outside counsel to provide legal advice on one potential lawsuit.

Adjournment

Chairman Mello adjourned the meeting at 1:07 p.m.

Respectfully submitted by Cindy Tiffany, Assistant Manager