

**Minutes of Wednesday, December 9, 2015**  
**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 9:37 a.m. on Wednesday, December 9, 2015. A quorum was determined at that time. Those present:

Directors

Steve Mello, Division 1  
Topper van Loben Sels, Division 2  
Jack Kuechler, Division 3  
Kenric Jameson, Division 4  
Tom Hester, Division 5

Staff

Melinda Terry, Manager  
Cindy Tiffany, Assistant Manager  
Kevin O'Brien, Downey Brand  
Gary Kienlen, MBK Engineers  
Sara Harper, MBK Engineers

Others

See attached sign-in sheet.

Absent

**Approval of the Minutes**

No corrections or additions were made to the October 7, 2015 minutes.

**MOTION by Director Hester to approve the October 7th minutes. Seconded by Director van Loben Sels, and unanimously approved by a voice vote. (AYES: Mello, van Loben Sels, Hester, Jameson– Absent: Kuechler)**

**Audit Report for FY 14-15**

Rick Johnston of Perry, Bunch & Johnston (PBJ) presented the "Report on Audits" for 2014 and 2015, analyzing the net position and governmental fund balance sheets of the NDWA to obtain reasonable assurance that the Agency's financial statements are free from material misstatement. He issued a "clean opinion" and highlighted new disclosure requirements in the report with particular attention to Note #8 on pension plans. He answered questions about NDWA's unfunded liability under CalPERS and alternative defined benefit employee retirement options, advising the staff to direct specific questions regarding the Agency's termination liability for withdrawal from CalPERS.

**MOTION by Director Hester to accept the Biannual Audit Report for fiscal years 2014 and 2015 presented by Rick Johnston. Seconded by Director Kuechler and unanimously approved by a voice vote. (AYES: Mello, van Loben Sels, Hester, Kuechler, Jameson)**

**Financial Reports**

Cindy Tiffany presented the quarterly financial reports and answered questions from Directors.

**MOTION by Director van Loben Sels to accept the Financial Reports as presented. Seconded by Director Jameson and unanimously approved by a voice vote. (AYES: Mello, van Loben Sels, Hester, Kuechler, Jameson)**

She then informed the Board that she has completed issuance of all direct bills (assessment invoices) and payments are already beginning to come in. The Agency should receive direct deposits from counties for their assessment collections the end of January early February.

A spreadsheet projecting Contract payments and reserve balance through 2021 that was requested at the last board meeting was distributed. Chairman Mello suggested a thorough discussion of the appropriate level of reserve and associated assessment rates necessary to keep pace with the current annual escalator clause and renegotiation of Contract payment required in 2021 be agendaized for a future meeting. The Board formed an ad hoc committee, Directors Kuechler and Hester, to provide Contract payments, reserves, and potential assessment rates through 2061 to the Board before the June 2016 meeting.

### **Manager Report**

Melinda Terry updated Board on Director Elections, informing them that per the state elections codes the counties have confirmed they are placing approval the appointment of Directors in Divisions 2, 3, 4 and 5 on the County Board of Supervisor agendas in December. She reminded them that the recent election of Directors in Divisions 2 and 4 are for four year terms through 2019, but Divisions 3 and 5 are only for remaining two years and therefore the Directors must run for full four year terms in 2017 with Division 1 too.

Ms. Terry informed the Board that the Delta Protection Commission (DPC) sent her correspondence requesting the Agency consider sponsoring the new Delta Leadership Program the DPC has established. Erik Vink, Executive Director of the DPC briefly described the purpose of the program and informed the Board that the first class of leadership candidates is twenty people, briefly describing the various individuals and backgrounds. He asked if NDWA would sponsor a workshop in conjunction with Central and South Delta Water Agencies, which would require a \$500 contribution from each agency. Agency legal counsel Kevin O'Brien confirmed that providing this funding for a workshop on Delta water supply and quality was compatible with NDWA's authority.

**MOTION by Director Kuechler to contribute \$500 for a workshop of The Delta Leadership Program. Seconded by Director Hester and unanimously approved by a voice vote. (AYES: Mello, van Loben Sels, Hester, Kuechler, Jameson)**

As one of the pending correspondence items, Kevin O'Brien distributed a draft editorial opinion piece requested by the Board at a previous meeting. The Manager commented that the content focused on flood control in the Delta rather than the Contract's assurances for the State to maintain water quality and supply, and therefore suggested the Central Valley Flood Control Association or a reclamation district would be a better sponsor for this piece. The Board agreed with the Manager, but were complimentary of the op-ed and recommended the NDWA sign as a cosponsor, if appropriate. Audience members suggested the flood control letter-to-the-editor also describe state and federal reclamation policies in the late 1800s and concerns with the current Delta Levee Investment Strategy being developed by the Delta Stewardship Council. The Board suggested that the Flood Association send the op-ed piece, but the NDWA sign on as a sponsor, and that an ad-hoc committee be formed to work with Kevin on drafting additional editorial pieces on history of the Contract assurances, current threats to in-Delta water supply, and NDWA's expectations regarding State's operation of the State Water Project to meet contractual obligations. Directors Mello and Kuechler agreed to serve on the ad-hoc committee.

**MOTION by Director Kuechler to form an ad hoc committee to work with legal counsel on drafting multiple opinion letters and to authorize Manager Melinda Terry to submit editorial letters for publication at her discretion. Seconded by Jameson and unanimously approved by a voice vote. (AYES: Mello, van Loben Sels, Hester, Kuechler, Jameson)**

## **Delta and Drought Report**

Melinda Terry provided an update on DWR's CA Waterfix/BDCP project, reminding the Board that NDWA submitted a comment letter on the RDEIR/SDEIS and will need to also weigh in on water rights change petition and 401 Clean Water Act permit submitted to the State Water Resources Control Board (SWRCB) and the 404 permit being considered by the U.S. Army Corps of Engineers (Corps) which all deal with Delta water quality and supply. On January 21st the Delta Protection Commission will receive briefings from permitting agencies regarding the sequencing and timelines for public comments on the various permits necessary for WaterFix/BDCP. The Corps has declined holding a public hearing on the 404 permit, but the SWRCB will begin quasi-judicial hearings on the DWR change petition in April 2016, preceded by a pre-organizational meeting in late January that legal counsel and agency engineer will explain in their report.

Due to recent rain events the SWRCB has lifted curtailments orders for all water rights categories except Term 91, and later this month will be considering a modified Temporary Urgency Change Petition (TUCP) and proposed regulations for implementation of new water diversion monitoring requirements established by SB 88 budget trailer bill. The water board will also be concurrently continuing to work on updating the Bay Delta Water Quality Plan, which could eventually result in modification of Delta outflows and D-1641 standards that would require the SWP/CVP water rights permits to be updated in accordance with the new standards.

Melinda briefly mentioned flood control issues with water hyacinth removal activities proposed by the Division of Boating and Waterways, a landscape-level analysis of habitat projects with the North/East Cache Slough area that the Delta Conservancy is doing with Prop 1 funding, and the Delta Stewardship Council (DSC) is updating their policy on water transfers. She will provide a more in-depth review of the proposed DSC water transfer policy at the next board meeting.

Director Mello reported on topics covered in a Delta briefing for Lt. Governor Gavin Newsom arranged by the DPC.

## **Legal Report**

Kevin O'Brien gave a presentation on the new Sustainable Groundwater Management Act (SGMA) with particular focus on the process, authorities, and liabilities associated with a local government agency, such as the NDWA, choosing to form a Groundwater Sustainability Agency (GSA). The GSA is ultimately responsible for developing, implementing, and enforcing a Groundwater Sustainability Plan (GSP) which must identify groundwater conditions in the basin and regulate extraction of groundwater by water users to protect a "sustainable yield" in the basin. He explained there are specific statutory elements required for forming a GSA, and complicating factors associated with overlapping jurisdictions, formation of multiple GSAs within a groundwater basin, public notice and participation requirements including public hearings in all four counties, and establishing an assessment on landowners. Once a local agency files application to form a GSA, then the statute allows other agencies 90 days to also submit an application.

Clean-up legislation, SB 13 (Pavley), provides additional clarification and direction regarding formation of GSAs, public participation, and authorizing intervention of the SWRCB in cases where there are overlapping GSAs in order to ensure coordination on the development of a single GSP for the groundwater basin. This is an important consideration for NDWA, because the Agency's jurisdiction is within four different groundwater basins.

Director Kuechler, Melinda Terry, and RD 2068 Manager Mike Hardesty reported on recent public meetings held by the Solano County Water Agency (SCWA) and proposed Memorandum of Understanding (MOU) regarding formation of a GSA in that subbasin and local farmer Brett Baker reported on applications already filed by local agencies in San Joaquin County. Erik Ringleberg, representing the Local Agencies of the North Delta (LAND) distributed and discussed a map of a proposed GSA within NDWA's boundaries that could be formed by the RDs in the shaded area.

The Board expressed interest in gathering more information before rendering a decision regarding taking a position on the formation of GSAs within the Agency's boundaries and agreed to form an ad-hoc committee comprised of Directors Kuechler and van Loben Sels to develop a recommendation to the Board at the next meeting on whether to sign the MOU with other agencies in the Solano basin as a first step. The Board decided to schedule a NDWA board meeting on January 6, 2016 so that they could vote on signing the Solano MOU before the next SCWA groundwater meeting on January 11th.

**MOTION by Director Kuechler to form an ad hoc committee to review the Solano groundwater basin MOU and provide their recommendation on signing the agreement to the Board at the next board meeting scheduled for January 6, 2016. Seconded by Director Mello and unanimously approved by a voice vote. (AYES: Mello, van Loben Sels, Hester, Kuechler, Jameson)**

Moving on to other legal matters, O'Brien announced that DWR's Special Contract Claims Procedure is in place and ready to receive applications from landowners in the North Delta. The deadline to submit claims forms to DWR is April 1, 2016. He reminded the Board that the Agency does not agree with DWR that the Drought Emergency under the Contract is no longer in affect as of August 15, 2015. However, DWR had previously committed to execute a supplemental agreement with NDWA to extend the special claims process past August 15<sup>th</sup>. Failure to reach agreement on such an agreement will mean DWR will not consider any claims for damage experienced after August 15th to be eligible for compensation. He has drafted a proposed agreement and recommended the Board authorize Melinda to sign the agreement on behalf of the Agency once DWR has signed.

Melinda Terry reported that DWR did not intend to host any public meetings on their special claims process, but would be willing to attend an informational meeting to answer questions and provide advice on filling out the claims form if the NDWA scheduled it. She said she will work with DWR staff on dates in late January so there is time to avoid the holiday, reserve a location, and provide plenty of public notice.

**MOTION by Director Kuechler for the Board to authorize the Manager to sign a drought agreement with DWR to extend the term of the Article 4 Drought Emergency, pursuant to the advice of legal counsel. Seconded by Director Mello and unanimously approved by a voice vote. (AYES: Mello, van Loben Sels, Hester, Kuechler, Jameson)**

As a follow-up to a prior Board inquiry about the current level of liability for the Agency, Directors, and staff, legal counsel reported he reviewed the exclusion provisions in NDWA's policy and found them to be standard. The Board directed staff to meet with the ACWA/JPIA to see if there is any opportunity to alter the policy or ability to purchase supplemental insurance, and report back to the Board with recommendations.

Kevin reviewed a draft letter he prepared requesting DWR to reimburse NDWA for the expenses

incurred for the negotiation of DWR's Special Claims Process and its Emergency Drought Barriers project proposed in 2014 and 2015. The Manager and the Board offered edit suggestions, including identifying in the letter what percentage of the NDWA annual budget these costs represent.

**MOTION by Director van Loben Sels to authorize legal counsel to send letter to DWR with recommended changes. Seconded by Director Kuechler and unanimously approved by a voice vote. (AYES: Mello, van Loben Sels, Hester, Kuechler, Jameson)**

### **Engineering Report**

Gary Kienlen distributed water quality graphs, noting salinity levels are still exceeding the Contract criteria, and he expects these conditions to continue for the next couple of weeks due to tidal and low pressure patterns as well as operation of the Cross Channel gates, but conditions may improve based on more Delta inflow due to reduced water use demands by farmers up river.

He also reported on recent discussions with SWRCB staff on draft regulations regarding new water diversion requirements mandated by SB 88. MBK will be preparing comments and making a presentation on behalf of clients at a public workshop scheduled on December 17<sup>th</sup>.

### **Closed Session**

The Board convened a closed session to confer with legal counsel three items: one existing litigation item (Steamboat Acres LLC v. Daniel P. Whaley, North Delta Water Agency, et. al.) and two potential litigation issues.

### **Closed Session Report**

The board returned to open session and Chairman Mello announced that the board had taken action on two items in closed session: 1) directed NDWA legal counsel to prepare and file a protest and notice of intent to appear in the State Water Resources Control Board (SWRCB) hearing process for the CA WaterFix water rights change petition and to prepare appropriate testimony and other evidence for submittal to the SWRCB in connection with such hearing process; and 2) authorized the Manager to sign Downey Brand agreement on joint legal representation in the WaterFix petition hearing process, and approved NDWA bearing all reasonable legal and consultant costs directly relating to participation in the hearing process for those reclamation and water districts within NDWA that elect to participate in the SWRCB hearing process on the petition for change.

### **Announcements**

The next board meeting will be at 9:30 a.m. on Wednesday, January 6, 2016 at the Walnut Grove Community Church.

### **Adjournment**

Chairman Mello adjourned the meeting at 2:00 p.m.

Respectfully submitted by Cindy Tiffany, Assistant Manager