

Minutes of Tuesday, November 21, 2023
North Delta Water Agency Emergency Board of Directors Meeting
3050 Beacon Blvd., Ste 203, West Sacramento

Call to Order

Chairman Mello called the emergency board of directors meeting to order at 4:34 p.m. on Tuesday, November 21, 2023. Pursuant to Government Code section 54953(b)(3), Directors Steve Mello, Jack Kuechler, Justin van Loben Sels, and Mark van Loben Sels attended remotely via identified teleconference locations. A quorum was determined at that time. Those present on the call:

Directors

Steve Mello, Division 1
Justin van Loben Sels, Division 2
Jack Kuechler, Division 3
Mark van Loben Sels, Division 4
Tom Slater, Division 5

Staff

Melinda Terry, Manager
Cindy Tiffany, Assistant Manager
Anne Williams, MBK Engineers

Others

Selection of Arbitrator for Department of Water Resources Claims Procedure

Melinda announced there was only one agenda to be discussed: the selection of an arbitrator by NDWA as described in the 2022 Special Contract Claims Procedure established by the Department of Water Resources in accordance with Article 4(b)(iv) of the 1981 Contract. Per Section 10 of the Special Claims Procedure, there is a 90-day deadline for a panel of three arbitrators to complete their task.

According to an August 9, 2023 DWR letter responding to a NDWA inquiry about the status of all of the claims submitted, DWR received five claims, but had only issued compensation checks for two of them. In early November, DWR called the NDWA Manager and informed her that it had denied the three remaining claims. On November 14, 2023, the claimant submitted the Dispute Resolution Form (Attachment 3 to Special Claims Application) for all three properties, which started the 90-day clock for an arbitration panel to render a decision. This triggered the requirement for NDWA to immediately select an arbitrator so that the dispute can be resolved within 90 days.

Director Slater recommended John McCarron, a partner at Downey Brand LLP law firm with experience in resolving complex business disputes, to serve on the arbitration panel. The board briefly discussed his knowledge and experience.

NDWA Manager Melinda Terry suggested the board postpone a decision on selecting an arbitrator. She informed the board that DWR sent her a 9-page Draft Arbitration Agreement that defines the arbitration process. This is the first time an arbitration process and agreement have been developed. Unfortunately, the draft document cannot be discussed today because it's not on the agenda. DWR is hosting a meeting tomorrow to discuss the Draft Agreement, including potential revisions to the wording. NDWA and claimant representatives have both been invited to participate. She recommended scheduling a Special Board meeting on Monday which will allow time for Agency staff and legal counsel to learn more about the arbitration process proposed by DWR before the board considers the selection of an arbitrator. She will send the Draft Agreement to the board for their review over the weekend.

The board decided to postpone the selection of an arbitrator and directed the Manager to schedule a Special Board meeting on Monday, November 27, 2023. The Manager will follow up with confirmation of the meeting time and location.

Public Comment

No public comments were provided.

Adjournment

Chairman Mello adjourned the meeting at 5:18 p.m.

Respectfully submitted by Cindy Tiffany, Assistant Manager