

**Minutes of Wednesday, December 13, 2023**  
**North Delta Water Agency Board of Directors Meeting**  
3050 Beacon Blvd Ste 203, West Sacramento, CA

**Call to Order**

Chairman Mello called the board of directors meeting to order at 2:03 p.m. on Wednesday, December 13, 2023. Pursuant to Government Code section 54953(b)(3), Directors Jack Kuechler, Justin van Loben Sels, and Mark van Loben Sels attended remotely via publicly accessible teleconference locations identified on the agenda. A quorum was determined at that time. Those present:

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

Cindy Tiffany, Assistant Manager  
Kevin O'Brien, Downey Brand  
Austin Cho, Downey Brand  
Anne Williams, MBK Engineers  
Gary Kienlen, MBK Engineers  
Yuen Lenh, MBK Engineers  
Matt Wickersham, Austin & Bird

Others

Osha Meserve  
Jay Ziegler

**Closed Session**

The board adjourned into closed session at 2:06 p.m. to conference with legal counsel on the following three items:

- i. Existing litigation regarding Coordinated Operation Agreement Amendments (*North Coast Rivers Alliance et al. v. Department of Water Resources et al.*; Sacramento County Superior Court Case No. 34-2019-8003057) pursuant to paragraph (1) of subdivision (d) of Government Code Section 54956.9 (One Item);
- ii. Initiation of litigation pursuant to paragraph (4) of subdivision (d) of Government Code Section 54956.9 (Two Items).

**Closed Session Report**

The board reconvened in open session at 3:01 p.m. and Chairman Mello announced that the board took no reportable action during closed session.

**Approval of the Minutes**

Minutes for the October 4, 2023 Board Meeting and November 21, 2023 Emergency Board Meeting were presented. No additions or corrections were made.

**MOTION** by Director Slater to approve the October 4, 2023, Board Meeting and November 21, 2023, Emergency Board Meeting minutes as presented. Seconded by Director Mello and unanimously approved by a roll call vote. (AYES: Mello, Kuechler, Slater, and J. van Loben Sels ABSTAIN: M. van Loben Sels)

## **Manager Report**

Due to the absence of the manager, these agenda items were discussed under the legal section of these minutes.

## **Special Claims Procedure**

Director Mello reminded the board there is a dispute between DWR and landowner over payment of Article 4 claims, so the landowner is seeking arbitration pursuant to DWR's 2022 Claims Procedures. Under DWR's Claims Procedure, the North Delta Water Agency is obligated to select one of the arbitrators to participate in this resolution process. After consulting with the landowner, the NDWA ad hoc committee is recommending John McCarron of Downey Brand to serve as an arbitrator. It was noted that current legal counsel for the Agency was not involved in any way on this matter and had no discussions with the ad hoc committee, board or directors, or landowners.

**MOTION** by Director Slater to approve John McCarron as the arbitrator for the Article 4 dispute resolution process. Seconded by Director Mello and unanimously approved by a roll call vote. (AYES: Mello, Kuechler, Slater, J. van Loben Sels, and M. van Loben Sels.)

## **Director Election Process**

Cindy Tiffany announced she received both Oaths of Office from Justin van Loben Sels (Division 2), and Mark van Loben Sels (Division 4). This is the final step in the process of being reappointed to a four-year term, ending in December of 2027.

## **Financial Report**

Cindy Tiffany reported that MBK sent her a draft memo on the status of the Agency's discussions with DWR to reconcile the acreage owned by DWR with NDWA boundaries. Anne will brief the board at the February meeting. Cindy then presented the current financial statements and answered questions regarding fiscal transactions.

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

## **Engineering Report**

### *Water Quality and Hydrologic Conditions*

Anne Williams provided an update on current water quality conditions. All seven monitoring locations are currently within NDWA contract criteria, but there was a data outage in October for the Sacramento River at Emmaton location. Due to the dry November, high diversions, and low flood releases, we see the 14-day average trending up.

All northern reservoirs are currently at or near the top of their flood conservation levels: Shasta – 121% of normal average; Oroville – 130% of normal average; and Folsom – 118% of normal average. The CDEC online monitoring site recently added a new graph to their website to show where reservoir flood levels need to be based on the time of year. Oroville is currently working on updating its water control manuals to implement “forecasted informed reservoir operations.”

The Delta is currently in balance and Term 91 remains lifted. The DCC gates are closed and will remain closed.

## **Legal Report**

### *Bay -Delta Water Quality Plan Update*

Kevin O'Brien announced the deadline to comment on the Staff Report (SED) for the Bay Delta Update for the Sacramento River and Delta watershed has been extended until January 19, 2024. The Board can discuss the content of the NDWA comment letter at the Special Board meeting to be scheduled in January. Kevin reported that staff and the ad hoc committee had a meeting with Diane Riddle and other SWRCB staff to discuss the Staff Report/ SED. Some of the issues for the Agency to highlight in comment letter issues with the modeling and the role of Voluntary Agreements (VAs) in this process. Jay Zigler said the early version of the VAs does not seem to be included in this staff report. Austin will work with Anne and Melinda to develop a draft comment letter to distribute at Special Board meeting in January. Austin said the amount budgeted for this fiscal year will cover legal costs through June, but if additional work is needed after these comments are submitted then additional funding will need to be allocated in the 2024-25 fiscal year.

### *Memorandum Summarizing Water Right Changes in SB 389*

Austin reviewed memo he prepared on water right changes in SB 389 that was included in the board packet. This bill allows SWRCB to conduct an investigation on riparian rights, but does not allow SWRCB to make a determination on those rights. It remains to be seen how SWRCB will implement these statutory changes that go into effect on January 1, 2024.

Jay Ziegler shared that California Forever LLC recently submitted information on pre-1914 water rights claims, and some other landowners within the Delta are amending their pre-1914 rights. This new law will allow his office to investigate those claims.

## **Succession Planning**

Director Slater reported the ad hoc committee has met several times. Recent discussions focused on hiring a job search consultant and options for providing new employees retirement benefits at lower administrative costs. Director Slater will have an initial discussion with an attorney recommended by Scott Shapiro of Downey Brand to review possible options regarding PERS for the committee to discuss further before making recommendation to the Board. The committee, in agreement with CCVFCA, does recommend jointly hiring job consultant Jeff Oliver for a maximum of \$10,000 that would be split 50/50 with NDWA. The Board discussed the proposed recommendation.

**MOTION** by Director Mello to retain Jeff Oliver to assist with search for new Manager at a maximum cost of \$5,000 to NDWA. Seconded by Director Kuechler and unanimously approved by a roll call vote. (AYES: Mello, Kuechler, Slater, J. van Loben Sels, and M. van Loben Sels.)

## **Delta Activities Report**

### *SWRCB/Delta Watermaster*

Jay Zigler announced that almost all water right reports have been submitted, except some that are mainly within the NDWA boundaries. His office is currently working with Anna Swenson to try and get the final reports submitted. He also is looking into the newly acquired land in Solano County by California Forever LLC.

### *Delta Conveyance Project*

DWR certified the Delta Conveyance Project EIR on December 8th. Kevin O'Brien pointed out there is only 30 days to file a CEQA lawsuit. Austin said there is a 10-day delay in the certification due to a technical glitch. The Agency will need to schedule a Special Board Meeting in January to make a decision.

*Delta Conservancy, Protection Council, Stewardship Council, and Habitat Activities*  
Nothing new to report.

*CVP/SWP Update*

DWR announced the initial 2024 water supply allocations for SWP contractors is 10%.

**Announcements**

Dates of various meetings and deadlines were announced. February 7<sup>th</sup> is the next scheduled NDWA Board Meeting.

**Public Comment**

No public comment was provided.

**Adjournment**

Chairman Mello adjourned the meeting at 4:33 p.m.

Respectfully submitted by Cindy Tiffany, Assistant Manager