

# North Delta Water Agency Board of Directors Meeting

14120 Grand Ave, Walnut Grove, CA 95690  
Wednesday, June 5, 2013 at 9:30 a.m.

## Minutes

### Call to Order

Chair Henry Kuechler called the regularly scheduled meeting to order at 9:39 a.m. on Wednesday, June 5, 2013. A quorum was determined at that time. Those present:

#### Directors

Neil Hamilton, Division 5  
Henry Kuechler, Division 3  
Steve Mello, Division 1  
Ken Ruzich, Division 4  
Topper van Loben Sels, Division 2

#### Others

Bob Webber, RD 999  
Vanessa Schmoker, RD 999  
John Lewallen, Tyler Island  
Stuart Siegel, Wetlands and Water Resources  
Ling Chu, DWR  
Dennis McEwan, DWR

#### Staff

Gary Kienlen, MBK Engineers  
Kevin O'Brien, Downey Brand  
Margaret Sorensen  
Melinda Terry

### Approval of Minutes

**Motion and second to approve the minutes of the April 3, 2013 meeting. Motion unanimously approved.**

### DWR Habitat Project Presentation

Stuart Siegel, Wetlands and Water Resources, Dennis McEwan, DWR, and Ling Chu, DWR gave a presentation on the Fish Restoration Program Agreement and the Prospect Island Restoration project. The presentation and handout included: the Prospect Island history; project restoration requirements and goals; planning process and tentative schedule; and near-term actions. The Board shared concerns about Program implementation impacts, especially: cumulative impacts; projects being flood-neutral; use of eminent domain; funding for payment of special district assessments; and altering water surface elevations to the detriment of North Delta water users. Comments for the CEQA and NEPA documents are due June 21.

### Finances

**Motion and second to approve the financial reports as presented. Motion unanimously approved.**

The Board reviewed the proposed budget and discussed the future needs of the agency, including Margaret's announcement to retire next year and options for replacing her. The Agency will pursue discussions with the CCVFCA regarding the various options and costs associated with hiring a replacement who can also work on policy issues in addition to performing administrative duties. Pursuant to Agency discussions with Downey Brand regarding the need for the firm to designate one of their water attorneys to become educated on various Delta planning efforts, including the BDCP EIR/EIS in order to utilize the firm's expertise to provide proactive leadership on these issues as they evolve, Kevin O'Brien announced Scott Shapiro has agreed to serve as their Delta point person. He will

begin familiarizing himself with the current Delta planning documents so he can advise and assist the firm's numerous Delta clients, including the NDWA, in participating and responding appropriately when needed. Anticipate more activity in the coming year as BDCP nears completion of Final Draft EIR/EIS for public comment and DSC begins implementing their Delta Plan which may result in requiring legal action by the Agency. For budgeting purposes legal costs are estimated to be up to \$10,000 per month based on anticipated activities next year, but may be less depending number of meetings or comments needing attention. Gary Kienlen discussed the BDCP modeling work and review that Walter Bourez with MBK Engineers will be doing on behalf of several clients interested in verifying how SWP/CVP water operations will be altered if permitted. MBK is also in discussions with other modelers representing other Delta clients who are considering combining resources and expertise to possible build their own model to perform independent effects analysis of the BDCP habitat and water conveyance operations. The Board expressed their issues of concern and questions regarding impacts to the Contract they would like Walter to have the modeling try and address.

**Motion and second to adopt the 2013-14 budget as proposed, including the employee compensation disclosure form. Motion unanimously approved.**

#### **Adoption of the 2013-14 Assessment Rate**

**Motion and second to approve Resolution 2013-01 establishing the benefit assessment rate for 2013-14. Motion unanimously approved.**

#### **Engineer's Report**

Gary Kienlen distributed water quality charts and reported that water quality is currently within the contract's criteria. The US Bureau of Reclamation and DWR submitted a letter to the SWRCB requesting approval to relax D-1641 water quality salinity objectives by reclassifying the water year type from dry to critical for meeting salinity criteria. The SWRCB did not take any Board action to revise D-1641, but sent a letter to USBR/DWR advising them that their agency would not enforce the D-1641 standard, which essentially was a green light to go ahead and make the change without any formal action to determine how the action would affect other beneficial water uses in the Delta. Melinda discussed the proposed changes with SWRCB staff and Central and South Delta Water Agencies and expressed concern that there was no notice given to NDWA or the public regarding this action. Gary Kienlen informed the Board it is difficult to know for sure how the change will affect NDWA Contract criteria because the SWRCB's salinity compliance point is at Emmaton and the NDWA's compliance is upriver at Three Mile Slough. Melinda will write a letter to DWR reminding them that regardless of any change in D-1641, the SWP must still operate to meet the NDWA contract criteria if the water quality standard is better than the D-1641, and must do so for the entire year, not just through mid-August.

#### **Legal Report**

Kevin O'Brien reported he is still working with DWR to obtain signatures on the two agreements NDWA has proposed to DWR: the agreement reducing NDWA's contract payment to DWR by the amount of Fish & Game's assessment; and the MOU to extend the existing water quality MOU between DWR and NDWA to include future Bay-Delta water quality changes made by the SWRCB.

#### **Manager's Report**

The Board reviewed the current Conflict of Interest Code for the Agency.

**Motion and second to approve the Conflict of Interest Code with no changes. Motion unanimously approved.**

Melinda, Gary Kienlen, and Joe Schofield met with Delta Watermaster Craig Wilson regarding a complaint from a Yolo Bypass landowner about a neighbor's excessive water use. Agency staff explained the NDWA contract, specifically the water use rights of all North Delta landowners contained

therein. Staff advised the Board that Craig Wilson appears to be misinterpreting the contract based on incorrect interpretation of the Prop. 218 Engineer's Report discussion of riparian water rights, so the Agency will need to continue to monitor his activities and educate him.

### **Report on Delta Activities**

Staff attended another BDCP Cooperating Agency meeting, but reported they are proving to be unproductive in terms of dialogue or providing the agency with the information necessary to confirm whether implementation of BDCP will violate the NDWA contract or not. Based on Agency staff's interpretation of the BDCP EIR/EIS the project will trigger provisions in the contract including: altering water elevations and flow patterns that create stranded intakes, erosion, seepage and other damage detrimental to North Delta channels and water users. Agency staff informed the BDCP staff of serious issues the BDCP failed to acknowledge, analyze, or mitigate, but were told consultants were under strict deadline to release final draft EIR/EIS on October 1, 2013 so didn't have the time to perform additional analysis. The Contra Costa County representative suggested the increased salinity in West/South Delta identified in the EIR/EIS as a "significant and unavoidable" adverse impact is in fact avoidable by providing mitigation via additional outflows. A water exporter representative responded the project would have to be modified to avoid the impact, which would reduce the benefits to water exporters and they would then be unwilling to pay for the project, therefore the water quality impact for the Delta was unavoidable. Melinda suggested and the Board agreed the Agency will schedule an informational only NDWA meeting on July 10<sup>th</sup> to provide the Board and North Delta water users details on the EIR/EIS content and anticipated adverse impacts to be caused if BDCP is implemented as currently drafted.

After presentations on alternatives to the BDCP, including Dr. Pyke's Western Delta Intakes Concept, Portfolio package, and Congressman Garamendi's proposal and a lengthy discussion about "protecting" the Delta, the Delta Protection Commission voted 9-2 to oppose the BDCP as currently drafted. The DPC is in the process of hiring a new Executive Director to replace the retiring Mike Machado.

The eminent domain legal proceedings to allow geo-technical drilling for BDCP pre-engineering needed to complete the EIR/EIS has been delayed. DWR rescinded their original condemnation resolutions. They plan to revise and send back to the CA Water Commission for approval. Starting the process over again and returning to court will take several months, preventing drilling this season and possibly in 2014 as well.

Several lawsuits have been filed challenging the legality of the Delta Plan approved by the Delta Stewardship Council. It is unclear how or if these legal complaints will delay DSC's implementation of the Delta Plan.

Comments on the EIR for the Lower Yolo Ranch tidal habitat project, located in the Yolo Bypass, are due June 20. The project is a requirement in the federal Biological Opinions mandating habitat restoration to mitigate jeopardy to endangered species caused by South Delta CVP/SWP pumping facilities. Liberty Island Land Management planning meeting will be held June 17.

### **Public Comment**

Attendees were reminded that all diverters in California needed to report water diversions by July 1.

### **Adjournment**

The meeting was adjourned at 12:35 p.m. on Wednesday, June 5, 2013.

Respectfully Submitted,  
Margaret Sorensen, Administrative Assistant