

**Minutes of Wednesday, August 4, 2021**  
**North Delta Water Agency Board of Directors Meeting**  
Remote Meeting Held via Teleconference

**Call to Order**

Chairman Mello called the board of directors meeting to order at 9:32 a.m. on Wednesday, August 4, 2021. Pursuant to State of California Executive Orders N-25-20 and N-29-20, members of the North Delta Water Agency Board of Directors and members of the public participated remotely by teleconference. A quorum was determined at the 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

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

Others

Bryan Busch  
Happy Callis  
Michael George

Erik Vink  
Mark Wilson

**Approval of Minutes**

In July 2021 the Agency held two extra meetings: 1) a regular board meeting on July 7, 2021; and 2) a special drought information board meeting on July 27, 2021. No changes were recommended to the minutes for either meeting.

**MOTION** by Director Slater to approve both the July 7, 2021 and July 27, 2021 minutes as presented. The motion was seconded by Director J. van Loben Sels and unanimously approved by a voice vote. (AYES: Mello, J. van Loben Sels, M. van Loben Sels and Slater. ABSENT: Kuechler)

**Financial Report**

Cindy reviewed the end of fiscal year 2020-21 financial statements and presented the current FY 2021-22 financial statements.

**MOTION** by Director Kuechler to accept the end-of-year 2020-21 and current 2021-22 financial statements as presented. The motion was seconded by Director Slater and unanimously approved by a voice vote. (AYES: Mello, Kuechler, J. van Loben Sels, M. van Loben Sels and Slater)

**Manager Report**

Melinda met with Jacob McQuirk of DWR regarding the possible installation in 2022 of temporary drought barriers in both the Sutter and Steamboat Sloughs. More details on the meeting will be discussed later during the drought update agenda item.

The NDWA manager participated on a panel with Jacob McQuirk and Delta Watermaster Michael George

about the drought at the DPC's July 15, 2021 meeting. Her presentation focused on the water quality assurances contained in both the NDWA 1981 Contract and the SWRCB's D-1641; actions taken in prior droughts such as barrier agreement in 1976 and special claims process in 2015; and the need for better cooperation from the State on developing specific mitigation measures to deal with declining water quality and potential installation of drought barriers.

Manager is currently working on a letter to send out to landowners advising them of curtailment actions by the water board and right to continue diverting under the 1981 Contract, notice of upcoming NDWA informational drought briefing, and exceedances of salinity criteria in 1981 Contract that occurred between June 28, 2021 and July 13, 2021 at the Three Mile Slough and Rio Vista monitoring locations.

The Agency received a letter from DWR requesting to "open" negotiations pursuant to Art. 9 of the 1981 contract. The Manager will confer with legal counsel on the response.

Due to the multiple drought activities and continuing dry conditions, the Manager recommended scheduling monthly board meetings, and additional special board meetings with time-sensitive drought updates, if necessary. The board agreed to add an informational drought briefing at the end of August, date to be confirmed by Cindy, and additional board meetings on September 8<sup>th</sup> and November 10<sup>th</sup>.

## **Engineering Report**

### *Water Quality Update*

Gary Kienlen reported there were exceedances of the salinity criteria in the 1981 Contract between June 28, 2021 and July 8, 2021 (11 days) at the Rio Vista monitoring location and from June 28, 2021 thru July 13, 2021 (16 days) at the Three Mile Slough location. This is the first time he could recall exceedances occurring at Rio Vista. All seven monitoring locations have been in compliance with the Contract water quality criteria since then. Releases from Shasta are now 9,000 cfs and will be reduced to 8,750 cfs later this week. He will monitor to see if this reduction in flow effects the water quality.

## **Legal Report**

### *Emergency Drought Provision*

Kevin O'Brien reported that he sent a draft proposal agreement to Tripp Mizzel on July 13<sup>th</sup>. He has not heard back from Tripp and has been unable to get ahold of him. This agreement would trigger the emergency drought provision in the contract to allow for a claims process to happen.

## **Drought Activities**

### *Curtailment Notice*

The SWRCB voted the day before to approve emergency regulations authorizing the water board to curtail water diversions in the Sacramento-San Joaquin watershed. The regulations are expected to take effect once approved by the Office of Administrative Law in mid-August. These Notices will be the last written information sent to water right holders as all future communication from the water board will be sent electronically via email and posted on its website. No riparian water rights will be curtailed within the Delta at this time, but is important to sign up for the electronic notices to continue to receive updates from the water board. The regulations will require water right holders to electronically submit a certification of compliance form to the Division of Water Rights. Kevin commented there is a substantial civil penalty if this paperwork is not completed.

### *Delta Diversion Complaints*

A coalition of SWP and CVP water contractors submitted a letter to the SWRCB claiming unlawful diversions are occurring in the Delta and must be stopped. Michael has been working with the complainants to explain the complexity of depletions in the Delta and the right to divert in the NDWA pursuant to the 1981 Contract. He will conduct a formal investigation and respond to their letter.

### *Delta Flows*

Michael acknowledged the Delta experiences drought as a lack of water quality, not a lack of water availability. The State is hoping for sufficient rain this winter to end the drought, but said planning for the drought extending into next year is ongoing. He stressed the outlook for 2022 is scary if we don't get a good winter because of the historic low reservoir levels, resulting in increased salinity intrusion. In the curtailment emergency regulation, there are minimum exports allowed (currently 800 cfs) to prevent damage to conveyance infrastructure and for human health and safety. There are currently algae blooms in the California Aqueduct due to low flow from Tracy through the Tahachapies.

### *Drought Barriers*

The Agency requested early consultation with DWR regarding the potential installation next year of temporary drought barriers in Sutter and Steamboat Sloughs in order to begin working on the development of a Memorandum of Permit similar to agreement executed in 1976 that includes commitments by DWR to conduct diversion survey investigations and implement mitigation measures to reduce impacts to existing diversion facilities prior to barrier installation. Jacob McQuirk expressed interest in working on these issues, but admitted he had not read the 1976 Agreement to understand the details involved the last time a barrier was installed on Sutter Slough and informed us the project is exempt from complying with CEQA pursuant to Governor's drought emergency proclamation. Although DWR is not required to prepare an EIR with mitigation measures, it is still required to obtain necessary project permits from CDFW, SWRCB, CVFPB and other agencies. Melinda emphasized the importance of DWR and NDWA executing a Memorandum of Permit that contains mitigation measures and pre-survey work similar to Agreement in 1976 since no EIR will be done. They also discussed moving the barrier location farther up the slough to prevent disruption of existing diversions and the need for DWR to reimburse NDWA for all legal, engineering, and manager costs associated with developing a Memorandum of Permit for these possible installations. NDWA was not reimbursed for approximately \$170,000 of expenses from working on barrier negotiations with DWR in 2016 and must avoid this time. Next step is to schedule a meeting with some potentially impacted farmers to discuss best location options and to work on a reimbursement agreement to cover NDWA's costs. Tom Slater volunteered to participate in the farmer meeting.

### *Delta Dry-Year Response Plan*

Melinda attended another meeting with the other Delta water agencies and the State Team. The group focused on developing a plan to provide financial incentives for farmers who voluntarily implement conservation measures. The goal is to conserve a total of 50,000 acre feet of water between January and June in dry or critically dry years, as defined in D-1641. The Delta agencies emphasized the importance of having the funding and conservation agreements in place in the fall, before farming decisions and purchases are made. The Delta agencies agreed conceptually with what is being proposed, but would first need to see the details of the Voluntary Agreements in the Sacramento Valley before committing to anything. Melinda expressed some reservations in terms of how such a plan may be different for NDWA due to the 1981 Agreement and existing agreements related to Article 2 that were adopted as part of Decision 1641 in which DWR agrees to provide the extra water on behalf of the Agency.

Steve Mello pointed out that NDWA doesn't have any water right so we can't agree to give anything up, it

would be on the individual diverters to agree. Michael acknowledged the circumstances in NDWA are different and still a lot of unknowns to resolve, including using Open ET to verify water savings. He stressed that landowners will not be held accountable for actual quantity of water savings; they are only responsible for implementing management actions they agree to do and DWR will be the source of the funding for incentive payments. The next meeting will be at the end of August.

### *Monitoring Gages*

Gary reported there had been some technical difficulty with data at the Three Mile Slough location and in other locations. The Cache Slough USGS gage has been discontinued because of problems with vegetation. The Liberty Island gage had some communication issues. Gary is unsure if we are actually seeing more gauge issues or if they are just highlighted due to the drought year, but getting replacement equipment is challenging. Melinda suggested this may be a topic the Delta Protection Commission may want to investigate more and possibly requesting funding from the Legislature for maintenance and purchase of gages.

### *Ad-Hoc Committees*

Melinda recommended establishment of three ad-hoc committees:

1. Drought Communications – Develop a resolution for the board’s consideration with protocols describing details about public outreach and written communication with landowners during droughts. Directors Mello and Slater volunteered to serve on the ad-hoc Drought Communications committee.
2. Drought Barriers - Develop a list of mitigation measures and pre-survey work to be provided by DWR prior to barrier installation. Directors Slater and Justin van Loben Sels volunteered to serve on the ad-hoc Drought Barriers committee.
3. Claims Process – Identify changes and additions to incorporate to the 2015 Special Claims Process. Directors Kuechler and Mello will serve again on this ad-hoc Claims Process committee.

## **Delta Activities Report**

### *Delta Habitat Projects*

The DSC held an appeal hearing on Lookout Slough habitat project and found the project as proposed is inconsistent with the Delta Plan. The project proponent will need to revise the project to be consistent and then resubmit a certification of consistency. The Central Valley Flood Protection Board issued a permit for Lookout Slough, but did not insert any of the terms & conditions requested by adjacent landowners and reclamation districts.

### *Delta Protection Commission*

Erik Vink reported the Commission approved a letter to DWR objecting to the use of eminent domain for habitat projects proposed in the Yolo Bypass instead of relying on voluntary landowners and a letter to the Delta Stewardship Council supporting the prioritization of funding for the Delta Levee Subvention Program in the Delta Levee Investment Strategy.

## **Closed Session**

The Board convened Closed Session through teleconference at 11:56 a.m. to discuss the potential initiation of litigation pursuant to paragraph (4) of subdivision (d) of Government Code section 54956.9 with legal counsel.

## **Closed Session Report**

The Board reconvened in open session at 12:52 p.m. and Chairman Mello announced the board took no

reportable action.

**Public Comments**

No public comments received.

**Adjournment**

Chairman Mello adjourned the meeting at 12:53 p.m.

Respectfully submitted by Cindy Tiffany, Assistant Manager