

Minutes of Wednesday, August 25, 2021

North Delta Water Agency Special Board of Directors Meeting – Informational Only Remote Meeting Held Via Teleconference

Call to Order

Chairman Mello called the Special Drought Information Board of Directors meeting to order at 9:33 a.m. on Wednesday, August 25, 2021. In accordance with California Executive Orders N-25-20 and N-29-20, the informational meeting was held remotely via teleconferencing. Those present include:

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
Cindy Tiffany
Kevin O'Brien, Downey Brand
Gary Kienlen, MBK Engineers.

Others

Michael George

List of public attendees attached.

Drought Conditions

Gary Kienlen of MBK Engineers started his presentation by describing current hydrologic conditions. This year is the fourth driest on record and Oroville Reservoir is only 23% full, which is the lowest on record for this time of year. He reviewed several drought actions taken so far, including Drought Proclamation by Governor Newsom, curtailment notices and orders implemented in the Delta watershed by the SWRCB, and approval of a Temporary Urgency Change Proposal (TUCP) allowing relaxation of salinity objectives in the Delta. He explained the provisions in the 1981 Contract related to DWR's obligation to maintain specified salinity criteria at seven monitoring locations and pointed out the exceedances of the salinity criteria that occurred at both the Three Mile Slough and Rio Vista locations between the end of July and first week of August. All locations are currently well within the water quality criteria. The calculation of the salinity exceedances in accordance with the 1981 Contract is based on a 14-day mean electrical conductivity (EC). He reminded diverters to self-monitor the water quality prior to irrigation due to variations in salinity levels throughout the day caused by tidal action and encouraged them to access data for the nearest monitoring station on CDEC and USGS websites.

Drought Response

Kevin O'Brien of Downey Brand spoke about the value of the NDWA 1981 Contract to protect water users from ocean salinity intrusion, provide year-round salinity standards at seven monitoring locations, and supplement landowner water rights during curtailment. In addition, the 1981 Contract has provisions obligating DWR to operate the State Water Project (SWP) to maintain water levels, avoid changes in natural flows and avoid seepage/erosion damage to channel embankments, and to provide compensation if all three components of the Emergency Drought provision are met.

Water rights under State law gives diverters the right to divert natural flow, but does not give the right to divert stored water released from upstream reservoirs. However, under the 1981 Contract, water users in the NDWA are specifically allowed to continue diverting water released from the Oroville Reservoir when curtailments are ordered by the SWRCB based on wording obligating DWR to: *"furnish such water as may be required within the Agency to the extent not otherwise available under the water rights of water users."*

He explained all three criteria in the 1981 Contract's Emergency Drought provision and described the Special Claims Procedure to compensate NDWA water users for net losses when the Contract's Drought provision is triggered. At this time, only two of the three drought provision criteria are met, so no Claims Procedures is established yet. Kevin also

reminded landowners that we learned from the 2015 claims process that good crop records by the landowners are very important. For example: having five years-worth of receipts, records, yields, etc. In 2015 it also took approximately one year for the State to pay out the claims. Kevin disclosed that the Agency is currently in discussions with DWR to possibly execute an agreement to implement a claims procedures process if water quality declines below the Contract's salinity criteria and will keep landowners informed if this effort moves forward.

SWRCB Notice of Curtailment and Information Orders

The Delta Watermaster, Michael George, reported that his office and the State Water Resources Control Board (SWRCB) are very serious about dealing with this drought, particularly in light of the desperately low water storage level. We are currently looking at a very low carry over storage into next year if we don't have a very wet winter, which poses a serious risk of being unable to prevent salinity intrusion into the Delta. His office is very aware of the provisions in the NDWA 1981 Contract as previously described by Kevin O'Brien, including the right to continue diverting within NDWA during curtailments.

He confirmed that the emergency regulation authorizing curtailment of diversions in the Delta watershed went into effect on August 20, 2021. The SWRCB will send affected water right holders a cover letter notifying them of the curtailment order with directions to electronically submit a certification of compliance to the water board by September 3, 2021, or face fines and penalties. The Division of Water Rights is holding a public workshop on August 31st to explain how to fill out and submit these mandatory forms. He also noted this will be the last mailed (paper copy) notice regarding updates on the curtailment regulations that the Division of Water Rights will be sending. Therefore, it is the obligation of water users to sign-up to receive updates via email from the water board.

The Watermaster showed a copy of the online certification form on-screen, and walked the public through how to fill it out. He recommended all NDWA water right holders to list the 1981 Contract in the "Alternative Source of Water" section, by choosing "other" and then typing in a description of alternative source. He provided an example of wording that could be used in the description box: *"The place of use for this water right is within the boundaries of the North Delta Water Agency. Therefore, should the underlying water right be deemed insufficient to support diversion and use, I claim the right to make up any alleged deficiency to meet beneficial use under the water supply contract between NDWA and the State of California."* This wording is just an example and not required to be used exactly. He also suggested landowners give a copy of the curtailment notice with instructions for filing online certification form to any tenant farmers or lease holders.

Gary Kienlen asked about the enhanced reporting that may be required of some water right holders. Michael responded that the notification letter specifies if the water right is subject to enhanced reporting, but it is only required if diverting 5,000-acre feet/year on one water right license. Michael reminded everyone there is a public workshop from 1:00-4:00 p.m. on September 31st specifically focused on enhanced reporting requirements for large diverters.

Several questions were asked by the public seeking clarification on: the certification forms; which water rights are curtailed; how to identify NDWA 1981 Contract rights as a supplemental water right on the certification form; filing an amended water use statement; and the upcoming public workshops hosted by the Division of Water Rights.

Director Kuechler thanked Michael George for the incredible time and attention he has devoted to understanding our 1981 Contract, interacting with our Agency, and especially for participating in today's informational briefing.

Drought Planning

The final presentation by NDWA Manager, Melinda Terry, discussed the Agency's efforts related to three actions being considered for implementation in 2022 if drought conditions persist: 1) drought barrier installation; 2) Dry-Year Response Plan implementation; and 3) establishment of a Special Claims Process.

She pointed out the drought conditions this year are similar to 1977, but that drought ended thanks to sufficient rainfall in 1978, so we didn't find out how much worse it could get. While we hope the new water year beginning on October 1st delivers sufficient rainfall to end the drought, we still need to plan for the possibility of another dry year. DWR is currently in the planning stages to add two more drought barriers in Sutter and Steamboat Sloughs if drought conditions continue in 2022. When an emergency drought barrier was installed on Sutter Slough in 1976, DWR executed a Memorandum of Permit with NDWA to mitigate adverse impacts to local diversions and obligate DWR to conduct pre-surveys, exempt NDWA from liability, and reimburse NDWA for all engineering, legal, and manager costs associated with the barriers. Specific mitigation measures in the 1976 agreement required DWR to have portable pumps and power available to landowners, to install overland pipes and pumps if necessary, and other measures. The Agency has recommended DWR locate the barriers farther upstream to reduce impacts to individual water diversion intakes and requested another mitigation agreement be executed prior to the installation, operation, and removal of drought barriers on Sutter and Steamboat Sloughs. DWR staff has already met with Agency and reclamation district representatives to discuss diversion impacts experienced from the 1976 Sutter Slough barrier, and indicated the department is open to moving the location of the barriers per local recommendation. NDWA will provide additional briefings once more details on the barriers and mitigation agreement are available.

Osha Meserve asked if DWR was planning to prepare an EIR for the two barrier projects proposed in the North Delta. Melinda responded that DWR is not doing an EIR because the barriers were exempted from complying with CEQA statutes in Governor Newsom's drought emergency proclamation, but DWR is still required to obtain permits for the projects from several state agencies with an opportunity for public comment.

Melinda reported on her participation in meetings with the other two Delta Agencies and State representatives to develop a Delta Dry Year Response Plan. At this point the plan is very conceptual, but is intended to define a financial incentive program for Delta farmers who volunteer to enter agreements with the State to implement actions to conserve water. If a pilot program is successful in 2022, then the program could be implemented in future drought years. The State is working on finalizing a program that can be publicly announced by the end of October.

As previously mentioned by Kevin O'Brien, the Agency has already initiated discussions with DWR about establishing a Special Claims Procedures process if all three drought emergency criteria in Art. 4 of the 1981 Contract are met or if DWR is unable to maintain the salinity criteria specified in the Contract.

The PowerPoint presentation by NDWA staff will be posted on the Agency's website with a video of today's informational briefing in its entirety.

Adjournment

Chairman Mello adjourned the meeting at 11:42 a.m.

Respectfully submitted by Cindy Tiffany, Assistant Manager

LIST OF ATTENDEES

6502070865	Deborah Bruggman	Matt Frank
7075915392	Diane K	Maurice Washington
9164467979	Doug Dickson	Michael
9167769127	E Franchis	Michael Vergara
9167774410	Edward Bennett	Michele
9168346507	Ellen Simson	Neva@Joe Avis Farms
9168346507	Emmy Cattani	Osha Meserve
Alexander Wilson	Fred Soecht	Paul
Angela Gonzalez	Gilbert Cosio	Paul Ahvenainen
Anna Swensen	Glenn Wilcox	Phil Ogilvie
Beatrix Treiterer	GM Tully	Psamra
Berry	Happy (Jill) Callis	Ramsey Kropf
Bill K	Harbinder Gill	Redwood 1
Brett Baker	Harvey Correia	Rick Gilmore
Bryan Busch	James Johas	Robert
Chan	Jbroek	Rod McGrew
Chan Farms	Jess Gebauer	Russell McGrew
Chi-Yu-Lin	Jesse Simaes	Ryan Bogle
Chris	Jessica Johnson	Sara McGrew
Christopher Voelker	JM Iphone	Stephen Heringer
Cork Mclsaac	Jminer	Steve Barsoom
Craig Nakahara	John Baranek	Steve Dinelli
Curtis Finton	John Coelho	Sue Opdyk
Daled	John Hospenthal	Susan Paulsen
Dane Henas	Jose Guitierrez	Suzzane Berkley
Daniel	K. Wilson	Tom Stokes
Daniel Wilson	Karen Chesnut	Tom, Eric, Jim Schene
David Ogilvie	Larry Irgens	Topacio
David Robinson	Lindsay Kammeier	Topher Chan
Davis O	Marc Van Camp	W Bogle
Debbie	Margaret F	William Hobkin
Debbie K	Matt	