

Minutes of Wednesday, December 7, 2022
North Delta Water Agency Board of Directors Meeting
Remote Meeting Held via Teleconference and in Person at
3050 Beacon Blvd., Ste 203, West Sacramento, CA

Call to Order

Chairman Mello called the board of directors meeting to order at 9:36 a.m. on Wednesday, December 1, 2022. A quorum was determined at that time. Those present:

Directors

Steve Mello, Division 1
Jack Kuechler, Division 3
Tom Slater, Division 5

Staff

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

Others

Karimi Arno
Madeline Baker
Bruce Blodgett
James Crowder
Lisa Crosley
Michael George

Richard Harris
Lindsay Kammeier
Megan LeRoy
David Pesavento
Maurice Washington

Closed Session

The board adjourned into closed session at 9:36 a.m. with legal counsel to discuss the 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 10:22 a.m. and Chairman Mello announced that the board took no reportable action during closed session.

Approval of the Minutes

Minutes for the October 5, 2022 Board Meeting were presented. No additions or corrections were made.

MOTION by Director Kuechler to approve the October 5, 2022 Board Meeting minutes as presented. Seconded by Director Slater and unanimously approved by a roll call vote. (AYES: Mello, Kuechler, and Slater ABSENT: J. van Loben Sels and M. van Loben Sels)

Approval of Resolution

To continue holding remote meetings during the COVID pandemic, the board must approve another resolution authorizing the extension of the Modified Brown Act provisions.

MOTION by Director Kuechler to approve Resolution No. 2022-11 to reauthorize the ability to continue holding remote board meetings. Seconded by Director Slater and unanimously approved by a roll call vote. (AYES: Mello, Kuechler, and Slater ABSENT: J. van Loben Sels and M. van Loben Sels)

Financial Report

Cindy Tiffany presented the current financial statements and answered questions regarding transactions.

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

Manager Report

Report on Meetings, Presentations, and Correspondence

Melinda Terry reported on recent meeting NDWA representatives had with DWR Director Karla Nemeth and other DWR staff. Issues discussed at this meeting were updating the 1998 MOU on implementation of Bay-Delta Plan with changes related to proposed voluntary agreements, extending the Art. 4 Special Claims Procedures to address damage during exceedances of Contract salinity criteria, and developing long-term solutions to address reoccurring exceedances of salinity criteria. A follow-up meeting to engage in further discussions will be scheduled in January of 2023.

The Agency staff met with the Delta Watermaster to discuss modification of the State Water Resources Control Board's methodology for issuing water rights curtailments to account for diversions allowed under the 1981 Contract. Representatives from RD 2068 and RD 999 also participated in this discussion. The Delta Watermaster's next step is to schedule a meeting with DWR to discuss the same issue and will invite NDWA to participate.

Recent NDWA correspondence includes a comment letter submitted on the Delta Watermaster's final summary findings and resolution of the Friant Water Authority's illegal water use complaint. NDWA also sent DWR a letter expressing concerns with 41 days of exceedances of Contract salinity criteria and requesting written response on how DWR plans to get back in compliance.

Delta Conveyance Project Resolution

Melinda reported she drafted a resolution regarding NDWA expectations on the Delta Conveyance Project for the Board's consideration, but unfortunately a copy was not included in the Board packet so she recommended deferring consideration of the proposed resolution to the next board meeting in February 2023.

Engineering Report

Water Quality and Hydrologic Conditions

Anne Williams provided an update on current water quality conditions. The Three Mile Slough monitoring location has been out of compliance since November 28th, but the salinity levels at the remaining six locations are within Contract criteria. Recent storms have unfortunately resulted in low run-off, so have not significantly improved water quality at the Three Mile Slough location.

State and federal reservoirs are still losing storage. Shasta storage is currently at 1.41 MAF with releases into the Sacramento River at 3,250 CFS. Oroville storage is at 979 TAF with releases into the Feather River at 1,400 CFS. Folsom storage is at 253 TAF. Total Delta inflow is 12,300 cfs and Sacramento River at Freeport is at 10,600 cfs. The Delta Cross Channel Gates are currently closed for salmon migration. Michael George reported that Term 91 will be lifted later today.

Contract Exceedances

Anne reviewed a memorandum by MBK describing the salinity criteria exceedances that occurred this year and the NDWA letter sent to DWR regarding these reoccurring exceedances requesting DWR to explain how it intends to bring salinity levels back into compliance with the 1981 Contract. The Agency has not received a

written response from DWR. Steve Mello announced the appointment of an ad-hoc committee to engage with DWR on Contract compliance.

Drought Activities

Investigation of Salinity Damage

Melinda recommended the Board authorize MBK to conduct an investigation of damage to crops and soils within NDWA from salinity levels exceeding Contract criteria. Anne reported she anticipate this effort to include data collection, research, interviewing farmers, and producing a written summary of findings. The current cost estimate is \$30,000, but would be more if a decision is made to add use of outside consultants. The Board expressed support for this effort. In order to maintain attorney client privilege, Kevin O'Brien recommended that Downey Brand retain MBK on behalf of the Agency to perform this work.

MOTION by Director Kuechler to authorize Downey Brand to retain MBK Engineers on behalf of NDWA to conduct an investigation of crop and salinity damage within the Agency from exceedances of the Contract salinity criteria. Seconded by Director Slater and unanimously approved by a roll call vote. (AYES: Mello, Kuechler, and Slater ABSENT: J. van Loben Sels and M. van Loben Sels)

Drought Barriers

Included in the Board packet is a monitoring plan for the emergency drought salinity barriers provided by DWR. Staff has not yet had the opportunity to review it yet. There is still no progress in obtaining language from DWR for a MOU to reimburse NDWA for legal, engineering, and manager costs associated with planning and implementation of drought barriers.

Special Claims Process

The special claims process required under the 1981 Contract drought provision (Article 4) is still open to receive applications until April 1, 2023.

Legal Report

Delta Conveyance Project

Kevin O'Brien reported the deadline to submit comments on the Delta Conveyance Project draft EIR is December 16, 2022. Melinda and staff are currently working on the comment letter. The letter will be relying heavily on previous comments submitted by NDWA on prior Delta tunnel projects. Commenting is necessary to maintain legal standing to challenge the EIR in court. NDWA comments will focus on identifying inadequacies in terms of project description, range of alternatives, modeling assumptions, mitigation of significant adverse impacts, and compliance with CEQA and the 1981 Contract. Melinda reported that she attended a public meeting co-hosted by the Delta Counties Coalition and Legislative Delta Caucus to provide the opportunity for Delta residents and stakeholder to express their comments in-person on the Draft EIR for the Delta Conveyance Project. A stenographer recorded all comments, which will be submitted to DWR.

Delta Activities Report

SWRCB/Delta Watermaster

Michael George announced that today is the last NDWA Board meeting he will be attending because his term as Watermaster ends on January 6, 2023. The SWRCB has begun interviews to find his replacement, but have not announced anyone yet.

There will likely be a delay in water reporting this year because his office is revising the reporting portal. He will advise his successor to not take any enforcement action for late reports as long as they are in by April 1st.

The water transfer protocols will likely be updated in near future as well. These changes could include timing

and amount of transfers that are allowed through the Delta. The water rights curtailment policy is also under refinement, and he is hopeful another workshop on this proposal will be held in early 2023. Finally, he anticipates the submission of a Section 1707 water code update petition from River Partners, requesting the dedication of water to river flows for riparian water rights. Michael expressed opposition to this proposal and will document his reasoning for the new Watermaster to consider.

Melinda and each of the Board members thanked Michael for serving as a balanced facilitator, Delta advocate, and liaison with state agencies. They further commended him for all that he has accomplished during his tenure. Director Kuechler suggested staff prepare a resolution in honor of Michael George's service, which was unanimously supported by the Board.

Delta Conservancy Activities

Michael announced a report on data collected from the Delta Drought Response Pilot Program will be published by the end of the year. The application period for implementation of the Program in 2023 is closed. The Conservancy received and approved 64 applications ranging from \$600-700/acre.

Delta Habitat Projects

Madeline Baker of Larsen Wurzel & Associates gave a presentation on the Little Egbert Multi-Benefit Project, located within the Yolo Bypass just upstream of Rio Vista. She reviewed the scope of the project and some of the current design concepts under development. She expressed appreciation for input provided by Board members and encouraged the Agency to send her any additional comments or suggestions.

Delta Protection Commission

Bruce Blodgett announced that the DPC has moved their offices. They are in the same building, but in a smaller suite. The Commission is still working on the National Heritage Area Management Plan and applications for the Delta Leadership Program are due today.

Delta Stewardship Council

Melinda briefed the Board on DSC hearing she attended on regulations on the Delta Levee Investment Strategy (DLIS) were presented. She expressed optimism based on fact that the Council is comprised of new board members who appeared interested in views of comments made by flood control agency representatives. Gilbert Cosio continues to provide input on Delta Adapts technical committees on behalf of NDWA, CCVFCA, and other local entities.

Delta Conveyance Project

Written comments on the Draft EIR for the DCP are due December 16, 2022.

Announcements

Dates of various meetings and deadlines were announced. February 1st is the next North Delta Board Meeting.

Public Comment

No public comment was provided.

Adjournment

Chairman Mello adjourned the meeting at 12:48 p.m.

Respectfully submitted by Cindy Tiffany, Assistant Manager