

Minutes of Wednesday, October 6, 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 9:31 a.m. on Wednesday, October 6, 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
Anne Williams, MBK Engineers

Others

John Leahigh, DWR
Mike Hardesty
B Peters
Michael George
Erick Stonebarger
Mark Wilson

Bryan Busch
Harvey Correia
916-296-1860
916-747-4074
209-931-7000

DWR Presentation

John Leahigh of DWR gave a presentation titled "Drought Conditions Update and Outlook in 2022." He noted that 2020 is in the top 10 driest years, and 2021 is the 3rd driest year on record. In 1977 it was an extreme drought, but normal temperatures. By comparison, 2014 was an extreme drought, but also very hot, and in 2021 it was an extreme drought, but even hotter than 2014. Therefore, the drought conditions were much more pronounced in 2021 than what was experienced in 2014. The heat intensifies evapotranspiration, which dries out the soils and stresses the vegetation. With these drier soil conditions, it means less run-off flowing into the rivers when it does rain.

Storage levels in the three primary CVP and SWP reservoirs, which are Folsom, Shasta, and Oroville, are all below average with the lowest inflow on record into Shasta and an earlier start to irrigation season in 2021. With all this, we now have a record low combined storage of only 2.09-million-acre feet between all three reservoirs.

Due to these record low storage levels, CVP Ag contractors have been reduced to 0% water allocation and SWP was reduced to 5% allocation. Several other drought response actions have also been implemented: 1) the SWRCB approved modification in the Delta salinity and outflow requirements (TUCP); 2) DWR installed a drought barrier on West False River; 3) the U.S. Bureau of Reclamation increased flows from New Melones to reduce outflow from Shasta; and 4) CVP and SWP exports at Tracy pumps have been reduced to minimum

levels necessary for health and safety.

Looking ahead, Mr. Leahigh said the priorities for 2022 will be maintaining health and safety export deliveries, Delta salinity control, fish protection, and conserving reservoir storage. The next steps are to have more robust multi-agency coordination with USBR, DWR, and SWRCB. To address water storage concerns, they are also working on preparation of a new TUCP to be submitted on December 1st to kick-in February 2022. DWR has created a [drought webpage](http://www.drought.ca.gov) at www.drought.ca.gov to keep the public updated.

Mr. Leahigh answered questions from board members and the public. Director Mello asked how implementation of recent amendments to the Coordinated Operations Agreement (COA) has affected storage levels in Oroville reservoir. Leahigh responded that the 2018 Addendum to COA does require a higher percentage of SWP water releases from the state in drier years and less in wetter years and acknowledged that Oroville was drawn down at a higher rate than in prior years and is currently only filled to 23% of capacity. This change was done primarily to maintain the cold-water pool in Shasta for the benefit of fish.

Melinda asked about what the additional changes are that DWR/USBR will be proposing in the December 2021 TUCP. He could not provide an answer because the TUCP is still under development, but said it will likely be similar to what was released early in 2014 and 2015. She asked if the next TUCP is expected to change the salinity standard to be less than the criteria in the 1981 Contract. He stated that DWR is projected to meet the NDWA Contract criteria through Spring.

Approval of Minutes

Director Mello requested a change to the August 25, 2021 minutes on page 3 under the Drought Planning section: change the word “upstream” to “downstream.” There were no changes made to the September 8, 2021 minutes.

MOTION by Director Mello to approve the August 25, 2021 minutes as amended to replace “upstream” with “downstream” on page 3 and approve the September 8, 2021 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)

Financial Report

Cindy reviewed the current Financial Statements.

MOTION by Director Kuechler to accept the financial statements as presented. The motion was seconded by Director M. van Loben Sels and unanimously approved by a voice vote. (AYES: Mello, Kuechler, J. van Loben Sels, M. van Loben Sels and Slater)

Manager Report

Report on Meetings, Presentation, and Correspondence

Melinda briefed the board about the legal memo received from Downey Brand disclosing legislative changes that affect local public agency meetings. Assembly Bill 361 is intended to allow extension of modifications to the Brown Act allowing public agencies to continue conducting public meetings remotely through teleconference during declared emergencies after the Governor’s Executive Order expires. The legislation requires public agencies to adopt a resolution every 30 days identifying the health and safety reasons it will continue to hold remote meetings. She recommended the Agency comply with these new requirements and presented Resolution No. 2021-04 which authorizes the NDWA to conduct remote teleconference meetings

due to COVID-19 risks associated with in-person meetings.

MOTION by Director Kuechler to adopt Resolution 2021-04 as presented. The motion was seconded by Director M. van Loben Sels and unanimously approved by a voice vote. (AYES: Mello, Kuechler, J. van Loben Sels, M. van Loben Sels and Slater)

Melinda reported that she received an email from Solano County Water Agency staff about water quality concerns if drought barriers are installed on Steamboat and Sutter Sloughs.

Engineering Report

Water Quality Update

Gary Kienlen reported that water quality is currently below our contract criteria but salinity levels are trending upward. Mean daily values have been about 3.6mS/cm, which will likely cause the 14-day mean EC at Three Mile Slough to increase above the Contract criteria of 2.77mS/cm. Real-time data has been showing up to 5mS/cm. Gary has already informed DWR Operations staff about these increasing salinity levels and the potential for the Contract's 14-day mean to be exceeded in the near future.

Melinda recommended the Agency's legal counsel draft a letter providing formal notice to DWR of the potential for Contract salinity criteria to be exceeded in near future at Three Mile Slough and request DWR to explain the actions it plans to implement to avoid exceedance of the criteria.

Legal Report

Drought Claims Procedure

Kevin O'Brien reported he has not recently heard from DWR legal counsel, Tripp Mizell, about executing an agreement to implement a Special Claims Procedures that compensates NDWA landowners for damages from water quality exceedances, but he will continue to try and make contact. Melinda suggested the letter to DWR be clear that NDWA either expects DWR to implement Article 12 remedies to regain compliance with Contract criteria or execute an agreement with the Agency to implement Article 4 Special Claims Procedures.

Drought Activities

Curtailment Orders

Michael George reported there have been no changes in the curtailment orders for the Delta watershed and compliance with submitting the online certification is at 95% in the Delta. The majority of non-compliance within the Delta is primarily the failure of State and Federal government agencies to submit certification by the deadline.

Drought Barriers

DWR submitted a to the U.S. Army Corps of Engineers requesting to keep the West False River drought barrier in place through next spring instead of removal in November 2021. Michael reported the plan is to also create a 200-foot-wide flood-flow notch.

Director Slater briefed the board on recent site visits with the four affected Reclamation Districts and DWR staff to view alternative drought barrier locations on Sutter and Steamboat Sloughs recommended by the local landowners and reclamation districts. He shared a map showing the locally preferred locations for the temporary barriers and said DWR staff were receptive to installing at these locations. Director Slater acknowledged there may still be some water access and delivery issues on the west side by RD 501 even if the barrier locations are moved, but it is unsure how significant these diversion impacts would be.

Gary Kienlen shared another map of the proposed barrier locations and noted that currently no modeling of water quality has been done at this point for these two projects. He believes that if the water coming in at Sutter and Steamboat Slough is blocked by the barriers, the same quantity of water is still coming up from Rio Vista into Cache Slough. As long as the quality at the Rio Vista monitoring location is within the Contract criteria, then quality should be good in Cache Slough. If this theory is correct, then these barriers should make little to no difference to the water quality in the Cache Slough region. In his professional opinion, water quality will be affected more by how the CVP and SWP projects are operated and also how the Bureau of Reclamation operates the Delta cross-channel gates.

Mike Hardesty expressed concerns with water quality in Cache Slough if drought barriers installed because Miner Slough provides fresh water to Cache Slough. If Miner Slough salts up, there is nothing to push the salt out, and should be considered for an additional monitoring location while the barrier is in place. Director Kuechler suggested DWR should be required to do water quality monitoring in the Cache Slough through an agreement with NDWA.

Melinda reported that Jacob McQuirk informed her that DWR has no intent to execute a MOU with NDWA that provides mitigation measures for the barrier projects, because DWR believes the 1981 Contract has the necessary protections and consider these projects to be nothing more than real estate transaction with landowners and RDs. She has read the permit agreements with RDs for the West False River drought barrier and in her opinion the two agreements are quite good and include some issues that were addressed in the 1977 Sutter barrier MOU. She expressed optimism that DWR seems open to moving the barrier locations per local recommendation, but warned the department has not committed to do so, which could result in significant impacts to diverters on the two sloughs. Downey Brand is still working on drafting a letter to DWR identifying the significant impacts anticipated if barriers are installed, and will hopefully have a draft ready prior to the next board meeting.

Delta Dry-Year Pilot Program

Melinda presented a conceptual document outlining a framework for implementing a Delta Dry-Year Incentive Pilot Program that would compensate landowners for reducing their consumptive use of water between January and June 2022. This would be a pilot program, dependent on farmers volunteering to implement specified water conservation measures. The incentives will be monetary and is proposed to range from \$800-\$1,500 per acre of land an action is taken, but there is currently no total dollar amount that will be dedicated to fund the program identified. The State Team is currently working on the financial portion of this plan as well as identifying mechanisms for disbursing the money to landowners. DWR is considering proving a block grant to the Delta Conservancy to then disburse to landowners. Melinda said the pilot program provides an opportunity to test and measure the effectiveness of multiple water conservation actions in each region of the Delta that have different land and groundwater elevations, but there are details of the program that still need to be finalized by DWR before farmers can sign up to participate. She recommended this pilot program proposal be presented at a special informational board meeting in order to receive feedback from farmers regarding the amounts being considered for incentive payments.

Delta Activities Report

SWRCB/Delta Water Master

Delta Watermaster Michael George announced changes to reporting dates for water use that was approved in the Resources Budget Trailer Bill and presented a document showing how the SWRCB plans to phase-in the new reporting deadlines. He also announced the public release of Open ET was scheduled for October 1st, but

is delayed until October 21st.

The Delta Stewardship Council released a Draft EIR on the Delta Plan Ecosystem Chapter Amendments with a 60-day public comment period. There is nothing to report on: Delta Habitat Projects or Delta Conservancy and Delta Protection Commission Activities.

Public Comments

No public comments received.

Closed Session

The Board convened Closed Session through teleconference at 12:13 pm to discuss the following:

A. CONFERENCE WITH LEGAL COUNSEL: ANTICIPATED LITIGATION

Pursuant to Government Code Section 54956.9, the Board will Meet in Closed Session with Legal Counsel to Discuss the Following Items:

- i. Initiation of litigation pursuant to Government Code Section 54956.9(d)(4) – three potential cases.

B. CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Property: water entitlements under 1981 NDWA-DWR Contract

Agency negotiator: Melinda Terry

Negotiating parties: Woodland-Davis Clean Water Agency

Under negotiation: terms of transaction

Closed Session Report

The Board reconvened in open session at 12:35 p.m. and Chairman Mello announced that the board took no reportable action during closed session.

Adjournment

Chairman Mello adjourned the meeting at 12: 36 p.m.

Respectfully submitted by Cindy Tiffany, Assistant Manager