

**Minutes of Wednesday, October 7, 2015**  
**North Delta Water Agency Board of Directors Meeting**  
14120 Grand Ave. (Walnut Grove Community Church), Walnut Grove

**Call to Order**

Chairman Mello called the board of directors meeting to order at 9:35 a.m. on Wednesday, October 7, 2015. A quorum was determined at that time. Those present:

Directors

Steve Mello, Division 1  
Topper van Loben Sels, Division 2  
Jack Kuechler, Division 3  
Tom Hester, Division 5

Staff

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

Others

See attached sign-in sheet.

Absent

Kenric Jameson, Division 4

**Approval of the Minutes**

A misspelling of Agency legal counsel's name in the August 5, 2015 minutes was pointed out.

**MOTION by Director Kuechler to approve the August 5, 2015 minutes with spelling correction. Seconded by Director Hester, and unanimously approved by a voice vote. (AYES: Mello, van Loben Sels, Hester, Kuechler)**

**Financial Reports**

Cindy Tiffany presented the quarterly financial reports and answered questions from the Directors. She provided an update on the biennial audit and the status of the assessment roll, informing them that all county assessment rolls have been accepted and direct bills are almost finished and expected to be mailed out by end of October.

Chairman Mello requested staff provide a document at the next meeting that projects the Contract payment amounts over the next 40 years so the Board can determine if the reserves are sufficient to keep up with the contractual escalation.

**MOTION by Director van Loben Sels to accept the 1st Quarter of FY 2015-16 Financial Reports as presented. Seconded by Director Hester and unanimously approved by a voice vote. (AYES: Mello, van Loben Sels, Hester, Kuechler)**

**Manager Report**

Melinda Terry distributed the 2016 board meeting schedule, informed the Board about a presentation she gave to the Delta Protection Commission regarding drought's impacts on Agency and north Delta water users, and provided an update on Director election process. The deadline to receive candidate applications has passed with no opponents filing against incumbents, therefore, pursuant to election law she sent letters to each county requesting the sole incumbent candidates be appointed by the county to fill the positions. The Agency will follow up with each county elections office to ensure the appropriate action is taken by the Board of Supervisors.

The Board also discussed general content of an opinion-editorial piece on Agency and Contract. Kevin O'Brien agreed to take the lead on preparing a draft for the board's consideration. Chairman Mello reminded the Manager to include a discussion of the Sustainable Groundwater Management Act on the next agenda.

### **Delta and Drought Reports**

Melinda Terry distributed a document outlining the sequencing of various permits and water rights proceedings and public comment deadline dates for BDCP/WaterFix. The EIR/EIS October 30<sup>th</sup> deadline is coming up first, followed by November 9<sup>th</sup> for 404 permit, with the 401 permit and water rights hearings on a change of diversion petition anticipated to start in early 2016. Gary informed the Board that MBK is working on a new technical memorandum regarding BDCP/WaterFix modeling for another client that is a follow-up on the work that Walter Bourez did for EIR comments last year. The Board directed Agency staff and consultants to coordinate on the preparation of written comments, including a copy of the new tech memo by MBK.

Other recent Delta activities include the SWRCB lifting curtailments for pre-1914 water rights and Metropolitan Water District of Southern California entering negotiations to possibly purchase the islands in the Delta Wetlands project. Kevin O'Brien indicated he believed NDWA previously filed a water rights protest on this project, but did not recall the specific arguments. Chairman Mello said the Delta Protection Commission filed comments regarding seepage and wave fetch impacts and Delta Watermaster Michael George speculated that facilitating right-of-ways and spoil areas necessary for BDCP/WaterFix may be reason for MWD's potential land purchase rather than water storage and transfer.

### **Legal Report**

Kevin O'Brien updated the Board on NDWA's liability insurance coverage, which is \$60 million per occurrence for the Agency, Directors, and officers, with standard exclusions. The board briefly discussed the level of coverage that is prudent and directed staff to follow-up with the Agency's insurance provider to better understand the exclusion provisions and provide a recommendation to the Board regarding the purchase of supplemental insurance.

Kevin recommended that NDWA request reimbursement from DWR for the Agency's cumulative legal/engineering expenses associated with the department's drought activities including the temporary barriers proposed in 2014 and 2015 and current Contract claims process, but suggested waiting to send a letter until the claims process is in place first.

### **Engineer Report**

Gary Kienlen distributed water quality graphs, noting salinity levels have been exceeding both the Contract and D-1641 criteria since September 14<sup>th</sup>, explaining that tidal and low pressure patterns creating higher salinity levels. In addition, the Cross Channel gates are currently open with no intention to close and the removal of the upcoming West False River barrier may increase salinity, and drought conditions have limited the operational options DWR has to reduce these effects.

Gary briefed the Board about a recent meeting he attended with the State Water Resources Control Board staff regarding interpretation and implementation of a budget trailer bill approved in June, Senate Bill 88, which requires installation of measuring equipment on diversion facilities sized 10 acre feet or

larger. MBK plans to continue participating in SWRCB's development of regulations to refine definitions of what is feasible and will keep the Agency updated on the progress.

### **DWR Presentation**

DWR legal counsel James Mizell and Chief of the Bay-Delta office Paul Marshall presented a draft of a special claims process established by the department to provide compensation pursuant to provision 4(b)(iv) of the 1981 NDWA-DWR Contract. Tripp Mizell explained the procedures they developed are intended to allow quick payment of claims through evaluation by the State if damage occurred due to violation of water quality, not an overly involved analysis, unless parties are not in agreement.

Several suggestions were made by Directors, Agency staff and consultants, and the public. Primary issues raised by the Agency included objecting to declaration in paragraph #3 that Drought Emergency for purposes of compensation ended on August 15<sup>th</sup>, definition of when irrigation season ends (particularly for permanent crops), and waiving liability for NDWA, Directors, and staff. Landowners asked a lot of questions regarding damage losses that would be covered, compensation for decisions to not plant, the type of information they need to submit with their application, and expressed concern that yield losses caused by water quality issues this year might not be evident until next year so not comfortable signing away future damage claims as this effects their lenders too.

DWR will take into account suggestions offered today when finalizing the claims documents and will continue working with Melinda Terry and Kevin O'Brien on a separate agreement to extend timeline in accordance with paragraph #5 of the Special Claims Procedure. DWR is planning on having the claims process in place and ready for landowners submissions by the end of 2015. The Board directed the manager to include an item on the December agenda regarding the intent to finalize an additional claims agreement to extend the 2015 Drought Emergency end date, and authorized Agency legal counsel and manager to work with DWR on agreement language to present to the Board.

### **Closed Session**

Confer with legal counsel for purposes of being briefed on potential for anticipated litigation on two matters including *H-Pond LLC v North Delta Water Agency* and possible settlement of *Steamboat Acres LLC v. Daniel P Whaley, North Delta Water Agency, et al.* Upon reconvening in open session, Chairman Mello announced that no reportable action was taken in closed session.

### **Adjournment**

Chairman Mello adjourned the meeting at 1:18 p.m.

Respectfully submitted by Cindy Tiffany, Assistant Manager