



MEMORANDUM

TO: SLDMWA Board of Directors, Alternates

FROM: Rebecca Akroyd, General Counsel

DATE: November 29, 2021

RE: Resolution Re-Ratifying The Proclamation Of A State Of Emergency By Governor Gavin Newsom (Mar. 4, 2020), Proclaiming The State Of Emergency Continues To Directly Impact The Ability Of Members Of The Legislative Bodies Of The San Luis & Delta-Mendota Water Authority To Meet Safely In Person, And Re-Authorizing Remote Teleconference Meetings For Such Legislative Bodies For The Period November 29, 2021 – December 29, 2021 Pursuant To Brown Act Provisions

BACKGROUND

On March 4, 2020, Governor Gavin Newsom proclaimed a state of emergency to exist in California as a result of the threat of COVID-19. Subsequently, the Governor issued a number of Executive Orders that suspended certain provisions of the Brown Act, and allowed local legislative bodies to hold public meetings via teleconferencing and to make public meetings accessible telephonically or otherwise electronically to all members of the public seeking to observe and to address the local legislative body, without requiring the physical presence of members, staff, or the public as a condition to participation for a meeting (Executive Order N-25-20 (Mar. 12, 2020); Executive Order N-29-20 (Mar. 17, 2020); Executive Order N-08-21 (June 11, 2021)). The last of these Executive Orders, N-08-21, rescinded the aforementioned modifications made to the Brown Act, effective September 30, 2021.

On September 16, 2021, the Governor signed AB 361, which immediately amended the Brown Act to permit teleconference meetings when the Governor has declared a state of emergency and certain other conditions are met. In such a situation, regular Brown Act teleconference provisions are suspended, the legislative body must make specific findings, and specific procedural mandates must be followed.

On September 30, 2021, the Water Authority Board of Directors adopted Resolution 2021-488, which proclaimed a local emergency, ratified the Governor's March 4, 2020 State of Emergency, and authorized remote teleconference meetings of the legislative bodies of the Water Authority for the period September 30, 2021 – October 29, 2021. Subsequently, the Board adopted Resolution 2021-490 and Resolution 2021-491, which together re-ratified the state of emergency and re-authorized remote teleconference meetings for the period October 7 – December 4.

Adoption of the resolution will allow the Water Authority's Board and standing committees to conduct business remotely in compliance with Government Code section 54953(e), through December 29, 2021.

ISSUE FOR DECISION

Whether to adopt the proposed Resolution Re-Ratifying the Proclamation of a State of Emergency by Governor Gavin Newsom (Mar. 4, 2020), Proclaiming the State of Emergency Continues to Directly Impact the Ability of Members of the Legislative Bodies of the San Luis & Delta-Mendota Water Authority to Meet Safely in Person, and Re-Authorizing Remote Teleconference Meetings for Such Legislative Bodies for the Period November 29, 2021 – December 29, 2021 Pursuant to Brown Act Provisions.

RECOMMENDATION

Staff recommends adoption of the proposed resolution.

ANALYSIS

Adopting the proposed resolution will allow the Water Authority's legislative bodies¹ to continue to conduct meetings via teleconference in conformity with Government Code section 54953(e), as amended by AB 361. Specifically, the bodies will be able to meet via teleconference but not be required to provide notice of each teleconference location, post a notice at each location, provide access at each location, require a quorum be present within the Authority's jurisdiction, or provide an option to meet at a physical location.

The resolution includes an affirmation that a state of emergency persists, and that requiring in-person attendance at meetings of the Water Authority's legislative bodies for all attendees would pose an imminent risk to the health and safety of the attendees. The resolution will take effect immediately upon its adoption and will be effective for 30 days, or until such time the Board of Directors adopts a subsequent resolution in accordance with Government Code section 54953(e)(3) to extend the time during which the legislative bodies may continue to teleconference without compliance with Government Code section 54953(b)(3). If conditions improve, the Board can also take action to rescind the Resolution prior to its expiration.

If the Board does not adopt the resolution the Board's prior resolution will expire as a matter of law and pursuant to its own terms on December 4, 2021, and in-person attendance will be required, or for those calling in, compliance with the notice and posting, in-person participation, and quorum requirements in Government Code section 54953(b)(3).

¹ Board of Directors, Water Resources Committee, Finance & Administration Committee, O&M Technical Committee, GBD Steering Committee, DHCCP Steering Committee, SGMA Northern Delta-Mendota Region Management Committee, and SGMA Central Delta-Mendota Region Management Committee.

SAN LUIS & DELTA-MENDOTA WATER AUTHORITY

RESOLUTION NO. 2021-___

RESOLUTION RE-RATIFYING THE PROCLAMATION OF A STATE OF EMERGENCY BY GOVERNOR GAVIN NEWSOM (MAR. 4, 2020), PROCLAIMING THE STATE OF EMERGENCY CONTINUES TO DIRECTLY IMPACT THE ABILITY OF MEMBERS OF THE LEGISLATIVE BODIES OF THE SAN LUIS & DELTA-MENDOTA WATER AUTHORITY TO MEET SAFELY IN PERSON, AND RE-AUTHORIZING REMOTE TELECONFERENCE MEETINGS FOR SUCH LEGISLATIVE BODIES FOR THE PERIOD NOVEMBER 29, 2021 – DECEMBER 29, 2021 PURSUANT TO BROWN ACT PROVISIONS

WHEREAS, the San Luis & Delta-Mendota Water Authority (“Water Authority”) is committed to preserving and nurturing public access and participation in meetings of its Board of Directors (“Board”) and other legislative bodies; and

WHEREAS, all meetings of the Water Authority’s legislative bodies are open and public, as required by the Ralph M. Brown Act (Cal. Gov. Code §§ 54950 – 54963), so that any member of the public may attend, participate, and watch the Water Authority’s legislative bodies conduct their business; and

WHEREAS, the Brown Act, Government Code section 54953(e), makes provision for remote teleconferencing participation in meetings by members of a legislative body, without compliance with the requirements of Government Code section 54953(b)(3), subject to the existence of certain conditions; and

WHEREAS, Government Code section 54953(e)(1) provides a legislative body may meet via teleconference if the Governor has proclaimed a state of emergency pursuant to Government Code section 8625 proclaiming the existence of conditions of disaster or of extreme peril to the safety of persons and property within the state caused by conditions as described in Government Code section 8558 and either (i) state or local officials have imposed or recommended measures to promote social distancing, (ii) the legislative body meets to determine by majority vote that, as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees, or (iii) the legislative body has voted as such and is meeting pursuant to that vote; and

WHEREAS, a legislative body's decision to meet pursuant to Section 54953(e) must be reevaluated and renewed at least every thirty (30) days and, in that time, the body must reconsider the circumstances of the state of emergency and find either (i) a state of emergency remains active and continues to directly impact the ability of the members to meet safely in person or (ii) state or local officials continue to impose or recommend measures to promote social distancing; and

WHEREAS, on March 4, 2020, Governor Gavin Newsom proclaimed a state of emergency pertaining to the threat to human health and safety posed by the COVID-19 virus pandemic and that proclamation remains in effect to this day in Merced County and statewide; and

WHEREAS, the virus has short- and long-term effects – fever and chills, cough, shortness of breath and difficulty breathing, fatigue, headache, nausea, vomiting, gastrointestinal issues, loss of taste and smell, death – and its prolific spread is severely impacting the health care system, inhibiting access to care for COVID-19 symptoms and other ailments; and

WHEREAS, while being vaccinated significantly decreases the likelihood of contracting or dying from the virus, vaccinated and unvaccinated people alike can carry, transmit, and be affected by the virus; and

WHEREAS, the COVID-19 virus, and its variants, is spread through the air when a person who is carrying the virus, whether he or she is showing symptoms or not, is in close proximity to another person; and

WHEREAS, while the COVID-19 virus remains present in the community, allowing members of the Water Authority's legislative bodies and members of the public to meet in person continues to present an imminent risk to attendee health and safety beyond the control of Water Authority services, personnel, equipment, and facilities; and

WHEREAS, pursuant to Government Code section 8635 et seq., the Board has the authority during a state of emergency to take all actions necessary to perform its functions in the preservation of law and order, preservation of the furnishing of local services, and protection of life and property, which includes the authority to direct meetings of all Water Authority legislative bodies to be held via teleconference pursuant to this Resolution; and

WHEREAS, the Board adopted Resolution No. 2021-488 on September 30, 2021, Resolution No. 2021-490 on October 7, 2021, and Resolution No. 2021-491 on November 4, 2021 finding that the requisite conditions exist for the legislative bodies of the Water Authority to hold meetings via teleconference pursuant to Government Code section 54953(e) and without compliance with Section 54953(b)(3); and

WHEREAS, the Board has reconsidered the circumstances of the state of emergency issued by the Governor, does hereby find emergency conditions persist in the Water Authority's service area that directly impact the ability of all meeting attendees to meet safely in person, and desires for Water Authority legislative bodies to continue to meet pursuant to Government Code section 54953(e); and

WHEREAS, the Board does hereby find that the legislative bodies of the Water Authority shall conduct their meetings pursuant to Government Code section 54953(e) by offering all meeting attendees access and an opportunity to comment via a teleconference option; and

WHEREAS, the Water Authority has taken and is taking measures to ensure public access and opportunity to offer public comment, including by providing teleconference and/or video conferencing access to members of the public for all meetings of Water Authority legislative bodies.

NOW, THEREFORE, BE IT RESOLVED, AS FOLLOWS, THAT:

Section 1. The facts stated in the recitals above are true and correct, and the Board so finds and determines.

Section 2. The Board hereby considers the conditions of the state of emergency related to the COVID-19 virus pandemic in the Water Authority's service area and finds the state of emergency continues to directly impact the ability of Water Authority legislative body members and attendees to meet safely in person given the spread of the Delta variant of the COVID-19 virus throughout the state, the "high" level of community transmission in Merced County noted on the Centers for Disease Control and Prevention COVID-19 Integrated County View website, and the

current number of infections in Merced County and other counties where the Water Authority's member agencies are located.

Section 3. The Board hereby re-ratifies the Governor of the State of California's Proclamation of State of Emergency related to the COVID-19 virus pandemic, effective as of its issuance date of March 4, 2020.

Section 4. The staff and legislative bodies of the Water Authority are hereby authorized and directed to take all actions necessary to carry out the intent and purpose of this Resolution including continuing to conduct open and public meetings in accordance with Government Code section 54953(e) and other applicable provisions of the Brown Act.

Section 5. This Resolution shall take effect immediately upon its adoption and shall be effective until the earlier of (1) December 29, 2021, (2) such time the Board adopts a subsequent resolution in accordance with Government Code section 54953(e)(3) to extend the time during which the legislative bodies of the Water Authority may continue to teleconference without compliance with paragraph (3) of subdivision (b) of section 54953, or (3) the Board acts to rescind this Resolution.

PASSED, APPROVED AND ADOPTED this 29th day of December, 2021, by the Board of Directors of the San Luis & Delta-Mendota Water Authority.

Cannon Michael, Chairman
San Luis & Delta-Mendota Water Authority

Attest:

Federico Barajas, Secretary

I hereby certify that the foregoing Resolution No. 2021-___ was duly and regularly adopted by the Board of Directors of the San Luis & Delta-Mendota Water Authority at the meeting thereof held on the 29th day of November, 2021.

Federico Barajas, Secretary