



MEMORANDUM

TO: SLDMWA Board of Directors, Alternates

FROM: Rebecca Akroyd, General Counsel

DATE: September 30, 2021

RE: Resolution Proclaiming a Local Emergency, Ratifying the Proclamation of a State of Emergency by Governor Gavin Newsom (Mar. 4, 2020), and Authorizing Remote Teleconference Meetings of the Legislative Bodies of the San Luis & Delta-Mendota Water Authority for the Period September 30, 2021 – October 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 The last of these Executive Orders, N-08-21, rescinded the aforementioned modifications made to the Brown Act, effective September 30, 2021. Unless the Legislature or the Governor took additional action, on or after October 1, 2021, a Brown Act body would have been required to comply with existing Brown Act provisions related to teleconference meetings – list all locations, give notice and access at each location, have a quorum in the jurisdiction, offer a physical location to attend and comment, etc.

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. Note that on September 20, 2021, the Governor executed Executive Order N-15-21, which provided clarity that notwithstanding the enactment of AB 361, the modifications in place from prior Executive Orders, including N-08-21, remained in place through September 30, 2021. In short, from September 16 to September 30, 2021, Brown Act bodies had the option to comply with either AB 361 or the Governor's executive orders related to teleconference meetings.

ISSUE FOR DECISION

Whether to adopt the proposed Resolution Proclaiming a Local Emergency, Ratifying the Proclamation of a State of Emergency by Governor Gavin Newsom (Mar. 4, 2020), and Authorizing Remote Teleconference Meetings of the Legislative Bodies of the San Luis & Delta-Mendota Water Authority for the Period September 30, 2021 – October 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 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. Instead, the bodies will be required to (1) give notice of the meeting and post agendas as otherwise required (timing, content, etc.), (2) allow members of the public to access the meeting via call-in or internet-based service (e.g. Zoom), (3) provide details on the agenda on how to access the meeting and comment, (4) give an opportunity to comment pursuant to Gov. Code 54954.3 and allow a reasonable amount of time during public comment for a person to register, login, and comment, and (5) monitor the call lines and internet-based service lines to ensure no disruption hinders access or ability to comment, if there is, take no action until public access is restored, or else the action is subject to challenge.

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 would pose an imminent risk to the health and safety of such individuals.

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 the Board does not adopt the resolution, 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 PROCLAIMING A LOCAL EMERGENCY, RATIFYING THE PROCLAMATION OF A STATE OF EMERGENCY BY GOVERNOR GAVIN NEWSOM (MAR. 4, 2020), AND AUTHORIZING REMOTE TELECONFERENCE MEETINGS OF THE LEGISLATIVE BODIES OF THE SAN LUIS & DELTA-MENDOTA WATER AUTHORITY FOR THE PERIOD SEPTEMBER 30, 2021 – OCTOBER 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 provisions 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, a required condition is that a state of emergency is declared by the Governor 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

WHEREAS, a proclamation is made when there is an actual incident, threat of disaster, or extreme peril to the safety of persons and property within the jurisdictions that are within the Water Authority’s boundaries, caused by natural, technological, or human-caused disasters; and

WHEREAS, it is further required that state or local officials have imposed or recommended measures to promote social distancing, or, the legislative body meeting in person would present imminent risks to the health and safety of attendees; and

WHEREAS, such conditions now existing in the Water Authority’s service area, specifically, a state of emergency has been proclaimed in the State of California pertaining to the threat to human health and safety posed by COVID-19 pandemic (Mar. 4, 2020 Proclamation of a State of Emergency); and

WHEREAS, allowing all individual members of the Water Authority’s legislative bodies and members of the public to meet in person would present an imminent risk to the health and safety of attendees, given the spread of the Delta variant of the COVID-19 virus throughout the

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

WHEREAS, the Board does hereby find that the existing state of emergency and conditions causing imminent risk to attendees has caused, and will continue to cause, conditions of peril to the safety of persons within the Water Authority's service area that are likely to be beyond the control of services, personnel, equipment, and facilities of the Water Authority, and desires to proclaim a local emergency and ratify the proclamation of state of emergency by the Governor and the State of California; and

WHEREAS, as a consequence of the local emergency, the Board does hereby find that the legislative bodies of the Water Authority shall conduct their meetings without compliance with paragraph (3) of subdivision (b) of Government Code section 54953, as authorized by subdivision (e) of section 54953, and that such legislative bodies shall comply with the requirements to provide the public with access to the meetings as prescribed in paragraph (2) of subdivision (e) of section 54953; and

WHEREAS, the Water Authority has taken and is taking measures to ensure access for the public, including by providing teleconference and/or video conferencing access to members of the public for all meetings of 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 proclaims that a local emergency now exists throughout the Water Authority, and allowing individual members of the Water Authority's legislative bodies and members of the public to meet in person would present an imminent risk to the health and safety of attendees.

Section 3. The Board hereby ratifies the Governor of the State of California's Proclamation of State of Emergency, 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, conducting 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) October 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 30th day of September, 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

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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 30th day of September, 2021.

Federico Barajas, Secretary