



## MEMORANDUM

TO: SLDMWA Board of Directors, Alternates

FROM: Rebecca Akroyd, General Counsel

DATE: July 14, 2022

RE: Resolution Ratifying The Proclamation Of A State Of Emergency By Governor Gavin Newsom (Mar. 4, 2020), Proclaiming The State Of Emergency Directly Impacts The Ability Of Members Of The Legislative Bodies Of The San Luis & Delta-Mendota Water Authority To Meet Safely In Person, And Authorizing Remote Teleconference Meetings For Such Legislative Bodies For The Period July 14, 2022 – August 13, 2022 Pursuant To Brown Act Provisions

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### **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 The last of these Executive Orders, N-08-21, rescinded the aforementioned modifications made to the Brown Act, effective September 30, 2021.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 a number of resolutions, most recently Resolution 2022-505, which re-ratified the state of emergency and re-authorized remote teleconference meetings through April 9, 2022.

In its April 7, 2022 Meeting, the Water Authority Board of Directors declined to re-ratify the state of emergency and re-authorize remote teleconference meetings, given declining COVID-19 community transmission rates in Water Authority member agencies' service areas. As of July 8, 2022, however, each of the counties comprising Water Authority members agencies' service areas have "high" COVID-19 Community Levels noted on the Centers for Disease Control and Prevention COVID-19 Integrated County View website.<sup>1</sup>

### **ISSUE FOR DECISION**

Whether to adopt the proposed Resolution Ratifying the Proclamation of a State of Emergency by Governor Gavin Newsom (Mar. 4, 2020), Proclaiming the State of Emergency Directly Impacts the Ability of Members of the Legislative Bodies of the San Luis & Delta-Mendota Water Authority to Meet Safely in Person, and Authorizing Remote Teleconference Meetings for Such Legislative Bodies for the Period July 14, 2022 – August 13, 2022 Pursuant to Brown Act Provisions.

### **OPTIONS**

1. Adopt the proposed resolution
2. Do not take action, and continue to hold in-person meetings, with normal notice and posting rules applying for those Directors that desire to participate remotely

### **ANALYSIS**

Adopting the proposed resolution would allow the Water Authority's legislative bodies<sup>2</sup> 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 but that there is adequate space and ventilation for a limited number of people to meet in person while being able to take precautions to protect their health and safety. This in-person option will be open to legislative body members and staff. 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

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<sup>1</sup> [https://covid.cdc.gov/covid-data-tracker/#county-view?list\\_select\\_state=all\\_states&list\\_select\\_county=all\\_counties&data-type=CommunityLevels](https://covid.cdc.gov/covid-data-tracker/#county-view?list_select_state=all_states&list_select_county=all_counties&data-type=CommunityLevels)

<sup>2</sup> 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.

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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, 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).

**SAN LUIS & DELTA-MENDOTA WATER AUTHORITY**

**RESOLUTION NO. 2022-\_\_\_**

**RESOLUTION RATIFYING THE PROCLAMATION OF A STATE OF EMERGENCY BY GOVERNOR GAVIN NEWSOM (MAR. 4, 2020), PROCLAIMING THE STATE OF EMERGENCY DIRECTLY IMPACTS THE ABILITY OF MEMBERS OF THE LEGISLATIVE BODIES OF THE SAN LUIS & DELTA-MENDOTA WATER AUTHORITY TO MEET SAFELY IN PERSON, AND AUTHORIZING REMOTE TELECONFERENCE MEETINGS FOR SUCH LEGISLATIVE BODIES FOR THE PERIOD JULY 14, 2022 – AUGUST 13, 2022 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**, 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 at high levels, allowing members of the Water Authority's legislative bodies and members of the public to meet in person presents 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, Resolution No. 2021-491 on November 4, 2021, Resolution No. 2021-492 on November 29, 2021, Resolution No. 2021-498 on December 14, 2021, Resolution No. 2022-499 on January 13, 2022, Resolution No. 2022-501 on February 10, 2022, and Resolution No. 2022-505 on March 10, 2022, 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**, staff have identified that the Water Authority's meeting space is sufficiently large and ventilated to allow some legislative body members and staff to convene in person while taking adequate measures to avoid imminent threat to their health or safety; and

**WHEREAS**, the Board has reconsidered the circumstances of the state of emergency issued by the Governor, does hereby find emergency conditions exist 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 again be permitted to meet pursuant to Government Code section 54953(e); and

**WHEREAS**, the Board has considered the circumstances of the state of emergency issued by the Governor, does hereby find emergency conditions exist 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 again be permitted 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 by allowing a limited number of legislative body members and staff to meet in-person so long as adequate measures can be taken to avoid imminent threat to their health or safety; 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 directly impacts the ability of Water Authority legislative body members and attendees to meet safely in person given the spread 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 as of July 8, 2022, 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 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) August 13, 2022, (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 14th day of July, 2022, by the Board of Directors of the San Luis & Delta-Mendota Water Authority.

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

Attest:

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Federico Barajas, Secretary

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I hereby certify that the foregoing Resolution No. 2022-\_\_\_\_ 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 14th day of July, 2022.

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Federico Barajas, Secretary