



MEMORANDUM

TO: SLDMWA Board of Directors, Alternates

FROM: Rebecca R. Akroyd, General Counsel
Rebecca L. Harms, Deputy General Counsel

DATE: January 11, 2024

RE: Adoption of Resolution Adopting Amendment to San Luis & Delta-Mendota Water Authority Bylaws Regarding Limited Disclosure of Confidential Information Obtained in Closed Session

BACKGROUND

The San Luis & Delta-Mendota Water Authority (“Water Authority”) is governed by the Ralph M. Brown Act, Government Code section 54950 et seq. pertaining to open and public meetings of California public agencies (“Brown Act”). The Brown Act generally prohibits confidential information obtained in closed session from being disclosed to any person outside the closed session absent approval from the legislative body of the public agency. (Gov. Code, § 54963.) Nonetheless, Government Code section 54956.96 permits the legislative body of a joint powers authority to adopt “a policy or bylaws or includ[e] in its joint powers agreement provisions that authorize...” the disclosure of closed session confidential information with “direct financial or liability implications” for the joint powers authority member by a joint powers authority legislative body member, or alternative member, to their member agency legal counsel or to the member agency legislative body in closed session.

Article 15 of the Water Authority’s Joint Exercise of Powers Agreement (“JPA”), dated January 1, 1992, authorizes the Board to adopt “such bylaws, rules and regulations for the conduct of its affairs as may be required.” Article VIII of the Water Authority Bylaws (“Bylaws”), dated April 8, 2021, allows for the Bylaws to be amended by resolution of the Board which requires a majority Board vote pursuant to Article III, Section 3.07 of the Bylaws.

The proposed amendment would authorize disclosure of certain confidential information obtained in the Water Authority’s closed sessions to Board member agency legal counsel or to their member agency legislative bodies in closed session as provided for in Government Code section 54956.96. This disclosure would help increase the efficiency of communications between the Board and member agency legislative bodies.

ISSUE FOR DECISION

Whether the Board of Directors should consider a resolution adopting an amendment to the Bylaws regarding limited disclosure of confidential information obtained in closed session.

RECOMMENDATION

Staff recommends adoption of the proposed resolution.

ANALYSIS

The Bylaws provision regarding closed session currently states in full:

Section 3.05 CLOSED SESSIONS

The Board may enter into a closed session during a regular, adjourned regular, special, or adjourned special meeting to consider matters as may lawfully be considered in such sessions. The Board shall comply in all respects with closed session requirements and procedures of the Brown Act.

(Bylaws, Art. III, Section 3.05.) The resolution for the Board’s consideration proposes to *add* the following language to the above existing provision:

(1) A Director, or Alternative Director attending a Board closed session in place of a Director, may disclose confidential information that has direct financial or liability implications for the Member to that Member’s legal counsel for purposes of obtaining advice on whether the matter has direct financial or liability implications for that Member; and

(2) A Director, or Alternative Director attending a Board closed session in place of the Director, may, upon the advice of its legal counsel pursuant to paragraph (1) above, disclose confidential information that has direct financial or liability implications for the Member to that Member’s legislative body in a closed session of the Member’s legislative body so long as that closed session is properly noticed and conducted in accordance with the Brown Act.

No Additional Basis for Water Authority Closed Sessions; An Additional Basis for Member Agency Closed Sessions – The above proposed provisions would not provide the Water Authority with an additional basis for convening closed sessions. Rather, the Water Authority would be required to continue to comply with the requirements of the Brown Act, including Government Code section 54954.5, which limits the topics that may be discussed in closed session and that require the Water Authority’s agenda to identify an acceptable basis for each of its closed session items. *However, the proposed Bylaws provisions above would provide member agencies with an additional basis for meeting in closed session.* Government Code section 54954.5(j) lists

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“conference involving a joint powers agency” pursuant to Government Code section 54956.96 as an acceptable basis for a closed session item.

Director or Alternate Consults with Member Agency Counsel First – Government Code section 54956.96(c) states, “[T]he legislative body of the local agency member, upon the advice of its legal counsel, may conduct a closed session in order to receive, discuss, and take action concerning information obtained in a closed session of the joint powers agency....” This means that if the Water Authority were to adopt the proposed Bylaws provisions above, the proper order of operations would be: (1) Director or Alternate participation in a Water Authority closed session, (2) Director or Alternate determination that information received in closed session “has direct financial or liability implications for that local agency,” (3) Director or Alternate shares information with member agency counsel and obtains agreement, and (4) member agency holds closed session and discloses Water Authority closed session information to member agency. Members are not required to obtain Water Authority approval before commencing these steps.

BUDGET IMPLICATIONS

The budget is not impacted by the adoption of this amendment to the Bylaws.

ATTACHMENT

Proposed Resolution

SAN LUIS & DELTA-MENDOTA WATER AUTHORITY

RESOLUTION NO. 2024-__

**RESOLUTION ADOPTING AN AMENDMENT TO THE SAN LUIS &
DELTA-MENDOTA WATER AUTHORITY BYLAWS REGARDING
LIMITED DISCLOSURE OF CONFIDENTIAL INFORMATION
OBTAINED IN CLOSED SESSION**

WHEREAS, the Board of Directors of the San Luis & Delta-Mendota Water Authority (respectively, the “Board” and the “Water Authority”), pursuant to the Water Authority’s procedures and the California Government Code, from time to time, may adopt policies for the efficient and lawful administration of the Water Authority; and

WHEREAS, Article 15 of the Water Authority’s Joint Exercise of Powers Agreement dated January 1, 1992 (“JPA”), provides “the Board may adopt from time to time such bylaws, rules and regulations for the conducts of its affairs as may be required;” and

WHEREAS, pursuant to JPA Article 15, on April 8, 2021, the Board adopted Resolution No. 2021-480, thereby adopting the “San Luis & Delta-Mendota Water Authority Bylaws” (“Bylaws”) and superseding all prior Board resolutions on Board conduct, and the Bylaws now generally govern Board conduct, permissions, limitations, and operations; and

WHEREAS, Article VIII of the Bylaws allows for the Bylaws to be amended by resolution of the Board which requires a majority Board vote pursuant to Article III, Section 3.07 of the Bylaws; and

WHEREAS, the Water Authority, as a California public agency, is governed by the Ralph M. Brown Act, Government Code section 54950 et seq. pertaining to open and public meetings of California public agencies (“Brown Act”); and

WHEREAS, section 54963 of the Brown Act generally prohibits confidential information obtained in closed session from being disclosed to any person outside the closed session absent approval from the legislative body of the public agency; and

WHEREAS, section 54956.96 of the Brown Act nonetheless permits the legislative body of a joint powers authority to adopt “a policy or bylaws or includ[e] in its joint powers agreement provisions that authorize...” the disclosure of closed session confidential information with a “direct financial or liability implications” for the joint powers authority member by a joint powers authority legislative body member, or alternative member, to their member agency legal counsel or to the member agency legislative body in closed session; and

WHEREAS, the Board finds that adopting an amendment to the Bylaws in accordance with section 54956.96 would help preserve the integrity of the Water Authority and Board and increase the efficiency of communications between the Board and member agency legislative bodies; and

WHEREAS, the Board desires to adopt an amendment to the Bylaws in accordance with section 54956.96, thereby, permitting closed session confidential information to be disclosed without Board consent in certain situations.

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

The facts stated in the recitals above are true and correct, and the Board so finds and determines. Further, the recitals set forth above, and definitions contained therein, are incorporated herein by reference as if set forth in full.

Section 1. The Board hereby resolves that Section 3.05 of the Bylaws is amended to read as follows:

Section 3.05 CLOSED SESSIONS

The Board may enter into a closed session during a regular, adjourned regular, special, or adjourned special meeting to consider matters as may lawfully be considered in such sessions. The Board shall comply in all respects with closed session requirements and procedures of the Brown Act.

Pursuant to Government Code section 54956.96, a provision of the Brown Act, the Board hereby authorizes disclosure of confidential information obtained in a closed session of the Board in the following situations and manners. Such disclosure shall not violate a Director's general obligation to maintain as confidential closed session discussion.

(1) A Director, or Alternative Director attending a Board closed session in place of a Director, may disclose confidential information that has direct financial or liability implications for the Member to that Member's legal counsel for purposes of obtaining advice on whether the matter has direct financial or liability implications for that Member; and

(2) A Director, or Alternative Director attending a Board closed session in place of the Director, may, upon the advice of its legal counsel pursuant to paragraph (1) above, disclose confidential information that has direct financial or liability implications for the Member to that Member's legislative body in a closed session of the Member's legislative body so long as that closed session is properly noticed and conducted in accordance with the Brown Act.

Section 2. Except as expressly provided herein, all other sections and provisions of the Bylaws shall remain in full force and effect.

Section 3. This Bylaws amendment shall remain in full force and effect from year to year, until and unless it is revoked or modified by the Board.

PASSED, APPROVED, AND ADOPTED this ___ day of January, 2024, 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. 2024-__ 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 __ day of January, 2024.

Federico Barajas, Secretary