



Special Board of Directors Meeting

September 28, 2021

12:30 PM

Tuesday, September 28, 2021 Meeting Schedule
08:30 am - IRP
10:30 am - Bay-Delta
11:30 am - Break
12:00 pm - Exec
12:30 pm - Sp BOD
01:00 pm - C&LR

Live streaming is available for all board and committee meetings on our mwdh2o.com website ([Click to Access Board Meetings Page](#))

Public Comment Via Teleconference Only: Members of the public may present their comments to the Board on matters within their jurisdiction as listed on the agenda via teleconference only. To participate call (404) 400-0335 and use Code: 9601962.

MWD Headquarters Building - 700 N. Alameda Street - Los Angeles, CA 90012

1. **Call to Order**
2. **Roll Call**
3. **Determination of a Quorum**
4. **Opportunity for members of the public to address the Board on matters in this notice of Special Board Meeting. (As required by Gov. Code § 54954.3(a))**
5. **OTHER BOARD ITEMS - ACTION**

5-1 Adopt resolution authorizing remote teleconference meetings pursuant to the Brown Act Section 54953(e) for meetings of Metropolitan’s legislative bodies for a period of 30 days from September 28, 2021 to October 28, 2021; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA

[21-553](#)

Attachments: [09282021 BOD 5-1 B-L.pdf](#)

- 5-2** Report on San Diego County Water Authority v. Metropolitan Water District of Southern California, et al., San Francisco County Superior Court Case Nos. CPF-10-510830, CPF-12-512466, CPF-14-514004, CPF-16-515282, CPF-16-515391, CGC-17-563350, and CPF-18-516389; the appeals of the 2010 and 2012 actions, Court of Appeal for the First Appellate District Case Nos. A146901, A148266, A161144, and A162168, and California Supreme Court Case No. S243500; the petition for extraordinary writ in the 2010 and 2012 actions, Court of Appeal for the First Appellate District Case No. A155310; the petition for extraordinary writ in the second 2016 action, Court of Appeal for the First Appellate District Case No. A154325 and California Supreme Court Case No. S251025; and the Metropolitan Water District of Southern California v. San Diego County Water Authority cross-complaints in the 2014 action, the first 2016 action, and the 2018 action; and authorize payment to San Diego County Water Authority for Water Stewardship Rate charges under the Exchange Agreement for 2015 to 2017 and statutory interest; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA.
[Conference with legal counsel - existing litigation; to be heard in closed session pursuant to Gov. Code Sections 54956.9(d)(1)]

6. FOLLOW-UP ITEMS

7. FUTURE AGENDA ITEMS

8. ADJOURNMENT

NOTE:

Each agenda item with a committee designation will be considered and a recommendation may be made by one or more committees prior to consideration and final action by the full Board of Directors. The committee designation appears in parenthesis at the end of the description of the agenda item e.g. (E&O, BF&I). Committee agendas may be obtained from the Board Executive Secretary.

Writings relating to open session agenda items distributed to Directors less than 72 hours prior to a regular meeting are available for public inspection at Metropolitan's Headquarters Building and on Metropolitan's Web site <http://www.mwdh2o.com>.

Requests for a disability related modification or accommodation, including auxiliary aids or services, in order to attend or participate in a meeting should be made to the Executive Secretary in advance of the meeting to ensure availability of the requested service or accommodation.



● **Board of Directors**

9/28/2021 Special Board Meeting

5-1

Subject

Adopt resolution authorizing remote teleconference meetings pursuant to the Brown Act Section 54953(e) for meetings of Metropolitan’s legislative bodies for a period of 30 days from September 28, 2021 to October 28, 2021; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA

Executive Summary

On March 17, 2020, Governor Newsom issued Executive Order N-29-20 to, among other things, suspend certain provisions of The Ralph M. Brown Act (“Brown Act”), the California open meetings law, to authorize a local legislative body to hold public meetings via teleconferencing due to COVID-19. The Executive Order expires on September 30, 2021. Governor Newsom recently signed AB 361, which amends the Brown Act to allow legislative bodies to continue to hold a teleconference meeting without complying with the teleconferencing requirements imposed by the Brown Act. To do so, there must be a declared state of emergency and a finding that either: (1) state or local officials have imposed or recommended measures to promote social distancing; or (2) the agency determines that as a result of the emergency, meeting in person would present imminent risks to the health and safety of the attendees.

Details

Background

Earlier this year, in March 2021, this Board voted to express support for AB 361 (Rivas, R. D-Hollister) Open meetings: local agencies: teleconference. This bill clarified the law and codified the intent of the Governor’s Executive Order signed on March 17, 2020, which waived the requirements of having the physical presence of legislative body members or of the public as a condition of participation in, or quorum for, a public meeting. The bill was signed into law on September 17, 2021, effective immediately until its repeal on January 1, 2024. The Governor immediately signed another Executive Order waiving the application of the law until October 1, 2021.

Summary of Amended Section 54953

AB 361 amends the Brown Act’s Government Code Section 54953 to allow a local agency the option to hold teleconference meetings without complying with the teleconferencing requirements of the Brown Act if certain circumstances are met. The special circumstances are found particularly in subsection (e) of Section 54953, and require that the legislative body holds a meeting during a proclaimed state of emergency and:

- (1) that state and local officials have imposed or recommended measures to promote social distancing; or
- (2) the legislative body holds a meeting for the purpose of determining, by majority vote, whether as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees; or
- (3) the legislative body holds a meeting and determines by majority vote, that as a result of the emergency, meeting in person would present imminent risks to the health or safety of the attendees.

If the state of emergency remains active or state or local officials have imposed or recommended measures to promote social distancing, the legislative body must renew the resolution every 30 days, by majority vote, to continue to meet under the special teleconferencing provisions. To renew the determination, the legislative body needs to reconsider the circumstances of the state of emergency and find any of the following circumstances exists: (1) the state of emergency continues to directly impact the ability of members to meet safely in person, or (2) state or local officials continue to impose or recommend measures to promote social distancing.

Holding a meeting under these special circumstances requires compliance with additional safeguards to ensure public access. Metropolitan is prepared to comply with the additional safeguards, which are:

1. All teleconferenced meetings shall be conducted in a manner that protects the statutory and constitutional rights of those appearing before the legislative body.
2. In addition to providing notice and posting the time of the teleconferenced meeting, the agency shall also give notice of the manner by which members of the public may access the meeting and offer public comment.
3. The agenda shall identify and include an opportunity for all persons to attend via a call-in option or an internet-based service option but does not require the agency to provide a physical location for which the public may attend or comment.
4. The agency shall allow members of the public to access the meeting, and the agenda shall include an opportunity for members of the public to address the legislative body directly and to offer comments in real time.
5. In the event of a disruption, which prevents the agency from broadcasting the meeting to members of the public using the call-in option or internet-based service option, or in the event of a disruption within the agency's control, which prevents the public from offering public comments using the call-in option or internet-based service option, the legislative body shall take no further action on items appearing on the meeting agenda until public access to the meeting via the call-in option or internet-based service option is restored.
6. Written or remote public comments must be accepted until the public comment period is formally closed; registration or sign-up to provide or to be recognized to provide public comment can only be closed when the public comment period is formally closed.

Need to Adopt a Resolution and if Necessary, Renew the Resolution Every 30 Days

In order to continue holding committee and board meetings in October remotely and by teleconference as Metropolitan has been doing, it is necessary for this Board to make the determination now that as a result of the ongoing emergency, meeting in person would present imminent risks to the health and safety of the attendees. There are currently no state or local measures in place to promote social distancing. However, the community transmission rates and spread of the COVID-19 Delta variant remain high, both nationally and locally throughout Metropolitan's service area. Additionally, the Centers for Disease Control and Prevention indicate that the Delta variant is highly contagious, more than two times as contagious as previous variants; some data suggests that the Delta variant might cause more severe illness than previous variants; and the Centers for Disease Control and Prevention is recommending that everyone wear a mask in public and in indoor settings. These factors considered together could present imminent risks to the health and safety of the attendees at the meetings of Metropolitan's legislative bodies.

The proposed Board resolution making the determination is provided in **Attachment 1**. If necessary, the Board can renew the resolution pursuant to findings as stated above, every 30 days, at which time a subsequent resolution will be adopted. Because there are not always fourth Tuesday meetings, if the Board adopts the resolution, staff recommends the Board consider renewing the resolution at the regularly scheduled Board meeting in October. If the resolution lapses, the Board can adopt a new resolution to make the initial determinations again.

Policy

Metropolitan Water District Act Section 61: Ordinances, Resolutions and Orders

Metropolitan Water District Administrative Code Section 11104: Delegation of Responsibilities

By Minute Item 52305, dated March 9, 2021, the Board authorized the General Manager to express support for AB 361

California Environmental Quality Act (CEQA)

CEQA determination for Option #1:

The proposed action is not defined as a project under CEQA because it involves continuing administrative activities, such as general policy and procedure making (Section 15378(b)(2) of the State CEQA Guidelines) and organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment (Section 15378(b)(5) of the State CEQA Guidelines).

CEQA determination for Option #2:

None required

Board Options

Option #1

Adopt a resolution authorizing remote teleconference meetings pursuant to the Brown Act Section 54953(e) for meetings of Metropolitan's legislative bodies for a period of 30 days from September 28, 2021 to October 28, 2021

Fiscal Impact: None

Business Analysis: The Metropolitan legislative body meetings can be held via teleconference without having the physical presences of legislative body members or of the public as a condition of participation in, or quorum for, a public meeting.

Option #2

Do not adopt the resolution

Fiscal Impact: None

Business Analysis: The Metropolitan legislative body meetings will be required to comply with the Brown Act requirements for public meetings.

Staff Recommendation

Option #1



 Marcia Scully
 General Counsel

9/24/2021

 Date

Attachment 1 – Resolution Initial Adoption

Ref# bd12685282

THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

RESOLUTION NO. XXXX

**RESOLUTION OF THE BOARD OF DIRECTORS OF
THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA
RELYING ON GOVERNOR NEWSOM’S MARCH 4, 2020 PROCLAMATION OF A
STATE OF EMERGENCY
AND AUTHORIZING REMOTE TELECONFERENCE MEETINGS OF THE
LEGISLATIVE BODIES OF THE METROPOLITAN WATER DISTRICT OF
SOUTHERN CALIFORNIA FOR THE PERIOD OF
30 DAYS FROM SEPTEMBER 28, 2021 TO OCTOBER 28, 2021 PURSUANT TO
BROWN ACT PROVISIONS**

WHEREAS, The Metropolitan Water District of Southern California (“Metropolitan”) is committed to preserving and nurturing public access and participation in meetings of the its legislative bodies; and

WHEREAS, all meetings of Metropolitan’s legislative bodies are open and public, as required by the Ralph M. Brown Act (Cal. Gov’t Code Sections 54950 – 54963), so that any member of the public may attend, participate, and watch the Metropolitan’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 Metropolitan’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 exist in at Metropolitan, specifically, Governor Newsom’s March 4, 2020 Proclamation of A State of Emergency caused by the COVID-19 pandemic; and

WHEREAS, meeting in person would create conditions that would present imminent risks to the health and safety of the attendees due to the fact that that: (1) the community transmission rates

and spread of the COVID-19 Delta variant remain high, both nationally and locally throughout Metropolitan's service area, (2) the Delta variant is highly contagious, more than two times as contagious as previous variants, (4) data suggests that the Delta variant might cause more severe illness than previous variants, and (5) the Centers for Disease Control and Prevention is recommending that everyone wear a mask in public and in indoor settings; and

WHEREAS, the Board of Directors does hereby find that the conditions described above has caused, and will continue to cause, conditions of peril to the safety of persons within Metropolitan that are likely to be beyond the control of services, personnel, equipment, and facilities of Metropolitan; and

WHEREAS, as a consequence of the state of emergency, the Board of Directors does hereby find that the legislative bodies of Metropolitan 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, Metropolitan is providing call-in telephonic access for the public to make comment and to listen; and providing livestreaming of the meetings over the internet to ensure access for the public.

NOW, THEREFORE, the Metropolitan Board of Directors does hereby resolve as follows:

Section 1. Recitals. The Recitals set forth above are true and correct and are incorporated into this Resolution by this reference.

Section 2. Meeting in Person Presents Imminent Risks. The Board hereby proclaims meeting in person would create conditions that would present imminent risks to the health and safety of the attendees due to the fact that: (1) the community transmission rates and spread of the COVID-19 Delta variant remain high, both nationally and locally throughout Metropolitan's service area, (2) the Delta variant is highly contagious, more than two times as contagious as previous variants, (3) data suggests that the Delta variant might cause more severe illness than previous variants, and (4) the Centers for Disease Control and Prevention is recommending that everyone wear a mask in public and in indoor settings.

Section 3. Governor's Proclamation of a State of Emergency. The Board of Directors hereby relies on 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. Remote Teleconference Meetings. The General Manager and legislative bodies of Metropolitan 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. Effective Date of Resolution. This Resolution shall take effect immediately upon its adoption and shall be effective until the earlier of (i) October 28, 2021, or 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 of Metropolitan may continue to teleconference without compliance with paragraph (3) of subdivision (b) of section 54953.

I HEREBY CERTIFY that the foregoing is a full, true, and correct copy of a resolution adopted by the Board of Directors of The Metropolitan Water District of Southern California at its meeting held on September 28, 2021.

Secretary of the Board of Directors of
The Metropolitan Water District
of Southern California