



San Diego County Water Authority

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November 5, 2015

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South Bay Irrigation District

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Valley Center
Municipal Water District

Vista Irrigation District

Yuima
Municipal Water District

OTHER REPRESENTATIVE

County of San Diego

Marcia Scully
Metropolitan Water District of Southern California
P.O. Box 54153
Los Angeles, CA 90054-0153

Re: Board Item 8-8 – Authorize the General Manager to enter into an Option-to-Purchase agreement for future acquisition of property from Delta Wetlands Properties Located in Contra Costa, San Joaquin, and Solano Counties

Dear Ms. Scully:

I am Jim Taylor, currently serving as interim Deputy General Counsel at the San Diego County Water Authority. The purpose of this letter is to express the Water Authority’s serious concern that matters to be discussed in closed session pursuant to Board Item 8-8 will exceed the limits of the cited statutory exception to the open meeting requirements of the Brown Act (Gov. Code Section 54956.8).

Government Code Section 54956.8 permits a local agency to hold a closed session “with its negotiator prior to the purchase, sale, exchange, or lease of real property by or for the local agency to grant authority to its negotiator regarding the price and terms of payment for the purchase, sale, exchange, or lease.” In a recent extensive examination of that code section, the state Attorney General has opined that the code section must be interpreted according to its plain language and to the premise that closed session authorizations are to be construed narrowly, in favor of the public’s right of access to public information. 94 Ops Cal Atty Gen 82 (2011). In light of those considerations, the Attorney General has further opined:

... [W]e conclude that the real-estate-negotiations exception to the open meeting requirements of the Brown Act permits the closed-session discussion of: (1) the amount of consideration that the local agency is willing to pay or accept in exchange for the real property rights to be acquired or transferred in the particular transaction; (2) the form, manner, and timing of how that consideration will be paid; and (3) items that are essential to arriving at the authorized price and payment terms....

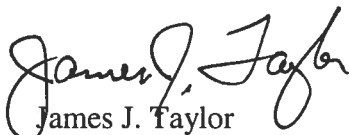
Any discussion outside these parameters would be contrary to the Brown Act requirement for an open and public meeting. The fact that the Board Item contemplates an option to purchase rather than a completed acquisition does not in any way change the analysis or conclusion. The closed session will be conducted pursuant to Government Code Section 54956.8, and its limitation on the scope of discussions applies.

Regarding Board Item 8-8, I am advised that the MWD Board of Directors has never been informed or discussed in open session the purpose of the option to purchase the properties listed. Section 140 of the MWD Act does authorize the district to acquire real property, but with the proviso that the acquisition be "necessary and convenient to the exercise of its powers...." Section 140 and common sense dictate that the Board of Directors be informed of the purpose of an option to purchase prior to a closed session discussion regarding price and terms. As discussed above, the *purpose* of a real property acquisition cannot be presented to the Board in a closed session called pursuant to Section 54956.8, because that is outside the bounds described in the Attorney General opinion.

The Water Authority requests that the board meeting agenda be revised to include an open board meeting presentation and discussion regarding the purpose of the option to purchase the properties prior to the closed session discussion of price and terms. If the purpose for the option to purchase is not first disclosed in open session, the only option board members have is to either violate open meeting laws or authorize price and terms to acquire property without any purpose having been established.

So that I may advise the Water Authority's MWD delegates concerning this matter, I request that you respond to this letter by fax or email by Friday afternoon to let me know whether an open session regarding the purpose of acquiring an option to purchase will precede the closed session discussion of price and terms. My email address is jtaylor@sdewa.org and my fax number is 858-522-6566.

Sincerely,



James J. Taylor
Interim Deputy General Counsel

cc: Water Authority's MWD Delegates