



# San Diego County Water Authority

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May 7, 2016

Randy Record and  
Members of the Board of Directors  
Metropolitan Water District of Southern California  
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Los Angeles, CA 90065-0153

**MEMBER AGENCIES**

- Carlsbad Municipal Water District
  - City of Del Mar
  - City of Escondido
  - City of National City
  - City of Oceanside
  - City of Poway
  - City of San Diego
  - Fallbrook Public Utility District
  - Helix Water District
  - Lakeside Water District
  - Olivenhain Municipal Water District
  - Otay Water District
  - Padre Dam Municipal Water District
  - Camp Pendleton Marine Corps Base
  - Rainbow Municipal Water District
  - Ramona Municipal Water District
  - Rincon del Diablo Municipal Water District
  - San Dieguito Water District
  - Santa Fe Irrigation District
  - South Bay Irrigation District
  - Vallecitos Water District
  - Valley Center Municipal Water District
  - Vista Irrigation District
  - Yuima Municipal Water District
- OTHER REPRESENTATIVE**
- County of San Diego

**RE: Real Property and Asset Management Committee and Board Meeting  
BOARD INFORMATION ITEMS - REQUEST TO CONFIRM BOARD ACTION  
Agenda Item 9-3: Update on purchase of property from Delta Wetlands Properties in Contra Costa, San Joaquin, and Solano Counties**

Chairman Record and Members of the Board,

At the March 8, 2016 board meeting, Chairman Record amended the motion, adopted by the Board, to require that action on the Delta Wetlands Property (Delta Wetlands Property or Property) would be brought back and discussed again so that the Board would have the opportunity to say, if it so determined, "I don't want to go forward" (excerpt of board minutes attached). We want to confirm staff is proceeding in accordance with the motion adopted by the Board, and request action on the above agenda item so that staff may be directed accordingly. We believe this discussion should occur in open session unless specific questions are identified that constitute a lawful basis to adjourn into closed session (price and terms).

Past consideration of this subject at predominantly closed session meetings, coupled with an exceedingly (and we believe, unnecessarily) short escrow period has complicated independent due diligence review of this item; however, public release of the Purchase and Sale Agreement and Joint Escrow Instructions following the March 8 meeting has at least allowed that process to begin to occur. Several critical concerns continue to exist and new concerns have been identified, some of the most important of which are summarized below.

1. Acquisition of the Property is premature: MWD has recently stated publicly a number of possible uses of the Delta Wetlands Property; however, given its stated intention to *not* use the property as a storage project as contemplated by the current owner, the only possible uses are all associated with the California Water Fix (the Project), since MWD has no other independent need to perform habitat mitigation in the Delta. While we understand the enthusiasm of staff and some board members for the Project, the MWD Board has not yet voted whether to support the Project. Similarly, the Water Authority Board has not yet taken any position on the Project, as it awaits vital information regarding the Project's yield and associated cost. Without making any prediction how the MWD or Water Authority boards might ultimately vote on the

Project, we do not believe that it is prudent or even appropriate for MWD to spend \$175,000,000 of MWD ratepayer money to purchase the Property until that vote is taken.

2. MWD should not be underwriting costs or assuming risks that must be shared by all California Water Fix contractors: Even assuming an affirmative Board vote to support the Project, MWD should not be paying 100% of any Project costs that should be shared by all state and federal water contractors. Negotiations have not yet been completed how Project costs will be shared; indeed, the costs have not yet been identified. Under these circumstances, *MWD is sending the wrong message* to suggest that its ratepayers are willing to pay 100% of Project costs. Whether MWD has actually said so or not, this is a rumor that is already widely circulating and may explain why other agencies are not stepping up now to share these costs with MWD. By this action, MWD would be establishing an unsustainable and unlawful precedent, as MWD ratepayers cannot and should not be asked to pay the costs of other water users.

We have previously objected in prior correspondence commenting on MWD's Integrated Water Resources Plan Update 2015 (2015 IRP), to any plan by MWD to pay a disproportionate share of Project costs in a speculative effort to develop a "water market" for Project water. See the Water Authority's January 10, 2016 letter RE Board Memo 8-3: Adopt the 2015 IRP Update at page 5, footnote iii citing the 2015 IRP Technical Report at Attachment 1, page vi. As previously stated, the Water Authority believes that MWD's legal obligation and mission is to provide its own service area and ratepayers with supplemental water, not to develop it for sale to others and or assume water supply costs that must lawfully be paid by other agencies and their ratepayers.

3. There is no money in the budget to pay for the Property and no justification to rush to close escrow before the Project is approved by the MWD Board and cost sharing with other state and federal contractors has been agreed-upon: The cost of acquisition of the Property is not included in the MWD budget, passed just last month - a budget that already projects and relies upon use of reserves to meet operating costs in 2017 and 2018. Thus, staff is not only imposing 100% of this Project cost on MWD ratepayers, it will also stick them with borrowing costs needed to secure funding to pay for the Property.

4. MWD alone will be assuming potentially significant liabilities and third-party risks if it rushes to close escrow before these risks may be properly analyzed and eliminated: The seller, Delta Wetlands Properties, is a party to a 2013 Protest Dismissal and Settlement Agreement that requires the seller to meet certain significant reclamation obligations, even if the previously contemplated water storage project is not implemented. The Settlement Agreement provides that the seller's obligations under the Agreement run with the land and that Delta Wetlands Properties may not sell the Property without requiring the proposed transferee to execute the settlement agreement and independently agree to be obligated by its terms. While we are not purporting to provide a legal opinion on how these provisions of the Settlement Agreement might be interpreted by a court, they certainly magnify the uncertainty, risk, and potentially significant liability that MWD may incur by purchasing the Property. It is unfortunate that MWD

chose to make such a large escrow deposit under these circumstances, but loss of the escrow deposit pales by comparison to the amount of the sales price and potential liabilities MWD alone is incurring in rushing to close this escrow for reasons that are not apparent.

MWD will not be prejudiced by taking the time to first approve the Project and negotiate cost sharing with the other state and federal contractors. On the other hand, MWD ratepayers will be greatly benefitted if those steps occur in an orderly fashion prior to acquisition of this Property. We look forward to a thoughtful discussion by the Board of these questions at next week's board meeting.

Sincerely,



Michael T. Hogan  
Director



Keith Lewinger  
Director



Fern Steiner  
Director



Yen C. Tu  
Director

Attachment: Excerpt of March 8, 2016 MWD Board Discussion -- Delta Islands

**Transcript**  
**MWD Board Meeting**  
**March 8, 2016**  
**MWD Union Station Headquarters**  
[http://mwdh2o.granicus.com/MediaPlayer.php?view\\_id=12&clip\\_id=5272](http://mwdh2o.granicus.com/MediaPlayer.php?view_id=12&clip_id=5272)

**Chair Record (01:19:23):** Thank you. 8-6. I'll call on Committee Chair Camacho. I'll remind everyone that if we want to talk about terms, we'll need to go into Closed Session. Chair Camacho.

**Camacho:** Ok. Mr. Chairman, I'd like to report the following action taken today in, in Real Property and Asset Management Committee. In Closed Session, the Committee conferred with the Real Property negotiators regarding Item 8-6, and by a vote of eight to two, voted to recommend the Board adopt Option 1 authorizing General Manager to pursue property from Delta Wetlands Properties on the terms set forth in the confidential Board Letter. And I so move.

**Record:** I'd like to amend the motion to say that if we vote to approve that we would come back at Executive Committee meeting on April 26, on that day for a Special Board Meeting to have the ability to take another bite at it if we so choose. Is that a...

**Scully:** *Unintelligible.*

**Camacho:** That's a...

**Scully:** *Unintelligible.*

**Camacho:** ...is that a friendly amendment to the motion?

**Record:** On that day. Is that acceptable?

**Camacho:** Absolutely. Yes.

**Record:** Director Lewinger?

**Lewinger:** I don't understand what "taking another bite means." My understanding of the offer is that we would enter into...I hope I'm...I don't think I'm...I don't know if I'm releasing Closed Session stuff by talking about it...Could...Can I ...Is it okay to talk about?

**Scully:** I'm sorry.

**Lewinger:** I'll start and stop me if I go over the line.

**Scully:** Okay. I apologize.

**Lewinger:** My understanding of the arrangement is that we enter into a 60-day escrow.

**Scully:** That's correct.

**Lewinger:** And there are only certain conditions that allowing us to get out of that escrow.

**Scully:** There are certain conditions allowing us to get out of the escrow without forfeiting the payment.

**Lewinger:** Without...without...right. And so...

**Scully:** The Earnest money payment.

**Lewinger:** The earnest money payment. Short of finding one of those issues and identifying that to stop the deal, I don't understand what meeting in 60 days could offer us if we haven't found one of those issues.

**Record:** Well, let me explain... And I'll, I'll wait to be tapped on the shoulder as well if I go too far. But my intention...

**Member of the public:** It's a public hearing. Speak openly.

**Record:** ...intention is that if we decide for whatever reason to not go forward, we would lose what we've put into escrow, but we would still have the ability to not go forward. Do you understand the distinction?

**Lewinger:** I, I think I do. And is, is that the offer that's on the table from the seller? And then I have one other question, Mr. Chairman, I guess.

**Record:** Okay.

**Lewinger:** Similar line of...similar line. Jeff, my understanding is the offer for this, this land has been offered for sale for some time, quite a while.

**Kightlinger:** Actually, that's not accurate. It's never been on the open market. They've owned it for some time.

**Lewinger:** Okay.

**Kightlinger:** And they pursued a project on it – a reservoir storage-style project for some time. But they have not put it on the market.

**Lewinger:** And, and, if, if we don't act on this motion today, and took some time to deliberate and answer a lot of questions that we raised in Closed Session, do you feel the deal would still be around in 60 to 90 days?

**Kightlinger:** I do not know. They will still likely own the property, though.

**Lewinger:** You don't feel that they will want to sell it in 60 to 90 days?

**Kightlinger:** I do not know.

**Lewinger:** Thank you.

**Record:** Director Paskett.

**Paskett:** Is there an amendment to the motion?

**Record:** Well, if we approve this, or before I amended it, the General Manager would have the ability to close this deal within 60 days and the only reason not to was the discovery of something during Phase I that wouldn't allow us to go forward. What I'm saying is, on April 26 at a Special Board meeting, we can discuss this again. We don't have to decide on a particular reason, but we would have the ability to say, "I don't want to go forward." Obviously, we would lose what we have deposited into escrow, but we would still have the option of not going forward.

**Paskett:** So that, and I realize that the rules are such that certain things are Closed Session, and so you'll tap me on the shoulder, too, from where you sit. Mr. Chair, as, as I had mentioned to you previously, my discomfort is the timeframe. We're looking at a 60-day escrow and we are looking at a very unusual purchase with many different moving parts. And, in the most simplest of property purchases, sometimes 60 days is not enough to address risks and mitigation. And so postponing this decision to allow the Board members to fully evaluate those risks, and the costs associated with those risks, and all the impacts to our agency as well as the region, feels like a better option today rather than voting to move forward to open escrow, even if the only downside is losing the amount of money that would go into escrow to hold it. Because the property owner has owned it for 30 years or more, and because it is an unusual market, it feels like this Board would benefit from more time to consider what was presented today to make a, a fully-informed decision. So I would ask for a substitute motion to put the matter over to at least the next Board meeting to give us time to consider all the very good information that staff presented today.

**Record:** there's a substitute motion to postpone, with a second. Let's vote. I see it.

**Morris:** Chairman Record, the substitute motion has failed for the lack of reaching 50 percent.

**Record:** We're back to the original amended motion. Director McKenney.

**McKenney:** Thank you, Mr. Chair. I'm supportive of approving the recommended action. I'm, I'm also supportive of your amendment, but I wonder if it's functionally any different not to just say that that second look would be at the Regular Board meeting next month rather than a Special Board meeting.

**Record:** Yeah, I mean, there's a number of ways to do it. Just trying to give some more, a little bit more of an option.

**Scully:** You know what ... and ... Brian's in the office, in the audience, he can correct me if I'm wrong. My understanding is that the escrow would be scheduled to close the day before the Board meeting in April. Of May.

**Record:** No, May.

**Scully:** Excuse me. In May.

**Record:** But you're talking about Board Meeting in April.

**Kightlinger:** He's talking about April.

**Scully:** Oh, April?

~ Unintelligible comments and laughter ~

**Record:** Any other discussion?

**Record:** I think we had a very good discussion Committee today. Director Barbre?

**Barbre:** Mr. Chairman, it's my understanding your motion would give us the maximum amount of time without having to set a Special Meeting to see what we discover when we go to Phase I. So, I, I think it's, it's more than reasonable to support your motion. This is a, this is a good project for all of us. It's, it's a good purchase for us long-term. And this is Met kind of laying the foundation for the future. So I support your motion.

**Record:** Director Ramos.

**Ramos:** Yes, I speak into, in support of your motion and look forward to receiving more information so that we feel that we've done our due diligence. I think there's a few more questions that people would like cleared. In addition, I would just like to address the Public and say that there was a lot of information presented at Committee. Take a look at the tape and you'll see all the different reasons why we may be entering into this agreement. Thank you.

**Record:** Anyone else? Then let's vote.

**Morris:** Chairman Record, the amended motion carries.