



San Diego County Water Authority

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February 12, 2017

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

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

RE: Board Item 8-5 -- Adopt CEQA determination and authorize entering into an agreement to lease Metropolitan property to the Semitropic Water Storage District. (RP&AM) ADDED [Conference with real property negotiators; agency negotiators: Lilly L. Shraibati and Bryan Otake; negotiating party: Semitropic Water Storage District; for portions of certain real property known as Webb Tract, located in Contra Costa County, California, and identified as Contra Costa County Assessor's Parcel Nos. 026-060-003, 026-060-007, 026-060-008, 026-060-015, 026-060-016, 026-060-017, 026-060-018, 026-060-019, 026-070-001, 026-070-006, 026-070-010, 026-070-011, 026-070-012, 026-070-013, 026-080-004, 026-080-005, 026-080-006, 026-080-007, 026-080-008, 026-080-009, and for portions of certain real property known as Bouldin Island, located in San Joaquin County, California, and identified as San Joaquin County Assessor's Parcel Nos. 069-030-35, 069-030-36, 069-030-37, 069-030-38, 069-030-39; 069-100-01, and 069-100-02; under negotiation: price and terms of payment; to be heard in closed session pursuant to Gov. Code Section 54956.8]

Dear Ms. Scully:

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 8-5 will, once again, 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 negotiators 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:

OTHER REPRESENTATIVE

County of San Diego

...[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 closed session to consider Board Item 8-5 to be conducted pursuant to Government Code Section 54956.8, is subject to these limitations.

Regarding Board Item 8-5, involving a proposed lease of the delta islands, MWD needs to disclose to the public and ratepayers what is really going on regarding these islands. First, without any environmental review and with no stated purpose, MWD paid \$175 million for land located at the other end of the state, completely outside of its service area. MWD had to borrow money to complete the purchase of this sub-par agricultural land that is a high liability risk due to uncertain levees, when there was absolutely no need to do so, because if the land were ever required for a public project it could be taken in eminent domain. In such a public proceeding, where fair value is paid, neutral MAI appraisers examine the land and determine value. But MWD purposefully avoided any such neutral third-party valuation and refused not only to do any appraisal, but also purposefully agreed in the sales agreement that the seller could actually hide all its appraisals from MWD. While MWD has admitted that it did not conduct any appraisal when it purchased the delta islands, staff told the board and public that it would come back this month, in February 2017, with information about the valuation of the property and how MWD intends to use it.ⁱ

Now, rather than coming back with this information as promised, MWD is involved in another undocumented, unplanned real property transaction with these islands via some form of lease arrangement, all to be considered, once again, in closed session. But the *purpose* of this lease transaction cannot be presented to the Board in a closed session called under Section 54956.8, because that is outside the bounds described in the Attorney General opinion.

Accordingly, the Water Authority requests that the board meeting agenda be revised to include an open session meeting presentation to present the information it promised to provide earlier, including the ex post facto property valuation and identification of the purpose for which MWD acquired the property. MWD must also explain in an open board meeting the purpose of a proposed lease of the property to the Semitropic Water Storage District. If this information 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 of a lease without any purpose having been established for MWD's acquisition and now, lease of the real property.

MWD is a public agency, entrusted with public funds, not a private investment firm with authority to bankroll speculative land deals. This is a matter of great public interest, involving the expenditure of a very substantial amount of ratepayer money. In the interest of transparency and good government, we hope you will agree to provide the requested information in public session.

Sincerely,

/s/

Mark J. Hattam
General Counsel

cc: Jeff Kightlinger, MWD General Manager
MWD Board of Directors

ⁱ A transcript of the November 8, 2016 Real Property and Asset Management Committee is attached, in which staff said that a "full report" would be made at this February meeting of the Real Property and Asset Management Committee.

**Metropolitan Water District of Southern California
Real Property and Asset Management Committee
November 8, 2016**

http://mwdh2o.granicus.com/MediaPlayer.php?view_id=12&clip_id=5738

Lewinger (37:23): Thank you Mr. Chairman. Director Steiner couldn't be here today and she asked me to follow up on a question that she raised at the Bay-Delta committee meeting, where she asked for any appraisals that have been done on the purchase of the Delta Islands and Manager Kightlinger reported that there would be a report at the Real Property Committee and he would send us whatever information we have on the appraisals to everybody. I guess just a simple question, do we, did we have an independent appraisal done on the Delta islands before we purchased them?

Shraibati: Not prior to the purchase; however, we are initiating those appraisals now.

Lewinger: So we did not have independent appraisal prior to the purchase?

Shraibati: Correct.

Lewinger: So, could somebody please explain to me how that comports with the Administrative code?

Kightlinger: This isn't on the agenda? So we can't get into the substance of it. There will be a full report on the Islands...

Shraibati: Right, I, I mentioned that I think last month that I was planning on bringing a full report on all Bay-Delta activities with Real Property in February.

Lewinger: Okay, so we can't, so this item is not on the agenda, so we can't discuss that section 8221 of the Administrative Code actually requires an independent audit prior to this Board purchasing land more than \$500,000, is that correct?

Kightlinger: Yes

Lewinger: Can we please have that specific issue agendaized for discussion at the next meeting?

Camacho: We're going to do that, are we doing in February?

Shraibati: February. Yeah.

Lewinger: I don't know whether that belongs in Finance and Admin or Legal or this committee but it doesn't seem like we follow the Administrative Code.

Camacho: And I believe that the information, sorry Jeff, being requested is being complied now and they are going through the process, so will be on this, plan to be on the agenda for February 2017.

Lewinger: February?

Shraibati: Yes

Lewinger: Can we, do we have to wait til February to talk about whether or not we follow the Administrative Code?

Kightlinger: We don't need a whole item to talk about the Admin Code if we're gonna give you a meaningful report on the islands with all the information, it'll be there. We can certainly send you a one-line email that shows we complied with everything.

Lewinger: Thank you Mr. Chairman.