



THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

Office of the General Counsel

February 27, 2017

Mark Hattam, Esq.
General Counsel
San Diego County Water Authority
4677 Overland Avenue
San Diego, CA 92123-1233

Re: Your Letter Dated February 21, 2017 Regarding Board Item 8-5 February 2017

Dear Mark:

This responds to your February 21, 2017 letter to me (Attachment 1), which continues the dialogue initiated by you in your February 12, 2017 letter to me, to which I responded on February 14, 2017 (collectively, Attachment 2).

Your February 12 letter expressed SDCWA's concern that matters to be discussed at Metropolitan's February 14 Real Property and Asset Management Committee meeting "*will, once again, exceed the limits of the cited statutory exception to the open meeting requirements of the Brown Act.*" This statement can best be characterized as an assertion, not an implication or innuendo, of a purported fact that Metropolitan had previously violated the Brown Act and was about to do so again.

You relied in part on the fact that Metropolitan did not separately notice Board Item 8-5 as an open session item and a closed session item. SDCWA is aware that Metropolitan does not include dual notices of open and closed session items on its agendas. There has been prior correspondence between Metropolitan and SDCWA on this issue (Attachment 3). The Brown Act does not require such a dual notice.

The remaining substance of your February 12 and 21 letters express opinions regarding the substantive actions taken by Metropolitan's Board and the level of information available to the public. None of these items are either relevant to or evidence of prior or potential violations of the Brown Act by Metropolitan with regard to discussion in closed session.

Mark Hattam, Esq.

February 27, 2017

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I appreciate our working relationship. Through candid and cordial discussion, we have been able to resolve disputes between our respective clients. I hope to continue that relationship going forward and, as you have requested of me, that you will avoid asserting -- without any evidence -- a lack of compliance with legal or ethical duties by Metropolitan.

Sincerely,



Marcia Scully

Attachments

cc: SDCWA Board of Directors
Metropolitan Water District Board of Directors

Attachment 1



San Diego County Water Authority

4677 Overland Avenue • San Diego, California 92123-1233
(858) 522-6600 FAX (858) 522-6568 www.sdcwa.org

February 21, 2017

Via Federal Express and Email

Marcia Scully, General Counsel
Metropolitan Water District of Southern California
700 N. Alameda Street
Los Angeles, CA 90012-2944

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

Comp Pendleton
Marine Corps Base

Rainbow
Municipal Water District

Romona
Municipal Water District

Rincon del Diabla
Municipal Water District

San Dieguito Water District

Santa Fe Irrigation District

South Bay Irrigation District

Vallecitos Water District

Valley Center
Municipal Water District

Visita Irrigation District

Yuima
Municipal Water District

OTHER REPRESENTATIVE

County of San Diego

RE: MWD Board Item 8-5 February 2017

Dear Ms. Scully:

This letter responds to your letter of February 14, 2017. Your letter took issue with the points I raised in my February 12, 2017, letter regarding MWD Board Item 8-5 (February 15, 2017 meeting). Your letter then also makes a slightly veiled assertion that perhaps I am unlawfully privy to the content of MWD closed sessions via some sort of theoretical improper disclosures by my directors who serve on MWD's Board. Though I appreciate your taking the time to respond promptly to my letter, your arguments are incorrect.

First, as to the substance of my letter and your response, we noted that there was an item (8-5 in the Real Property and Asset Management Committee) that was noticed for closed session in regards to the Delta Islands. The agenda noted a possible lease with Semitropic Water Storage District. However, there was no similar open session on the agenda where the public could be apprised of what the exact purpose was of any proposed new lease. Your letter basically contends that this was set to be "addressed separately in open session. It is on the agenda as Committee Item 6a – Update on Delta Islands." This is a useful example of what the Water Authority and other concerned citizens have been complaining about regarding MWD's lack of providing explanatory materials ahead of time so that its Board, member agencies, and the public can fully understand what is being considered. Item 6a is a generic PowerPoint about the Delta Islands that has a single page referencing a current Semitropic lease, with no explanation or tie-in to the later closed session item. I ask that you compare item 7-2 on that same Committee's agenda, which regards a different lease. I have attached, for convenience sake, as Exhibit "A," a copy of the detailed Board memo that accompanied this item 7-2, thus providing the public advance knowledge about this agenda item. You will see that MWD explained precisely what was occurring with that lease. A similar advance-notice item for the Semitropic lease (absent price/negotiation information to be addressed in closed session) would have been helpful in avoiding any confusion.

Unfortunately, MWD has fallen into the bad habit of often failing to provide details ahead of Board meetings as to what MWD is going to consider at those meetings, with no staff memos on many noticed items. It might have been the case that if MWD had fully explained the purpose of the Semitropic lease ahead of time as foundation for open and closed session items, we would have had no objection.

A public agency providing a safe and reliable water supply to the San Diego region

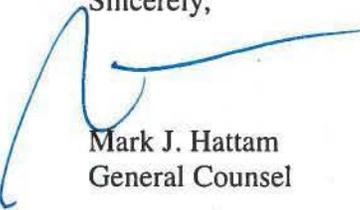
Second, your innuendo about my supposed knowledge of the content of MWD closed sessions unfairly impugns my integrity and that of the Water Authority MWD delegates. I am not privy to information from your closed sessions, and my directors who also sit on MWD's Board are well aware of their duties of closed session confidentiality in that role, and perform their duties lawfully. The basis for my statement about MWD again not being forthcoming about the Delta Islands was not based on closed session information, but based on MWD's actual actions last year in buying the properties. Obviously, when a public agency enters a purchase agreement and the document thus becomes public, one can see the actual result of the prior closed sessions. For example, though I have no idea what specific information MWD discussed in closed session, I was very surprised to see that, in the actual signed public contract buying the Delta Islands that MWD's Board approved, MWD had agreed to allow the Seller to hide all its appraisals from MWD (emphases added):

5.2 Promptly after the execution and delivery of this Agreement, Seller shall conduct such examination as Seller deems appropriate to identify and segregate from Seller's files those Buyer Identified Files that contain information that is privileged, proprietary or confidential (which shall include, without limitation, internal memoranda and appraisals) (collectively, the "Confidential Documents").

This, coupled with the fact that MWD admitted in Public Records Act responses to me that it never performed a single appraisal for such a large expenditure of public funds, was shocking, because it became evident in "putting 2 + 2 together" that MWD intentionally avoided any knowledge that it could gain from MAI appraisals (declining to see Seller's appraisals, and refusing to do any appraisal itself). None of this implicates any Brown Act or closed session breaches of duty by me or Water Authority delegates, but simply follows from my reasonable deductions from the later-disclosed public facts.

In any event, I realize that as with many other issues between our agencies, we will just have to "agree to disagree." However, I suggest that in the future any innuendo about breaches of ethical duties, backed up with zero evidence of anything, be avoided.

Sincerely,



Mark J. Hattam
General Counsel

Attachment:

MWD Board Action Memo Item 7-2 Real Property and Asset Management Committee (2/14/2017)

cc: Water Authority Board of Directors
MWD Board of Directors
Maureen Stapleton, Water Authority General Manager
Jeffrey Kightlinger, MWD General Manager



THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

BOARD
ACTION

● **Board of Directors**
Real Property and Asset Management Committee

2/14/2017 Board Meeting

7-2

Subject

Adopt CEQA determination and authorize a long-term ground lease to New Cingular Wireless, PCS, LLC at Lake Mathews, county of Riverside

Executive Summary

Authorize a long-term ground lease to New Cingular Wireless, PCS, LLC for a telecommunications equipment site in the unincorporated area of Lake Mathews, county of Riverside

Details

Staff is seeking board approval to enter into a 15-year telecommunications lease (5-year initial term and two 5-year renewal options) with New Cingular Wireless, PCS, LLC on Metropolitan-owned property in the unincorporated area of Lake Mathews, county of Riverside (**Attachment 1**). An independent appraisal has established fair market rent at \$24,600 for the first year. The fair market rent will be subject to annual escalations of four percent. A one-time processing fee of \$2,500 will also be charged. The agreement will comply with Metropolitan's standard leasing terms and conditions, including retaining Metropolitan's paramount right to use the property. Staff's evaluation has determined that this agreement will not interfere with Metropolitan's water operations. Design and construction of planned improvements for this property will be subject to Metropolitan's review and written approval. Board authorization of this agreement is required, given that the real property interest to be conveyed exceeds five years.

Policy

Metropolitan Water District Administrative Code Section 8230: Grants of Real Property Interests

Metropolitan Water District Administrative Code Section 8231: Appraisal of Real Property Interests

Metropolitan Water District Administrative Code Section 8232: Terms and Conditions of Management Documents

Fair Market Value Policy adopted by the Board on August 11, 2011

California Environmental Quality Act (CEQA)

CEQA determination for Option #1:

Pursuant to the provisions of CEQA and the State CEQA Guidelines, the county of Riverside, acting as the Lead Agency, approved the project and adopted the Wireless Telecommunications Facility PP 25255 / Environmental Assessment 42565 in September 2016, which includes an Initial Study, mitigation, and measures to ensure compliance with the mitigation as a condition of approval of the project (EA). A Notice of Determination was filed on September 12, 2016. Metropolitan, as a Responsible Agency under CEQA, is required to review and consider the information in the EA for the project and adopt the Lead Agency's findings prior to approval of the terms and conditions for the proposed long-term lease agreement. The environmental documentation is in **Attachment 2**.

The CEQA determination is: Review and consider the information provided in the adopted 2016 EA and adopt the Lead Agency's findings related to the proposed action.

CEQA determination for Option #2:

None required

Board Options

Option #1

Adopt the CEQA determination to review and consider the information provided in the 2016 EA and adopt the Lead Agency's findings related to the proposed action, and

Authorize the long-term ground lease to New Cingular Wireless, PCS, LLC.

Fiscal Impact: Metropolitan will receive \$24,600 for the initial annual rent payment, with a four percent annual rent escalation, in addition to a one-time \$2,500 processing fee.

Business Analysis: Allow Metropolitan to generate revenue and defray costs associated with weed, trash, and debris abatement

Option #2

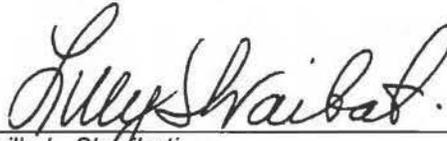
Take no action.

Fiscal Impact: Forgo opportunity to generate revenue

Business Analysis: Land would remain vacant and would not produce revenue nor decrease maintenance expenses for Metropolitan.

Staff Recommendation

Option #1



Lilly L. Shraibati
Manager, Real Property Group

1/30/2017
Date



Jeffrey Kightlinger
General Manager

2/1/2017
Date

Attachment 1 – Location and Site Maps

Attachment 2 – Wireless Telecommunications Environmental Documentation

Ref# rpdm12643953

Location and Site Maps



Location and Site Maps





THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA
700 N. Alameda Street, Los Angeles, California 90012

2/14/2017 Board Meeting

Board Letter # 7-2

**Adopt CEQA determination and authorize a long-term ground lease to New Cingular Wireless,
PCS, LLC at Lake Mathews, county of Riverside**

**Attachment 2:
Wireless Telecommunications Environmental Documentation**

The environmental documentation attachment is not included

You may review these documents on our website at:
<http://mwdh2o.com/WhoWeAre/Board/Board-Meeting>

OR

By contacting Metropolitan's Board Executive Secretary at: (213) 217-6291
or via email at DL-BoardSupportTeam@mwdh2o.com

Attachment 2



San Diego County Water Authority

4677 Overland Avenue • San Diego, California 92123-1233
(858) 522-6600 FAX (858) 522-6568 www.sdcwa.org

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
 - Vailacitos Water District
 - Valley Center Municipal Water District
 - Vista Irrigation District
 - Yuima Municipal Water District
- OTHER REPRESENTATIVE**
- County of San Diego

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:

...[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.¹

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.



THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

Office of the General Counsel

Via E-mail and U.S. Mail

February 14, 2017

Mark J. Hattam, Esq.
General Counsel
San Diego County Water Authority
4677 Overland Avenue
San Diego, CA 92123-1233

Re: Board Item 8-5 February 2017

Dear Mark:

Your February 12, 2017 letter to me regarding Board Item 8-5, a proposed lease of a portion of Metropolitan's real property in the Bay-Delta to Semitropic Water Storage District asserts that, as part of this item, Metropolitan is required to re-visit and provide additional information regarding the purchase of the Delta properties including a discussion of the value of the property and potential or proposed use of all of the Delta Properties.

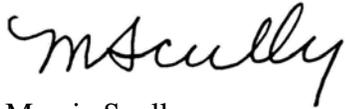
There were nine noticed public meetings relating to the purchase of the Delta properties prior to and including the March 8, 2016 meeting at which the Board approved the purchase. A number of potential uses for the Delta Properties were discussed in open session. There is no immediate intent to change the existing land uses.

The purchase of the Delta properties was complete when escrow closed in July 2016. Subsequent to the close of escrow, SDCWA directors have requested additional information regarding the value of and potential uses of the entirety of the property. Board Item 8-5 does not address these issues. It is limited to authorization to continue leasing a portion of property to a pre-existing tenant. The closed session is specifically to discuss the proposed price and terms of the lease, as authorized by the Brown Act. The questions relating to the purchase price and potential uses of the property are not a part of Item 8-5 and will be addressed separately in open session. **It is on the agenda as Committee Item 6a. – Update on Delta Islands.** You assert in your letter a *"serious concern"* that Metropolitan will *"once again, exceed the limits of the cited statutory exception to the open meeting requirements of the Brown Act."* Your letter does not explain the basis for your statement. The SDCWA has not formally challenged the legality or

Mark J. Hattam, Esq.
February 14, 2017
Page 2

appropriateness of prior discussions in closed session. Since you are not an authorized attendee at closed session meetings, and, further, unless the SDCWA has asked you to take legal action with regard to a closed session meeting, any discussion with you by the SDCWA delegates to Metropolitan's Board revealing the substance of discussions in closed session would violate both the Brown Act and the ethics provisions regarding confidential information in Metropolitan's Administrative Code; the basis of your statement is unclear. The confidential board letter that provides directors (only) with the information relating to the proposed lease that is the subject of Board Item 8-5 is subject to the same requirements of confidentiality.

Very truly yours,

A handwritten signature in black ink that reads "mscully". The signature is written in a cursive, lowercase style.

Marcia Scully
General Counsel

Attachment

cc: Metropolitan Board of Directors
SDCWA Board of Directors



AM Committee

M. Camacho, Chair
G. Dake, Vice Chair
P. Beard
D. Dear
L. Dick
M. Hogan
G. Peterson
M. Ramos
R. Wunderlich

REVISION 2

**Real Property and Asset
Management Committee**

Meeting with Board of Directors*

February 14, 2017

10:00 a.m. -- Room 2-456

Tuesday, February 14, 2017 Meeting Schedule		
9:00 a.m.	Rm. 2-145	L&C
10:00 a.m.	Rm. 2-456	RP&AM
11:00 a.m.	Rm. 2-145	OP&T
12:00 p.m.	Board Room	Board Meeting

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

* The Metropolitan Water District's Real Property and Asset Management Committee meeting is noticed as a joint meeting with the Board of Directors for the purpose of compliance with the Brown Act. Members of the Board who are not assigned to the Real Property and Asset Management Committee may attend and participate as members of the Board, whether or not a quorum of the Board is present. In order to preserve the function of the committee as advisory to the Board, members of the Board who are not assigned to the Real Property and Asset Management Committee will not vote on matters before the Real Property and Asset Management Committee.

1. **Opportunity for members of the public to address the committee on matters within the committee's jurisdiction (As required by Gov. Code Section 54954.3(a))**
2. **Approval of the Minutes of the meeting of the Real Property and Asset Management Committee held December 13, 2016**
3. **CONSENT CALENDAR ITEMS – ACTION**

7-2 Adopt CEQA determination and authorize a long-term ground lease to New Cingular Wireless, PCS, LLC at Lake Mathews, County of Riverside. (RP&AM)

ADDED

Recommendation:

Option #1:

Adopt the CEQA determination to review and consider the information provided in the 2016 EA and adopt the Lead Agency's findings related to the proposed action, and

Authorize the long-term ground lease to New Cingular Wireless, PCS, LLC.

4. OTHER BOARD ITEMS – ACTION

ADDED

8-5

Adopt CEQA determination and authorize entering into an agreement to lease Metropolitan property to the Semitropic Water Storage District. (RP&AM)

[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]

Recommendation:

Option #1:

Adopt the CEQA determination that the proposed action is not defined as a project, is categorically exempt, and is not subject to CEQA and

Authorize staff to enter into a new lease agreement with Semitropic Water Storage District according to the price and terms recommended in the board letter and in a form approved by the General Counsel.

5. BOARD INFORMATION ITEMS

None

6. COMMITTEE ITEMS

- a. Update on Delta Islands

7. MANAGEMENT REPORT

- a. Real Property Management Manager's Report

8. FOLLOW-UP ITEMS

None

9. FUTURE AGENDA ITEMS

10. ADJOURNMENT

NOTE: At the discretion of the committee, all items appearing on this agenda, whether or not expressly listed for action, may be deliberated and may be subject to action by the committee.

This committee reviews items and makes a recommendation for final action to the full Board of Directors. Final action will be taken by the Board of Directors. Agendas for the meeting of the Board of Directors may be obtained from the Board Executive Secretary. This committee will not take any final action that is binding on the Board, even when a quorum of the Board is present.

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 Board Executive Secretary in advance of the meeting to ensure availability of the requested service or accommodation.

Attachment 3



THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

Office of the General Counsel

December 7, 2015

Director Michael T. Hogan
Director Keith Lewinger
Director Fern Steiner
Director Yen C. Tu
San Diego County Water Authority
4677 Overland Avenue
San Diego, CA 92123

Re: Your letter dated November 30, 2015 regarding Board Agenda Item 8-7

Dear Directors:

Thank you for your letter dated November 30 regarding Board Agenda Item 8-7. Chairman Record asked that I respond.

This month's Agenda Item 8-7 involves potential liability for cleanup costs of a Superfund Site. There will be an open session presentation describing Metropolitan's involvement with the site. The law allows the Board to confer with, and receive advice from, its lawyers in closed session in matters involving pending or potential litigation. The public has an interest in knowing about the litigation risks of public agencies; however, the law recognizes the higher public purpose in encouraging frank discussions between public agencies and their lawyers. In other words, public agencies are not deprived of the attorney-client privilege because a lawsuit might present a risk of loss of public funds. In the case at hand, this matter involves risk that litigation may be filed against Metropolitan by EPA. It is imperative that the Board hear and discuss its options in a confidential arena in order to allow it to make the best decision possible.

Your letter suggests that the agenda does not provide the public with sufficient notice that there will be an open session discussion of Agenda Item 8-7. The same issue was raised last month by the Water Authority's Interim General Counsel Jim Taylor regarding Agenda Item 8-8 involving a closed session to discuss the price and terms of a real estate transaction. Mr. Taylor did not provide Metropolitan with any legal authority requiring Metropolitan to list the same item of business twice on an agenda -- once for closed session and once for open session. Nor did my research identify any such requirement.

The Brown Act requires all meetings of legislative bodies to be open, except when otherwise allowed by law. The meeting agenda must include a brief general description of each item of

business to be transacted or discussed, and describe the legal basis for any closed session. The posted agenda meets these requirements, as well as the spirit, of the Brown Act. In fact, Metropolitan has been using the same format for its agendas, without objection, for many years.

Your letter requests that the subject of closed session agenda items be addressed by the next Legal and Claims Committee and for the Board to consider and establish appropriate agenda protocols. The Chairman has proposed that this subject is more appropriately considered by the Executive Committee, which is tasked with approval of the Board and committee agendas. Your letter also suggests that a publicly available report similar to the Board report dated May 17, 2000 related to the Superfund Site, should be provided in connection with Agenda Item 8-7. There is a significant difference. The 2000 memorandum provided the Board with a report on action that had been taken by the General Manager within his authority to settle claims. No Board action was required. Agenda Item 8-7 involves a Board decision to approve settlement terms that are not final. The Board is entitled to have a closed session discussion with its lawyers before it makes that decision.

Thank you for providing your concerns and suggestions regarding Agenda Item 8-7.

Very Truly Yours,



Joseph Vanderhorst
Assistant General Counsel