

MONTEREY COUNTY

OFFICE OF THE DISTRICT ATTORNEY
JEANNINE M. PACIONI, DISTRICT ATTORNEY



February 24, 2022 (*Note: Actual date was April 4, 2023*)

Via Email Only

Amber Maltbie
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Dear Ms. Maltbie,

District Attorney Jeannine Pacioni assigned me to review your letter dated March 31, 2023, alleging that the Monterey Peninsula Water Management District (MPWMD) violated the Brown Act at its March 20 meeting. I have carefully reviewed your letter detailing your allegations as well as the MPWMD Agenda for the March 20 meeting, accompanying documents (concurrently noticed), and video of the meeting.

I respectfully disagree that the MPWMD Board violated the Brown Act in considering or acting to approve item 14.b. Specifically, I disagree with your assertion that, “At no point did the Board discuss or make a determination that there was a need for immediate action or that the need for immediate action arose only after the agenda had been posted.”

On page 2 of the March 20 agenda appears the following: “ADDITIONS AND CORRECTIONS TO THE AGENDA – The General Manager will announce agenda corrections and proposed additions, which may be acted on by the Board as provided in Sections [sic] 54954.2 of the California Government Code.”

At 1:15:13 on the video, the chair inquired whether there were any additions or corrections to the agenda. The clerk answered in the affirmative, stating that “due to the need for immediate consideration by the Board for matters that arose after the posting of the published agenda and as provided by Government Code section 54954.2 . . . the Board is being asked to make the following addition . . .” The clerk went on to describe a request from Director Karen Paul to appear remotely pursuant to Government Code section 54954.2(b)(4). General Manager Dave Stoldt then interjected that there was another addition, Action Item 14.b, “and this would be to authorize expenditure of up to \$60,000 for an update to the rate study for Measure J by the Raftelis financial consulting team.” A motion and a second to approve both items immediately followed, and the Board took a roll call vote which passed unanimously.

The Board therefore complied with Government Code section 54954.2:

(b) Notwithstanding subdivision (a), the legislative body may take action on items of business not appearing on the posted agenda under any of the conditions stated below. Prior to discussing any item pursuant to this subdivision, the legislative body shall publicly identify the item.

(2) Upon a determination by a two-thirds vote of the members of the legislative body present at the meeting, or, if less than two-thirds of the members are present, a unanimous vote of those members present, that there is a need to take immediate action and that the need for action came to the attention of the local agency subsequent to the agenda being posted as specified in subdivision (a).

The Board did determine there was an immediate need to act, and that the need arose after the posting of the agenda, as reflected by the clerk's statement and the motion to act on both items with a unanimous vote to approve. According to the Attorney General's 2003 publication, [The Brown Act, Open Meetings for Local Legislative Bodies](#) (which Attorney General Rob Bonta currently posts on his website):

The body may discuss an item which was not previously placed upon an agenda at a regular meeting, *when the body determines* that there is a need for immediate action which cannot reasonably wait for the next regularly scheduled meeting. (§ 54954.2(b)(2).) [Italics added, p. 18].

I agree with the Attorney General, based on the plain wording in the statute, that the Board determines whether the need is legitimate. A 2/3 or unanimous vote, depending on attendance, is all that is required. The general manager sufficiently identified the item pursuant to section 54954.2(b) and, pursuant to the motion, the Board voted unanimously to add item 14.b to the agenda. The motion adopted a finding there was an immediate need to act and the need arose after posting of the agenda. Assuming *arguendo* that the printed notice on page 2 of the agenda does not resolve this matter, the moving directors need not, and did not, repeat the clerk's recitation of the finding nor the wording of each item. The Board then voted on both items to which the finding applied. Section 54954.2 does not state that separate votes are required. The Board therefore took the requisite procedural steps to put item 14.b on the agenda, completed at 1:17:25 on the video.

As you know, if you disagree, Government Code section 54960 affords you a procedural avenue you may pursue without assistance from this office.

Sincerely,

JEANNINE M. PACIONI
District Attorney

A handwritten signature in black ink, appearing to read 'Berkley Brannon', with a stylized, cursive script.

Berkley Brannon
Chief Assistant Deputy District Attorney

cc: David Laredo, General Counsel
Monterey Peninsula Water Management District
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Dave Stoldt, General Manager
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