

LAS POSAS BASIN POLICY ADVISORY COMMITTEE MEETING

Thursday, December 7, 2023

In Person: Calleguas Municipal Water District, 2100 Olsen Road, Thousand Oaks, CA 91360

Via Zoom:

<https://us06web.zoom.us/j/82279304227?pwd=7AaCh8hj39HYAF9a0EKmEa1teAMKeb.1>

Meeting ID: 822 7930 4227

Passcode: 817910

NOTICE OF MEETING

NOTICE IS HEREBY GIVEN that the Las Posas Basin Policy Advisory Committee will hold an initial meeting at 3:00 PM on Thursday, December 7, 2023, in the Board Meeting Room of the Calleguas Municipal Water District and Via Zoom.

AGENDA

A. Call to Order

B. Pledge of Allegiance

C. Roll Call

D. Agenda Review

E. Public Comments

F. PAC Member Comments

G. Regular Agenda

Item 1: Initial Meeting(s) Protocol. Appoint PAC member to take and publish minutes of initial PAC meeting and to develop and publish agendas and to take minutes of future PAC meetings until a PAC Administrator is appointed the by Watermaster.

Item 2: Election of Officers (Chair and Vice Chair) and establish Time and Place of Regular Meeting Dates (Judgment § 6.5).

Item 3: Nomination of PAC Administrator, TAC Administrator, and Other Two TAC Members. Discuss next steps for generating candidates and issuing nominations to Watermaster.

Item 4: Review Membership Responsibilities (Judgment § 6.6)

Item 5: Discussion/Planning for Brown Act Compliance.

- i. See attached presentation of Brown Act overview provided to the Borrego Basin Watermaster.

Item 6: Discussion/Planning for Judgment Tasks

- i. Budget and Scope of Work for Basin Optimization Yield Study
- ii. Annual Report
- iii. Basin Optimization Plan
- iv. Technical Representative on ASR Study Group
- v. Initial Watermaster Budget and Basin Assessment

H. Adjourn

The Ralph M. Brown Act: The People's Business and the Right of Access

Borrego Watermaster Board Meeting
March 31, 2020



Overview

- History of the Brown Act
- Purpose of the Brown Act
- Applications of the Brown Act
- Serial Meetings
- Rules Governing Meetings
- Teleconferencing
- Closed Session
- Remedies/Cure
- Alternate Board Members
- Brown Act and COVID-19 Response



The Ralph M. Brown Act

- In late 1951, San Francisco Chronicle reporter Mike Harris spent six weeks looking into the way local agencies conducted meetings. State law had long required that business be done in public, but Harris discovered secret meetings or caucuses were common. He wrote a 10-part series on “Your Secret Government” that ran in May and June 1952.



The Ralph M. Brown Act

- Out of the series came a decision to push for a new state open meeting law.
- Assembly Member Ralph M. Brown carried legislation.
- The “Brown Act”, has evolved under a series of amendments and court decisions, and has been the model for other open meeting laws—such as the Bagley-Keene Act, enacted in 1967 to cover state agencies.



The Right to Access

- Two key parts of the Brown Act have not changed since its adoption in 1953:

“In enacting this chapter, the Legislature finds and declares that the public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the people’s business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly.”

“The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.”



Purpose of Brown Act

To ensure that almost all aspects of the decision-making process of legislative bodies of local agencies are conducted in public and open to public scrutiny.

“The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.” (Gov. Code 54950.)



Application

To whom does the act apply?

- Local agencies
- Legislative bodies
- Meetings
- Persons elected to legislative bodies, even prior to assuming office



Application

- *Local Agency*
 - Means a county, city, whether general law or chartered, city and county, town, school district, municipal corporation, district, political subdivision, or any board, commission or agency thereof, or other local public agency, including Watermasters that voluntarily agree to follow the Brown Act (which is the norm)
- *Legislative Body*
 1. Governing body;
 2. Board, commission, committee created by formal action of the governing body;
 3. Private organizations (in limited circumstances).



The Key to the Brown Act

- All meetings shall be open and public except when the Brown Act authorizes otherwise.
- The Ralph M. Brown Act (Government Code sections 54950-54963).



Application



- What is a meeting?
- When is a meeting not a meeting?



Application

- *Meeting*

- Any gathering of a majority of the members at the same time and place to hear, discuss or deliberate upon any matter under their jurisdiction.
- No action needs to be taken for a meeting to occur; conversations between and among members of a legislative body about issues confronting the agency is sufficient.



Application

- *Not a Meeting*

- Individual contacts;
- Conferences and seminars;
- Community meetings;
- Purely social or ceremonial occasions;
- Attendance at standing committee meetings;
- Meetings with other legislative bodies – a majority of the governing body may attend as long as they do not discuss among themselves issues related to the agency.



Serial Meetings

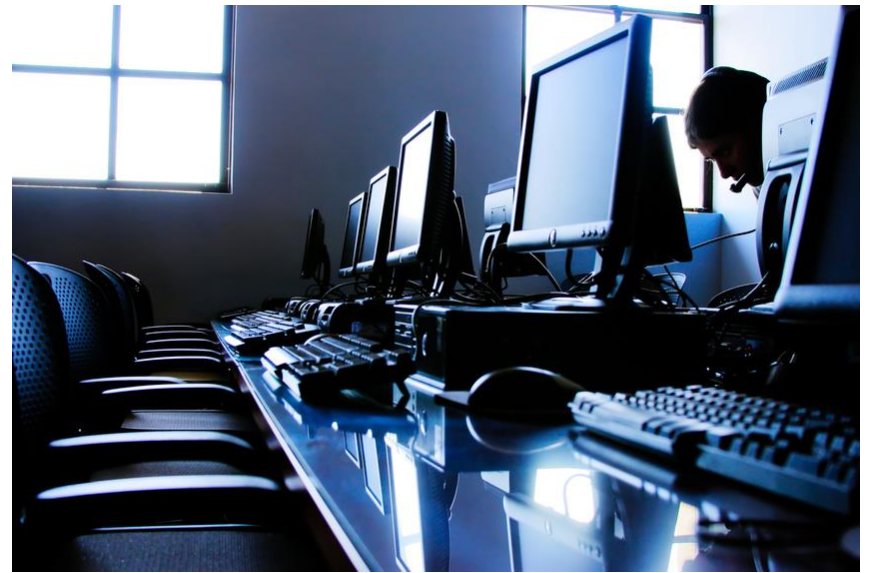
- *Serial Meetings – Expressly Prohibited*
 - “Use of direct communication, personal intermediaries, or technological devices employed by a majority of the legislative body members in order to develop a collective concurrence as to action to be taken on an item by the legislative body is prohibited.”



Serial Meetings

Ways Serial Meetings Can Happen

- Personal Meeting
- Telephone
- Email
- Written Correspondence
- Use of Intermediaries
- Social Networking Sites such as Facebook and Twitter.



Social Media

- Engaging in discussion section of social media, article, etc.
- Meeting does not have to be a physical meeting
- Series of comments to a blog or news article



Serial Meetings

Elements of a Serial Meeting

- Series of Communications
- Between Less Than a Quorum
- Taken As a Whole Involves a Majority
- Concurrence
 - Advances or Clarifies the Understanding of an Issue;
 - Facilitates an Agreement or Compromise Among Members;
 - Advances the Ultimate Resolution of an Issue.



Serial Meetings

Two types of Serial Meetings

1. Chain

- Member A speaks to Member B who speaks with Member C about a particular matter and in the process they all form a collective concurrence on a matter.

2. Hub and Spoke

- An intermediary (including an alternate board member) acts as a hub of a wheel with members relaying information back and forth to each other through the hub and in the process a majority of the legislative body develops a collective concurrence.



Serial Meetings

Serial Meeting Exceptions

- While the Brown Act prohibits serial meetings, it also explicitly provides an exception for one-on-one communications by a non-member (i.e., staff) with members of the legislative body.
- Does NOT mean back and forth and sharing of views of different members
- Brown Act also allows communications to call or schedule a special meeting.



Serial Meetings

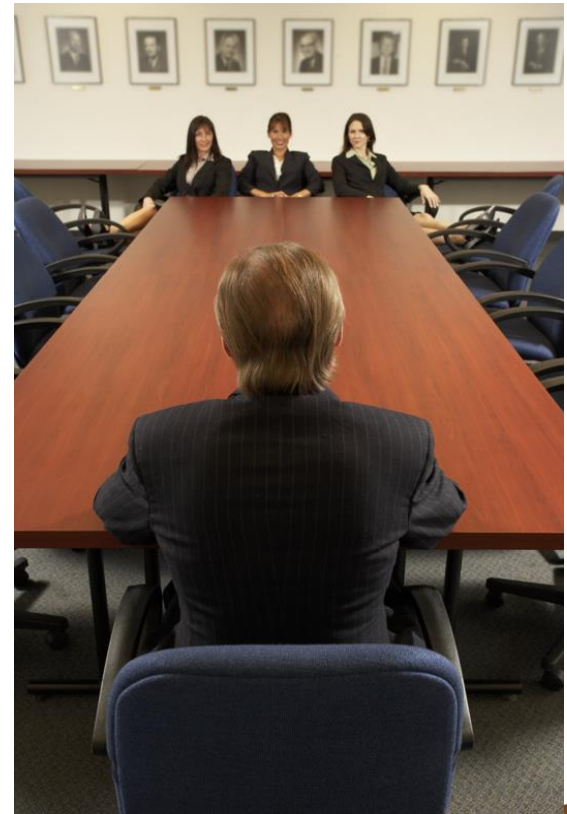
E-mail Tips

- Refrain from replying to “All” in E-mails
- Do not take a position or make a commitment
- E-mail board members for info only
- Take caution
- Ensure compliance with law



Rules Governing Meetings

- Regular meeting
- Special emergency meetings
- Adjourned meetings
- Public's right to comment



Rules Governing Meetings

REGULAR MEETINGS - Agenda Requirements:

- Post 72 hours prior to the meeting.
- Must include the time and location of the meeting.
- Must contain a brief general description of each item to be discussed or addressed, including closed session items.
- Notices available in alternative ADA formats and distributed in advance to those who request copies.



Special Circumstances at Meetings

- No public meeting shall be inaccessible to the disabled
- All public meetings shall meet the “protections and prohibitions contained in Section 202 of the Americans with Disabilities Act of 1990.”
- Agenda for the meeting needs to include “information regarding how, to whom, and when a request for disability related modification or accommodation, *including auxiliary aids or services may be made by a person with a disability who requires a modification or accommodation in order to participate in the public meeting.*”



Special Circumstances at Meetings

- For bilingual public speakers Brown Act requires that twice as much time to present during limited public comment
- Enough time to provide original statement in native language and translation
- Example: instead of 3 minutes should provide 6 minutes.



Rules Governing Meetings

SPECIAL MEETINGS - Agenda Requirements:

- ⑩ Posted no later than 24 hours prior to the meeting.
- ⑩ Must include the time and location of the meeting.
- ⑩ Must contain a brief general description of each item to be discussed or addressed, including closed-door items.



Rules Governing Meetings

ADJOURNED MEETINGS - Agenda Requirements:

- Not necessary to post a new agenda if legislative body adjourns meeting to a time and place in the order of adjournment that is less than 5 days as long as no additional business is transacted.



Rules Governing Meetings

EMERGENCY MEETINGS - Agenda Requirements:

- ⑩ Requires severe impairment to public health and safety.
- ⑩ Absent a “dire emergency,” at least one hour prior to the meeting, telephonic notice to media organizations.
- ⑩ If a dire emergency, notice given when members of the body are notified.
- ⑩ Generally, emergency meetings may not be held in closed session. The AG’s office encourages bodies to give the public an opportunity to comment on closed-session items prior to the body adjournment into closed session.



Rules Governing Meetings

Distribution of Agenda Packet to Public

In addition to posting an agenda, a local agency must also make the agenda packet available to the public when the materials are distributed to all or a majority of the legislative body, whichever is first.



Rules Governing Meetings

The Public's Right to Comment

- ⑩ At every regular meeting, members of the public have the right to directly address the body on any item of public interest if that item is under the jurisdiction of the body.
- ⑩ For agenda items, the public must be given an opportunity to comment before or during the body's consideration of the item.
- ⑩ At special and emergency meetings, members of the public have the right to address the body about any item that is listed on the agenda.



Willful Interruptions

- The legislative body may remove persons from a meeting who willfully interrupt proceedings.
- Ejection is justified only when audience members actually disrupt the proceedings.
 - Board may not prohibit “insolent” remarks by members of the public absent actual disruption
 - § If order cannot be restored after ejecting disruptive persons, the meeting room may be cleared. Members of the news media who have not participated in the disturbance must be allowed to continue to attend the meeting. The legislative body may establish a procedure to readmit an individual or individuals not responsible for the disturbance.



Rules Governing Meetings

Public Recording of Meetings

- The public must be allowed to audio or video tape a meeting unless the agency can make a reasonable finding that the recording would constitute a persistent disruption of the proceedings
- Recordings of public meetings by the agency are public records



Rules Governing Meetings

No action or discussion allowed for any item not listed on agenda except for:

- Adding items by majority vote for emergency situations
- Adding Items of Subsequent Need. Adding items by 2/3 vote because of need for immediate action that came to the attention after the agenda is posted
- Consideration of items continued to another meeting within 5 calendar days



Rules Governing Meetings

- Brief responses to statements or questions from public
- Questions to staff for clarification of matters based upon public comments
- Brief announcements or reports on member's or staff's own activities
- Providing references or information to staff
- Asking staff to report back at a future meeting on any matter



Teleconferencing

- Teleconferencing may be used for any meeting of the legislative body.
- All votes by roll call.
- Agendas posted at all teleconference locations and teleconference locations identified.
- Teleconference locations must be accessible to the public.
- Normally, at least a quorum of the board must be within the boundaries of the local agency, but the Judgment provides an exception to state that at least two Board members must be physically in Borrego during a meeting.



Closed Sessions

CONFIDENTIAL

- Must be expressly authorized by law
- Must be briefly described in agenda
- Must verbally announce items
- If action is taken, may need to report to the public



Closed Sessions

- Real Property Transactions
- Litigation--Existing, Anticipated and Initiation
- Personnel Issues--Appointment, Performance, Evaluation, Discipline/Dismissal/Release
- Labor Negotiations
- Threats to Public Services of Facilities
- Joint Powers Authority
 - ⑩ Can disclose closed session discussions with authorizing legislative body in closed session



Closed Session

- Brown Act Agenda Safe Harbor Language
- Requires specific wording for each specific instance
- Consult with your attorney for language requirements
- Subject to any advice from the future WM legal counsel, Board member alternates should not attend closed session unless the regular board member is absent



The Confidentiality of Closed Session Discussions

- The Brown Act explicitly prohibits the unauthorized disclosure of confidential information acquired in a closed session by any person present, and offers various remedies to address breaches of confidentiality.
- Only the legislative body acting as a body may agree to divulge confidential closed session information; regarding attorney/client privileged communications, the entire body is the holder of the privilege and only the entire body can decide to waive the privilege.



Remedies for Disclosure

- Employee
 - Disciplinary action against an employee who has willfully disclosed confidential information in violation of this section; up to dismissal
- Member of the Legislative Body
 - Referral of the member who willfully disclosed confidential information in violation of this section to the Grand Jury



Remedies for Violations

- Any interested person, including the district attorney, may seek to invalidate certain actions of a legislative body on the ground that they violate the Brown Act. Violations of the Brown Act, however, **cannot be invalidated** if they involve the following types of actions:
 - Those taken in substantial compliance with the law.
 - Those involving the sale or issuance of notes, bonds or other indebtedness, or any related contracts or agreements; [?]
 - Those creating a contractual obligation, including a contract awarded by competitive bid for other than compensation for professional services, upon which a party has in good faith relied to its detriment; [?]
 - Those connected with the collection of any tax; or [?]
 - Those in which the complaining party had actual notice at least 72 hours prior to the regular meeting or 24 hours prior to the special meeting, as the case may be, at which the action is taken.



Brown Act Cure

- The remedy is available to “[t]he district attorney or any interested person” who must first mail or fax a “cease and desist letter” “to the clerk of secretary of the legislative body being accused of the violation” “clearly describing the past action of the legislative body and nature of the alleged violation.”
- Such a demand must be made within nine months of an alleged violation.
- The legislative body has 30 days to respond to a cease-and-desist letter although a later response may still obviate subsequent suit, but will oblige the agency for the plaintiff’s attorneys’ fees and costs.
- Such a response may be “an unconditional commitment to cease, desist from, and not repeat the past action that is alleged to violate this chapter” in substantially the form specified in section 54960.2, subdivision (c)(1)
- Such an unconditional commitment “shall be approved by the legislative body in open session at a regular or special meeting as a separate item of business, and not on its consent agenda.”



Brown Act Exceptions During the Covid-19 Crisis

- By executive orders issued in March 2020, the Governor suspended various parts of the Brown Act, including:
 - Local Agency Executive Director or other qualified representative of the agency can give Board updates on COVID issues outside of a public meeting
 - Board meetings can be held telephonically only, with no physical meeting room
 - Dial in number for the public must be provided



Questions?

