

EXHIBIT 8-A



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Refer To File # 270226-0006

March 31, 2023

Monterey County District Attorney Jeannine Pacioni
142 W. Alisal Street, Suite A
Salinas, California 93901
publicinformation@co.monterey.ca.us

Re: Notice of Material Brown Act Violation by the Monterey Peninsula Water Management District

Dear District Attorney Pacioni:

My law firm represents California American Water. On their behalf, this letter serves to alert you to violations of the Ralph M. Brown Act ("Brown Act") by the Monterey Peninsula Water Management District ("MPWMD") Board of Directors. Specifically, at its March 20, 2023 regular meeting, the MPWMD Board of Directors voted on an action item that was not timely included on the agenda. Additionally, the Board voted without making a determination that there was an immediate need for action on the item. No evidence was offered to indicate that the need for the agenda item became known to the Board after the regular agenda had been posted. This amounts to a material violation of the Brown Act and potentially invalidates the Board's action.

Discussion

California Government Code section 54954.2(a)(3) prohibits the Board of Directors from taking any action or discussing any items not on the posted agenda. Exceptions to this prohibition are construed narrowly.

During MPWMD's March 20 meeting, General Manager Dave Stoldt requested to add a new action item to the agenda described as "to authorize expenditure of up to \$60,000 for an update to the rate study for Measure J by the Raftelis financial consulting team." The Board approved adding this agenda item as item 14.b without discussion. (See hour 1, minute 16 - <https://www.youtube.com/watch?v=SGSzYTTqgJM>.) During public comment before item 14.b was considered, a representative of California American Water alerted the Board to the potential Brown Act violation, but his concerns were dismissed. The Board then proceeded to vote to approve new action item 14.b. 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. (See hour 3, minute 17.)

Had the Board wished to avail itself of the limited exception for legitimate immediate needs, it was required to first make two determinations: 1) that there was an immediate need to take action, and 2) that the need arose after the posting of the agenda. The matter may only then

be placed on the agenda. (See Gov. Code § 54954.2(b)(2).) In this case, General Manager Stoldt described the need for Board action as one on mere convenience. Specifically, he stated:

“The reason for this and the reason it wasn’t on the agenda is, when we looked at the work performed by the consultant to date, and the timeline through which this board could decide to continue to move forward with a hearing on public necessity, it was brought to our attention that it might be in our interest and in our findings’ interest to update the rate study that was done in a similar fashion to 2019 to demonstrate savings as result of acquisition. Raftelis has looked at the schedule and if they get started basically now in the next week or so, they can finish by the end of May. So that’s why the sudden ask. They had provided a scope and a budget.”

A desire to have a study completed in time to inform the Board during a future vote is clearly not a legitimate immediate need. Even if it were, the Board failed to take the requisite procedural steps to put the item on the agenda.

In this case, the Board was alerted to the pending Brown Act violation, but moved forward with the vote anyway. Therefore, we are respectfully requesting that the District Attorney’s office act expeditiously in investigating and remedying the potentially invalid action.

Please do not hesitate to contact me if I can provide additional information.

Sincerely,



Amber Maltbie
Nossaman LLP

cc: David Laredo, General Counsel
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