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2-11-16

Board Members and Responsible Staff
Newhall County Water District
23780 Pine St.
Newhall CA. 91321

Via Hand Delivery to the Newhall County Water District

Dear Fellow Board Members:

As a more than twenty year incumbent on this Board who has taken an oath of office to follow the law and who has regularly full-filled the requirements of AB1234 by attending the required ethics training classes to ensure that I am knowledgeable concerning the laws governing elected members of Boards in the State of California including the Ralph M. Brown Act, I now wish to file a formal complaint under this statue on behalf of myself and my constituents in Newhall County Water District whom I believe have been wronged by violations of the Ralph M. Brown Act by our Board.

The Ralph M Brown Act states:

*"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.
This chapter shall be known as the Ralph M. Brown Act."*

I firmly believe that this concept must hold true for our own water district and the people that have elected us not only because it is the law but also because it is a moral and ethical obligation to our constituents to act in an open and transparent manner. The residents of Newhall County Water District absolutely have the right to know what actions and discussions are being taken by their elected representatives.

Therefore, this letter is to call your attention to what I believe was a substantial violation of central provisions of the Ralph M. Brown Act, Govt. Code Sections as follow below, which may jeopardize the finality of any action or decisions made by Newhall County Water District (NCWD).

Approximately a year ago our Board formed an "ad hoc committee" to commence "settlement negotiations" with Castaic Lake Water Agency (CLWA) over various legal disputes including an illegal rate increase to Newhall County Water District, a Brown Act violation claimed against us by CLWA and the illegal acquisition of Valencia Water Company in violation of state law including the State Constitution, CLWA's own enabling act and AB134, a law previously negotiated with CLWA to settle actions they

took a decade earlier. Since that time, the Second Appellate Court has ruled for Newhall County Water District on two of these disputes, which are therefore settled.

What constitutes a "legislative body" under the Brown Act? According to section **Section 54952** of the Brown Act:

As used in this chapter, "legislative body" means:

(a) *The governing body of a local agency or any other local body created by state or federal statute.*

(b) *A commission, committee, board, or other body of a local agency, whether permanent or temporary, decision making or advisory, created by charter, ordinance, resolution, or formal action of a legislative body.*

*However, advisory committees, composed solely of the members of the legislative body that are less than a quorum of the legislative body are not legislative bodies, **except that standing committees of a legislative body, irrespective of their composition, which have a continuing subject matter jurisdiction, or a meeting schedule fixed by charter, ordinance, resolution, or formal action of a legislative body are legislative bodies for purposes of this chapter.***

This "ad hoc" committee was established by the Board and held meetings for approximately a year and was therefore in fact, a standing committee. Discussions by this "ad Hoc" committee went far beyond discussions of settlement of a lawsuit into consolidation of all of this Valley's water agencies, including how this would be accomplished, structure, public relations to persuade the public, what legislation might be needed, etc. None of these discussions were ever agendaized or reported to the public during that time, although a vague summary has since been made public by means of a "workshop" held on February 4th, 2016.

Section 54952.6 of the Act describes an action as:

"As used in this chapter, "action taken" means a collective decision made by a majority of the members of a legislative body, a collective commitment or promise by a majority of the members of a legislative body to make a positive or a negative decision, or an actual vote by a majority of the members of a legislative body when sitting as a body or entity, upon a motion, proposal, resolution, order or ordinance.

Using the statute's description of an "action" our Board took an action in closed session at our Board meeting of January 14th as to whether or not the District should proceed with consolidation with the Castaic Lake. No report of the action taken was made after the end of the closed session.

54953 (c)(1) of the Brown Act states

*"No legislative body shall take action by secret ballot, whether preliminary or final. **(2)** The legislative body of a local agency shall publicly report any action taken and the vote or abstention on that action of each member present for the action."*

At the Board meeting of January 14th our Board took an action secretly in closed session as to whether or not the District should proceed with consolidation with the Castaic Lake Water Agency. No report of the action taken was made to the public after the end of the closed session.

Section 54954.2 describes when and what must be posted on public meeting notices as follows:

(a)(1) *At least 72 hours before a regular meeting, the legislative body of the local agency, or its designee, shall post an agenda containing a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session. A brief general description of an item generally need not exceed 20 words.*

(2) *No action or discussion shall be undertaken on any item not appearing on the posted agenda, except that members of a legislative body or its staff may briefly respond to statements made or questions posed by persons exercising their public testimony rights under Section 54954.3."*

At no time in the past year was the discussion of consolidation, a new governance structure, a public relations campaign or legislation or other related matters that are of vital interest and importance to our constituents ever posted on a Newhall County Water District agenda.

I make note to the Board that under Section 54963:

(e) A local agency may not take any action authorized by subdivision (c) against a person, nor shall it be deemed a violation of this section, for doing any of the following:

(1) Making a confidential inquiry or complaint to a district attorney or grand jury concerning a perceived violation of law, including disclosing facts to a district attorney or grand jury that are necessary to establish the illegality of an action taken by a legislative body of a local agency or the potential illegality of an action that has been the subject of deliberation at a closed session if that action were to be taken by a legislative body of a local agency.

(2) Expressing an opinion concerning the propriety or legality of actions taken by a legislative body of a local agency in closed session, including disclosure of the nature and extent of the illegal or potentially illegal action.

(3) Disclosing information acquired by being present in a closed session under this chapter that is not confidential."

To cure and correct, Brown Act Govt. Code Section 54960.1, requires you to withdraw and disclose any commitments made. Govt. Code Section 54957.1 (b), (c) also requires copies of any contracts or settlements approved must be made available promptly. As provided by Govt. Code Section 54960.1, you have 30 days from receipt of this demand to either cure or correct the challenged action or to inform me of your decision not to do so.

Sincerely,

Lynne Plambeck
Board member, Newhall County Water District

CC: Public Integrity Division,
Office of the District Attorney
Los Angeles County