



Staff Report

TO: Board of Directors

FROM: Jennifer Hanson, General Manager
Kris Stepanian, Board Secretary

DATE: February 8, 2023

SUBJECT: AB 361 Compliance – Brown Act/Covid-19 Teleconference and Remote Meeting Requirements (Consent)

ADMINISTRATION

RECOMMENDATION:

Adopt Resolution No. 2023-08 (Re-Authorizing Remote Meetings Consistent with AB 361).

BACKGROUND:

On October 21, 2021, the Board of Directors adopted Resolution No. 2021-32 (Authorizing Remote Meetings Consistent with AB 361), enabling board members to attend public meetings in person or remotely. The resolution lapses every 30 days. Therefore, subsequent resolutions re-authorizing remote meetings have been adopted at least every 30-days to remain in effect, and were previously adopted by the Board on the following dates:

- November 10, 2021
- December 8, 2021
- December 15, 2021
- January 12, 2022
- February 9, 2022
- March 9, 2022
- March 23, 2022
- April 13, 2022
- May 11, 2022
- June 8, 2022
- June 22, 2022
- July 13, 2022
- July 27, 2022
- August 24, 2022
- September 14, 2022
- October 12, 2022
- November 9, 2022
- December 7, 2022
- December 14, 2022
- January 11, 2023

Adopting the resolution does not prohibit the public from attending meetings in person. Public attendance will be determined by the Board based on current conditions and health and safety considerations.

In September of 2021, California Legislature and Governor Newsom enacted AB 361, "Open Meetings: State and Local Agencies: Teleconferences." The bill amended Government Code section 54953 and clarifies Brown Act requirements regarding remotely-attended public meetings. The Governor's COVID-19 State of Emergency ends on February 28, 2023. Therefore, it is anticipated that this will be the final resolution re-authorizing remote meetings consistent with AB 361.

BUDGETARY IMPACT: None

Attachment: (2)

- Resolution No. 2023-08 (Re-Authorizing Remote Meetings Consistent with AB361)
- Letter from District Counsel regarding Changes to the Brown Act Remote Meeting Provisions dated 12/29/2022



RESOLUTION NO. 2023-08
OF THE BOARD OF DIRECTORS OF THE NEVADA IRRIGATION DISTRICT

RE-AUTHORIZING REMOTE MEETINGS CONSISTENT WITH AB 361

WHEREAS, the Nevada Irrigation District (“District”) is committed to preserving and nurturing public access and participation in meetings of the Board of Directors; and

WHEREAS, all meetings of Nevada Irrigation District’s legislative bodies are open and public, as required by the Ralph M. Brown Act (Cal. Gov. Code 54950 – 54963), so that any member of the public may attend, participate, and watch the District’s legislative bodies conduct their business; and

WHEREAS, the Brown Act, Government Code section 54953(e), makes provisions for remote participation in meetings by members of a legislative body by audio or video or both, without compliance with the requirements of Government Code section 54953(b)(3), subject to the existence of certain conditions; and

WHEREAS, a required condition of remote meetings is a declaration of a state of emergency by the Governor pursuant to Government Code section 8625, proclaiming the existence of conditions of disaster or of extreme peril to the safety of persons and property within the state caused by conditions as described in Government Code section 8558; and

WHEREAS, it is further required that state or local officials have imposed or recommended measures to promote social distancing, or, the legislative body meeting in person would present imminent risks to the health and safety of attendees; and

WHEREAS, the Board of Directors previously adopted Resolution Number 2021-32 on October 21, 2021, finding that the requisite conditions exist for the District’s legislative bodies to conduct remote meetings without compliance with paragraph (3) of subdivision (b) of section 54953; and

WHEREAS, as a condition of extending the use of the provisions found in section 54953(e), the Board of Directors must reconsider the circumstances of the state of emergency; and the Board of Directors has done so; and

WHEREAS, emergency conditions persist in the District, specifically, on March 4, 2020, the Governor proclaimed State of Emergency to exist in California due to the COVID-19 pandemic, which proclamation is still active and will end on February 28, 2023; and

WHEREAS, state and local officials have recommended social distancing measures, including masks, to slow the spread of COVID-19 and the contagious Delta variant, and to protect the vulnerable and immunocompromised members of the community; and

WHEREAS, the Board of Directors does hereby find that the state of emergency continues to directly impact the ability of members to meet in-person; and

WHEREAS, as a consequence of the State of Emergency and recommended social distancing measures, the Board of Directors does hereby find that the legislative bodies of Nevada Irrigation District shall continue to conduct their meetings without compliance with paragraph (3) of subdivision (b) of Government Code section 54953, as authorized by subdivision (e) of section 54953, and that such legislative bodies shall comply with the requirements to provide the public with access to the meetings as prescribed in paragraph (2) of subdivision (e) of section 54953; and

WHEREAS, the public may attend meetings and comment by calling in or by using the Zoom platform as described in meeting agendas.

NOW, THEREFORE, THE BOARD OF DIRECTORS OF NEVADA IRRIGATION DISTRICT DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. Recitals. The Recitals set forth above are true and correct and are incorporated into this Resolution by this reference.

Section 2. Re-ratification of Governor’s Proclamation of a State of Emergency. The Board hereby ratifies the Governor of the State of California’s Proclamation of State of Emergency, effective as of its issuance date of March 4, 2020.

Section 3. Remote Teleconference Meetings. The District’s General Manager, Secretary, and legislative bodies are hereby authorized and directed to take all actions necessary to carry out the intent and purpose of this Resolution including, continuing to conduct open and public meetings in accordance with Government Code section 54953(e) and other applicable provisions of the Brown Act.

Section 4. Effective Date of Resolution. This Resolution shall take effect immediately upon its adoption and shall be effective until the Governor's COVID-19 State of Emergency end date on February 28, 2023.

PASSED AND ADOPTED by the Board of Directors of the Nevada Irrigation District at a regular meeting held on the 8th day of February, 2023, by the following vote:

- AYES:** Directors:
- NOES:** Directors:
- ABSENT:** Directors:
- ABSTAINS:** Directors:

President of the Board of Directors

Attest:

Secretary to the Board of Directors

**MINASIAN, MEITH,
SOARES, SEXTON &
COOPER, LLP**

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December 29, 2022

VIA EMAIL AND U.S. MAIL

NEVADA IRRIGATION DISTRICT
1036 W. Main Street
Grass Valley, California 95945

RE: Changes to the Brown Act Remote Meeting Provisions

Dear Client:

A significant change to the Brown Act will be implemented in 2023 that may impact your agency's practices regarding remote meetings. The change in the Brown Act takes effect on January 1, 2023, and the Governor's COVID-19 State of Emergency will end on February 28, 2023. As you may recall, remote meetings during the COVID-19 State of Emergency have been held pursuant to 30-day remote meeting resolutions and legislation adopted in 2021. This letter will explain how new legislation adopted in 2022 and effective January 1, 2023 (AB 2449) and the end of the Governor's declaration of a State of Emergency for COVID-19 may change your remote meeting practices.

February 28, 2023 Expiration of the COVID-19 Emergency and 30-Day Resolutions.

Until February 28, 2023, the provisions relating to the 30-day resolutions remain in place as the primary method of holding remote meetings for Board members during the COVID-19 State of Emergency where either the emergency impacts the ability of the Board members to meet remotely or there are social distancing measures imposed or recommended by state or local officials. (See Government Code section 54953, subdivision (e).) **After the state of emergency ends on February 28, 2023, your agency's Board members should not rely on the 30-day remote meeting resolutions to attend meetings remotely, even if a 30-day resolution was passed prior to February 28.** If a future pandemic-related state of emergency (or other emergency) occurs that affects the ability of the members to safely meet in person, the Board may consider using the 30-day remote meeting resolutions. In most circumstances, Board members will need to attend meetings in person following February 28, 2023. Board members who need to attend meetings remotely in the

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absence of a declared state of emergency have a couple constrained options, discussed on the second page of this letter. If your Board is already attending meetings in-person and no Board members attend remotely, then your practices do not likely need a change in order to become compliant with AB 2449.

Your agency may still provide members of the public with remote access to open sessions of meetings via a call-in option or audio-video teleconference platform like Zoom. However, if the call-in option or audio-video platform crashes or has technical problems that affect the ability of the public to listen in and participate in public comment, the meeting should not proceed until the technical difficulties are resolved.

Two Options for Remote Attendance of Board Members.

Board members that have a need to attend a meeting remotely have two options under the Brown Act as modified by AB 2449. Because of the complexity and constraints of option 2, option 1 may be preferable where time allows for the agency and the Board member to comply with the agenda-posting requirements.

Option 1: Include the location from where the Board member will be teleconferencing in the agenda, post the agenda at the Board member's teleconference location concurrently with the agency's posting of the agenda, allow the public to attend the meeting from each teleconference location including the Board member's location, take all votes by rollcall, and ensure that at least a quorum of the Board are attending the meeting within the jurisdictional boundaries of the agency. (Government Code section 54953, subdivision (b)(3).)

Option 2 (The "Just Cause" exception): If option 1 is not used, then each Board member attending remotely must state "just cause" at the beginning of the meeting and obtain the Board's approval of their just cause exception. Just cause is defined as one of the following 4:

- (A) A childcare or caregiving need of a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner that requires them to participate remotely.
- (B) A contagious illness that prevents a Board member from attending in person.
- (C) A need related to a physical or mental disability
- (D) Travel while on official business of the legislative body or another state or local agency.

Alternatively, the Board member seeking to participate remotely may request that the agency approve his/her attendance based on "emergency circumstances." "Emergency circumstances" means a physical or family medical emergency that prevents a member from attending in person. (Government Code Section 54953, subdivision (f).)

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There are a number of additional requirements if a Board member uses the “just cause” exception (option 2). **At least a quorum of the Board must be physically present at the primary meeting location.** All of the Board, including the remotely attending Board member, must use two-way audio-video conferencing (like Zoom) that allows the public to both see and hear the Board conduct the meeting and receive public comment (the Board members should not turn off their cameras when using this option). The Board member attending remotely is required to announce if any adults are in the room with them and their relationship to that adult. A Board member cannot use the just cause exception for more than three consecutive months or 20 percent of the regular meetings for the local agency within a calendar year, or more than two meetings if the legislative body regularly meets fewer than 10 times per calendar year. **For agencies that meet monthly or less frequently, this means that a Board member is limited to using the “just cause” exception for no more than 2 meetings per year.** If the Board member’s request to participate remotely is provided to the agency with enough time to place the request on the agenda, the item should be agendaized before any other action by the Board. If the request was not made with sufficient time to allow the request to be placed on the agenda, then the Board may still approve the request. Finally, the remote Board member should briefly (20 words or less) describe the basis of the just cause exception in a general way without disclosing any private medical or personal information. The in-person Board members should then approve that just cause circumstances exist and the remote Board member’s attendance via teleconference at the outset of the meeting.

Conclusion and Recommendation.

Following the February 28, 2023 expiration of the COVID-19 state of emergency, in-person Board attendance is likely to become the norm for many agencies. The “just cause” exception for attending meetings remotely has a number of onerous requirements and should not be regularly relied upon as a means of remote Board attendance at meetings. When Board members plan on attending a meeting remotely, we recommend Option 1 above. The “just cause” exception/Option 2 should be reserved for unexpected circumstances (e.g., illness) where Option 1 is not practical.

If you have any questions, please do not hesitate to contact our office.

Very truly yours,

MINASIAN, MEITH, SOARES
SEXTON & COOPER, LLP

By: 
AIDAN P. WALLACE

APW/