



**SPECIAL MEETING
OF THE BOARD OF DIRECTORS
OF THE LIVERMORE-AMADOR VALLEY WATER MANAGEMENT AGENCY**

Wednesday, September 29, 2021, 5:00 p.m.

Due to State of Emergency related to Covid-19 and the need to maintain social distancing, this meeting will be conducted via teleconference.

Meeting participants and the public may participate through computer video and audio by clicking on the following link:

<https://us02web.zoom.us/j/87001479653>

We recommend using your full name to log in for the meeting for ease of identification and recordkeeping purposes.

Meeting ID: 870 0147 9653

**One tap mobile if using audio only from a telephone and not a computer
+1 669 900 9128 - 87001479653# US (San Jose)**

See below for additional info on participation procedures.

- 1. Call to Order**
- 2. Pledge of Allegiance**
- 3. Roll Call**
- 4. Order of Agenda/Acknowledgement of Posting**
(The agenda may be re-ordered by motion of the Board. The agenda has been posted virtually on the Agency's website and, to the extent possible under the circumstances, physically in the display case outside the DSRSD Building, Pleasanton City Hall and Livermore City Hall at least 72 hours prior to a regular meeting and 24 hours prior to a special meeting.)
- 5. Public Comment**
(See text in box below for information on how to observe and submit public comments.)
- 6. Consent Calendar**
(All items on the Consent Calendar will be considered together by one or more action(s) of the Board unless a Board member pulls an item.)

- Pages 4 – 5** **6.a. Board Meeting Minutes of September 8, 2021**
(The Board will consider approving the minutes from the September 8, 2021 Board meeting.)
- Action** **7. Authorization for the General Manager to Award a Contract for the Purchase of Three Vertical Turbine Pumps**
Pages 6 – 14 (The Board will consider options for the award of a contract for the Purchase of up to three vertical turbine pumps. The options include rejecting all bids and: 1) authorizing the General Manager to re-bid the procurement or to use an alternative procurement method with guidance from legal counsel, 2) authorize the General Manager to negotiate the procurement on terms acceptable to LAVWMA starting with the low bidder and moving to the next highest bidder if unable to reach a mutually acceptable agreement, 3) Directing the General Manager to return to the Board with alternatives to purchase, such as repairing existing pumps, or 4) some combination of these options.)
- Resolution** **8. Consider Adopting a Resolution Authorizing Remote Teleconference Meetings of the Legislative Bodies of the Livermore-Amador Valley Water Management Agency Pursuant to Brown Act Provisions**
Pages 15 – 20 (The Board will consider how the State of Emergency impacts the ability of the LAVWMA Board and its legislative bodies to meet safely in person due to COVID-19, the requirements by local health authorities to maintain social distancing and/or the imminent health and safety risks of meeting in person, and the limitations of the meeting spaces available to LAVWMA, and consider whether to adopt a resolution to continue remote meetings for the next 30 days in compliance with AB 361 to better ensure the health and safety of the public.)
- Information** **9. Matters From/For Board Members**
(Board members may make brief announcements or reports on his or her own activities, pose questions for clarification, and/or request that items be placed on a future agenda. Except as authorized by law, no other discussion or action may be taken.)
- 10. Next Regular Board Meeting, Wednesday, November 17, 2021, 6:00 p.m.**

IMPORANT NOTICE REGARDING COVID-19 AND TELECONFERENCED MEETINGS:

Due to the State of Emergency declared by the Governor and the recommendation by the County Public Health Officer to maintain social distancing, to minimize the spread of the coronavirus, please note the following changes to LAVWMA’s ordinary meeting procedures:

- LAVWMA’s facilities are not open to the public during this emergency.
- The meeting will be conducted via teleconference. (See Executive Order 29-20)
- All members of the public seeking to observe and/or to address the Board may participate in the meeting telephonically in the manner described below.

HOW TO PARTICIPATE IN THE MEETING:

For both audio and video through a computer, click on the following link:

<https://us02web.zoom.us/j/87001479653> Meeting ID: 870 0147 9653

For audio only via telephone, dial 1 669 900 9128 then enter the following code 87001479653#

NOTE: This is a public meeting that can be heard live by any member of the public. It may be recorded to facilitate taking meeting minutes.

HOW TO SUBMIT PUBLIC COMMENTS:

Written / Read Aloud: Please email your comments to info@lavwma.com, write “Public Comment” in the subject line. In the body of the email, include the agenda item number and title, as well as your comments. If you would like your comment to be read aloud at the meeting (not to exceed three (3) minutes at staff’s cadence), prominently write “Read Aloud at Meeting” at the top of the email. All comments received before 12:00 PM the day of the meeting will be included as an agenda supplement on LAVWMA’s website under the relevant meeting date and provided to the Directors at the meeting. Comments received after this time will be treated as concurrent comments.

Concurrent Comments: During the meeting, the Board Chair or designee will announce the opportunity to make public comments and identify the cut off time for submission. A short recess (generally less than 5 minutes) will take place during the time public comment is open to allow the comments to be collected, unless it is clear no member of the public is participating. Please email your comments to info@lavwma.com, write “Public Comment” in the subject line. In the body of the email, include the agenda item number and title, as well as your comments. Once the public comment period is closed, all comments timely received will be read aloud. Comments received after the close of the public comment period will be added to the record after the meeting.

ACCESSIBILITY INFORMATION:

Board Meetings are accessible to people with disabilities and others who need assistance. Individuals who need special assistance or a disability-related modification or accommodation (including auxiliary aids or services) to observe and/or participate in this meeting and access meeting-related materials should contact Chuck Weir, General Manager, as soon as possible but at least 72 hours before the meeting at (925)-875-2202 or info@lavwma.com. Advanced notification will enable LAVWMA to swiftly resolve such requests to ensure accessibility.

PUBLIC RECORDS:

Public records that relate to any item on the open session agenda for a meeting are available for public inspection. Those records that are distributed after the agenda posting deadline for the meeting are available for public inspection at the same time they are distributed to all or a majority of the members of the Board. The Board has designated LAVWMA’s website located at http://lavwma.com/agency_meetings.php as the place for making those public records available for inspection. The documents may also be obtained by contacting the General Manager.

C:\Users\chuck\Documents\Weir Technical Services\LAVWMA\Agendas\2021\2021-09-29\2021-09-29_LAVWMA_Agenda.docx

LAVWMA
Livermore-Amador Valley Water Management Agency

DRAFT

Minutes

Special Meeting of Board of Directors

Wednesday, September 8, 2021

Due to Shelter in Place Orders, this was a web meeting available to participants and the public through the following link: <https://us02web.zoom.us/j/81364327563>

6:00 p.m.

1. Call to Order

Chair Ann Marie Johnson called the meeting to order at 6:00 p.m.

2. Pledge of Allegiance

The Pledge of Allegiance was recited.

3. Roll Call

Board Members Present: Chair Ann Marie Johnson; Vice Chair Julie Testa; and Directors Valerie Arkin, Gina Bonanno, Bob Carling, and Arun Goel

Board Members Absent: None

Staff Present: General Counsel Clare Gibson, General Manager Chuck Weir, Treasurer Carol Atwood, DSRSD, Jeff Carson, DSRSD Operations Director, and Christina Lawrence, Jarvis, Fay, & Gibson, LLP

Staff Absent: None

Others Present: None

Introductions

General Manager Weir introduced Clare Gibson, filling in for Alexandra Barnhill, and Christina Lawrence, who was actively involved in the development of the pump purchase bid packet as well as the bids that were submitted. Board members welcomed both of them.

4. Order of Agenda

There were no changes to the order of the agenda.

5. Comments from the Public

There were no comments from the public.

6. Consent Calendar

a. Minutes of the August 18, 2021 LAVWMA Board Meetings

Director Carling motioned, seconded by Director Arkin, to approve Consent Calendar Item No. 6.a.

There were no comments from the public. The Motion passed unanimously (6 – 0) by a roll call vote.

7. Authorization for the General Manager to Award a Contract for the Purchase of three Vertical Turbine Pumps

General Manager Weir noted that the Board had approved awarding the pump purchase project to Trillium Pumps USA and that a Notice of Potential Award (NPA) was issued to them on August 23, 2021. The NPA included the contract from the bid packet with a requirement to sign the contract within ten days. The contract was structured to allow for up to 275 days for delivery of the pumps. On August 25, 2021 Trillium sent an email indicating they could not accept the award.

Mr. Weir then described various options for the Board to consider, including rejecting all bids and authorizing the General Manager to negotiate an agreement with the lowest bidders at terms that were mutually acceptable to both parties. Another option discussed was to continue with the bidding process and award the project to the third low bidder, Peerless Pump / Muni Quip as the lowest responsible, responsive bidder. The second low bidder, Xylem/Goulds submitted their bid after the deadline so theirs was automatically rejected. Several Board members spoke on the options and felt that Trillium had lost its chance at the project. Board members stated that the project should be offered to Peerless Pump / MuniQuip. The General Manager Weir and General Counsel Gibson stated that was an acceptable approach.

Director Carling motioned, seconded by Director Goel, to reject the bids from Trillium Pumps USA and Xylem/Goulds as nonresponsive, and to award the contract to Peerless Pumps / MuniQuip.

There were no comments from the public. The Motion passed unanimously (6 – 0) by a roll call vote.

8. Matters From/For Board Members

There were no matters from the Board.

9. Next Regular Board Meeting, Wednesday, November 17, 2021 at 6:00 p.m. Unless the Governor’s order allowing remote meetings is extended or modified, the meeting will be held at the City of Pleasanton Council Chambers.

10. Order of Adjournment to Wednesday, July 21, 2021, 6:00 p.m.

There being no further action, Chair Johnson adjourned the meeting at 6:27 p.m.

Minutes Approved by the Board _____.

Charles V. Weir
General Manager

ITEM NO. 7 AUTHORIZATION FOR THE GENERAL MANAGER TO AWARD A CONTRACT FOR THE PURCHASE OF THREE VERTICAL TURBINE PUMPS**Action Requested**

Consider options for the award of a contract for the purchase of up to three vertical turbine pumps. The options include rejecting all bids and: 1) authorizing the General Manager to rebid the procurement or to use an alternative procurement method with guidance from legal counsel, 2) authorizing the General Manager to negotiate the procurement on terms acceptable to LAVWMA starting with the low bidder and moving to the next highest bidder if unable to reach a mutually acceptable agreement, 3) directing the General Manager to return to the Board with alternatives to purchase, such as repairing existing pumps, or 4) some combination of these options.

Summary

At the September 8, 2021 meeting, the Board authorized the issuance of a Notice of Potential Award (NPA) to Peerless Pumps for the purchase of three vertical turbine pumps, **Attachment No. 7.a**. Unfortunately, Peerless also had issues with the terms and conditions of the contract and declined executing the contract. Please refer to **Attachment No. 7.b** which is a series of emails with Peerless.

MuniQuip is the manufacturer's representative for Peerless Pumps in northern California. The General Manager had several emails and telephone calls with MuniQuip. They attempted to negotiate a contract with Peerless that would allow for a buy/resell arrangement. In this situation MuniQuip would contract with LAVWMA at the bid price. Peerless offered to sell the pumps to MuniQuip at essentially the bid price which left MuniQuip in an untenable position. The General Manager was informed of this situation during a telephone call with MuniQuip representatives on September 22, 2021. At that point, this Special Board meeting was scheduled.

As a reminder, following is a summary of events related to the pump bid process. A bid packet for the purchase of three new pumps was released on July 6, 2021. The due date for bids was August 5, 2021 at 3:00 p.m. Four bids were received, including one that was received after the deadline. A virtual Zoom bid opening was held that afternoon. The results of the bids are summarized below:

Agenda Explanation
Livermore-Amador Valley
Water Management Agency
Board of Directors
September 29, 2021

Bidder	Time Submitted	Pump Manufacturer	1. Base Bid
Trillium Pumps USA, Inc., aka Floway Pumps	10:02 a.m. and 11:11 a.m.	Trilium Pumps USA, Inc.	\$357,057.00
Flo-Line Technology, Inc.	11:51 a.m.	Johnson / Sulzer	\$941,200.00
Peerless Pump Co. in care of MuniQuip LLC	2:47 p.m.	Peerless Pump Company	\$444,509.00
Xylem-Goulds Water Technology - c/o R. R. MacDonald Co.	3:06 p.m. after the deadline	Xylem - Goulds Water Technology	\$414,892.00

A summary of the bids follows:

1. Trillium Pumps USA was the apparent low bidder at \$357,057. Attached to their bid were technical documents indicating they clearly understood the technical specifications. Their references spoke highly of their products and services. Also attached to the bid was a request to modify terms and conditions of LAVWMA's standard contract. Their objections included liquidated damages, liability, and ownership of documents.
2. Xylem Goulds Water Technology was the second low bidder at \$414,892. However, their bid was received after the bid deadline. In addition, their bid had exceptions to the technical specifications, including the type of stainless steel required for the pump. They asked to change the stainless steel requirement. Addendum No. 1 to the bid packet was issued on August 2, 2021, which clearly stated that the stainless steel could not be changed due to the nature of the effluent being pumped. In addition, their bid included attachments requesting modifications to the standard contract language.
3. Peerless Pump / Muni Quip was the third low bidder at \$444,509. They included attachments that were related to their references. They did not object to the standard contract language. However, they attached standard submittals, did not recognize certain specifications, and included coatings and tests that did not meet the technical specifications. Their references spoke highly of their products and services. It should also be noted that MuniQuip was the supplier for the three pumps purchased in 2017. At that time, the manufacturer was American Marsh Pumps.
4. Flo-Line Technology was the high bidder at \$941,200. Due to the high price, their bid was rejected and not thoroughly reviewed.

Since Trillium and Peerless have both declined the award, the Board needs to consider its options. The options include rejecting all bids and: 1) authorizing the General Manager to rebid the procurement or to use an alternative procurement method with guidance from General Counsel, 2) authorizing the General Manager to negotiate the procurement on terms acceptable to LAVWMA starting with the low bidder and moving to the next highest bidder if unable to reach a mutually acceptable agreement, 3) directing the General Manager to return to the Board with alternatives to purchase, such as repairing existing pumps, or 4) some combination of these options. These options are the same as those considered at the September 8, 2021 Special Board meeting.

Note that in all circumstances, Staff's recommendation is to reject all bids. LAVWMA expressly reserved the right to do so for any reason in the bid package and believes doing so is appropriate here given the various issues with irregularities, responsiveness, timeliness, price deviations, etc.

LAVWMA's Joint Powers Agreement provides that LAVWMA will follow the laws applicable to the City of Pleasanton. With respect to the procurement of equipment and supplies, Section 3.28.020 of Pleasanton's Municipal Code authorizes "open market procurement" for supplies and equipment, which requires the solicitation of at least three bids, whenever possible, and that the purchase be awarded to the lowest responsible bidder. Pleasanton's Municipal Code also authorizes the city manager to "[n]egotiate and recommend execution of contracts for the purchase of supplies and equipment" and to "[a]ct to procure for the city the needed quality in supplies and equipment at least expense to the city and in support of local businesses."

Additionally, where public bidding is incongruous and unavailing to a local agency's efforts to contract for the greatest public benefit, it will not produce any advantage to the local agency, *or* it is practically impossible to achieve the agency's needs through public bidding, it may be permissible under the common law exception to public bidding for the agency to award the contract without public bidding. (*Graydon v. Pasadena Redevelopment Agency* (1980) 104 Cal. App. 3d 631, 635-636.)

LAVWMA has attempted to procure the pumps through a bidding process. The bidding process has achieved the objective of obtaining competitive prices. Now, the goal is to negotiate the best commercially available terms based on the agency's objectives.

Option No. 1. It is doubtful that rebidding the pump purchase would change the results unless the contract in the bid packet is modified to meet the concerns of Trillium, Xylem, and Peerless both in terms of the contract language and the variations to the specifications. Modifying the contract in the packet would not address the public policy concerns raised by the Board.

Option No. 2. Negotiating with the low bidder may result in more acceptable contract terms than modifying the terms in a new bid packet, but there is no guarantee of that. The advantage of this approach is that the General Manager can negotiate the best deal for LAVWMA taking into account the variables of contract terms, pricing, timing, etc. as a whole.

Option No. 3. Repairing the existing pumps is unlikely to yield the desired results. Pump No. 1 was damaged beyond repair, so at a minimum, one new pump is required. The status of the other two pumps would not be known until they are removed and sent out for inspection. Since the first three pumps were badly damaged and determined to not be repairable, it is doubtful that the findings would be any different for the other two pumps. This is particularly true since the pumps are now four years older than the first three that were replaced.

Option No. 4. Not yet defined. This could be some combination of the above. For example, the Board may wish to direct that LAVWMA purchase two of the pumps and only purchase a third if it is unable to repair one.

Scheduling is also a consideration. Had Peerless accepted the award, the delivery date for the pumps would have been late June 2022. Rebidding the pump purchase would likely add two months to that date, or early August 2022. Negotiating with the low bidders will likely only add a month to the timeline. Removing a pump for inspection would mean two pumps would be out of service until a rebuilt pump is returned.

Recommendation

From a cost and timing perspective, Option No. 2 appears to be the best option. If the Board concurs with Option No. 2, then the motion should be to reject all bids and authorize the General Manager to negotiate the procurement on terms acceptable to LAVWMA starting with the low bidder and moving to the next highest bidder if unable to reach a mutually acceptable agreement.

Attachments

1. Attachment No. 7.a, Notice of Potential Award to Peerless.
2. Attachment No. 7.b, Peerless email communication.



Livermore-Amador Valley Water Management Agency

Sent via email to Gary Holt, GHolt@peerlesspump.com

September 13, 2021

Gary Holt, Regional Sales Manager
Peerless Pump Company
P.O. Box 8430
Alta Loma, CA 91701

Re: **NOTICE OF POTENTIAL AWARD**
Vertical Turbine Pump Purchase, LAVWMA 2021-03

Dear Mr. Holt:

I am pleased to inform you that at its September 8, 2021 meeting, the Livermore-Amador Valley Water Management Agency ("Agency") Board of Directors approved awarding a contract for the Purchase of Three Vertical Turbine Pumps ("Project") to Peerless Pump Company ("Supplier") for the Contract Price of \$444,509.00, based on Supplier's Bid Proposal and Supplier's Bid Schedule submitted on August 5, 2021.

A copy of the Contract accompanies this Notice. Please advise if any information for Supplier needs to be modified. Once finalized, I will email the contract to you at the listed emails via DocuSign. Supplier must execute the Contract via DocuSign and submit the required Performance Bond (executed) and insurance certificates and endorsements via DocuSign or via email to weir@lavwma.com, no later than ten days from the date of this Notice of Potential Award, above.

This Notice of Potential Award does not bind the Agency to award the Contract. The Agency, acting through its Agency Board of Directors or authorized designee, reserves the right to reject any or all bids, and the right to decline to award the Contract, notwithstanding any staff recommendation.

Please acknowledge receipt of this Notice of Potential Award by signing the attached Acknowledgement of Notice of Potential Award, as indicated, and transmitting the Acknowledgement to my office via email at: weir@lavwma.com. Do not hesitate to contact me if you have any questions in this regard.

Sincerely,

A handwritten signature in black ink that reads "Charles V. Weir".

Charles V. Weir
General Manager
Enclosure

C:\Users\chuck\Documents\Weir Technical Services\LAVWMA\Agreements\Vertical_Turbine_Pumps_Peerless_MuniQuip_2021\Peerless_NPA_09-13-21.docx



Livermore-Amador Valley Water Management Agency

Acknowledgement of Notice of Potential Award

On behalf of Peerless Pump Company. (“Supplier”), I acknowledge receipt of the Notice of Potential Award for the Vertical Turbine Pump Purchase Project:

s/ _____
Name: Gary Holt
Title: Regional Sales Manager

Date: _____

From: [Gary Holt](#)
To: weir@lavwma.com
Cc: [Don Reppond](#)
Subject: Re: LAVWMA contract
Date: Monday, September 13, 2021 4:18:40 PM

Chuck,

We will not accept contract as written. I do not know if Muniquip will accept contract on a buy/resell basis.

Regards,

Gary Holt - Regional Sales Manager
Peerless Pump Company
P. O. Box 8430
Alta Loma, CA 91701
909 636 9503
gholt@peerlesspump.com
<http://linkedin.com/in/gary-holt-b284b244>

On Sep 13, 2021, at 4:07 PM, weir@lavwma.com wrote:

Hi Gary,

The terms and conditions of the contract are not negotiable. That is how you ended up with the NPA.

Thanks,

Chuck Weir
General Manager
Livermore-Amador Valley Water Management Agency
7051 Dublin Boulevard
Dublin, CA 94568
510-410-5923
925-829-1180 (fax)
weir@lavwma.com

From: Gary Holt <GHolt@peerlesspump.com>
Sent: Monday, September 13, 2021 4:04 PM
To: weir@lavwma.com
Cc: Don Reppond <donr@muniquipllc.com>
Subject: Re: LAVWMA contract

Chuck,

Are the terms and conditions of the contract negotiable? I know there is some

verbiage in the contract that will not be accepted by Peerless Pump. Muniquip should have included our terms and conditions with the bid.

Regards,

Gary Holt - Regional Sales Manager
Peerless Pump Company
P. O. Box 8430
Alta Loma, CA 91701
909 636 9503
gholt@peerlesspump.com
<http://linkedin.com/in/gary-holt-b284b244>

On Sep 13, 2021, at 3:04 PM, weir@lavwma.com wrote:

Let's try this again with correct Notice.

Thanks,

Chuck Weir
General Manager
Livermore-Amador Valley Water Management Agency
7051 Dublin Boulevard
Dublin, CA 94568
510-410-5923
925-829-1180 (fax)
weir@lavwma.com

From: weir@lavwma.com <weir@lavwma.com>
Sent: Monday, September 13, 2021 1:57 PM
To: 'Gary Holt' <GHolt@peerlesspump.com>; 'Don Reppond' <donr@muniquipllc.com>
Subject: RE: LAVWMA contract

Good afternoon Gary and Don,

Attached are the Notice of Potential Award and Contract. Let me know if any of the company information for Peerless needs to be changed. I also need an email address for Tim Ballengee for DocuSign. As noted in the bid packet, a Performance Bond is also required. You might also want to get a start on the schedule as required by Section 01110, B. Schedule Requirement and Section 13 of the Instruction to Bidders. Let me know if you have any questions.

Looking forward to working with you.

Thanks,

Chuck Weir
General Manager
Livermore-Amador Valley Water Management Agency
7051 Dublin Boulevard
Dublin, CA 94568
510-410-5923
925-829-1180 (fax)
weir@lavwma.com

From: Gary Holt <GHolt@peerlesspump.com>
Sent: Monday, September 13, 2021 10:51 AM
To: Don Reppond <donr@muniquipllc.com>
Cc: weir@lavwma.com
Subject: Re: LAVWMA contract

Don,

Tim Ballengee VP Sales and myself will be signing contract. We need to see copy of bid package you turned in.

Regards,

Gary Holt - Regional Sales Manager
Peerless Pump Company
P. O. Box 8430
Alta Loma, CA 91701
909 636 9503
gholt@peerlesspump.com
<http://linkedin.com/in/gary-holt-b284b244>

On Sep 10, 2021, at 12:46 PM, Don Reppond
<donr@muniquipllc.com> wrote:

Gary

Please forward to Chuck Weir the name of the person that will be signing the contract for Peerless. Chuck will then for the contract to you and Peerless.

Don Reppond
Senior Sales Engineer
MuniQuip LLC
Cell: 707-685-3757
donr@muniquipllc.com

ITEM NO. 8 CONSIDER ADOPTING A RESOLUTION AUTHORIZING REMOTE TELECONFERENCE MEETINGS OF THE LEGISLATIVE BODIES OF THE LIVERMORE-AMADOR VALLEY WATER MANAGEMENT AGENCY PURSUANT TO BROWN ACT PROVISIONS

Action Requested

Approve Resolution No. 21-08, Authorizing Remote Teleconference Meetings of the Legislative Bodies of the Livermore-Amador Valley Water Management Agency Pursuant to Brown Act Provisions.

Summary

On March 4, 2020, Governor Newsom declared a State of Emergency to make additional resources available, formalize emergency actions already underway across multiple State agencies and departments, and help the State prepare for a broader spread of COVID-19.

On March 17, 2020, the Governor issued Executive Order N-29-20 which authorized meetings of local legislative bodies to be held by teleconference as long as specified notice and comment provisions were followed. Given the state of emergency and authority to meet remotely, on April 3, 2020 the Board President issued a declaration altering the regular meeting location to be held via teleconference only. The Board ratified this declaration at its regular meeting on May 20, 2020. For the past year and a half, LAVWMA has been meeting remotely via Zoom. Meeting remotely has allowed LAVWMA to ensure the public's continued access to government meetings while also ensuring the public's safety.

On June 11, 2021, Governor Newsom issued Executive Order N-08-21, which rescinded his prior Executive Order N-29-20 and set a date of October 1, 2021 for agencies to transition back to public meetings held in full compliance with the Brown Act. However, the Delta variant has emerged, causing a spike in cases throughout the State. As a result, the Alameda and Contra Costa County Public Health Departments have issued a Health Order requiring masks indoors in public places, regardless of vaccination status.

The California Legislature recently approved AB 361, which was signed as an urgency statute by the Governor on September 16, 2021 and is effective immediately. This law allows local legislative bodies to continue to meet remotely after the October 1 deadline under specified circumstances.

A local agency will be allowed to continue to meet remotely when:

- The legislative body holds a meeting during a proclaimed state of emergency, and State or local officials have imposed or recommended measures to promote social distancing.
- The legislative body holds a meeting during a proclaimed state of emergency for the purpose of determining, by majority vote whether as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.
- The legislative body holds a meeting during a proclaimed state of emergency and has determined, by majority vote, that, as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

To meet remotely agencies must make certain findings demonstrating the requirements to continue to hold remote meetings apply. Staff is recommending that Resolution XXXX be adopted as these findings can be made. Specifically, LAVWMA meets the requirements to continue holding meetings remotely in order to ensure the health and safety of the public because:

- LAVWMA is still under a state of emergency as declared by the Governor.
- County Health Order 21-03 requires that all individuals in indoor public spaces wear masks, regardless of vaccination status.
- County Public Health officers have issued various health orders, recommendations and updates designed to slow the spread of COVID-19, including recommendations for social distancing and directing that public meetings continue to be held remotely to protect public health.¹
- LAVWMA cannot maintain social distancing requirements for the public, staff, and Directors in their meeting spaces.

LAVWMA staff is concerned about protecting the health and safety of attendees, particularly given that even fully vaccinated people have contracted the Delta variant, people may have and transmit the virus before knowing they are infected and/or if they are asymptomatic, meetings can last several hours, and LAVWMA meeting facilities are shared with other public entities and are limited in space with seats close together.

¹ See, e.g. Contra Costa County Public Health Officer's "Recommendations for Safely Holding Public Meetings" which provides that online meetings are strongly recommended as those meetings present the lowest risk of transmission of SARS-CoV-2, the virus that causes COVID-19. Available online at <https://cchealth.org/covid19/pdf/recommendations-for-safe-public-meetings.pdf> Other county health officers have issued similar, and we anticipate Alameda County will follow suit.

Under AB 361, if the state of emergency remains active for more than 30 days, a local agency must make the following findings by majority vote every 30 days to continue using the bill's exemption to the Brown Act teleconferencing rules.

- The legislative body has reconsidered the circumstances of the emergency; and
- Either of the following circumstances exist: The state of emergency continues to directly impact the ability of members to meet safely in person, or State or local officials continue to impose or recommend social distancing measures.

For these reasons, Staff anticipates that if the pandemic continues, the LAVWMA Board will be asked to approve a resolution on every agenda making findings regarding the circumstances of the emergency and vote to continue using the law's exemptions. AB 361 sunsets on January 1, 2024.

It is important to note that holding meetings remotely does not compromise the level of transparency or engagement that the Brown Act was designed to ensure. Studies have shown that remote meetings maintain and, in many instances, enhance the transparency and accessibility of public agency meetings. The Little Hoover Commission has prepared a white paper which recommends that remote meetings be allowed on a permanent basis because of the evidence gathered showing that bringing meetings to the public, rather than the other way around, promotes public participation and engagement.²

Recommendation

Consider Adopting Resolution No. 21-08 Authorizing Remote Teleconference Meetings of the Legislative Bodies of the Livermore-Amador Valley Water Management Agency Pursuant to Brown Act Provisions

Attachments

Attachment No. 8, Resolution No. 21-08, Authorizing Remote Teleconference Meetings of the Legislative Bodies of the Livermore-Amador Valley Water Management Agency Pursuant to Brown Act Provisions.

² Available online at The Government of Tomorrow: Online Meetings
<https://lhc.ca.gov/sites/lhc.ca.gov/files/Reports/261/Report261.pdf>

**LIVERMORE-AMADOR VALLEY WATER MANAGEMENT AGENCY
RESOLUTION NO. 21-08**

**A RESOLUTION OF THE LIVERMORE-AMADOR VALLEY WATER
MANAGEMENT AGENCY AUTHORIZING REMOTE TELECONFERENCE
MEETINGS OF THE LEGISLATIVE BODIES OF THE LIVERMORE-AMADOR
VALLEY WATER MANAGEMENT AGENCY PURSUANT TO BROWN ACT
PROVISIONS**

WHEREAS, on March 4, 2020, the Governor of the State of California issued a Proclamation of a State of Emergency due to COVID-19. Such Proclamation remains and is in effect as of the date of this Resolution, as are the facts, circumstances, and emergency under which it was issued; and

WHEREAS, the Livermore-Amador Valley Water Management Agency ("Agency") ordinarily holds its regular meetings on the third Wednesday in February, May, August, and November at 6 p.m. at the Pleasanton City Council Chambers, 200 Old Bernal Avenue, Pleasanton, California 94566; and

WHEREAS, the City of Pleasanton officially closed its public facilities as of March 20, 2020 due to the coronavirus pandemic, making the Council Chambers unavailable to the public; and

WHEREAS, on April 3, 2020 the Agency Board President issued a Declaration altering the regular meeting location to be held via teleconference only pursuant to Executive Order N-29-20. The Board ratified this Declaration at its regular meeting on May 20, 2020; and

WHEREAS, the Health Officers of the County of Alameda and Contra Costa ("Health Officers") have issued various health orders and updates designed to slow the spread of COVID-19 (including variants thereof) such as vaccinations, quarantines, face covering requirements, and social distancing recommendations designed to protect public health; and

WHEREAS, on September 20, 2021, the Health Officer issued recommendations for safely holding public meetings, including strongly recommending teleconferencing meetings as those meetings present the lowest risk of transmission of SARS-CoV-2, the virus that causes COVID-19, and further recommended social distancing and face masking of all attendees; and

WHEREAS, as of September 24, 2021, 22.7% of Alameda County and 14.5% of Contra Costa County residents remain unvaccinated or partially vaccinated. The Health Officers recommend social distancing for those who are not fully vaccinated and further recommend avoiding crowded places, close contact settings, and confined places with poor airflow; and

WHEREAS, COVID-19 continues to spread, the Delta variant (a highly-infectious COVID-19 strain) is prevalent in the Bay Area. COVID-19 poses imminent health and safety concerns. The risk of exposure to COVID-19 depends on the likelihood of coming into close physical contact with people who may be infected and through contact with contaminated surfaces and objects. The severity of the illness varies. Per the US Centers for Disease Control and Prevention about 14% of the cases are severe (meaning, they required hospitalization), with an infection that affects both lungs and has the potential to lead to severe medical complications (such as

respiratory failure, shock, or multiorgan dysfunction) that can cause death in some people. The number of cases of infections and deaths occurring locally can be determined by viewing the dashboards of the Health Officers; and

WHEREAS, on June 11, 2021, the Governor issued Executive Order N-08-21, which placed an end date of September 30, 2021 on such authority; and

WHEREAS, due the rise in COVID-19 cases, including due to the Delta variant, the Agency continues to be deeply concerned about protecting the health and safety of attendees, particularly given that even fully vaccinated people have contracted the Delta variant, people may contract and transmit the virus before knowing they are infected and/or if they are asymptomatic; meetings of the Agency can last several hours, and the Agency’s meeting facilities are shared spaces with member agencies, limited in space with seats that are close together, and have restricted air flow; and

WHEREAS, the California State legislature adopted AB 361 as an urgency measure that was signed by the Governor on September 16, 2021. AB 361 amends the Brown Act to allow local governments to use teleconferencing and virtual meeting technology as long as there is a gubernatorial “proclaimed state of emergency” upon the local legislative body finding that State or local officials have imposed or recommended measures to promote social distancing or that meeting in person would present imminent risks to the health or safety of attendees; and

WHEREAS, the Board desires to continue holding public meetings of the Agency using teleconferencing and virtual meeting technology in order to avoid the imminent risk to the health and safety of attendees; and

WHEREAS, the Agency found that conducting its meetings using virtual meeting technology allowed the equivalent, if not improved, access to the meetings for Directors, staff, and the public based on the ease of use and flexibility of technology. This experience has been confirmed by the Little Hoover Commission, which evaluated the effectiveness of remote meetings statewide; and

WHEREAS, the Board, after giving all public notices required by State Law, held a duly noticed public meeting on September 29, 2021; and

WHEREAS, at such public meeting, the Board considered all pertinent oral and written information, exhibits, testimony, and comments received during the public review process, including, without limitation, information received at the public hearing, the oral report from Agency staff, the written report from staff, this Resolution, and all other information on which each of the Directors has based their decision (collectively, “Remote Meeting Information”).

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of LAVWMA as follows:

Section 1. Recitals. The Board hereby finds and determines that the foregoing recitals are true and correct; the recitals are hereby incorporated by reference into each of the findings as though fully set forth therein. The recitals and the information below constitute findings in this

matter, and together with the Remote Meeting Information, serve as an adequate and appropriate evidentiary basis for the findings and actions set forth herein.

Section 2. Timing. This meeting was held on September 29, 2021, before expiration of the Brown Act exemptions granted pursuant to Executive Orders N-29-20 and N-08-21.

Section 3. AB 361 Findings. The Board hereby further finds the following: A state of emergency remains active due to the coronavirus pandemic, which continues to directly impact the ability of attendees to meet safely in person. State and/or local officials have imposed and/or recommended measures to promote social distancing. They have strongly recommended public agencies hold their meetings online because doing so presents the lowest risk of transmission of SARS-CoV-2, the virus that causes COVID-19. COVID-19 poses an imminent risk to the health and safety of attendees because it can be contracted and transmitted by people without symptoms and regardless of vaccination status and has the potential to lead to severe disease and death.

Section 4. Remote Meetings. Meetings of the Agency and its legislative bodies will continue to be conducted remotely using teleconferencing for the next 30 days in compliance with AB 361.

Section 5. CEQA. This action does not constitute a “project” within the meaning of Public Resources Code Section 21065, 14 Cal Code Reg. Section 15060(c)(2), 15060(c)(3), and/or 15378 because it has no potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. In addition, this action is categorically exempt pursuant to Section 15061(b)(3), “Review for Exemptions” of the CEQA Guidelines because there is no possibility that it may have a significant effect on the environment, and no further environmental review is required. No unusual circumstances exist and none of the exceptions under CEQA Guidelines Section 15300.2 apply. This determination reflects the Board’s independent judgment and analysis.

DULY AND REGULARLY ADOPTED by the Agency’s Board of Directors this 29th day of September, 2021 by the following vote:

- AYES:
- NOES:
- ABSENT:

Ann Marie Johnson, Chair

ATTEST: _____
Charles V. Weir, General Manager

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