



Special Board Meeting Agenda

Russ Baggerly, Director
Angelo Spandrio, Director
Brian Brennan, Director

Pete Kaiser, Director
James Word, Director

CASITAS MUNICIPAL WATER DISTRICT
Special Meeting to be held at the
Casitas Board Room
1055 Ventura Ave.
Oak View, CA 93022
May 4, 2019 @ 8:30 A.M.

Right to be heard: Members of the public have a right to address the Board directly on any item of interest to the public which is within the subject matter jurisdiction of the Board. The request to be heard should be made immediately before the Board's consideration of the item. No action shall be taken on any item not appearing on the agenda unless the action is otherwise authorized by subdivision (b) of §54954.2 of the Government Code and 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 of the Government Code.

1. Call to Order
2. Roll Call
3. Pledge of Allegiance to the Flag of the United States of America.
4. Agenda Confirmation – Consider and approve, by majority vote, minor revisions to Board items and/or attachments and any item added to, or removed/continued from, the Agenda.
5. Public comments – presentations on District related items that are not appearing on the agenda – three minute limit.
6. General Manager comments. Brief announcements and report on GM and District workforce activities.
7. Board of Director Comments.
8. Action Items
 - A. Development and Possible Approval of Casitas Municipal Water District Mission Statement.

9. Discussion Items

- A. Review and Receive April 8, 2019 Memorandum on Recommendations for Board of Director Decision-Making Governance from District Counsel.

10. Adjournment.

If you require special accommodations for attendance at or participation in this meeting, please notify our office 24 hours in advance at (805) 649-2251, ext. 113. (Govt. Code Section 54954.1 and 54954.2(a)).



ARNOLD LAROCHELLE MATHEWS
VANCONAS & ZIRBEL LLP

MEMORANDUM

TO: Casitas Municipal Water District Board President Peter Kaiser and
Members of the Board Executive Committee

FROM: Robert N. Kwong *RNK*

DATE: April 8, 2019

SUBJECT: Recommendations for Board of Director Decision-Making Governance

I. Introduction

Governing an organization, whether it is a voluntary, governmental, for profit or non-profit corporate body or agency involves a certain level of formality and consistency to promote:

- thoughtful and orderly decision-making;
- simplified board minutes and record-keeping; and
- the legitimacy and acceptance of such decisions to the organization, its constituents, and those it serves.

The goal of this memorandum is to set forth and apply time-tested principles, best management practices and applicable statutory provisions for the Casitas Municipal Water District Board of Directors (“District Board”). Specifically, this memorandum makes recommendations for what and how each District Board agenda item should look like and how agenda items ought to be formulated and presented for District Board review and action. It is my hope that these recommendations will help the District Board conduct its business with greater efficiency, accountability, transparency and order.

II. Context and Governance Principles for Board of Director Decision-Making

The United States of America and all its governmental subsidiaries are founded on Greco-Roman and Judeo-Christian principles¹ that can be summarized as doing all things decently and in order. The principle of law and order in democratic governmental decision-

¹ Lane, Melissa, “Ancient Political Philosophy,” The Stanford Encyclopedia of Philosophy (Winter 2018 Edition), Edward N. Zalta (ed.), URL = <<https://plato.stanford.edu/archives/win2018/entries/ancient-political/>>.

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making is found in the earliest Greek and Roman texts to the Magna Carta to the Constitution of the Commonwealth of Virginia to the United States Constitution.²

In California, the state constitution mandates that, “The people have the right of access to information concerning the conduct of the people’s business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.” Cal.Const. Art.1, §3(b)(1). The part of the state constitution further states that, “A statute, court rule, or other authority . . . shall be broadly construed if it furthers the people’s right of access, and narrowly construed if it limits the right of access.” Cal.Const. Art. 1§3(b)(2).

This constitutional precept of a high degree of transparency in government activities for democratic accountability makes the Brown Act Open Meetings Law (“Brown Act”) (Gov. Code §54950 *et seq.*) all the important for purposes of good Board of Director governance. The Brown Act’s foundational principle is that:

[P]ublic 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 these 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.

Carlson v. Paradise Unified School Dist. (1971) 18 Cal.App.3d 196.

Governmental open meetings laws provide as good a basis as there is upon which any governing board or decision-making body can go about the deliberative process of making decisions that affect an organization. Stated another way, governing boards or decision-making bodies exist to aid in the conduct of the organization’s business, and their deliberations should be conducted as openly as possible and with due process. These basic foundations of board governance due process are explained further below.

² “Where there is no law, but every man does what is right in his own eyes, there is the least of real liberty.”
Henry M. Robert

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III. Board Director Rights and Duties

In organizations of all kinds, good governance starts with the Board of Directors. “The board’s role and legal obligation is to oversee the administration and management of the organization and ensure that the organization fulfills its mission.”³ The Board does not execute the day-to-day management of the organization for that would be contrary to its oversight and visionary role. Good Board members monitor, guide, and enable good management. The Board of Directors has decision-making powers regarding matters of policy, direction, major transactions, fiscal management oversight, strategy and governance of the organization or government agency.⁴ To this end, every Board member or director has the following rights:

- Right to be informed regarding all activities and operations of the organization.
- Right to inspect all books and records of the organization.
- Right to contact staff or Board Committee members with questions and concerns.
- Right to receive notice of all board meetings and copies of meeting minutes.

For the most part, current District Board operations and practices and the proposed Bylaws ensure that these four Board member rights are upheld and satisfied. And with Board member rights comes the corresponding Board member duties as follows:

A. Duty of Care

A Board director must pay attention to organization matters and participate fully in board review and decision-making. He or she must exercise the care that an ordinarily prudent person would exercise in a like position and under similar circumstances.

B. Duty of Loyalty

A Board director must put the needs of the organization ahead of any personal interest when making decisions affecting the organization and may not use information obtained as a director for personal gain. A director must always maintain confidentiality regarding the agency’s operations.

³ L. Rosenthal, Lincoln Center for the Performing Arts, *The Harvard Law School Forum on Corporate Governance and Financial Regulation* (April 15, 2012).

⁴ Water Code §§71270-71300

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C. Duty of Obedience

A Board director must be faithful to the organization's mission and may not act in a manner that is inconsistent with this mission. This requirement is based on the public trust afforded to governmental entities, and the assumption that the agency will manage constituent funds in fulfillment of the agency's statutory purpose.

D. Fiduciary Duty

A Board director has a fiduciary (i.e., one who must exercise a high standard of care in managing another's money or property (Black's Law Dictionary, 10th ed., p. 743)) duty to the organization and is responsible for assuring the agency's fiscal health.

IV. Best Practices for Due Notice of Board Meetings

These foregoing principles about Board governance in general and the role of Board members board governance provide the context for best practices for the conduct of board business and decision-making, which are primarily based upon the Brown Act.

Advance, prior notice of Board meetings is essential to a well-run and publicly accessible Board meeting. Ideally, a written and final board agenda is provided to the board members at least a week (7 days) in advance of the meeting. The agenda shall conform to set standards in terms of format and content so that the board is sufficiently informed ahead of time so that he or she can think through the proposed action items, if any, and to thoroughly read the supporting materials so that when the meeting arrives he or she can be an effective and substantive contributor to the board decision-making process.

Especially for informing the public, the Brown Act addresses this prior noticing principle in Section 54954(a) [i.e., each legislative body shall provide for the time and place for regular meetings by ordinance, resolution, or by-laws] and with a required 72 hours prior notice of a regular meeting in Section 54954.2.

V. Best Practices for Board Agendas & Board Letters

Board meetings should be governed by a published agenda with sufficient detail to prepare and guide the board in making the best decisions possible. The substantive aspect of due notice is also achieved through the proper description and explanation of board agenda items. A properly worded agenda item achieves the following important goals:

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- informing the board members on the issue that is to be discussed or acted upon;
- allowing the board members to learn about the issue prior to the meeting;
- informing interested parties and the public at large about what the governing board is considering; and
- helping any interested party make an intelligent decision on whether they should attend the board meeting and participate in the decision-making body's deliberations on an agenda item.

Freedom Newspapers, Inc. v. Orange County Employees Retirement System (1993) 6 Cal.4th 821. It cannot be overemphasized about how important it is for the District Board meeting agenda to be a tool of public communication and education about the activities, accomplishments, plans and programs of the District.

A. Agenda Item Titles & Synopsis of Agenda Item

Each board agenda shall be written and list each item of business to be considered by the governing body. Each agenda item shall "contain ... a brief general description of each item of business to be transacted or discussed at the meeting." Gov. Code §54952. Thus, each Board agenda item should:

- (1) Not exceed twenty (20) words;
- (2) Be worded to convey the essence of the agenda item so that any interested person reading it would know what would be discussed or decided by the Board; and
- (3) Not be so narrowly worded as to limit the governing board's discretion or options regarding the agenda item.

B. Recommended Action(s) for Agenda Items

Each Board memorandum or letter should be prepared to help the Board make the best decision possible given all the relevant facts, circumstances and applicable law. This Board governance goal is reflected in the detail with which District Staff recommendations are made to the Board for discussion, deliberation and decision. Recommendations should be worded in a way so that any board member can understand the project or recommended action. Recommended actions should specify the action to be taken in simple terms. Recommended actions should flow from the agenda item analysis. Finally, recommended actions, if worded correctly, enable the board member to simply say either:

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- (1) "Move approval of the recommended action(s)"
- (2) "Move denial of the recommended action(s);" or
- (3) "Move approval of the recommended action with the following modifications, conditions or changes ..."

This practice of crafting well-worded recommended action(s) for the Board minimizes the inevitable and oftentimes frustrating process of articulating motions for Board deliberation and action. This may not do away altogether with the struggle to articulate a motion for Board action but at least this gives the Board a good starting point for discussion and formulating actions. This practice of crafting well-worded recommended action(s) for the Board also has the additional benefit of focusing District staff to think in terms of what actions the Board will be asked to make.

C. Standardized Board Letter Format

The main objectives of this standardization are simply to create a consistent format for matters coming to the board for review and action, to provide a more "reader friendly" presentation of information; and to include helpful content to the Board for its decision-making. In this way, a Board member or interested party may quickly find and read certain information, such as policy issues or cost, about a Board agenda item.

Based upon my experience as general legal counsel for various government agency boards and committees, I recommend that the District develop standardized Board letter from the District General Manager or his designee to the Board⁵ that provides the Board of Directors with:

- Prominent display of Board agenda item number;
- A Board agenda item title consistent with subsection V.A., above, that basically summarizes the agenda item;
- Proposed recommended action(s) (i.e., Approve and Authorize, Receive and File, Consider and Adopt, etc.);
- Whether the agenda item was reviewed by a Board Committee and what that Committee recommended if anything;
- Fiscal impact, if any, of proposed recommended action;

⁵ This means ending the practice of using interoffice memorandum from District staff to the General Manager on certain agenda items as the "Board letter/memorandum" for that matter. The use of interoffice memorandum in this way may jeopardize or waive the District's ability to assert the deliberative due process privilege when and if it receives a Public Records Act request for information and communications that led to a Board agenda item.

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- Background Facts; and
- Explanation and Analysis of Proposed Recommended Action.

A proposed standardized Board letter containing these core elements is attached as Exhibit A. Many current Board agenda items are accompanied with District staff memorandum that includes some or all of this information but not in a standardized format.

D. Length of Standardized Board Letter

Each Board agenda item should be accompanied by its own Board letter or memorandum written on District letterhead using the same format, usually 1-2 pages in length for simple, routine matters and rarely more than 3-4 pages for complex matters. The emphasis is on succinct writing and full analysis.

E. Pagination

Not only should each Board agenda item be paginated, the entire Board meeting package should be serially paginated from page 0001 to the end for reader convenience and reference.

F. Handling Board Business Not Listed on the Board Agenda

Due process in Board governance is tested whenever a Board member raises an issue, problem or proposed action that is neither listed on the Board meeting agenda nor analyzed in a Board letter or memorandum. Thankfully, the Brown Act has foreseen this common occurrence and addressed it as follows:

- (1) A decision-making body may not consider, act on or discuss any issue, matter, project or proposal not specifically listed or appearing on the decision-making body's written agenda which was made available to the Board prior to the meeting. (Gov. Code §54954.2)
- (2) However, a Board member may *briefly* respond to statements made or questions posed by persons exercising their public testimony rights under Section 54954.3. (Gov. Code §54954.2(a)(3); emphasis added.)
- (3) In addition, on their own initiative or in response to questions posed by the public, a Board member may:

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- ask a question for clarification;
 - make a brief announcement; or
 - make a brief report on his or her own activities.
- (4) Furthermore, a Board member, subject to rules or procedures of the legislative body (i.e., Proposed Board Bylaws), may:
- provide a reference to District staff or other resources for information;
 - request District staff to report back to the Board at a subsequent meeting concerning any matter within the District's jurisdiction or mission; or
 - act to direct staff to place a matter of business on a future Board meeting agenda.

Items V.F.(2)-(4) above are best reserved for a regular Board meeting agenda item simply entitled "Board Member Comment" with a citation to this portion of the Brown Act to remind the Board members of what can and cannot be handled at this juncture of a Board meeting.

VI. Conclusion

Although much of the current Board meeting agenda meets many of the above Brown Act requirements and corresponding board governance best practices, please consider these recommendations for an improved board decision-making process as starting points and goals that are subject to change and flexibility considering the District's organizational needs, resources and circumstances.

EXHIBIT A

EXAMPLE OF STANDARDIZED BOARD LETTER FORMAT

[insert Casitas Municipal Water District logo/letterhead]

[insert BOARD MEETING DATE]: AGENDA NO. _____

BOARD AGENDA ITEM TITLE or SUBJECT:

[In accordance with Government Code §54954.2 provide an approximately 20-word description of the agenda item. For example, "Approve and Authorize General Manager to sign a Professional Services Contract with EFG Corporation for Hydrogeologic Services in an amount not to exceed \$85,000"]

RECOMMENDED ACTION(S):

[Succinct statement of recommended action or actions. For example: "(1) Authorize FY 2019-20 Budget Adjustment in the amount of \$65,000 from Account No. XYZ to Account No. JKL; (2) Approve Contract with EFG Corporation and Authorize GM to Sign"]

FISCAL IMPACT:

[Explain if the item has any fiscal impact, if it is covered in the FY budget or if budget adjustments are necessary, etc.]

COMMITTEE:

[Whenever applicable, state the name of the Committee, date reviewed, and the action taken by the Committee. For Example: "Reviewed by Finance Committee on September 1, 2019 and voted to recommend this item to the full Board for approval."]

BACKGROUND:

[Explain relevant facts and circumstances leading to this agenda item being placed on the Board meeting agenda. Provide context and helpful information leading up to proposed action.]

ANALYSIS:

[Explanation of the proposed action; pros and cons; alternatives; justification.]

[Signed by District General Manager or his designee]