

ITEM: CONSENT CALENDAR (REVISED STAFF REPORT)

8. CONSIDER RESCINDING BOARD ACTION ON ITEM NO. 14-B MADE ON MONDAY, MARCH 20, 2023 AND RE-AUTHORIZING THE GENERAL MANAGER TO APPROVE ADDITIONAL FUNDING FOR RAFTELIS IN AN AMOUNT NOT-TO-EXCEED \$60,000

Meeting Date:	April 17, 2023	Budgeted:	N/A
From:	David J. Stoldt, General Manager	Program/ Line Item No.:	N/A
Prepared By:	David J. Stoldt	Cost Estimate:	\$60,000

General Counsel Review: N/A

Committee Recommendation: N/A

CEQA Compliance: This action does not constitute a project as defined by the California Environmental Quality Act Guidelines Section 15378.

SUMMARY: At the March 20, 2023 Board meeting, the chair inquired whether there were any additions or corrections to the agenda. The clerk answered in the affirmative, stating that “due to the need for immediate consideration by the Board for matters that arose after the posting of the published agenda and as provided by Government Code section 54954.2 . . . the Board is being asked to make the following addition . . .” The clerk went on to describe a request from Director Karen Paull to appear remotely pursuant to Government Code section 54954.2(b)(4). General Manager Dave Stoldt then interjected that there was another addition, Action Item 14.b, “and this would be to authorize expenditure of up to \$60,000 for an update to the rate study for Measure J by the Raftelis financial consulting team.” A motion and a second to approve both items immediately followed, and the Board took a roll call vote which passed unanimously, 6 to 0 with one absence.

On March 31, 2023 California American Water, through its attorney Nossaman LLP, sent a notice to the County District Attorney of what it thought was a Brown Act violation in how the District noticed, described, and voted on the item (see **Exhibit 8-A**).

The District Attorney responded on April 4, 2023 that it determined no Brown Act violation occurred and the Board took the requisite procedural steps to put item 14.b on the agenda and act upon it (see **Exhibit 8-B**).

Nevertheless, Government Code 54960.1 (c) (2) provides the MPWMD Board, as a legislative body, the opportunity to cure or correct action that has been challenged as failing to comply with the Brown Act. Out of an abundance of caution, it is recommended that the Board rescind its March 20, 2023 vote in favor of Item 14.b of that meeting agenda and to re-authorize the General Manager to enter into a contract amendment with Raftelis Financial Consultants not to exceed \$60,000 to update the rate study related to Measure J activities.

RECOMMENDATION: District General Counsel recommends that the Board rescind its March

20, 2023 vote in favor of Item 14.b of that meeting agenda and to re-authorize the General Manager to enter into a contract amendment with Raftelis Financial Consultants not to exceed \$60,000 to update the rate study related to Measure J activities.

BACKGROUND: On March 13, 2023 District staff asked Raftelis for an estimate of cost and schedule to update the Financial Plan/Rate Analysis (aka Rate Study) to reflect the new appraisal of the Cal Am Monterey Water System and the Cal AM current GRC application. On March 19, 2023 Raftelis provided an estimate of cost to be \$60,000 and completion by the end of May. This information came too late to be noticed in the published agenda for the March 20, 2023 meeting.

EXHIBITS

8-A Cal-Am Letter Alleging Brown Act Violation

8-B Monterey County District Attorney Determination of No Brown Act Violation