

CLIENT NEWS BRIEF

California Appellate Court Holds That Closed Session Agenda Language Substantially Complies with the Brown Act Despite Errors in Agenda Item

In *Castaic Lake Water Agency v. Newhall County Water District, et al. (Castaic)* (June 26, 2015) 2015 Cal. App. Lexis 641, the court of appeal recently addressed the question of what constitutes substantial compliance with the Brown Act's agenda requirements. The court addressed whether the Newhall County Water District's (Newhall) description of a closed session agenda item complied with the Brown Act. The court held that Newhall substantially complied with the Brown Act despite the fact that Newhall did not utilize "safe harbor" language to describe the subject of the closed session and cited to the wrong specific provision of the Brown Act in relation to the agenda item.

The Brown Act allows for legislative bodies to hold closed sessions in enumerated circumstances, provided that the agenda sufficiently describes the matters being discussed. The Brown Act contains specific "safe harbor" language for closed session items, usage of which is presumed to comply with the Brown Act.

When conferring with legal counsel regarding litigation in closed session, Government Code section 54954.5, subdivision (c), provides safe harbor language applicable to three specific scenarios as follows: existing litigation, exposure to litigation, or initiation of litigation. In *Castaic*, Newhall's board considered the last category, initiation of litigation. For this item, the designated Brown Act safe harbor language is:

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Initiation of litigation pursuant to paragraph (4) of subdivision (d) of Section 54956.9 (Specify number of potential cases).

Newhall's closed session agenda to discuss initiating litigation against the Castaic Lake Water Agency instead described the item as "Conference with Legal Counsel pursuant to Government Code Section 54956.9(c) to discuss potential litigations (2 cases)." This item did not track the Brown Act's safe harbor language and did not specify that the closed session was to consider initiating litigation, as opposed to defending or prosecuting an existing case, or discussing exposure to litigation, which are other permissible closed session topics set forth in paragraphs (1) and (2) of subdivision (d) of Government Code section 54956.9.

In holding that Newhall nevertheless substantially complied with the Brown Act, the appellate court reasoned that Newhall's errors were merely technical and that the substance of the notice properly informed the public that the agency was going to meet to discuss potential litigation. The court reached this conclusion even though Newhall's agenda said nothing about *initiating* litigation.

Castaic appears to go somewhat further than prior cases interpreting the Brown Act by finding substantial compliance despite discrepancies between the agency's agenda and the prescribed safe harbor language where the specific type of litigation at issue - in this case initiating litigation (where the agency is a plaintiff) versus exposure to litigation (where the agency is a defendant) - was

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not identified. This decision reaffirms the principle of substantial compliance, and that if a local agency commits what is determined to be a minor drafting error when preparing a closed session agenda item, a court might not find a Brown Act violation.

It is not yet known whether the Castaic Lake Water Agency will appeal this decision to the California Supreme Court. Lozano Smith will continue to monitor the case.

For further information about this case and the Brown Act's open meeting requirements, including how public agencies should provide notice for closed sessions within meetings, please contact one of our [nine offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#), or download our [Client News Brief App](#).