

**A N T E L O P E V A L L E Y
W A T E R M A S T E R B O A R D
M E M O R A N D U M**

DATE: April 17, 2017
TO: WATERMASTER BOARD
FROM: Thomas S. Bunn III of Lagerlof, Senecal, Gosney & Kruse, LLP
RE: Procedure in the absence of all board members

Question Presented: The Judgment provides that meetings are subject to the Brown Act, and that the Watermaster can only act by unanimous vote. If not all board members (or their alternates) attend a board meeting, can the meeting go forward?

Brief Answer: Although not totally free from doubt, a judge would likely say “yes,” as long as no action is taken. Nothing in the Judgment nor the Brown Act prohibits a meeting of less than a quorum of the members. However, any meeting of three or more board members must comply with Brown Act public meeting requirements.

Analysis: Section 18.1.2.3 of the Judgment provides that all decisions of the Watermaster, other than those specifically designated as being subject to a simple majority vote, shall be by a unanimous vote. To date, the Watermaster has not designated any subject matter as being subject to a simple majority vote, so a unanimous vote is required to make any decision. Section 18.1.2.4 provides that all Board members must be present to make any decision requiring a unanimous vote. Except for that section, there is nothing in the Judgment addressing how many members must be present for a meeting.

Section 18.4.11 of the Judgment states that the Watermaster shall provide notice of and conduct all meetings and hearings in a manner consistent with the standards and timetable set forth in the Brown Act. Nothing in the Brown Act sets a minimum number of board members that must be present at a meeting.

“Quorum” is defined in Black’s Law Dictionary as “the smallest number of people who must be present at a meeting so that official decisions can be made.” So what, if anything, can be done when a quorum is not present? In the absence of a definitive statement in the Judgment or the Brown Act,

we looked at Robert's Rules of Order, which is not binding on the Watermaster but provides guidance on the usual practices of non-Brown-Act bodies.

Robert's Rules of Order provides that the only action that can legally be taken in the absence of a quorum is to fix the time to which to adjourn, to adjourn, to go into recess, or to take measures to obtain a quorum (Robert's Rules of Order, 9th Edition at p. 342). Thus, according to Robert's Rules, very few actions are allowed without a quorum, and more importantly, they are specifically enumerated and expressly noted as the "only" actions that can be taken without a quorum.

The Brown Act takes a different approach. "Action taken" is defined more narrowly, as follows, "a collective decision made by a majority of the members of a legislative body, a collective commitment or promise by a majority of the members of a legislative body to make a positive or a negative decision, or an actual vote by a majority of the members of a legislative body when sitting as a body or entity, upon a motion, proposal, resolution, order or ordinance." (Gov. Code Section 54952.6.) The only mention of an action permitted to be taken without a quorum is found in another section, in which the Brown Act provides that the members present may adjourn the meeting to a time and place specified in the order of adjournment. (Gov. Code Section 54955.) Unlike the list in Robert's Rules, it appears that this Brown Act provision is not meant to be an exhaustive list of the "only" instances in which action without a quorum is allowed. This implies that more can be done without a quorum under the Brown Act, as compared to Robert's Rules.

Conclusion: A court would likely find that such things as staff reports and discussion without a collective decision are not "actions taken" under the Brown Act and therefore are permitted, even when a quorum is not present.