

# Agenda

## Sacramento Suburban Water District Special Board Meeting

3701 Marconi Avenue, Suite 100  
Sacramento, California 95821

Monday, December 6, 2021  
5:00 p.m.

**This meeting will be conducted both in-person in the District's Boardroom at the address above, and by videoconference and teleconference using the information provided below. The public is invited to listen, observe, and provide comments during the meeting by any method provided. The President will call for public comment on each agenda item at the appropriate time and all votes will be taken by roll call.**

**The District recommends that members of the public participate in public meetings via videoconference and/or teleconference per the instructions below.**

**For members of the public interested in viewing and having the ability to comment at the public meeting via Zoom, an internet enabled computer equipped with a microphone and speaker or a mobile device with a data plan is required. Use of a webcam is optional. You also may call in to the meeting using teleconference without video. Please use the following login information for videoconferencing or teleconferencing:**

**Join the meeting from a computer, tablet or smartphone:**

<https://us02web.zoom.us/j/86757887837?pwd=L01pVysxQjhPYms2S2liWVZhMmtBQT09>

**Meeting ID:** 867 5788 7837

**Password:** 008171

**You can also dial in using your phone:** 1 (669) 900-6833

New to Zoom? Get the app now and be ready when your first meeting starts: <https://zoom.us/>  
Zoom uses encryption of data during Zoom meetings. The District uses a secure password to restrict access to scheduled meetings. The meeting host has control of content sharing, recording, and chat.

**Please mute your line.**

Where appropriate or deemed necessary, the Board may take action on any item listed on the agenda, including items listed as information items. Public documents relating to any open session item listed on this agenda that are distributed to all or a majority of the members of the Board of Directors less than 72 hours before the meeting are available for public inspection in the customer service area of the District's Administrative Office at the address listed above.

The public may address the Board concerning an agenda item either before or during the Board's consideration of that agenda item. Persons who wish to comment on either agenda or non-agenda

items should fill out a Comment Card and give it to the General Manager. The President will call for comments at the appropriate time. Comments will be subject to reasonable time limits (3 minutes).

In compliance with the Americans with Disabilities Act, if you have a disability, and you need a disability-related modification or accommodation to participate in this meeting, then please contact Sacramento Suburban Water District Human Resources at 916.679.3972. Requests must be made as early as possible and at least one full business day before the start of the meeting.

**Call to Order**

**Pledge of Allegiance**

**Roll Call**

**Announcements**

**Public Comment**

This is the opportunity for the public to comment on non-agenda items within the Board’s jurisdiction. Comments are limited to 3 minutes.

**Items for Discussion and/or Action**

- 1. District Response to William Eubanks’ Brown Act Cease-and-Desist Letter  
*Recommendation: Approve District’s response to William Eubanks’ November 8, 2021 Brown Act Cease-and-desist Letter.*

**Adjournment**

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**Upcoming Meetings**

Monday, December 20, 2021, at 6:00 p.m., Regular Board Meeting

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I certify that the foregoing agenda for the December 6, 2021 meeting of the Sacramento Suburban Water District Board of Directors was posted by December 2, 2021 in a publicly-accessible location at the Sacramento Suburban Water District office, 3701 Marconi Avenue, Suite 100, Sacramento, California, and was freely available to the public.

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Dan York  
 General Manager/Secretary  
 Sacramento Suburban Water District



## Agenda Item: 1

**Date:** December 6, 2021

**Subject:** District Response to William Eubanks’ Brown Act Cease-and-Desist Letter

**Staff Contact:** Dan York, General Manager

**Recommended Board Action:**

Approve District’s response to William Eubanks’ November 8, 2021 Brown Act Cease-and-desist Letter.

**Discussion:**

On November 12, 2021, the Board received a letter from ratepayer William Eubanks dated November 8, 2021, which alleges that certain Directors took actions which violated the Brown Act and demands that the Board refrain from similar future conduct. The letter identifies nine occurrences of conduct which Mr. Eubanks alleges violates various unspecified provisions of the Brown Act.

District legal counsel reviewed Mr. Eubanks’ letter and advised that it should be regarded as a cease-and-desist demand for past violations of the Brown Act made under Government Code section 54960.2. This statute, part of the Brown Act, authorizes any person to object to actions by a public agency’s governing body which could adversely affect the public’s participation in public meetings held in accordance with the Brown Act. The objection must be made in writing within nine months of the alleged violation and demand that the agency’s governing body either cure and correct the violation within 30 days of receiving the letter, or respond by explaining why the agency has chosen not to correct the alleged violation. If an agency does not cure and correct an alleged Brown Act violation by issuing an “unconditional commitment” in the form provided in Government Code section 54960.2, and is later sued by the objecting person and a court finds that a violation occurred, the action is invalidated and the agency must pay the objector’s attorneys’ fees and costs incurred for correcting the violation. If the agency cures and corrects the violation by issuing an unconditional commitment, the result is that the violation is expunged and the objector prohibited from taking further action on the removal of the violation.

Attached to this report is the District’s proposed response to Mr. Eubanks’ November 8 “cease-and-desist” letter. The District’s response is in two parts. The first part is an unconditional commitment letter which acknowledges that three of Mr. Eubanks’ allegations involve possible violations of the Brown Act and commits the Board to not engage in similar conduct in the future. The second part is “Attachment 1,” which addresses the other six allegations made by Mr. Eubanks and explains why the District believes that those allegations do not involve violations of the Brown Act.

If the Board approves the unconditional commitment letter regarding the three allegations which involve possible Brown Act violations and timely issues it to Mr. Eubanks, he cannot file a lawsuit to further pursue his claims as to those items. As to the other six allegations made by Mr. Eubanks, legal counsel advises he believes that the conduct involved would not be found by a court to violate the Brown Act and therefore the District is not required to include these incidents in the unconditional commitment. However, counsel and staff recommend that the Board also approve issuance of Attachment 1 as part of the District's response to Mr. Eubanks in order to provide a record that the District evaluated and responded to all nine allegations and states the reasons the six allegations discussed in the attachment do not constitute violations of the Brown Act.

**Fiscal Impact:**

None

**Strategic Plan Alignment:**

**Goal B - Optimize Operational and Organizational Efficiencies**

**Attachment:**

1 – Draft letter

[SSWD Letterhead]

December \_\_, 2021

Mr. William Eubanks

Address

Address

Dear Mr. Eubanks:

The Board of Directors of the Sacramento Suburban Water District has received your cease-and-desist letter dated November 8, 2021 alleging that the following described past actions by certain members of the Board violated the Ralph M. Brown Act:

1. At the March 2021 regular monthly Board Meeting, you attempted to comment on the agenda item relating to the SSWD Long Range Plan. Assuming the role of President, former Director McPherson immediately interrupted you, stating in effect that you were out of order. President Wichert endorsed Director McPherson's action and refused to allow you to comment.

2. On June 16, 2021, you attended a meeting of the Ad Hoc Committee on employee benefits. Notwithstanding the Ad Hoc designation for the committee, President Wichert ruled that meetings of the committee would be publicly noticed and would be conducted so that the public could comment on the proceedings. The committee chairperson was Director McPherson, with Director Thomas filling the second seat. Director McPherson abruptly declared the meeting adjourned. You had filled out a comment card and asked if there would be public comment. Director McPherson said "no".

3. At the July 2021 regular board meeting, you asked to make comments during the public forum item on the agenda. You wished to speak about the June 16, 2021 Ad Hoc Employee Benefits Committee meeting. President Wichert asked you to hold your comments until the next meeting of the Ad Hoc Employee Benefits Committee.

In order to avoid unnecessary litigation and without admitting any violation of the Ralph M. Brown Act, the Board of Directors of the Sacramento Suburban Water District hereby unconditionally commits that it will cease, desist from, and not repeat the challenged past actions as described above.

The Board of Directors of the Sacramento Suburban Water District may rescind this commitment only by a majority vote of its membership taken in open session at a regular meeting and noticed on its posted agenda as "Rescission of Brown Act Commitment." You

Mr. William Eubanks

December \_\_, 2021

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will be provided with written notice, sent by any means or media you provide in response to this message, to whatever address or addresses you specify, of any intention to consider rescinding this commitment at least 30 days before any such regular meeting. In the event that this commitment is rescinded, you will have the right to commence legal action pursuant to subdivision (a) of Section 54960 of the Government Code. That notice will be delivered to you by the same means as this commitment, or may be mailed to an address that you have designated in writing.

In addition, please see Attachment 1 to this letter, which addresses certain additional incidents described in your November 8, 2021 letter and which the Board of Directors of the Sacramento Suburban Water District believes do not constitute violations of the Brown Act. Attachment 1 explains the District's analysis of why the specified incidents do not constitute violations of the Brown Act.

Very truly yours,

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Robert P. Wichert  
President, Board of Directors

RPW:

Enclosure (Attachment 1)

cc: *[Discuss who to copy, if anyone, from Mr. Eubanks' copyees list]*

## ATTACHMENT 1

### CONDUCT ALLEGED IN NOVEMBER 8, 2021 LETTER WHICH DOES NOT VIOLATE BROWN ACT AND SUPPORTING DISCUSSION

In addition to the three items alleged to violate the Brown Act, which the District has acknowledged as possible violations and has issued an unconditional commitment under Government Code section 54960.2 to not repeat in the future, Mr. Eubanks' November 8, 2021 cease-and-desist letter alleges six additional incidents.

The Sacramento Suburban Water District does not believe that these six incidents constitute violations of the Ralph M. Brown Act and therefore do not require any action. The incidents and the District's responses stating the basis for its determination are:

1. At the March 22, 2019 meeting of the Board's Finance & Audit Committee, you allege that former Director Kathleen McPherson accused General Manager Dan York of several illegal and unethical actions and criticized related actions of past Boards. You also allege that Director Wichert criticized General Manager York for not being fiscally conservative enough. You object to this incident as "immature, school yard bullying" by Directors in a recorded public meeting intended to humiliate the General Manager, and that the issues raised by Directors Wichert and McPherson should have been dealt with confidentially.

SSWD's response: Under Government Code section 54960.2, a cease-and-desist letter filed by a member of the public alleging past violations of the Brown Act must be brought within nine months of the occurrence of the alleged violation. The conduct alleged by you occurred in March 2019, which was more than 31 months ago. In addition, while the conduct complained of might not be best practice by members of a public agency governing body, the Brown Act and other laws prohibit the Board of Directors from preventing any person from criticizing District policies, services or staff, or of the acts or omissions of the Board. (See Government Code section 54954.3, subdivision (c), and Civil Code section 47, subdivision (b).)

2. At the April 15, 2019 board meeting, you allege that, during the Public Forum item on the meeting agenda, you described in detail Directors Wichert's and McPherson's conduct during the March 22, 2019 Finance and Audit Committee meeting, and urged the Board President and other board members to listen to the audio recording of the meeting. When you were detailing the accusations directed at General Manager York, former Director McPherson left the boardroom and that Director Wichert interrupted you and asked the Board President to stop you from continuing to comment.

SSWD's response: See previous response. The conduct alleged by you occurred in April 2019, which was more than 30 months ago. In addition, SSWD assumes that by "Regular Order" means the policy entitled "Rules for Proceedings of the Board of Directors" which is designated as Policy PL-BOD 002 ("Board Rules"). With respect to this allegation, you were

in fact permitted to make your comments during the Public Forum item on the agenda as required by Board Rule 17 and Government Code sections 54954.2 and 54954.3.

3. At the January 2021 Board meeting, which was conducted via Zoom, you alleged that Board President Wichert did not conduct the meeting in accordance with “Regular Order.” You allege that meeting participants were not required to identify themselves and were allowed to speak at any time on any subject in violation of Regular Order. You claim that certain unidentified persons you call “lobbyists” were given priority in making public comment. As a result of the lack of Regular Order, the proceedings were difficult to follow and somehow had the effect of suppressing public comment in a manner you did not identify.

SSWD’s response: The January 2021 SSWD board meeting also occurred outside the nine-month window for alleging a Brown Act violation. There is nothing in the Brown Act which requires any member of the public participating in the meeting to be identified. (See, Government Code section 54953.3.) There also is nothing in the Brown Act or the Board Rules governing the order in which the Board President may call members of the public wishing to comment – the only requirement in the Brown Act is that all members of the public wishing to speak be accorded one opportunity to do so. (See, Government Code section 54954.3(b)(1).) In addition, your allegation regarding the presence of lobbyists is not a Brown Act violation because registered lobbyists and other interest group representatives are members of the public and have the same right to comment as any other member of the public.

4. You allege that the February 2021 regular board meeting was “pure chaos” because the Board President did not follow the Regular Order, which resulted in suppressing public comment. You also allege that Board President Wichert ignored the published agenda and gave “self-aggrandizing lectures on a variety of subjects” aimed at staff, other Directors, and the public.

SSWD’s response: As noted in the previous response, the Board Rules permit the Board President to conduct public meetings with broad discretion as long as Brown Act requirements for agenda notice and public participation are met. Your allegations express an opinion about the Board President’s political and meeting conduct skills, but fails to allege any legal flaws in the notice provided by the published agenda, that any off-agenda items were discussed at length or acted on, or that any member of the public was denied an opportunity to comment on each item on the agenda on which they wished to speak.

5. You allege that Board President Wichert conducted the April 19, 2021 regular board meeting in violation of the Brown Act by not evenly applying the Board Rules to members of the public who attended in-person and those who participated via Zoom. Specifically, you allege that in-person attendees were asked to enter their names on a sign-in sheet and use speaker cards to designate the items on which they wished to speak, while Zoom attendees were not even asked to identify themselves. You further allege that certain unidentified in-person attendees who are personal friends of Board President Wichert and lobbyists were not required to follow the Regular Order standards for public participation, and that the net



effect of the failure to conduct the meeting using SSWD's Board Rules was to suppress public comment in an unspecified manner.

SSWD's response: As noted in SSWD's response to allegation number 3 on the previous page, there is no Brown Act requirement for members of the public to identify themselves as a prerequisite for participating in a public meeting. While the Board may ask participants to identify themselves, an attendee's providing of his or her name, address, and affiliation is voluntary. Thus, the Board President's failure to ask each Zoom participant to identify themselves is not a Brown Act violation.

6. Your final allegation concerns the September 1, 2021 meeting of the Ad Hoc Employee Benefits Committee. You asked for the draft minutes of the June 16, 2021 committee meeting several times before the September 1 meeting, but those minutes were not provided until the meeting was held. You further allege that the minutes of the June 16 committee meeting did not document former Director McPherson's refusal to permit you to comment on one of the agenda items and her decision to adjourn the meeting instead.

SSWD's response: The Brown Act does not require SSWD to prepare and make available meeting minutes at any particular time or to keep minutes of its public meetings at all. In addition, the Brown Act does not require that meeting minutes, if prepared, follow any specific format or include any specific content. Good practice dictates that, if minutes are prepared, they be reasonably accurate and capture any actual official actions taken. If SSWD prepares minutes, then it must make them available to the public at the same time that it makes them available to the committee members. (See, Government Code section 54957.5(b).)