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July 13, 2015

Presiding Justice Lee Smalley Edmon
Associate Justice Patti S. Kitching
Associate Justice Richard D. Aldrich
Division 3, Second Appellate District
Ronald Reagan State Building
300 S. Spring Street
2nd Floor, North Tower
Los Angeles, CA 90013

Reference: REQUEST FOR PUBLICATION
Castaic Lake Water Agency v Newhall County Water District,
Case No. B254639 (LACSC Case No. BS144162)

Honorable Justices:

The League of California Cities respectfully requests that the Court publish its decision in *Castaic Lake Water Agency v Newhall County Water District*, Case No B254639, in which the Court analyzes the Brown Act's¹ substantial compliance standard and its safe harbor provision for noticing permissible closed sessions.

The League submits that the opinion meets the standards for publication and contains sound legal principles that, if made available as precedent, would help guide public agencies to the benefit of all Californians. Considerable public resources were expended on this litigation between two public agencies and the League is hopeful that this Court will publish its well-reasoned decision to maximize the benefit of their expenditure of public funds.

¹Gov't Code §54960 et seq.

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The League is an association of 474 California cities united in promoting open government and home rule to provide for the public health, safety, and welfare of their residents and to enhance the quality of life in California communities. The League is advised by its Legal Advocacy Committee, which is comprised of 24 city attorneys representing all regions of the State. The committee monitors appellate litigation affecting municipalities and identifies those cases, such as the matter at hand, that are of statewide or nationwide significance.

This Court granted the League's request to file an amicus brief and to present oral argument through which the League sought to show the Court the broader implications of the matter litigated in this case. The League's member cities have a substantial interest in the Court's opinion in this case. All League members are governed by "legislative bodies" subject to the Brown Act. The Brown Act determines procedures by which California realizes its commitment to transparent governance at the local level. Because of the importance of proper implementation of and compliance with the Brown Act, judicial guidance is crucial, although currently relatively scant in certain respects, including with respect to the proper application of the substantial compliance standard.

California Rules of Court Rule 8.1105(c) sets forth a liberal standard for publication. It encourages publication of opinions that meet any one of nine enumerated criteria. The Court's decision in this case easily meets the standard for publication in Rule 8.1105(c) under subparagraphs 2, 3, 4, 6 and 8.

(2) Applies an existing rule of law to a set of facts significantly different from those stated in published opinions

In its opinion, the Court considered whether the safe harbor provisions of the Brown Act required the exact words of the statute on posted agendas to constitute "substantial compliance," as Petitioner vehemently argued it did. The Court applied the safe harbor language of Government Code section 54954.5 ("No legislative body or elected official shall be in violation [of the Brown Act's noticing requirements] if the closed session items were described in substantial compliance with the section.") to the circumstance where the challenged posted agenda did not include the correct citation as set out in the Act. Slip Op. at 9. The Court's analysis of the facts focuses on whether the posted agenda achieves the purpose of the statute, rather than – as argued by Petitioner – it recites the exact language of the safe harbor notice. The case law explaining what

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constitutes substantial compliance under the Brown Act is scant enough that the Court relied on a case under the comparable Bagley-Keene Open Meeting Act² to guide its analysis. Slip Op. at 9 (citing *North Pacifica LLC v. California Coastal Comm'n* (2008) 166 Cal.App.4th 1416). In this regard, the Court's opinion applies the statute to a set of facts different from other published decisions under the Brown Act, thereby warranting publication.

This opinion is also noteworthy in part because the Court holds that the trial court may take into account actual compliance with the Brown Act in evaluating the adequacy of an action taken to cure alleged violations pursuant to Government Code section 54960.1(e). See Slip Op. at 8-9. Brown Act jurisprudence is particularly lacking in the area of what a trial court should consider in response to a motion to dismiss under section 54960.1(e) and this Court's opinion contributes toward development of this important area of law.

(3) ...explains...with reasons given, an existing rule of law

Nearly every day thousands of legislative bodies of local agencies in California prepare and post agendas to advance the State's goals of government transparency at the local level and otherwise satisfy their obligations under the Brown Act. On pages 9 through 11 of the Opinion, the Court carefully analyzes the purposes of the Brown Act as stated by the Legislature against the technical requirements of noticing closed session items. This explanation makes an important contribution to the case law practitioners rely on to evaluate whether various actions comply with the Brown Act. For this reason, the Opinion warrants publication.

(4) Advances a new...clarification...or construction of a provision of a...statute, ordinance

Petitioner argued strenuously that nothing short of a precise recitation of the safe harbor language as set out in the Brown Act could be deemed substantial compliance with the Act. This Court construes the statute to emphasize achievement of the goal of public notice and participation over hypertechnical errors. Slip Op. at 11. This important construction of the Brown Act would assist trial courts that are frequently asked to

²Gov't Code §11120 et seq.

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evaluate the effect of nonprejudicial but technical imperfections in posted notice. The Brown Act governs numerous local agencies, including all of the League's member cities and their commissions, boards and subcommittees. This Court's opinion offers a clear enunciation of an important standard of review and, for that reason, warrants publication.

(6) Involves a legal issue of continuing public interest

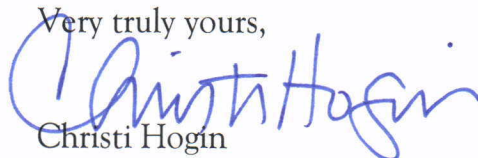
The proper construction of the Brown Act and the manner in which the statute's purpose is achieved is of continuing public interest; the Brown Act is an open government statute quintessentially related to the public interest. In this case, the Court construes the Brown Act in a manner which informs city and county clerks and board and district secretaries in thousands of local agencies regarding a task they regularly perform; the Court's opinion would also aid trial courts throughout California by providing a clear analytical path to follow when evaluating alleged technical violations of the Brown Act. For this reason, the opinion warrants publication.

(8) reaffirms a principle of law not applied in a recently reported decision

The Court's opinion offers a clear construction of the Brown Act's noticing requirements in light of the Legislature's intended purposes and the substantial compliance standard, thus warranting publication as we are not aware of another reported decision on this point.

For the reasons stated herein, the Court's opinion meets the standards for publication under the Rules of Court. Significant public resources were expended in this litigation between two public agencies; publication would afford the maximum benefit to the public from this litigation. The League respectfully requests that the Court certify the decision for publication.

Very truly yours,



Christi Hogin
JENKINS & HOGIN, LLP
For *Amicus Curiae*
League of California Cities

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 1230 Rosecrans Avenue, Suite 110, Manhattan Beach, CA 90266.

On **July 13, 2015**, I served the foregoing documents described as:

REQUEST FOR PUBLICATION

on the interested party or parties in this action by placing the copy(ies) of the original(s) thereof enclosed in sealed envelopes with fully prepaid postage thereon and addressed as follows:

PLEASE SEE SERVICE LIST ATTACHED

VIA OVERNIGHT MAIL COURIER. I caused such envelope to be transmitted via **Overnite Express Mail Courier** to the offices of the addressee(s).

X **VIA U.S. MAIL.** I enclosed the above described documents in a sealed envelope or package addressed to the person (s) listed above or on the attached service list and caused such envelope with postage thereon fully prepaid to be placed in the United States mail at Los Angeles, California.

*I am readily familiar with the **Jenkins & Hogin, LLP's** practice of collection and processing correspondence for outgoing mailing. Under that practice it would be deposited with U.S. Postal Service on that same day with postage thereon prepaid at Manhattan Beach, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.*

X **STATE** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed this 13th day of July, 2015, at Manhattan Beach, California.


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