



THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

Office of the General Manager

March 23, 2012

Mr. Douglas F. Manchester
Chairman & Publisher
San Diego Union-Tribune
350 Camino De La Reina
San Diego, CA 92108

Dear Mr. Manchester:

The San Diego Union-Tribune has a duty to its readers to perform a bare minimum of research before making the types of serious allegations made in its March 13 editorial, "Attorney General Should Probe MWD." The San Diego County Water Authority (SDCWA), a member agency of the Metropolitan Water District of Southern California (Metropolitan), has initiated litigation challenging Metropolitan's water rate structure. SDCWA is also protesting Metropolitan's proposed adjustment to rates for 2012-2013 and 2013-2014. This litigation is a straight-forward business dispute regarding rate setting. Casting this business dispute in the public arena as a conspiracy issue does a disservice to ratepayers, the general public – and, it is patently false.

Nearly nineteen million people in Southern California rely on Metropolitan to provide them safe and reliable water. While there are legitimately differing perspectives about rates, SDCWA has taken the matter out of the courtroom and employed tactics designed to deceive the public in an attempt to influence the pending legal dispute with Metropolitan and mislead its own ratepayers about SDCWA's decision to purchase expensive water from the Imperial Irrigation District instead of buying cheaper water from Metropolitan.

Metropolitan has not reviewed all 60,000 pages of information SDCWA claims to have received from Metropolitan and its member agencies. Pursuant to an agreement with SDCWA's law firm as part of SDCWA's lawsuit, Metropolitan paid for a copy of all of the public records SDCWA received from the member agencies, and SDCWA was supposed to promptly provide Metropolitan's law firm with a full set. SDCWA violated the terms of that agreement and withheld certain documents from Metropolitan, yet included them in their March 12 release of records on which it bases its allegations. However, upon review, it is clear that these documents do not support any of SDCWA's allegations.

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In fact, contrary to SDCWA's assertions, there is nothing in the public records released by SDCWA on March 12 (and now posted by SDCWA on the Internet) that supports any allegation of wrongdoing by Metropolitan. The following are the facts concerning SDCWA's latest attempt to mislead the public that your readers should know.

1. Charge: Metropolitan and/or its member agencies have violated the Brown Act because staff of member agencies meet with each other.

Truth: As SDCWA well knows, the Brown Act does not apply to the communications or meetings of public agency staff members. This law serves a very specific purpose — to ensure that members of a legislative body who are meeting to hear, discuss, deliberate, or take action on any item in the legislative body's jurisdiction, with a majority present, do so in public. (Cal. Government Code Sections 54952-54953.) The Brown Act does not apply to meetings of anyone other than the members of a legislative body. It certainly does not require the public to be invited to staff meetings. Neither Metropolitan, SDCWA, nor any other public agency of which we are aware (such as cities and counties), permit public participation in staff-level meetings. Metropolitan conducts multiple staff-level meetings each month to discuss water-related issues, to which SDCWA and all other member agency staff are always invited and attend. Others are free to hold further meetings of their own, just as SDCWA staff does to discuss issues of interest to them, and they do not invite all other member agency staff or Metropolitan staff. Likewise, some other member agency staff hold their own meetings to discuss issues of interest to them. Metropolitan does not conduct any of those meetings. Such staff meetings and collaborations are routine. None of the "volumes of emails and other documents" released by SDCWA shows anything different. These documents do not involve communications or meetings between or among Metropolitan Directors, who are the members of Metropolitan's legislative body.

2. Charge: The public records released by SDCWA demonstrate the existence of a "secret society" and/or an "anti-San Diego coalition."

Truth: The public records SDCWA obtained from Metropolitan and the member agencies show no such thing. Of the 500-plus pages of documents SDCWA released, the sum total of purported support that SDCWA cites for the false allegation of a "secret society" are two emails sent by one staffer at one member agency to his colleague at the same agency. This staffer uses the phrase "secret society" clearly in jest, to joke about the outlandish claim SDCWA had just made in its lawsuit, that meetings by a working group of member agency staffers were "secret meetings" and a "cabal." Far from being evidence that a secret society exists, it is obviously a tongue-in-cheek reference to SDCWA's own fictional claim. SDCWA cites no document where the member agency staff working group called themselves the "secret society," as SDCWA recklessly claims. Likewise, as to a supposed anti-San Diego coalition, SDCWA cites only one document among the 500-plus pages where this phrase appears. It is in the handwritten notes of one member agency staffer, reflecting the fact that SDCWA's lawsuit called the member agency

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staff working group an "Anti-San Diego Coalition." Incidentally, in January the Superior Court dismissed SDCWA's claim containing the "secret meetings," "cabal," and "Anti-San Diego Coalition" allegations from the lawsuit. This almost seems a set-up: SDCWA makes an unsupported claim in a lawsuit about secret meetings, a cabal, and an anti-San Diego coalition; two staffers then comment on this, one in jest; and SDCWA points to their remarks as proof that the vast conspiracy actually exists. There is no such evidence and it is irresponsible to state that there is. And, it is certainly interesting to note that while SDCWA alleges the conspiracy was formed in 2009, the rate structure about which it complains and has sued has been in place since 2003.

3. Charge: Metropolitan management, particularly its General Manager Jeffrey Kightlinger, participated in the activities of the member agency working group.

Truth: Metropolitan was not a part of the member agency staff working group. To support its allegation, SDCWA cites only a few pages of documents where the General Manager's name appears, in reference to a meeting or call to discuss issues or procedures. Other references to Metropolitan staff are similarly limited. Metropolitan's General Manager also participates in meetings and calls with SDCWA. Nowhere does any document show Metropolitan's General Manager or other Metropolitan management directing the activities of the member agency staff working group.

4. Charge: The member agencies' and Metropolitan's separate hiring of consultants was a "conflict of interest."

Truth: Consultants are commonly used in the water industry. There is nothing atypical or legally suspect about the contractual arrangements mentioned, which are a matter of public record. It is our understanding that the member agency staff working group hired two consultants to assist with cost and other water-related matters. We understand SDCWA has hired one of these consultants itself. MWD staff has separately hired the parent company of this same consultant to provide technical assistance to its Long-Range Finance Plan working group, in which SDCWA participates along with all other member agencies.

5. Charge: The vacancy in Metropolitan's Ethics Officer position is indicative of unethical behavior at Metropolitan.

Truth: Metropolitan has for years had an Ethics Officer and an Ethics Office with a supporting staff. It still does. The past Ethics Officer, after five years of service, resigned recently, effective March 3. At its regularly scheduled meeting on March 13, the Metropolitan Board of Directors named an Interim Ethics Officer until the position is permanently filled. During the nine-day vacancy, the Ethics Office remained in place and staffed.

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Had the Union-Tribune taken the time to review the public records that SDCWA produced, or critically investigated SDCWA's misleading characterizations of these records, these inaccuracies could have been easily identified. The Union-Tribune would have also discovered something much more informative, albeit less salacious, than what was alleged. Metropolitan and its member agencies work diligently to analyze rate impacts, promote water conservation, and make policy recommendations to the Metropolitan Board of Directors. Metropolitan and all the other member agencies work together to promote the interests of our customers and to ensure a safe and reliable water supply for Southern California. SDCWA's self-imposed exile from this mission, and desire to find a scapegoat for its own expensive water policy decisions, is not evidence of a nefarious plot to exclude them. Rather, it is the cause of the current divisions within our agency instigated by the Water Authority, and of the perpetuation of their frivolous litigation for which Southern California ratepayers, including those in San Diego, must foot a very expensive bill. It should be noted that this is part of a longstanding campaign by the SDCWA. This is the fourth lawsuit between the SDCWA and Metropolitan over the past 15 years. SDCWA did not prevail in the previous three lawsuits. And, yet, they keep suing – at ratepayer expense.

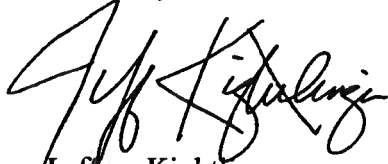
The Metropolitan Water District was created by an act of the California legislature in 1927 to bring much-needed water supplies to Southern California. Today, Metropolitan delivers an average of 1.7 billion gallons of water a day to its 26 member agencies in Los Angeles, Riverside, San Bernardino, Orange, San Diego, and Ventura counties. Collectively, these agencies serve nearly 19 million Southern Californians with Metropolitan water and support the region's \$1 trillion economy. Metropolitan is governed by a 37-member Board of Directors appointed by its member agencies, including SDCWA. Under California law, the Board's actions are based on majority voting, just like most other public agencies. In a majority voting situation, not everyone agrees and often votes are not unanimous, but decisions have to be made and important work must go forward. Metropolitan's Board, through its majority voting in open and public meetings, sets water rates and charges, incentivizes conservation and recycling efforts, invests in water supply and water quality improvements and upgrades, and approves capital projects such as water treatment plants and water conveyance systems.

Metropolitan will continue to pursue its vital public mission of providing its entire service area with safe and reliable supplies of high-quality water to meet present and future needs in an environmentally and economically responsible way. This most certainly includes promoting and protecting the interests of SDCWA's customers. It also means serving those customers by correcting the public record whenever baseless allegations are made.

In turn, the San Diego Union-Tribune has an ethical obligation to its readers to confirm and fact-check all data to ensure the accuracy of information from all sources to avoid any unintentional or deliberate distortion of facts. A little due diligence would have prevented this obvious effort to mislead the public through the media about a business dispute that is aimed at shifting costs from one region to another.

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Sincerely,



Jeffrey Kightlinger
General Manager

cc: Hon. Jerry Brown, Governor, State of California
Hon. Kamala Harris, Attorney General, State of California
Hon. Darrell Steinberg, President pro Tempore, California State Senate.
Hon. John Pérez, Speaker, California State Assembly
Hon. Bonnie Dumanis, San Diego County District Attorney
Hon. Jan Goldsmith, City Attorney, City of San Diego
Board of Directors, Metropolitan Water District of Southern California
Board of Directors, San Diego County Water Authority
Lora Cicalo, Executive Editor, San Diego Union-Tribune



OPINION

Attorney general should probe MWD

By U-T San Diego Editorial Staff

6 p.m., March 12, 2012

The San Diego County Water Authority's release Monday of volumes of emails and other documents show what appears to be a behind-the-scenes attempt involving many water agency officials to manipulate policy decisions of the giant Metropolitan Water District of Southern California. To protect the interests of the 19 million customers in six counties whose local water agencies rely on MWD for supplies, we think an independent investigation of what those involved themselves called the "Secret Society" and the "Anti-San Diego Coalition" should be undertaken by state Attorney General Kamala Harris.

The documents show dozens of meetings over the past three years involving top staff officials with 20 of the 26 water agencies that are part of MWD, in particular the biggest: the city of Los Angeles' Department of Water and Power and the Municipal Water District of Orange County. These 20 agencies combined have nearly three-quarters of the 37 weighted votes on the MWD board.

That's a crucial distinction because it may mean those meetings violated the Brown Act – the state's most important open-government law. "I don't believe it's lawful for more than a majority of any joint powers authority to meet without public notice for any purpose," said Californians Aware attorney Terry Francke, a leading expert on the Brown Act.

MWD spokesman Bob Muir, however, said gatherings of staff members of individual water agencies had nothing to do with MWD and amounted to routine collaboration between officials dealing with similar interests – not the type of meeting covered by the Brown Act.

We are not sure about this distinction. But what is undeniable is that the documents show the deliberations were held on how to influence and shape the most crucial matters pending before the MWD and its board of directors – water rates, water billing strategies, pending capital projects and the San Diego County Water Authority's lawsuit against MWD over what county water officials allege is systematic overbilling

by MWD. To assist in these deliberations, the participating districts hired two consultants, an individual and a company, that both reportedly also had contractual relationships with MWD and involved former top MWD officials. This could not be a more obvious conflict of interest.

The backdrop to this is the MWD scandal of the mid- and late 1990s, in which the water wholesaler clandestinely funded a public-relations campaign to try to discredit the San Diego County Water Authority. Then as now, MWD was unhappy with county officials' interest in obtaining water supplies from other sources. The past scandal led to the Legislature's passage of a 1999 law preventing MWD from engaging in such covert activities and requiring the agency to open an ethics office.

So now it appears it is MWD's member agencies that are involved in "anti-San Diego" meetings without public notice, and the MWD thinks that means it is just fine. Perhaps that is why the MWD's "ethics officer" position is now unfilled.

The need for an independent investigation is obvious.