



## San Diego County Water Authority

4677 Overland Avenue • San Diego, California 92123-1233  
(858) 522-6600 FAX (858) 522-6568 www.sdcwa.org

March 28, 2012

Jeff Kightlinger  
General Manager  
Metropolitan Water District of Southern California  
P.O. Box 54153  
Los Angeles, CA 90054-0153

#### MEMBER AGENCIES

Carlsbad  
Municipal Water District

City of Del Mar

City of Escondido

City of National City

City of Oceanside

City of Poway

City of San Diego

Fallbrook  
Public Utility District

Helix Water District

Lakeside Water District

Olivenhain  
Municipal Water District

Otay Water District

Padre Dam  
Municipal Water District

Camp Pendleton  
Marine Corps Base

Rainbow  
Municipal Water District

Ramona  
Municipal Water District

Rincon del Diablo  
Municipal Water District

San Dieguito Water District

Santa Fe Irrigation District

South Bay Irrigation District

Vallecitos Water District

Valley Center  
Municipal Water District

Vista Irrigation District

Yuima  
Municipal Water District

#### OTHER REPRESENTATIVE

County of San Diego

Re: Letter to *U-T San Diego*

Dear Jeff:

The Water Authority has received a copy of your letter to *U-T San Diego* dated March 23, 2012 (attached). I want to take this opportunity to correct some of the many inaccurate statements made in your letter and provide a different perspective. The key points are:

1. Contrary to your statements, the Water Authority's allegations of procedural misconduct and discrimination have not been "dismissed" and remain pending before the court.
2. Your attempt to dismiss as a mere "joke" MWD admissions about the secret and discriminatory scheme to punish San Diego and its ratepayers is not credible.
3. Your characterization of the practice of conspiring to set board policy behind closed doors, excluding San Diego, as business as usual – is an indictment of MWD, not a defense.
4. Your letter inaccurately characterizes the nature and outcome of past litigation between the Water Authority and MWD.

First, and most fundamentally, it will be up to the courts – not MWD itself – to decide the legal effect and implications of the documents the Water Authority introduced into the administrative record at the March 12 public hearing on MWD's 2013 and 2014 water rates. Contrary to your assertion, the Superior Court has not "dismissed" or made any ruling on the admissibility or relevance of this evidence at the trial of the pending action involving MWD's 2011 and 2012

water rates.<sup>1</sup> This evidence is still part of the case. As you are well aware, discovery into MWD's and the member agencies' practices is going to take place eventually, regardless of MWD's extraordinary efforts to delay the inevitable. MWD's delay tactics in the litigation contradict your claim that the trial of this matter should take place as quickly as possible – as the Water Authority would like to do.<sup>2</sup>

We have explained to the full MWD board our perspective on what the documents disclose.<sup>3</sup> We also believe that the substance of the documents speaks for itself. But I want to state without reservation that the Water Authority does not find any humor in the documents and does not believe that they were written "in jest." As the agency that has been excluded from, and borne the consequences of these meetings, we disagree that there is no evidence of wrongdoing on the part of MWD and the participating member agencies. It is similarly troubling that, even now, you believe it is appropriate for MWD to employ the same financial consultant that worked for more than two years with this majority group of MWD member agencies to advise MWD on the same issues. The records show that the consultant was advising the "workgroup" on how to secure financial benefits from MWD's finance plan and associated rate structure while also advising MWD on its finance plan and rate structure.

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<sup>1</sup> Although the Court dismissed two causes of action, it did not address, much less decide, the relevance of the facts related to MWD's procedural misconduct and discriminatory practices which relate to and support all of the Water Authority's claims. These and other facts including the so-called "cost-shifting" claims establish the arbitrariness and capriciousness of MWD's rate-setting practices. The court also ruled against MWD on two other causes of action that were added to the case, and summarily dismissed MWD's misguided "anti-SLAPP" motion.

<sup>2</sup> Your claim that MWD has paid our attorneys for copies of the documents we have received from the Public Records Act requests and that the Water Authority has withheld documents is also false. MWD has paid nothing to the Water Authority for these records; if you are so certain it has, it would be a simple matter for you to release to the public a cancelled check for such payment. Our attorneys agreed, as a matter of professional courtesy, to provide your attorneys with copies of Public Records Act documents, and to invoice your attorneys for the copying costs. As promised, our attorneys have provided you with all of the documents we have received, on a rolling basis, in regular tranches of documents. Your complaint about being sandbagged rings especially hollow given MWD's substantial involvement in the activities of the Secret Society, including your prior request that all member agencies provide a copy of their productions directly to MWD. See Beverly Hills PRA 319-320, attached.

<sup>3</sup> While you may be offended by the use of certain terminology, that offensive terminology was coined by the MWD member agency working group participants, not the Water Authority (e.g., "Secret Society," "anti-San Diego coalition," "leaked" information, "no pay, no play," and "sanitized" agendas).

Although MWD has admitted that it has no financial interest one way or the other regarding this litigation, and thus should be neutral about its outcome,<sup>4</sup> your letter repeats the arguments advanced by the majority member agencies comprising the “workgroup” that the Water Authority’s lawsuit is motivated by paying too much for IID water<sup>5</sup> and that it results in “cost-shifting.” Neither of these arguments is true, and neither addresses the real issue in the litigation or justifies MWD’s rate allocation. At some point, MWD will have to show that its rate allocation and charges are reasonably proportional to MWD’s cost of service. It is telling that your letter fails to address this central issue, on which MWD has no answer.

Regarding your disparaging and inaccurate remarks about past litigation, the facts are that the Water Authority prevailed in its prior lawsuit against MWD challenging its wheeling rate. The later action by the Court of Appeal did not reject the Water Authority’s claims, it merely clarified the legal standard and sent the matter back to the trial court for further proceedings. MWD itself then chose to dismiss the case prior to any decision on the heart of the case, rather than litigate. In the preferential rights matter, the Water Authority received from the court the legal clarification it needed to plan for its future.<sup>6</sup>

The Water Authority continues to believe, as it always has, that MWD has a vital mission and is of critical importance to both Southern California and the state.

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<sup>4</sup> At MWD’s October 19, 2011 Finance and Insurance meeting, MWD Interim CFO Thomas DeBacker explained that MWD is financially “indifferent” to the outcome of the rate litigation because any change in the allocation of costs to “supply” versus “transportation” will simply reallocate costs among the member agencies.

<sup>5</sup> This is the subject of the so-called “independent” economic study seven MWD member agencies contracted for from the Los Angeles Economic Development Corporation, with the full support and cooperation of MWD. See attached letter from Maureen Stapleton to William Allen dated March 8, 2012. (The letter, with all attachments, can be found at [www.MWDFacts.com](http://www.MWDFacts.com).)

<sup>6</sup> As you know, MWD had been assuring the Water Authority for many years – incorrectly, in order to induce reliance on MWD – that preferential rights were “unenforceable.”

Mr. Jeff Kightlinger  
March 28, 2012  
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However, MWD's success must be built on a solid foundation of truth, sound governance, fiscal accountability and a commitment to operating in the best interests of all Southern Californians, including San Diegans.

Sincerely,



Maureen A. Stapleton  
General Manager

**Attachments**

**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  
Doug Manchester, Chairman and Publisher, U-T San Diego  
John Lynch, Vice Chairman & CEO, U-T San Diego  
Jeff Light, Editor, U-T San Diego  
Lora Cicalo, News Section Leader/Executive Quality Editor,  
U-T San Diego  
Water Authority Board of Directors  
MWD Board of Directors



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.

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

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.

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.

Mr. Douglas F. Manchester  
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March 23, 2012

Sincerely,

A handwritten signature in black ink, appearing to read 'Jeff Kightlinger', written in a cursive style.

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.**

**Chris Theisen**

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**From:** Office of the General Counsel [OfficeoftheGeneralCounsel@mwdh2o.com]  
**Sent:** Thursday, November 03, 2011 5:08 PM  
**To:** 'SKennedy@bmblawoffice.com'; 'DMartirosian@ci.glendale.ca.us'; 'NDupont@rwglaw.com'; 'CGodinez@ci.glendale.ca.us'; 'CLee@rwglaw.com'; 'PSULLIVAN@TorranceCA.gov'; 'steve@lemieux-oneill.com'; 'Gene.Tanaka@bbklaw.com'; 'Jeff.Ferre@bbklaw.com'; 'dboyer@kbtlawyers.com'; 'dpayne@kbtlawyers.com'; 'rbehrens@kbtlawyers.com'; 'srasmussen@cityofpasadena.net'; 'victor.sofelkanik@ladwp.com'; 'DThompsonBell@TorranceCA.gov'; 'Christine@Lemieux-Oneill.com'; 'akott@anaheim.net'; 'Dkulper@calleguas.com'; 'jwhite@anaheim.net'; Laurence Wiener; 'dbarlow@ci.burbank.ca.us'; 'tstevenson@ci.burbank.ca.us'; 'lclegg@comptoncity.org'; 'rrugley@comptoncity.org'; 'khh@jones-meyer.com'; 'gary\_anderson@longbeach.gov'; 'robert\_shannon@longbeach.gov'; 'jffletcher@ci.santa-ana.ca.us'; 'bkaufman@ci.santa-ana.ca.us'; 'joseph.lawrence@smgov.net'; 'gshoaf@redwineandsherrill.com'; 'jean\_cgc@hotmail.com'  
**Cc:** Art Aguilar (arta@centralbasin.org); Bennion, Sydney B; Bill Mace, AGM, City of Burbank (bmace@ci.burbank.ca.us); Chris Theisen; 'Christy at Upper San Gabriel'; Chuck Schaich, Admin Anlst, City of Torrance (CSchaich@torrnet.com); David Gustavson; 'David Pettijohn'; David Schickling (davids@ci.fullerton.ca.us); DCalkins@anaheim.net; Gilbert Borboa (gil.borboa@smgov.net); James McDaniel (DAGM-LADWP) (james.mcdaniel@ladwp.com); 'Jensen, Charlene'; John Mundy; John Rossi (nverceles@wmwd.com); 'Jolene Walsh - EMWD'; Karl Seckel, AGM, MWDOC (kseckel@mwdoc.com); Kevin Watson; kevin.wattier@lbwater.org; khunt@mwdoc.com; Kightlinger, Jeffrey; kshoghi@comptoncity.org; lclabaugh@wmwd.com; Man, Debra C; Michelle Underwood McKinney (munderwood@wmwd.com); njazmadarian@FMWD.com; 'P Rugge, Western AGM'; P. E. Jones Secty' (howellr@emwd.org); P. E. Paul D. Jones II (jonesp@emwd.org); P. Kavounas, Glendale, City of ; 'Paludi, Fernando'; Phyllis Currie (pcurrie@cityofpasadena.net); pmeszaros@mwdoc.com; Ray Burk (rburk@santa-ana.org); rbeste@TorranceCA.Gov; rdavis@ci.burbank.ca.us; Rich Nagel (richardn@westbasin.org); Richard Hansen, 3VMWD; Ron Ruiz (RRuiz@sfcity.org); 'Rosemarie Howell'; Rossi, John - WMWD; Scully, Marcia L; Shan Kwan, City of Pasadena (skwan@cityofpasadena.net); Shane Chapman (Shane@usgvmwd.org); Susan Mlligan (smulligan@calleguas.com); Susan Mulligan (HGraumlich@calleguas.com); Tom Love (tlove@ieua.org); 'thixson@bingham.com'; 'cwest@bingham.com'  
**Subject:** SDCWA Public Records Act Request  
**Attachments:** 2011 10 27 SDCWA FAC.pdf

THE METROPOLITAN WATER DISTRICT  
OF SOUTHERN CALIFORNIA

<b>Date:</b>	November 3, 2011
<b>To:</b>	Member Agency Counsel
<b>From:</b>	Marcia Scully, Interim General Counsel
<b>Subject:</b>	<i>SDCWA Public Records Act Request</i>

Some Metropolitan member agencies have received Public Records Act requests from Kekel & Van Nest, LL.P. attorneys for the San Diego County Water Authority in SDCWA's challenge to Metropolitan's water rates. The request relates to allegations in SDCWA's First Amended Petition for Writ of Mandate and Complaint for Damages and Declaratory Relief filed October 27, 2011, attached for your information.

To assist us in defending this litigation, please provide a copy of the request received by your agency to Carol Nagai, [c.nagai@mwadh2o.com](mailto:c.nagai@mwadh2o.com). Also please provide a copy of your response when it is provided to the attorneys for SDCWA. If necessary, we can provide an external hard drive or other media for our copy.

We also would appreciate receiving notice and copies of anything you receive related to the rate litigation. You may receive discovery requests.

Thank you for your assistance. Please contact me if you have questions or need more information



## San Diego County Water Authority

4677 Overland Avenue • San Diego, California 92123-1233  
(858) 522-6600 FAX (858) 522-6568 www.sdcwa.org

March 8, 2012

**William C. Allen**  
President and Chief Executive Officer  
Los Angeles County Economic Development Corporation  
444 South Flower Street, 37<sup>th</sup> Floor  
Los Angeles, CA 90071

#### MEMBER AGENCIES

Carlsbad  
Municipal Water District

City of Del Mar

City of Escondido

City of National City

City of Oceanside

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San Diegouito Water District

Santa Fe Irrigation District

South Bay Irrigation District

Vallacitos Water District

Valley Center  
Municipal Water District

Vista Irrigation District

Yuma  
Municipal Water District

#### OTHER REPRESENTATIVE

County of San Diego

Dear Mr. Allen:

**Re: Draft Report: *The Cost of Water in San Diego: the SDCWA-IID Water Transfer and SDCWA Water Rates***

Dear Mr. Allen:

The San Diego County Water Authority has a long track record working closely with the business community in San Diego, Southern California and throughout the State on public policy initiatives affecting water supply reliability. I am a member of the board of directors of the San Diego Regional Chamber of Commerce, and two past Chairmen of the Regional Chamber and San Diego Regional Economic Development Corporation, Vince Mudd and Tom Wornham, serve on the Water Authority's board of directors. We have historically worked together cooperatively with both the Los Angeles Chamber of Commerce and with the Los Angeles County Economic Development Corporations, most recently on the successful passage of the 2009 water bill package and bond measure.

We were very surprised recently to discover a draft report by LAEDC (copy attached) (Draft Report) that turned up in response to a Public Records Act request to a public agency in Orange County. While we do not yet have all of the relevant information, we do know from records that are now available that the origin of the Draft Report was a plan by a group of Metropolitan Water District member agencies to discredit the Water Authority and its investments in Colorado River water supplies. It appears that the agencies involved wished to conceal the identity of the Report's true sponsors. The records we have obtained indicate that LAEDC was paid \$50,000 for this work. We would appreciate it if you would let us know who paid for this project.

Mr. William C. "Bill" Allen  
March 8, 2012  
Page 2

I presume you are aware of the litigation that is pending between the Water Authority and Metropolitan regarding Metropolitan's water rates and charges, including charges relating to the transportation of the Water Authority's Colorado River supplies that are the subject of the Draft Report. It is not clear, and I would like to discuss with you how the cost of water in San Diego is relevant to the *LA County Strategic Plan for Economic Development* that guides your selection of projects. We both know how important it is that LAEDC meet its commitment of offering unbiased economic and policy research. With that in mind, and in light of the secretive nature of the Draft Report and the likelihood that it will be the subject of discovery in the litigation, the easiest way to conclude this matter is for LAEDC to immediately disassociate itself from, and terminate any further work on the Draft Report.

If LAEDC feels compelled to complete the Report, the Water Authority requests an opportunity to meet with you and the authors<sup>1</sup> of the Report to provide more complete data. The Draft Report contains a number of incorrect assumptions and data, omissions and invalid "apples-to-oranges" comparisons.<sup>2</sup> In all candor, I don't understand why the Water Authority was not contacted earlier in connection with the preparation of a Report on San Diego water rates. I will make myself and my staff available to your staff and the authors to ensure that complete and accurate information is provided. Based on Public Record Act records, it is my understanding that this opportunity has already been provided to Metropolitan and the agencies that secretly funded the Draft Report.

Finally, in light of the unusual circumstances, we would also request that any Final Draft Report be submitted for peer review by independent, objective and credible economists jointly selected by the Water Authority and the Metropolitan Water District.

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<sup>1</sup> Since he has been a paid consultant to Metropolitan in past litigation against the Water Authority, we question whether one of the report's authors, Dr. Steven Erie, qualifies as an "unbiased" author. He should be disqualified from further work on the report and any analyses he provided should be disregarded. A second author, Vladimir Kogan, appears to be an associate of Dr. Erie at the University of California, San Diego. The Water Authority would like to understand more fully how the authors of the Draft Report were selected and the ties they may have to the parties to the litigation.

<sup>2</sup> A preliminary DRAFT analysis of Errors and Omissions in the Draft Report is attached.

Mr. William C. "Bill" Allen  
March 8, 2012  
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Thank you for your consideration of these requests. The Water Authority looks forward to working with LAEDC in the future. Please do not hesitate to call me if you have any questions; otherwise, we look forward to receiving your response.

Sincerely,

A handwritten signature in black ink, appearing to read "Maureen A. Stapleton". The signature is fluid and cursive, with the first name being the most prominent.

Maureen A. Stapleton  
General Manager

**Attachments**

cc: Mayor Jerry Sanders  
Mayor Antonio Villaraigosa  
Ruben Barrales, President and CEO, San Diego Regional Chamber of  
Commerce  
Mark Cafferty, President and CEO, San Diego Regional EDC  
Water Authority Board of Directors  
Metropolitan Water District Board of Directors

**Preliminary DRAFT Analysis of  
Errors and Omissions in the  
DRAFT Los Angeles Economic Development Corporation Study Entitled:  
“The Cost of Water in San Diego: the SDCWA-IID Water Transfer and SDCWA  
Water Rates”**

**Assumptions**

As with any economic analysis, assumptions are critical. Because the Colorado River Quantification Settlement Agreement (QSA) agreements and terms are complex, it is easy to overlook some details of the water transfer agreement that are fundamental to valuation of this long-term water supply. In reviewing the DRAFT LAEDC Report, a number of critical assumptions regarding supplies and costs have not been considered, and other assumptions are incorrect or invalid.

**IID Supply Rate and Other Water Transfer-Related Costs**

By limiting the time frame to 2015, the DRAFT LAEDC Report provides a distorted comparison of the cost of MWD and Water Authority QSA supplies. No explanation is provided why the study is limited to this very short time period. While the commodity cost of IID water, not including transportation, is higher than the cost of MWD's Tier 1 and Tier 2 water during the first 15 years of the transfer agreement, in the remaining 30 years of this 45-year agreement, the IID supply rate is projected to escalate at a significantly lower rate than the total projected cost of MWD water to the Water Authority. If the contractual time frame of the QSA agreements is taken into consideration, and if the RTS and Capacity Charges that LAEDC's DRAFT Report failed to include are also considered, the IID water supply is projected to become a lower-cost alternative to MWD. The pending litigation was initiated by the Water Authority to redress Metropolitan's action to shift the costs of its acquisition of State Water Project supplies, and other water supply costs, to the Water Authority through transportation charges Metropolitan imposes on the QSA supplies. While the Water Authority has taken steps to manage the long-term risk of the cost of its QSA supplies by linking the price escalation to an inflation index, there is no such limitation on the future rate increases that may be imposed by MWD.

The 10-year compound annual growth of MWD's Tier 1 and Tier 2 Untreated supply from 2004-2014 are 7.96% and 6.53%, respectively. The 10-year growth of MWD's Readiness to Serve Charge and Capacity Charges are 7.98% and 3.78% respectively. Beginning in 2016 the price per acre-foot for IID supply will be based on the annual increase in the Gross Domestic Product Implicit Price Deflator (GDPIPD) as published by the Bureau of Economic Analysis of the United States Department of Commerce. For comparison purposes to historic MWD rates and charges, the 10-year (2001-2011) compound annual growth rate for this index is 2.25%, and it is 3.79% over the past 40 years (1971-2011).

In addition to the supply price paid to IID for water, the Water Authority has committed to pay a number of other costs that should be reflected in the unit cost of water. These include:

- \$114 million in nominal costs to mitigate the environmental impacts of the water transfer with IID.
- \$40 million in nominal costs to IID for socioeconomic mitigation from 2003-2017. Beginning in 2018, IID will repay the Water Authority \$10 million of this amount based on a set schedule.
- \$6 million to IID for previously disputed costs and \$50 million for water conservation projects in the Imperial Valley. This nominal funding served as the catalyst for indexing the IID supply rate to the GDPIPD (as opposed to indexing to MWD rates and charges, which was contemplated in the original Water Transfer Agreement with IID but was subsequently considered to present too great a risk). By providing these funds to IID the Water Authority not only created a mechanism to stabilize the IID supply rate increases for the remaining 35-years of the initial transfer agreement term, but also removed the shortage premium through 2034, which is paid during times of drought, further adding to the long-term cost effectiveness – and cost-certainty – of this supply.

From 2003-2047 the Water Authority will have received 6.9 million-acre feet of highly reliable water from the water transfer, resulting in an average cost of \$31 per acre-foot (adjusted for inflation) for these “other” water transfer costs.

#### **All American and Coachella Canal Lining Projects**

The cost of water from the AACLP and CCLP is estimated at \$10 per acre-foot per year (2012 dollars) based on the operations and maintenance (O&M) expenses of the canals.

Upon substantial completion of the canal lining projects, the United States Bureau of Reclamation issued a final “secretarial determination” with a total project yield of 77,700 acre-feet per year for the AACLP and CCLP. In addition to this supply, the Water Authority negotiated an agreement with the Coachella Valley Water District to receive up to an additional 4,850 acre-feet per year related to the CCLP. For planning purposes the Water Authority expects to receive approximately 2,500 acre-feet per year from this source (actual amounts will vary based on environmental mitigation requirements. From 2007-2011 an additional 13,000 acre-feet has been diverted). Over the remaining 110-years, approximately 8.4 million acre feet will be received from this source. The limited O&M costs and the additional 4,850 acre-feet per year worth of supply was not considered in the DRAFT LAEDC Report.

The total nominal project cost of the CCLP was \$129 million, of which \$87 million was paid from the State General Fund and Proposition 50 funds. The total nominal project cost for the AACLP was \$319 million, of which \$170 million was paid from the State

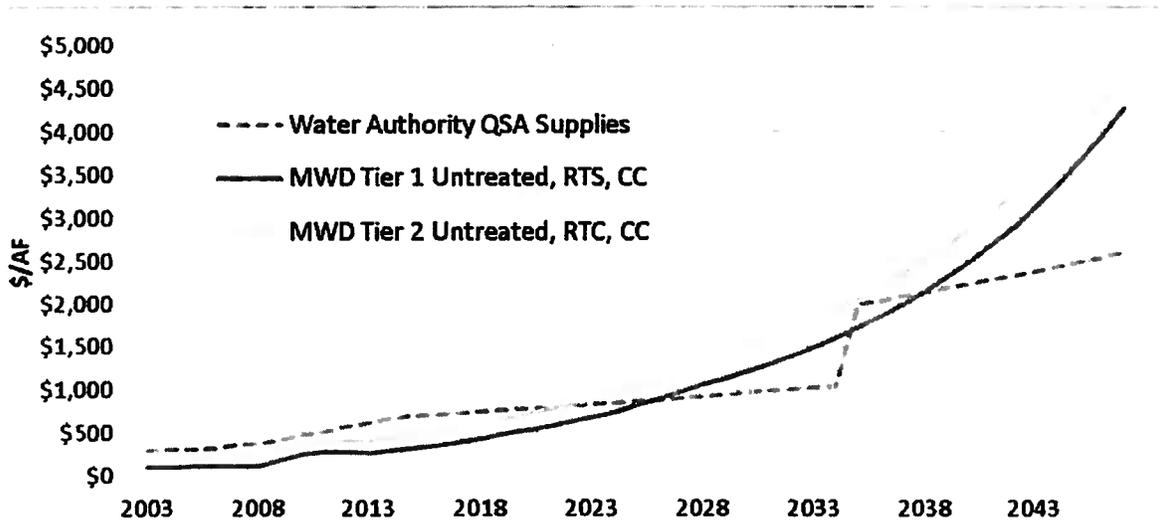
General Fund, Proposition 50 funds, and Proposition 84 funds. The Water Authority debt-financed all environmental mitigation and construction costs that exceeded available State funding.

Total project costs in the DRAFT LAEDC Report are incorrect, and no consideration was given to the economic value of a 110-year water supply project. After the period during which Water Authority debt is retired, only the \$10 per-acre-foot (2012 dollars) in O&M expenses will be required for the 80,000 acre-feet of supply annually.

Over the 110-year term that the Water Authority has rights to the conserved water from the canals, an estimated 8.4 million-acre feet will be delivered at an average cost of \$34 per acre-foot (adjusted for inflation).

**Comparison of Water Authority QSA Supplies to MWD Rates and Charges**

The graph below depicts the 45-year comparison of the Water Authority's QSA supplies to MWD's Tier 1 and Tier 2 rates. for supplies. This includes the actual and estimated commodity cost for IID supply from 2003-2047; \$31 per acre-foot for "other" water transfer costs (environmental/socioeconomic mitigation and GDPIPD supply index); \$34 per acre-foot related financing the CCLP and AACLP; and \$10 per acre-foot for canal O&M expenses.



NOTE: Beginning in 2035, either the Water Authority or IID can, if certain criteria are met, elect a market rate price through a formula described in the IID/Water Authority Conserved Water Transfer Agreement. For the purposes of this comparison, in 2035 the IID supply rate was increased by approximately \$900/acre-foot in consideration of the variables used to determine a market-based rate for the transfer water. While the price may in fact be lower, this estimate provides a reasonable assumption for the purposes of this comparison.

**Failure to Recognize Water Shortages from MWD**

A central premise of the DRAFT LAEDC study is that the Water Authority could save money by purchasing water from MWD instead of IID. While the economic analysis

above shows that basic premise to have limited validity, the DRAFT LAEDC study completely ignores the fact that MWD does not have sufficient water supplies available to meet the Water Authority's near or long-term needs without itself investing in water supply options that will come at a substantially higher cost than its historical imported water supplies. In fact, the study fails to mention that, due to water supply shortages, MWD found it necessary to implement its water supply allocation plan for almost two full years of the study period, from July 1, 2009, through April 2011. During this period, MWD deliveries to the Water Authority were cut back by 13 percent. Given these facts, there is no basis for the *assumption* in the DRAFT Report that the Water Authority could have simply replaced its QSA water supplies with additional purchases of lower cost water from MWD. Just the opposite is the case – the availability of the QSA supplies helped to reduce water supply shortages that otherwise would have been experienced throughout the MWD service territory.

#### **QSA-Related Summary**

In the early years, supplies from MWD are slightly less costly – to the extent they are available – than QSA water supplies. Over the remainder of these long term agreements – which run 45, 75 and 110 years, respectively – water supplies from the QSA are both far more reliable *and* less costly than supplies from MWD.

#### **Other Issues**

The DRAFT Report discusses a number of other issues relating to the Water Authority's investments and water rates that is incomplete and inaccurate. A more detailed presentation and complete information will be provided to LAEDC in accordance with our meeting discussion.

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