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4 Attorneys for Plaintiff and Petitioner San Diegans
5 for Open Government

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7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 COUNTY OF SAN DIEGO – HALL OF JUSTICE
9

10 _____
SAN DIEGANS FOR OPEN GOVERNMENT; and) CASE NO. 37-2017-00021082-CU-MC-CTL
11 DOES 1 through 10,)
12 Plaintiffs and Petitioners,)
13 vs.)
14 SAN DIEGO COUNTY WATER AUTHORITY;)
and DOES 11 through 1,000,)
15 Defendants and Respondents.)
16 _____

**VERIFIED COMPLAINT FOR
DECLARATORY, INJUNCTIVE, AND
OTHER EQUITABLE RELIEF AND
PETITION FOR WRIT OF MANDATE
BASED ON VIOLATIONS OF THE
RALPH M. BROWN ACT AND OTHER
LAWS**

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18 Petitioner and Plaintiff SAN DIEGANS FOR OPEN GOVERNMENT ("Plaintiff") alleges as
19 follows in this Verified Complaint for Declaratory, Injunctive, and Other Equitable Relief and Petition
20 for Writ of Mandate Based on Violations of the Ralph M. Brown Act and Other Laws:

21 **Parties**

22 1. Plaintiff is a non-profit organization formed and operating under the laws of the State
23 of California. At least one of Plaintiff's members resides in and pays taxes, fees, or both within the
24 geographical jurisdiction of the San Diego County Water Authority ("SDCWA") and has an interest in,
25 among other things, ensuring that SDCWA's governing body, officials, and employees comply with the
26 law and make transparent government decisions. Plaintiff is suing on its own behalf and on behalf of
27 its members, all persons similarly situated, all taxpayers within SDCWA's geographical jurisdiction,
28 and/or on behalf of SDCWA itself.

1 2. Under the Ralph M. Brown Act (GOV'T CODE § 54950 *et seq.*), Defendant and
2 Respondent SDCWA is a "local agency" and its governing board is a "legislative body." *See* GOV'T
3 CODE §§ 54951 & 54952(a).

4 3. The true names and capacities of the parties identified as DOES 1 through 1,000 are
5 unknown to Plaintiff, who will seek the Court's permission to amend this pleading in order to allege
6 the true names and capacities as soon as they are ascertained. Each of the fictitiously named Defendants
7 and Respondents 11 through 1,000 has some cognizable interest in the subject matter and/or the relief
8 sought in this lawsuit.

9 **Background Information¹**

10 4. Acting through its governing board, SDCWA has appointed four of its directors to serve
11 as "Metropolitan Delegates" to the Metropolitan Water District of Southern California ("MWD").
12 According to SDCWA Administrative Code Section 9.00.030: "The Metropolitan Delegates are
13 individually and collectively authorized to represent the Authority in all matters as determined by a
14 majority of the Metropolitan Delegates."

15 5. On or about April 21, 2017, based on an article published in the *San Diego Union-*
16 *Tribune*, Plaintiff discovered that at least a majority of the Metropolitan Delegates meet secretly on a
17 monthly basis to discuss matters within their subject-matter jurisdiction, and have been doing so for
18 nearly 20 years. A true and correct copy of the article is attached to this pleading as Exhibit "A" and
19 incorporated by reference.

20 **Jurisdiction and Exhaustion of Remedies**

21 6. Since at least January 1, 2017:

22 A. Government Code Section 54960(a) has provided as follows: "The district
23 attorney or any interested person may commence an action by mandamus, injunction, or declaratory
24 relief for the purpose of stopping or preventing violations or threatened violations of this chapter by
25 _____"

26 ¹ No matter how any portion of this pleading's allegations or prayer is construed, in no way does
27 Plaintiff intend to assert a claim or seek relief that is inconsistent with the following parameters: (1)
28 Plaintiff does not seek any relief greater than or different from the relief sought for the general public
or for a class of which Plaintiff's members residing within SDCWA's geographical jurisdiction are
themselves members. (2) This lawsuit seeks to enforce at least one important right affecting the public
interest and to confer at least one significant benefit, whether pecuniary or non-pecuniary, on the general
public or a large class of persons. (3) Private enforcement is necessary and places a disproportionate
financial burden on Plaintiff in relation to its stake in the matter.

1 members of the legislative body of a local agency or to determine the applicability of this chapter to
2 ongoing actions or threatened future actions of the legislative body, or to determine the applicability of
3 this chapter to past actions of the legislative body, subject to Section 54960.2, or to determine whether
4 any rule or action by the legislative body to penalize or otherwise discourage the expression of one or
5 more of its members is valid or invalid under the laws of this state or of the United States, or to compel
6 the legislative body to audio record its closed sessions as hereinafter provided.”

7 B. Government Code Section 54960.1(a) has provided as follows: “The district
8 attorney or any interested person may commence an action by mandamus or injunction for the purpose
9 of obtaining a judicial determination that an action taken by a legislative body of a local agency in
10 violation of Section 54953, 54954.2, 54954.5, 54954.6, 54956, or 54956.5 is null and void under this
11 section. Nothing in this chapter shall be construed to prevent a legislative body from curing or
12 correcting an action challenged pursuant to this section.”

13 7. Plaintiff is an “interested person” within the meaning of Government Code Sections
14 54960 and 54960.1. On or about May 16, 2017, Plaintiff demanded that SDCWA cure, cease, and
15 desist from the Metropolitan Delegates’ actions taken in violation of the Brown Act, as required by
16 Sections 54960 and 54960.1. On or about June 5, 2017, SDCWA rejected the demand. A true and
17 correct copy of Plaintiff’s demand is attached to this pleading as Exhibit “B,” and a true and correct
18 copy of SDCWA’s rejection is attached to this pleading as Exhibit “C.”

19 8. Plaintiff also brings this action pursuant to Code of Civil Procedure Sections 526a, 1060
20 *et seq.*, and/or 1084 *et seq.*, among other applicable provisions of law.

21 9. Plaintiff has no plain, speedy, and adequate remedy in the ordinary course of law since
22 its members and other members of the public will suffer irreparable harm as a result of violations of the
23 Brown Act by SDCWA’s Metropolitan Delegates. Their decision to meet in secret also rests on the
24 their failure to satisfy a clear, present, ministerial duty to act in accordance with all applicable laws.

25 10. Plaintiff has a beneficial right and interest in the members of SDCWA’s governing board
26 fulfilling all their legal duties, as alleged in this pleading.

27
28

FIRST CAUSE OF ACTION
Violation of Ralph M. Brown Act
(Against All Defendants and Respondents)

11. Paragraphs 1 through 10 are fully incorporated into this paragraph.

12. Since at least January 1, 2017:

A. Government Code Section 54953(a) has provided as follows: “All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter.”

B. Government Code Section 54952(b) has defined “legislative body” under the Brown Act to include: “A commission, committee, board, or other body of a local agency, whether permanent or temporary, decisionmaking or advisory, created by charter, ordinance, resolution, or formal action of a legislative body. However, advisory committees, composed solely of the members of the legislative body that are less than a quorum of the legislative body are not legislative bodies, except that standing committees of a legislative body, irrespective of their composition, which have a continuing subject matter jurisdiction, or a meeting schedule fixed by charter, ordinance, resolution, or formal action of a legislative body are legislative bodies for purposes of this chapter.

13. Plaintiff is informed and believes and on that basis alleges:

A. A majority of the Metropolitan Delegates regularly meet in private and without notifying the public about the meeting location, date, or time and without posting an agenda of the topics to be discussed or other business to be conducted at the delegates’ meeting.

B. According to Metropolitan Water District Act (“MWD Act”) Section 51: “The [MWD] board shall consist of at least one representative from each member public agency. The representatives shall serve without compensation from the district. They shall, at the option of the agency, either be designated and appointed by the chief executive officer of the member public agency with the consent and approval of the governing body of the agency or be selected by a majority vote of the governing body of the agency.” SDCWA is a “member public agency” within the meaning of Section 51.

C. According to SDCWA Administrative Code Section 2.04.010: “The office of the General Manager is created and established. The General Manager is the chief administrative and

1 executive officer of the Authority.” According to Section 2.04.020: “The General Manager shall be
2 appointed by and serve at the pleasure of the Board.”

3 D. SDCWA does not designate, appoint, or select the Metropolitan Delegates in the
4 manner prescribed by MWD Act Section 51. They are not designated and appointed by SDCWA’s
5 General Manager, who by law is also SDCWA’s chief executive officer, and they are not selected by
6 a majority vote of SDCWA’s governing body. Instead, according to SDCWA Administrative Code
7 Section 9.00.010: “The Chair, with the approval of the Board [*i.e.*, SDCWA’s governing body], shall
8 appoint the Metropolitan Delegates, who are the Authority’s representatives on the board of directors
9 of the Metropolitan Water District.”

10 E. Maureen A. Stapleton has been SDCWA’s General Manager since approximately
11 1996 and has never been the Chair of SDCWA’s governing body.

12 F. The Metropolitan Delegates constitute a “legislative body” within the meaning
13 of Government Code Section 54952(b).

14 14. Plaintiff, its members, and other members of the public are being harmed by the
15 Metropolitan Delegates’ secret meetings because such meetings deprive the public of the benefits of
16 the intent of the Brown Act that public officials’ “actions be taken openly and that their deliberations
17 be conducted openly.” Plaintiff, its members, and other members of the public have no way to monitor
18 the conduct of the Metropolitan Delegates when at least a majority of them meet because those meetings
19 are conducted in secret.

20 **Prayer**

21 FOR ALL THESE REASONS, Plaintiff respectfully prays for the following relief against all
22 Defendants and Respondents (and any and all other parties who may oppose Plaintiff in this
23 proceeding):

24 A. A judgment determining or declaring that SDCWA has failed to comply fully with the
25 Brown Act as it relates to the Metropolitan Delegates’ meetings, rendering the action taken at such
26 meetings null and void;

27 B. A judgment determining or declaring that SDCWA must comply fully with the Brown
28 Act as it relates to the Metropolitan Delegates’ meetings;

1 C. A judgment determining or declaring that the Brown Act applied to SDCWA and the
2 past meetings of the Metropolitan Delegates' meetings;

3 D. Injunctive relief prohibiting SDCWA's Metropolitan Delegates from meeting secretly,
4 unless and until they have fully complied with the Brown Act and all other applicable laws as
5 determined by the Court;

6 E. Issuance of a writ of mandate requiring SDCWA and/or the Metropolitan Delegates to
7 rescind any and all actions taken by the Metropolitan Delegates in violation of the Brown Act;

8 F. Issuance of a writ of mandate requiring SDCWA's Metropolitan Delegates to cease and
9 desist from meeting secretly except as authorized by the Brown Act, unless and until they have fully
10 complied with the Brown Act and all other applicable laws as determined by the Court;

11 G. Any and all other relief that may be authorized by the Brown Act but is not explicitly
12 or specifically requested elsewhere in this Prayer;

13 H. All legal fees and other expenses incurred in connection with this proceeding, including
14 but not limited to reasonable attorney fees as authorized by the Government Code, the Code of Civil
15 Procedure, and/or other applicable law; and

16 I. Any and all further relief that this Court may deem appropriate.

17 Date: June 12, 2017.

Respectfully submitted,

BRIGGS LAW CORPORATION

Cory J. Briggs

By:

Cory J. Briggs

Attorneys for Plaintiff San Diegans for Open
Government

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**COMPLAINT FOR DECLARATORY, INJUNCTIVE, AND OTHER EQUITABLE
RELIEF AND PETITION FOR WRIT OF MANDATE BASED ON VIOLATIONS OF
THE RALPH M. BROWN ACT AND OTHER LAWS**

Exhibit "A"

Water authority members meet more in private than public



By **James DeHaven**

APRIL 21, 2017, 11:00 PM

Members of the San Diego County Water Authority met behind closed doors more than 100 times last year — four times as often as they met in public.

State law limits the scope and frequency of such unnoticed, unrecorded meetings so as to prevent officials from hiding their activities from the public, which pays for them.

Yet payroll documents, the only records available to describe the get-togethers, show three groups of authority board members met behind closed doors on a monthly basis in 2016. A spokesman did not answer questions about when the groups first formed, though Board Chair Mark Muir said at least one has held regular meetings for nearly two decades.

A U-T Watchdog review of pay slips found Muir and others named to the authority's 36-member oversight board were paid more than \$80,500 for last year's closed door get-togethers — about 20 percent more than they were paid for meetings held in public.

That review identified a wide array of gatherings held out of the public's view, including:

- 37 committee pre-board and “pre-brief” meetings, usually convened a week before the authority board's monthly public meeting.
- 22 regularly scheduled gatherings of authority-appointed delegates to the Metropolitan Water District of Southern California.
- 15 temporary committee meetings, sometimes referred to as task forces or work groups.
- 13 conference calls, briefings and legislative roundtables, often with staff and lobbyists deployed to Sacramento.
- At least 13 meetings attended by the board's chair, vice chair, secretary and up to five directors named to head board committees, including two gatherings of directors to plan and embark on a chairman's retreat.

Discussion at the closed door meetings ranged from energy storage and hydropower to potential choices for a new general counsel. Some featured appearances from a cast of visitors that included U.S. Rep. Scott Peters,

state Sen. Toni Atkins, Assemblywoman Lorena Gonzalez and self-described “master business coach” Don Maruska.

But the most popular, by far, was the monthly gathering of MWD delegates.

Four directors are officially named as representatives to the larger, Los Angeles-based water importing district. More than twice that many were paid to attend a typical delegates meeting in 2016. The gatherings were held in San Diego, not at an MWD gathering at its headquarters in L.A. Muir said the authority has held some version of the same unnoticed, unrecorded meeting for at least 18 years.

California’s open meeting law, passed in 1953 and known as the Ralph M. Brown Act, only allows closed door meetings of such small collections of board members on a social or chance basis, or if their official task is temporary. As a 1996 Attorney General’s opinion described it, agency directors are not subject to the Brown Act if they are “charged with accomplishing a specific task in a short period of time.”

Longer-term groups — known as standing committees — are required to meet in public, according to a 2010 guide to the law published by the League of California Cities, under the guidance of a panel of lawyers that included Daniel Hentschke, then the San Diego County Water authority’s general counsel.

Standing committees are generally defined as groups with ongoing jurisdiction whose meetings and membership are set by official action, the guide says.

Brown Act experts contacted by U-T Watchdog said the closed-door gatherings could provide a forum for directors to reach a quiet consensus on any number of issues that are supposed to be aired in public.

“What the public doesn’t know can hurt them,” said Donna Frye, president of open-government advocacy group Californians Aware. “What if they’re talking about a rate increase? Without the Brown Act, the decision could be made without the public knowing about it.”

Jodi Cleesattle, an attorney and member of the Society of Professional Journalists’ Freedom of Information Committee, agreed.

“It sounds like the San Diego County Water Authority advisory committee in this case does have continuing jurisdiction over a particular subject because its members are tasked with acting as delegates to the Metropolitan Water District of Southern California,” she said via email. “If this is the case, the advisory committee would be considered a standing committee subject to the requirements of the Brown Act.”

The authority says its long-running delegates panel does not run afoul of the rules. It said the group isn’t a committee at all, but a group of directors that “represent the Water Authority’s interests in other venues” — not subject to open meetings laws.

Authority spokesman Mike Lee said the authority scrupulously complies with open meeting law.

“It’s a public disservice to imply something is amiss in agencies that follow the law on the basis of a hypothetical harm – the potential that something nefarious could happen,” he wrote in an email. “That will be true no matter where the line is, and it’s inherently unfair to set an arbitrary standard above what the law requires and then criticize agencies for not meeting it.

“Besides complying with the law, the water authority makes numerous efforts to engage the public through our Citizens Water Academy, robust online resources and involvement with community groups at several different levels. Of course, we also welcome the public – including the media – to any and all board and board committee meetings, an invitation that few in the media have taken in recent years.”

Task forces

Payroll records show the delegates group convened twice as often as the authority’s board and standing committees in 2016, and up to three times as often as any other temporary committee. Directors themselves often referred to the gatherings as a committee or subcommittee meeting.

The authority’s administrative code identifies six standing committees — Administrative and Finance, Engineering and Operations, Imported Water, Legislation and Public Outreach, Water Planning, and Audit.

It makes no mention of certain groups that appear in pay records for authority board members — the Energy, Hydropower, Colorado River and General Counsel Selection panels and the Outreach Oversight and Metropolitan Water District Working “task forces.” Lee said that phrase is used to refer to the type of temporary committees that are outlined in the bylaws and allowed to legally convene behind closed doors.

Financial records show directors were paid to attend four Energy and three Colorado River, Hydropower and General Counsel meetings. Lee said the latter two groups have since disbanded, while a new Outreach Oversight task force convened for the first time last month.

He said the nine-member “MWD working” task force, which did not surface in last year’s payroll records, meets at least as often as the district delegates panel.

The San Diego County Water Authority has good reason for its MWD delegates to meet on their own, as SDCWA has long been embroiled in a complex legal dispute with the Los Angeles regional authority over water importing charges. Officials at MWD said the broader agency has no involvement with the local get-togethers and was not notified or invited to them.

Lee did not say exactly why the water authority believes the delegates group is not a standing committee, despite decades of regular meetings. Much of the power to define a committee falls to the board chairman, Muir, also an Encinitas city councilman.

Muir — who alternately referred to delegate gatherings as “work groups” and committee meetings — also did not directly answer questions about which of the authority board’s sub-groups ought to be subject to the Brown Act. But he was confident the board was on the right side of that law.

“We play by the rules,” he said.

Paid to attend

Authority board members receive no base pay, only per-meeting stipends, expenses and mileage. They can receive upwards of \$20,000 in such pay.

Financial records show the authority paid board members \$40,260 for delegates meetings and other closed door gatherings. It paid roughly the same amount for director participation at a host of similarly unnoticed, unrecorded pre-board and pre-brief meetings.

Those meetings are regularly held about a week before the board’s monthly public meeting. Lee said they are meant to “plan for effective and efficient committee/board meetings,” and are typically attended by the chair, vice chair and one additional member of the authority’s standing committees.

Checks cut for private director meetings exceeded the amount they were paid to attend meetings that were open to the public, about \$64,000.

“If regular, non-noticed delegate ‘get-togethers’ are events at which the attendees are paid, why are they being paid?” asked Simon Mayeski, a San Diego small business owner and longtime volunteer with California Common Cause. “What action or discussion demands their particular expertise at least enough to earn recompense?”

“Either those paid attendees are acting as a committee or subcommittee of (the Metropolitan Water District) -- and therefore these meetings need to follow the Brown Act -- or they are being paid only to have social interaction with other (district) members, and that is not cool.”

**COMPLAINT FOR DECLARATORY, INJUNCTIVE, AND OTHER EQUITABLE
RELIEF AND PETITION FOR WRIT OF MANDATE BASED ON VIOLATIONS OF
THE RALPH M. BROWN ACT AND OTHER LAWS**

Exhibit "B"

BRIGGS LAW CORPORATION

San Diego Office:
4891 Pacific Highway, Suite 104
San Diego, CA 92110

Telephone: 619-497-0021
Facsimile: 909-949-7121

Please respond to: Inland Empire Office

Inland Empire Office:
99 East "C" Street, Suite 111
Upland, CA 91786

Telephone: 909-949-7115
Facsimile: 909-949-7121

BLC File(s): 1593.99

16 May 2017

Maureen Stapleton, General Manager
Mark Muir, Chair
Gary Croucher, Secretary
San Diego County Water Authority
4677 Overland Avenue
San Diego, CA 92123

Via Facsimile Transmission and U.S. Mail

Re: Request to Cure, Cease and Desist from Violations of Ralph M. Brown Act
(Metropolitan Water District Delegates)

Dear Ms. Stapleton and Messrs. Muir and Croucher:

On behalf of my client, San Diegans for Open Government, I am writing to request the cure of a pattern of violations of the Ralph M. Brown Act (Government Code Section 54950 *et seq.*) committed by the San Diego County Water Authority through secret meetings of its Metropolitan Water District ("MWD") Delegates. The full extent of the violations is unknown at this time because, by definition, the circumstances surrounding secret meetings are known only to the perpetrators. Nonetheless, according to recent reporting by *The San Diego Union-Tribune*, the Delegates are holding illegal secret meetings and have been doing so for a very long time.

In particular, Mr. Muir reportedly admitted that the Authority "has held some version of the same unnoticed, unrecorded [monthly] meeting [of the Delegates] for at least 18 years." A review of the Authority's website shows no agendas or other public notices for those meetings, and my client is not aware of any such documents existing elsewhere, despite a belief that at least one such meeting has occurred within the last 90 days. In the absence of a properly posted agenda for such meetings, they are illegal.

Under the Brown Act, "[a]ll meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter." GOV'T CODE § 54953(a). The definition of "legislative body" includes "[a] **commission, committee, board, or other body of a local agency**, whether permanent or temporary, decisionmaking or advisory, **created by charter, ordinance, resolution, or formal action of a legislative body.**" *Id.*, § 54952(b) (emphasis added). Advisory committees made up solely of members of the legislative body but less than a quorum of that body are not themselves legislative bodies, "**except that standing committees of a legislative body, irrespective of their composition, which have a continuing subject matter jurisdiction**, or a meeting schedule fixed by charter, ordinance, resolution, or formal action of a legislative body **are legislative bodies** for purposes of this chapter." *Id.* (emphasis added).

According to the Authority's administrative code, the Delegates are appointed by the Chair, "with the approval of the Board," and "are the Authority's representatives on the board of directors



of the Metropolitan Water District.” Admin. Code § 9.00.010.¹ “The Metropolitan Delegates are individually *and collectively* authorized to represent the Authority in all matters as determined by a majority of the Metropolitan Delegates.” *Id.*, § 9.00.030 (emphasis added).

By law – namely, an administrative code enacted by the Authority’s board – the Delegates have collective decision-making authority in representing the Authority on the MWD board and have continuing jurisdiction over MWD affairs as they relate to the Authority. Moreover, regardless of the label used (or avoided) by the Authority, the Delegates represent “[a] commission, committee, board, or other body of” the Authority.² Consequently, the Delegates’ meetings must be properly agendized or otherwise noticed to the public, and they must be held in public.

Under the Brown Act, the violations must come to an end and be cured not more than 30 days after receipt of this letter. Please notify me *in writing* as soon as possible to let me know whether the violation will be stopped and cured and, if so, when the cessation and cure will take place. (My client may sue before receiving your response.)

Thank you for your prompt attention to this important matter.

Sincerely,

BRIGGS LAW CORPORATION

Cory J. Briggs

¹ All citations to the “Admin. Code” are to the Authority’s administrative code at <https://www.sdcwa.org/administrative-code>.

² There should be no dispute that a “collective” qualifies as “[a] commission, committee, board, or other body” within the meaning of the Brown Act. For example, Merriam-Webster defines “collective” as “denoting a number of persons or things considered as one group or whole.” See <https://www.merriam-webster.com/dictionary/collective>.



**COMPLAINT FOR DECLARATORY, INJUNCTIVE, AND OTHER EQUITABLE
RELIEF AND PETITION FOR WRIT OF MANDATE BASED ON VIOLATIONS OF
THE RALPH M. BROWN ACT AND OTHER LAWS**

Exhibit "C"



San Diego County Water Authority

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

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

Fairbrook
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

Yuma
Municipal Water District

OTHER REPRESENTATIVE

County of San Diego

June 5, 2017

Cory J. Briggs, Esq.
Briggs Law Corporation
Inland Empire Office
99 East "C" Street, Suite 111
Upland, CA 91786

Re: Your letter dated May 16, 2017 (the "Letter")

Dear Mr. Briggs:

We are in receipt of your Letter demanding that the San Diego County Water Authority (the "Water Authority") cease and desist from alleged violations of the Brown Act in regards to purported "secret" meetings of its Metropolitan Water District of Southern California ("MWD") delegates. This letter constitutes the response of the Water Authority to your claims, which you have asserted as being on behalf of an entity called "San Diegans for Open Government" ("SDOG").

The Water Authority disagrees with your characterization of the MWD delegates as a legislative body. They are not a legislative body under the Brown Act, but rather representatives of the Water Authority at MWD. Your interpretation of the law would fundamentally contradict the role the delegates play, and actually strip them of their ability to be effective delegates – all in violation of the applicable statutory regime.

The Water Authority's Administrative Code provides that the MWD delegates are appointed to sit on MWD's Board by the Chair of the Water Authority Board, with approval of the Water Authority Board, and that they are the Water Authority's representatives at MWD. Admin. Code § 9.00.010. The MWD delegates are "individually and collectively authorized to represent the Authority in all matters as determined by a majority of the Metropolitan Delegates." Admin. Code § 9.00.030. Emphasis added.

The appointment of representative delegates is not the creation of a subsidiary legislative body of the Water Authority. The appointment is merely the exercise of the Water Authority's duty as a member agency of MWD. The MWD Act sets forth the composition of the MWD Board. *See* MWD Act, Part 3, Chapter 1, "Board Organization." Thus, the Water Authority merely appoints representative members to an existing body, as authorized

A public agency providing a safe and reliable water supply to the San Diego region

Cory J. Briggs, Esq.
June 5, 2017
Page 2 of 2

by statute. The MWD delegates from the Water Authority, or from MWD's other member agencies, are not separate legislative bodies. They are merely members of other legislative bodies (the Water Authority, MWD, and other MWD member agencies).

The Water Authority Board, as a whole, has never had the ability to exercise the powers that the MWD delegates exercise by law, such as voting at MWD. The MWD delegates constitute a minority of the Water Authority Board, and a minority of the MWD Board. Therefore, they are free to discuss MWD matters amongst themselves or with staff without being a legislative body subject to the Brown Act.

Any argument that the MWD delegates are, in and of themselves, a legislative body would lead to absurd results that would void the legislative intent of the MWD Act, and the legislatively created unique structure of the MWD Board. Given that each MWD member agency has at least one member on the MWD Board, under your analysis each delegate or group of delegates appointed by each member agency would be deemed its own legislative body that must comply with the Brown Act each time they discuss their votes at MWD. In many cases, this would be undermined by the fact that a legislative body must have more than one representative, and many of the MWD member agencies do not have more than one representative on the MWD Board. This would leave these single representative agencies free to conduct business as usual via their sole delegate, but force those agencies with more than one representative on the MWD Board to each separately comply with the Brown Act each time their representatives met.

Further, the very role of being a representative means that actions must often be decided swiftly after consultations with other representatives and staff. If the MWD delegates were a legislative body subject to the Brown Act, as you contend, then when MWD seeks to vote on matters affecting the Water Authority, under your construct the delegates could not "on the spot" converse with one another and staff to discuss how the Water Authority's interests might be affected by a proposed vote, as this would require a noticed public meeting. This kind of restriction would actually violate, and effectually void, their statutory function as representatives of the Water Authority seeking to protect the Water Authority and its ratepayers in San Diego County.

Additionally, in their official capacities as board members of the Water Authority and of MWD, the MWD delegates do comply with the Brown Act. Therefore, if they were to meet with a majority of either board or the agencies' standing committees, they would comply with the Brown Act. The public is no more harmed by the MWD delegates meeting amongst themselves and with staff than they would be if a minority of any other legislative body meets.

In summary, your claim as to the MWD delegates is misplaced. We urge you and your purported client SDOG to not institute frivolous litigation.

Sincerely,



Mark J. Hattam
General Counsel

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF San Diego

I have read the foregoing COMPLAINT FOR DECLARATORY, INJUNCTIVE, AND OTHER EQUITABLE RELIEF AND PETITION FOR WRIT OF MANDATE etc. and know its contents.

CHECK APPLICABLE PARAGRAPH

I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

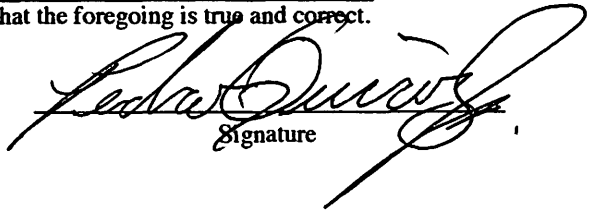
I am an Officer a partner _____ a _____ of San Diegans for Open Government, a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I am one of the attorneys for _____ a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

Executed on June 11, 20 17, at San Diego, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Pedro Quiroz, Jr.
Type or Print Name


Signature

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF _____

I am employed in the county of _____, State of California. I am over the age of 18 and not a party to the within action; my business address is, _____

On _____, 20 _____, I served the foregoing document described as _____

_____ on _____ in this action by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list:
 by placing the original a true copy thereof enclosed in sealed envelopes addressed as follows:

BY MAIL
 * I deposited such envelope in the mail at _____, California. The envelope was mailed with postage thereon fully prepaid.
 As follows I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at _____ 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.

Executed on _____, 20 _____, at _____, California.

**** (BY PERSONAL SERVICE)** I delivered such envelope by hand to the offices of the addressee. Executed on _____, 20 _____, at _____, California.

(State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct. I (Federal) declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Type or Print Name

Signature

* (By MAIL SIGNATURE MUST BE OF PERSON DEPOSITING ENVELOPE IN MAIL SLOT, BOX, OR BAG)
**(FOR PERSONAL SERVICE SIGNATURE MUST BE THAT OF MESSENGER)