



San Diego County Water Authority

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March 12, 2018

Marcia Scully, General Counsel
Metropolitan Water District of Southern California
P.O. Box 54153
Los Angeles, CA 90054

MEMBER AGENCIES

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Municipal Water District

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OTHER REPRESENTATIVE

County of San Diego

RE: Ethics Office Issues

Dear Ms. Scully,

Thank you for your email reply to my March 9 letter. Without belaboring the matter, I wanted to respond to a few points you raised and hope it is helpful as the Board continues to discuss and deliberate these issues.

First, we believe your email letter overstates the role of the MWD Board of Directors in "making substantive decisions regarding the future of the Ethics Office." While the MWD Board plays an important role under SB 60 in the approval process, the approval is required to be of rules **adopted by the independent Ethics Office**. MWD Act § 126.7(c)(2). **The Ethics Office, not the Board of Directors, is also charged with adopting procedures** for protecting the confidentiality of sources, the job security of "whistle blowers," and the due process rights of the accused. MWD Act § 126.7 (c)(3). So while it is true that the Board must approve the procedures, the statute provides that the rules are to be adopted by the independent Ethics Office. The concern we have raised is that MWD management and the Board appear to be conducting a wholesale reorganization of the Ethics Office without an independent Ethics Officer in place.

Similarly, the Board's discretion is not unlimited because it must abide by the important statutory mandate that the Office of Ethics operate as an independent entity, free from political interference from MWD management or the Board of Directors or any other source. MWD Act § 126.7 (c)(1). SB 60 also mandates that the Ethics Office adopt and the Board approve rules that are **consistent with the intent and spirit of the laws and regulations of specific entities** as described in my last letter.

Second, we are also aware of the provisions contained in the Ethics Office Investigation Guidelines. While you are correct in noting that the Guidelines provide for the General Counsel to review and comment on investigation **reports**, you fail to mention all of the other important provisions in the Guidelines intended to protect the independence of the Ethics Office, the confidentiality of evidence obtained in the course of investigations, and guard against retaliation that could ensue from the improper disclosure of evidence.

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Finally, while we appreciate your confirmation that the Mayorkas attorneys have in fact reviewed not just Ethics Office reports but investigation records as we feared they might do, your response still does not identify what matter you believe is the subject of the attorney-client privilege or who the "client" is in this context. It continues to appear that you have acted as counsel for the Ethics Office, management and possibly Board members who may have been the subject of these investigations. This is why we raised the concerns we did at the outset and why we continue to have serious questions about the manner in which this Ethics Office review is being conducted.

Thank you and the Board for continued consideration of these serious matters.

Sincerely,

A handwritten signature in blue ink, appearing to be 'M. Hattam', with a long horizontal stroke extending to the right.

Mark J. Hattam
General Counsel

Cc: MWD Board of Directors
Jeffrey Kightlinger, MWD General Manager
Water Authority Board of Directors
Maureen A. Stapleton, Water Authority General Manager