

April 21, 2023

Arturo Chacon, Board President
Elizabeth Brizuela, Board Secretary/Senior Executive Secretary
Margarita Aguilar, Board Secretary¹
Central Basin Municipal Water District
6252 Telegraph Road
Commerce, CA 90040-2512

RE: Brown Act Cease and Desist Letter

Dear President Chacon and Secretary Brizuela:

I write on behalf of Juan (Joey) Martinez to notify the Board of Directors and its Secretary of violations of the Brown Act during the public comment period at the March 27, 2023 Central Basin Municipal Water District (“CBMWD”) Board of Directors Meeting (“Meeting”), and to seek the Board’s commitment to preventing similar violations going forward. The Board violated the Brown Act, Government Code §§ 54950 et seq., by telling Mr. Martinez he was out of order, trying to prevent him from speaking and then ordering armed guards to prevent him from discussing the employment status of District General Manager Alejandro “Alex” Rojas in the wake of a recent criminal indictment against Mr. Rojas.

Summary of Events

Mr. Martinez wanted to speak at the March 27, 2023 Meeting to raise concerns about the employment status of District General Manager Rojas, given his recent indictment. According to video of the Meeting, before Mr. Martinez began to speak during the public comment period, he waited patiently and quietly at the public podium while one of the Board members or staff set up a microphone for him.² He began his comments by informing the Board that he wanted to submit a document for the record. The same individual who set up the microphone for Mr. Martinez then walked up to the podium and collected the document from Mr. Martinez, who calmly handed it to her.

¹ Elizabeth Brizuela is listed as the Board Secretary/Senior Executive Secretary on the Central Basin Municipal Water District’s website. However, Margarita Aguilar is listed as the Board Secretary on the Registry of Public Agencies maintained by the Secretary of State’s office. In an abundance of caution, I am addressing this letter to both individuals.

² For video of the Meeting, see <https://tinyurl.com/March-27-Meeting>, last accessed April 20, 2023.

EXECUTIVE DIRECTOR Hector O. Villagra

CHAIR Michele Goodwin VICE CHAIRS Rob Hennig and Stacy Horth-Neubert
CHAIRS EMERITI Marla Stone Shari Leinwand Stephen Rohde Danny Goldberg Allan K. Jonas* Burt Lancaster* Irving Lichtenstein,
MD* Jarl Mohn Laurie Ostrow* Stanley K. Sheinbaum*

*deceased

Mr. Martinez then said “Please let the record reflect that I have turned [in] a 18 count criminal complaint filed by the D.A. George Gascon against Alejandro Alex Rojas and Luis ... Rojas.” As soon Mr. Martinez mentioned the name “Alejandro Alex Rojas,” a member of the Board who appears to be Board President Arturo Chacon banged his gavel, informed Mr. Martinez that “you’re out of order,” and called for security, making a series of hand gestures to a California Metro Patrol guard. The guard then went to the podium, stood in between Mr. Martinez and the Board, took possession of the microphone Mr. Martinez was using, and told Mr. Martinez to “take a seat bro.”

Mr. Martinez briefly continued his attempt to provide public comment, noting that Board Director Leticia Vasquez had made “very alarming” allegations. The guard looked to the same Board member who had struck the gavel the first time, who then struck it twice more, said “he’s out of order,” and appears to have said something to the effect of “remove him please.” The guard responded first by again telling Mr. Martinez “you need to take a seat -- take a seat” before immediately ordering other guards to remove him. One of the other guards then put his hand on Mr. Martinez’s arm, saying “let’s go sir,” while Mr. Martinez turned around and started to leave. Mr. Martinez continued his attempt to provide public comment while walking away from the podium, with the guard escorting him out. He stated “Alex Rojas, you’ve committed – you’re being indicted for eighteen counts of fraud, embezzlement and perjury. Why is this Board continuing to allow you to continue your job when you’re clearly being investigated for criminal counts?” While Mr. Martinez spoke loudly as he was exiting the room, he remained measured in tone with a calm demeanor. The door was closed behind him, and I am informed that Mr. Martinez was not permitted to rejoin the hearing along with other community members once the public comment period had ended – the doors remained barred with armed guards blocking entry.

Barely ten seconds elapsed between Mr. Martinez’s first words at the podium and the first gavel strike. Mr. Martinez had been forced to leave the room within two minutes of beginning to speak. The Board member who struck his gavel and ordered security to remove Mr. Martinez from the hearing provided no warning before ordering Mr. Martinez removed, and no explanation for his actions other than to state that Mr. Martinez was “out of order.”

Brown Act Violations

The Board violated the Brown Act by preventing Mr. Martinez from speaking on a matter of public interest within the Board’s authority. The Brown Act requires that, during a regular meeting of a legislative body, members of the public “must be allowed to speak ... ‘on any item of interest to the public, ... that is within the subject matter of the legislative body.’” Gov’t. Code § 54954.3. The Brown Act applies to water districts. *See Castaic Lake Water Agency v. Newhall Cnty. Water Dist.*, 238 Cal. App. 4th 1196, 1203 (2015), as modified (July 22, 2015). Because the Board provided no explanation for the decision to silence and then remove Mr. Martinez beyond its conclusory allegation that he was “out of order,” its rationale is unclear. It is abundantly clear, however, that the Board had no legitimate or legal basis for its actions, which violated the Board’s obligation to allow public comment.

As a threshold matter, the Board cannot justify the decision to silence and remove Mr. Martinez by claiming he was in any way disruptive. As is clear from the video, he was calm,

patient, and cooperative at the outset of his presentation to the Board. He engaged in no behavior that “actually disrupts, disturbs, impedes, or renders infeasible the orderly conduct of the meeting” before he was declared “out of order.” Gov’t Code § 54957.95. Indeed, a Board or staff member handed him a microphone and accepted the document he offered for the record. It is therefore apparent that it was the content of Mr. Martinez’s speech rather than disruptive conduct that led to his being declared “out of order,” silenced, and forcibly removed from the proceedings. Even if Mr. Martinez had been disruptive in some manner, which was not the case, the Board could not legally order him removed from the hearing without first warning him that his behavior was disrupting the meeting and that his failure to cease could result in his removal. *Id.* The Board member who ordered Mr. Martinez silenced and removed provided no such warning. Nor could he, given the fully orderly nature of Mr. Martinez’s behavior.

More importantly, the Board had no substantive basis for preventing Mr. Martinez from speaking. Concerns about a public body’s employees are clearly matters of public concern appropriate for discussion at open meetings. *See Baca v. Moreno Valley Unified Sch. Dist.*, 936 F. Supp. 719, 736 (C.D. Cal. 1996) (“the open session of a school board meeting is a legally proper place for citizens to voice their complaints about a school district’s employees”). The Brown Act does not grant public bodies “authority to silence public speech that may also touch upon related employment issues” but instead requires them to allow the public to speak ““on *any* item of interest to the public ... that is within the subject matter jurisdiction’ of the Board, without exception.” *Leventhal v. Vista Unified Sch. Dist.*, 973 F. Supp. 951, 958–59 (S.D. Cal. 1997) (quoting Gov’t Code § 54954.3(a)) (court’s emphasis). This clearly includes “the fitness of the administrative leader” of a public body. *Id.* at 958.

Nor is there any question that decisions about whether to hire or fire the District General Manager are within the subject matter jurisdiction of the Board, as the state Water Code gives the Board explicit authority over such matters. *See* Water Code § 71340 (“the board shall appoint, by a majority vote, a secretary, treasurer, attorney, general manager, and auditor, and shall define their duties and fix their compensation. ... Each of these officers shall serve at the pleasure of the board.”). It may be that the Board member who ordered Mr. Martinez silenced and removed believed that Mr. Martinez wanted to address the indictment against Mr. Rojas for some reason other than to discuss his fitness for employment, but this was not the case and, in any event, the Board provided no opportunity for Mr. Martinez to explain why he thought the indictment was relevant before shutting down his ability to provide public comment. Nevertheless, Mr. Martinez made his intentions clear as the guard escorted him out, and he expressed his concern with the Board’s decision to continue employing Mr. Rojas despite his criminal indictment. This did not suffice to convince the Board to reverse course and allow Mr. Martinez to provide public comment.³

Finally, the Brown Act prohibits the Board from silencing and removing Mr. Martinez simply because it may have thought he was about to criticize the Board’s actions or decisions. Public bodies like the CBMWD “shall not prohibit public criticism of the policies, procedures, programs, or services of the agency, or of the acts or omissions of the legislative body.” Gov’t

³ The Board also violated the First Amendment and the free speech provisions of the California Constitution when it prevented Mr. Martinez from commenting on Mr. Rojas’s fitness for the job. “Debate over public issues, including the qualifications and performance of public officials ... lies at the heart of the First Amendment.” *Leventhal*, 973 F. Supp. at 958; *see also* *Baca*, 936 F. Supp. at 728 (noting that article 1, section 2 of the California Constitution prohibits government bodies from prohibiting speech that is “negatively critical of” public employees).

Code § 54954.3(c). Mr. Martinez was therefore fully entitled to challenge the Board's decision to keep Mr. Rojas on the payroll after his indictment.

Conclusion and Cease and Desist Demand

The Board's decision to silence and remove Mr. Martinez violated the Brown Act and has caused Mr. Martinez to fear that he will be prevented from engaging in public comment in future Board meetings, or that he will face repercussions for doing so. Accordingly, pursuant to Government Code section 54960.2(a), I hereby notify the Board of Directors and its Secretary that the Board must immediately cease and desist from preventing Mr. Martinez or others from providing public comment about its decisions about the continued employment of District General Manager Alejandro "Alex" Rojas or any other employee of the Water District, regardless of whether those comments entail discussion of the criminal indictment against Mr. Rojas.

Pursuant to Government Code section 54960.2(b), Mr. Martinez may take legal action if the Board does not respond to this letter within 30 days, providing its unconditional commitment to cease, desist from, and not repeat the violation described here. In that eventuality, Mr. Martinez would be entitled to court costs and attorney fees. *Id.*

Please let me know if you have any questions or would like any additional information. I look forward to your response. I can be reached via email at jmarkovitz@aclusocal.org.

Sincerely,

Jonathan Markovitz
Free Expression and Access to Government Staff Attorney

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