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## Water agency draws fire after filing unusual libel suit

*The Central Basin district, facing a raft of investigations, targets authors of a critical email. L.A. County's D.A. fears action could deter whistle-blowers.*

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It all started with anonymous emails. The Central Basin Municipal Water District, the emails alleged, was guilty of corruption and double-dealing in awarding a \$1-million federal grant.

Officials at Central Basin, a water agency serving more than 2 million L.A. County residents, publicly denied the claims, suggesting the emails were sent by the firms that didn't get the contract. But Central Basin didn't stop there. It hired a law firm and last month filed a highly unusual libel suit against the unnamed authors of the email.

Such lawsuits are rare because, under free speech laws, governments generally cannot be defamed by public critics or whistle-blowers.

"You can't defame the government," said Eugene Volokh, a professor at UCLA Law School. "The government can't sue for libel even if it feels they can prove statements about it are not just false, but lies."

The suit comes as the water district faces a raft of official investigations. The district attorney's office is investigating questionable travel expenses as well as the finances of one of its board members. And Central Basin is one of several local water agencies whose rates and spending practices are being audited by the state.

In an interview Friday, Dist. Atty. Steve Cooley blasted the district's action as a "strategic lawsuit against public participation" and said he feared it could deter other whistle-blowers.

"This strikes me as an incredibly bizarre and unusual move from a public entity," Cooley said Friday. "If this became a widespread practice, it would have a chilling effect on whistle-blowers and others who seek to assure good and honest government."

In this case, the emails had been sent to the water district as well as to federal and state agencies overseeing the federal contract. The suit doesn't list the defendants by name.

The libel suit claims the emails, which were sent from the address [whistleblower2010@aol.com](mailto:whistleblower2010@aol.com), "exposed Central Basin to contempt, ridicule, disgrace and injured Central Basin in its business operations."

Central Basin officials declined to answer specific questions about the libel case. But in a statement, the district said it was responding to "fraudulent conduct in the context of a water contract bid."

"It is in the best interest of the public to expose such activity and hold the wrongdoers accountable," the statement said.

A lawyer for Buchalter Nemer, the firm that filed the libel suit on behalf of the water district, declined to comment. "I'm not going to respond to your questions," attorney Peter Holbrook said.

Courts have not looked kindly at libel suits by government agencies. In the 1964 case *New York Times Co. vs. Sullivan*, the U.S. Supreme Court stated that for "good reason, no court of last resort in this country has ever held, or even suggested, that prosecutions for libel on government have any place in the American system of jurisprudence."

"You wouldn't have politics as we know it, and you certainly wouldn't have a 1st Amendment as we know it" if government agencies could be libeled, said Terry Francke, an attorney and open government advocate.

Two years ago, in one of the more recent government libel cases, Jefferson Parish, Louisiana, sued anonymous commenters criticizing the government and public officials on a newspaper website. But the parish eventually dropped the suit.

It's more common for cities to threaten their detractors with legal action. In 2007, Pomona's city attorney sent a letter to a website ordering it to "cease and desist any further publication of false information" regarding city leaders. The letter threatened legal action against "false and libelous information." No libel lawsuit was ever filed.

Al Wickers, a 1st Amendment expert and partner at Davis Wright Tremaine, was amazed by Central Basin's case. "It's just a totally bogus libel claim," he said.

The controversy stems from a federal stimulus grant Central Basin won from the U.S. Department of Energy in the summer of 2010. Central Basin won the award in conjunction with HydroEarth, a Lake Forest-based water management firm.

But instead of moving forward with the original research proposal, Central Basin amended the project and opened it up for competitive bidding. Staffers subsequently chose to partner with a different company, Water2Save, selecting it in favor of two other firms that submitted bids: HydroEarth and HydroPoint.

Tom Calderon, a former state Assemblyman, holds a consulting contract with Water2Save, which has identified him on its website as both a "Director of Governmental Affairs" and "Board Director." Calderon is also a consultant to Central Basin, under an agreement that pays him about \$140,000 per year. His two brothers, who are both in the state Legislature, have helped support the district in Sacramento.

In late February, representatives from the companies who lost out on the work contacted The Times, claiming Calderon's roles constituted a conflict of interest. Around the same time, the anonymous emails were sent to Central Basin, saying the \$965,855 Water2Save contract had "the appearance of impropriety."

At a Feb. 27 board meeting, where the deal was set to be formally approved, Central Basin General Manager Art Aguilar called the claims "blatant lies," saying Calderon had no influence in the procurement process. Aguilar postponed the board's vote, however, and ordered an "independent review" from the agency's law firm, Buchalter Nemer.

"I'm tired of all the innuendo that comes flying out at this district," Aguilar said at the meeting. "Quite frankly, we've had it."

Attorneys from Buchalter Nemer later questioned individuals involved in the bidding process. At least one person was asked specifically what information he had shared with The Times.

In April, Central Basin released the firm's report, which said it found no evidence of wrongdoing and recommended the contract be awarded as planned to Water2Save. The libel lawsuit was filed May 10.

Central Basin officials said previously that the emails came from HydroPoint, one of the firms that bid for the project but was not chosen at the winner. However, HydroPoint is not named in the lawsuit.

Nancy Sterling, a spokeswoman for HydroPoint, said she could neither confirm nor deny that the "whistleblower2010" emails came from her client.

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