

**MEMORANDUM****TO:** Board of Directors
FROM: Director Tony Estremera,
 Board Ethics & Conduct Ad
 Hoc Committee Chair

SUBJECT: *Executive Summary of Investigation re:
 Director Kremen*
DATE: October 24, 2022

On February 26, 2022, the San Jose Spotlight published an article concerning allegations against Director Gary Kremen by an unnamed, former campaign staffer that allegedly arose during his political campaign for County Assessor. The allegations did not pertain to Valley Water.

On or about March 2, 2022, Director Kremen issued a statement calling for the Board Ethics and Conduct Ad Hoc Committee (Committee) "to conduct an independent investigation with due process" to determine whether "allegations of illegal sexual harassment have occurred with Water District staff."

On March 16, 2022, the Board received correspondence from members of the community alleging that Director Kremen had engaged in disrespectful conduct towards them.

The Board met on March 16, 2022 to consider Director Kremen's statement and to determine appropriate Board action. The Board authorized the Committee to develop a process and to propose a scope for the investigation.

On March 22, 2022, the Board received a report from the Committee on the process of the investigation and ratified the Committee's proposed scope of investigation. Specifically, the Board authorized the Committee to investigate the following issues:

Issue 1: Whether Director Kremen has violated any Valley Water Board Governance Policies with respect to interactions with Valley Water staff, including but not limited to policies prohibiting sexual harassment; and

Issue 2: Whether Director Kremen has violated any Valley Water Board Governance Policies with respect to his treatment of members of the public at Valley Water meetings.

The Committee retained Jenica Maldonado, Esq. of Renne Public Law Group to conduct the investigation. Following a thorough investigation, Ms. Maldonado has produced an executive summary of her findings. The Committee has reviewed the executive summary and has concluded that it is complete. The Committee hereby provides the executive summary to the full Board of Directors.

NOTED

OCT 25 2022

EXECUTIVE SUMMARY:

INVESTIGATION REPORT CONCERNING SANTA CLARA VALLEY WATER DISTRICT DIRECTOR GARY KREMEN

Client: Santa Clara Valley Water District

Investigator: JENICA D. MALDONADO, SBN 266982
Renne Public Law Group

Date: October 24, 2022



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I. INTRODUCTION AND BACKGROUND

Renne Public Law Group provides this Executive Summary concerning Santa Clara Valley Water District (“District”) Board of Directors (“Board”) member Gary Kremen (“Kremen”) at the request of the Board Ethics and Conduct Ad Hoc Committee (“Committee”).

On February 26, 2022, the San Jose Spotlight published an article concerning allegations against Kremen by an unnamed, former campaign staffer regarding events that allegedly arose during his political campaign for County Assessor. The staffer alleged that Kremen directed them to access a DropBox account that included semi-nude photos and that Kremen treated the staffer unprofessionally.

On or about March 2, 2022, Kremen submitted a statement to the Board relating to the allegations from his former staffer (hereinafter “self-referral”). While asserting that the “alleged assertions do not relate” to the District in “any way,” Kremen requested that the Committee “conduct an independent investigation with due process to determine if any of the allegations of illegal sexual harassment have occurred with Water District staff.”

On March 16, 2022, the Board directed that the Committee be convened for the purpose of initiating an investigation into the matters in the self-referral and a written complaint received from the Sierra Club. The Sierra Club’s letter accused Kremen of “disrespectful treatment towards environmental advocates” and asserted that an investigation in response to the self-referral should “also include Director Kremen’s failure to treat members of the public with respect[.]”

On March 22, 2022, the Board authorized the following scope for this investigation:

- (1) whether Kremen has violated any Valley Water Board Governance Policies during interactions with Valley Water staff, including with respect to sexual harassment; and
- (2) whether Kremen has violated any Valley Water Board Governance Policies with respect to treatment of members of the public at Valley Water meetings.

The Board directed the Committee to retain an outside investigator to conduct the investigation.

II. INVESTIGATION SCOPE & METHODOLOGY

On May 2, 2022, the Committee engaged the Renne Public Law Group (“RPLG”) for the purpose of conducting this investigation. Partner Jenica Maldonado served as the principal investigator, with assistance from Senior Counsel Sarah Pastran, Associate Michael Cohen, and Senior Analyst Luke Jensen (collectively, “Investigators” or “RPLG”). The Committee requested that Investigators complete the investigation within six (6) months.

Throughout the investigation, RPLG sought and obtained the Committee’s approval to further define the investigation’s scope and to implement certain standards to facilitate the identification of potential material evidence and interpret the District’s Board Governance Policies.

Timeline. Investigators sought and obtained the Committee’s approval to limit their inquiries to a specific timeframe. The Committee directed Investigators to investigate issues going back three years from the date of Kremen’s self-referral (i.e., from March 2, 2019 through March 2, 2022) subject to the proviso that Investigators could seek permission from the Committee to investigate potentially material issues arising outside this timeline.

Treatment of Written (Largely Anonymous) Complaints. Other than the Sierra Club complaint, the Board’s defined scope was not tethered to specific written complaints from any District employees.

At the time the Board initiated the investigation on March 22, 2022, the District was in receipt of written complaints concerning Kremen from District employees. Two of the written complaints accused Kremen of using his power as a board member inappropriately—one predated the investigation’s defined timeframe and thus was not included in the scope. The other was timely and not anonymous and thus included in the scope (*see* Allegation 16). Five of the written complaints were anonymous and accused Kremen of bullying and mistreating District employees. Given their lack of specificity, these complaints were not included as material allegations within the investigation’s scope. The District also provided the Committee with one additional anonymous complaint received after March 22, 2022 that also accused Kremen of using his authority as a Board member inappropriately. None of the written complaints accused Kremen of sexual harassment.

The Committee recognized that the investigation’s scope was not tied to specific complaints from District employees, that the above-mentioned complaints were largely anonymous, and that there were inherent difficulties associated with undertaking an investigation with such parameters. The Committee authorized Investigators to interview unclassified employees, as appropriate, to determine whether they had information related to the above-mentioned written complaints and/or related to the investigation’s general scope. The Committee also authorized Investigators to interview classified employees where Investigators identified them as potential witnesses.

Identifying Allegations Responsive to Scope. Investigators interviewed fifty (50) witnesses between May and October 2022. Witnesses raised both material and non-material allegations concerning Kremen. “Material allegations” are defined as facts alleged by witnesses relating to Kremen’s conduct during a specific interaction with a District employee or member of the public at a public meeting, or a series of interactions with District employees related to a specific District project. “Non-material” allegations are defined as non-specific allegations regarding Kremen’s character, personality, and mannerisms, or where witnesses failed to provide sufficient facts about an alleged interaction within the Investigation’s scope.

Investigators identified twenty-five (25) material allegations regarding inappropriate treatment of staff, directing working, directing personnel actions, and mistreatment of the public. The Committee authorized Investigators to further investigate and render findings regarding the material allegations. The material allegations are identified below, as well as a summary of findings. Investigators did not include non-material allegations in the investigatory issues or offer findings for these allegations.

Standards for Findings of Fact as to Material Allegations. For the evidence collected on each material allegation, Investigators made one of three findings of fact—sustained, not sustained, or unsubstantiated. Investigators sustained a finding of fact if they determined that it was more likely than not that the facts alleged occurred, i.e., based upon the preponderance of the evidence standard. Investigators did not sustain a finding of fact if they determined that the allegations could not be established under the preponderance of evidence standard. Investigators found allegations to be unsubstantiated where they lacked sufficient information to make a finding under the preponderance of evidence standard due to incomplete information from witnesses or insufficient time to further investigate issues within the investigation’s six-month timeline.

Where witnesses offered conflicting testimony about material allegations, Investigators considered witness credibility. Relevant factors for assessing witness credibility included: whether multiple witnesses shared the same or similar accounts of an incident at issue; whether a witness reported the alleged incident to a supervisor and whether that supervisor recalled the same; the degree of specificity or detail offered by the witness concerning an alleged incident; whether a witness offered correspondence or documents prepared contemporaneously with the events in question; whether the witness had a motive to lie or refrain from disclosing material information; and whether a witness’s statement appeared to lack plausibility.

Treatment of Board Governance Policies. Investigators analyzed the District’s Board Governance Policies that could relate to an “interaction” with District staff or “treatment” of a member of the public at a public meeting. Investigators predominantly relied upon the plain meaning of the words reflected in the relevant Board Governance Policies. Where the meaning of a word within a rule could not be deduced from its plain meaning alone, Investigators reasonably considered secondary sources.

Investigators identified Board Governance Policies that relate, in principle, to interactions with District staff or treatment of the public by a Board member. With limited exceptions, however, the policies do not include language that prohibits an individual board member from engaging in specific conduct toward District staff or members of the public. Instead, most Board Governance Policies relevant to the investigation are framed as expectations or principles or in aspirational terms.

For example, GP-6.3 provides that board members “may *not* attempt to exercise individual authority over the organization,” that their interactions with Board Appointed Officers (BAOs) and staff “*must* recognize the lack of authority vested in individual members,” and that they “*shall refrain* from abusive conduct, personal charges or verbal assaults upon the character or motives of...staff and the public.” (GP-6.3, 6.3.1)

By comparison, GP-7 provides a general recognition that “[a]ll individuals are unique and important and will be treated with fairness, dignity, and respect,” and GP-11 provides that “[t]he Board will require the organization’s work environment to be one...in which all individuals are unique and important and are treated with fairness and dignity.” (GP-7; GP-11.3.)

GP-6.3 sets forth specific prohibitions as to the conduct of individual board members; GP-7 acknowledges shared beliefs or principles; and GP-11.3 recognizes the Board’s commitment to collectively “require” the District to provide a work environment that upholds those beliefs or principles. The latter two rules do not prohibit individual Board members from engaging in specific conduct. Nor do they define what constitutes fairness, dignity, or respect, which can otherwise vary based on subjective opinion informed by the unique facts and circumstances of any incident.

Given these limitations of the Board Governance Policies, Investigators limited their findings about whether Kremen “violated” a Board Governance Policy to circumstances where Investigators would (a) sustain the underlying allegations based upon the preponderance of the evidence standard, and (b) where so sustained, to instances where a Board Governance Policy prohibiting such conduct applied. Investigators refrained from opining as to whether Kremen’s conduct violated the “spirit” or appeared inconsistent with a Board Governance Policy that lacked prohibitory terms.

III. WITNESS STATEMENTS & OTHER EVIDENCE

Investigators conducted interviews with fifty (50) individuals, including Chief Executive Officer Rick Callender, Assistant Chief Executive Officer Melanie Richardson, other unclassified employees, classified employees, members of the public, and Kremen himself. No Board members besides Kremen were interviewed for the investigation. Two witnesses did not respond to requests for interview. One witness initially participated, but then requested that Investigators delete her interview transcript.

Multiple witnesses expressed concerns about retaliation and demonstrated reluctance to share their thoughts candidly. No witnesses expressed a desire to be named publicly as a complainant against Kremen. Other than Kremen, Callender, Richardson, and the members of the Sierra Club, Investigators have anonymized witnesses’ identities in this report. Investigators provide information regarding a witness’s position and the division of the District in which they work, to the extent that doing so does not plainly undermine anonymity. The Investigators also use the general-neutral pronoun “they” and identify only the general time period of an alleged event, as opposed to dates of specific meetings, where doing so might undermine anonymity.

In addition to witness interviews, Investigators reviewed relevant video and audio footage from District Board and Board subcommittee meetings; agendas, minutes and Board packets; work product prepared by District staff; email communications and attachments provided by witnesses; and the above-mentioned complaints.

IV. FINDINGS

Investigators evaluated whether material allegations, if established, amounted to violations of Board Governance Policies that prohibit Board members from engaging in certain recognized forms of inappropriate treatment of staff, as stated in GP-6.3.1. GP-6.3.1 provides in relevant part that “Board members shall refrain from abusive conduct, personal charges, or verbal assaults upon the character or motives of...staff and the public.” The rule does not define the meaning of the terms used therein. Based upon a review of several dictionary sources, Investigators recognize the definition of “abusive” to mean extremely offensive or cruel. Investigators interpret “personal charge” to include a challenge to one’s competence or intelligence. Investigators interpret “verbal assault upon the character or motives...of staff” to include an aggressive or hostile statement that posits allegations regarding one’s character or motives in a particular situation.

Investigators also evaluated whether material allegations, if established, amounted to violations of Board Governance Policies that prohibit Board members from attempting to exercise individual authority over the District. The material allegations included claims that Kremen had attempted to direct the work of District employees and that he had attempted to cause certain personnel actions, including urging managers to place their subordinates on performance improvement plans (“PIP”)¹ or, in one instance, stating that he would cause the termination of a District employee if certain circumstances transpired. Investigators evaluated whether such allegations violated GP-6.3 and 6.3.1. GP-6.3 provides “Board members may not attempt to exercise individual authority over the organization.” GP-6.3.1 provides in relevant part that “[m]embers’ interactions with the BAOs or with staff must recognize the lack of authority vested in individual members except when explicitly Board authorized.”

Investigators did not identify any material allegations of sexual harassment. The Board originally authorized this investigation in response to Kremen’s request that the District “determine if any of the allegations of illegal sexual harassment have occurred with Water District staff.” GP-11 is the Board’s Policy on Inclusion, Equal Employment Opportunity, Discrimination/Harassment Prevention, and Diversity. It provides in relevant part that the “Board and its members will not discriminate, harass, or allow harassment against any...employee on the basis of sex[.]” Of the material allegations identified by Investigators, none pertained to sexual harassment or sexual misconduct that would, if established, violate GP-11.

A. Did Kremen Violate Any Board Governance Policies Based Upon Material Allegations Regarding Interactions With District Staff?

Yes. Investigators identified twenty-one (21) material allegations relating to District employees. Investigators’ findings with respect to each of the material allegations are identified below. Certain allegations amounted to more than one violation of Board Governance Policies that included prohibitory language.

¹ Generally, PIPs require an employee to meet certain goals in performing their duties that, if not met, could lead to discipline, up to and including termination.

1. Allegation 1 (Violation of GP-6.3.1 Regarding Inappropriate Treatment of Staff; No GP Finding Regarding Directing Work).

Witnesses allege that Kremen bullied a manager in the Raw Water Division during a non-public Zoom meeting in June 2021 held with other District employees to debrief the manager's presentation to the Board earlier that month. Kremen allegedly expressed irritation that the materials presented to the Board had not incorporated changes he had earlier suggested, stating that he thought the omissions were willful and implying that the manager had been insubordinate or was defying him. Kremen also allegedly stated at the meeting that he intended to speak with Callender about pulling staff off projects if they would not listen to him. The manager perceived this comment as directed at them, and other witnesses present perceived it as a direct attack on the manager. The interaction allegedly brought the manager to tears. Numerous witnesses had either attended the meeting or heard of Kremen's conduct at the meeting. Kremen did not recall the meeting.

Investigators sustain a violation of GP-6.3.1. Based upon the preponderance of the evidence, it appears more likely than not that Kremen made a personal charge and verbal assault on the manager's character or motives by suggesting that the manager had willfully disregarded his earlier instructions regarding the presentation materials and by questioning the manager's qualifications to maintain her position. It also appears more likely than not, based upon the credible accounts of multiple witnesses present for the interaction, that Kremen engaged in abusive behavior toward the manager in the presence of co-workers.

Investigators also consider whether Kremen's conduct constitutes a violation of GP-6.3 and GP-6.3.1's provisions pertaining to exercising individual authority over the District. Investigators express concern that a board member would suggest a staff member was insubordinate, given that staff members are only required to take express direction regarding the performance of their duties from superior District staff. Investigators lack sufficient information to ascertain whether Kremen's directions constitute an attempt to exercise individual authority over the District on this occasion because Investigators are unaware of the broader Board policy on this matter at the time of the meeting.

2. Allegation 2 (Violation of GP-6.3.1 Regarding Inappropriate Treatment of Staff).

Witnesses allege that Kremen bullied a member of the External Affairs Division in Spring 2020. Specifically, witnesses allege that, following a virtual "tour" with government representatives located in Washington, D.C., Kremen contacted the District employee and shared his discontent concerning the tour. Kremen allegedly laid into the employee, called them incompetent, and told them that if they could not perform the job competently, then maybe someone else should. The interaction allegedly brought the employee to tears. The incident was reported to Callender, who allegedly admonished Kremen for his conduct. The employee allegedly confronted Kremen regarding the incident several weeks later and Kremen allegedly apologized profusely in response. Kremen did not recall any of the above-described events.

Investigators sustain a violation of GP-6.3.1. Based upon the preponderance of the evidence, it appears more likely than not that Kremen made a personal charge and verbal assault on the employee's character by questioning their competence to perform their job duties.

Investigators did not also treat this allegation as a potential instance of directing District personnel decisions because the alleged comment was not to the employee's supervisor.

3. Allegation 3 (Violation of GP-6.3.1 Regarding Bullying; Violation of GP-6.3 and 6.3.1 Regarding Directing Personnel Actions).

Witnesses alleged that Kremen bullied a classified employee in the Integrated Water Management Division during the employee's presentation at a June 2021 Board subcommittee meeting. Witnesses specifically recalled that Kremen threatened the employee's job.

Investigators reviewed an audio recording of the June 2021 meeting. The recording revealed that Kremen criticized staff for lack of progress on a District initiative, asserted that staff was not following the Board's direction, and suggested that the project team may need to be reorganized. Kremen also made a formal motion to have Callender evaluate the project's efforts to date and consider reorganizing the project team. At the conclusion of the presentation, the employee assures Kremen that they will endeavor to make all possible progress on the initiative. To this, Kremen responds, "we actually made this the number two priority, so it's not if we can . . . if we *don't*, we've directed the CEO to look at a reorganization of this project." Throughout the interaction, Kremen's tone is angry, exasperated, and aggressive. Kremen raises his voice and interrupts the employee several times. Callender recalls admonishing Kremen for his conduct. Kremen expressed understanding that his behavior could upset others but reported that his motive for his remarks on the dais was only to raise staff awareness about the urgency of the matters under consideration.

Investigators sustain a violation of GP-6.3 and GP-6.3.1 with respect to both inappropriate treatment of staff and attempting to direct personnel actions. The audio recording reflects Kremen making a statement that constitutes both a personal charge and verbal assault on the employee's character, because it questions the employee's competence to remain in their position in a public forum. The statement simultaneously attempts to direct a personnel action by explicitly directing that the CEO consider a "reorganization" of the team if certain steps in the project are not achieved. Multiple witnesses explained "reorganization" to mean, in District parlance, that the employee would be removed from their job assignment.

4. Allegation 4 (Violation of GP-6.3.1 Regarding Inappropriate Treatment of Staff; No GP Finding Regarding Directing Work).

An unclassified employee in the Financial Planning & Management Division alleged that he had several private conversations with Kremen over the last three years about accounting requirements for the District's financial statements. During one of those conversations in July 2020, Kremen allegedly informed the employee that he wanted the District's Annual Comprehensive Financial Report (ACFR) to present financial statements "the way they're presented in a private company's financial report" and told the employee, "don't tell me government GAAP is the reason why you can't do that because I don't give a f*ck." The

employee alleged that the specific suggested revision underlying Kremen's statement involved changes that the employee believed would be inconsistent with the GAAP requirements for government financial statements.

Callender recalled discussing Kremen's use of profanity with the employee but did not recall the context. Callender generally recalled, however, that Kremen had previously made comments reflecting a lack of understanding with respect to private versus public financial reporting mechanisms. Kremen denied proposing to the employee that the District use alternative accounting standards, although he recalled an interaction with the employee in Spring 2020 during which Kremen made over 100 comments on the District's draft ACFR based upon errors that Kremen observed. Kremen denied making the specific statement recalled by the witness or using profanity generally.

Investigators sustain a violation of GP-6.3.1 with respect to inappropriate treatment of staff. Based upon the preponderance of the evidence, it appears more likely than not that Kremen used profanity in a hostile manner towards the employee, which Investigators deem to constitute abusive conduct.

Investigators lack sufficient information to opine as to whether Kremen's conduct in this instance constituted directing work in violation of GP-6.3 or GP-6.3.1. Based upon the preponderance of the evidence, Investigators find it more likely than not that Kremen provided constructive feedback to the employee concerning the ACFR. A Board member providing constructive feedback to staff regarding District work product does not in and of itself constitute an attempt to exercise individual authority over the District—it can be an appropriate exercise of a Board member's authority. However, Investigators lack sufficient information to determine whether the substantive nature of Kremen's comments and/or suggested revisions in this instance constituted a deviation from Board policy. Investigators were also unable to identify any formal Board action recognizing an express District policy of regarding the District's accounting practices.

5. Allegations 5 & 6 (Violations of GP-6.3.1 Regarding Inappropriate Treatment of Staff and GP-6.3 and GP-6.3.1 Regarding Personnel Actions).

An unclassified employee in the Financial Planning & Management Division alleged that Kremen called them in March 2020 to tell them to place a subordinate on a PIP. When the employee disagreed that the subordinate's performance warranted such treatment, Kremen informed the employee that he would rip the employee's subordinate to shreds during their next Board appearance and tear up the employee, too. In light of the subordinate's alleged poor performance, Kremen also allegedly stated that the subordinate would be the first to be fired if the District suffered financial hardship as a result of the pandemic. The employee allegedly informed Callender about the call. Callender recalled being informed about the call and reported that he subsequently admonished Kremen for his conduct toward staff in the Financial Planning & Management Division, if not for the specific phone call. Kremen recalled expressing his displeasure with the employee's subordinate during a discussion with Callender and the employee but did not otherwise recall making the alleged remarks.

Investigators sustain a violation of GP-6.3.1. Based upon the preponderance of the evidence, it appears more likely than not that Kremen engaged in abusive conduct toward the employee by telling them that he intended to tear up the employee.

Investigators also sustain a violation of GP-6 and GP-6.3.1. Based upon the preponderance of the evidence, it appears more likely than not that Kremen attempted to compel an unclassified, management level employee to place their subordinate on a PIP, which is a form of personnel action. It also appears more likely than not that Kremen threatened that he would attempt to cause the subordinate's termination from employment if the District suffered future financial hardship due to the pandemic. Given the inclusion of the word "attempt" in GP-6.3, it is irrelevant that Board members lack unilateral authority to effectuate personnel actions.

6. Allegation 7 (No Violation of GP-6.3.1 Regarding Inappropriate Treatment of Staff).

A classified employee in the Financial Planning & Management Division alleged that Kremen gestured towards them in a potentially threatening manner during in-person Board meetings (pointing index and middle finger towards eyes and then towards the recipient, suggesting, "I'm watching you") before the onset of the COVID-19 pandemic. Callender had never heard of the allegation or witnessed the gesture, and Kremen could not recall making the gesture. The Investigators could not locate video footage of this conduct.

Investigators do not sustain a violation of GP-6.3.1. Any such gesture could have been playful or meant in jest, and the employee themselves could not determine whether Kremen intended it to be threatening.

7. Allegation 8 (No Violation of GP-6.3.1 Regarding Inappropriate Treatment of Staff).

Witnesses alleged that, by the nature of his questioning, Kremen drilled, attacked, and treated unfairly a Deputy Operating Officer in the Water Utility Division during the employee's Board meeting presentation in April 2019. Investigators reviewed the video footage from the Board meeting in question. The video footage corroborated that, during the at-issue presentation, Kremen interrupted the presenter, pointed his finger at them, challenged the presenter on several points, and, at the end of his questioning, threw up his hands, turned off his microphone, leaned back in his chair, and rolled his eyes.

Investigators do not sustain a violation of GP-6.3.1. The video footage does not reflect Kremen engaging in abusive conduct toward the Deputy Operating Officer. Moreover, nothing Kremen said to the employee constitutes a "personal charge" or "verbal assault" upon the employee's "character or motives." Rather, while it appears that Kremen expressed irritation and may have engaged in conduct that some might find rude, Kremen's comments and questions were confined to the presentation's subject matter and appeared aimed at informing the Board's decision-making concerning a major District project.

8. Allegation 9 (No Violation of GP-6.3.1 Regarding Inappropriate Treatment of Staff).

Witnesses allege that Kremen invited a representative from an outside water district to a June 2021 Board subcommittee meeting to orchestrate a “gotcha” moment and expose a classified District employee in the Water Supply Division for lacking information. Investigators reviewed the audio recording from the cited subcommittee meeting. The recording did not reveal evidence that Kremen may have invited the outside water district representative for the purpose of orchestrating a “gotcha” moment. Kremen did not recall the specific meeting, but generally advised that representatives from outside water districts routinely attend meetings for this particular subcommittee. He also denied attempting to orchestrate a “gotcha” moment regarding this District employee.

Investigators do not sustain a violation of GP-6.3.1. Based upon the preponderance of the evidence, it does not appear that Kremen engaged in the conduct alleged or that Kremen made a personal charge, a verbal assault, or engaged in otherwise abusive conduct toward the staff member.

9. Allegation 10 (No Violation of GP-6.3.1 Regarding Inappropriate Treatment of Staff).

An unclassified employee in the Financial Planning & Management Division alleged that Kremen bullied them during a presentation to a Board subcommittee held via Zoom in January 2022. Witnesses alleged that Kremen became angry with the employee and that other staff in attendance texted Callender that Kremen was agitated and asked Callender to sign on to help calm Kremen down. Callender recalled receiving the text messages and recalled eventually signing on, but reportedly did not observe Kremen engaging in the conduct alleged. Two other Board members who were present allegedly apologized to the unclassified employee for their colleague’s conduct following the meeting. Investigators reviewed video footage of that meeting. The footage revealed that Kremen repeatedly and in an increasingly exasperated tone referred to errors in a past report that the employee and their staff had produced. In his interview with Investigators, Kremen expressed unawareness regarding how others perceived his conduct in the meeting.

Investigators do not sustain a violation of GP-6.3.1. The video footage does not reflect Kremen engaging in abusive conduct toward the unclassified employee. Moreover, nothing Kremen said to the employee constitutes a “personal charge” or “verbal assault” upon the employee’s “character or motives.” Rather, while it appears that Kremen expressed irritation and may have engaged in conduct that some might find rude or inappropriate, his comments and questions were confined to the presentation’s subject matter and appeared aimed at informing the Board’s decision-making concerning financial matters pertaining to the District.

10. Allegation 11 (No GP Finding Regarding Inappropriate Treatment of Staff).

A classified employee in the Water Supply Division alleged that Kremen bullied them in October 2020 during a Zoom meeting between Kremen, the employee, and two of the

employee's supervisors. The employee noted the interaction as an example of Kremen humiliating staff. During the meeting, Kremen allegedly insulted every single slide in their presentation slide deck, said the employee did not know how to put a presentation together, and claimed the presentation was missing information that was in fact included. The employee told Investigators that it brought them to tears. The employee alleged that their two supervisors stayed on after Kremen signed off and reassured the employee, telling them that Kremen was just in one of his moods. Neither supervisor had a recollection regarding this incident. Kremen did not recall the alleged incident.

Investigators do not sustain a finding with respect to this allegation. Investigators lack sufficient evidence to determine whether the alleged conduct occurred and, as such, cannot determine whether Kremen's alleged conduct constitutes a violation of the District's Governance Policies.

11. Allegation 12 (No GP Finding Regarding Inappropriate Treatment of Staff).

Several witnesses alleged that Kremen bullied a classified employee in the Water Supply Division, especially during presentations to the Board. Based on these allegations, Investigators reviewed video footage from select Board meetings and audio recordings from select subcommittee meetings during the responsive period. This review did not reveal any additional evidence pertaining to the allegations.

It was also alleged that Kremen had mistreated this employee in non-public settings. Callender reported that Kremen had openly doubted the employee's fitness for their position, while another witness recalled that Kremen had directly critiqued the employee's performance, though neither alleged that Kremen made those statements to the employee themselves. Two other witnesses referenced Kremen's interactions with the employee but did not make specific allegations or provide any identifying information about potential instances of Kremen treating them inappropriately. The employee initially sat for an interview, but then ultimately declined to participate, citing fear of retaliation by Kremen. Kremen acknowledged that he believes that the employee fails to excel in their role and recalled expressing as much to another District staff member, though he denied making related statements to the witnesses who reported the statements.

Investigators do not sustain a finding with respect to this allegation. Investigators lack sufficient evidence to determine whether the alleged conduct occurred and, as such, cannot determine whether Kremen's alleged conduct constitutes a violation of the District's Governance Policies. Investigators note that Board members may, in principle, provide appropriate constructive feedback about an employee's job performance to the employee's supervising BAO.

12. Allegation 13, 14, 15 (No Violation of GP-6.3 or 6.3.1 Regarding Directing Work).

An unclassified employee in the Watersheds Division alleged that Kremen subjected another unclassified employee in their division (Allegation 13) and two employees in the Water

Supply division, one classified (Allegation 14) and one unclassified (Allegation 15), to “fire drills,” or requests for work or assistance on short notice that required District employees to promptly respond to Kremen and cease performance of their other work duties. Investigators interviewed the three subject employees. All three failed to confirm the allegations, and instead either felt that Kremen’s requests were appropriate (Allegations 13 and 15) or denied ever receiving any requests from Kremen (Allegation 14). Kremen could not recall elements of the alleged interactions, but reported that certain details were familiar to him. Callender also confirmed that Board members are generally authorized to contact unclassified employees to obtain information. Callender also explained his expectation that unclassified staff report back to him if they have an interaction with a Board member. Multiple employees confirmed this expectation and their practice to notify Callender regarding such contact with Board members.

Investigators do not sustain a violation of GP-6.3 or GP-6.3.1. Based upon the preponderance of the evidence, it does not appear that Kremen attempted to exercise individual authority over District employees in a manner that violates GP-6.3 or GP-6.3.1 in any of the three instances.

13. Allegation 16 (No GP Finding Regarding Directing Work).

In 2019, the District’s EEOP Division received a complaint from a classified management level employee in the Imported Water Unit concerning allegations that Kremen had attempted to direct the work of their subordinate and that Kremen had rescheduled a Board subcommittee meeting to facilitate their subordinate’s attendance. During their interview with Investigators, the subordinate also alleged that Kremen attempted to convert a “meet-and-greet” meeting (which is intended to be an opportunity for Board members to meet staff and is not supposed to cover substantive work topics) into a substantive meeting, wherein Kremen requested the subordinate prepare work product. Kremen recalled interacting with the employee but did not recall rescheduling the Board subcommittee meeting. He also generally recalled the “meet-and-greet” meetings but could not recall speaking with the employee during such a meeting.

Investigators do not sustain a finding with respect to this allegation. Investigators lack sufficient evidence to determine whether the alleged conduct occurred and, as such, cannot determine whether Kremen’s alleged conduct constitutes a violation of the District’s Governance Policies.

14. Allegation 17 (No GP Finding Regarding Directing Work; Violation of GP-6.3 & 6.3.1 Regarding Personnel Actions).

Multiple witnesses raised allegations about interactions they had with Kremen concerning a significant document published by the District relating to a major District project. One unclassified employee (Witness 1) alleged that Kremen micromanaged their work on the project, but also noted that Kremen would often state that he was not directing the employee.

Another unclassified employee (Witness 2) alleged that Kremen requested to see a draft of the document and returned a redlined copy to them. Kremen recalled requesting an

opportunity to review a draft of this document. He did not recall making redlines but acknowledged that he has a practice of redlining District draft documents.

Another unclassified employee (Witness 3) alleged that Kremen had strong opinions regarding the project and encouraged the employee to shift the focus of the project document toward a particular issue. The employee explained that the project document had not highlighted the issue because state law had not yet issued regulations relevant to the issue, although regulations were anticipated. The employee and their team dedicated a separate briefing with Kremen to address this issue and addressed it at a subsequent public meeting. The employee believed that further explanation had satisfied Kremen to accept staff's original approach. On such basis, the employee did not include Kremen's requested changes in the document. Kremen recalled discussing inclusion of the issue with Witness 3.

Kremen allegedly had a one-on-one meeting with Assistant Chief Executive Officer Melanie Richardson while she was serving as Acting CEO in Callender's absence. During this meeting, Kremen allegedly told Richardson that he did not think that Witness 3 was responding appropriately to him with respect to his requested changes to the document. He also said he thought Witness 3 should be placed on a Performance Improvement Plan (PIP) because he was not happy with their reluctance to address the issue he raised. Kremen did not recall this conversation with Richardson. Kremen also expressed skepticism that he would make such statements due to his belief that Witness 3 performs their job duties well.

Richardson recalled disagreeing with Kremen's opinion and reporting the conversation to Callender. Callender corroborated that Richardson reported this conversation to him. Callender also recalled Kremen's and Witness 3's disagreement about including the issue not yet addressed by state regulations. Callender recalled telling Kremen to stay out of the process of drafting the document. Kremen did not recall speaking with Callender.

Investigators do not sustain a finding as to whether Kremen violated GP-6.3.1 by attempting to exercise individual authority to direct work of District employees. Based upon the preponderance of the evidence, Investigators find that Kremen encouraged Witness 3 to address the issue he raised, that he requested a draft from Witness 2 and redlined the document. Investigators lack sufficient information to determine whether Director Kremen's input fell within the scope of appropriate Board member conduct under the circumstances. Specifically, Investigators cannot determine whether Kremen's input was consistent with prior Board directives to staff on this project or whether Kremen's efforts constituted an attempt to lead the work of District staff in a direction inconsistent with the Board's prior directives.

Investigators do sustain a violation of GP-6 and GP-6.3.1 on the grounds that Kremen attempted to exercise individual authority regarding personnel actions. Based upon the preponderance of the evidence, it appears more likely than not that Kremen attempted to compel District management to take a personnel action related by urging Richardson to place Witness 3 on a PIP.

15. Allegation 18 (No GP Finding Regarding Directing Work).

An unclassified employee in the Integrated Water Management Unit queried whether instructions they had received from Kremen to prepare a PowerPoint presentation (PPT) in April 2020 were consistent with the Board's policy—based upon action by the Board or a Board subcommittee—for a major District project. The witness alleged that Kremen directed him to prepare a PPT for a presentation to external government officials concerning proposed changes to the project. The witness alleged that they participated with Kremen in the presentation to the external government officials. Kremen did not recall directing the employee to prepare the PPT, working on the PPT, or the meeting with external government officials.

Investigators do not sustain a finding as to whether Kremen's conduct violated relevant Governance Policies, GP-6.3 or GP-6.3.1. Investigators lack sufficient information to determine whether the specific changes outlined in the proposal were consistent with the Board's policy on the project or whether Kremen's specific actions were authorized by the relevant Board subcommittee.

16. Allegation 19 (No GP Finding Regarding Personnel Actions).

Witnesses alleged that Kremen found a certain District employee ineffective or lacking the necessary relationship skills for their position and sought to cause the District to hire a supervisor to oversee them. The employee's position related to a District initiative about which Kremen is passionate. Unsatisfied with the employee's and the overall unit's efforts or abilities on that initiative, Kremen allegedly threatened to hire an assistant officer from outside the organization to oversee the employee. Callender reported that the proposition upset the District's labor unions. Ultimately, the Board approved a budget adjustment for the new Assistant Officer position in November 2021. At least in part because of union opposition, Callender has refused to hire for the role.

Kremen acknowledged that he shared his opinion with the subject employee's supervisor that they lacked the skills to develop the external relationships necessary to support the District. Kremen also stated that someone in the employee's position needed business development skills. Kremen confirmed that he was a proponent of the budget adjustment, although he recalled that the allocation was for either third-party consultations or an Assistant Officer, and that the District hired consultants to assist in the subject employee's unit.

Investigators do not sustain a finding as to whether Kremen's conduct violated relevant Governance Policies GP-6 or GP-6.3.1 with respect to attempting to exercise individual authority as to personnel actions. Investigators lack sufficient evidence to determine whether and to what extent Kremen influenced the budget adjustment to allow for the position he desires.

17. Allegation 20 (No Violation of GP-6.3 or GP-6.3.1 Regarding Personnel Actions).

In early 2022, the District opened applications for a management position in the Water Supply Division. Shortly thereafter and without warning, the District closed the position and announced that it would be filled by internally transferring a manager from a different division.

The decision allegedly surprised some District employees, who felt that the manager lacked the qualifications for the new position.² Multiple witnesses alleged that Kremen had influenced or caused the transfer. District Executives, however, refuted these allegations and stated that Kremen played no role in their decision to transfer the manager, which was based on the manager's performance in their past role. Kremen denied involvement in discussions about the transfer, requesting the transfer, or even harboring an opinion about the manager's personal work performance.

Investigators do not sustain a violation of GP-6 or GP-6.3.1. Based upon the preponderance of the evidence, it does not appear that Kremen demanded certain personnel actions related to the manager. Instead, it appears more likely than not that District Executives decided to effectuate the transfer independent from Kremen.

18. Allegation 21 (No GP Finding Regarding Personnel Actions).

One witness alleged that Kremen prevented an employee's promotion to a managerial position. Multiple witnesses expressed that Kremen appeared to dislike the employee. Kremen had no opinion on the employee and disavowed any familiarity with the potential promotion.

Investigators lack sufficient evidence to determine whether the alleged conducts occurred and, as such, cannot determine whether Kremen's alleged conduct constitutes a violation of GP-6 or GP-6.3.1.

B. Did Kremen Violate Any Board Governance Policies Based Upon Material Allegations That He Mistreated Members of the Public?

RPLG does not find that Kremen violated GP-6.3.1 with respect to the allegations raised in the Sierra Club complaints based upon Kremen's treatment of the public at public meetings. GP-6.3.1 provides that "Board members shall refrain from abusive conduct, personal charges or verbal assaults upon the character or motives of...the public."

For the reasons stated above, RPLG does not address whether Kremen's below-described conduct was inconsistent with other Board Governance Policies that lack prohibitory language but articulate the Board's stated principles that it will treat individuals, including members of the public, with fairness, respect, and dignity. (See GP-7.3 [Values Statement].)

RPLG's findings are limited to the discrete incidents that the Sierra Club advocates identified. RPLG did not receive other complaints about specific incidents of mistreatment of a member of the public by Kremen during a public meeting.

On March 15, 2022 and March 16, 2022, the Board received correspondence from the Sierra Club alleging that Kremen engaged in disrespectful conduct toward their advocates. RPLG interviewed Sierra Club Loma Prieta Chapter Water Committee Co-Chair, Katja Irvin and Director of Sierra Club California, Brandon Dawson about these allegations. After her interview with Investigators, Irvin submitted a letter to RPLG dated June 16, 2022, identifying four Board

² The District received an anonymous complaint related to this matter on March 30, 2022.

meetings during which Kremen allegedly responded “in an abusive manner to public comments from environmental stakeholders.” RPLG has reviewed the video recordings associated with each of the four meetings. A summary of the relevant interactions from each meeting is provided below.

1. March 22, 2022, Regular Board Meeting.³

The relevant discussion begins with Agenda Item 4.2 and concerns the Sites Reservoir Project (SRP). Staff provides an update on the SRP and recommends that the District commit to an additional three years of participation and funding for the SRP at the District’s current level. The Sierra Club submitted written public comment in opposition to Staff’s recommendation – Sierra Club member Molly Culton also spoke, reiterating the concerns expressed in the Club’s written comment. After public comment concludes, Kremen acknowledges the Sierra Club’s written correspondence and pushes back against the Club’s concerns about the SRP’s negative consequences on endangered species.

The June 16, 2022 Sierra Club letter appears to suggest that Kremen’s response was retaliatory and motivated by the fact that “this meeting happened after the [Sierra Club’s] complaint against Kremen was filed.”

Investigators do not sustain a violation of GP-6.3.1 in this instance. Kremen’s response to public comments from Sierra Club members was focused on the content of those comments as they relate to District projects. Kremen disagreed with the concerns they shared, but Investigators do not find that his conduct was “abusive” (i.e., extremely offensive or cruel) as understood in this report. Moreover, nothing Kremen said constitutes a “personal charge” or “verbal assault” upon the “character or motives” of the relevant Sierra Club members (GP-6.3.1.).

2. January 10, 2022, Special Board Meeting.⁴

The January 10, 2022, Special Board Meeting is primarily dedicated to Agenda Item 2.1, “Work Study Session on Fiscal Years 2023-27 Preliminary Capital Improvement Program and Preliminary Fiscal Year 2022-2023 Groundwater Production Charges.” Katja Irvin makes public comment and expresses opposition to, among other things, the Pacheco Reservoir Expansion Project and claims that it should be eliminated from the Capital Improvement Program because it will unnecessarily increase water costs for residents without providing additional water.

Kremen responds to Irvin’s comment and claims that the Pacheco Reservoir Expansion Project will provide additional water by capturing water in wet years that would have gone to the ocean. Kremen concludes his response by stating “I think the false news of it providing no extra water was uttered by someone who believed they had a hydrogeology degree, but it turns out they don’t.”

³ Video footage can be found here: https://scvwd.granicus.com/MediaPlayer.php?view_id=3&clip_id=2011

⁴ Video footage can be found here: https://scvwd.granicus.com/MediaPlayer.php?view_id=3&clip_id=1992

Investigators do not sustain a violation of GP-6.3.1 in this instance. It may have been rude, counterproductive, or unprofessional when Kremen responded to comments from Irvin by obliquely referring to her as “someone who believe[s] they ha[ve] a hydrogeology degree, but it turns out they don’t.” However, Investigators do not find that Kremen’s conduct was “abusive” (i.e., extremely offensive or cruel) as understood in this report. Moreover, nothing Kremen said constitutes a “personal charge” or “verbal assault” upon Irvin’s “character or motives.” (GP-6.3.1.)

3. November 17, 2020, Special Board Meeting.⁵

The relevant discussion is focused on Agenda Item 2.3 and concerns the Sites Reservoir Project and Delta Conveyance Project. Sierra Club California member, Brandon Dawson, provides public comment on this item. The Sierra Club’s position as expressed by Brandon Dawson (and articulated in written public comment from Dawson and Irvin) is that the District should prioritize stormwater capture and recycled water and remove the Sites Reservoir Project and Delta Conveyance Project from the District’s Water Supply investment portfolio. Kremen responds and describes the Sierra Club as being “well known for its...white privilege position.”

In his interview with RPLG, Dawson described Kremen’s response to the Sierra Club’s comments as being “really disrespectful,” and “kind of racist.” Kremen makes his comment after public comment ends and does not specifically refer to Dawson, or any other Sierra Club members. Dawson is not the only member of the Sierra Club who provides public comment. In his interview with Investigators, Kremen stated that he feels his perspective on the Sierra Club is grounded in historical fact and that he did not intend to disrespect Dawson or other people of color associated with the Sierra Club.

Investigators do not sustain a violation of GP-6.3.1 in this instance. Investigators were troubled by the use of a racially charged statement from the dais. While Investigators make no findings about whether Kremen’s conduct violates Governance Policies other than GP-6.3.1, Investigators acknowledge that Kremen’s statements may have been rude, counterproductive, unprofessional, and inconsistent with GP-7, the District’s Values Statement, or GP-11, the Inclusion, Equal Employment Opportunity, Discrimination/Harassment Prevention, and Diversity policy.

Nevertheless, Kremen’s comments about the Sierra Club were not aimed at any particular Sierra Club members, but at the organization as a whole. Moreover, there were several Sierra Club members in attendance, and Kremen’s comments were not made in direct response to the comments made by any of the members at the meeting. Thus, we do not find that Kremen made any “personal charge(s)” or “verbal assault(s)” upon any Sierra Club member’s “character or motives.” (GP-6.3.1.) Moreover, although it is understandable why Sierra Club member Brandon Dawson, a person of color, found Kremen’s comments to be “really disrespectful,” Kremen’s comments were not aimed at Dawson specifically. Thus, we also do not find Kremen’s conduct “abusive” (i.e., extremely offensive or cruel) as understood in this report. (GP-6.3.1.)

⁵ Video footage can be found here: https://scvwd.granicus.com/MediaPlayer.php?view_id=3&clip_id=1838

4. June 23, 2020, Regular Board Meeting.⁶

The relevant discussion concerns the Anderson Dam and the Federal Energy Regulatory Commission (FERC) ordering the District to implement interim risk reduction measures (IRRM) immediately at the Anderson Dam prior to construction on the Anderson Dam Seismic Retrofit Project (ASRP). The District refers to the implementation of these IRRMs as the Federal Energy Regulatory Commission Order of Compliance Project (FOCP).

The Sierra Club took issue with the District seeking an emergency exemption to CEQA allowing it to initiate the FOCP without first completing an Environmental Impact Report (EIR). The Sierra Club asserted that the scope of the FOCP went beyond the IRRMs and included parts of the ASRP that should not be exempt from CEQA.

Kremen responds to comments from the Sierra Club, stating: “What to me is upsetting is to hear someone talk about plants and animals and the environment when we have peoples’ lives at stake. This kind of shameful conduct that appears over and over again by a couple of small members of the Sierra Club: ‘Oh I don’t want X so people can have 10 times the price of water especially disadvantaged communities’ – the kind of disadvantaged communities that are downstream from Anderson. It’s shameful to me this lack of social justice and putting plants over people...This conduct is outrageous.”

After another round of public comment, Kremen responds by stating: “that public comment was just yet another example of NIMBY ‘I got mine, you can’t have your water,’ and ‘it’s going to be more expensive for everyone but I can pay for it because I live in Los Altos’ – it’s just going to hurt disadvantaged people.”

Investigators do not sustain a violation of GP-6.3.1. Kremen’s statements may have been rude, counterproductive, unprofessional, and inconsistent with GP-7, the District’s Values Statement, or GP-11, the Inclusion, Equal Employment Opportunity, Discrimination/Harassment Prevention, and Diversity policy. However, Investigators do not find that Kremen’s conduct was “abusive” (i.e., extremely offensive or cruel) as understood in this report. Moreover, nothing Kremen said constitutes a “personal charge” or “verbal assault” upon the Sierra Club members’ “character[s] or motives.” (GP-6.3.1.) Kremen did not address his criticism to any particular Sierra Club members, let alone any member’s “character or motives.” (GP-6.3.1.)

⁶ Video footage can be found here: https://scvwd.granicus.com/MediaPlayer.php?view_id=3&clip_id=1793

Thank you for the opportunity to assist the District with this matter.

Respectfully submitted,

A handwritten signature in blue ink that reads "Jenica Maldonado". The signature is written in a cursive, flowing style.

Jenica Maldonado
Partner, Renne Public Law Group

Governance Policies of the Board

Title: Board Members' Code of Conduct		
Category: Governance Process		
Policy No. GP-6	Adopted: June 15, 1999 Chair: Larry Wilson	Latest Revision: July 28, 2020 Chair: Nai Hsueh
The Board of Directors revised and adopted this policy at its public meeting on the latest revision date.		

The Board commits itself and its members to ethical, business-like, and lawful conduct, including proper use of authority and appropriate decorum when acting as Board members.

Board members who do not adhere to this code of conduct may be subject to the procedures of GP-6.7 through GP-6.9 listed below.

- 6.1. Members must have loyalty to the District and community and not be conflicted by loyalties to staff, other organizations or any personal interest.
- 6.2. Members must avoid conflict of interest with respect to their fiduciary responsibility and are obligated by virtue of their office to discharge their responsibilities with integrity and fidelity and are prohibited from placing themselves in a position where their private, personal interest may conflict with their official duties.
- 6.3. Board members may not attempt to exercise individual authority over the organization.
 - 6.3.1. Members' interaction with the BAOs or with staff must recognize the lack of authority vested in individual members except when explicitly Board authorized. Board members shall refrain from abusive conduct, personal charges or verbal assaults upon the character or motives of other members of the Board, committees, commissions, staff and the public. Board members shall support the maintenance of a positive and constructive environment for District employees.
 - 6.3.2. Members' interaction with public, press or other entities must recognize the same limitation and the inability of any Board member to speak for the Board except to repeat explicitly stated Board decisions.
 - 6.3.3. No member shall contact staff on behalf of a party who is bidding or intends to bid on a District contract or who has or intends to submit a response to a request for proposals or request for qualifications, nor shall a Director inquire about the identity of bidders or proposers prior to the time that staff has made a recommendation for selection of a contractor, vendor, or consultant. Members are not prohibited from making general inquiries about the status of a particular procurement, or from providing a member of the public with information about the appropriate staff contact concerning procurement of goods and services by the District.

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6.3.4. After issuance of a request for goods or services, Board members are prohibited from communicating with any current or potential vendor, supplier, contractor, or consultant, except as described in this paragraph, until after issuance by the Chief Executive Officer or his/her designee of a decision on any protest relating to the request for goods or services or resultant contract award. Any communications during this period shall be limited to matters unrelated to the request for goods or services or the contract award. Whenever the member has communicated during the aforementioned period with any current or potential vendor, supplier, contractor, or consultant in violation of these restrictions, the name of the party, the date, and the content of the communications shall be disclosed at the next board meeting after the communication and noted in the minutes.

6.4. Members will respect the confidentiality appropriate to issues of a sensitive nature.

6.4.1. No member shall violate the confidentiality of closed session discussion.

6.5. Members will be properly prepared for Board deliberation.

6.6. The Board may not authorize severance pay for a Board-appointed employee of the District when the employee voluntarily separates from District employment. "Severance pay" does not include any otherwise lawful payment required to be paid by the District under a pre-existing employment agreement or under a separation and release agreement resolving a claim or claims made or threatened against the District. The Board shall not agree to amend an employment contract after the employee announces or requests a voluntary separation, except upon a Board determination, in open session, that an adjustment in compensation is required to retain the employee and is in the best interest of the District.

6.7. This policy applies to the Santa Clara Valley Water District Board of Directors and the following procedures shall be followed when any member of the Board of Directors reasonably believes that another member of the Board has engaged in misconduct or has failed to act in the best interests of the District. The procedures shall not be effective in any case in which a non-board member seeks redress for alleged misconduct by a Board member. While the Board has discretion in deciding the actions it may choose to take in response to a complaint, this policy provides definitions and procedures related to three types of actions: admonition, sanction and censure.

6.7.1. Admonition

Admonition is the least severe form of action. An admonition may typically be directed to all members of the Board, reminding them that a particular type of behavior is not in the best interests of the District, and that, if it occurs or is found to have occurred, could make the member subject to sanction or censure. An admonition may be issued in response to a

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particular alleged action or actions, although it would not necessarily have to be triggered by a complaint of misconduct. An admonition may be issued by the Board prior to any findings of fact regarding any complaint, and because it is a warning or reminder, would not necessarily require an investigation or separate public hearing to determine whether a complaint is true.

6.7.2. Sanction

Sanction is the next most severe form of action. Sanction should be directed to a particular member of the Board based on a particular action (or set of actions) that is determined to be misconduct but is considered by the Board not to be sufficiently serious to require censure. A sanction is distinguished from censure in that it does not constitute punishment. A written sanction may be based upon the Board's review and consideration of a written complaint. The member accused of such misconduct will have an opportunity to provide a written response to the complaint. A sanction may be issued by the Board, and because it is not punishment or discipline, it would not necessarily require an investigation or separate public hearing.

6.7.3. Censure

Censure is the most severe form of action in this policy. Censure is a formal statement of the Board officially reprimanding one of its members. It is a punitive action, which serves as a penalty imposed for misconduct, but it carries no fine or suspension of the rights of the member as an elected official. Censure should be used for cases in which the Board determines that the misconduct is a serious offense. In order to protect the overriding principle of freedom of speech, the Board shall not impose censure on any of its members for the exercise of his or her First Amendment rights, no matter how distasteful the expression was to the Board or the District. However, nothing herein shall be construed to prohibit the Board from collectively condemning and expressing their strong disapprobation of such remarks.

6.7.4. Referral to District Attorney

At any point during any of the processes hereinafter described, the Board may refer the matter, as appropriate, to the Santa Clara County District Attorney for investigation. Prior to or following such referral, the Board may proceed with any of the actions described in this policy.

6.8. Available Procedures for addressing Misconduct

There are four separate methods for the Board to address Board member misconduct under this Policy: (1) written complaint; (2) request for admonition; (3) request for sanction; and (4) request for censure. Written complaints that specifically seek admonition, sanction, or censure as a specific remedy shall be treated as a request for that remedy (admonition, sanction, or censure), and the provisions of sections GP-6.9 and GP-6.10 shall not apply.

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6.9. Written Complaints

In the event a Board member reasonably believes another Board member has failed to act in the best interests of the District resulting in misconduct, a written complaint shall be submitted to the Chief People Officer. Upon receipt, the Chief People Officer, Human Resources Division shall transmit the complaint to the District Counsel for review. The District Counsel shall review complaints to determine whether there is a sufficient basis for further action.

6.9.1. If a complaint fails to articulate a sufficient basis for further consideration, the complainant and the accused Board member will be so advised by the District Counsel, and the matter shall be deemed concluded.

6.9.2. If a complaint adequately articulates a sufficient basis for further action, the District Counsel shall present the complaint to the Board Ethics and Conduct Ad Hoc Committee (the "Committee"), which shall be comprised of the Chair and two members of the Board. In the event the subject of a complaint is the Chair or any member of the Committee, the Board shall select another Board member to serve on the Committee in that member's stead. The District Counsel may recommend to the Committee that:

6.9.2.1. Fact finding as to the complaint should be conducted; or

6.9.2.2. Informal resolution of the complaint should occur; or

6.9.2.3. An independent investigation of the complaint should occur.

6.10. Prior to any determination by the Committee to proceed with an investigation, the accused Board member must be given a reasonable opportunity to meet with the Committee or to provide a written response to the complaint. In deciding whether or not to open an investigation, the Committee should consider:

6.10.1. Whether an investigation may compromise investigations regarding the same alleged misconduct, whether the misconduct may result in criminal charges, and whether the right of the accused Board member to a fair jury trial may be compromised by proceeding with an investigation.

6.10.2. Whether persons involved in the allegations may choose to exercise their constitutional right against self-incrimination, which may limit the investigation's ability to present a full and impartial picture of alleged events.

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- 6.10.3. Whether measures can be taken to protect the rights of the member accused of misconduct, the member making such allegations, and those who have information regarding the allegations.

6.11. Investigations

- 6.11.1. If the Committee determines that an investigation is warranted, upon notification of the Board, District Counsel may be directed to conduct the investigation. District Counsel may select and manage an independent investigator to assist in conducting the investigation.
- 6.11.2. In the course of the investigation, District Counsel shall determine the process by which statements are taken. District Counsel may allow witnesses to choose to provide a signed declaration under penalty of perjury attesting to their knowledge of the facts surrounding the complaint.
- 6.11.3. At the conclusion of the investigation, the results of the investigation shall be presented in writing to the Committee and CEO. If the Committee is satisfied with the completeness of the investigation, it shall provide the Board with its findings and any recommendations. Following such findings and recommendations, any individual Board member may file a request for admonition, sanction, or censure.
- 6.11.4. If the Committee determines that an investigation is not warranted, the complainant and the Board shall be notified. Following such notification, any Board member may file a request for admonition, sanction, or censure.
- 6.11.5. Should any Board member file a request for admonition, sanction, or censure following investigation, the Committee shall submit to the Board a recommendation as set forth in sections GP-6.12.2, GP-6.13.2, or GP-6.14.2, below, and the matter shall thereafter be considered by the Board at its next public meeting subject to the restrictions of section GP-6.14.5, below.

6.12. Request for Admonition

- 6.12.1. Any Board member may make a written request for an admonition which must be submitted to the Committee. The request must contain specific language descriptive of the alleged misconduct and the reason(s) admonition is appropriate. A copy of the request for admonition shall be provided to the Board member accused of the misconduct.
- 6.12.2. The Committee shall review the request and submit it to the Board with a recommendation. The Committee's recommendation shall provide:

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6.12.2.1. Admonition is warranted; or

6.12.2.2. Admonition is not warranted; or

6.12.2.3. No further action is required.

6.12.3. A recommendation by a majority of the Committee shall be based on the Committee's review of the written record.

6.12.4. An admonition can be approved by a majority of the Board.

6.13. Request for Sanction

6.13.1. Any Board member may make a written request for sanction which must be submitted to the Committee. The request must contain specific language descriptive of the alleged misconduct and the reason(s) sanction is appropriate. A copy of the request for sanction shall be provided to the Board member accused of the misconduct by personal service within five (5) business days from the date the Committee receives the request. The time for service shall be tolled if the Board member is unavailable for service.

6.13.2. The Committee shall review the request and determine if an investigation is warranted. Following the investigation, or if no investigation was undertaken, following review of the request, the Committee shall submit the request to the Board with a recommendation. The Committee's recommendation shall provide:

6.13.2.1. Admonition, rather than sanction is warranted; or

6.13.2.2. Sanction is warranted; or

6.13.2.3. No further action is warranted.

6.13.3. A recommendation by a majority of the Committee shall be based on the Committee's review of the written record.

6.13.4. The Committee's recommendation shall be subject to a majority vote of the Board.

6.14. Request for Censure

6.14.1. Any Board member may make a written request for a censure which must be submitted to the Committee. The request must contain specific language descriptive of the alleged misconduct and the reason(s) censure is appropriate. A copy of the request for censure shall be served

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on the Board member accused of the misconduct by personal service within five (5) business days from the date the Committee receives the written request. The time for service shall be tolled if the Board member is unavailable for service.

- 6.14.2. The Committee shall review the request and submit the request to the Board with a recommendation. The Committee's recommendation shall provide:
 - 6.14.2.1. Further investigation of the request for censure is required; or
 - 6.14.2.2. Admonition or sanction is warranted; or
 - 6.14.2.3. The request for censure should be set for a separate Board public hearing; or
 - 6.14.2.4. No further action is required.
- 6.14.3. A recommendation by a majority of the Committee shall be based on the Committee's review of the written record.
- 6.14.4. If the Board determines that further investigation is required, the Board shall direct the Committee to lead the investigation which may be assisted by the CEO and District Counsel. The following guidelines apply to such an investigation:
 - 6.14.4.1. The Committee may be assisted by a separate independent investigator.
 - 6.14.4.2. Upon completion of the investigation, the Committee should determine if taking all the facts and evidence into consideration, there are reasonable grounds to believe or not believe that the misconduct occurred.
 - 6.14.4.3. The Committee shall issue to the Board a final a report and recommendation as approved by a majority of the Committee. The Committee's final report shall be made available to the public.
- 6.14.5. If a separate Board public hearing is required, it must be scheduled far enough in advance to provide the Board member subject to the charges adequate time to prepare a defense, and that Board member shall be given the opportunity to make an opening and closing statement and to question his or her accusers. The Board member subject to the charges may be represented and may have the representative speak or question on his/her behalf. The Chair or Vice Chair, if the Chair is the subject of the charges, shall preside at the public hearing. The rules of evidence shall not apply to the hearing of the matter, which is not a formal adversarial proceeding. If the District Counsel has assisted Board members in the

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investigation, independent legal counsel shall provide legal advice to the Board during the hearing of the matter.

- 6.14.6. A decision to censure requires the adoption of a resolution making findings with respect to the specific charges, based on substantial evidence and approved by a two-thirds vote of Board.

6.15. Complaints from non-Board members

This policy applies to the Santa Clara Valley Water District Board of Directors and the following procedure shall be followed when a non-Board member files a written complaint stating his/her reasonable belief that a member of the Board has acted or failed to act in the best interests of the District resulting in misconduct. While the Board has discretion in deciding the actions it may choose to take in response to such a complaint, this policy provides definitions and procedures related to three types of actions: admonition, sanction and censure as defined in sections GP-6.7.1, GP-6.7.2., and GP-6.7.3, of this policy.

- 6.16. At any point during any of the processes hereinafter described, the Board may refer the matter as appropriate to the Santa Clara County District Attorney for investigation. Following such referral, the Board may proceed with any of the actions described in this policy.

- 6.17. This policy applies to the Santa Clara Valley Water District Board of Directors and the following procedures shall be followed when a non-Board member reasonably believes that a member of the Board has acted or failed to act in the best interests of the District resulting in misconduct. A written complaint signed by the complainant shall be filed with the Chief People Officer, Human Resources Division. Upon receipt, the Chief People Officer shall transmit the complaint to the Chief Executive Officer (CEO) and the District Counsel for review. The CEO and District Counsel shall review the complaint to determine whether there is a sufficient basis for further action.

- 6.17.1. If a complaint fails to articulate a sufficient basis for further consideration, the complainant and the accused Board member will be so advised and the matter shall be deemed concluded.

- 6.17.2. If a complaint adequately articulates a sufficient basis for further action, the CEO and District Counsel shall present the complaint to the Chair of the Board. In the event the subject of the complaint is the Chair, the Vice Chair shall be presented with the complaint. The CEO and District Counsel may recommend to the Chair or Vice Chair that:

- 6.17.2.1. Fact finding as to the complaint should be conducted; or

- 6.17.2.2. Informal resolution of the complaint should occur; or

- 6.17.2.3. An independent investigation of the complaint should occur.

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- 6.18. Prior to the determination by the Chair or Vice Chair to proceed with an investigation, the accused Board member must be given a reasonable opportunity to meet with the Chair or Vice Chair or to provide a written response to the complaint. In deciding whether or not to open an investigation, the Chair or Vice Chair should consider:
- 6.18.1. Whether an investigation may compromise investigations regarding the same alleged misconduct and if the misconduct may result in criminal charges, whether the right of the accused Board member to a fair jury trial may be compromised by proceeding with an investigation.
 - 6.18.2. If persons involved in the allegation may choose to exercise their constitutional right against self-incrimination, which may limit the investigation's ability to present a full and impartial picture of the alleged events.
 - 6.18.3. Measures to protect the rights of the member accused of misconduct, the non-Board member making such allegations, and those who have information regarding the allegations.
- 6.19. Investigations
- 6.19.1. If the Chair or Vice Chair determines that an investigation is warranted, upon notification of the Board, District Counsel may be directed to conduct an investigation, and District Counsel may select and manage an independent investigator to assist in conducting such investigation.
- Alternatively, at the discretion of the Chair or Vice Chair, the Board's Ethics and Conduct Ad Hoc Committee (as described in Section 6.9.2 of the Board's Governance Policies) shall select an independent investigator to conduct the investigation.
- 6.19.2. In the course of the investigation, District Counsel shall determine the process by which statements are taken. A witness may choose to provide a signed declaration under penalty of perjury attesting to his/her knowledge of the facts surrounding the complaint. Within ninety (90) days of the date an investigation begins, District Counsel shall inform the Board of the investigation's progress. Investigations should be completed within six (6) months from the date the investigation begins; however, in the event the investigation cannot be completed within the six (6) month time period, District Counsel shall so notify the Board.
 - 6.19.3. At the conclusion of the investigation, the results of the investigation shall be presented in writing to the Chair or Vice Chair. If the Chair or Vice Chair is satisfied with the completeness of the investigation, the Chair or Vice Chair shall provide the Board with findings and any recommendations. Following such findings and recommendation, any individual Board member may file a request for admonition, sanction, or censure.

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- 6.19.4. If the Chair or Vice Chair determines that an investigation is not warranted, the complainant and the Board shall be notified. Following such notification, any Board member may file a request for admonition, sanction, or censure as set forth in sections GP-6.12, GP-6.13, or GP-6.14 of this policy, save and except that whenever the term “Committee” appears therein, the term “Chair” or “Vice Chair” shall be applicable.
- 6.19.5. Should any Board member file a request for admonition, sanction, or censure following the Chair or Vice Chair’s findings and recommendations or determination that an investigation is not warranted as set forth in sections GP-6.19.1 through GP-6.19.4 above, the matter shall thereafter be considered by the Board at its next public meeting subject to the restrictions of section GP-6.14.5, above.

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