



# Santa Clara Valley Water District

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**File No.:** 18-1114

**Agenda Date:** 1/8/2019  
**Item No.:** \*2.6.

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## BOARD AGENDA MEMORANDUM

### **SUBJECT:**

Public Hearing - Determine the Necessity for the Board of Directors to be Compensated for up to 15 Days Per Calendar Month and to Consider Compensation Amount for Calendar Year 2019; and Revise Board Compensation Governance Process Policy.

### **RECOMMENDATION:**

- A. Review and approve proposed revisions to the Board Governance Policy GP-10.6.1, documenting process required by AB 1889 (Caballero) for Board to determine business need to compensate Directors for up to 15 days per calendar month;
- B. Conduct a Public Hearing to allow members of the public to provide comments on the need to compensate Directors for up to 15 days per calendar month and Director compensation amount for calendar year 2019;
- C. Close the Public Hearing; and
- D. Discuss, make a finding and adopt an Ordinance reflecting the number of meetings per calendar month Directors should be compensated and the Director compensation amount for calendar year 2019; or
- E. Provide direction to the Clerk of the Board relevant to the authorized number of compensated meetings per month and meeting compensation amount for calendar year 2019.

### **SUMMARY:**

This item allows the Board to discuss and act on the following:

1. Revisions to Board Governance Policy GP-10.6.1
2. Hold a public hearing to:
  - a. Determine necessity for Directors to be compensated for up to 15 days per calendar month.
  - b. Consider Directors' compensation for calendar year 2019

### **1. Board Governance Policy GP-10.6.1**

Currently, Board Governance Policy GP-10.6.1 states that, "Board members are eligible to receive compensation per day, up to 10 days per month, in accordance with statutory requirements." The statutory requirements are the District Act Section 33(c), and the California Water Code Section 20202.

On September 5, 2018, AB 1889 (Caballero) was enacted by the Governor, taking effect on January 1, 2019. The bill revises Section 33(c) of the District Act to read:

“Notwithstanding Section 20202 of the Water Code or any other law, until December 31, 2023, no ordinance adopted to provide compensation to a director shall authorize compensation for more than a total of 15 days in any calendar month. If the district compensates its directors for more than 10 meetings in a calendar month, the board shall annually adopt a written policy describing, based on a finding supported by substantial evidence, why more than 10 meetings per month are necessary for the effective operations of the district.”

With the revision to the District Act, staff recommends that Board Governance Policy GP-10.6.1 be updated to reflect the new annual determination process and any increase in possible compensation days from 10 to 15 days per calendar month. Staff proposes that GP-10.6.1 be revised, as outlined in Attachment 1, and as follows (proposed new text in **red font** and deleted text has a ~~strikethrough~~):

10.6.1. Per Diem Meetings, Events, and Activities Compensation

**After annually making a finding based on substantial evidence that there is an operational need for Board members to be paid for more than 10 meetings in a calendar month**, Board members are eligible to receive compensation per day, up to ~~10~~ **15** days per **calendar** month, in accordance with the **Section 33(c) of the Santa Clara Valley Water District Act**, statutory requirements, for the following meetings, events, and activities **listed below**, all of which are hereby deemed by the Board to constitute the performance of official duties~~:~~. **For the purpose of making a finding, substantial evidence shall include, but is not limited to, such things as the number of meetings in the prior year that were qualified for compensation pursuant to this policy, and how many and how frequently committee meetings of the Board of Directors occur.**

**2. Public Hearing to Determine necessity for Directors to be compensated for up to 15 days per calendar month and Consider Directors' compensation for calendar year 2019**

At its December 11, 2018, regular meeting, the Board set a public hearing to be held on January 8, 2019, to determine the necessity for Directors to be compensated for up to 15 days per calendar month and to consider Directors' Compensation for calendar year 2019. A Notice of Public Hearing has been published in a newspaper of general circulation, as well as county community papers, notifying the public of the opportunity to provide comment at the public hearing if they so choose (Attachment 2).

The public hearing is held pursuant to Santa Clara Valley Water District Act (District Act) Section 33 (c), Government Code Section 53232.1, and California Water Code Sections 20200-20207.

Monthly Meeting Limit

AB 1889 (Caballero) enacted by the Governor on September 5, 2018, and taking effect on January 1, 2019, amends the District Act by adding Section 33(c), authorizing the Board, until December 31, 2023, to annually adopt a written policy describing, based on a finding supported by substantial evidence, why more than 10 meetings per month, but not more than 15 meetings per month, are

necessary for the effective operation of the District. The determination of whether a Director's activities on any specific day are compensable shall be made pursuant to Section 53232.1 of the Government Code. Board Governance Policy GP-10.6.1 provides the activity definitions required by this Government Code section.

With the above recommended Board Governance Policy changes, a finding could be made based on substantial evidence including, but not limited to the following.

1. Many of the District's responsibilities such as water supply, flood protection, and environmental stewardship, are in other jurisdictions spread across separate governmental entities. These functions require numerous meetings to set courses of action based on input from the community and other stakeholders.
2. The number and scope of Board and committee meetings, public hearings, community meetings, and other meetings Directors must attend to accomplish the District's business are extensive. The Board has 15 internal policy committees, and the Directors serve on a total of 29 external boards and committees for other intergovernmental, regional, or public policy entities. (Attachment 3)
3. The District is the only water agency in California that is both a state and federal water contractor through the State Water Project and the Central Valley Project, putting the District at the heart of complex water policy debates in both Sacramento and Washington. This greatly expands the number of meetings necessary to ensure reliable water supplies for Santa Clara County as compared to other regions.
4. In 2018, in the months of January through November, the Directors reported a total of 224 meeting days that were unpaid because the meeting days occurred in months that exceeded the 10-meeting day limit. (Attachment 4) The total number of meetings is likely higher than reported because only 10 meeting days are compensable. With so many meeting days that would otherwise qualify for compensation, the 10-meeting day limit does not reflect the actual number of meeting days needed to serve as a Director on the District Board.

The Board could consider the following monthly meeting limit options:

1. Make a finding based on substantial evidence that there is an operational need to compensate Directors for up to 15 days per calendar month, and set the meeting day limit accordingly, effective March 9, 2019, for calendar year 2019 (60 days after adoption of ordinance); or
2. Determine that there is no operational need to compensate Directors for more than the current 10 days per calendar month, and therefore, make no change in the current limit.

Meeting Compensation:

California Water Code Section 20202 authorizes the Board to annually consider, through the public hearing and ordinance adoption process, compensation increases at a rate not to exceed an amount equal to five percent (5%) annually.

Any Board approved change in the Directors' number of compensated meetings per month and meeting compensation rate will become effective beginning 60 days after date of ordinance adoption, pursuant to California Water Code Section 20204.

The Board's last compensation adjustment was in April 2018. In accordance with the regulatory process, the Board held a public hearing on January 23, 2018, for the public to comment on the Directors' meeting compensation amount; and at their February 13, 2018, meeting, the Board adopted Ordinance 18-01 enacting a compensation increase of five percent (5%), effective April 14, 2018 (12 months after the last compensation increase.)

The Board could consider the following monthly compensation options:

1. Keep the Directors' compensation at the current amount of \$286.68 per day, up to 10 or 15 days per calendar month, as previously determined; or
2. Reduce the Directors' compensation to a specified amount below the current \$286.68 rate per day, up to 10 or 15 days per calendar month, as previously determined, effective April 14, 2019; or
3. Approve an increase up to 5% in Directors' compensation in accordance with the California Water Code Sections 20200-20207, for up to 10 or 15 days per **calendar month, as previously determined, effective April 14, 2019.**

**FINANCIAL IMPACT:**

Funds are budgeted in the Board of Directors Fiscal Year 2019 budget for meeting compensation.

**CEQA:**

The recommended action does not constitute a project under CEQA because it does not have the potential for resulting in direct or reasonably foreseeable indirect physical change in the environment.

**ATTACHMENTS:**

- Attachment 1: Board Governance Policy GP-10.6.1
- Attachment 2: Notice of Public Hearing
- Attachment 3: 2018 Board Committee Appointments
- Attachment 4: 2018 Board Meeting Days Analysis

**UNCLASSIFIED MANAGER:**

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