



Santa Clara Valley Water District Board Policy and Monitoring Committee Meeting

Headquarters Building Boardroom
5700 Almaden Expressway, San Jose, CA 95118

Join Zoom Meeting:
<https://valleywater.zoom.us/j/81170871803>

SPECIAL MEETING AGENDA

**Monday, June 24, 2024
1:00 PM**

District Mission: Provide Silicon Valley safe, clean water for a healthy life, environment and economy.

Board Policy and Monitoring Committee

Director Nai Hsueh, Chairperson
(District 5)

Director Tony Estremera, Vice Chairperson
(District 6)

Director John Varela, Member
(District 1)

All public records relating to an item on this agenda, which are not exempt from disclosure pursuant to the California Public Records Act, that are distributed to a majority of the legislative body will be available for public inspection at the Office of the Clerk of the Board at the Santa Clara Valley Water District Headquarters Building, 5700 Almaden Expressway, San Jose, CA 95118, at the same time that the public records are distributed or made available to the legislative body. Santa Clara Valley Water District will make reasonable efforts to accommodate persons with disabilities wishing to attend Board of Directors' meeting. Please advise the Clerk of the Board Office of any special needs by calling (408) 265-2600.

Rick Calendar,
Marta Lugo,
Michele King,
Brian Hopper
(Staff Liaisons)

Stephanie Simunic
Assistant Deputy Clerk II
Office/Clerk of the Board
(408) 630 -2408
ssimunic@valleywater.org

Note: The finalized Board Agenda, exception items and supplemental items will be posted prior to the meeting in accordance with the Brown Act.

Santa Clara Valley Water District
Board Policy and Monitoring Committee
SPECIAL MEETING
AGENDA

Monday, June 24, 2024

1:00 PM

Headquarter Boardroom
5700 Almaden Expressway
San Jose, 95118

IMPORTANT NOTICES AND PARTICIPATION INSTRUCTIONS

Santa Clara Valley Water District (Valley Water) Board of Directors/Board Committee meetings are held as a “hybrid” meetings, conducted in-person as well as by telecommunication, and is compliant with the provisions of the Ralph M. Brown Act.

To maximize public safety while still maintaining transparency and public access, members of the public have an option to participate by teleconference/video conference or attend in-person. To observe and participate in the meeting by teleconference/video conference, please see the meeting link located at the top of the agenda. If attending in-person, you are required to comply with Ordinance 22-03 - AN ORDINANCE OF THE SANTA CLARA VALLEY WATER DISTRICT SPECIFYING RULES OF DECORUM FOR PARTICIPATION IN BOARD AND COMMITTEE MEETINGS located at <https://s3.us-west-2.amazonaws.com/valleywater.org.if-us-west-2/f2-live/s3fs-public/Ord.pdf>

In accordance with the requirements of Gov. Code Section 54954.3(a), members of the public wishing to address the Board/Committee during public comment or on any item listed on the agenda, may do so by filling out a Speaker Card and submitting it to the Clerk or using the “Raise Hand” tool located in the Zoom meeting application to identify yourself in order to speak, at the time the item is called. Speakers will be acknowledged by the Board/Committee Chair in the order requests are received and granted speaking access to address the Board.

- Members of the Public may test their connection to Zoom Meetings at: <https://zoom.us/test>
- Members of the Public are encouraged to review our overview on joining Valley Water Board Meetings at: <https://www.youtube.com/watch?v=TojJpYCxXm0>

Valley Water, in complying with the Americans with Disabilities Act (ADA), requests individuals who require special accommodations to access and/or participate in Valley Water Board of Directors/Board Committee meetings to please contact the Clerk of the Board’s office at (408) 630-2711, at least 3 business days before the scheduled meeting to ensure that Valley Water may assist you.

This agenda has been prepared as required by the applicable laws of the State of California, including but not limited to, Government Code Sections 54950 et. seq. and has

not been prepared with a view to informing an investment decision in any of Valley Water's bonds, notes or other obligations. Any projections, plans or other forward-looking statements included in the information in this agenda are subject to a variety of uncertainties that could cause any actual plans or results to differ materially from any such statement. The information herein is not intended to be used by investors or potential investors in considering the purchase or sale of Valley Water's bonds, notes or other obligations and investors and potential investors should rely only on information filed by Valley Water on the Municipal Securities Rulemaking Board's Electronic Municipal Market Access System for municipal securities disclosures and Valley Water's Investor Relations website, maintained on the World Wide Web at <https://emma.msrb.org/> and <https://www.valleywater.org/how-we-operate/financebudget/investor-relations>, respectively.

Under the Brown Act, members of the public are not required to provide identifying information in order to attend public meetings. Through the link below, the Zoom webinar program requests entry of a name and email address, and Valley Water is unable to modify this requirement. Members of the public not wishing to provide such identifying information are encouraged to enter "Anonymous" or some other reference under name and to enter a fictional email address (e.g., attendee@valleywater.org) in lieu of their actual address. Inputting such values will not impact your ability to access the meeting through Zoom.

Join Zoom Meeting:

<https://valleywater.zoom.us/j/81170871803>

Meeting ID: 811 708 71803

Join by Phone:

1 (669) 900-9128, 81170871803#

1. CALL TO ORDER:

1.1. Roll Call.

2. TIME OPEN FOR PUBLIC COMMENT ON ANY ITEM NOT ON THE AGENDA.

Notice to the public: Members of the public who wish to address the Board/Committee on any item not listed on the agenda may do so by filling out a Speaker Card and submitting it to the Clerk or using the "Raise Hand" tool located in the Zoom meeting application to identify yourself to speak. Speakers will be acknowledged by the Board/Committee Chair in the order requests are received and granted speaking access to address the Board/Committee. Speakers' comments should be limited to three minutes or as set by the Chair. The law does not permit Board/Committee action on, or extended discussion of, any item not on the agenda except under special circumstances. If Board/Committee action is requested, the matter may be placed on a future agenda. All comments that require a response will be referred to staff for a reply in writing. The Board/Committee may take action on any item of business appearing on the posted agenda.

3. APPROVAL OF MINUTES:

- 3.1. Approval of May 15, Board Policy and Monitoring Committee (BPMC) Minutes. [24-0560](#)
Recommendation: Approve the minutes.
Manager: Candice Kwok-Smith, 408-630-3193
Attachments: [Attachment 1: 051524 BPMC Draft Minutes](#)
Est. Staff Time: 5 Minutes

4. REGULAR AGENDA:

- 4.1. Review and Discuss Board Governance Policy Governance Process-6 (GP-6): Board Members' Code of Conduct and Provide Direction to Staff on Next Steps. [24-0575](#)
Recommendation: A. Review Board Governance Policy Governance Process-6 (GP-6): Board Members' Code of Conduct; and
B. Review Prior Committee input regarding Governance Policy GP-6 improvements; and
C. Identify Additional Areas Where Governance Policy GP-6 could be improved and provide direction to staff on next steps.
Manager: Rick Callender, 408-630-2017
Attachments: [Attachment 1: Board Governance Policy GP-6 \(current\)](#)
[Attachment 2: Flowcharts for existing GP-6](#)
[Attachment 3: Proposed Flowchart Revisions for GP-6](#)
Est. Staff Time: 15 Minutes
- 4.2. Discuss Board Policy and Monitoring Committee (BPMC) Work Plan Agenda Items. [24-0576](#)
Recommendation: Discuss BPMC Work Plan.
Manager: Candice Kwok-Smith, 408-630-3193
Attachments: [Attachment 1: 2024 BPMC Work Plan](#)
Est. Staff Time: 5 Minutes

5. CLERK REVIEW AND CLARIFICATION OF COMMITTEE REQUESTS.

This is an opportunity for the Clerk to review and obtain clarification on any formally moved, seconded, and approved requests and recommendations made by the Committee during the meeting.

6. ADJOURN:

- 6.1. Adjourn to Special Meeting at 11:00 a.m., on Tuesday, July 16, 2024.



Santa Clara Valley Water District

File No.: 24-0560

Agenda Date: 6/24/2024
Item No.: 3.1.

COMMITTEE AGENDA MEMORANDUM Board Policy and Monitoring Committee

Government Code § 84308 Applies: Yes ☐ No ☒
(If "YES" Complete Attachment A - Gov. Code § 84308)

SUBJECT:

Approval of May 15, Board Policy and Monitoring Committee (BPMC) Minutes.

RECOMMENDATION:

Approve the minutes.

SUMMARY:

In accordance with the Ralph M. Brown Act, a summary of Committee discussions, and details of all actions taken by the Board Policy and Planning Committee, during all open and public Committee meetings, is transcribed and submitted for review and approval.

Upon Committee approval, minutes transcripts are finalized and entered into the District's historical records archives and serve as historical records of the Committee's meetings.

ENVIRONMENTAL JUSTICE AND EQUITY IMPACT:

The approval of minutes is not subject to environmental justice analysis.

ATTACHMENTS:

Attachment 1: 051524 BPMC Minutes

UNCLASSIFIED MANAGER:

Candice Kwok-Smith, 408-630-3193

THIS PAGE INTENTIONALLY LEFT BLANK



For full meeting record, please review meeting videos at:
<https://www.valleywater.org/how-we-operate/committees/board-committees>

BOARD POLICY AND MONITORING
COMMITTEE MEETING

DRAFT MINUTES

REGULAR MEETING
WEDNESDAY, MAY 15, 2024
10:00 AM

(Paragraph numbers coincide with agenda item numbers)

1. CALL TO ORDER:

A regular meeting of the Santa Clara Valley Water District (Valley Water) Board Policy and Monitoring Committee (Committee) was called to order by Director Hsueh in the Valley Water Headquarters Building Boardroom at 5700 Almaden Expressway, San Jose, California, and by Zoom teleconference, at 10:03 a.m.

1.1. Roll Call.

Committee members in attendance were District 5 Director Nai Hsueh and District 6 Director Tony Estremera, constituting a quorum of the Committee. District 1 Director John L. Varela arrived as noted below.

Staff members in attendance were: Gina Adriano, Aaron Baker, Mera Burton, Theresa Chinte, Rita Chan, Rosie Cofre, Marisela Garcia (Benitez), Rachael Gibson, Chris Hakes, Brian Hopper, Michele King, Candice Kwok-Smith, Emelia Lamas, Anna Lee, Dave Leon, Courtney Letts, Marta Lugo, Patrice McElroy, Nicole Merritt, Linda Nguyen, Carlos Orellana, Sasa Seto, Arthur Saye, Kirsten Struve, Tina Yoke.

Public in attendance were: Director Rebecca Eisenberg, Arthur Keller, Diahann Hudson, Molly Culton (Sierra Club).

2. TIME OPEN FOR PUBLIC COMMENT ON ANY ITEM NOT ON THE AGENDA:

Director Hsueh declared time open for public comment on any item not on the agenda. There was no one who wished to speak.

Director Hsueh moved the agenda to Item No. 3.1.

2.1 Election of 2024 Board Policy and Monitoring Committee (BPMC) Chairperson and Vice Chairperson.

Recommendation: Nominate and elect the 2024 BPMC Chairperson and Vice Chairperson.

The BPMC considered this Item without a staff presentation.

Public Comments: None.

It was moved by Director Varela and seconded by Director Estremera and unanimously carried to elect Director Hsueh as the 2024 Chairperson and Director Estremera as the 2024 Vice Chairperson.

2.2 Approve the Board Policy and Monitoring Committee (BPMC) Purpose.

Recommendation: Approve the BPMC Purpose.

The BPMC considered this Item without a staff presentation.

Public Comments: None.

It was moved by Director Varela and seconded by Vice Chairperson Estremera and unanimously carried to approve the BPMC Purpose as noted in the Agenda Memo.

Chairperson Hsueh moved the agenda to Item No. 4.2.

3. APPROVAL OF MINUTES:

3.1 Approval of January 2, 2024 Board Policy and Planning Committee (BPPC) Minutes and January 11, 2024 Diversity and Inclusion Committee (DIAHC) Minutes.

Recommendation: Approve the minutes.

The BPMC considered the minutes of the January 2, 2024 BPPC Minutes and January 11, 2024 DIAHC Minutes.

Public Comments: None.

It was moved by Director Estremera, seconded by Chairperson Hsueh, with Director Valera absent, to approve the January 2, 2024 BPPC Minutes and January 11, 2024 DIAHC Minutes.

4. REGULAR AGENDA:

4.1 Discuss Board Governance Policy Governance Process-6 (GP-6): Board Members' Code of Conduct and Provide Feedback.

- Recommendation:**
- A. Review Board Governance Policy Governance Process- 6 (GP-6): Board Members’ Code of Conduct; and**
 - B. Identify areas where Board Governance Policy GP-6: Board Members’ Code of Conduct could be improved and provide direction to staff on next steps.**

District 1 Director Varela arrived at 10:06 a.m.

The BPMC discussed and provided input on the attachments in the Committee Agenda Memo, including written complaints by Board Members against Board Members, complaints from Non-Board Members against Board Members, and complaints from employees against Board Members. Brian Hopper, Carlos Orellana, and Patrice McElroy were available to answer questions. Director Varela left his seat briefly and returned during this item.

Public Comments: None.

The BPMC continued the item and requested staff incorporate the discussed input and return with an updated document to the next BPMC meeting.

Director Hsueh moved the agenda to Item No. 2.1.

4.2 Develop a Draft Fiscal Year 2024-2025 (FY25) Board Work Plan and Submit for Board Review and Approval.

- Recommendation:**
- A. Review the Draft Fiscal Year 2024-2025 (FY25) Board Work Plan, incorporating input from the Board at the April 29, 2024 Special Board Meeting;**
 - B. Review any additional input on the FY25 Board Work Plan received at the May 14, 2024 Board Meeting, if any; and**
 - C. Submit a FY25 Board Work Plan for Board review and approval.**

The BPMC reviewed the Draft FY25 Board Work Plan which included Board input from the May 29, 2024 work study session and staff recommended modifications.

Public Comments: None.

It was moved by Director Varela, seconded by Director Estremera, that the item was unanimously approved, to submit the FY2024-2025 Board Work Plan, with the discussed edits, to the Board for approval at a June 2024 Board meeting.

4.3 Discuss Potential BPMC Work Plan Agenda Items and the Committee’s Next Meeting Date/Schedule.

- Recommendation:**
- Discuss potential BPMC Work Plan agenda items and the Committee’s next meeting date/schedule.**

The BPMC reviewed the 2023 Board Policy and Planning Committee Work Plan and Schedule, and the Proposed 2024 Diversity and Inclusion Ad Hoc Committee Work Plan, and discussed items completed, to be added, or to be removed on each Work Plan, and agreed to combine into one work plan.

Public Comments: None.

Chairperson Hsueh stated she will work with staff to place preliminary schedules for the items. Chairperson Hsueh expressed her opinion for the need for monthly meetings, and the BPMC requested to hold meetings on the third Wednesday at 11 a.m.

5. CLERK REVIEW AND CLARIFICATION OF COMMITTEE REQUESTS:

This is an opportunity for the Clerk to review and obtain clarification on any formally moved, seconded, and approved requests and recommendations made by the Committee during the meeting.

Stephanie Simunic confirmed the BPMC elected Director Hsueh as Chairperson and Director Estremera as Vice Chairperson under Item 2.1; the BPMC approved the Committee Purpose under Item 2.2; the Governance Policy Governance Process-6 is continued under item 4.1, the FY25 Board Work Plan was approved with edits under item 4.2; and the next BPMC meeting will be on the third Wednesday in June at 11 a.m. under item 4.3.

6. Adjourn:

6.1. Adjourn to Regular Meeting Meeting on Wednesday, June 19 at 11 a.m.

Chairperson Hsueh adjourned the meeting at 11:51 a.m., to a regular meeting on Wednesday, June 19 at 11 a.m. The meeting was subsequently rescheduled to a special meeting on Monday, June 24, 2024 at 1 p.m.

Stephanie Simunic
Assistant Deputy Clerk II

Date Approved:



Santa Clara Valley Water District

File No.: 24-0575

Agenda Date: 6/24/2024

Item No.: 4.1.

COMMITTEE AGENDA MEMORANDUM Board Policy and Monitoring Committee

Government Code § 84308 Applies: Yes ☐ No ☒
(If "YES" Complete Attachment A - Gov. Code § 84308)

SUBJECT:

Review and Discuss Board Governance Policy Governance Process-6 (GP-6): Board Members' Code of Conduct and Provide Direction to Staff on Next Steps.

RECOMMENDATION:

- A. Review Board Governance Policy Governance Process-6 (GP-6): Board Members' Code of Conduct; and
- B. Review Prior Committee input regarding Governance Policy GP-6 improvements; and
- C. Identify Additional Areas Where Governance Policy GP-6 could be improved and provide direction to staff on next steps.

SUMMARY:

Following acceptance of the Director Gary Kremen Investigation Report in 2022, the Board assigned to the then Board Policy and Planning Committee to review Board Governance Policy, Governance Process-6, Board Members' Code of Conduct (GP-6) and identify areas of improvement.

On September 12, 2023, the Board approved an updated Board of Director Code of Ethics and Conduct Policy, which the Board Policy and Planning Committee (Committee) had recommended for approval at the Committee meeting on August 10, 2023. Substantive portions of the Code of Conduct were updated but the Committee deferred making changes to processes for addressing Board member misconduct at that time.

At its regular meeting of May 15, 2024, the Committee began its review of GP-6 and provided proposed revisions. This item allows the Committee to continue its review GP-6 (Attachment 1) and suggest areas that could be improved to clarify and simplify the implementation of the policy. Staff have also summarized and created flowcharts outlining the Board's current process in GP-6 to address complaints made against Board members either from other Board members or address complaints from non-Board members (Attachment 2).

A. Prior Committee Input Regarding GP-6 Revisions

The Committee's prior input regarding recommended changes to the GP-6 provisions can be summarized as follows:

1. A written complaint would now go to the Clerk of the Board who would then circulate it to the Board Chair for initial action, and to the CEO and the District Counsel for informational purposes;
2. The Board Chair should have a more direct role in reviewing complaints and determining whether they set forth a sufficient basis for further action (assistance from the District Counsel could be requested as to potential legal implications);
3. The Board Chair should determine whether to try and resolve complaints informally;
4. If efforts to informally resolve the complaint fail or if the Board Chair concludes an informal resolution would be unlikely the Ethics and Ad Hoc Committee would be convened to determine whether to investigate or conduct fact finding;
5. The Chair would select the investigator (with input from the District Counsel if requested) and the District Counsel would contract for the independent investigator;
6. There should be time limits for investigations with flexibility to extend upon good cause; and
7. More descriptive language should be added to the GP provisions regarding censure, admonition, and sanction.

In addition to this input, the Committee discussed having a single process for Board member and non-Board member-initiated complaints. Recognizing that any complaints from employees may originate through other methods (e.g., reporting to the employee's manager), any such complaints will still be routed through the same process as other complaints against Board members. Conversely, any employee complaints that are initially submitted to the Clerk of the Board will be referred to Human Resources for compliance with applicable Administrative Policies.

Based upon this input, a revised Flowchart for the complaint process (Board member complaints and non-Board member complaints) is attached for the Committees consideration. (Attachment 3.) This represents a real departure from the existing GP-6 which had separate processes if complaints were made by non-Board members (e.g., different roles for the Chair and Ethics and Ad Hoc Committee depending on who made the complaint). Having a single process should make GP-6 easier to understand and apply overall. Once the Committee approves the new flowchart, the revised policy language can be added for the Committee's review.

B. Composition and Role of Ethics and Conduct Ad Hoc Committee

Discussion regarding the role of the Chair and the Ethics and Ad Hoc Committee identified a legal concern. At present, the Ethics and Ad Hoc Committee is supposed to have three members comprised of the Chair and two members of the Board. If the Chair meets with an accused Board member to informally resolve a complaint and later convened the Ethics and Ad Hoc Committee because those efforts were unsuccessful, this would represent a serial meeting of four members of the Board (a quorum) over a matter within their subject matter jurisdiction. Under the Brown Act, meetings of a quorum of a legislative body must be public and noticed. (Government Code Sections 54952.2-5.)

Under the proposed changes, a complaint would be referred to the Ethics and Ad Hoc Committee if the Chair were unable to informally resolve it or if he or she did not feel it was something that could or should be informally resolved. Under the proposed changes, the accused Board member would have a right to meet with the Ad Hoc Committee (creating a meeting of four) before it decided whether to order an investigation or fact finding. This ability to meet ahead of time is consistent with the existing GP-6 language:

- In the event of a Board member complaint, the current GP-6 holds that the accused can meet with the Committee before it makes a determination on whether to proceed with an investigation (GP 6.6);
- In the event of a third-party complaint, the current GP 6.14 holds that the accused Board member may meet with the Chair before the Chair decides whether or not to proceed with an investigation.

To avoid a potential violation of the Brown Act, several different approaches could be taken:

- A. Eliminate the role of the Ethics and Conduct Ad Hoc Committee and have the Chair alone handle the complaints and related processes; or
- B. Reduce membership of the Ethics and Conduct Ad Hoc Committee to two members (the Chair and one other) since this avoids the quorum issue if there are any meetings with the accused Board member; or
- C. Eliminate the accused Board member's ability to meet with the Ethics and Conduct Ad Hoc Committee before any determination to proceed with an investigation or fact finding and have restrictions on the Chair's communication with the other Ethics and Conduct Committee members so as not to disclose any part of the Chair's communications with the accused Board member during efforts to informally resolve a complaint.

Note, option C is not recommended since it may be practically difficult to avoid bringing up prior informal resolution discussions with the accused Board member when the Ethics and Conduct Ad Hoc Committee would be addressing the complaint against him or her and presumably touching upon some of the same discussion points.

The Committee is asked to weigh in on these options or identify a different option that would help to avoid any Brown Act violations. Once an approach is identified, the policy language will be updated accordingly.

C. Future Topics

Staff anticipates that the Committee will provide direction to staff at this meeting and over the next few months of Board Policy and Monitoring Committee meetings with the goal of recommending a final updated policy to the Board at the October 22, 2024, Board meeting. The Committee is invited to identify any specific elements of GP-6 it wishes to discuss at the upcoming July 2024 meeting.

ENVIRONMENTAL JUSTICE AND EQUITY IMPACT:

There are no environmental justice and equity impacts associated with this item.

ATTACHMENTS:

Attachment 1: Board Governance Policy GP-6

Attachment 2: Flowcharts for existing GP-6

Attachment 3: Proposed Flowchart Revisions for GP-6

UNCLASSIFIED MANAGER:

Rick Callender, 408-630-2017

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: September 12, 2023 Chair: John L. Varela
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-6.3 through GP-6.5 listed below.

- 6.1. 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.
- 6.2. 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.
- 6.3. 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.

6.3.1. 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 particular alleged action or actions, although it would not necessarily have to be triggered by a

Governance Policies of the Board

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.

6.3.2. 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.

6.3.3. 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.

6.3.4. 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.

6.4. 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-6.5 and GP-6.6 shall not apply.

Governance Policies of the Board

6.5. 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.

6.5.1. 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.

6.5.2. 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:

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

6.5.2.2. Informal resolution of the complaint should occur; or

6.5.2.3. An independent investigation of the complaint should occur.

6.6. 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:

6.6.1. 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.

6.6.2. 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.

Governance Policies of the Board

- 6.6.3. 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.

6.7. Investigations

- 6.7.1. 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.
- 6.7.2. 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.
- 6.7.3. 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.
- 6.7.4. 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.
- 6.7.5. 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-6.8.2, GP-6.9.2, or GP-6.10.2, below, and the matter shall thereafter be considered by the Board at its next public meeting subject to the restrictions of section GP-6.10.5, below.

6.8. Request for Admonition

- 6.8.1. 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.
- 6.8.2. The Committee shall review the request and submit it to the Board with a recommendation. The Committee's recommendation shall provide:

Governance Policies of the Board

6.8.2.1. Admonition is warranted; or

6.8.2.2. Admonition is not warranted; or

6.8.2.3. No further action is required.

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

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

6.9. Request for Sanction

6.9.1. 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.

6.9.2. 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:

6.10.2.1. Admonition, rather than sanction is warranted; or

6.10.2.2. Sanction is warranted; or

6.10.2.3. No further action is warranted.

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

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

6.10. Request for Censure

6.10.1. 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

Governance Policies of the Board

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.

- 6.10.2. The Committee shall review the request and submit the request to the Board with a recommendation. The Committee's recommendation shall provide:
 - 6.10.2.1. Further investigation of the request for censure is required; or
 - 6.10.2.2. Admonition or sanction is warranted; or
 - 6.10.2.3. The request for censure should be set for a separate Board public hearing; or
 - 6.10.2.4. No further action is required.
- 6.10.3. A recommendation by a majority of the Committee shall be based on the Committee's review of the written record.
- 6.10.4. 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:
 - 6.10.4.1. The Committee may be assisted by a separate independent investigator.
 - 6.10.4.2. 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.
 - 6.10.4.3. 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.
- 6.10.5. 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

Governance Policies of the Board

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

6.10.6. 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.

6.11. 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-6.3.1, GP-6.3.2., and GP-6.3.3, of this policy.

6.12. 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.

6.13. 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.

6.13.1. 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.

6.13.2. 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:

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

6.13.2.2. Informal resolution of the complaint should occur; or

6.13.2.3. An independent investigation of the complaint should occur.

Governance Policies of the Board

- 6.14. 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:
- 6.14.1. 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.
 - 6.14.2. 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.
 - 6.14.3. 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.
- 6.15. Investigations
- 6.15.1. 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 6.5.2 of the Board's Governance Policies) shall select an independent investigator to conduct the investigation.
 - 6.15.2. 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.
 - 6.15.3. 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.

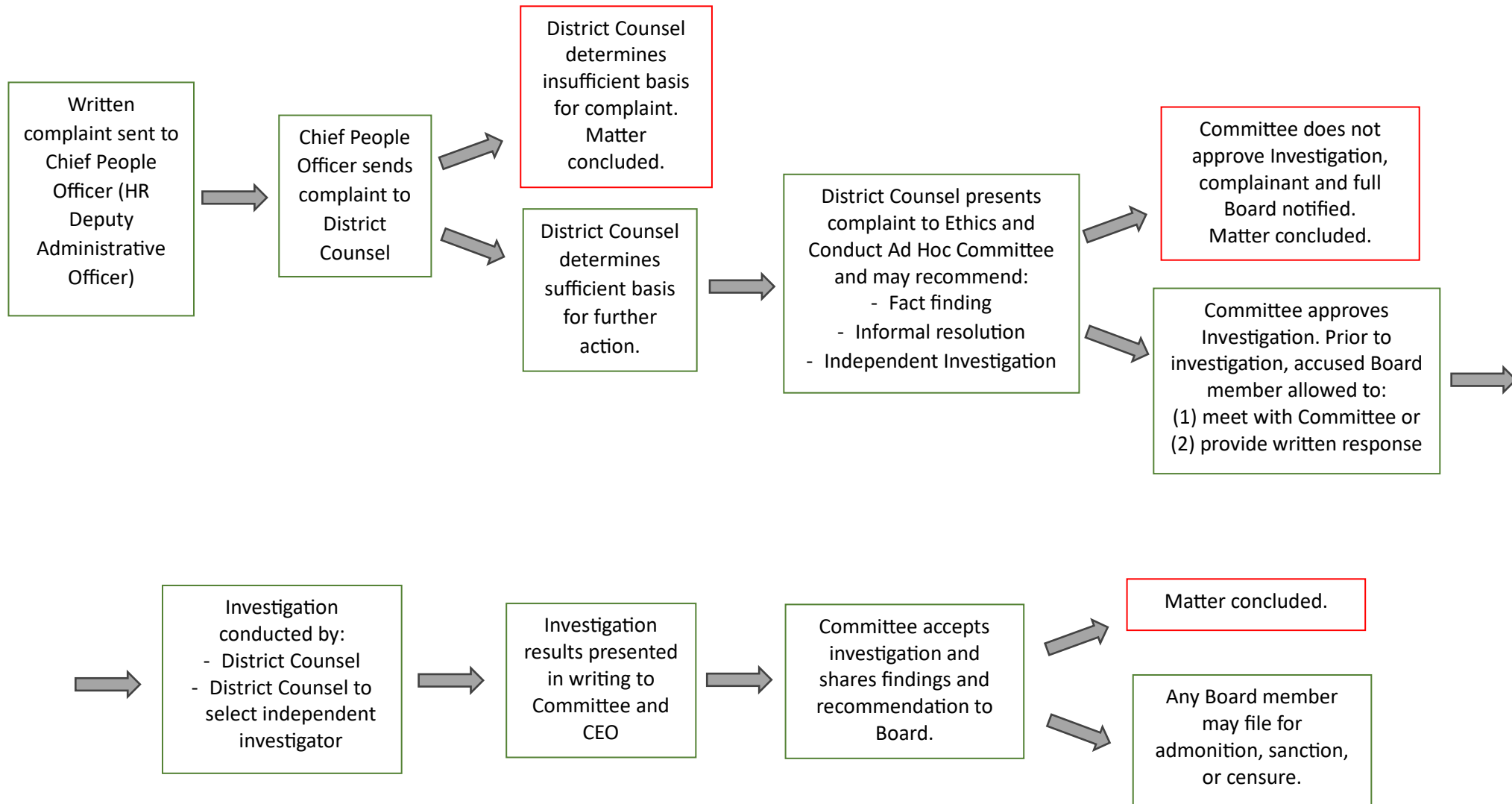
Governance Policies of the Board

- 6.15.4. 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-6.8, GP-6.9, or GP-6.10 of this policy, save and except that whenever the term “Committee” appears therein, the term “Chair” or “Vice Chair” shall be applicable.
- 6.15.5. 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-6.15.1 through GP-6.15.4 above, the matter shall thereafter be considered by the Board at its next public meeting subject to the restrictions of section GP-6.10.5, above.

THIS PAGE INTENTIONALLY LEFT BLANK

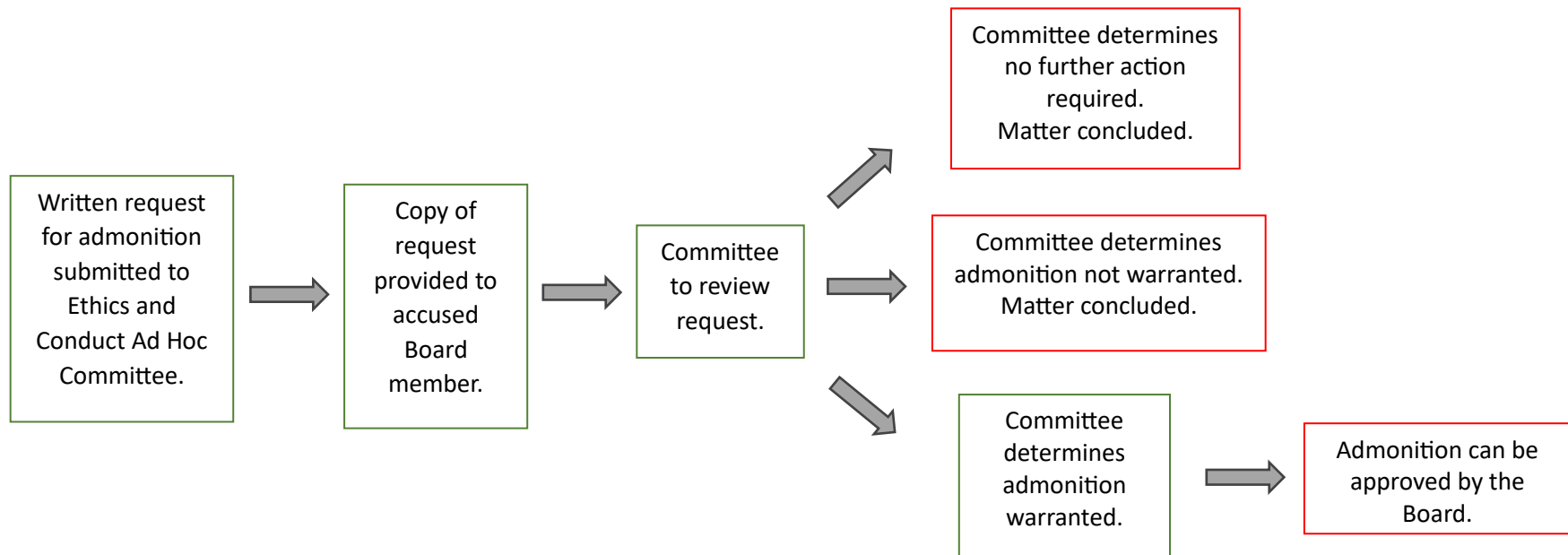
Valley Water GP-6 FLOWCHARTS

Written Complaints by Board Members



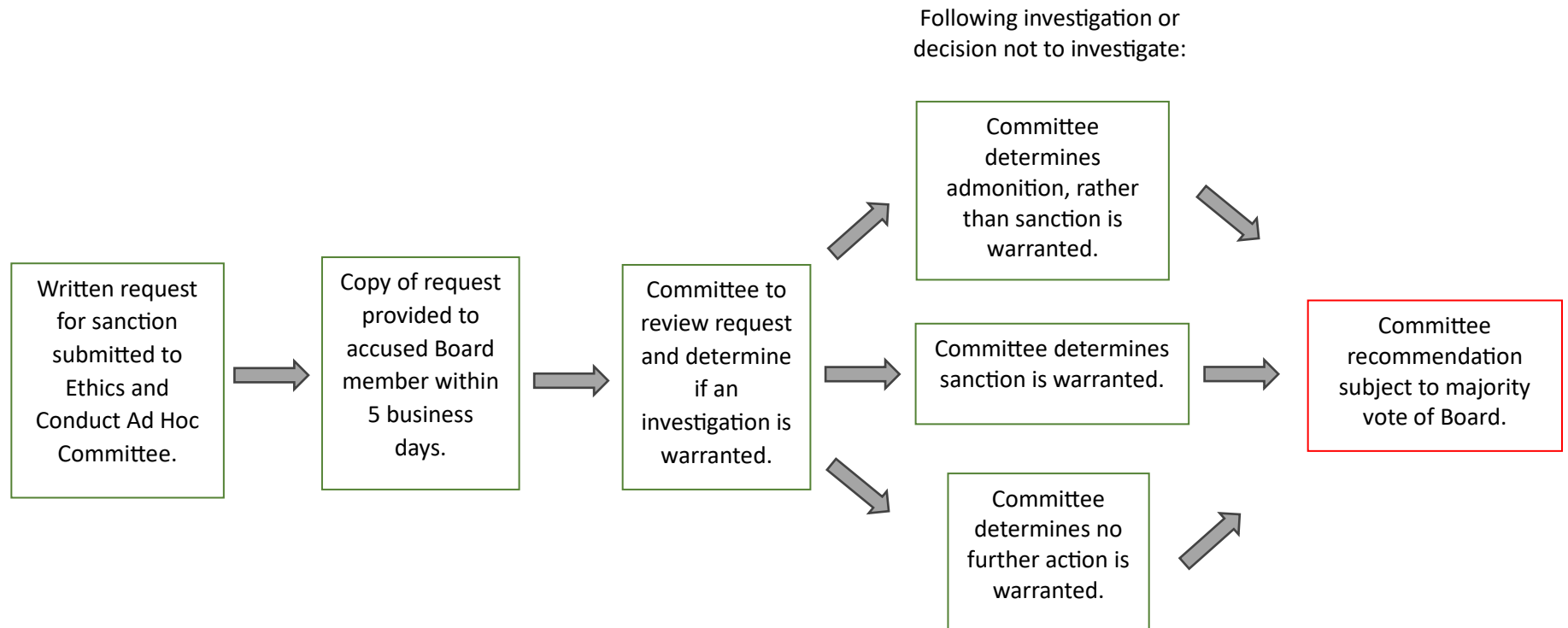
Valley Water GP-6 FLOWCHARTS

Board Member Request for Admonition



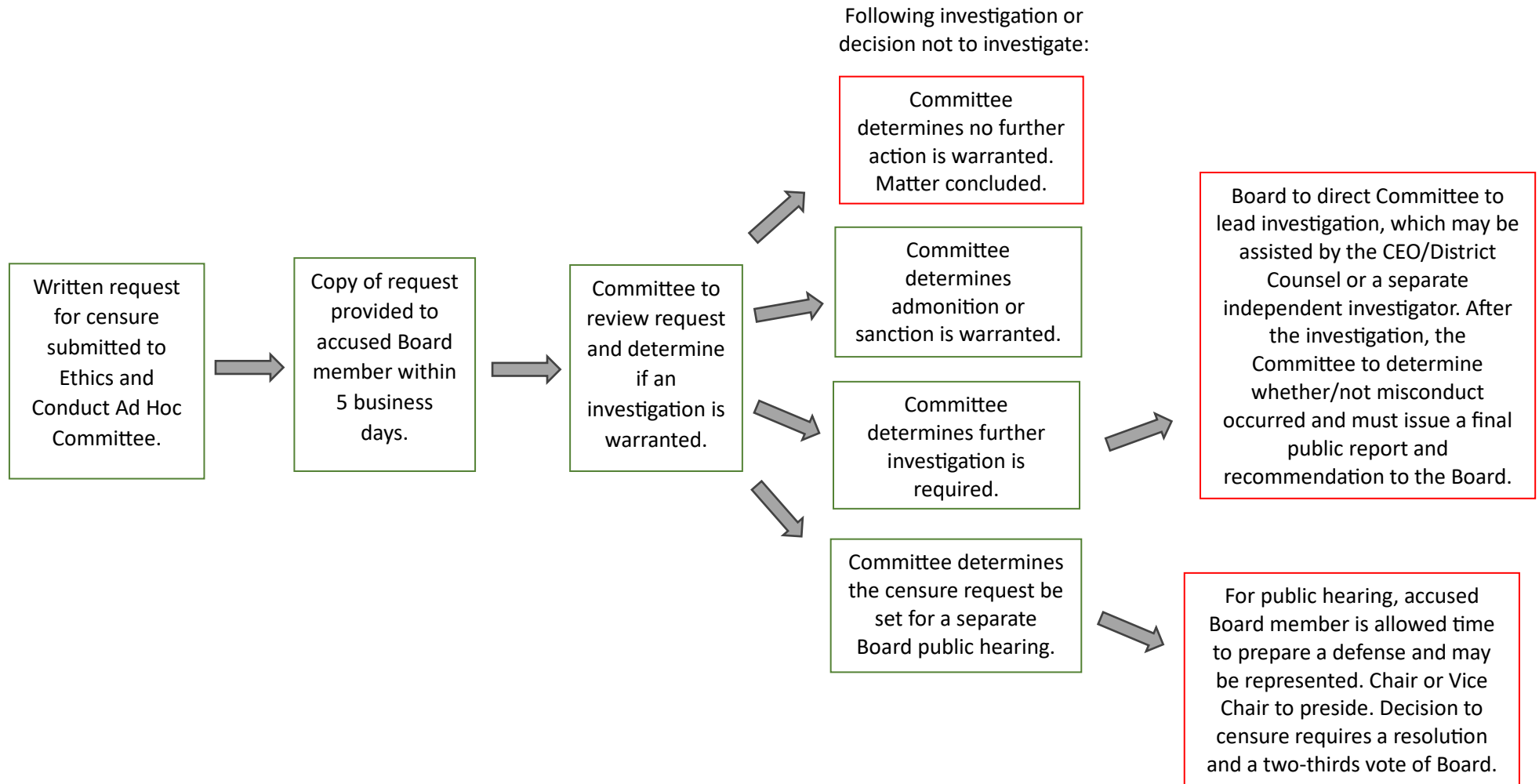
Valley Water GP-6 FLOWCHARTS

Board Member Request for Sanction



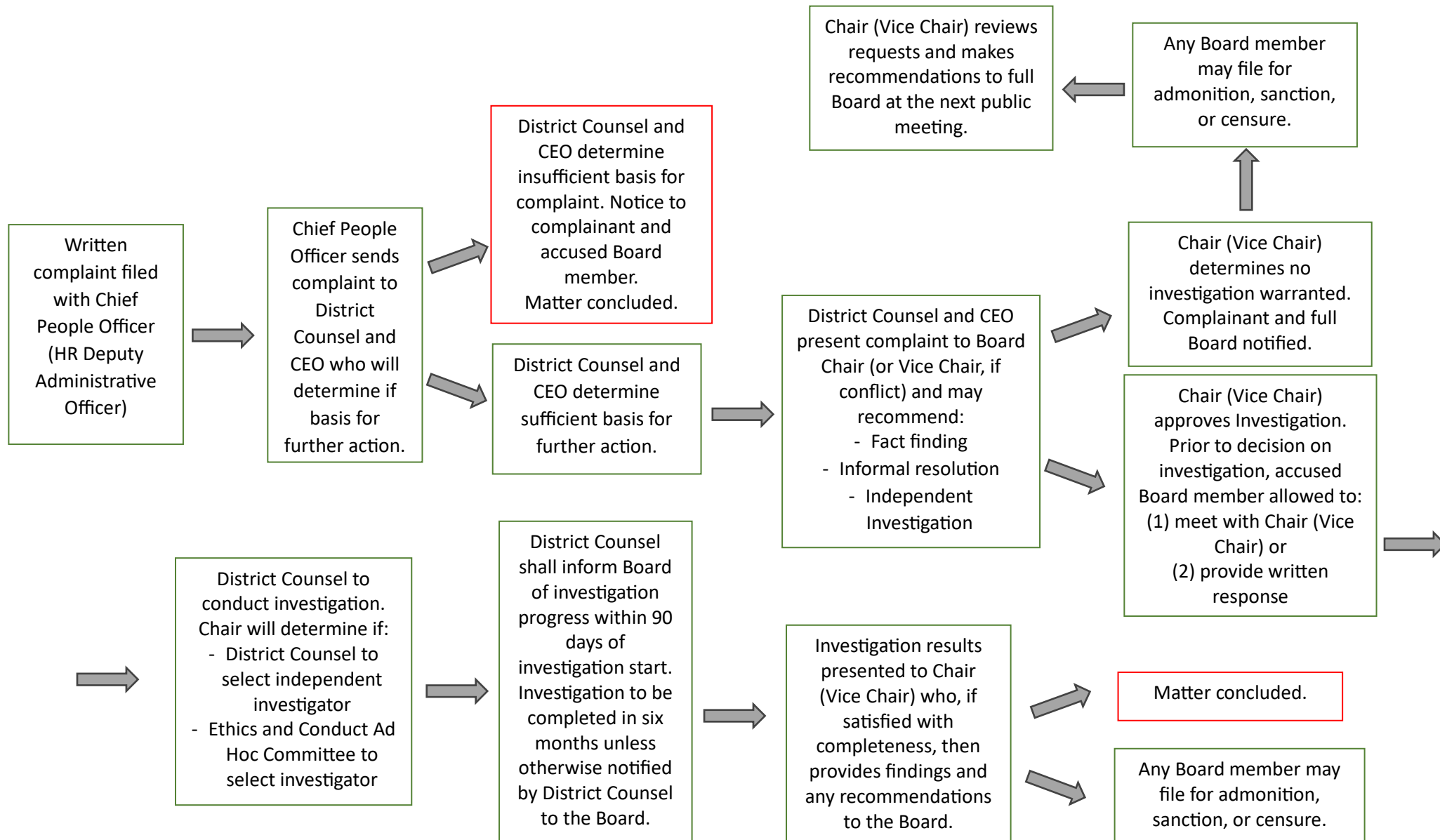
Valley Water GP-6 FLOWCHARTS

Board Member Request for Censure



Valley Water GP-6 FLOWCHARTS

Complaints from Non-Board Members



Valley Water GP-6 FLOWCHARTS

Category 1: Actions initiated by Board members

Board members can address Board member misconduct by:

- (1) Written complaint
- (2) Request for admonition
- (3) Request for sanction
- (4) Request for censure

GP 6.5	Written Complaints by Board Members
GP 6.5	Written complaint submitted to Chief People Officer (HR Deputy Administrative Officer)
	Chief People Officer transmits complaint to District Counsel for Review
	District Counsel to determine whether there is a sufficient basis for further action
6.5.1	If complaint fails to articulate a sufficient basis for further consideration, District Counsel advises both the complainant and the accused Board Member – matter deemed concluded
6.5.2	<p>If complaint adequately articulates a basis for further action, District Counsel to present the complaint to the Board Ethics and Conduct Ad Hoc Committee and may recommend:</p> <ul style="list-style-type: none"> Fact finding as to the complaint (6.5.2.1) Informal Resolution of the complaint (6.5.2.2) An independent investigation (6.5.2.3)
6.6	<p>Before Committee can determine to proceed with an investigation:</p> <ul style="list-style-type: none"> Accused Board member must be given a reasonable opportunity to (1) meet with the Committee or (2) provide a written response to the complaint
	<p>Committee approves investigation (GP 6.7.1)</p> <ul style="list-style-type: none"> Following notification of the Board, the District Counsel may be directed to conduct the investigation (6.7.1) District Counsel may select and manage an independent investigator to assist in conducting investigation (6.7.1) District Counsel shall determine the process by which statements are taken (may allow declarations in lieu of testimony) (6.7.2)
6.7.3	<p>Conclusion of Investigation:</p> <ul style="list-style-type: none"> Results presented in writing to the Committee and CEO If the Committee is satisfied with completeness of investigation, it shall provide the Board with its findings and recommendations. (No role for CEO in determination of completeness) Following presentation of Committee's findings and recommendations, any Board member may file a request for admonition, sanction, or censure

Valley Water GP-6 FLOWCHARTS

	<p>Committee does not approve investigation (6.7.4):</p> <ul style="list-style-type: none"> • Complainant and full Board to be notified. • Following notification, any Board member may file a request for admonition, sanction, or censure.
	<p>Board member request for admonition, sanction, or censure following investigation (6.7.5):</p> <ul style="list-style-type: none"> • Committee shall submit to the Board a recommendation as to the request per 6.8.2 (admonition), 6.9.2 (censure), or 6.10.2 (sanction) • Matter to be considered by full Board at next public meeting (subject to need to give Board member subject to the charges sufficient time in the event of censure (6.10.5) • Process is silent as to Committee role in the event a request for admonition, sanction, or censure following written complaint and Committee decision not to investigate.

GP 6.8	Board member request for Admonition
6.8.1	Board member written request for admonition submitted to Ethics and Conduct Ad Hoc Committee
6.8.1	Copy of request to be provided to Board member accused of misconduct
6.8.2	<p>Committee to review request and submit it to the full Board with a recommendation based upon its review of the written record:</p> <ul style="list-style-type: none"> • Admonition warranted • Admonition not warranted • No further action is required
6.8.4	Admonition can be approved by a majority of the Board

GP 6.9	Board member request for Sanction
6.9.1	Board member written request for sanction submitted to Ethics and Conduct Ad Hoc Committee
6.9.1	Copy of request must be provided to the Board member accused of misconduct by personal service within 5 business days from the date the Committee receives the request
6.9.2	Committee to review the request and determine if investigation is warranted.
	<p>Following investigation or decision not to investigate, Committee shall submit the request to the Board with a recommendation based upon its review of the written record:</p> <ul style="list-style-type: none"> • Admonition, rather than sanction is warranted • Sanction is warranted

Valley Water GP-6 FLOWCHARTS

	<ul style="list-style-type: none"> No further action is warranted
6.9.4	Committee's recommendation subject to a majority vote of the Board

GP 6.10	Board member request for Censure
6.10.1	Board member written request for censure submitted to Ethics and Conduct Ad Hoc Committee
6.10.1	Copy of request must be provided to the Board member accused of misconduct by personal service within 5 business days from the date the Committee receives the request
6.10.2	Committee to review the request and determine if investigation is warranted.
6.10.2	<p>Following investigation (or decision not to investigate), Committee shall submit the request to the Board with a recommendation based upon its review of the written record:</p> <ul style="list-style-type: none"> Further investigation of the request for censure is required; or Admonition or sanction is warranted; or The request for censure should be set for a separate Board public hearing; or No further action is warranted
6.10.4	<p>Board determination that further investigation is required:</p> <ul style="list-style-type: none"> Board shall direct Committee to lead the investigation which may be assisted by the CEO and District Counsel Investigation <ul style="list-style-type: none"> Committee may be assisted by a separate independent investigator Upon completion of investigation, Committee should determine if there are reasonable grounds to believe or not believe that misconduct occurred. Committee to issue final (public) report and recommendation to Board
	<p>If Board sets the request for censure for public hearing:</p> <ul style="list-style-type: none"> Scheduled so as to give accused Board member adequate time to prepare a defense Accused Board member may be represented Chair or Vice Chair (if Chair is subject of the charges) to preside at hearing Decision to censure requires resolution and a 2/3 vote of the Board.

Valley Water GP-6 FLOWCHARTS

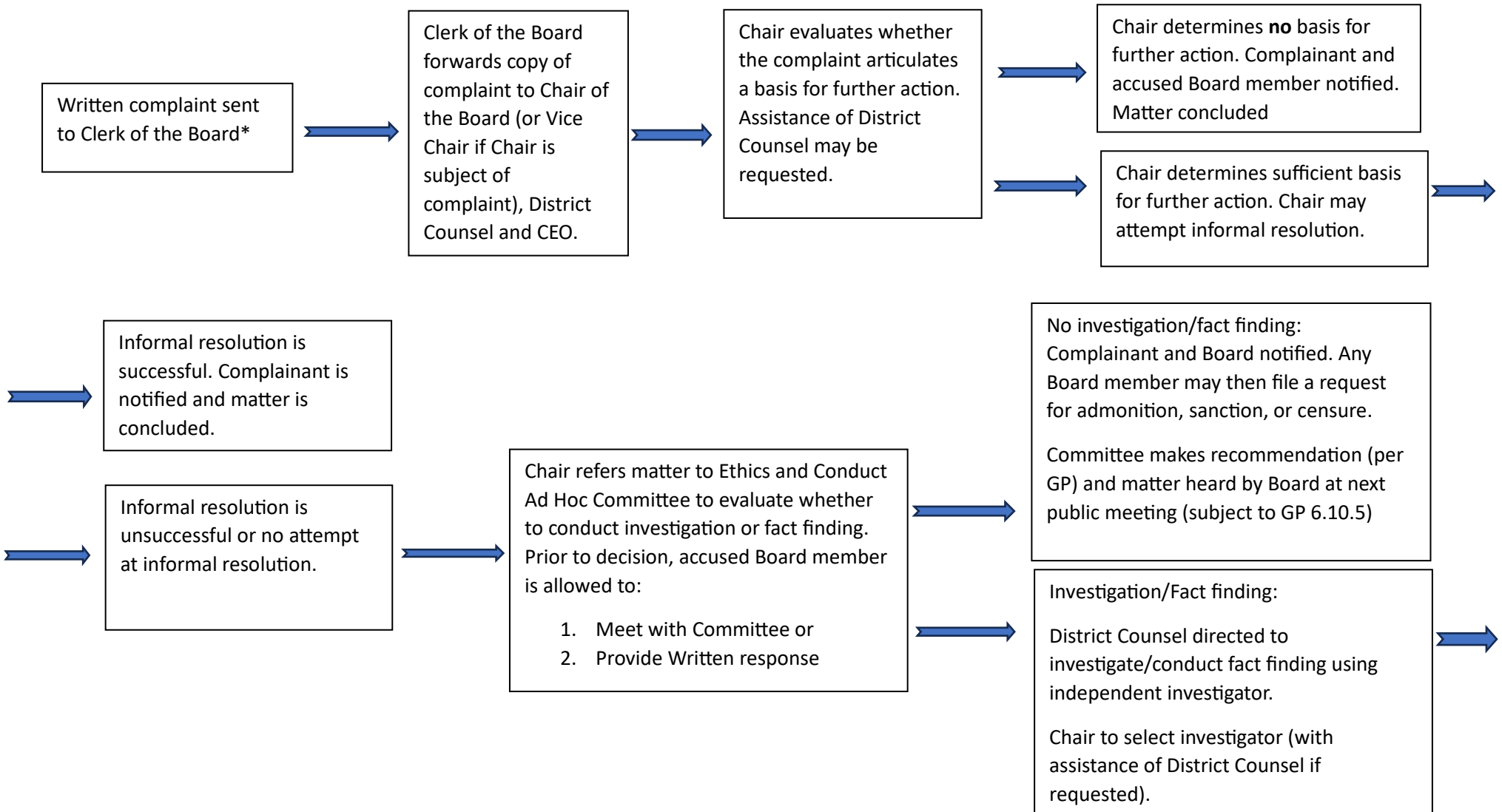
Category 2 – Complaints from non-Board members

6.11	Written complaint by non-Board member stating his/her reasonable belief that a member of the Board has acted or failed to act in best interests of Valley Water.
6.11	Written complaint filed with Chief People Officer
6.13	Chief People Officer transmits written complaint to District Counsel and CEO for review
6.13	CEO and District Counsel shall review the complaint to determine whether there is a sufficient basis for further action (no guidance in event of disagreement between CEO and District Counsel)
6.13.1	<p>Insufficient Complaint (Complaint fails to articulate a sufficient basis for further consideration)</p> <ul style="list-style-type: none"> • Notice to complainant and accused Board member – matter deemed concluded.
6.13.2	<p>Sufficient Complaint (Complaint adequately articulates a basis for further action):</p> <ul style="list-style-type: none"> • CEO and District Counsel shall present complaint to the Chair of the Board (Vice Chair if conflict) • CEO and District Counsel may recommend to Chair: <ul style="list-style-type: none"> ○ Conduct fact-finding; or ○ Informal resolution of the complaint; or ○ An independent investigation of the complaint should occur
6.14.1	<p>The Chair alone decides whether to investigate.</p> <p>Prior to decision on whether to investigate, the accused Board member must have an opportunity to:</p> <ul style="list-style-type: none"> • Meet with the Chair; or • Provide a written response to the complaint
6.15	Investigation
6.15.1	Following notification of Board, the Chair may direct the District Counsel to conduct an investigation.
6.15.1	<p>Selection of Investigator</p> <p>The Chair has discretion to have the Investigator selected by the District Counsel or selected by the Ethics and Conduct Ad Hoc Committee.</p> <p>(Potential selection of the investigator is the only role for the Ethics and Conduct Ad Hoc Committee in matters of third-party complaints.)</p>
6.15.2	District Counsel shall inform Board of the investigation's progress within ninety days of investigation's start.
6.15.2	Investigation to be completed in six months or Board to be notified by District Counsel within six-month time period if it cannot be completed within that time frame.
6.15.3	Conclusion of investigation

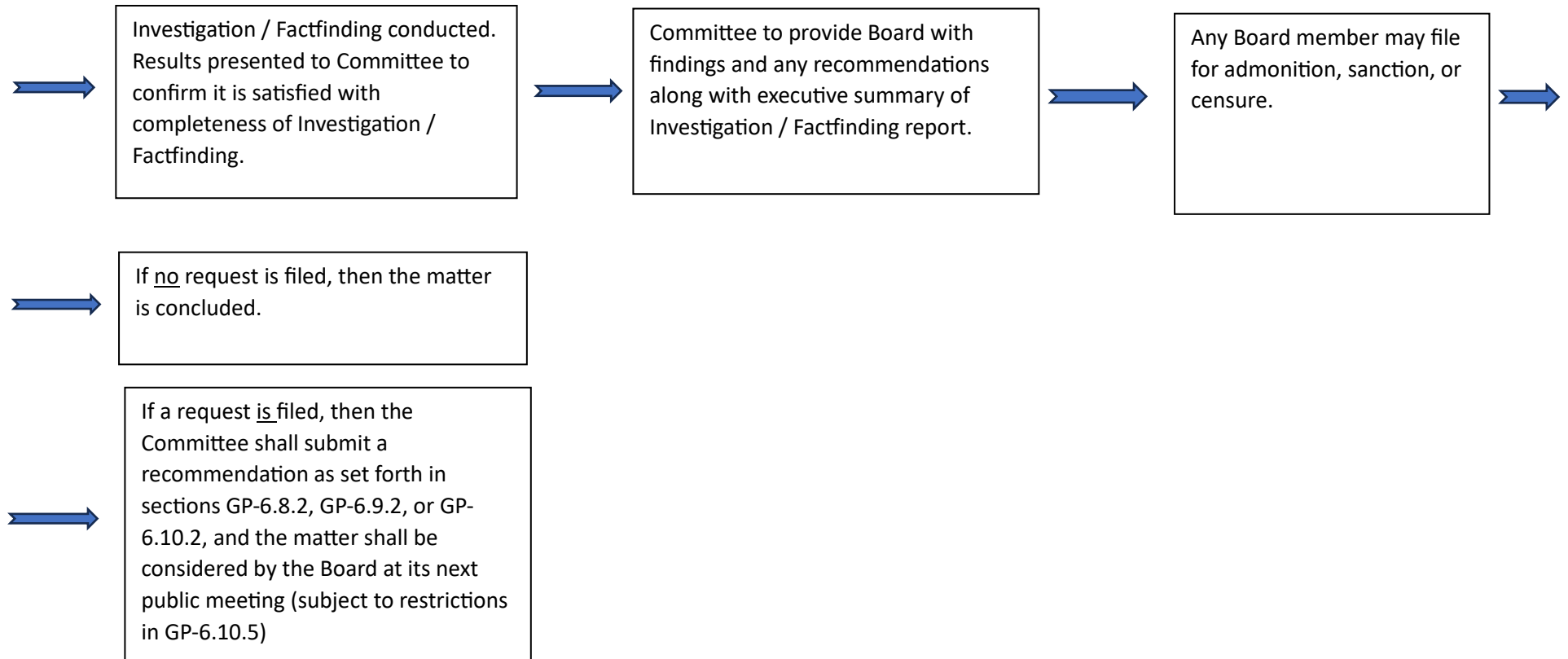
Valley Water GP-6 FLOWCHARTS

	<ul style="list-style-type: none">• Results presented in writing to Chair (Vice-Chair)• If Chair (Vice Chair) satisfied with completeness of investigation, he or she must provide the Board with findings and any recommendations.• Following Chair's findings and recommendations, any Board member may file a request for admonition, sanction, or censure
6.15.4	<p>No Investigation</p> <ul style="list-style-type: none">• Chair (Vice-Chair) determines investigation is not warranted• Complainant and Board notified of decision.• Following Board notification, any Board member may file a request for admonition, sanction, or censure• The Chair (Vice-Chair), and not the Ethics and Conduct Ad Hoc Committee, would review the requests and make recommendations to the full Board (6.15.4)• The Chair's recommendation on the request would be heard at the next public meeting (subject to need to give Board member subject to the charges sufficient time in the event of censure (6.15.5, 6.10.5)

Valley Water GP-6 Proposed Flowchart Revisions
Written Complaints by Board members or non-Board members



Valley Water GP-6 Proposed Flowchart Revisions
Written Complaints by Board members or non-Board members



THIS PAGE INTENTIONALLY LEFT BLANK



Santa Clara Valley Water District

File No.: 24-0576

Agenda Date: 6/24/2024

Item No.: 4.2.

COMMITTEE AGENDA MEMORANDUM Board Policy and Monitoring Committee

Government Code § 84308 Applies: Yes ☐ No ☒
(If "YES" Complete Attachment A - Gov. Code § 84308)

SUBJECT:

Discuss Board Policy and Monitoring Committee (BPMC) Work Plan Agenda Items.

RECOMMENDATION:

Discuss BPMC Work Plan.

SUMMARY:

Under direction of the Clerk, Work Plans are used by Board Committees to increase Committee efficiency, provide increased public notice of intended Committee discussions, and enable improved follow-up by staff. Work Plans are dynamic documents managed by Committee Chairs and are subject to change.

ENVIRONMENTAL JUSTICE AND EQUITY IMPACT:

The review of the Committee's Work Plan is not subject to environmental justice analysis.

ATTACHMENTS:

Attachment 1: 2024 BPMC Work Plan

UNCLASSIFIED MANAGER:

Candice Kwok-Smith, 408-630-3193

THIS PAGE INTENTIONALLY LEFT BLANK

2024 Board Policy and Monitoring Committee Work Plan and Schedule

Subject	Task	5/15/24	6/19/24	7/17/24	8/21/24	9/18/24	10/16/24	11/20/24	12/18/24
Board Planning Process	A. Provide Support for Board Planning Activities								
	1. Develop Draft FY24-25 Board Work Plan	X							
	2. Planning for Board's FY25-26 Strategic Planning Workshop								
	B. Provide Support for Board Policy Review								
	1. Update on Expansion of the Water Resources Protection Manual								
	2. Fuel Management Policy and Wildfire Resilience Plan								
	3. One Water Watershed Plans								
	4. Update on Climate Change Action Plan Implementation								
	5. Review Governance Policies of the Board: Executive Limitations								
	6. Review Governance Policies of the Board: Governance Process-6 Board Members Code of Conduct	X	X	X	X				
Board Committees Principles and Structures	C. Align Board Committees' Work Plans with Board Planning Calendar								
REDI Office	D. REDI Office								
	1. DEI Strategic Master Plan Implementation Update			X					
	2. Historical Key Decisions to Advance Environmental Justice								
	3. Naming/Renaming of Valley Water Facilities								
	4. Tribal Land Acknowledgement								
Human Resources	E. Human Resources								
	1. Next Generation Career Pathway								
	2. Veterans Outreach								
	3. Employee Survey								
	4. Formerly Incarcerated and Disability Outreach								
Other Assignments Requested by Board	F. Other Assignments as Requested by the Board								

THIS PAGE INTENTIONALLY LEFT BLANK