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VIA EMAIL

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Board Policy & Monitoring Committee
Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118

Re: Proposed Edits to Board Governance Policy GP-9.3 (Board Members Representation on External Committees) — Comment in Advance of Committee Consideration (Agenda Item 4.2 – File # 26-0609 – July 21, 2026)

Dear Members of the Board Policy & Monitoring Committee:

I write as a longtime observer of San Francisquito Creek Joint Powers Authority (SFCJPA) governance to raise a concern with proposed new Section 9.3.3 of the Board's Governance Policy for Board Members Representation on External Committees, a red-lined copy of which is attached as Exhibit A. As drafted, Section 9.3.3 would encroach on the governance structure Valley Water itself agreed to in the Second Amended and Restated Joint Powers Agreement for the San Francisquito Creek Joint Powers Authority (the JPA Agreement); it risks recurring delay on ordinary SFCJPA Board business; and, perhaps most significantly, it may limit the SFCJPA's ability to draw on the real-time, considered judgment of an engaged Valley Water Director. A better-fitted means of addressing Valley Water's underlying notice concern is available within the JPA Agreement itself, and I urge the Committee to pursue it instead of Section 9.3.3 in its current form.

Section 9.3.3 Reaches into Territory the JPA Agreement Assigns to Majority Vote, Without Amending the Agreement

The JPA Agreement expressly divides authority between the SFCJPA Board of Directors and the five Member Entities. Paragraph 9(e) provides that "[t]he powers of the Board of Directors are each of the powers of the Authority not specifically reserved to the Member Entities by this Agreement," and paragraph 9(j) provides that "any action of the Board of Directors shall require a vote of a majority of the Directors," except as otherwise specified in the Agreement or required by law. The categories reserved to the Member Entities are limited and

enumerated: approval of each entity's operating budget contribution (¶ 12(b)); approval of an entity's funding for a capital project (¶ 7(b)); approval of amendments to the Agreement, following thirty days' notice (¶ 19); and written consent to termination, by four-fifths of the Member Entities (¶ 17(a)). Everything else — including the Board's ordinary adoption or modification of project standards, technical criteria, and work plans — was deliberately left to majority vote, so the Authority could act without routing every decision back through five separate governing bodies and calendars.

Proposed Section 9.3.3 would require Valley Water's SFCJPA representatives to "timely notify the Board of any upcoming votes that, in their judgment, require full Board input or approval, including matters involving financial commitments, project progress, or organizational changes, and … obtain the Board's direction before voting." Those categories are illustrative, not exclusive, and "project progress" is broad enough to reach most substantive SFCJPA Board votes — precisely the ordinary business paragraph 9(j) assigns to majority vote. The practical effect, whatever the intent, is to require prior Valley Water Board authorization before its representative may exercise the independent judgment paragraph 9 contemplates each Director will exercise.

The JPA Agreement's own mechanism for changing the division of authority between the Board of Directors and the Member Entities is paragraph 19, which requires approval by every Member Entity's governing body on thirty days' notice. Section 9.3.3, by contrast, is a unilateral amendment to Valley Water's internal Governance Policies. It does not amend the JPA Agreement, and the other four Member Entities — Palo Alto, Menlo Park, East Palo Alto, and the San Mateo County Flood and Sea Level Rise Resiliency District — have no notice of it and no vote on it, notwithstanding that its practical effect reaches into the balance of authority those entities negotiated in paragraphs 6, 7, 9, 12, and 19 of the Agreement.

To be clear, Section 9.3.3 would not alter paragraph 9(j)'s majority-vote threshold, and Valley Water's representative would continue to hold a single vote among five. The mechanism is not a formal veto. But its practical effect is to place a forced choice before the SFCJPA Board each time Valley Water's representative determines, in his or her sole judgment, that an ordinary matter should first be referred to the full Valley Water Board: the SFCJPA Board may proceed to vote without the benefit of Valley Water's considered position, or it may delay the matter until Valley Water's Board is able to schedule it for review. Neither alternative is one the JPA Agreement, as negotiated, requires the SFCJPA Board to face on business that paragraph 9(j) assigns to ordinary majority vote, and the choice between them is left entirely to the unilateral, unreviewable judgment of a single Director.

I do not suggest Valley Water intends Section 9.3.3 to operate this way, but a mechanism's practical effects do not depend on its intended purpose. A representative who holds a standing, Board-sanctioned basis to decline commitment in the room, and to invoke referral to a home Board on a timeline that Board alone controls, holds a form of negotiating leverage that the other four Directors do not: delay of this kind functions as negotiating friction in any multi-party deliberative body, whatever its purpose. Other Directors may adjust their own positions to avoid triggering a referral they cannot influence, or they may hesitate to press a matter to a vote knowing that doing so forecloses Valley Water's considered input. That asymmetry is a structural byproduct of Section 9.3.3, not a claim about the Committee's or Valley Water's purpose in proposing it, and it is worth the Committee's attention precisely because paragraph

9(j)'s majority-vote design assumed no single Director would hold this kind of unilateral procedural option over the others.

The Procedural Effect Risks Substantial, Recurring Delay in SFCJPA Business

Whether Section 9.3.3 introduces delay depends on two variables: the mismatch between the two Boards' notice regimes, and how far in advance an "upcoming vote" is understood to arise. Valley Water's own posting requirements are fixed: regular Board agendas are posted eleven days before the meeting, and even a special meeting requires seventy-two hours' notice. The SFCJPA's are not fixed by the JPA Agreement at all; paragraph 9(g) simply incorporates the Brown Act, whose default rule requires at least seventy-two hours' notice of a regular meeting's agenda.

Section 9.3.3 does not say whether an "upcoming vote" means an item projected for a future SFCJPA Board agenda or only an item once it has been formally noticed for Brown Act purposes. Under the first, Valley Water's own fixed notice requirements — eleven days for a regular meeting, seventy-two hours for a special meeting — may accommodate the sequence Section 9.3.3 requires; under the second, they cannot. If "upcoming vote" assumes the SFCJPA's informal, longer-range awareness of matters on its calendar, Valley Water's review may fit within its ordinary cycle without incident — though a rescheduled SFCJPA item, not unusual in practice, could still compress that runway. If it assumes only the SFCJPA's formal Brown Act notice, the mismatch is immediate: even a special meeting, itself requiring seventy-two hours' notice, could only run on the same timeline as the SFCJPA's own minimum notice period — not ahead of it. Either way, the SFCJPA Board would face the same threshold choice described above, with the frequency of that choice turning on which of the two readings applies — a distinction Section 9.3.3 leaves unresolved.

For the SFCJPA, and for the Member Entities whose interest in Reach 2 is geographically concentrated — Palo Alto, Menlo Park, and East Palo Alto foremost among them — a recurring delay on ordinary Board business cuts against the efficiency the Member Entities built into the Agreement when they assigned such business to majority vote in the first place.

Section 9.3.3 May Diminish Rather Than Protect, the Value of Valley Water's Own Considered Judgment

Any assessment of Section 9.3.3 should weigh not only its procedural costs, but what it risks with respect to a genuine asset: Valley Water's own expertise. Valley Water is not merely one voice among five on the SFCJPA Board. It is the Member Entity with decades of specialized experience in flood control engineering and policy in Santa Clara County, and it played the lead financial and technical role in delivering the completed downstream reach. Paragraph 9(a) of the JPA Agreement — one Director, one vote for each Member Entity — was structured on the premise that each Director, including Valley Water's, would bring the Member Entity's expertise to bear directly and in real time in Board deliberation, not that the expertise would be filtered through a separate, prior approval process before the Director could speak to it.

Section 9.3.3 puts that premise at risk, and it is worth the Committee's attention that the risk cuts against Valley Water's own interests as much as the SFCJPA's. A representative who must withhold a considered position until Valley Water's Board has separately reviewed and directed the matter cannot, in the interim, offer the SFCJPA Board the benefit of Valley Water's

technical judgment on ordinary business — the real-time give-and-take the Agreement's majority-vote design assumes each Director will bring to deliberation. Two outcomes plausibly follow, and neither serves the purpose Section 9.3.3 is presumably meant to advance.

Applying the same threshold choice here, the SFCJPA Board may proceed without Valley Water's considered input, leaving the Authority to decide exactly the kind of technical or policy question on which Valley Water's institutional experience is most valuable, without that experience informing the outcome — or it may delay the matter to await Valley Water's direction, a procedural cost that falls hardest on time-sensitive flood-risk decisions in which Santa Clara County residents — Valley Water's own constituents — share a direct interest in prompt action. The engaged, real-time participation of an empowered Director, not a pre-cleared position relayed after the fact, is what has made Valley Water's presence on the SFCJPA Board valuable to date, and Section 9.3.3 risks trading that value away while trying to protect it.

A Better-Fitted Remedy: Propose Expanding the JPA Agreement's Own Enumerated Categories of Member-Entity Approval, Through Paragraph 19

I recognize that the impetus for Section 9.3.3 may be a genuine concern, as expressed by Valley Water's representative, that votes on what Valley Water staff refer to as "significant decisions" have on occasion come before the SFCJPA Board without sufficient advance notice to allow full review of the underlying materials. That is a legitimate concern, and the JPA Agreement already provides the correct vehicle for addressing it — not through a unilateral, internal policy directed at one Director's prerogative, but through the Agreement's own amendment mechanism.

There is a related and equally legitimate interest worth acknowledging: on decisions of real significance to the Reach 2 Project, both the SFCJPA and Valley Water benefit when Valley Water's representative can draw on the collective expertise of Valley Water's own organization — its engineering staff, its institutional history with the Project, and its Board's considered judgment — rather than relying solely on the representative's individual assessment in the moment. That interest, too, is better served through paragraph 19 than through Section 9.3.3. A properly defined amendment, identifying the specific categories of decision that genuinely warrant full Member Entity review, would let Valley Water bring its institutional resources to bear where the stakes justify it, through a process every Member Entity has agreed to and can rely on, rather than through a standing, open-ended rule whose reach and timing remain uncertain, and whose costs, as described above, fall unevenly on the SFCJPA and the other Member Entities.

If Valley Water believes that categories of SFCJPA Board action beyond the four presently enumerated in paragraphs 6, 7, 12, and 17 warrant individual Member Entity approval, the appropriate course is for Valley Water to propose a paragraph 19 amendment to the JPA Agreement, identifying the specific category of action to be added to the enumerated list, and to bring that proposal to the SFCJPA Board and to the other four Member Entities for consideration on the record. That approach would have several advantages over Section 9.3.3 as drafted.

It would apply symmetrically to all five Member Entities and their representatives, rather than asymmetrically to Valley Water's Director alone. It would define the triggering category

with the same precision the Agreement already uses for budget and capital-project approvals, rather than the open-ended "in their judgment" standard proposed in Section 9.3.3. And it would preserve the majority-vote efficiency the JPA Agreement provides for most Board business that does not fall within the expanded category, rather than introducing a standing notice-and-approval requirement of uncertain scope.

I respectfully ask the Committee to decline to advance Section 9.3.3 in its current form, and instead to direct staff to work with the SFCJPA and the other Member Entities on a properly noticed paragraph 19 amendment that addresses Valley Water's stated notice concerns through a defined, mutually negotiated exception — rather than the open-ended, unilateral reach into majority-vote authority that Section 9.3.3 would introduce.

Respectfully submitted,

Jeffrey Shore

cc: Greer Stone, Chairperson, SFCJPA Board
Lisa Gauthier, Vice-Chairperson, SFCJPA Board
Drew Combs, SFCJPA Board Member
Mark Dinan, SFCJPA Board Member
Keith Reckdahl, SFCJPA Alternate Director, City of Palo Alto
Kaia Eakin, SFCJPA Alternate Director, San Mateo County Flood and Sea Level Rise
Cecilia Taylor, SFCJPA Alternate Director, City of Menlo Park
Ruben Abrica, SFCJPA Alternate Director, City of East Palo Alto
Margaret Bruce, Executive Director, SFCJPA
Ed Shikada, City Manager, City of Palo Alto
Melanie Richardson, Interim CEO, Valley Water

Exhibit A

Governance Policies of the Board

Title: Board Committee Structure Category: Governance Process		
Policy No. GP-9	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.		

Nominations of Board members to committees shall be made by the Chair subject to approval by the Board, subject to annual review.

9.1. Board Committees:

9.1.1. A committee is a Board committee only if its existence and charge come from the Board, regardless whether Board members sit on the committee. Unless otherwise stated, a committee ceases to exist as soon as its task is complete.

9.2. Board Members Representation on Board Standing and Ad Hoc Committees:

9.2.1. Board members who are not the appointed representatives to Board Standing or Ad Hoc Committees shall be permitted to attend open noticed meetings of such committees only as observers to watch and listen, and not participate in discussion, ask questions or make statements. The non-appointed Board member(s) must observe the meeting from the area designated for members of the public. During the course of the meeting, appointed representatives of Board Standing or Ad Hoc Committees shall not speak to or otherwise engage with non-appointed Board members attending the meeting as observers.

9.3. Board Members Representation on External Committees:

9.3.1. Board members assigned to serve ~~serving~~ on external committees or other governing bodies (Board representative) shall serve in the best interests of the District unless otherwise required by statute, ordinance, resolution, or other legislative action

9.3.2 Board representatives ~~members~~ shall serve on appointed committees to maintain effective relationships.

9.3.3 Board representatives shall timely notify the Board of any upcoming votes that, in their judgment, require full Board input or approval, including matters involving financial commitments, project progress, or organizational changes, and shall obtain the Board's direction before voting.

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