



SANTA CLARA VALLEY WATER DISTRICT

NON-AGENDA

July 24, 2020

Board Policy EL-7 Communication and Support to the Board
The BAOs shall inform and support the Board in its work.

Page	<u>CEO BULLETIN & NEWSLETTERS</u>
	None.
	<u>BOARD MEMBER REQUESTS & INFORMATIONAL ITEMS</u>
5	BMR/IBMR Weekly Reports: 07/23/20
6	Memo from David Cahen, Risk Manager, dated 7/15/20, regarding Directors and Officers Insurance.
9	Memo from David Cahen, Risk Manager, dated 7/16/20, regarding Risk Management Communication.
	<u>INCOMING BOARD CORRESPONDENCE</u>
14	Board Correspondence Weekly Report: 07/23/20
15	Email from Tina Paez, to the Board of Directors and Community Leaders, dated 7/16/20, regarding the Mayfair Neighborhood in East San Jose (C-20-0109).
17	Email from Robert Fernandez, to the Board of Directors and Community Leaders, dated 7/16/20, regarding Olinder Neighborhood Ongoing Issues (C-20-0110).
18	Email from Richard McMurtry, to the Board of Directors, dated 7/20/20, regarding Environmental Education Program (C-20-0112).
21	Email from Don Lieberman, to the Board of Directors, dated 7/21/20, regarding Anderson New Discharge Pipe (C-20-0113).
24	Email from Iris Stewart-Frey, to the Board of Directors, dated 7/21/20, regarding the Safe, Clean Water Program (C-20-0114).
25	Email from E. Barron, to the Board of Directors, dated 7/21/20, regarding the Safe, Clean Water Program (C-20-0115).
26	Email from Suzanne Morrone, to the Board of Directors, dated 7/21/20, regarding Increasing Problems with Pollution and Encampments (C-20-0116).
29	Email from Cynthia Jones, to Director Keegan, dated 7/21/20, regarding Keeping Neighborhoods Clean and Safe (C-20-0117).
32	Email from Prakash Arunkundrum, to the Board of Directors, dated 7/21/20, regarding Homeless Activity along Coyote Creek (C-20-0118).

		<u>OUTGOING BOARD CORRESPONDENCE</u>
36		Email from Director Keegan, to Don Lieberman, dated 7/16/20, regarding Evaluation for Home Elevation (C-20-0098).
38		Email from Director Kremen, to Bill Wells, dated 7/16/20, regarding Earthquakes in the California Delta (C-20-0099).
46		Email from Chair Hsueh, to Deborah Jacobs, dated 7/20/20, regarding Retiree Health Coverage (C-20-0100).
49		Email from Director Keegan, to Cynthia Jones, dated 7/20/20, regarding Homeless Activity along Coyote Creek (C-20-0101).
51		Email from Director Keegan, to Kimberlee Stephens, dated 7/20/20, regarding Homeless Activity along Coyote Creek (C-20-0102).
53		Email from Director Keegan, to Anne Loera, dated 7/20/20, regarding Homeless Activity along Coyote Creek (C-20-0103).
55		Email from Director Keegan, to Elizabeth Schroeder, dated 7/20/20, regarding Homeless Activity along Coyote Creek (C-20-0104).
57		Letter from Chair Hsueh, to Rick Lanman, President, GCRCD, regarding Guadalupe-Coyote Resource Conservation District's (GCRCD) withdrawal from the Fish and Aquatic Habitat Collaborative Effort (FAHCE) Settlement Agreement.

Board correspondence has been removed from the online posting of the Non-Agenda to protect personal contact information. Lengthy reports/attachments may also be removed due to file size limitations. Copies of board correspondence and/or reports/attachments are available by submitting a public records request to publicrecords@valleywater.org.

CEO BULLETIN

BOARD MEMBER REQUESTS and Informational Items

Report Name: Board Member Requests

Request	Request Date	Director	BAO/Chief	Staff	Description	20 Days Due Date	Expected Completion Date	Disposition
I-20-0013	07/14/20	Varela	Callender	Taylor Narayanan	Director Varela requests that staff contact Mr. Bergin in the below email (via email) to explain the District's portion of his tax bill, attached.	08/03/20		



MEMORANDUM

FC 14 (08-21-19)

TO: Board of Directors and PFFC

FROM: David Cahen

SUBJECT: Directors and Officers Insurance

DATE: July 16, 2020

A member of the PFFC requested information regarding errors and omissions coverage from District Counsel. As a result, staff has been requested to prepare a memo to provide an understanding to members of the Board of Directors and PFFC regarding activities covered under the District's Directors' and Officers' policy when the Board and/or PFFC member participates in District or PFFC activities.

Issue

Who is covered and what are the types of acts generally covered under a Directors & Officers (D&O) insurance policy?

Who is Covered?

With respect to directors & officers, the District's policy states:

We will pay on behalf of the Insured those sums in excess of the **retained limit** that the Insured becomes legally obligated to pay for **loss** arising out of a **public officials wrongful act** to which this insurance applies and which takes place in the **coverage territory** during the **policy period**.

Further, the definition of directors and officers states:

Directors and Executive Officers: An individual while appointed as a Director or Executive Officer but only with respect to their duties as your officer or director and while acting within the course and scope of their authority.

Elected or Appointed Officials: An elected or appointed official of any board, commission or agency of yours, but only with respect to their duties and while acting within the course and scope of their authority as an elected or appointed official."

Board members of the District and the Public Facilities Financing Corporation (PFFC) are included as a full named insured under the District's policy, per the coverage language above. Because of this, full coverage applies to them while working on behalf of the District.

What types of acts would be covered?

The policy is broad and would cover the vast majority of claims against a Board or PFFC member. Generally, the policy covers the Director or Officer for any 'public officials wrongful act' not excluded by the policy. A 'public officials wrongful act' is defined broadly as:

- a. Breach of duty by an Insured, neglect, error, misstatement, misleading statement, or omission by an Insured; or
- b. Violation of civil rights protected under 42 USC 1981 et seq., or any similar federal, state, or local law by an Insured; or
- c. Violation of any state civil rights law that arises out of the discharge of duties for the Name Insured

Board of Directors and PFFC

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The types of claims that would not be covered would include previously known claims and fraudulent/dishonest conduct on the part of the Board.

Some of the more specific types of acts covered include:

Wrongful Acts

In the context of D&O policy claims, a wrongful act may include violation of a statute, improper self-dealing, conflict of interest, fraudulent financial statements, a tort, violation of the articles of incorporation or by-laws or transactions with companies in which the officers or directors have a personal interest. A misrepresentation as to the company's business or finances may qualify as a wrongful act for purposes of a D&O claim.

For example, if a corporation misrepresented a company's financial health in order to secure funding from an investor, the investor may later sue the company and its directors for those misrepresentations. A D&O policy would provide coverage for the costs of defending this lawsuit and any resulting settlement or judgment against the corporation and its directors.

Improper Management Suits

Officers and directors may also be sued for improper management of the company's finances. This may include inefficient administration of the company that results in losses or extending credit where it is not warranted. This may also arise when a company sells its assets for an unreasonably low price.

If a company has a piece of property valued at \$1,000,000, for example, and it sells it for \$500,000, a shareholder may sue for financial mismanagement if the sale was made to someone connected to the directors or officers, there may be an additional claim for improper self-dealing. As above, D&O policy would indemnify the cost of the lawsuit and any settlement or award.

Errors in Judgment

There are more specialized forms of coverage should officers or directors make mistakes or errors in judgment. This could arise in a number of contexts, such as disseminating false or misleading information, disclosing material facts, or authorizing false or misleading reports. It may also come about when a company is allowed to make improper guarantees.

For example, if a supplement company promises that its elixir will cure a certain ailment — without proof to back up those claims — then customers may sue when the promise proves to be false. A D&O policy would provide coverage for this lawsuit. There is also specialized coverage option known as Errors and Omissions coverage for human errors that result in a defect in a company's products or services. This type of coverage can extend beyond solely Directors and Officers. Directors and Officers are covered under the District's Errors and Omissions policy.

Negligence of Duties

A director or officer may also be sued for negligence in the performance of his duties. This may result from failing to file annual reports, failing to supervise, regular absence from meetings, and failing to inspect the company's books and records. An example of negligence may be if an employee is embezzling from the company, and the directors and officers fail to find the embezzlement and stop it. The company's shareholders may sue for damages that arose from this negligence; the lawsuit would be covered by a D&O policy.

Board of Directors and PFFC

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Coverage of Fines, Penalties, and Other Legal Costs

D&O policy claims examples can be found in other contexts, such as government investigations. When a government or regulatory agency investigates a corporation, the costs may be high, even if no wrongdoing is found. For example, if a company is suspected of violating laws relating to disposal of toxic waste, the investigation may take years to complete and may require thousands of hours worth of attorney fees. A D&O policy may cover the cost of the investigation, as well as any penalty levied by the government.

DocuSigned by:



David Cohen

Risk Manager



MEMORANDUM

FC 14 (02-08-19)

TO: Board of Directors

FROM: David Cahen
Risk Manager

SUBJECT: Risk Management Communication

DATE: July 15, 2020

The purpose of this memorandum is to provide you a copy of recent Risk Management staff's communication with individuals that have filed a claim against the District.

Please find the following attachment:

- 1) July 13, 2020 confirmation letter to Mr. Robert Gearhead (District 7)

For additional information, please contact me at 408-630-2213.

DocuSigned by:

David Cahen

3BB76B20CBF4482...
David Cahen
Risk Manager



July 13, 2020

Robert Gearhead
209 Mistletoe Rd.
Los Gatos, CA 95032

Re: Receipt of Claim – L1900012

Dear Mr. Gearhead,

We received your claim regarding damage to your fence.

We will investigate the claim and notify you of our findings.

If you have any questions, please don't hesitate to contact Risk Manager, David Cahen at (408) 630-2213.

Sincerely,

A handwritten signature in blue ink that reads "Lilian Dennis".

Lilian Dennis
Management Analyst II
(408) 630-2652





**CLAIM AGAINST THE SANTA CLARA VALLEY WATER DISTRICT
California Government Code Sections 900 and following**

<p>The completed form can be mailed, sent electronically or hand delivered. Mail or deliver to:</p> <p>Clerk of the Board Santa Clara Valley Water District-HQ 5700 Almaden Expressway San Jose, CA 95118</p> <p>Or submit the completed form electronically to: clerkoftheboard@valleywater.org</p>	Clerk of the Board's Date Stamp	
	For SCVWD Use Only	
	Date Received:	ROUTING
	<input type="checkbox"/> Via U.S. Mail:	<input checked="" type="checkbox"/> CEO:
	<input type="checkbox"/> Hand Delivered:	<input checked="" type="checkbox"/> District Counsel
	<input checked="" type="checkbox"/> E-mail: COB 7/13/20	<input checked="" type="checkbox"/> Risk Management
<input type="checkbox"/> Other: _____	<input checked="" type="checkbox"/> COB	
	<input checked="" type="checkbox"/> BOD (District #): <u>7</u>	

With certain exceptions, claims for personal injury or property damage MUST be filed within six months of the incident giving rise to the claim. Claimant must complete each section. If information is unknown, write "unknown" in the appropriate box. Please use additional pages if necessary. Please attach itemized receipts, witness statements, photos and all other documentation that you believe will be helpful to process your claim. Claimant MUST sign and date the form; see last page.

Name of Claimant: Robert Gearheard				
Address of Claimant: 209 Mistletoe Rd		City: Los Gatos	State: CA	Zip: 95032
Mailing Address to Which Notices Should be Sent if Different From Above:		City:	State:	Zip:
Home Phone Number:	Cell Phone Number: (408)499-5513	Work Phone Number:		
Is this claim being filed on behalf of a minor? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		If so, please indicate minor's date of birth: _____ Relationship to the minor: _____		
Date and time of incident or loss: 6/8/2020	Location of incident or loss (address): 209 Mistletoe Rd. Los Gatos, CA 95032		Is there a police report? <input type="checkbox"/> Yes If Yes, Police Report #: <input checked="" type="checkbox"/> No	

Describe how the incident or loss happened, and the reason you believe the Santa Clara Valley Water District is responsible for your damages (Please attach additional sheets if necessary):

On a windy day one of the trees from the creek fell down and damaged my fence. Santa Clara Valley Water District fixed my fence in the past when this happened because they maintain the trees in the creek on the other side of my backyard fence.



**CLAIM AGAINST THE SANTA CLARA VALLEY WATER DISTRICT
California Government Code Sections 900 and following**

In detail, describe the damage or injury *(Please attach additional sheets if necessary)*:

One of the trees in the creek fell down on a windy day and broke 4 or 5 planks on my backyard fence. No person was injured.

List Name(s) and contact information of any witness(es) or District employee involved (if any):

None


DAMAGES CLAIMED: Basis for computation of amounts claimed (include copies of bills, invoices, estimates, receipts, photos, police case # or other documentation.) Note: If your claim is more than \$10,000, you need not fill in an amount, but must state whether jurisdiction for the claim would be in the Limited Jurisdiction (up to \$25,000) or Unlimited jurisdiction of the Superior Court.

Is the amount of the claim under \$10,000? Yes No
 Court Jurisdiction: (Check One) Limited Civil Unlimited Civil

ITEMS	CLAIM AMOUNT
1. Broken fence planks (4 or 5)	\$?
2.	\$
3.	\$
4.	\$
TOTAL AMOUNT	\$?

WARNING: IT IS A CRIMINAL OFFENSE TO FILE A FALSE OR FRAUDULENT CLAIM (Penal Code Section 72 and 550)

I have read the matters and statements made in the above claim and I know the same to be true of my own knowledge, except to those matters stated upon information and belief and as to such matters I believe the same to be true. I certify under penalty of perjury that the foregoing is TRUE and CORRECT.

Signed this 7 day of July, 2020 
 Claimant's signature

Government Code Section 945.6 provides that, with limited exceptions, any suit brought against a public entity must be commenced:

- (1) If written notice is given of a denial of claim in accordance with **Section 913**, not later than six months after the date such notice is personally delivered or deposited in the mail.
- (2) If written notice is not given of a denial of claim in accordance with **Section 913**, within two years from the accrual of the cause of action.