



Santa Clara Valley Water District Board Audit Committee Meeting

Headquarters Building Boardroom
5700 Almaden Expressway
San Jose, CA 95118

REGULAR MEETING AGENDA

**Wednesday, April 20, 2022
2:00 PM**

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

BOARD AUDIT COMMITTEE
Barbara Keegan, Chair - District 2
Gary Kremen, Vice Chair - District 7
Richard P. Santos - District 3

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) 630-2600.

DARIN TAYLOR
Committee Liaison

MAX OVERLAND
Assistant Deputy Clerk II
Office/Clerk of the Board
(408) 630-2749
moverland@valleywater.org
www.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.

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Santa Clara Valley Water District
Board Audit Committee
REGULAR MEETING
AGENDA

Wednesday, April 20, 2022

2:00 PM

Headquarters Building Boardroom

*****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 encouraged to wear a mask.

In accordance with the requirements of Gov. Code Section 54954.3(a), members of the public wishing to address the Board/Committee at a video conferenced meeting, during public comment or on any item listed on the agenda, should use the “Raise Hand” tool located in the Zoom meeting link listed on the agenda, at the time the item is called. Speakers will be acknowledged by the Board Chair in the order requests are received and granted speaking access to address the Board.

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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.

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Join Zoom Meeting:
<https://valleywater.zoom.us/j/91608079873>
Meeting ID: 916 0807 7983
Join by Phone:
1 (669) 900-9128, 91608079873#

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 Committee on any item not listed on the agenda should access the "Raise Hand" tool located in Zoom meeting link listed on the agenda. Speakers will be acknowledged by the Committee Chair in order requests are received and granted speaking access to address the Committee. Speakers comments should be limited to three minutes or as set by the Chair. The law does not permit Committee action on, or extended discussion of, any item not on the agenda except under special circumstances. If 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 Committee may take action on any item of business appearing on the posted agenda.

3. APPROVAL OF MINUTES:

3.1. Approval of Minutes.

[22-0233](#)

Recommendation: Approve the minutes.

Manager: Michele King, 408-630-2711

Attachments: [Attachment 1: 011922 BAC Minutes](#)
[Attachment 2: 021622 BAC Minutes](#)

4. REGULAR AGENDA:

4.1. Board Audit Committee's 2022 Annual Self-Evaluation Process.

[22-0224](#)

Recommendation: Discuss the Board Audit Committee's 2022 Annual Self-Evaluation Process.

Manager: Darin Taylor, 408-630-3068

4.2. South Bay Clean Creeks Coalition Partnership Agreement.

[22-0396](#)

Recommendation: Receive information on the South Bay Clean Creeks Coalition (SBCCC) Partnership Agreement.

Manager: Darin Taylor, 408-630-3068

Attachments: [Attachment 1: SBCCC Communication to Valley Water](#)
[Attachment 2: Valley Water Communication to SBCCC](#)
[Attachment 3: CEO Email to SBCCC](#)
[Handout 4.2-A: SBCCC Letter](#)

4.3. Discuss the Necessity of Evaluating Risk Management Organizational Alignment; Determine If Any Changes Need To Be Made to the Annual Audit Work Plan; and Authorize Staff to Present Any Recommended Changes to the Full Board for Approval to Update the Annual Audit Work Plan at a Future Board Meeting.

[22-0451](#)

Recommendation: A. Discuss the necessity of evaluating the Risk Management Organization alignment;
B. Determine if any changes need to be made to the Annual Audit Work Plan; and
C. Authorize staff to present any recommended changes to the full Board for approval to update the Annual Audit Work Plan at a future Board meeting.

Manager: Carlos Orellana, 408-630-2755

Attachments: [Attachment 1: District Counsel Audit Final Report](#)
[Attachment 2: FY18/19 - FY20/21 Annual Audit Work Plan](#)
[Attachment 3: 2022-2024 Annual Audit Work Plan](#)
[Attachment 4: Informal Survey of Risk](#)

4.4. Discuss the 2022-2024 Annual Audit Work Plan.

[22-0384](#)

Recommendation: A. Discuss the 2022-2024 Annual Audit Work Plan;
B. Recommend initiation of the CIP Process Audit to the full Board; and
C. Recommend to the full Board that Sjoberg Evashenk Consulting, Inc., be the auditor for the CIP Process Audit.

Manager: Darin Taylor, 408-630-3068

Attachments: [Attachment 1: 2022-2024 Annual Audit Work Plan](#)
[Attachment 2: CIP Performance Audit Scope Document](#)

- 4.5. Review and Discuss the 2022 Board Audit Committee Work Plan.

[22-0386](#)

Recommendation: Review and discuss topics of interest raised at prior Board Audit Committee (BAC) Meetings and make any necessary adjustments to the BAC Work Plan.

Manager: Darin Taylor, 408-630-3068

Attachments: [Attachment 1: 2022 BAC Work Plan](#)

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 Regular Meeting at 2:00 p.m., on May 18, 2022.



Santa Clara Valley Water District

File No.: 22-0233

Agenda Date: 4/20/2022

Item No.: 3.1.

COMMITTEE AGENDA MEMORANDUM Board Audit Committee

SUBJECT:

Approval of 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 Audit Committee, during all open and public Committee meetings, is transcribed and submitted to the Committee for review and approval.

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

ATTACHMENTS:

Attachment 1: 011922 BAC Minutes

Attachment 2: 021622 BAC Minutes

UNCLASSIFIED MANAGER:

Michele King, 408-630-2711

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BOARD AUDIT COMMITTEE MEETING

MINUTES

**REGULAR MEETING
WEDNESDAY, JANUARY 19, 2022
2:00 PM**

(Paragraph numbers coincide with agenda item numbers)

1. CALL TO ORDER:

A Regular meeting of the Santa Clara Valley Water District (Valley Water) Board Audit Committee (Committee), conducted by Zoom teleconference, was called to order in the District Headquarters Conference Room A-124, 5700 Almaden Expressway, San Jose, California, at 2:00 p.m.

1.1 Roll Call.

Committee members in attendance were District 2 Director Barbara Keegan, Chairperson presiding, with District 7 Director Gary Kremen and District 3 Director Richard P. Santos participating by teleconference, constituting a quorum of the Committee.

Staff in attendance was E. Sans. Staff members participating by teleconference were I. Bella, E. De Anda, A. Fonseca, A. Gschwind, B. Hopper, C. Kwok-Smith, M. Lugo, A. Mendiola, C. Orellana, L. Orta, M. Sra, D. Taylor, S. Tran, K. Yasukawa, and T. Yoke.

Also, in attendance by teleconference was Mr. George Skiles, Sjoberg Evashenk Consulting, Inc.; and Mr. John Olenberger, and Mr. Mike Brown, PMA Consultants.

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

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

3. APPROVAL OF MINUTES:

3.1 Approval of Minutes.

Recommendation: Approve the minutes.

The Committee considered the attached minutes of the December 15, 2021, Committee meeting. It was moved by Director Santos, seconded by Director Kremen, and unanimously carried that the minutes be approved.

4. REGULAR AGENDA:

4.1 Review and Discuss the 2022 Board Audit Committee Work Plan.

Recommendation: Review and discuss topics of interest raised at prior Board Audit Committee (BAC) Meetings and make any necessary adjustments to the BAC Work Plan.

Mr. Darin Taylor, Chief Financial Officer, reviewed the information on this item, per the attached Committee Agenda Memo, and per the information contained in Attachment 1.

The Committee received the information without formal action, and noted the following:

- The Committee requested that the Committee take a more active role in all aspects of an audit, not just the administrative functions; and
- The Committee requested that staff include this concept in the BAC Audit Charter discussion scheduled for the February Committee meeting.

4.2 Board Audit Committee's 2021 Annual Self-Evaluation.

Recommendation: A. Conduct the Annual Self-Evaluation;
B. Direct Staff to Prepare a Formal Report; and
C. Direct Staff to Return to the BAC for Approval to Present the Report to the Full Board.

Mr. Taylor reviewed the information on this item, per the attached Committee Agenda Memo.

The Committee received the information without formal action, and noted the following:

- The Committee noted that last year's process was not successful; and
- The Committee requested that the Chief Audit Executive (CAE), Sjoberg Evashenk, interview the Committee members to develop an overall comprehensive report.

4.3 Receive Final Contract Close-out Report from TAP International, Inc.

Recommendation: Receive Final Contract Close-out Report from TAP International, Inc.

Ms. Denise Callahan, TAP International, Inc. (TAP), reviewed the information on this item, per the attached Committee Agenda Memo, and per the information contained in Attachment 1.

The Committee noted the information without formal action.

4.4 Receive and Discuss a Status update on the Implementation of Audit Recommendations.

Recommendation: Receive and discuss a status update on the implementation of audit recommendations.

Mr. Anthony Mendiola, Program Administrator, reviewed the information on this item, per the attached Committee Agenda Memo.

The Committee received and discussed the information without formal action, and noted the following:

- The Committee requested that future reports of this nature be reviewed by the CAE to ensure progress toward completion and implementation of recommendations; and
- The Committee requested that staff bring this report back to the Committee when all pending recommendations have been addressed.

4.5 South Bay Clean Creeks Coalition Partnership Agreement.

Recommendation: Receive information on the South Bay Clean Creeks Coalition (SBCCC) Partnership Agreement.

Mr. Taylor reviewed the information on the item, per the attached Committee Agenda Memo.

The Committee received the information without formal action, and noted the following:

- Staff noted that this item is under third party review by PMA Consultants and will return to the Committee at the March 16, 2022, meeting.

4.6 Management's Draft Response to the Human Resources Audit Report.

Recommendation: Receive and discuss management's draft response to the Human Resources Audit Report.

Mr. Mike Brown, and Mr. John Olenberger, PMA Consultants, reviewed the information on this item, per the attached Committee Agenda Memo.

The Committee received and discussed the information without formal action, and noted the following:

- PMA Consultants confirmed that it will finalize the report and management response;
- Staff will add the Human Resources Audit Report to the Audit Recommendations Tracking report (Item 4.4); and
- Staff will add this to the Committee Work Plan and will bring back to the Committee for review at a future meeting.

4.7 Discuss the 2022-2024 Annual Audit Work Plan.

Recommendation: Discuss the 2022-2024 Annual Audit Work Plan.

Mr. George Skiles, Sjoberg Evashenk, reviewed the information on this item, per the attached Committee Agenda Memo.

The Committee discussed the information without formal action, and noted the following:

- The CAE to interview the full Board to understand the Boards perspective as it relates to risk;
- The Committee requested that the first three audits to be considered are:
 - Capital Improvement Plan Process;
 - Emergency Response;
 - Data Management; and
- The Committee requested that the CAE provide the Committee an estimate of when the Emergency Response and Data Security and Integrity audits might begin.

4.8 Discuss the Financial Auditor Selection Process.

Recommendation: Discuss the Financial Auditor Selection Process.

Mr. Taylor reviewed the information on this item, per the attached Committee Agenda Memo.

The Committee discuss the information without formal action, and noted the following:

- The Committee requested that staff consider revising the selection criteria to include one of the "Top 10" or "Big 5" in the industry provided they have the skills and experience necessary to conduct financial audits of government agencies; and

- The Committee is still in the process of determining the members who will participate on the committee panel for the selection process.

5. CLERK REVIEW AND CLARIFICATION OF COMMITTEE REQUESTS:

5.1 Mr. Max Overland, Assistant Deputy Clerk II, confirmed there no new Committee Requests.

6. ADJOURN:

6.1 Adjourn to Regular Meeting at 2:00 p.m., on February 16, 2022.

Chairperson Keegan adjourned the meeting at 4:00 p.m., to the 2:00 p.m. Regular Meeting on February 16, 2022.

Max Overland
Assistant Deputy Clerk II



BOARD AUDIT COMMITTEE MEETING

MINUTES

**REGULAR MEETING
WEDNESDAY, FEBRUARY 16, 2022
2:00 PM**

(Paragraph numbers coincide with agenda item numbers)

1. CALL TO ORDER:

A Regular meeting of the Santa Clara Valley Water District (Valley Water) Board Audit Committee (Committee), conducted by Zoom teleconference, was called to order in the District Headquarters Conference Room A-124, 5700 Almaden Expressway, San Jose, California, at 2:00 p.m.

1.1 Roll Call.

Committee members in attendance were District 2 Director Barbara Keegan, Chairperson presiding, with District 7 Director Gary Kremen and District 3 Director Richard P. Santos participating by teleconference, constituting a quorum of the Committee.

District 1 Director John Varela, and District 4 Director Linda LeZotte, attended via Teleconference.

Staff in attendance was M. Overland. Staff members participating by teleconference were C. Orellana, District Counsel, L. Bankosh, I. Bella, R. Blank, J. Codianne, J. Collins, M. Cook, E. De Anda, C. Gayotin, B. Hopper, C. Kwok-Smith, M. Lugo, J. Martin, A. Mendiola, J. Middleton, L. Orta, S. Peters, M. Sra, C. Sun, D. Taylor, P. Thomas, S. Tippets, K. Yasukawa, and T. Yoke.

Also, in attendance by teleconference was Mr. George Skiles, Sjoberg Evashenk Consulting, Inc.; and Ms. Cepideh Roufougar, JacksonLewis P.C.

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

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

3. APPROVAL OF MINUTES:

4. REGULAR AGENDA:

4.1 Election of 2022 Board Audit Committee Chair and Vice Chair.

Recommendation: Nominate and Elect the 2022 Board Audit Committee Chair and Vice Chair.

It was moved by Director Santos and seconded by Director Kremen, and unanimously carried that Chairperson Keegan remain Chairperson, and moved by Chairperson Keegan and seconded by Director Santos, and unanimously carried that Director Kremen remain Vice Chairperson.

4.2 Board Audit Committee Audit Charter Discussion.

Recommendation: A. Consider recommended changes to Board Audit Committee Charter;
B. Provide input regarding further changes to Board Audit Committee Charter; and
C. Approve recommendation to Board of Directors for modifications to Board Audit Committee Charter.

Mr. Brian Hopper, Senior Assistant District Counsel, reviewed the information on this item, per the attached Committee Agenda Memo.

The Committee considered the information without formal action, and noted the following:

- The Committee considered the change to Article 8, Section 3;
- The Committee discussed the idea of establishing a quarterly status meeting with the financial auditor to share “pertinent” information as issues are uncovered instead of waiting to report out in a final report;
- The Committee added new content regarding training for the Committee to be conducted by the Chief Audit Executive was approved by consensus;
- The Committee revised the Charter content to clarify the timing and expectation of when the Financial Auditor should report uncovered issues to the Committee and full Board; and
- Chairperson Keegan will work with Mr. Taylor and Mr. Hopper to update the Charter content to bring to the full Board for approval.

4.3 Receive an Update on the Status of the Pacheco Reservoir Expansion Fact-Finding Investigation.

Recommendation: A. Receive an update on the status of the Pacheco Reservoir Expansion fact-finding investigation; and
B. Approve direction to staff to provide results of the fact-finding to the full Board of Directors.

Ms. Cepideh Roufougar, JacksonLewis P.C., reviewed the information on this item, per the attached Committee Agenda Memo, and per the information contained in Attachment 1.

The Committee received the information without formal action, and noted the following:

- The Committee, through consensus, requested staff to provide the Pacheco Reservoir Expansion Fact-Finding Investigation information to the full Board at a future Board meeting.

4.4 Receive an Update on the Status of the District Counsel Audit Recommendation Implementation.

Recommendation: Receive an update on the status of the District Counsel Audit recommendation implementation.

Mr. Carlos Orellana, District Counsel, reviewed the information on this item, per the attached Committee Agenda Memo.

The Committee noted the information without formal action.

4.5 Status Update on the Implementation of Recommendations from the 2015 Consultant Contracts Management Process Audit Conducted by Navigant Consulting, Inc. (Navigant), and status update on the Consultant Contracts Improvement Process.

Recommendation: Receive a status update on the implementation of the recommendations made by Navigant in the 2015 Consultant Contracts Management Process Audit and the status of the Consultant Contracts Improvement Process.

Ms. Concepcion Gayotin, Purchasing and Contracts Manager, reviewed the information on this item, per the attached Committee Agenda Memo, and per the information contained in Attachment 2.

The Committee received an update on this information without formal action, and noted the following:

- The Committee requested that staff come back with more detailed information about the integration of software and processes to ensure efficient collaboration on such procurements.

4.6 Second Quarter Fiscal Year 2021-22 Financial Status Update.

Recommendation: Receive the second quarter Fiscal Year 2021-22 financial status update as of December 31, 2021.

Mr. Taylor reviewed the information on this item, per the attached Committee Agenda Memo, and the corresponding presentation materials contained in Attachment 1 were reviewed by staff as follows: Mr. Enrique De Anda, Budget Manager, reviewed Slides 1 through 5; and Ms. Charlene Sun, Treasury and Debt Manager, reviewed Slides 6 through 13.

The Committee received the information without formal action, and noted the following:

- The Committee requested staff to provide quarterly updates to include the projected revenue versus just actuals received; and
- Mr. Taylor to follow-up with the Chief Executive Officer to consider how to collect financial data in an expedited manner.

4.7 Receive a Final Update on the Status of the Mitigation and Monitoring Compliance Audit Recommendation Implementation.

Recommendation: Receive a final update on the status of the Mitigation and Monitoring Compliance Audit recommendation implementation.

Mr. Carlos Orellana reviewed the information on this item, per the attached Committee Agenda Memo.

The Committee noted the information without formal action.

4.8 Discuss the 2022-2024 Annual Audit Work Plan.

Recommendation: Discuss the 2022-2024 Annual Audit Work Plan.

Ms. Jennifer Codianne, Chief Operating Officer, reviewed the information on this item, per the attached Committee Agenda Memo.

The Committee discuss the information without formal action, and noted the following:

- Staff expressed concern that the scope of the filed work is optimistic and aggressive;
- The Chief Audit Executive clarified that the scope is often extensive and will be adjusted depending on what is reviewed and uncovered during the initial audit planning phase; and
- The Committee expressed that even a small efficiency in Capital could be a significant savings to Valley Water.

4.9 Review and Discuss the 2022 Board Audit Committee Work Plan.

Recommendation: Review and Discuss topics of interest raised at prior Board Audit Committee (BAC) Meetings and make any necessary adjustments to the BAC Work Plan.

Mr. Taylor reviewed the information on this item, per the attached Committee Agenda Memo.

The Committee noted the information without formal action.

4.10 Financial Auditor Selection Process Discussion.

Recommendation: Approve staff recommendations to be incorporated into the Financial Auditor selection process.

Mr. Taylor reviewed the information on this item, per the attached Committee Agenda Memo.

The Committee, through consensus, approved staff's recommendation.

5. CLERK REVIEW AND CLARIFICATION OF COMMITTEE REQUESTS:

- 5.1 Mr. Max Overland, Assistant Deputy Clerk II, confirmed there no new Committee Requests.

6. ADJOURN:

- 6.1 Adjourn to Regular Meeting at 2:00 p.m., on March 16, 2022.

Chairperson Keegan adjourned the meeting at 3:40 p.m., to the 2:00 p.m. Regular Meeting on March 16, 2022.

Max Overland
Assistant Deputy Clerk II



Santa Clara Valley Water District

File No.: 22-0224

Agenda Date: 4/20/2022

Item No.: 4.1.

COMMITTEE AGENDA MEMORANDUM Board Audit Committee

SUBJECT:

Board Audit Committee's 2022 Annual Self-Evaluation Process.

RECOMMENDATION:

Discuss the Board Audit Committee's 2022 Annual Self-Evaluation Process.

SUMMARY:

The Board Audit Committee (BAC) was established to assist the Board of Directors (Board), consistent with direction from the full Board, to identify potential areas for audit and audit priorities, and to review, update, plan, and coordinate execution of Board audits.

On August 27, 2019, the Board approved the BAC Audit Charter to provide detailed guidance regarding how the BAC should carry out its functions and to guide the work of the Chief Audit Executive (CAE), Sjoberg Evashenk Consulting, Inc.

According to Article 9, paragraph 4 of the BAC Audit Charter, the BAC shall conduct a self-evaluation of its performance annually. The Committee shall conduct the evaluation of its performance to determine whether it is functioning effectively and to discuss with the Independent Auditor any observations related to the effectiveness of the Committee. The Committee shall prepare a formal report based upon each such self-evaluation and shall provide such report to the full Board following its adoption by the Committee.

At its January 19, 2022, BAC meeting the committee discussed the prior year's self-evaluation process. The general consensus was that the previous process didn't produce any valuable insight regarding the effectiveness of the committee. During the discussion it was decided that the CAE would conduct interviews with the Committee members to develop an overall comprehensive report. The report would be brought back to the BAC for consideration at a later date.

Overall, consistent with prior years, members of the BAC generally agreed that the overall governance and activities of the committee were aligned with its charter. However, members did raise specific areas where improvements may be achieved, and value added. These include:

- Maintaining and increasing open communication between the Board and individual directors and the Chief Audit Executive
- Formalizing communication between the BAC and external auditors (at least quarterly), including review of audit results
- Establishing a process to annually review the BAC Charter to identify desired or required updates
- Allowing the Chief Audit Executive and external auditors to raise sensitive issues in compliance with the Brown Act
- Meeting duration and content can be excessive and bureaucratic
- Minimizing adversarial nature of audits, to the extent possible, while building buy-in from management and staff

The purpose of this agenda item is to discuss the annual self-evaluation process for calendar year 2022.

ATTACHMENTS:

None

UNCLASSIFIED MANAGER:

Darin Taylor, 408-630-3068



Santa Clara Valley Water District

File No.: 22-0396

Agenda Date: 4/20/2022

Item No.: 4.2.

COMMITTEE AGENDA MEMORANDUM Board Audit Committee

SUBJECT:

South Bay Clean Creeks Coalition Partnership Agreement.

RECOMMENDATION:

Receive information on the South Bay Clean Creeks Coalition (SBCCC) Partnership Agreement.

SUMMARY:

After a series of exchanges of emails between Santa Clara Valley Water District (Valley Water) staff and SBCCC, on December 7, 2021, Mr. Steve Holmes, Executive Director of SBCCC, sent an email to Director Gary Kremen and Director Richard Santos (Attachment 1) expressing his concerns regarding the administration of SBCCC's Partnership Agreement with Valley Water's grant process.

On December 14, 2021, Valley Water staff sent a letter to Mr. Holmes expressing concerns regarding SBCCC's efforts in meeting with Valley Water staff as requested and meeting the requirements of the Partnership Agreement (included in Attachment 2). On December 26, 2021, Mr. Holmes emailed CEO Rick Callender and ACEO Melanie Richardson expressing concerns with the requirements of the Partnership Agreement and Valley Water staff efforts. On December 27, CEO Callender emailed Mr. Holmes (Attachment 3) to inform him that as CEO he would be asking for an independent third-party management review to be conducted to evaluate, review, and make recommendations surrounding the allegations asserted by both Valley Water staff and the SBCCC.

As this matter directly relates to recommendations from the 2020 Grant Management Audit, executive management instructed staff to engage one of the third-party consultants assisting with management audits to lead the 3rd party management review. As such, PMA Consultants was engaged to conduct the review.

The purpose of this agenda item is for the Board Audit Committee (BAC) to receive the findings and recommendations associated with the review and provide any comment or feedback as appropriate.

FINDINGS:

Based on the information provided and reviewed, interviews with Valley Water staff and interview with Mr. Holmes, PMA Consultants had the following findings:

1. The Partnership Agreement used a contract vehicle (i.e., a Standard Technical Services Agreement) which was unique when compared to the current agreement used for Grants.
2. SBCCC is not fully aligned with Valley Water as to the primary purpose and uniqueness of the Partnership Agreement, specifically:
 - a. SBCCC refers to the Partnership Agreement as a “Grant” which is incorrect.
 - b. Based on our interview with Mr. Steve Holmes (SBCCC’s Executive Director), SBCC believes the primary purpose of the Partnership Agreement is to get disadvantaged communities to participate in creek “clean-ups”. This perspective validates Valley Water’s staff concern that SBCCC does not recognize the importance of the outreach, education, and community engagement services with underserved communities. Valley Water viewed the primary objective as creating outreach and relationships with disadvantaged communities, and the subsequent clean up as a first step in getting involved after having created relationships and improving understanding of the educational aspects of the work. As stated in the Request for Proposals below, with emphasis:

*“The qualified entities to provide and support volunteer cleanup efforts and education to reduce contaminants entering the waterways and groundwater and **increase education and community engagement** for stewardship activities, **specifically in underserved and other communities** in Santa Clara County CA, USA along the Guadalupe and Coyote Watersheds.”*

Throughout the engagement, Valley Water emphasized the importance of the objective to create relationships and increase education prior to initiating clean-up activity, which created friction as SBCCC was more focused on quickly beginning the creek clean-up.

3. SBCCC knowingly and willfully let their worker’s compensation insurance lapse, although they knew it was a contractual requirement, in accordance with the provisions of Section 3700 of the California Labor Code. SBCCC justified the action based on “no response from Valley Water’s Procurement Department”, but there is no evidence of Valley Water having waived the requirement.
4. All invoices submitted to date have been processed and paid, and SBCCC stated that they did not intend to issue another invoice.

Mr. Holmes stated no less than three (3) times during our interview that he considers the contract to be rescinded based on his request to be released as stated in his February 4, 2022 email (included in Attachment 3) to CEO Callender. Additionally, Mr. Holmes claims that he never received a fully executed contract and considers that as further reasoning why SBCCC should not be considered to be currently “in contract”. It is noted that during the review, a fully executed contract was documented.

PMA RECOMENDATIONS TO MANAGEMENT:

1. Continue to use the existing, and recently improved, soliciting and award process administered by the Office of External Affairs, versus using the Procurement department as

was the case in the Partnership Agreement.

2. Develop an escalation and dispute resolutions process and include it as part of future Grants and Partnership Agreements.
3. Review Valley Water insurance notification requirements, specifically related to third party notification of cancellation
4. Review and confirm that SBCCC's insurance is in place for this Agreement, and all other open grants
5. Internally discuss the probability of successfully accomplishing the goals of the Safe, Clean Water Program as funded by the Special Property Tax, in concert with SBCCC's request to be released from their contract and establish a plan to either move forward with SBCCC or release them and initiate the solicitation process as managed by the Office of External Affairs, similar to Grants.

ATTACHMENTS:

Attachment 1: SBCCC Communication to Valley Water

Attachment 2: Valley Water Communication to SBCCC

Attachment 3: CEO Email to SBCCC

Handout 4.2-A: SBCCC Letter

UNCLASSIFIED MANAGER:

Darin Taylor, 408-630-3068

THIS PAGE INTENTIONALLY LEFT BLANK

From: Gary Kremen <GKremen@valleywater.org>
Sent: Tuesday, December 07, 2021 4:38 PM
To: Michele King <MKing@valleywater.org>
Subject: Fwd: SBCCC Partnership #33144 Check In (Valley Water/SBCCC)

Please distribute to audit committee

Gary Kremen

Begin forwarded message:

From: Steve Holmes <s.holmes@sbcleancreeks.com>
Date: December 7, 2021 at 1:05:40 PM PST
To: Gary Kremen <GKremen@valleywater.org>, Richard Santos <rsantos@valleywater.org>
Cc: Rick Callender <rcallender@valleywater.org>
Subject: Fwd: SBCCC Partnership #33144 Check In (Valley Water/SBCCC)

To: Dick Santos & Gary Kremen

From: Steve Holmes, South Bay Clean Creeks Coalition

Subject: Partnership Grant #33144

Attached you will find the past couple months of correspondence with VW Staff as we have been asked to revisit an executed grant from 2019. This review/overhaul has been on-going since April 2021 and been fraught with delays and reworks. At this point, my staff has told me that they refuse to administer Valley Water Grants. I'm pretty sure that modifying an executed contract is not a unilateral decision. I was hesitant to share these issues out of concern for repercussions with the many staff members I interface with at the District but this grant situation is toxic, robbed our group of the limited working hours available and ultimately been a fiscal drain on our monetary resources.

SBCCC has secured several grants via Clean, Safe Creeks Grants funding and has demonstrated our ability to execute all aspects of those previous grants. We also have numerous grants through other entities including County of Santa Clara, City of San Jose, Google, Knight Foundation, Sharks Foundation. This VW grant process is broken. I along with many of my partners are reluctant/ unlikely to submit grant requests due to how difficult and time consuming it is to finalize and receive funding. Valley Water has lost sight of how beneficial and necessary these funds are to NGO's as

we mutually struggle to clean our trash clogged waterways and educate community members. I can say that Staff has good intentions but has lost sight of the bigger picture.

So that you have a clear understanding of the struggles we have faced I have included several of the pain points below.

-Grant was to be awarded March 2018; one stipulation was we provide Workers Comp Insurance even though our work was covered under the City of San Jose. We purchased that insurance costing \$835 monthly then after no response from VW for 90 days and \$2505 paid out we canceled the policy. I met with Norma in August and explained once VW executed the grant we would secure a policy. In Sept, our contact reached out to inform us that due to not having an active policy that the grant would be handed over to the second place finisher. I explained my conversation with Norma which led to an internal review and grant ultimately awarded in Jan 2019. By stopping then restarting the insurance policy, we learned that this put us in a bad light with the insurer as premiums increased to \$1445 monthly with an addt. one time charge of \$15,437. And \$2900 paid out over Oct-Dec as we continued to wait. **So over \$5,000 wasted as we waited for a grant award 9 months after the posted March award date.**

-Since the work would be occurring in the field on Valley Water property, we were required to secure an Encroachment Permit. We submitted renewal forms into this Dept and emails defining the work area requesting a Permit. This required numerous emails requesting updates, **it took us ONE YEAR to secure, preventing our work from moving fwd.**

-Our first invoice review was delayed and stretched from one fiscal year into the next. Once the invoice was opened, several of the deliverable items were not accepted. Had we been notified in a timelier manner we could have shifted them to other grants but the delay due to turnover in the Dept meant we had to discard the work, receiving no credit.

-Due to all the starts and stops, Staff put in a request to extend the grant out 3 yrs. In April, we were notified and then asked to enter a deep dive of the grant having to provide definitions of work, schedules, clarify activities and this has gone on till now. You can see the level of granularity in the email stream that only dates back to Sept. Keep in mind that we already have an executed grant in place.

At this point, I feel the best path forward would be for us to prepare an invoice for all this extra work and development of materials, submit and receive payment then close out the grant. It is telling that the three most active groups along our waterways aren't seeking grants from Valley Water. I hope this shines light on a grant process that in essence tortures the grantees.

South Bay Clean Creeks Coalition just eclipsed 1,000,000 pounds of trash cleared from our waterways with over 15,000 volunteers hours logged. Our support for Valley Water had us invite a staff member to our recent Chinook Monitoring event. We share our findings with your Biology group on wildlife like our Chinook salmon. We regularly post on the good work Valley Water is accomplishing through our Social Media. We do need financial support from Valley Water, one solution would be to re-establish a new Partnership Grant between Valley Water and City of San Jose and have us work as agents as this was an effective approach in the past.

Sincerely,

Steve Holmes

----- Forwarded message -----

From: **Kristen Yasukawa** <KYasukawa@valleywater.org>

Date: Fri, Dec 3, 2021, 1:36 PM

Subject: RE: SBCCC Partnership #33144 Check In (Valley Water/SBCCC)

To: Steve Holmes <s.holmes@sbccleancreeks.com>, Carol Symkiewicz <c.szymkiewicz@sbccleancreeks.com>, Philip

Bair <p.bair@sbccleancreeks.com>

Cc: Sherilyn Tran <STran@valleywater.org>, Grants <Grants@valleywater.org>, Amy Fonseca <AFonseca@valleywater.org>

Hi SBCCC Team:

In preparation for our meeting next week, here are some follow up items. We can discuss these further and provide any clarification when we meet.

Thanks and have a great weekend!

Kristen

Updated Project Area Map (includes all red and black shaded areas)

<https://www.google.com/maps/d/u/0/edit?mid=1saCODhwwwyREkgLK8xb5S72ypb-7nUt&usp=sharing>

Translation Services

Our agency uses these professional translation services and then follows up with an internal translation review.

- AVANTPAGE – Emma Vargas, emma@avantpage.com, 530-750-2040 x16
- ANDESTRANSLATION – Isabel Oh, info@andestranslations.com, 408-515-5181

Translation guidelines:

1. Keep the organization Valley Water or Santa Clara Valley Water District in English.
2. Keep the city and street names in English.
3. Keep all webpage URLs and links the same in English.
4. For Chinese translation, Simplified Chinese is preferred over Traditional Chinese.

PPT Feedback

Our subject matter experts provided the following feedback on the PowerPoint presentations:

- Suggest clearly identifying the objective and call to action for each PPT
- Suggest aligning the PPT language and concept with the grade level (ex: some of the PPTs for elementary grades use the terminology for high school grade levels, or vice versa)
- Suggest aligning the presentations to learning standards such as Next Generation Science Standards or Common Core Standards
- Suggest incorporating engagement and interactive elements
- Suggest ensuring all text and graphics are legible, and complexity matches the grade level audience
- Recommend correcting grammar and misspellings (ex: Riparian Corridor PPT, slide 7 says “subsistence” should be subsidence)

KRISTEN YASUKAWA

COMMUNITY BENEFITS PROGRAM ADMINISTRATOR
Office of Civic Engagement
Tel. (408) 630-2876 / Cell. (408) 604-5356
[Schedule a meeting with me!](#)



SANTA CLARA VALLEY WATER DISTRICT
5750 Almaden Expressway, San Jose CA 95118
www.valleywater.org

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From: Amy Fonseca <AFonseca@valleywater.org>
Sent: Wednesday, November 24, 2021 9:48 AM
To: Steve Holmes <s.holmes@sbcleancreeks.com>
Cc: Philip Bair <p.bair@sbcleancreeks.com>; Carol Symkiewicz <c.szymkiewicz@sbcleancreeks.com>; Kristen Yasukawa <KYasukawa@valleywater.org>; Sherilyn Tran <STran@valleywater.org>; Grants <Grants@valleywater.org>
Subject: RE: SBCCC Partnership #33144 Check In (Valley Water/SBCCC)

Yes, that works!

Just sent out the Zoom invite.

Thanks,

AMY FONSECA

COMMUNITY BENEFITS SENIOR MANAGEMENT ANALYST
Office of Civic Engagement
Tel. (408) 630-3005 / Cell (408) 691-8889



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From: Steve Holmes <s.holmes@sbcleancreeks.com>
Sent: Wednesday, November 24, 2021 9:41 AM
To: Amy Fonseca <AFonseca@valleywater.org>
Cc: Philip Bair <p.bair@sbcleancreeks.com>; Carol Symkiewicz <c.szymkiewicz@sbcleancreeks.com>; Kristen Yasukawa <KYasukawa@valleywater.org>; Sherilyn Tran <STran@valleywater.org>; Grants <Grants@valleywater.org>
Subject: Re: SBCCC Partnership #33144 Check In (Valley Water/SBCCC)

Amy,

Can we reserve the 12/7 Tues at 2:00 time slot?

Steve

On Fri, Nov 19, 2021, 10:18 AM Amy Fonseca <AFonseca@valleywater.org> wrote:

Thanks, Steve. Right now, the following times are looking good:

Thurs 12/2 – 11:00 am

Mon 12/6 – 4:00 pm

Tues 12/7 – 2:00, 2:30, or 3:00 pm

Please let me know if any of those will work for you.

Thanks,

AMY FONSECA

COMMUNITY BENEFITS SENIOR MANAGEMENT ANALYST
Office of Civic Engagement
Tel. (408) 630-3005 / Cell (408) 691-8889

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From: Steve Holmes <s.holmes@sbcleancreeks.com>
Sent: Thursday, November 18, 2021 3:30 PM
To: Amy Fonseca <AFonseca@valleywater.org>
Cc: Philip Bair <p.bair@sbcleancreeks.com>; Carol Symkiewicz <c.szymkiewicz@sbcleancreeks.com>; Kristen Yasukawa <KYasukawa@valleywater.org>; Sherilyn Tran <STran@valleywater.org>; Grants <Grants@valleywater.org>

Subject: Re: SBCCC Partnership #33144 Check In (Valley Water/SBCCC)

Amy,

Apologize for the slow response. We've had 3 cleanups since Monday and several of my staff are away on vacation thru the 30th. Can we look at week of Dec 6th?

On Thu, Nov 18, 2021, 3:16 PM Amy Fonseca <AFonseca@valleywater.org> wrote:

Thanks, Philip.

Steve – is there any time next week that will work for you? If you could provide some options, I can see what we can arrange.

Thanks,

AMY FONSECA

COMMUNITY BENEFITS SENIOR MANAGEMENT ANALYST
Office of Civic Engagement
Tel. (408) 630-3005 / Cell (408) 691-8889

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From: Philip Bair <p.bair@sbcleancreeks.com>

Sent: Tuesday, November 16, 2021 12:18 PM

To: Amy Fonseca <AFonseca@valleywater.org>

Cc: Steve Holmes <s.holmes@sbcleancreeks.com>; Carol Symkiewicz <c.szymkiewicz@sbcleancreeks.com>

Subject: Re: SBCCC Partnership #33144 Check In (Valley Water/SBCCC)

I can meet on Tuesdays/Thursdays after 12 and Wednesdays anytime (unfortunately not free on Mondays) - whatever ends up being decided.

On Mon, Nov 15, 2021 at 1:24 PM Amy Fonseca <AFonseca@valleywater.org> wrote:

Thanks, Steve.

If possible, we would like to meet before the holiday to get everything sorted out. The soonest time we can all meet after 11/24 would be Thurs 12/2.

Would any of the following days/times work?

Tues 11/16 – 4:30 pm

Thurs 11/18 – 9:00 am, 1:30 pm or 2:00 pm

Mon 11/22 – Anytime after 2:00 pm

Tues 11/23 - 8:30 am or 11:00 am

Wed 11/24 – 10:00 am or 2:00 pm

Please let us know.

Thanks,

AMY FONSECA

COMMUNITY BENEFITS SENIOR MANAGEMENT ANALYST
Office of Civic Engagement
Tel. (408) 630-3005 / Cell (408) 691-8889

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From: Steve Holmes <s.holmes@sbcleancreeks.com>
Sent: Monday, November 15, 2021 12:55 PM
To: Amy Fonseca <AFonseca@valleywater.org>
Subject: Re: SBCCC Partnership #33144 Check In (Valley Water/SBCCC)

Whats available week after Thanksgiving and after the 30th is best.

On Mon, Nov 15, 2021, 12:52 PM Amy Fonseca <AFonseca@valleywater.org> wrote:

Hi everyone,

Would any of the following days/times work?

Tues 11/16 – 4:30 pm

Thurs 11/18 – 9:00 am, 1:30 pm or 2:00 pm

Mon 11/22 – Anytime after 2:00 pm

Let me know if you prefer another time.

Thanks,

AMY FONSECA
COMMUNITY BENEFITS SENIOR MANAGEMENT ANALYST
Office of Civic Engagement
Tel. (408) 630-3005 / Cell (408) 691-8889

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From: Sherilyn Tran <STran@valleywater.org>
Sent: Sunday, November 14, 2021 8:20 PM
To: Philip Bair <p.bair@sbcleancreeks.com>; Kristen Yasukawa <KYasukawa@valleywater.org>
Cc: Grants <Grants@valleywater.org>; Amy Fonseca <AFonseca@valleywater.org>; Carol Symkiewicz <c.szymkiewicz@sbcleancreeks.com>; Steve Holmes <s.holmes@sbcleancreeks.com>
Subject: RE: SBCCC Partnership #33144 Check In (Valley Water/SBCCC)

Hi Steve,

Per our conversation last week, I'll request for Amy to set up some time for all of us to be on a call together so we can sort out some of these issues. I appreciate you getting on a call to discuss with me on ways we can come to a compromise on some of these issues, as you are aware of the responsibilities my team has as stewards of public funds and the expectations your staff may have in terms of acceptable deliverables. But as you and I discussed, I think there is a path forward. However, to avoid further miscommunication and out of mutual respect for the work that both of our teams are doing, I think it's best that we all, including you and I, be a part of the next conversation, and hopefully, final conversation to clarify these items so we can move forward. Looking forward to resolving these issues soon.

SHERILYN TRAN
CIVIC ENGAGEMENT MANAGER

Office of Civic Engagement
Ofc. (408) 630-2772 / Cell (408) 604-5836

Santa Clara Valley Water District is now known as:

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From: Philip Bair <p.bair@sbcleancreeks.com>
Sent: Thursday, November 11, 2021 1:25 PM
To: Kristen Yasukawa <KYasukawa@valleywater.org>
Cc: Grants <Grants@valleywater.org>; Sherilyn Tran <STran@valleywater.org>; Amy Fonseca <AFonseca@valleywater.org>; Carol Symkiewicz <c.szymkiewicz@sbcleancreeks.com>; Steve Holmes <s.holmes@sbcleancreeks.com>
Subject: Re: SBCCC Partnership #33144 Check In (Valley Water/SBCCC)

Attention Valley Water team,

Steve, Carol, and I have gone through the items from the previous email and have outlined our responses below.

This email request for additional information represents the final review of outstanding deliverables. We would like to inform you that we will submit an invoice for the additional work that has been created as a result of the response to the agreement (e.g. meetings, reworks, creation of additional materials, etc.). Any additional materials provided to Valley Water will be uploaded to the Google Drive folder shared specifically with Valley Water (link provided in previous meetings/emails to be bookmarked and saved). We have added some videos for your approval, along with the maps.

Past experiences have resulted in long delays from receipt of documents by Valley Water from SBCCC for review, which have hindered progress on this grant. We request a five business day review time with response. In the event we receive no response, those tasks will be deemed approved by Valley Water and we will proceed with the grant. Through the course of this grant, if this situation occurs three times, we will collectively agree for the review process to be canceled. We are creating a "for review" folder within the shared google drive folder we provided. Upon sending notification of items being added to this folder, they will remain there for five days for review. After this point, they will be considered approved if no response is provided.

We would like to know the best practice for how to submit invoices to Valley Water, if you could provide that.

Below are our responses to your email's bullet points:

- Per our meeting on 10/27/21, could you provide one map that shows the full project area?
Could you provide this map within the coming week by 11/12/21?

I think it is unreasonable for us to hand trace a portion of the underserved community map just to add it to our existing map. We will provide two maps, the original expanded team map and the additional underserved area in San Jose that we agreed to. We appreciate the flexibility in expanding the range of the map. Both maps are in the shared folder awaiting your review.

Outreach Plan

Specific outreach activities: "These outreach activities will need to be documented as they are confirmed and scheduled."

In the spirit of following the terms of the original contract, SBCCC is not required to provide these additional details.

Final schedule – **Given delays in response times, it is unreasonable to expect specific days and times laid out in a schedule in advance and prior to grant approval. Creation of this**

document will have little value until we begin working in the areas to establish partnerships.

List of key stakeholders signed on to partner in activities – **We have already provided a list of stakeholders in the original agreement, and a list of schools/parks has been provided within the currently agreed-upon grant areas. Related to the updated grant areas, a list of parks and schools can be found in the Communication Plan in the shared folder.**

Culturally relevant outreach materials - **We will not develop translated materials for k-12 english-learning schools. Outreach materials will be translated when stakeholder's preferred language dictates it (i.e. In canvassing neighborhoods, we will create a flyer in multiple languages). We will first create outreach materials in English and submit to Valley Water for approval. Once approved, we will create multi-language flyers using google translation and then forward it to a translation service for review. If Valley Water can provide us info about their translation services, that would be appreciated. We will not be translating PPT's into other languages - please note that we are still waiting on a response on the original PPT's, and it is a concern of turnaround time as well.**

BioBlitz events will count as presentation deliverable – **Details and materials were provided to Sherilyn by Steve, we would just like a response on that. We have provided you with two handouts that are presented to participants on the day of the event, along with visuals that tell the story of our living streams (thus creating value in protecting them and our environment). We have a poster provided by San Jose ESD by how trash gets into waterways that we also use. We typically have a small cleanup alongside the bioblitz that reinforces the importance of caring for our urban streams. We have videos of local wildlife that we also provide to attendees during tabling at bioblitz events. See shared folder for aforementioned documents.**

Post-educational outreach survey results – **We would like more clarity on how to administer a survey to k-12 students. Pencil and paper surveys are best suited for this age demographic, but turning this in as a deliverable will pose unrealistic challenges. We cannot administer individual online surveys given that students do not all have access to a device in school. We propose a group survey facilitated by the teacher that covers the efficacy of the presenter and information. We would like to remove the questions regarding demographics from the forms for the post-presentation educational survey results, as they are inappropriate.**

Cleanup plan – **We will provide site location two weeks in advance of a cleanup. We have provided a detailed plan of how we conduct cleanups in the past. Post-cleanup details will be shared with Valley Water, including # of volunteers, what schools or community groups they're from, pictures, and weight estimate.**

Youth Eco Stewards YES Program – **The YES program's scope is aligned with the educational outreach plan already in place - it is explained in both the proposal and the agreement.**

Link for drive once

more: <https://drive.google.com/drive/folders/1bk3rKtCk4iYY0uuAbvPmlXww7VtlcKcZ?usp=sharing>

Thank you for your help,

-SBCCC

On Thu, Nov 4, 2021 at 5:08 PM Kristen Yasukawa <KYasukawa@valleywater.org> wrote:

Hi Philip:

Thanks for your patience as we reviewed the updated documents you sent over. Our feedback is outlined below.

We also compared the plan with the scope and deliverables in the agreement and with what's been completed to date (see attached for the information in a table format).

Please let us know if you have any questions or if we can provide further clarification. We are available for a follow up meeting to further discuss any of these items as well.

I'll be out of the office starting tomorrow, so Amy will be available to work with you to keep these items moving forward.

Thank you!
Kristen

Project Location – Valley Water agrees with SBCCC's proposed project location to include the original project area + the expanded boundaries + the disadvantaged communities areas on the CalEnviroScreen map in Coyote/Guadalupe watersheds in San Jose (red areas of the map).

- Per our meeting on 10/27/21, could you provide one map that shows the full project area? Could you provide this map within the coming week by 11/12/21?

Outreach Plan – SBCCC provided a communication plan and schedule. Valley Water reviewed the plan and would like the following items to be addressed:

- **Specific outreach activities** – SBCCC explained that the specific outreach activities may vary as community groups, schools, stakeholders, etc. confirm availability. These outreach activities will need to be documented as they are confirmed and scheduled.
- **Final schedule** – As explained in the above first bullet, please notify Valley Water of the confirmed activities as far in advance as possible, when they are finalized and scheduled.
- **List of key stakeholders signed on to partner in activities** – The communication plan includes the list of schools that will be outreached to, but could you also include a list of the local businesses, community centers and community organizations that will be outreached to? The original agreement also mentions neighborhood associations, social clubs, local corporations and local elected official offices.
- **Culturally relevant outreach materials** – Thanks for noting that you will be using a professional translation service. Could you provide the name of your translation vendor? We would like our internal translation reviewers to review the translated materials in advance to ensure quality translations.
 - We'd like to note that in the communication plan, you mentioned that flyers will be translated but PPTs will not. It is industry best practice that if you invite participants to engage in another language, that that activity/presentation is also available in the same language.
- **List of educational outreach events** - As explained in the above first bullet, please notify Valley Water of the confirmed activities as far in advance as possible, when they are finalized and scheduled.

PPT presentations – We sent the PPTs to our graphics team for logo approval, and to our

internal subject matter experts for content accuracy. We let them know that you want to use these as soon as possible and we will follow up with their feedback as soon as we receive it, hopefully within the coming week.

BioBlitz events will count as presentation deliverable – Valley Water agrees to count BioBlitz events as a presentation, as long as at the beginning of the BioBlitz event, a verbal presentation covering the talking points and with other visuals (video, display boards, etc) are provided that align with the PPT presentation content.

Post-educational outreach survey results – Please share the survey questions, which should include optional demographic data collection (age, language spoken, ethnic background, etc.). The survey must be reviewed and approved by Valley Water

Cleanup plan – Please develop a cleanup plan that includes proposed cleanup sites, # of volunteers targeted and actual, list of participating collaborating partners in the community, and a timeline/schedule of activities. This clean up plan must be reviewed and approved by Valley Water.

Youth Eco Stewards YES Program – The original scope of work mentions implementation of a Youth Eco Stewards YES Program. Could you provide more information about this program?

KRISTEN YASUKAWA
COMMUNITY BENEFITS PROGRAM ADMINISTRATOR
Office of Civic Engagement
Tel. (408) 630-2876 / Cell. (408) 604-5356
SANTA CLARA VALLEY WATER DISTRICT
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From: Philip Bair <p.bair@sbcleancreeks.com>
Sent: Thursday, October 28, 2021 1:20 PM
To: Amy Fonseca <AFonseca@valleywater.org>
Cc: Grants <Grants@valleywater.org>; Kristen Yasukawa <KYasukawa@valleywater.org>; Sherilyn Tran <STran@valleywater.org>; Carol Symkiewicz <c.szymkiewicz@sbcleancreeks.com>; Steve Holmes <s.holmes@sbcleancreeks.com>
Subject: Re: SBCCC Partnership #33144 Check In (Valley Water/SBCCC)

Hello,

All the updates and changes have been made as per yesterday's meeting notes, see the link here: <https://drive.google.com/drive/folders/1bk3rKtCk4iYY0uuAbvPmIXww7VtlcKcZ?usp=sharing>

This folder is for your viewing and has all PPT's and supporting documents (including the supplemental communication plan - grant document that contains all the elaborative details). Let me know if you have any questions. Could we get a time estimate on when it could get looked at and approved?

Thank you,

-Philip

On Tue, Oct 26, 2021 at 2:05 PM Amy Fonseca <AFonseca@valleywater.org> wrote:

OK, just sent the zoom link.

Thanks,

AMY FONSECA
COMMUNITY BENEFITS SENIOR MANAGEMENT ANALYST
Office of Civic Engagement
Tel. (408) 630-3005 / Cell (408) 691-8889

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From: Philip Bair <p.bair@sbcleancreeks.com>
Sent: Tuesday, October 26, 2021 11:25 AM
To: Amy Fonseca <AFonseca@valleywater.org>
Cc: Grants <Grants@valleywater.org>; Kristen Yasukawa <KYasukawa@valleywater.org>;
Sherilyn Tran <STran@valleywater.org>
Subject: Re: SBCCC Partnership #33144 Check In (Valley Water/SBCCC)

Tomorrow at 10AM works for me, thank you. Could you also invite Carol S. from our group as well for that time?

On Tue, Oct 26, 2021 at 10:15 AM Amy Fonseca <AFonseca@valleywater.org> wrote:

Hi Philip,

Sorry about that!

Kristen is out today. I can set something up for the following times:

Wed 10/27 (tomorrow) at 9:30 am, 10:00 am, 2:30 pm or 3:00 pm
Thurs 10/28 anytime after 1:30 pm
Friday 10/29 between 10:30 am and 12:00 pm

Let me know and I will set something up right away.

Thanks,

AMY FONSECA
COMMUNITY BENEFITS SENIOR MANAGEMENT ANALYST
Office of Civic Engagement
Tel. (408) 630-3005 / Cell (408) 691-8889

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From: Philip Bair <p.bair@sbcleancreeks.com>
Sent: Tuesday, October 26, 2021 10:06 AM
To: Kristen Yasukawa <KYasukawa@valleywater.org>
Cc: Amy Fonseca <AFonseca@valleywater.org>; Grants <Grants@valleywater.org>
Subject: Re: SBCCC Partnership #33144 Check In (Valley Water/SBCCC)

Hello, are we meeting today? I haven't received a zoom link. Just called and left a voicemail as well.

On Oct 22, 2021, at 12:37 PM, Philip Bair <p.bair@sbcleancreeks.com> wrote:

Hi Kristen,

I can meet for a half hour at 11:30 AM on Tuesday if we would like to meet over zoom. Could we invite Carol S. from our group as well for that time?

An item we'd like to address and have in writing is an acknowledgement that we are able to keep the original grant area (as identified in the proposal) in addition to the underserved communities map that you have shared with us. We are okay with expanding our boundaries to include the areas identified in your map - we just want to keep our original project from the agreement as well.

I have updated the logos in the PPT's as well.

Thank you,

Philip

On Fri, Oct 22, 2021 at 12:24 PM Kristen Yasukawa
<KYasukawa@valleywater.org> wrote:

Hi Philip:

I just called you and left a voicemail. Due to scheduling, it might be easier to set a meeting time. Here's my availability for early next week:

- Mon 10/25 any time between 1-3 p.m. or after 4 p.m.
- Tues 10/26 any time before noon

Let me know what date/time works best for you. I understand the urgency for us to connect so you can move forward with the work.

Thanks!
Kristen

KRISTEN YASUKAWA
COMMUNITY BENEFITS PROGRAM ADMINISTRATOR
Office of Civic Engagement
Tel. (408) 630-2876 / Cell. (408) 604-5356
SANTA CLARA VALLEY WATER DISTRICT
5750 Almaden Expressway, San Jose CA 95118
www.valleywater.org

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From: Philip Bair <p.bair@sbcleancreeks.com>
Sent: Friday, October 22, 2021 10:48 AM
To: Kristen Yasukawa <KYasukawa@valleywater.org>
Subject: Re: SBCCC Partnership #33144 Check In (Valley Water/SBCCC)

Hi Kristen,

You can call me today at your convenience, I'm working from home.

On Fri, Oct 22, 2021 at 10:03 AM Kristen Yasukawa
<KYasukawa@valleywater.org> wrote:

Hi Philip:

I apologize for not responding sooner. I did receive your voicemail but had not yet had a chance to re-review the items you sent. Do you have time today for a phone call to further discuss? It would be helpful if we could walk through the documents together to ensure we are on the same page.

Thank you,
Kristen

KRISTEN YASUKAWA
COMMUNITY BENEFITS PROGRAM ADMINISTRATOR
Office of Civic Engagement
Tel. (408) 630-2876 / Cell. (408) 604-5356
SANTA CLARA VALLEY WATER DISTRICT
5750 Almaden Expressway, San Jose CA 95118
www.valleywater.org

Clean Water · Healthy Environment · Flood Protection

From: Philip Bair <p.bair@sbcleancreeks.com>
Sent: Friday, October 22, 2021 9:27 AM
To: Kristen Yasukawa <KYasukawa@valleywater.org>
Cc: c.szymkiewicz@sbcleancreeks.com; Sherilyn Tran
<STran@valleywater.org>; Steve Holmes
<s.holmes@sbcleancreeks.com>; Grants <Grants@valleywater.org>;
Amy Fonseca <AFonseca@valleywater.org>; Dannette Lewis
<DLewis@valleywater.org>
Subject: Re: SBCCC Partnership #33144 Check In (Valley Water/SBCCC)

Hello,

I have tried contacting Kristen via phone several times this week (both phone #'s) and have left two voicemails in hopes of a call back. I'm writing here to confirm that all of the concerns about the communication plan were addressed in a separate document entitled "Communication Plan Grant." This had all of the details that were requested prior - perhaps it was overlooked. If there's a way you'd like documents sent in a way that they won't be overlooked, let me know.

Thank you for providing the updated logo.

-Philip

On Fri, Oct 15, 2021 at 5:10 PM Kristen Yasukawa
<KYasukawa@valleywater.org> wrote:

Hi Philip:

Thanks for sending over these items for the partnership agreement. We've reviewed what you shared and also have an update on the project area, see below.

If it's helpful, we are available for a follow up meeting to further discuss any of these items.

Thank you!
Kristen

Project Area

After our previous discussions, we discussed the project area internally. We would like to see if you could expand your proposed project area to align with the disadvantaged communities in the Guadalupe and Coyote Watersheds, as indicated on the [Cal EnviroScreen map](#) (screenshot below). Since you requested an expanded project area due to lack of involvement and engagement in the initial project area described in the proposal, we hope that a broader area will help even more with that concern and increase engagement and awareness with disadvantaged communities.

Communication Plan

It looks like you might've sent the old plan over accidentally. Could you send over the updated plan that incorporates our feedback and discussion items from our last meeting? See our comments in the last email chain below. The plan may also need to be expanded to correspond to the broader project area as described above.

9/23/21 email recap - Philip presented a draft project plan and timeline for Valley Water staff review. Initial staff feedback includes:

- **Due to the continued uncertainties of the pandemic impacts, identify the original activities and alternate activities for each task that could be performed in compliance with any public health ordinances (shelter in place, social distancing, etc.). This way, no matter what happens in the coming months, you will have approved activities to perform and that will minimize any delays.**
- **Include the updated creek cleanup protocols**
- **Add detail, description and explanation for the outreach and education materials**

Outreach Materials

At first glance we noticed that the Valley Water/Safe, Clean Water logo needs to be updated. Please see the attached logo file (we also have other file formats, upon request). Friendly reminder that we need to review all items that include the Valley Water/Safe, Clean Water logo.

We will be able to review the outreach materials for content once they are described in the updated communication plan and we can understand how it all fits together.

- Will all of these materials be translated into multiple languages?
Will the translations be conducted and/or reviewed by professional translators?
- How is the SBCCC BioBlitz event incorporated into the project?

KRISTEN YASUKAWA

COMMUNITY BENEFITS PROGRAM ADMINISTRATOR

Office of Civic Engagement

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From: Philip Bair <p.bair@sbcleancreeks.com>

Sent: Wednesday, September 29, 2021 10:17 AM

To: Kristen Yasukawa <KYasukawa@valleywater.org>

Cc: c.szymkiewicz@sbcleancreeks.com; Sherilyn Tran

<STran@valleywater.org>; Steve Holmes

<s.holmes@sbcleancreeks.com>; Grants <Grants@valleywater.org>;

Amy Fonseca <AFonseca@valleywater.org>; Dannette Lewis

<DLewis@valleywater.org>

Subject: Re: SBCCC Partnership #33144 Check In (Valley Water/SBCCC)

Hello,

Following up to provide PPT presentations, an event flyer (2 pages), and a write-up to complement the communication plan. I'm including a link to the PPT's we are looking to get approved before proceeding, viewable

here: <https://drive.google.com/drive/folders/1bk3rKtCk4iYY0uuAbvPmlXww7VtlcKcZ?usp=sharing>

-Philip

On Thu, Sep 23, 2021 at 9:18 PM Kristen Yasukawa
<KYasukawa@valleywater.org> wrote:

Hi Carol and Philip:

It was nice to meet you, Philip, and to connect on the status of the partnership project.

Per our conversation, here are the responses to your initial questions and the next steps we discussed. Please let me know if you have anything to add/update.

I will be out of the office until October. Please continue to work with Amy and Dannette in my absence.

Thank you – and may the force be with you!

Kristen

1) In regards to presentations to the Neighborhood Associations – most are now meeting on Zoom and don't plan on returning to in-person meetings.

Suggested solution: Screen shot of meeting

Forgo the survey and ask for a follow up letter from the Association regarding our participation in which they could provide feedback on our content.

As we discussed, we would prefer not to forgo the survey, especially since there are many successful virtual options. We recommend sending out the online survey via email after the meeting, or in the chat in the Zoom before the meeting ends. The survey would be in addition to the screen shot of the meeting and participant sign up/sign in list.

2) The project area has many commercial elements but few parks, schools or libraries. Can we expand the boundaries of the project by ½ mile to include more parks, schools etc? Here is the link to our proposed expansion of the project area:

<https://www.google.com/maps/d/edit?mid=1GwUUw4LYH1kXrWbTU8L4822agr7256Ue&usp=sharing>

Our team will discuss the project area and get back to you. The project area described in the RFP is the Guadalupe and Coyote Watersheds, specifically in underserved and other communities.

The watersheds map boundaries are accessible here:
<https://www.valleywater.org/learning-center/watersheds-santa-clara-valley>

For the disadvantaged communities boundaries, we use the Cal EnviroScreen map, which is accessible here:



Attachment 2 (to Third Party Review)

From: Rachael Gibson <rgibson@valleywater.org>
Sent: Tuesday, December 14, 2021 12:14 PM
To: Michele King <MKing@valleywater.org>
Cc: Rick Callender <rcallender@valleywater.org>; Darin Taylor <DTaylor@valleywater.org>; Melanie Richardson <mrichardson@valleywater.org>; Marta Lugo <MLugo@valleywater.org>; Sherilyn Tran <STran@valleywater.org>
Subject: SBCCC Partnership #33144 - Failure to meet agreement requirements
Importance: High

Good afternoon Michele, would you please add the response (below) to Item 2.1 that appears on the Board Audit Committee's agenda, and kindly share it with the Board Audit Committee? The issue will be agendized for an update and discussion at their next meeting. Thank you!

--Rachael

RACHAEL GIBSON

CHIEF OF EXTERNAL AFFAIRS

External Affairs Division

rgibson@valleywater.org

Tel. (408) 630-2884 / Cell. (408) 781-4739



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From: Marta Lugo <MLugo@valleywater.org>

Sent: Tuesday, December 14, 2021 10:33 AM

To: Steve Holmes <s.holmes@sbcleancreeks.com>

Cc: Rick Callender <rcallender@valleywater.org>; Melanie Richardson <mrichardson@valleywater.org>; Rachael Gibson <rgibson@valleywater.org>; Sherilyn Tran <STran@valleywater.org>; Kristen Yasukawa <KYasukawa@valleywater.org>

Subject: SBCCC Partnership #33144 - Failure to meet agreement requirements

Importance: High

Hello Steve,

I hope this finds you well. Sherilyn invited me to the meeting scheduled on Tuesday, Dec. 7, between our Grants team and you and your South Bay Clean Creeks Coalition (SBCCC) team to help move the partnership project forward. I was disappointed that you canceled the meeting at the last-minute last week because I wanted to discuss several serious issues regarding the partnership agreement between Valley Water and (SBCCC). Since you canceled last week's meeting, I am sending this email to highlight our concerns, outlined below, including SBCCC's failure to meet the agreement's requirements to increase education and community engagement for stewardship activities, specifically in underserved communities.

1. SBCCC's failure to provide sufficient evidence of progress made towards meeting Partnership deliverables

As you know, Valley Water is responsible for ensuring that the contract terms and deliverables outlined in the partnership are honored and performed in good faith. This partnership agreement, executed December 7, 2018, for approximately \$200,000, is to carry out critical work in communities that have been historically underrepresented in environmental stewardship efforts. Valley Water issued a formal Request for Proposal (RFP) for this partnership agreement to enlist a qualified entity *to: specifically engage underserved groups and disadvantaged communities.*

In the process of reviewing the first invoice for this partnership agreement, our grants staff noted that very little, if any, progress has been made on the tasks relative to engaging with underserved communities. Your staff member only recently shared with our grants team that SBCCC had been unsuccessful in its limited engagement efforts

with underserved communities and requested the grants team to provide him with additional tools and resources, which they did immediately. That included providing your team with best practices such as a list of certified professional translators, a more comprehensive outreach map targeting underserved/ disadvantaged communities, and review of materials and other resources, all as requested.

2. SBCCC's failure to authentically engage with underserved communities of color

SBCCC has made little effort to authentically engage or reach out to underserved communities or provide satisfactory evidence of doing so, as required by the agreement. It appears that there is a clear resistance and/or unwillingness from South Bay Clean Creeks Coalition to meaningfully engage with underserved communities and provide equitable services in our creeks for communities of color, which not only violates the terms of this partnership agreement, but also fails to meet Valley Water's commitment to and expectations relative to racial equality, diversity, and equitable treatment of all our diverse communities in its efforts to advance environmental justice. Here are two examples:

- SBCCC's Communication Plan submitted on November 1 indicated that PowerPoint presentations—which are an important outreach tool for presentations—would not be translated into other languages.
- SBCCC attempted to be reimbursed for outreach activities with other groups that were not included in the agreement, nor considered as historically underserved groups, including:
 - Presentation to the Valley Water Homeless Ad Hoc Committee
 - Presentation at a San Francisco Estuary meeting
 - Tabling event at Google for their employee Earth Day

3. SBCCC's failure to meet with Valley Water staff to provide necessary information and work together in good faith to resolve issues

I am also deeply concerned about your and your staff's refusal to meet with Valley Water staff to resolve these critical issues. In fact, you canceled the last scheduled meeting on Dec. 7 only a few hours prior, with no further explanation and no mention of rescheduling. This was after Valley Water staff attempted to meet with you directly to resolve the issues several times over the last few months. To recap:

- September 23: Valley Water met with your staff to discuss these deliverables and reporting.
- October 27: Valley Water met again with your staff to check-in on the status.
- November 4: Valley Water sent you and your staff an email requesting the follow up items from the last meeting.
- November 4: Phone conversation between you and the Civic Engagement Manager, where you agreed to a team meeting to get on the same page.
- November 5: Grants staff emailed SBCCC to set that meeting up.
- November 11: SBCCC staff emailed grants staff but did not respond to the meeting request.
- November 14: The Civic Engagement Manager reminded SBCCC staff that you

had agreed to meet with our team soon.

- November 18: You emailed to request that meeting occur the week of December 6; the meeting was set for December 7.
- December 3: Valley Water staff emailed some information in advance of the December 7 meeting.
- December 7: You canceled the meeting with no explanation and no offer to reschedule.

Further, I am troubled by SBCCC attempting to invoice Valley Water for SBCCC's time to perform and submit the required documentation, for example, attempting to characterize the work required for the agreement as "additional work" when in fact it is nothing more than doing what SBCCC is contractually obligated to do under the agreement.

4. SBCCC's failure to meet contractual obligations stipulated in partnership agreement

To be clear, your organization has a contractual obligation to provide meaningful engagement with underserved communities of color as outlined in the scope of the agreement, and this requires providing sufficient evidence and satisfactory documentation. That has not occurred to date, which raises serious questions about whether SBCCC wants to meaningfully engage with these underserved communities at all. Our expectation is that SBCCC please adhere to the contract terms and agreed-upon deliverables. As you know, Valley Water has an obligation as stewards of public funds to be accountable in ensuring agreements are carried out and funds are spent as promised to the taxpayers, and SBCCC has not done so thus far.

Valley Water requests that you abide by the terms of the partnership and submit proper documentation and evidence of meeting deliverables relative to outreach and engagement with underserved communities, so that this agreement may continue forward, as committed to by SBCCC. Our offer to meet to resolve these issues still stands; if you have any questions or would like to discuss any aspect of this agreement, I encourage you to please contact me and/or Sherilyn Tran for a meeting right away.

Thank you for your attention to this matter.

MARTA M. LUGO, MPH (*She/ Her*)

EXTERNAL AFFAIRS ASSISTANT OFFICER

Office of Racial Equity, Diversity & Inclusion

Office of Civic Engagement

Division of External Affairs

District Mobile (408) 613-9129

mlugo@valleywater.org

Santa Clara Valley Water District is now known as:



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VALLEY WATER

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RE: SBCCC Partnership #33144 - Failure to meet agreement requirements

External
Inbox



Rick Callender

Fri, Feb 4, 5:23 PM
(6 days ago)

to me

Hi Steve,

I appreciate you sharing your thoughts. This was definitely not an audit but a review which is much shorter and quicker. It would have only likely required a couple hours total of you and your staff time. Suggesting that it would have been an arduous process is simply incorrect, wrong and a bad interpretation of fact. As you know, we have 100s of grants and grantees and we also notice we have a different relationship and response from SBCCC, our surveys of our grantees bear out this fact as well.

I sincerely hope you change your mind about the review as that's the only way we will be able to get to the bottom of what's really going on and causing problems. I truly want to see the problems, no matter who is causing them, fixed. I am always willing to talk, but would include my staff in any conversations as I don't run nor direct the program as you know.

Having a better relationship is my goal too, however getting to and dealing with the truth and facts surrounding the assertions are needed in order to fix whatever is causing the problems. I thought you supported exposing truth, I think in this instance a review is badly needed and why I encourage you to let the facts be told to demonstrate what's the truth.

I appreciate you support for our programs and look forward to future collaborations.

r

Rick L. Callender, Esq.
Chief Executive Officer
Santa Clara Valley Water District
Office: 408-630-2017
Cell: 408-406-5203

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From: Steve Holmes <s.holmes@sbccleancreeks.com>

Sent: Friday, February 4, 2022 4:41 PM

To: Rick Callender <rcallender@valleywater.org>

Subject: Re: SBCCC Partnership #33144 - Failure to meet agreement requirements

Rick,

To go through an audit and adding more work to me and my Staff, what is gained if we're walking away? Valley Water is the only Organization where I have a stack of records 5" tall. There are several incidents related to this grant which if we chose to go down this path it wouldn't reflect well. Focusing on these sort of things is toxic.

SBCCC has collaborations with numerous groups yet this is the only one where I have such a contentious relationship, although I must say it has improved. SBCCC is looking for a clean break and closure on this matter. I hope you can help us achieve this outcome.

Having a better relationship amongst our organizations is still an important goal for me. Maybe once we get beyond this, we should pick up the phone and talk. We have some good things on the horizon. I do support your programs, ie. handing off potential Adopt-a-Creek partners. And, we both advocate for one day achieving Clean Healthy Creeks.

Steve

On Fri, Feb 4, 2022, 3:38 PM Rick Callender <rcallender@valleywater.org> wrote:
Hi Steve,

I am a bit disappointed and perplexed that you would not want to engage in a review of the contract and processes so that we could put into place best management practices to address concerns on all sides.

I think this review would have truly been an excellent way ensure that all voices were heard, and a factual report would be provided to me and the Valley Water Board - with solutions identified. I am aware that you raised challenges with our Board audit committee, however I remind you that the reason why I sought an independent review of the matter is Valley Water staff also raised many concerns with the administration of the contract, amongst other issues.

I am ccing the staff at Valley Water who I will ask to determine what process should be undertaken to achieve the outcomes you are seeking, and to determine what path Valley Water should take relative to the contract.

Thanks for the note, and I'm truly sorry you elected to take this path vs a review.

r

Rick L. Callender, Esq.

Chief Executive Officer
Santa Clara Valley Water District
Office: 408-630-2017
Cell: 408-406-5203

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www.valleywater.org

From: Steve Holmes <s.holmes@sbcleancreeks.com>
Sent: Friday, February 4, 2022 3:16 PM
To: Rick Callender <rcallender@valleywater.org>
Subject: Re: SBCCC Partnership #33144 - Failure to meet agreement requirements

Rick,

After discussions with my Board Members regarding this Grant, we would like to take a different path. South Bay Clean Creeks Coalition SBCCC doesn't seek to extend grant discussions/review any further. We would ask Valley Water to draft a mutual agreement with both sides rescinding the contract. We have several deliverables in process and/or completed related to this grant but at this time we will not be seeking any further grant monies related to this Partnership Grant. Our recent correspondence to this Committee provides several challenges grantees still face when working with Valley Water. And since we don't intend to seek further grants through VW, adding more time and energy to this situation doesn't make sense.

Steve

On Mon, Dec 27, 2021 at 8:44 PM Steve Holmes <s.holmes@sbcleancreeks.com> wrote:
Thanks Rick.

On Mon, Dec 27, 2021, 8:30 PM Rick Callender <rcallender@valleywater.org> wrote:
Steve,

Thank you for your note. I have seen the back and forth on this matter and want to make sure that all communities, including disadvantaged communities, and that the SBCCC are being treated fairly. I am aware of some of the challenges that have been present in past with moving grants along, however I am confident that many of those challenges were addressed in 2020 and 2021 with the audit, appropriate staffing, and updates to processes.

As you likely agree, this situation clearly requires a 3rd party review, especially since it has played out in front of the audit committee of the Board. As such, I am going to ask

for our independent management auditor to conduct a review of this matter so that I, and the Board, can have an accurate report and findings on what has occurred, and understand solutions and a path forward. I am going to ask for this review to be conducted within 30-45 days so that all can be assured of the facts and ways we can all provide better service and response. If it is expected to take longer, I will ask for Darin to respond to all.

By way of this email I am requesting that Darin immediately get the Management Auditor involved in a review of this matter, and evaluate the assertions on all sides, so adequate solutions and paths forward can be employed to the benefit of our community and the taxpayers of Santa Clara County.

Thanks for reaching out.

r

Rick L. Callender, Esq.
Chief Executive Officer
Santa Clara Valley Water District
Office: 408-630-2017
Cell: 408-406-5203



4/10/2022

To: Board Audit Committee

From: South Bay Clean Creeks Coalition (SBCCC)

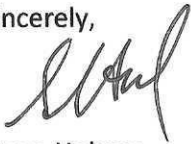
Subject: SBCCC Partnership Agreement Review

After review of the letter submitted by PMA Consultants and their findings (Page 2, Items 1-4) related to the Partnership Agreement and an absence of the issues SBCCC raised. We felt it necessary to include the Summary pages we submitted to PMA so that Board Members have the ability to better understand why SBCCC walked away from \$170,000 in funding through Valley Water (VW).

The majority of our issues stemmed from delays by VW Staff. PMA makes no mention of a near 2 year delay in receiving an encroachment permit to gain access and begin work along the Waterways. Their summary that "all invoices are paid", leaves out much related to our struggles seeking payment for services performed. Requiring we purchase insurance without an executed agreement led to a 9 month window where we were required to lay out \$835 monthly. With no communication back from Staff as to status of agreement we did cancel the policy. Having to outlay monies (insurance, hiring staff) with no means for invoicing VW places it's Partners in fiscal harm's way.

SBCCC's representative will be out of town with no internet or phone access the day of this next Committee meeting. And since the Committee's collection of documents doesn't include our issues, we felt it necessary to forward so that anyone reviewing this issue has a 360 degree view. Support materials related to our Summary can be made available upon request. We have submitted these documents in the hopes that with some adjustments future Grantees will benefit from this exercise.

Sincerely,



Steve Holmes

Executive Director

South Bay Clean Creeks Coalition

A. Sue Tippetts letter dated 2/10/16 Internal review of our earlier derailed Plant Mgt Project

To help provide a historical record of our challenges obtaining an Encroachment permit, we have included this VW Memo. SBCCC approached VW seeking help in locating a parcel to conduct project on VW property. Site was identified; permits from NOAA, CDFW submitted, paid for and secured. City of Campbell & Acterra were brought on board and a Grant application for the project was submitted through VW Grant Program. During this period VW changed their mind, entered project area and removed all invasive thus killing our project. Prior to this, SBCCC had seen VW staff in project site inventorying invasive plants and told by these individuals that a project was eminent. We reached out to lead VW mgrs and were assured that VW was moving fwd with our project.

This letter addresses reasonable expectation for receiving an executed Encroachment Permit, 3-4 weeks (pg 3). And they decided to add inaccurate statements pointed at our Organization; “work activities undertaken outside permit terms and information is relayed to volunteers not in a partnership tone and includes misinformation”. This letter was then published on the VW website. At the time, Board Chair Lezotte asked that the letter be removed but staff reported back that it couldn’t be taken down.

B. Workers Comp

I understated the financial impact resulting from the delays. I spoke with the State Fund auditor as to why my rates were so high. He indicated that the lapse in policy was perceived by the insurance carrier as our organization doing work without coverage in place even though we were covered under the City of San Jose’s Volunteer policy. So a higher rate was implemented as a punitive measure. He said it would revert to lower rates as the policy moved fwd. **Additional fees for Year 1 \$13,144.61**

Timeline

- RFP Notice of Intent to Award Week of March 12-16 2018
- Workers Comp purchased March 2019 (paid 3 months at \$835 = \$2505.90 Total)
- Cancelled Policy after no response from VW June 2019
- Meeting with CEO to discuss cancelled Workers Comp Insurance (Summer 2019)
- Staff instructed SBCCC to purchase new Policy Sept 2019 (paid 2 payments in 2019 \$1,445.25 = \$2,890)
- Contract awarded 12/1/2019 **SBCCC paid out \$5,396.40 with no Contract Awarded**

Recommendation: Require Grantees to procure Insurance once all issues have been resolved with VW to prevent financial hardship. Lack of empathy by VW Staff, no apologizes or acknowledgment of the harmful impact their inactions have had on us as a Partner shines a light on their Culture.

C. Encroachment Permit

Upon receiving the grant award, VW Staff and I notified the Encroachment Permit group of our permit requirement via emails, face-to-face meetings including Dept. Mgr, Sherilyn Tran, Marta Lugo & Rick Callendar. After our early grant activities on VW property without permit, Sherilyn instructed us to cease activities including Cleanups, Bioblitz's, Learning days along Waterways until we received the Permit. Sherilyn's Dept was sympathetic to our frustration but had no power to influence this other Dept to expedite issuing us a permit. Phase 1 of grant activities establishes the target group to migrate to Phase 2 watershed activities, with no permit fwd progress was stopped in its tracks. Our D3 grant will require a permit, our first submittal was pushed out by this Dept. So we will have to start this process from scratch at some point in the future.

Project awarded 12/2018 with a two year term ending 12/31/2020.

Encroachment Permit issued 12/8/2020. It took 2 years to receive an executed Permit.

Recommendation: Delays in this Dept date back at least 6 years (A. Sue Tippetts Letter pg 3). Vincent Gin indicated yrs back that it was a manpower issue or is it a Silo issue? Having to make endless update calls, emails and meetings for updates is the equivalent of death by a thousand paper cuts.

D. Partnership Grant delayed receipt of physical copy to Grantee

Staff member reached out 12/1/18, alerted me that a document would be forthcoming for signatures and that a PO would follow. After no further communication, we reached out to staff person on 12/31/18 who said process had been completed back on 12/1/18. We asked about PO and were told to simply move ahead. No PO?

During our struggles with the Worker Comp/Delayed Grant Award issues, we suggested elevating the situation to a higher authority; she told us that that would disqualify us from being awarded the grant. This placed us in a difficult space so we opted to just move forward without a contract in hand.

E. Invoicing

Time sequence of events provided via email **E. Subject: Request for Payment for C33144 Partnership Date: March 3, 2020. Submittal of invoice delayed due to VW staff working backlogged grant invoices first. District was facing attrition/manpower challenges which delayed all invoicing to grantees.** With no means to receive payment for further work on the grant deliverables SBCCC paused work until VW caught up and processed our first invoice. During this period of time; VW implemented a new invoicing portal further delaying & COVID caused delays near the end of this timeframe as well.

Timeline

- Work completed Jan-Aug 2019
- Invoice submitted 3/3/2020 (pg 1)
- Response from VW Staff, invoices had been reviewed 4/29/2020 (pg 2)

-VW Staff acknowledging delays and accepting some documents 5/7/2020 (pg 3)

-Recap of invoice deliverables and VW accept/declined items 5/7/2020 (pg 4-6)

Note: VW gave us written instructions to cease grant activities along waterway, previously staff had verbally instructed to suspend due to the Encroachment permit issue (Oct/Nov 2019 timeframe?)

-SBCCC resubmits invoice to VW 6/3/2020 (pg 7)

-VW acknowledges receipt and submittal for payment 6/5/2020 (pg 8)

Note: Had VW been able to process our invoice in a timelier manner, we could have shifted the denied deliverable/activities to alternative grants. But due to a delay of up to 16 months since activities had been completed , we essentially lost these activities.

Staff's insistence that SBCCC run through a second discovery phase April to Nov

SBCCC feels that VW already conducted this activity prior to approving the contract in 2018. All this recent discovery work SBCCC was not contractually bound to undertake but was pressured into participating. We think that if VW is seeking the truth then having an outside law group providing an opinion is warranted.

Since April, SBCCC was required to do a deep dive into expanding descriptions of activities to satisfy VW Staff that they met their standards. Many of these were delayed by VW as they waited for responses back from other Depts, our PowerPoint took nearly 30 days to get a response. We felt like there was no end to what staff would ask for next. To get a flavor for this process, we included the email **G. Letter to Board Members dated 12-7-21** which unfortunately only extends back to mid-Sept. During one of my final calls with Sherilyn, we suggested that if we didn't receive a response back within 10 business days that the item would be deemed approved.

I think it's important to look at the bigger picture here, we were being asked to activate neighborhoods in the underserved areas. This in itself posed a challenge as our door to door canvassing connected with many of our underserved. A common response was that due to economic pressures a large percentage of people contacted liked what we were doing but held down 2-3 jobs making it near impossible to attend our outreach activities. To be clear, we are not saying this was a show stopper merely an unforeseen obstacle. My point is, by taking the simplified RFP activities and making them so much more difficult staff was inadvertently making a difficult undertaking even more so. The PowerPoint situation was the breaking point.

Hiring Staff

This project required us to hire a Project Manager paying \$60,000. With delays in payment of invoices, our organization was negatively impacted. Having to then go back over the terms of our grant while providing no funding and having to suspend work due to no Encroachment Permit led to Staff reduction measures. Finding good people in this job market is hard enough.

F. D3 Delay on amendment 7 month

Having multiple grants working gives us a better view of what is actually happening in this Dept. We have been assured that past delays with grant administration are behind us yet in mid-January we received approval on this minor amendment to our grant after 7 months. My concern is that when this next round of grants floods into this Dept. things will revert back. By taking the time to share with you SBCCC's challenges, I do want to emphasize that staff is hard working, fair and has good intentions but we have pain points like permitting, lengthy reviews before grants are approved, manpower shortages that brought invoicing to a halt. SBCCC has several grants through many sources tied to public funds that require minimal paperwork and red tape. The pendulum needs to swing back to a middle point.

H. Letter to Board Members dated 12-26-2021

Direct rebuttal to Marta Lugo's claims

Item 1. Very little progress has been made due to Encroachment Permit delays, VW not able to process invoices, recently the second vetting exercise since April. We did point out that we have accomplished much in this grant target area but have been unable to assign these activities to the grant. It has been very successful, results were shared in our original reply to this email.

Item 2. At the first vetting prior to the grant being awarded, we explained that since the schools taught in English, we would follow this protocol and now we have staff trying to change what has been previously agreed to. The (3) rejected activities have valid reasons to be included but VW Staff said "no". The Google tabling established a relationship with this organization who's new campus in San Jose borders the grant area. The San Francisco Estuary presentation had representatives of NGO's working in the target area as well as SJSU professors who could be allies & VW Ad Hoc Committee presentation updated staff and Board Members working closely with us along the waterways in this grant target area.

Item 3 Many of the calls our Executive Director had with staff are missing, these calls conflicted with other activities we had running during these dates like a Cleanup in the Target Area and a Chinook salmon creek walk but we took the calls with Sherilyn, the second while standing in Los Gatos Creek in waders. Plus email back to staff is not included in her list. Everything seemed to break down after our email dated **Nov 11 (Document G pg. 9-10)** where we pushed back on the entire vetting process questioning whether VW was overstepping the contract terms agreed to prior. Since we never received a strongly worded counter to the email we assumed staff had reviewed the matter and we were later told by Sherilyn that the list of remaining deliverable had been waived. Kristen's email dated **Nov 4 (Document G pg 12)** stating "best practices", participants of a presentation have access to a copy in their language seemed to imply VW was again pushing us to include multiple languages of the PowerPoint. I called Kristen and shared my frustration and Sherilyn reached out to me the next day to clarify this would not be a new requirement. Then in her email dated **Dec 3 (Document G pg 2)** she once again started telling us that the PowerPoint needed to align with Next Generation Science Standards and at that moment we had had enough even though Sherilyn reached out and said this too was just a comment and not a new stipulation but we were done. In Marta's letter it seems to imply we are

refusing to comply with the terms of the contract. We feel VW is overstepping their authority beyond the already agreed to terms with this lengthy revetting.



Santa Clara Valley Water District

File No.: 22-0451

Agenda Date: 4/20/2022

Item No.: 4.3.

COMMITTEE AGENDA MEMORANDUM Board Audit Committee

SUBJECT:

Discuss the Necessity of Evaluating Risk Management Organizational Alignment; Determine If Any Changes Need To Be Made to the Annual Audit Work Plan; and Authorize Staff to Present Any Recommended Changes to the Full Board for Approval to Update the Annual Audit Work Plan at a Future Board Meeting.

RECOMMENDATION:

- A. Discuss the necessity of evaluating the Risk Management Organization alignment;
- B. Determine if any changes need to be made to the Annual Audit Work Plan; and
- C. Authorize staff to present any recommended changes to the full Board for approval to update the Annual Audit Work Plan at a future Board meeting.

SUMMARY:

The Board Audit Committee (BAC) was established to assist the Board of Directors (Board), consistent with direction from the full Board, to identify potential areas for audit and audit priorities, and to review, update, plan, and coordinate execution of Board audits.

The District Counsel Audit Final Report (Attachment 1) was provided to the BAC for review and discussion at the December 16, 2020, Committee meeting. Recommendation #5 from the District Counsel Audit provides that the Board Audit Committee should ensure that the scope of the audit proposed in the FY18/19 - FY 20/21 Annual Audit Work Plan (Attachment 2) for the risk management function include an evaluation of the advantages and disadvantages of implementing alternative organizational alignments for the Risk Management Unit and the Workers' Compensation programs.

As referenced in Recommendation #5 from the District Counsel Audit, a Risk Management audit was separately identified in the FY 18/19 - FY 20/21 Annual Audit Work Plan (Audit ID 4). The audit objective for the Risk Management audit would have evaluated whether risk management business processes could be implemented more effectively, i.e., contract claims, workers' compensation, small claims.

On January 26th, 2021, the Board received and discussed the recommendations resulting from the District Counsel Audit. The Board decided to delay any implementation of the recommendations until

a new District Counsel was appointed, had an opportunity to get acclimated to their new role, become familiar with their organization, and review the report and findings from the audit. A new District Counsel was appointed, effective June 1, 2021.

At this January 26, 2021 Board meeting, the Board of Directors passed a motion removing Risk Management alignment issues from the audit and directing the CEO to work with the new District Counsel to determine where the Risk Management function should reside.

At the October 20th, 2021 BAC meeting, Committee Chair Keegan noted that a new District Counsel had begun working and recommended that discussion of the alignment of the Risk Management Unit be deferred for several months to allow the District Counsel and the interested Board members to further evaluate the placement of the Risk Management Unit within the District Counsel's authority.

On January 11th, 2022, the Board approved the 2022-2024 Annual Audit Work Plan (Attachment 3) which also includes a Risk Management performance audit (Audit ID 19). The audit objective for the Risk Management audit will evaluate whether there are advantages or disadvantages from realigning business functions, and if risk management business processes would gain any benefit from an update.

For the BAC's further information, Risk Manager David Cahen conducted an informal survey of other local agencies to understand the placement of their risk management units. The results of that informal survey are included as Attachment 4.

The District Counsel and CEO have spoken and recommend that the Risk Management Unit remain within the District Counsel's Office. The amount of interaction between Risk Management and the attorneys in the District Counsel's Office coupled with the District Counsel's familiarity with the claims process and with insurance issues make this a logical placement for the Unit.

The purposes of this discussion are to discuss this recommendation and to receive District Counsel's perspective regarding the proposed Risk Management performance audit as described in the 2022-2024 Annual Audit Work Plan, determine if any changes need to be made to the Annual Audit Work Plan, and authorize staff to present any recommended changes to the full Board for approval to update the Annual Audit Work Plan.

ATTACHMENTS:

Attachment 1: District Counsel Audit Final Report
Attachment 2: FY18/19 - FY20/21 Annual Audit Work Plan
Attachment 3: 2022-2024 Annual Audit Work Plan
Attachment 4: Informal Survey of Risk

UNCLASSIFIED MANAGER:

Carlos Orellana, 408-630-2755



TAPInternational

Final Report

**DISTRICT COUNSEL'S
OFFICE CAN BENEFIT
FROM ENHANCED
STRUCTURE AND
IMPROVED MANAGEMENT
PROCESSES**

December 7, 2020

**Final Report by the Independent
Auditor to the Board Audit Committee**



Date: December 7, 2020

Memorandum For: Board Audit Committee (BAC)

From: Independent Auditor, TAP International, Inc.

Subject: Transmittal of TAP International Performance Audit Report

Attached is our final report, *District Counsel's Office Can Benefit from Enhanced Structure and Improved Management Processes*. The audit objective was to identify potential structural, organizational, and procedural improvements in the District Counsel's Office.

Our audit identified opportunities to improve service delivery and performance through an enhanced operating strategy, implementing structural and process improvement changes. The report contains five recommendations that will enhance the efficiency and effectiveness of legal services provided to Valley Water's operational and administrative units.

A summary of agency responses to the recommendations in this audit report is included in Appendix A and the full response is included in Appendix B.

TAP International, Inc.

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The background of the slide is a scenic landscape. The top half shows a bright, hazy sky with a sunburst effect on the right side. Below the sky, there are rolling hills and a layer of white clouds or fog. In the foreground, there is a field of tall, dry grass. A yellow rectangular box is overlaid on the right side of the image, containing the section header text.

Section 1: Audit Highlights

Audit Highlights

Why the Audit Was Conducted

The Office of the District Counsel (District Counsel's Office) provides a myriad of legal services to Valley Water's Board of Directors (Board) and 80 operational and administrative offices, divisions, and units.¹ At the Board's direction, the Independent Auditor (Auditor) conducted a performance audit of the District Counsel's Office to identify potential structural, organizational, and procedural improvements.

How the Audit Was Conducted

The performance audit included a review of the District Counsel's Office organizational structure, operational performance, staff roles and responsibilities, processes, and policies and procedures. The audit work included: (1) interviews with District Counsel's Office attorneys and staff, (2) interviews with the primary customers of the District Counsel, (3) analysis of financial data, contracts, consultant agreements,² and other documentation related to the District Counsel's Office operations, and (4) peer agency research on structure and practices. This performance audit used qualitative evidence, documentary evidence, and other performance information to assess overall agency effectiveness. The Auditor took additional steps to corroborate and substantiate qualitative information described in the report per generally accepted government auditing standards.

What the Audit Found

Valley Water operations and administrative units generally agreed that the District Counsel's Office provides quality legal services, providing legal review, advice, and representation, but many of them raised concern about the frequency of communication and timeliness of services. This audit determined attorneys have managed and prioritized their projects and workflows without centralized processes or tools. Each attorney has been encouraged to be independent and operate their own legal service center. While this management approach provides high autonomy to attorneys and increases morale, it also creates non-uniformity in service delivery among Valley Water operational and administrative units and customer satisfaction concerns.

While there is not an established operating standard for public sector legal offices, best practices suggest that operating models are evolving from board-centric roles and as-needed support

¹ Valley Water has 13 attorneys, risk and workers compensation managers and administrative support personnel supporting seven Directors serving on the Board and over 800 regular employees. The District Counsel's Office also outsources legal services.

² Also referred to as professional services agreements within Valley Water.

services on a task-by-task basis to enterprise-wide models that uniformly support organizations. This audit reports various strategies to update the District Counsel's Office current operating model consistent with best management practices as well as practices identified in other public sector legal offices, such as added policy and procedural development, use of added document templates, effective workflow management, use of master services agreements, service level agreements (SLAs), performance management systems, and implementation of multi-source feedback assessments (e.g. upward, downward, and lateral input on service delivery satisfaction to and from the department, customers, and other stakeholders). Implementation of these strategies would likely increase customer satisfaction.

Recommendations (in priority order)

1. The District Counsel's Office should develop and implement a written strategy for approval by the Board that provides an updated operating model for efficient service delivery. In the development of the strategy, the District Counsel can consider, for example, enhanced policy and procedure development³ and new/enhanced tools described throughout this report. These tools, for example, can include workflow management, SLAs, added performance measurement, use of multi-source feedback assessments, and risk-based criteria assessments.

Estimated In-House Labor

- Strategy Development: 24 to 36 hours to discuss and agree upon potential enhancements.
 - Strategy Implementation: Costs are dependent upon the scope of the strategy developed.
2. The District Counsel and the Information Technology & Administrative Services Chief Operating Officer should update Valley Water Administrative Policies that (1) identify areas that require the development of new contractual and agreement templates, and (2) identify the responsible party for updating existing contract, agreement, and amendment templates as well as non-disclosure agreements (NDAs). These updates should also include the responsible party for NDA monitoring.

³ -Development of risk-based criteria for reviewing consultant agreements, purchase acquisitions, and/or other types of contracts.

-Development of criteria for prioritization and assignment of Board and Valley Water requests for services.

-Preparation (sources of information to be used) and maintenance of the Quarterly Report provided to the Board and the Litigation Matrix used to document current litigation status, which is part of the Quarterly Report.

-Clarification of EL 7.5 regarding the handling of Board member requests for the drafting of resolutions.

-Maintenance of the Legal Advice Matrix used to document the communication of advice provided to Valley Water management and staff.

-Personnel training requirements, including cross-training and succession planning.

-E-discovery procedures (currently in development).

-Criteria for risk management decision-making applicable to insurance.

Estimated In-House Labor

- Up to 36 hours to meet, confer, review, and approve updates to the administrative policies.

3. The District Counsel should convene a workgroup on planning activities or projects involving contracting opportunities with key stakeholders (E.g., Chief Executive Officer (CEO) and Chief Operating Officers (COOs)) to develop a decision-making guide for early engagement with the District Counsel Office and Risk Management.

Estimated In-House Labor

- Up to 24 hours to prepare for, facilitate, and document the working group meeting results.

4. The District Counsel should discuss with the Board the use of a master services agreement to add another procurement mechanism for legal services.

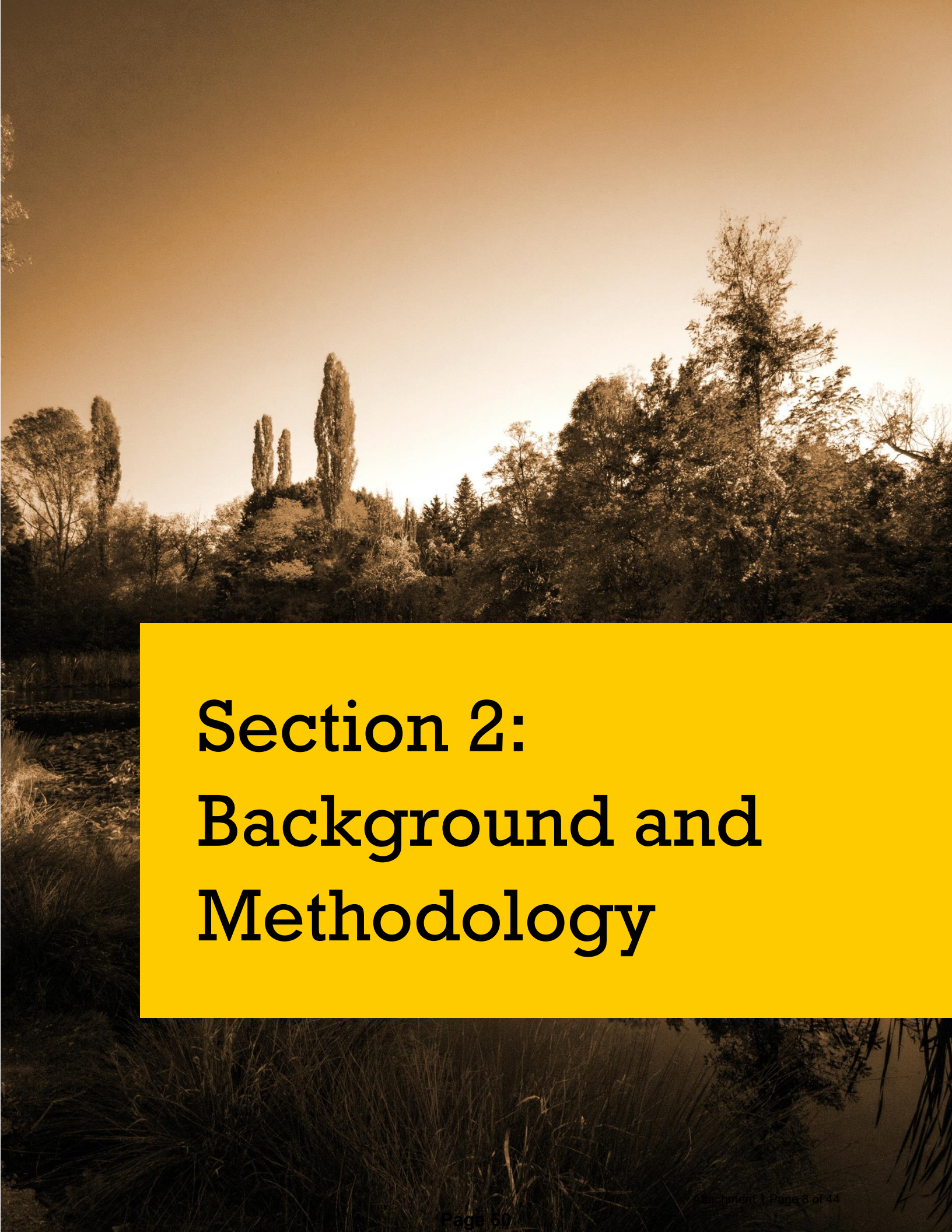
Estimated In-House Labor

- Up to five hours for preparation of memo and Board discussion.

5. The Board Audit Committee should ensure that the scope of the audit currently proposed in the annual audit work plan for the risk management function, include an evaluation of the advantages and disadvantages of implementing alternative organizational alignments for the Risk Management Unit and the Workers' Compensation programs.

Estimated In-House Labor

- No labor cost for the District Counsel's Office.

A sepia-toned photograph of a landscape. In the background, a hill is covered with dense foliage, including several tall, slender, columnar trees that stand out against the sky. The foreground features a body of water, possibly a pond or a slow-moving stream, with tall, thin reeds or grasses growing along the left bank. The overall tone is warm and historical.

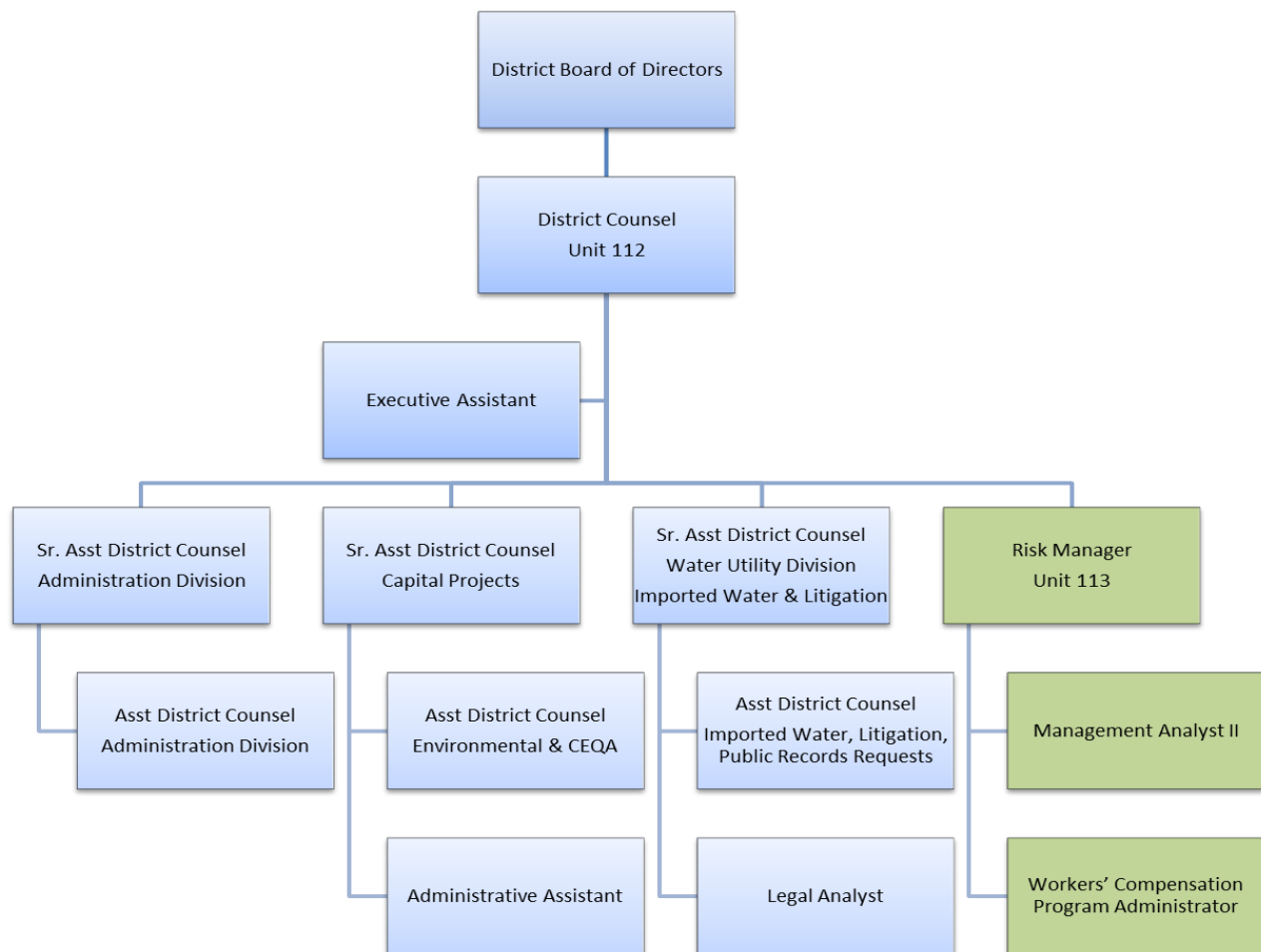
Section 2: Background and Methodology

Background

To Whom Does the District Counsel's Office Report?

The Valley Water Board directly appoints the District Counsel, who serves at the discretion of and reports directly to the Board, as shown in Figure 1 below. In addition to the District Counsel, Valley Water has two other Board Appointed Officers (BAOs) who serve as part of Valley Water's executive leadership team: The CEO and the Clerk of the Board. The District Counsel, as a BAO, is expected to "provide high quality, trustworthy and responsive legal counsel to Valley Water in a manner that creatively helps accomplish Valley Water's mission." The current District Counsel was appointed in February 2010.

Figure 1. Organizational Chart of the District Counsel's Office



How Should a Public Legal Counsel's Office Operate?

While multiple state and local laws guide District Counsel decisions, there is not an established standard for public legal offices that guide leaders on how day-to-day management should be performed. Public legal offices consistently report to an elected governing body with day-to-day strategies varying from limited organizational maturity to robust maturity that include use of formal SLAs, integration of legal support in enterprise-wide communication strategies, formal delineation of roles and responsibility, and embedding attorneys in specific departments. The size and complexity of the public agencies drive the maturity of the operating model.

Best practices for in-house legal service delivery recommend an exact operating model communicated within the legal office and with the rest of the agency. The strategy is based on the needs of the requestors of legal services (customers), defines the roles and responsibilities of all the parties, and the processes to support consistent service delivery.⁴

What Services are Provided by the District Counsel's Office?

Nine staff members assist the District Counsel in providing legal services to Valley Water. Three additional staff support the Risk Management and Workers' Compensation programs. Key services, among others, provided by the Office address:

- Water rights,
- Construction contract and amendment review,
- Consultant agreement and amendment review,
- Procurement agreement review,
- Contract drafting and negotiation,
- Public procurement compliance,
- Employee labor agreements and human resource issues,
- Construction law,
- Real estate law,
- Environmental law,
- Litigation,
- Grant compliance,
- Finance law,
- Statutory interpretation,
- Open government and ethics issues,
- General legal advice,
- Workers' compensation, and

⁴ Deloitte Legal, "In-house Legal Service Delivery – Transform Your Legal Operating Model," 2020.

- Risk management and claims.

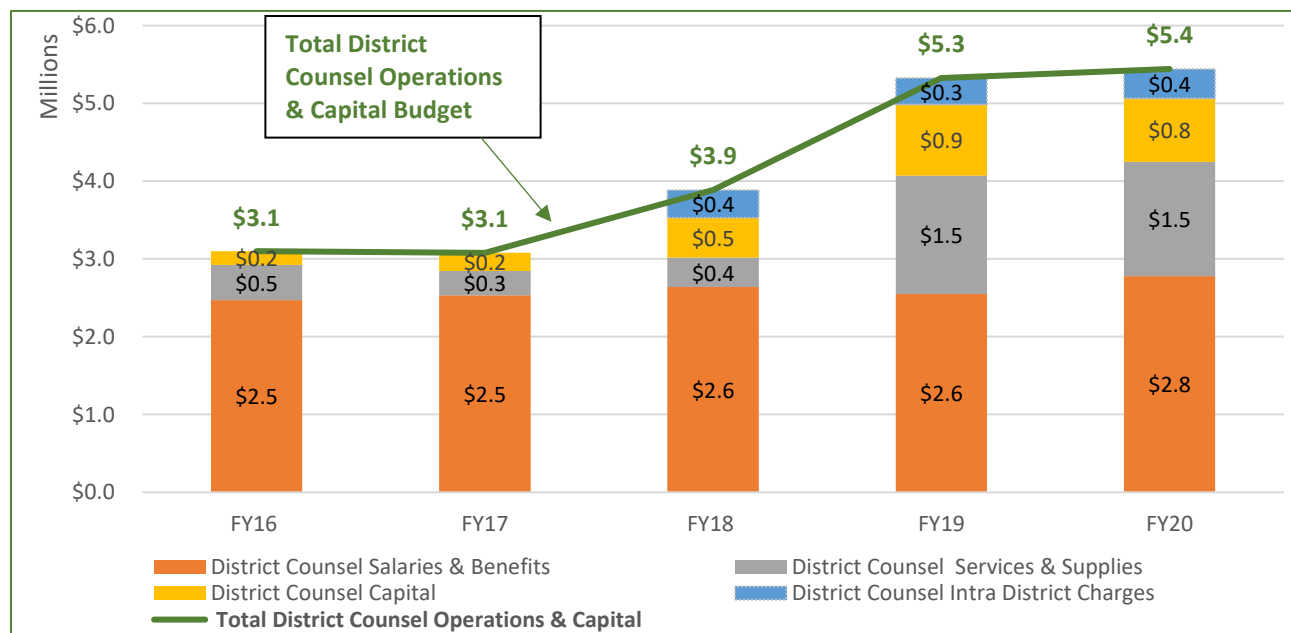
Valley Water does not maintain or track data that would show the volume or proportion of work performed by staff members among these types of services.

How Much Does the District Counsel's Office Spend?

In fiscal year (FY) 2019, the budget to operate the District Counsel's Office was \$5.4 million, a growth of 76 percent since FY 2016, due to the expansion of Valley Water projects and operations.⁵ As shown in Figure 2, (shaded in grey) services and supplies contributed to the increase. A detailed analysis of the budget showed an increase in outsourced legal services.

The District Counsel functions are budgeted through the general fund, which primarily receives funding through intra-district overhead charges to Watershed and Water Utility enterprise operations and capital programs. Valley Water's financial management officials said that the District Counsel's Office does not generally seek or receive separate reimbursement for services from other revenue sources.

Figure 2. District Counsel's Office Budget, FY 2016 to 2020



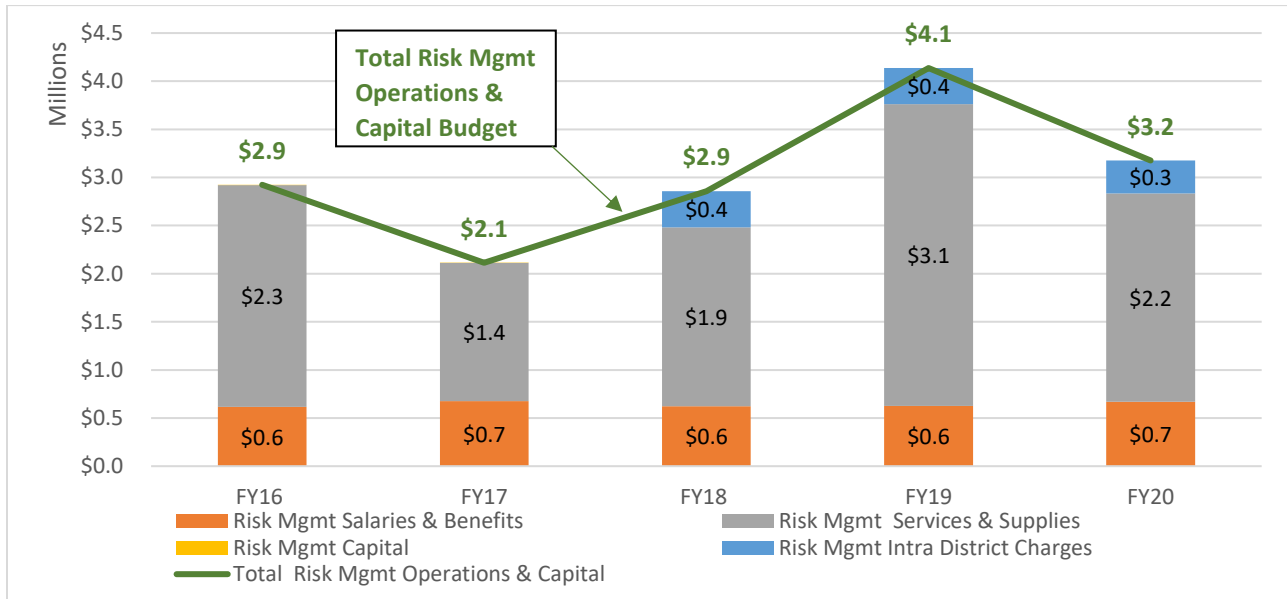
Source: Valley Water Budget Documents, <http://www.aqua.gov/archived-budget-documents-prior-years>

For the Risk Management Unit within the District Counsel's Office, the operating budget increased modestly by nine percent between FYs 2016 and 2020, as shown in Figure 3.

⁵ Valley Water's total FY 2019 budget is \$529 million, and the Five-Year Capital Improvement Program includes 67 projects totaling \$6.5 billion.

The budgets for salaries & benefits for both the District Counsel's Office and the Risk Management Unit remained steady since FY 2016.

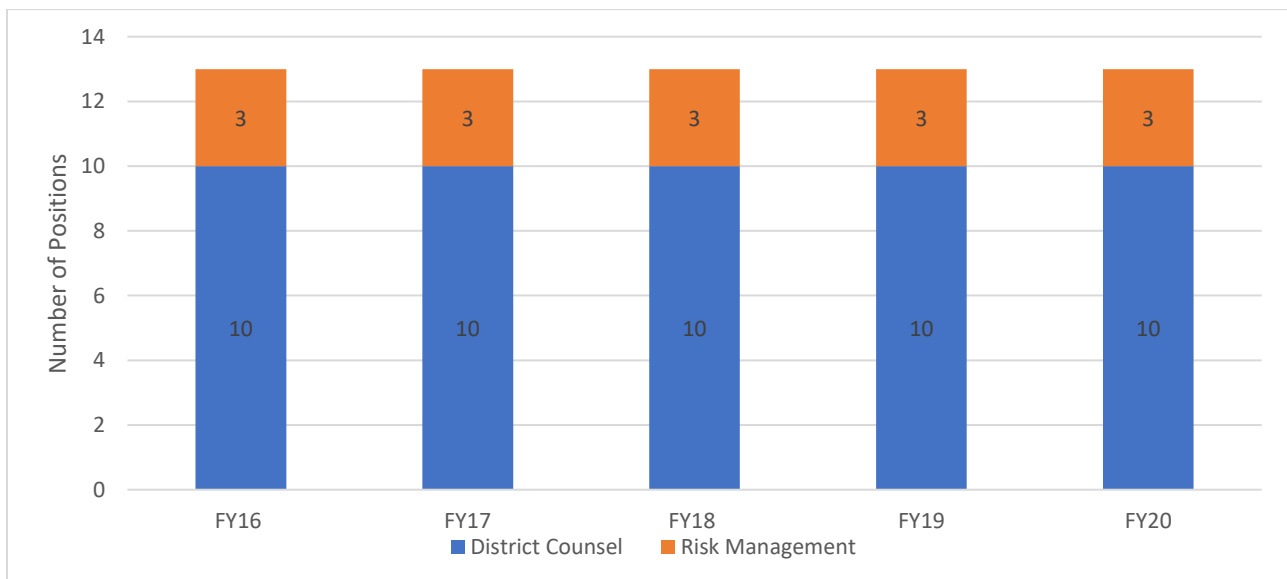
Figure 3. Risk Management Unit Budget, FY 2016 to 2020



Source: Valley Water Budget Documents, <http://www.aqua.gov/archived-budget-documents-prior-years>

Specifically, the number of budgeted positions in the District Counsel's Office and the Risk Management Unit did not change throughout the period, as shown in Figure 4.

Figure 4. District Counsel's Office and Risk Management Unit Budgeted Positions, FY 2016 to 2020



Source: Valley Water Budget Documents, <http://www.aqua.gov/archived-budget-documents-prior-years>

Methodology

How was the Performance Audit Conducted?

This performance audit assessed potential opportunities for structural, organizational, and procedural improvements in the District Counsel's Office. The audit examined the functions, structure, roles and responsibilities, and customer satisfaction of the District Counsel's Office's legal services to the Board and Valley Water management and staff in the operational and administrative units.

Audit Objective

In 2018, Valley Water's Auditor conducted an enterprise-wide audit risk assessment and identified the District Counsel's Office as an area that could benefit from further review. Our specific audit objective was to determine and identify potential structural, organizational, and procedural improvements.

Scope of Work

This specific audit examined the following areas:

- Roles and responsibilities of the District Counsel's Office.
- Valley Water Administrative Policies and other policies related to services provided by the District Counsel's Office.
- District Counsel's Office management structure and staff assignments.
- Customer service satisfaction and feedback.
- District Counsel's Office work processes, including:
 - Performance metrics and service levels
 - Time tracking and reporting
 - Succession planning
 - Contracting and use of outside legal firms (subject matter experts)
 - Use and maintenance of contract and agreement templates
 - Legal review of documents (contracts, agreements, amendments, etc.)
 - Use of NDAs
 - Use of District software systems
 - Information sharing and communications

The scope of the work did not assess whether legal documents and communications to the Board were properly classified because the District Counsel did not release these documents due to their privileged and/or confidential nature. This assessment is included on the annual audit work plan of the Auditor.

The scope of work also did not examine the efficiency of claims administration and management by the Risk Management Unit, which is also included on the annual audit work plan of the Auditor.

Finally, this audit did not include an assessment of any individual employee performance or a comparison of timeliness metrics with other peer agencies due to the absence of available data.

Project Approach

To address the audit objective, the Auditor performed the following activities:

- Analyzed the District Counsel's Office Manual for areas of enhancement, such as the use of risk-based criteria, communication protocols, training, and e-discovery procedures.
- Evaluated the Valley Water organizational charts and budget documents.
- Assessed available contract and agreement templates to determine the different types available and their last revision dates.
- Analyzed 23 recent selected records from the Consultant Agreement System (CAS)⁶ to determine the work performed by District Counsel attorneys for the review and approval of consulting agreements, and the types of edits made by attorneys.
- Computed turnaround times for the length of the review process for 23 consultant agreements.
- Reviewed the District Counsel's Office folder log-in sheets to evaluate the approval process.
- Interviewed all District Counsel staff to:
 - Discuss job functions and primary service areas.
 - Assess workflow processes between the District Counsel's Office and internal customers.
 - Identify performance metrics for the Office.
 - Identify areas of possible improvement.
- Interviewed each member of the Board to assess:
 - Satisfaction with District Counsel's Office services and timeliness.
 - Processes for information sharing and transparency.
 - Use of outside attorneys and subject matter experts.
 - Succession planning and staff assignments.
- Interviewed 17 District management and staff in the following 12 Valley Water operational and administrative offices, divisions, and units.
 - Clerk of the Board
 - Office of Talent and Inclusion
 - Dam Safety and Capital Delivery
 - Watersheds Design and Construction

⁶ CAS is Valley Water's in-house system for processing consulting agreements.

- Watersheds Stewardship and Planning
- Water Utility Capital
- Raw Water
- Water Supply
- Treated Water
- Information Technology and Administrative Services
- General Services
- Purchasing and Consultant Contracts Services

The purpose of the interviews was to:

- Determine the level of satisfaction with the District Counsel's Office services.
 - Assess workflow processes with the District Counsel's Office.
 - Evaluate communication protocols.
 - Identify areas of concern and possible improvement.
- Conducted a peer review of public legal offices to identify and compare structure and management practices. Five agencies were contacted – City of San Jose, Santa Clara Valley Transportation Authority (VTA), Metropolitan Water District of Southern California (MWD), San Diego County Water Agency, and East Bay Municipal Utility District (EBMUD). Two of these agencies agreed to provide additional information beyond what was contained on their website. Other information was obtained through the publicly available budget and financial documents. Other agencies were researched to respond to audit committee requests for information.

Assessment of the Reliability of Data

Section 9.2 of generally accepted government auditing standards require auditors to describe limitations or uncertainties with the reliability or validity of evidence if: (1) the evidence is significant to the findings and conclusions within the context of the audit objectives; and (2) such disclosure is necessary to avoid misleading the report users about the findings and conclusions.

The District Counsel's Office does not routinely capture operating and workload data. In the absence of data related to consultant agreements, the Auditor collected and performed its analysis of CAS data and found it minimally adequate for the audit wherein a judgmental selection of recent consultant agreements from CAS was reviewed for comments, edits, and timeliness. As CAS only records the processing and review of consultant agreements and not construction contracts, procurement purchases,⁷ or other documentation reviews, the results of our analysis cannot be projected to the entirety of the District Counsel's work.

Assessment of Internal Controls

Section 9.20 of generally accepted government auditing standards require auditors to assess the adequacy of internal controls if they are significant to the audit's objectives. The objectives of

⁷ Supplies, equipment, software, etc.

this performance audit did not require an internal control assessment, but policies and procedures and other controls were reviewed to identify potential improvements.

Audit Statement

This audit is known as a performance audit. A performance audit evaluates the economy, efficiency, and effectiveness of programs, services, and operations. The Auditor conducted this performance audit per generally accepted government auditing standards. Those standards require that the audit be planned and performed to obtain sufficient evidence to provide a reasonable basis for the findings and conclusions based on the audit objectives. The Auditor believes that the evidence obtained provides a reasonable basis for the findings and conclusions based on the audit objectives. A preliminary technical draft for review of its technical accuracy and a formal draft report for a response to formal recommendations were provided to the District Counsel's Office. Comments were incorporated as applicable throughout the report. [See Appendix A for the summary of agency comments to the recommendations included in this report and Appendix B for the full agency response.]



Section 3: Key Findings

Finding 1: Customer Satisfaction is Mixed

Customers report high satisfaction with the quality of services

One standard performance measure to gauge operational performance is customer satisfaction. Nearly all the Board's Directors (six of seven) and most of the managers (10 of 14) across 12 operational and administrative units we interviewed, highly rated the quality of services provided by the District Counsel's Office. Staff from Human Resources, and those working on California Environmental Quality Act (CEQA), Fish and Aquatic Habitat Collaboration Effort (FAHCE), and water rights generally reported the highest satisfaction levels with the quality of service while Administrative Services reported being the least satisfied.

Valley Water managers want better communication on the status of services requested

Eleven of 12 operational and administrative offices, divisions, and units were not as satisfied with communication activities by the District Counsel's Office. Our review found that the District Counsel's Office does not routinely provide regular status updates to Valley Water managers and staff about work requests. Communication strategies varied through ad-hoc (sometimes prompted, other times unprompted) verbal or email updates. Valley Water managers said the frequency and the quality of District Counsel Office communication is highly dependent upon individual attorneys; some were particularly good at updating them on the status of the work, while others said that communication seldom occurs unless there was direct outreach. District Counsel staff reported varying level of awareness about these communication concerns with some reporting being unaware that Valley Water operational and administrative units had communication concerns.⁸

Valley Water managers want faster service

Eleven of the 12 operational and administrative offices, divisions, and units were also not as satisfied with timeliness by the District Counsel's Office. Valley Water managers and staff described multiple examples of service delivery with capital projects, real estate acquisitions, and other types of services that were delayed due to legal attorney review that took longer than expected to complete. While there is not an agreed-upon standard for timeliness, the turnaround times for legal review of 23 recent

⁸ The District Counsel submits a quarterly report to the Board of Directors, which serves as the only formal mechanism for status reporting, but the District Counsel said that this report does not include the status of individual work requests by Valley Water units.

professional service agreements ranged from 1 to 49 calendar days, averaging 17 calendar days.⁹ Consulting agreements outside of our sample of 23 agreements took between four months to over a year for final review and approvals. District Counsel attorneys said they were unaware of management's concerns regarding timeliness. Other attorneys said they were aware of these concerns and described their proactive communication efforts.

Valley Water and District Counsel's Office share responsibility for timeliness issues

Valley Water departments, divisions, and units and the District Counsel's Office described different circumstances for longer than expected turnaround times. Nine of 12 Valley Water operational and administrative offices, divisions, and units attributed the delays to two key areas. First, Valley Water managers reported that the reviewing attorney would require the use of a different contract template, although the managers believed they were using the correct template for their needs; some of them unknowingly used an outdated template because the District Counsel attorneys did not place the updated template on the Valley Water intranet. As shown in Figure 5 below, 32 percent of 190 legal review comments requested clarification or definition and another 12 percent commented on the use of non-standard contract language or incorrect templates among the consultant agreements. Second, Valley Water managers reported that delays occur when District Counsel attorneys request changes to the scopes of work, question costs and business-related decisions, as well as editing and format changes, including to documents that have been previously edited, rather than only focusing on legal or regulatory concerns. Figure 5 shows that 19 percent of legal comments addressed formatting suggestions or line edits, equating to about one in five comments. For example, the District Counsel's Office attorneys corrected and commented on "typos" or noted that Valley Water units used an incorrect format to describe a list of tasks in the scope of work. District Counsel attorneys explained that many of their editing comments are necessary to help avoid future litigation. Contracts and Procurement staff explained that final review and verification of requested changes impact original processing schedules, creating bottlenecks, especially when multiple reviews occur.

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Figure 5. Types of District Counsel's Office Comments on Professional Services Agreements (Sample of 23)

Type of Comment by the District Counsel Reviewer	Percent of Total
Needs clarification or definition	32%
Use of non-standard contract language, incorrect template/version	12%
Formatting suggestion or line edit	19%
Missing or incomplete element	13%
Extraneous or redundant materials; should be deleted or removed	9%

⁹ The results of the professional services agreements reviewed cannot be projected to the full population of documents reviewed by the District Counsel's Office. CAS only contains consultant agreements and no other types of documents reviewed by the District Counsel's Office.

Flawed logical or inconsistent requirements	7%
Incorrect information	6%
Other	2%
Grand Total (190 First Review Comments)	100%

Source of data: Auditor Analysis

District Counsel staff attributed timeliness concerns to multiple issues, such as project managers submitting documentation that was not properly prepared, contracts that were improperly modified, or use of incorrect templates. The District Counsel attributes timeliness issues to insufficient staffing levels.

The Auditor verified that some timeliness concerns are due to the quality of documents submitted to the District Counsel's Office for review that could have benefitted from line editing. Other timeliness concerns stem from applying the same level of attorney review for each professional services agreement regardless of the nature of or complexity of the proposed work. In other public agencies legal offices, application of risk-based management principals guide the level of review based on the evaluation of risk exposure. District Counsel attorneys verified that the same level of review was performed even when some agreements may have low risk of future litigation. A District Counsel attorney explained that each attorney has their own philosophy in reviewing contracts, and the philosophy of the Office is to protect Valley Water from potential litigation.

Contracting delays have a financial impact. Actual costs could not be determined because of the unavailability of data to perform a cost analysis.¹⁰ Valley Water managers prepared a memo about five years ago, requesting authority to outsource legal services when needed to help prevent project delays. Under Valley Water Board Governance Policy EL-5, District Counsel has the authority to procure outside legal services when internal resources cannot efficiently meet organizational needs, provided the District Counsel informs the Board immediately of the procurement.^{11 12} While the Auditor did not have available information to assess District Counsel procurement decisions, the District Counsel explained that outsourcing decisions are based on his discretion.¹³ The Auditor noted that the District Counsel does not have formal written decision-making criteria for these procurement decisions.

¹⁰ A cost analysis would consider the amount of time spent reviewing contracts integrated with other data on project schedule delays due to contracting delays.

¹¹ Valley Water's Purchasing and Consultant Contracts Services Unit is not involved in these procurements or with ensuring compliance with procurement requirements.

¹² In FY 2018 the District Counsel's Office budgeted \$1.1 million for outside legal services and by FY 2020, budgeted \$2.5 million.

¹³ The District Counsel explained that he considers the availability of attorneys and the specialized expertise available.

Finding 2: Updating the District Counsel's Office's Operating Model Can Enhance Customer Satisfaction

The District Counsel's Office can benefit from an enhanced operating model consistent with best practices to address service delivery issues such as timeliness, communication, and non-uniform approaches to providing services. The District's Chief Counsel explained that the Office's operating model is individual-centric in that each attorney determines how best to provide services. While this type of individual-centric operating model is not uncommon among public sector legal departments, others have more mature operating models to help sustain a consistent level of services. We describe potential strategies below that are designed to enhance service delivery.

Added policy and procedure development

Policies and procedures serve as one key element of effective governance by forming the basis for an organization's internal control system. In other

words, policies and procedures help promote operational efficiency and effectiveness. The District Counsel's Office manual covers general areas of operations such as:

- Mission statement,
- Roles and responsibilities,
- Administrative policies,
- Office procedures, and
- Board communications.

Added procedural development could facilitate uniformity and transparency in decision-making and service delivery. Areas that need to be addressed in policies and procedures include:

- Development of risk-based criteria for reviewing consultant agreements, purchase acquisitions, and/or other types of contracts.
- Development of criteria for prioritization and assignment of Board and Valley Water requests for services.
- Preparation (sources of information to be used) and maintenance of the Quarterly Report provided to the Board¹⁴ and the Litigation Matrix used to document current litigation status, which is part of the Quarterly Report.
- Clarification of EL 7.5 regarding the handling of Board member requests for the drafting of resolutions.

¹⁴ Governance Policy EL 7.11 provides direction on the information the District Counsel will communicate to the Board but does not constitute an office policy and procedure which would guide the development, format, timing, and review of the Board's quarterly report.

- Maintenance of the Legal Advice Matrix used to document the communication of advice provided to Valley Water management and staff.
- Personnel training requirements, including cross-training and succession planning.¹⁵
- E-discovery procedures (currently in development).
- Criteria for risk management decision-making applicable to insurance requirements.¹⁶

Early District Counsel participation in planning activities

There is not a policy or criteria that requires District Counsel or other support unit involvement for projects that are new to Valley Water, complex in design, or will likely have significant costs (E.g., over \$100 million). The District Counsel's Office is not involved in the review process during the development of requests for proposal or bids (which typically includes sample contract language) unless specifically requested by project management. The Auditor's review of 23 consultant agreements showed that 32 percent of comments involved requests for clarifications and definition, as shown in Table 5. These legal comments might have been prevented had the District Counsel's Office been involved earlier in the planning process. District Counsel attorneys reported that the first time they might see a request for proposal or contract is in the Legistar system when it needs to be reviewed just before Board review and/or approval. District Counsel attorneys said that they have previously advocated for early involvement in the planning process without success. However, another attorney said that it should be the project manager's and COO's decision to determine the need for early legal counsel involvement. Valley Water management has recently taken proactive steps on the Anderson Dam retrofit project to include District Counsel's Office participation in project planning meetings. Attorneys involved in these early planning meetings reported benefits from early risk assessment and proactive legal research.

Risk Management can also become involved earlier in the project planning process to help identify project risks and contractor insurance requirements, rather than consult at the project manager's discretion later in the project or during the contract negotiation phase. Efficient and effective project planning requires all stakeholders' participation and involvement so that any project issues can be identified and addressed as early in the process as possible

Added document template development

A standard practice in government purchasing is the development and maintenance of template documents that can be used for different procurements. The templates contain standard language for terms and conditions and formatting designed to address different contracting needs. If used effectively, the templates can minimize the time required to review contracts. While the Valley Water District Counsel's Office attorneys reported

¹⁵ Training on succession planning would convey the importance of the three designated staff that could potentially assume the leadership position to receive requisite knowledge transfer.

¹⁶ Presently, decisions can vary. Risk management staff acknowledged that some vendors had raised questions about the level of insurance required of them for activities that do not have a material risk to the agency.

having developed a standard set of templates, they also stated that Valley Water units often do not use the correct templates, resulting in extra legal review work of contracts and agreements, as previously described in Figure 5. Valley Water operational and administrative unit management stated that even though standard templates or templates from previously approved contracts or agreements are used, the District Counsel attorneys will edit the document language depending on the type of procurement or use the review and approval process to update the standard language.

Additional contract template development is needed to address all the types of services outsourced by Valley Water, such as for accounting/audit, staff support, marketing, other professional services, or different types of construction-related contracts. Valley Water management reported if a current template does not meet their needs, they will copy and paste language from other available contracts. With additional standard templates, Valley Water divisions and units could potentially minimize delays and frustration with the agreement and contract review process.

District Counsel and Valley Water management disagree over ownership for updating and maintaining the templates for contracts, amendments, and agreements. Most of the templates for standard consulting agreements available on Valley Water's intranet had not been revised since the calendar years 2016 and 2017. The last known agreement to be updated was the Capital Consultant Contracts Standard Consultant Agreement in 2018. District Counsel attorneys explained they are responsible for the review and approval of legal agreements; Government Relations is responsible for identifying necessary updates resulting from changes in California and federal legislation, and General Services is responsible for making the required legal changes to the documents. The General Services Purchasing Unit management, on the other hand, said it is not their responsibility because they do not have the legal expertise to make those types of changes.

Valley Water's Administrative Policy AD-6.3, "Approval Authority for Consultant Services Contracts," assigns responsibility to District Counsel to "develop, review and/or approve all standardized and customized contracts." The District Counsel explained this excludes the updates due to changes in laws.¹⁷ The absence of formally defining the responsible party has led to inefficiencies in the contracting process. For example, a 2019 change in California law regarding small business enterprise preference in public construction contracts should have prompted a revision to Valley Water's templates. At the time of our review, the template had not been updated, even though District Counsel noted the need for a change in January 2020. In this instance, the general services unit had to repeat the request for proposal preparation process.

¹⁷ Implementation of AD 6.3 language is not included in the job description for the District Counsel likely contributing to the ambiguity of ownership. The District Counsel job description does state, however, that the District Counsel "monitors legal developments, including proposed legislation and court decisions related to water agency law and activities; evaluates their impact on District operations and recommends appropriate action." The job description language would reasonably include legislative and regulatory changes that affect contracting language in contract and agreement templates.

The District Counsel explained that the Office does not have the resources or time to monitor and identify the legal changes. Greater clarity about the responsible party to update contract templates could prevent the risk of undermining the integrity of the procurement process.

Workflow management processes and software

High performing organizations use software applications to receive, track, and monitor services requests. The District Counsel's Office uses three

Valley Water electronic systems to help track workflow for some of its activities. The CAS and Legistar¹⁸ software applications alert the District Counsel's Office when documents require review; limitations in these systems do not allow the District Counsel's Office to examine the overall number of assignments, staff assigned to them, and the status of the review. Historically, the District Counsel's Office did have a work request system, but its use was discontinued years ago, according to the District Counsel, because it could no longer be supported technically. The third system – the Risk Management Information System (RMIS) – is used by the Risk Management Unit to manage claims. At the time of our review, Risk Management staff had a backlog of claims to enter, preventing real-time analysis of all current claims.

In the absence of robust workflow management software applications, the Auditor examined how workflow is currently managed. First, in the area of assigning work requests, the District Counsel's Office utilizes general guidelines. For example, one attorney is generally responsible for imported water and litigation, while another is responsible for environmental law. Generally, one attorney is assigned to one or more key areas with another attorney serving as a backup. The key issue with these guidelines is that any attorney could be assigned to work on requests by the Board, which are given top priority thereby delaying the completion of work requested by operational and administrative units. Valley Water staff explained they may or may not be informed of deliverable delays, resulting in dissatisfaction with the timeliness of legal services and creating uncertainty on overall project timelines.¹⁹ One option that other public agencies have used is to have one or two specific attorneys dedicated to servicing Board requests and attending standing committee meetings while other attorneys would be dedicated to servicing specific divisions and units.

Second, in the area of managing work requests, the District Counsel's Office primarily relies on several manual processes to collect, manage, and track all other work requests. For instance, to track hardcopy documents requiring signatures, the District Counsel uses a manual paper log to record dates the documents are received, assigned, and completed. The workflow of other documents, such as construction contracts being prepared before bid or submittal through Legistar, are reviewed by District Counsel attorneys outside of either of these electronic workflow systems. A comprehensive electronic workflow application would better manage work requests by recording submittal and completion dates for all types of documents allowing the monitoring

¹⁸ Legistar is Valley Water's electronic system for processing documents being submitted to the Board of Directors.

¹⁹ Due to the lack of quantifiable information collected on workflow and turnaround times, the exact impact of delays due to the re-prioritization of work due to Board requests is not known.

of the status of work requests by external customers. Having this information could also aid District Counsel management in continuous process improvements.

Use of service level agreements

Best practices in service delivery between public agency departments encourage the use of SLAs.²⁰ SLAs define the services to be delivered by one department to another and helps reduce ambiguity in inter departmental service support levels. For example, an SLA for contract reviews between the District Counsel's Office and an operational unit would address:

- Agreed-upon completion dates for service
- Expectations for document quality prior to submission for legal review
- Scope of services to be provided (e.g. line editing and or legal risk)
- Communication protocols (e.g. frequency and content)

Expectation setting afforded by SLAs could improve timeliness. The absence of defined work performance expectations is a contributing factor for lower levels of customer satisfaction. District Counsel staff explained that the preparation of SLAs might be too time-consuming.²¹

Better timekeeping system

Effective time tracking is a fundamental activity of all public agencies to ensure proper accountability and use of public funds. Timekeeping software applications are used in legal offices in both the public and private sectors, which allow a standard way to assess operating efficiency. The Office of the District Counsel has a time tracking application, but it is not configured to capture the type of data needed to perform staffing and financial analysis.²² The District Counsel and attorneys provided various reasons for why they should not change how they track their time, such as:

- Staff maintain informal records for personal reference.
- The District Counsel's Office is a support service and should not be asked to track their time differently than other support departments.
- Providing privileged and confidential information about how their time is spent on activities to their customers could be problematic. In the private sector, time activity reports are classified as "privileged and confidential" to prevent the sharing of information to unintended parties.
- The Office's budget is not determined by time input.
- The Board has not asked the Office to formally track their hours.

²⁰ Other examples of agencies include Los Angeles County, Sacramento County, City of San Diego, Sacramento City Unified School District, California Department of Justice, and the University of California Merced.

²¹ The District Counsel's Office would need to consider if SLAs should be used for long term and/or short-term assignments.

²² District Counsel staff currently record regular earning hours and leave time only.

The District Counsel added that time tracking would not likely result in increased funding to the Office, but staff has reported providing time records at the request of operations for invoicing purposes. The last verified instance of the reimbursement of attorney time was in February 2017. Comprehensive time tracking by the District Counsel's Office could potentially identify other reimbursement opportunities as well as provide the ability to effectively assign attorney workloads and right-size staffing levels.²³

Management of non-disclosure agreements

NDAs are an important legal structure used to protect information from being made available by the recipient of that information and are considered a legal contract. A party in breach of an NDA may be subject to legal action commensurate with the value of information. Like other public agencies, Valley Water sends and receives NDAs.

Standard management practices would, at a minimum, establish a standardized policy on the management and administration of NDAs, including defining roles and responsibilities for their compliance. A process to support the management of NDAs includes centralized maintenance, document tracking, compliance monitoring, and reporting. At the time of our review, Valley Water did not have a process for managing NDAs. Without a process, Valley Water does not know how many NDAs are in place, their nature, the signatory responsible for their compliance, or whether the District Counsel's Office has reviewed all of them. The District Counsel's Office said they are in the process of developing a formal policy for NDA management and administration. A target date has not been established for its completion.

Use of master services agreements

Many public agencies use master services agreements²⁴ to implement public outreach that procures legal services for a wide range of subject matter and demonstrates conformance to public procurement requirements, including allowing for consistent and timely acquisition of services when needs arise. A master services agreement would involve developing a list of pre-vetted firms through a request for qualifications process to develop a master services agreement for all eligible firms. School districts, cities, counties, transit districts, water agencies, and retirement systems across California have issued bids to hire multiple legal firms to provide services.²⁵ The District Counsel explained that all the legal needs cannot be anticipated, defined, and incorporated into a master services agreement and that some type of "carve-out" will be

²³ In our peer review of agencies, the MWD tracks legal time for multiple reasons – regular and reimbursable time – and the City of San Jose track attorney time for budgetary, litigation and program tracking. Examples of other agencies that track legal time include the Colusa County Counsel and the City of Sacramento.

²⁴ Competitive bid contract that establishes a list of pre-qualified and approved firms for a selected set of services.

²⁵ In our peer review of agencies, the MWD uses a master services agreement for specialized legal services. The San Jose City Attorney's Office is required to adhere to the same general purchasing requirements as other departments or offices. Other examples of agencies outside of our peer review that have bids soliciting multiple firms to contract legal services include the Los Angeles County Employee Retirement Association, Sonoma County, Paramount School District, Los Angeles Metropolitan Transportation Authority, the County of Ventura, the Los Angeles Unified School District, Azusa Unified School District, South Orange County Community College District, and the California State Treasurer's Office.

needed for emergency procurements. The District Counsel added that Valley Water is unlikely to realize cost savings because the pool of available firms with water rights experience is very small and too specialized to have standard rates. Finally, the District Counsel also expressed concern about the limitations in the firms that can be retained due to possible conflicts of interest and their providing representation for an opposing legal party. A master services agreement is designed to have a broad reach, to provide a range of hourly costs, and to identify all eligible local, regional, and national firms that can avoid having these types of conflict of interest issues.

Use of added performance measures

Widely used in the public sector, regardless of the department's mission, performance measurement is the process of collecting, evaluating, and reporting information that can provide management with a quantifiable operational assessment of efficiency and effectiveness. The District Counsel's Office uses one formal performance measurement – the submission of Quarterly Reports as the sole performance metric for operational performance.²⁶

Other performance measures can be developed, such as turnaround times and volumes of documents, projects, or cases reviewed, which help Valley Water identify and correct possible process bottlenecks. District Counsel staff raised concern, however, that tracking performance measures could adversely influence attorneys' decision-making so that organizational performance could look more favorable. An effective set of performance measures would address this concern by including qualitative and quantitative metrics to assess tangible and intangible benefits from service delivery.

Use of a multi-source assessments

The District Counsel also raised concern that Valley Water's Board Appointed Officer (BAO) Performance Evaluation Procedure, Document Number Q622D02²⁷, already establishes the agreed upon evaluation criteria for assessing the District Counsel's performance. The Auditor identified that the purpose of the document is to guide the Board in assessing BAO employee performance, which is different from implementing performance management principles to guide day-to-day managerial decision-making based on routine operational performance measurement.

A best practice in assessing operational effectiveness is to collect and evaluate feedback from stakeholders that provide or receive services from an office or unit. Implementation of a multi-

²⁶ These quarterly reports are prepared manually by the District Counsel's Office because the Office does not have available off-the-shelf software applications that could generate these reports electronically. The labor costs involved in manual preparation is unknown because of the absence of utilizing time tracking systems. Organizational performance measurement/management software is widely available or simple database development of key performance measures could be developed in house based on any number of performance measurement frameworks, such as the Balanced Score Card approach or a Results Based Management Framework.

²⁷ The criteria is limited to the Board's annual evaluation of individual BAO performance related to Leadership, Strategic Planning, Customer/Partner Focus Monitoring Organizational Performance, Workforce Focus, Financial, Communication and Support to the Board, and Business Results.

source assessment is an effective and anonymous tool that supports a culture of continuous process improvement.

Receiving and providing feedback (on an annual basis) between the District Counsel's Office and its customers could allow the Office to be aware of the services and areas that need improvement, as evidenced by some attorneys reporting that they were unaware of the communication issues between the District Counsel's Office and the Valley Water divisions and units.

The District Counsel said that a multi-source assessment might pose potential legal conflicts with the Board Governance Policy II. Section 3.2 of the Board BAO Linkage asserts that "The Board, as a whole, will not evaluate, either formally or informally, any employee other than the BAOs". Section 5.5 of the policy further states,

"Monitoring of each BAO's job performance will be against the expected BAO job output: accomplishment of the duties for which he/she is accountable to the Board, and performance within the applicable limitations established by the Board. The monitoring shall occur through a review of the reports submitted by the BAO in accordance with the Board Appointed Officer Performance Evaluation procedure."

The District Counsel explained that the policy and the District Counsel's employment agreement would require an amendment to include implementation of a multi-source assessment and could be done provided these amendments occur in the future. The Auditor's analysis determined that the Board policy and employment agreement were designed for individual employee performance evaluation and did not prohibit the District Counsel's Office from implementing best management practices that monitor operational performance.

Other Issues: Realigning the Risk Management Unit Needs Further Study

A clearly defined organizational structure, including well developed roles and responsibilities influence accountability, transparency, fairness, and responsibility. The results of our peer agency review showed that the risk management function was placed under administrative departments - variously reporting to the Deputy General Manager, the Directors of Finance, Human Resources, or Administrative Services, but ultimately reporting to the organization's CEO.²⁸

In contrast, Valley Water's Risk Management Unit is placed under the Office of the District Counsel, reporting directly to the District Counsel who reports to the Board as previously discussed in this report. Valley Water's Risk Management Unit includes the Workers' Compensation program and risk retention (self-insurance), and risk transfer (insurance)

²⁸ City of San Jose, VTA, MWD, San Diego County Water Agency, EBMUD.

program.²⁹ The Auditor's analysis showed that the activities of the Workers' Compensation program, such as claims processing administration and reporting, could organizationally move to the Environmental, Health, and Safety Unit. Combining these two units would integrate and centralize business processes for the prevention of accidents and management of claims should accidents occur.³⁰ The analysis also showed that the CEO does not have a formal role in establishing the Risk Management Unit's goals and objectives or in the monitoring of its performance.

The Valley Water Risk Manager explained that the risk management function is structured under the District Counsel's Office to better review claims and contracts, provide easier access for legal coordination, and that the Workers' Compensation program should remain under his unit because of shared expertise among staff. In contrast, the Procurement and Contracts Manager reported that better efficiencies could be accomplished through consolidation with their office because separating the insurance coverage function has led to confusion and frustration among vendors. Further study would be needed on organizational restructuring given that standard business practices show that executive management, such as the CEO, should be responsible and held accountable for risk management and control processes.

²⁹ The mission of the Risk Management Program Unit is to protect assets by identifying and evaluating loss exposures and applying effective risk management techniques to reduce or eliminate risk. Specifically, the unit is tasked with the management of Valley Water's Workers' Compensation program and risk retention (self-insurance) and risk transfer (insurance) programs to cost-effectively maximize coverage and to comply with the Board Governance policies. The Risk Management Unit, currently staffed by a Risk Manager and Management Analyst II, and a Program Administrator of the Workers' Compensation program, was transitioned to the District Counsel's Office in 2007 from the Chief Administrative Office (now the Information Technology & Administrative Services Office). Between July 2017 and March 2020, Risk Management processed approximately 208 settlements totaling approximately \$828K.

³⁰ The program is housed under the Risk Management Unit as a separate function staffed by one Program Administrator.



Section 4: Acknowledgments

ACKNOWLEDGMENTS

TAP International wishes to thank the staff who participated in this audit from the following divisions and units:

- Office of the District Counsel and Risk Management
- Clerk of the Board
- Office of Talent and Inclusion
- Dam Safety and Capital Delivery
- Watersheds Design and Construction
- Watersheds Stewardship and Planning
- Water Utility Capital
- Raw Water
- Water Supply
- Treated Water
- Information Technology and Administrative Services
- General Services
- The Board of Directors



Section 5: Appendices

APPENDIX A – Summary of Agency Responses

RECOMMENDATION #1 - The District Counsel's Office should develop and implement a written strategy for approval by the Board that provides an updated operating model for efficient service delivery. In the development of the strategy, the District Counsel can consider, for example, enhanced policy and procedure development and new/enhanced tools described throughout this report. These tools, for example, can include workflow management, SLAs, added performance measurement, use of multi-source feedback assessments, and risk-based criteria assessments.

SUMMARY OF MANAGEMENT RESPONSE:
Management agrees with the recommendation.

The District Counsel agrees to develop and implement a written strategy with an updated operating model for efficient service delivery for approval by the Board.

The District Counsel further commented on the many suggested solutions included in the audit report, describing the varied potential benefits or concerns.

Target Implementation: The District Counsel recommends that implementation should await appointment of a successor District Counsel so that he or she can have critical input on the ultimate strategy proposed for the office. With respect to implementation of a future written strategy, it is suggested that the Board consider this as a goal for the successor District Counsel. Direction is requested from the Board of Directors if it would like the strategy to be developed prior to the appointment of a successor District Counsel.

INDEPENDENT AUDITOR RESPONSE

TAP International agrees that the development and implementation of the updated operating strategy should await appointment of a successor District Counsel because of the need for organizational and operational changes to address the issues described in the audit report.

Although TAP International did not formally recommend implementation of the multiple potential solutions described in the audit report, the solutions suggested are standard management practices to address the District Counsel's Office's service delivery issues that were identified by the audit (such as timeliness, communication, and non-uniform approaches to providing services). TAP International opted against prescribing the use of these tools to provide management flexibility to tailor or adopt alternative solutions as part of an updated operating model. The current District Counsel in describing concerns with a suggested solution contained in the audit report, such as the development of criteria for risk management unit decision-making, dedicating staff to serve the Board only, and tracking attorney time, has the flexibility to implement other alternative strategies that could enhance Office performance and accountability.

RECOMMENDATION #2 - The District Counsel and the Information Technology & Administrative Services Chief Operating Officer should update Valley Water Administrative Policies that (1) identify areas that require the development of new contractual and agreement templates, and (2) identify the responsible party for updating existing contract, agreement, and amendment templates as well as non-disclosure agreements (NDAs). These updates should also include the responsible party for NDA monitoring.	
SUMMARY OF MANAGEMENT RESPONSE: Management agrees with the recommendation. The District Counsel reported that efforts to develop an administrative policy to address non-disclosure agreement are underway with an expected completion date of April 2021 or earlier. Target Implementation: July 1, 2021.	INDEPENDENT AUDITOR RESPONSE: TAP International commends District Counsel initiation of activities to address this recommendation.

RECOMMENDATION #3 - The District Counsel should convene a workgroup on planning activities or projects involving contracting opportunities with key stakeholders (E.g., Chief Executive Officer (CEO) and Chief Operating Officers (COOs)) to develop a decision-making guide for early engagement with the District Counsel Office and Risk Management.	
SUMMARY OF MANAGEMENT RESPONSE: Management agrees with the recommendation. District Counsel agrees that early involvement by the District Counsel's Office and Risk Management on complex, high-value, or large-scale Valley Water projects that will involve contracts would generally be beneficial. While there have been recent efforts to include the District Counsel's Office in the early planning processes for some projects (e.g., the Anderson Dam Retrofit Project), more consistency would be beneficial. This consistency can be increased through the development of the recommended decision-making guide and its use by the CEO and Chief Operating Officers since they are the ones who will be aware of future projects and project needs. The District Counsel is happy to attempt to convene the recommended workgroup and hopes the other BAOs and Valley Water's Chief Operating Officers and Chief Financial Officer will support and participate in the workgroup. Target Implementation: May 1, 2021. Unless different direction is received from the Board of Directors, the District Counsel does not believe that implementation of this recommendation needs to wait upon the appointment of a successor District Counsel.	INDEPENDENT AUDITOR RESPONSE: TAP International commends District Counsel initiation of activities to address this recommendation.

RECOMMENDATION #4 - The District Counsel should discuss with the Board the use of a master services agreement to add another procurement mechanism for legal services.

SUMMARY OF MANAGEMENT RESPONSE: Management agrees with the recommendation

The District Counsel requested that in the event the Board determines that a master services agreement should be used to procure legal services in the future, it should continue to be allowed to retain legal services separately from master services agreements in cases where there is a need for legal services that cannot be fulfilled, or cannot be best fulfilled, by firms on the list of pre-vetted firms, or there is insufficient time to use a competitive process to secure a new firm.

Target Implementation: To be determined.

INDEPENDENT AUDITOR RESPONSE:

TAP International commends the District Counsel for initiating discussions with the Board about the use of alternative contracting mechanisms. The District Counsel noted concerns about retaining its authority to sole source legal services, but the purpose of the recommendation is to add to the procurement strategies versus eliminating them.

RECOMMENDATION #5 - The Board Audit Committee should ensure that the scope of the audit currently proposed in the annual audit work plan for the risk management function, include an evaluation of the advantages and disadvantages of implementing alternative organizational alignments for the Risk Management Unit and the Workers' Compensation programs.

SUMMARY OF MANAGEMENT RESPONSE:

Not applicable for a management response.

The District Counsel commented on this recommendation and argued against organizational changes describing that Workers' Compensation activities should not be consolidated under Environmental, Health and Safety because claims administration of the Workers' Compensation program is more closely aligned with Risk Management.

INDEPENDENT AUDITOR RESPONSE:

This recommendation was made to the Board Audit Committee. The audit report describes the issues that were raised that support further study of a potential organizational change. Should the Audit Committee wish to expand the scope of the current risk management audit listed on the annual work, the arguments presented by the District Counsel will be considered.

APPENDIX B – Full Agency Response to Recommendations

TO: Tap International, Inc.

FROM: Stanly Yamamoto

SUBJECT: District Counsel Audit Response

District Counsel Audit Response

The following represents the District Counsel's response to the five recommendations in the TAP International (TAP) draft audit report: District Counsel's Office Can Benefit From Enhanced Structure And Improved Management Processes. A justification is presented with any response where the District Counsel is not in agreement. Because the current District Counsel, Stanly Yamamoto, has announced his retirement effective May 3, 2021, no targeted implementation date is included for some of the recommendations. Direction is needed from Valley Water's Board of Directors regarding whether implementation should be targeted prior to May 2021 or whether it should await appointment of a successor District Counsel. Where that direction is needed, the targeted implementation dates below have been designated as "To be determined." The Board may also consider utilizing the audit as a tool for evaluating candidates and subsequently collaborating with the successor District Counsel in any implementation program.

Finally, it should be noted that where implementation of a recommendation will involve creation or modification of Board Governance Policies, Administrative Policies, or Work Instructions, final approval of the same does not rest with the District Counsel.

Recommendations

1. The District Counsel should develop and implement a written strategy for approval by the Board that provides an updated operating model for efficient service delivery. In the development of the strategy, the District Counsel can consider, for example, enhanced policy and procedure development¹ and new/enhanced tools described throughout this report. These tools, for example, can include workflow management, SLAs, added performance measurement, use of 360-degree type of reviews, and risk-based criteria assessments.

District Counsel Response: The District Counsel agrees with the overall recommendation to develop and implement a written strategy with an updated operating model for efficient service delivery for approval by the Board but disagrees (in whole or in part) with some of the identified elements suggested for inclusion in such a strategy where noted below.

¹ -Development of risk-based criteria for reviewing consultant agreements, purchase acquisitions, and/or other types of contracts.

-Development of criteria for prioritization and assignment of Board and Valley Water requests for services.

-Preparation (sources of information to be used) and maintenance of the Quarterly Report provided to the Board and the Litigation Matrix used to document current litigation status, which is part of the Quarterly Report.

-Clarification of EL 7.5 regarding the handling of Board member requests for the drafting of resolutions.

-Maintenance of the Legal Advice Matrix used to document the communication of advice provided to Valley Water management and staff.

-Personnel training requirements, including cross-training and succession planning

-E-discovery procedures (currently in development).

-Criteria for risk management decision-making applicable to insurance.

First, with respect to the targeted implementation date, the District Counsel recommends that this should await appointment of a successor District Counsel so that he or she can have critical input on the ultimate strategy proposed for the office. With respect to implementation of a future written strategy, it is suggested that the Board consider this as a goal for the successor District Counsel. Direction is requested from the Board of Directors if it would like the strategy to be developed prior to the appointment of a successor District Counsel.

a. Enhanced Policy and Procedure Development

- i. Development of risk-based criteria for reviewing consultant agreements, purchase acquisitions, and/or other types of contracts

While Risk Management agrees that some form of documentation would be helpful to create transparency as to the rationale behind the assignment of insurance requirements, that documentation must be based solely on risk factors, such as liability to Valley Water, and whether the contractor will have access to the Water's computer infrastructure.

The point of the risk management process is to assess the risk and assign insurance requirements appropriate to the risk, not based on arbitrary factors such as the size of the contract or other non-risk related factors. Size of contract and risk are not necessarily related. For example, an architect may redesign a home including placing a huge 18-foot-long I-bar between the first and second floors to ensure the second floor was supported. The cost of the architect's services is approximately \$10,000. Using the size of the contract as a determining factor, the amount of insurance required from the architect would be minimal. However, using a risk-based approach would dictate higher limits. In this case, if her design was wrong and if the I-bar had collapsed the damages could be catastrophic.

Other factors, such as whether the contract is essential, available alternatives, etc. are more business decision factors, and should be considered if the contractor takes exception to the insurance or other standard requirements. These factors can be used to evaluate whether a contractor can be relieved of the established requirements if requested.

- ii. *Development of Criteria for Prioritization and assignment of Board and Valley Water requests for service*

The District Counsel agrees that the development of such formal written criteria would be useful. Input regarding what criteria should be used can also be solicited from the successor District Counsel and from the Board at a future workshop.

- iii. *Clarification of EL 7.5 regarding the handling of Board member requests for the drafting of resolutions*

Direction will be needed from the Board regarding what, if any changes, are needed to the Governance Policies. EL-7.5 requires Board Appointed Officers (BAOs) to deal with the Board as a whole except when (a) fulfilling informal or oral individual requests for information or (b) responding to officers or committees duly charged by the Board. Drafting a resolution would not be a mere request for information. If the resolution was not requested by "officers or committees duly charged by the Board," it would fall outside of the authority of the existing EL-7.5. Further, Board Linkage 2.2 provides that "[a]ny Board member requests that require substantive work should come to the Board for direction."

To the extent that the requested resolution required substantive work by District Counsel staff, to do this work would require approval of the whole Board under the current policy. Input on

how these policies should be changed can be obtained from the entire Board at a future Board meeting or Board workshop. The Board can give direction on whether this should precede appointment of a successor District Counsel or if it should wait until after the appointment of the same. It is recommended, however, that this wait until after the appointment of a successor District Counsel so that he or she can provide input on the potential policy changes to the Board.

- iv. *Maintenance of the Legal Advice Matrix used to document the communication of advice provided to Valley Water management and staff.*

District Counsel agrees that a formal policy regarding maintenance of the Legal Advice Matrix can be developed. It is recommended that this await appointment of a successor District Counsel. The Board should also consider using this recommendation as a tool for evaluating candidates for the District Counsel position (e.g., as the foundation for an interview question).

- v. *Personnel training requirements, including cross-training and succession planning.*

District Counsel agrees that a formal policy regarding personnel training requirements can be developed, however it should be noted that staff work plans often include cross-training requirements such as the Administrative Assistant with the Executive Assistant and those efforts are consistently ongoing. It is recommended that the formal policy await appointment of a successor District Counsel. The Board should also consider using this recommendation as a tool for evaluating candidates for the District Counsel position (e.g., as the foundation for an interview question).

- vi. *E-discovery procedures.*

As noted in the audit report, these procedures are currently in development.

- vii. *Criteria for risk management decision-making applicable to insurance.*

Please see the response to section (i.) above.

b. Effective Workflow Management

District Counsel agrees that the use of a comprehensive electronic workflow application could be beneficial with respect to improving efficiency, and the future strategy to be presented to the Board may include this as a component. It is recommended that the final selection of such a program await appointment of the new District Counsel. However, earlier inquiries can be made regarding the types of programs on the market, their features, and their compatibility with Valley Water's current systems. Gathering this preliminary information may help facilitate development of the future strategy. The Board should also consider using this recommendation as a tool for evaluating candidates for the District Counsel position (e.g., as the foundation for an interview question).

Within the discussion on workflow management, the auditor sets forth an organizational option where one or two specific attorneys would be dedicated to servicing Board requests and attending standing committee meetings while other attorneys would be dedicated to servicing specific divisions and units. District Counsel does not recommend such an option for inclusion in the future strategy given the sheer number of committee meetings at Valley Water and, more importantly, the working knowledge of the underlying projects needed to be able to respond to many inquiries, often in real time. Often the attorneys working with staff on projects are in the best position to be able to answer detailed questions from the Board members. If the responsibility for Board inquiries was delegated to a single attorney, in order to answer many questions, he or she would likely need to make inquiries of the attorneys working with staff in any event, which would delay the response time and would still leave the responding attorney with less information than the appropriate responding attorney.

Dedicating one or two attorneys to servicing Board requests and attending committee meetings would also result in fewer attorneys being primarily responsible for the day-to-day work with staff. This may also result in the most experienced attorney in a subject area being unable to handle an assignment due to his or her dedication to Board requests and Committee meetings. Given the current size of the District Counsel's Office, this approach could prove to be problematic.

c. Service Level Agreements

District Counsel agrees that Service Level Agreements (SLAs) can be developed for use with some units and projects *where appropriate*. The development of the SLA program would be in conjunction with development of the overall strategy for efficient service delivery to be submitted for Board approval. This strategy would include under what circumstances SLAs should be utilized, the process under which they are entered into, and what their standard terms should include. Rather than a formal contract to be signed by two parties, the SLAs would be set out as documents setting forth formal expectations and assurances in order to increase common understanding by District Counsel staff and their respective clients. The Board may also wish to use this recommendation as a tool for evaluating candidates for the District Counsel position (e.g., as the foundation for an interview question).

In the audit report's description of a potential SLA for contract reviews, it is noted that the SLA would address agreed-upon completion dates. District Counsel notes that any meaningful estimate for the time to complete a legal review assignment would not be feasible without a review and thorough understanding of the assignment and all of its inherent elements. Accordingly, rather than arbitrarily identifying a specific timeline for completion of legal review assignments, most SLAs would likely need to allow some flexibility and perhaps include a process by which the assigned attorney would review and understand the assignment and issues presented before providing an estimated completion date for an assignment. This is the type of process that would be further defined in the future strategy for efficient service delivery to be developed and submitted for Board approval.

Finally, since the SLAs would be a component of the strategy for efficient service delivery, District Counsel recommends that targeted implementation follow appointment of a successor District Counsel. Prior to that time, District Counsel can implement standard communication protocols to be used by legal counsel to keep clients apprised of the status of outstanding legal assignments.

Note: Board Audit Committee members requested that TAP provide information as which public entities have currently implemented and are administering SLAs.

d. Better Timekeeping System

District Counsel acknowledges that where there is an opportunity for Valley Water to recover funds for the time legal counsel works on matters, their time should be accurately tracked and recorded.

For matters *not* involving a potential recovery of costs/fees, District Counsel is open to evaluating the potential use of timekeeping in the context of a future electronic workflow application. The actual features and functions of any electronic workflow application ultimately selected will determine what types of activities can be tracked and how efficiently they can be tracked. Defining these factors will allow the successor District Counsel to make a fully informed recommendation regarding what, if any, attorney activities should be regularly tracked by time, how such time tracking should be documented, and how the results should be utilized. The Board may also wish to use this recommendation as a tool for evaluating candidates for the District Counsel position (e.g., as the foundation for an interview question).

Any inclusion of timekeeping in the future strategy would need to be tailored to serve an objective purpose and need (for example, an identified need to capture time spent on specific projects or types

of assignments). In addition, whether or how to use such timekeeping would consider the time needed to capture such records weighed against the perceived benefit of obtaining the time records. For example, if attorneys (such as those in private practice) had to track time for *each and every* task performed over the course of a day (answering phone calls, reading emails, writing emails, answering short questions, attending meetings, etc.), even with the use of software an undue amount of time would be consumed in this exercise every week (easily more than one hour each work day), which would have the cumulative impact of leaving significantly less time to perform actual legal work each week. While the intended outcome of the audit is to increase efficiency, tracking time for *all* daily activities would have the opposite effect of creating inefficiency given the reduced amount of time available to perform legal work.

In addition, depending upon their required level of detail, the timekeeping records could be strictly confidential attorney-client communications and available for review by the District Counsel alone. A modified version might be made available for external revenue-generating purposes.

The audit report suggests that the use of comprehensive time tracking could potentially identify other reimbursement opportunities as well as provide the ability to effectively assign attorney workloads and right-size staffing levels. While it is true that where there is an actual opportunity for reimbursement, the time records must have been captured in order to submit the reimbursement request or motion for fees, the reality is that these reimbursement opportunities are extremely rare in practice. For purposes of reimbursement, the more efficient practice would be to identify those reimbursement opportunities at the outset and perform more robust timekeeping in only those cases. The future strategy for enhanced service delivery will need to determine what, if any, time records would be useful to evaluate attorney workloads and staffing levels. That defined need should determine the scope of any timekeeping.

NOTE: The Board Audit Committee members requested information from TAP as to which public agencies are currently using timekeeping systems. District Counsel requests that TAP's response clarify the purposes for such timekeeping by those agencies. For example, is it only done for revenue-generating or recovery purposes?

e. Use of Added Performance Measures

District Counsel is not opposed to identifying and utilizing additional performance measures in conjunction with an electronic workflow application. The features and functions of that workflow software may determine what additional performance measures make sense for inclusion in a future strategy for enhanced service delivery. However, it is recommended that the development and use of new performance measures await appointment of the successor District Counsel.

f. Use of a 360-Degree Type of Review

District Counsel is not opposed to the use of regular (annual) feedback from clients as a tool to better monitor operational performance of the office as a whole and to identify any problems or concerns facing the office. This feedback would not be utilized for individual personnel evaluations but would instead be used as a tool by the District Counsel to assess overall office performance. The future strategy for enhanced service delivery would need to define the scope and features of this program. It is recommended that the development and use of this review await appointment of a successor District Counsel.

NOTE: The Board Audit Committee members requested that TAP provide additional information defining this terminology (360-degree review) as it is a term of art and advise as to which other public agency in-house legal offices are using such reviews.

Targeted Implementation of Recommendation 1: To be determined.

2. The District Counsel and the Information Technology & Administrative Services Chief Operating Officer should update Valley Water Administrative Policies that (1) identify areas that require the development of new contractual and agreement templates, and (2) identify the responsible party for updating existing contract, agreement, and amendment templates as well as non-disclosure agreements (NDAs). These updates should also include the responsible party for NDA monitoring.

District Counsel Response: The District Counsel agrees with this recommendation.

The recommendation is to work with the Information Technology & Administrative Services Chief Operating Officer to update Valley Water *administrative policies* relating to contract templates and responsible parties in the contracting process. These would be the administrative policies for which this Chief or her reports are the designated 'owners.'

As to the first part of the recommendation (updating an administrative policy that identifies *areas* that require the development of new contractual and agreement templates), the District Counsel presumes that the intent is for the development of an administrative policy which lays out a clear *process* for regularly identifying any needed contract templates or template updates.

As to the development of an administrative policy regarding NDAs, the District Counsel notes that this effort has already commenced and should be completed by April 2021 or earlier. The Board Audit Committee has requested an opportunity to review the proposed administrative policy and provide any feedback. A proposed policy will be scheduled for a future Board Audit Committee agenda, and any input from the Committee will be considered before the policy is formally adopted.

Targeted Implementation of Recommendation 2: July 1, 2021.

3. The District Counsel should convene a workgroup on planning activities or projects involving contracting opportunities with key stakeholders (E.g., Chief Executive Officer (CEO) and Chief Operating Officers (COOs)) to develop a decision-making guide for early engagement with the District Counsel Office and Risk Management.

District Counsel Response: The District Counsel agrees with this recommendation.

District Counsel agrees that early involvement by the District Counsel's Office and Risk Management on complex, high-value, or large-scale Valley Water projects that will involve contracts would generally be beneficial. While there have been recent efforts to include the District Counsel's Office in the early planning processes for some projects (e.g., the Anderson Dam Retrofit Project), more consistency would be beneficial. This consistency can be increased through the development of the recommended decision-making guide and its use by the CEO and Chief Operating Officers since they are the ones who will be aware of future projects and project needs. The District Counsel is happy to attempt to convene the recommended workgroup and hopes the other BAOs and Valley Water's Chief Operating Officers and Chief Financial Officer will support and participate in the workgroup.

Unless different direction is received from the Board of Directors, the District Counsel does not believe that implementation of this recommendation needs to wait upon the appointment of a successor District Counsel.

Targeted Implementation for Recommendation 3: May 1, 2021.

4. The District Counsel should discuss with the Board the use of a master services agreement to add another procurement mechanism for legal services.

District Counsel Response: The District Counsel has no objection to this recommendation.

The recommendation is for the District Counsel to *discuss* with the Board the use of a master services agreement to add another procurement mechanism for legal services. District Counsel has no objection to obtaining the Board's views on this issue through such a discussion. The Board may also consider using this recommendation as a tool for evaluating candidates for the District Counsel position (e.g., as an interview question).

Currently, the District Counsel's Office does not typically use a competitive procurement process to retain outside legal counsel, and such counsel are selected based upon a number of considerations including experience and expertise. A competitive process has been used to select counsel in the past for certain projects or ongoing programs. For example, the District Counsel used a competitive process to select law firms to provide legal services for workers' compensation litigation and for recycled water infrastructure procurement (i.e., design-build and P3).

The Board's own Governance Policy (EL-5.3.9) exempts payments for legal services from the competitive procurement process. In order to ensure flexibility and the ability to timely retain the best counsel for any given need, District Counsel recommends that the Board maintain the current Governance Policy provision to be utilized with formal written standards for the selection of outside counsel to be developed by the District Counsel and maintained with the office's formal policies.

In the event that the Board determines that a master services agreement should be used to procure legal services in the future, District Counsel recommends that it be allowed to retain legal services separately from master services agreements in cases where there is a need for legal services that cannot be fulfilled, or cannot be best fulfilled, by firms on the list of pre-vetted firms, or there is insufficient time to use a competitive process to secure a new firm.

The need for some types of legal services and expertise is foreseeable and can be incorporated in a request for qualifications. However, it is impossible to anticipate all such future needs and some needs will only be occasional and periodic, such as unique investigations requiring specific expertise. For example, there may be a need for legal counsel with a particular expertise in an esoteric area of law or hired for a particular strategic reason due to a pending, unanticipated political matter. Further, it is possible that pre-vetted firms may no longer be suitable for a particular assignment due to lack of availability, recent public controversy, retirement or loss of attorneys in the desired practice areas, etc. Where this occurs, there may be a need to fill a legal need on short notice. Having to go through a formal procurement process may prevent the District Counsel's office from retaining new counsel in time to address a given need. Consequently, any such program (and modification of the related Governance Policies) should retain an exception as described above.

Note: The Board Audit Committee members requested TAP provide information as to how other local agencies are currently procuring outside counsel services; if Master Service Agreements have been implemented; and for what types of services.

Targeted Implementation for Recommendation 4: To be determined.

5. The Board Audit Committee should ensure that the scope of the audit currently proposed in the annual audit work plan for the risk management function, include an evaluation of the advantages and disadvantages of implementing alternative organizational alignments for the Risk Management Unit and the Workers' Compensation programs.

District Counsel Response: The District Counsel disagrees with this recommendation.

When determining the scope of the future audit for the risk management function, Management requests that the Board Audit Committee consider the following:

Risk Management takes exception to the recommendation that Workers Compensation ("WC") should be moved from Risk Management to the Environmental Health and Safety Unit ("EHS"). This recommendation appears to be based on a fundamental misconception as to the primary function of the Workers' Compensation unit. The report states that moving Workers' Compensation to EHS will "place the Workers' Compensation program in a unit most closely aligned with their function and allow for a more streamlined reporting and performance feedback structure, rather than reporting to a business unit that reports directly to the Board," yet the function of WC is never discussed.

The essential function of the WC unit is claims administration. The WC unit intakes employee claims of injury, reports them to the third-party administrator, assists the injured worker throughout the lifetime of the claim, and generally manages the workers' claim from beginning to end. The Workers Compensation Administrator is responsible for interacting with, and managing, the Third-Party Claims administrator, again, a claims function, as well as dealing with state claim agencies, etc. Investigation into the cause of the accident is not an essential function of the unit. The investigation into the cause of the injury is necessarily handled by the EHS unit. While the Workers Compensation Administrator assists in the investigation and uses the information for the claims, this investigation is a separate function from WC.

The essential function of the WC unit is closely aligned with that of the Risk Management Unit. One of the essential functions of the Risk Management Unit is also claims. In this particular organization, the Risk Manager has more than 20 years' experience overseeing WC claims. EHS does not handle claims.

The District Counsel reserves the right to make further comments on this issue if and when it is included in a future audit of the risk management function.

Targeted Implementation for Recommendation 5: N/A.

/s/ Electronically Approved
Stanly Yamamoto
District Counsel

cc: Darin Taylor

Santa Clara Valley Water District Annual Audit Work Plan, FY 18/19 to FY 20/21.

DRAFT AUDIT WORK PLAN – MAY 5, 2021

SANTA CLARA VALLEY WATER DISTRICT BOARD OF DIRECTORS DRAFT
ANNUAL WORK PLAN, FY 18/19 TO FY 20/21

OVERVIEW

The selection of audits is an important responsibility of the Audit Committee. The formulation of this audit work began in 2018 when the Valley Water's Board of Director provided input and approved the enterprise risk assessment that was administered across agency operations. The audit work plan is a culmination of a comprehensive effort to consider input on auditable areas from Valley Water employees, mid-level management, executive management, and Board Directors.

The proposed audit work plan considers factors that, if addressed, will provide opportunities to mitigate those risks and improve operations. These factors include:

- **Operational** – Are Valley Water programs/activities performed and services delivered in the most efficient, effective, and economical manner possible, and do they represent sound business decisions, including appropriate responses to changes in the business environment?
- **Financial** – Is there an opportunity to improve how Valley Water manages, invests, spends, and accounts for its financial resources?
- **Regulatory** – Do Valley Water programs and activities comply with applicable laws and regulations?
- **Health and Safety** – Are Valley Water services delivered in a manner that protects our residents and employees from unnecessary exposure to environmental factors?
- **Information Security** – Are Valley Water's information systems and networks protected against unauthorized access, use, disclosure, disruption, modification, inspection, recording, or destruction?

In addition, the proposed audit work plan considers several other factors in the selection of audits.

- **Relevance** – Does the audit have the potential to affect Board decision-making or impact Valley Water customers and residents?
- **Best Practices** – Does the audit provide the opportunity to compare current performance to best practices?
- **Return on Investment** – Does the audit have the potential for cost savings, cost avoidance, or revenue generation?
- **Improvement** – Does the audit have the potential to result in meaningful improvement in how Valley Water does its business?
- **Risk** - The audit work plan also considers risks related to major functions, as identified through a 2017 enterprise risk assessment conducted by TAP International.
- **Audit Frequency** – Individual Divisions at Valley Water should not be subject to more than two audits per year.

AUDIT WORK PLAN, FY 18/19 TO FY 20/21

This proposed audit work plan is divided into section. Section A describes ongoing non-audit (e.g. advisory) responsibilities of the Independent auditor and well as other quality assurance activities planned by executive management. Section B describes the audits planned for implementation by the Independent Auditor and other audits planned by Valley Water's executive management.

SECTION A

NON-AUDIT SERVICES AND SPECIAL PROJECTS

The following table lists non-audit services and special projects for the FY 2019-20 audit work plan:

Project	Scope	Planned Hours
Board of Director/Audit Committee Requests for Information	Ongoing. Should the Board of Directors request information on activities implemented by other public agencies or on other matters of interests applicable to enhancing the efficiency and effectiveness of operations, the independent auditor will collect and summarize information.	80
Audit Training	Annual. The Board Audit Committee Charter describes a requirement to provide audit training to BAC committee members at least annually.	2
Support services	Ongoing. Provide support services to Board Directors and Valley Water staff applicable to specific initiatives or planning projects to prevent potential service delivery risks, such as the planning of a new ERP system.	40
QEMS – Independent Auditor	Ongoing. Provide services to ensure proper oversight and accountability.	As needed
Management reviews	Ongoing. Valley Water 's CEO as needed will initiate internal quality assurance reviews of business practices and operations. These reviews are to be shared with the audit committee.	As needed

SECTION B: AUDIT SERVICES**AUDIT WORK PLAN – INDEPENDENT AUDITOR****FY 2018-19**

The following audits have been approved in FY 2018-19 by the Board of Directors and will continue into the FY 2019-20 audit work plan.

ID	Audit	Audit Objectives	Planned Hours
1	District Counsel Office Review	Are there structural, organizational, and process improvement opportunities for the District Counsel's Office?	664
5	Contract Change Order Processing	What types of business process improvements are necessary for contract change order processing?	429
6	Real Estate Review	How can the Real Estate improve its financial and service delivery performance?	574
Total	3 audits		1,667

FY 2019-20

The following audits have been selected for approval for the FY 2019-20 audit work plan.

ID	Audit Name	Audit Objectives	Planned Hours	Factors Considered
	Ad-hoc Board Audits	TBD	500-800	Relevance
	Audit Follow up	Review and monitor the status of audit recommendations	120	Relevance
	Sub Total		620-800	
13	Construction project management	What areas of Valley Water's capital project budgeting practices can benefit from adopting best practices?	314-371	Financial Improvement Risk Best practices
2	SCADA audit*	Does Valley Water's Supervisory Control and Data Acquisition (SCADA) systems meet established SCADA security frameworks?	714-857	Information Security Relevance Improvement Risk
7	Permitting best practices	How does Valley Water's permitting process compare with other agencies? Can alternative permit processing activities benefit Valley Water?	171-229	Operational Best practices Improvement

4	Risk Management	Can risk management business processes be implemented more effectively? (i.e. contract claims, workers compensation, small claims).	143-260	Relevance Financial Operational Best practices
3	Billing and Collections audit	Are there opportunities to enhance Valley Water's billing and collection processes?	343-429	Relevance Financial Regulatory Improvement Risk Return on Investment
11	Accountability audit	Are there opportunities to enhance safe clean water audits?	115-171	Health and Safety Relevance Improvement
Sub Total	5		1,800-2,317	

*The SCADA audit (ID 2) will be deferred and reconsidered during the next Risk Assessment given the master planning efforts underway for Valley Water's SCADA systems.

FY 2020-21

The following audits have been selected for approval for the FY 2020-21 audit work plan.

ID	Audit Name	Audit Objectives	Planned Hours	Factors Considered
	Ad-hoc Board Audits**	TBD	500-800	Relevance
	Audit Follow up	Review and monitor the status of audit recommendations	120	Relevance
	Subtotal		620-800	
	<u>Grants Management</u>	<u>Performance audit of the efficiency and effectiveness of grant management and administration</u>	<u>Outsourced-TBD</u>	<u>Financial improvement</u> <u>Operational Best practices</u>
Ad Hoc Board Audit	Pacheco Reservoir Expansion (Lessons Learned)	(1) Develop a timeline of project costs (including contract change orders and professional services agreement amendments) and identify the types of expenses incurred.	220-270	Financial, Operational, and best practices improvements

		(2) Identify key drivers for project cost increases that were within and outside of VW's control. (3) Identify lessons learned in the planning, design and construction phases of the project.		
21	Community engagement	Can Valley Water benefit from updating its purchasing practices for multi-media, advertising, and other community engagement vendor related activities? What are the best practices in planning and facilitating community engagement?	417-543	Financial Improvement Operational Best practices
	Property Management	<u>Is Valley Water implementing its encroachment licensing program consistent with the Board's guiding principles?</u>	400	Operational
20	Homelessness analysis	How can the Valley Water enhance its homelessness encampment clean-up activities that <u>protect health and safety</u> ?	290-371	Health and Safety Relevance Financial Operational
8	Classified information***	To what extent does the Valley Water's Counsel's office appropriately classify confidential information?	143-200	Relevance Operational
26	Local workforce hiring	What are the financial and service delivery disadvantages and advantages of RFPs that require preferences for local workforce hiring?	200-229	Operational
27	Equipment maintenance	Is Valley Water adequately meeting the needs of equipment maintenance?	143-229	Health and safety Operational Financial
33	Water Fix	What potential financial risks could occur on the California Water Fix project?	160-286	Financial Relevance
Sub Total	9		1,973-2,528	

**Ad-Hoc Audits to be added to the Board performance plan upon identification and approval of reviews.

***This issue was included in the project plan for the performance audit of the District Counsel's office.

AUDIT WORK PLAN – VALLEY WATER RESPONSIBILITY**FY 18/19 THRU FY 19-20****QEMS**

QUALITY ENVIRONMENTAL MANGEMENT SYSTEM INTERNAL AUDITS	
AUDIT DESCRIPTION AND UNIT #	
Treated Water O&M DOO: TW Survey (customer service w/ WS DOO)	#515
Laboratory Services Unit	#535
North Water Treatment Operations Unit	#565
South Water Treatment Operations Unit	#566
Treatment Plant Maintenance Unit (North & South WTP)	#555
Water Quality Unit	#525
Water Utility Capital Division	
Capital Program Planning and Analysis Unit	#335
Construction Services Unit	#351
Pipelines Project Delivery Unit	#385
East Side Project Delivery Unit	#375
West Side Project Delivery Unit	#376
Dam Safety & Capital Delivery Division	
CADD Services Unit	#366
Dam Safety Program & Project Delivery Unit	#595
Design and Construction Unit #3	#333
Pacheco Project Delivery Unit	#377
Water Supply Division DOO: TW Survey (customer service w/ TW O&M DOO)	#415
Wells & Water Measurement Unit	#475
Watersheds Design and Construction Division	
Design and Construction Unit #1	#331
Design and Construction Unit #2	#332
Design and Construction Unit #4	#334
Design and Construction Unit #5	#336
Land Surveying and Mapping Unit	#367
Real Estate Services Unit	#369
Associated Business Support Areas	
Facilities Management Unit	#887
Infrastructure Services Unit/IT	#735
Equipment Management Unit	#885
Business Support & Warehouse Unit	#775
Purchasing & Consultant Contracts Services Unit	#820

Emergency Services & Security	#219
Environmental, Health & Safety Unit	#916
Workforce Development (Training)	#915
Core ISO Procedures: Continual Improvement Unit	#116
Office of Communications (Customer Service)	#172
Office of the Clerk of the Board (Customer Service)	#604

COMPLIANCE AND FINANCIAL AUDITS

FINANCIAL AUDITS
Financial Audits
Treasurer's Report
Appropriation's Limit
Compensation and Benefit Compliance (odd years)
Travel Expenses Reimbursement (even years)
Single Audit (if applicable)
WUE Fund Audit



TAPInternational

FY 2022-2024 Annual Audit Work Plan

November 10, 2021

Final

ANNUAL AUDIT WORK PLAN

The Audit Work Plan serves as a tool for communicating audit priorities as determined by the Santa Clara Valley Water District's Board Audit Committee (BAC) and Board of Directors. The selection of audits for formal review and approval by the Board of Directors is an important responsibility of the Audit Committee.

Audits are an important oversight tool because they provide independent and fact-based information to management and elected officials. Those charged with governance and oversight can use the information to improve program performance and operations, reduce costs, facilitate decision making.

Audits can:

- Verify that programs, services, and operations are working based on your understanding.
- Assess efficiency and effectiveness.
- Identify the root cause or problems.
- Assess the progress of prior audit recommendations.
- Identify the impact of changes
- Identify leading practices.
- Assess regulatory compliance.
- Develop policy options.
- Assess the accuracy of financial information reported.

The types of audits that can be conducted include:

- Internal audits: Internal audits review the environment, information, and activities that are designed to provide proper accountability over District operations.
- Compliance audits: Compliance audits review adherence to policies and procedures, state regulatory requirements, and/or federal regulatory requirements.
- Performance audits (impact or prospective audits): Performance audits review the economy, efficiency, and effectiveness of Valley Water programs, services, and operations.
- Desk reviews: Small and quick audits.
- Follow up audits: Follow up audits assess the implementation status of recommendations included in prior audit reports.
- Best practices reviews: Compares current operations to best practices.

This proposed audit work plan is divided into sections. Section A describes anticipated ongoing support services to be provided by the independent auditor as well as other quality assurance activities planned by Valley Water's executive management. Section B describes the audits planned for implementation by the Independent Auditor.

SECTION A

ONGOING SUPPORT SERVICES AND SPECIAL PROJECTS

The following table lists non-audit services and special projects for the FY 2022 to 2024 audit work plan:

Project/Responsible Party	Scope	FY 2022 Planned Hours	FY 2023 Planned Hours	FY 2024 Planned Hours
Board of Director & Board Audit Committee Requests for Information/ Independent Auditor	Ongoing. Should the Board of Directors request information on activities implemented by other public agencies or on other matters of interests applicable to enhancing the efficiency and effectiveness of operations, the independent auditor will collect and summarize information.	80	80	80
Audit Training/ Independent Auditor	Annual. The Board Audit Committee Charter describes a requirement to provide audit training to Board Audit Committee members at least annually.	2	2	2
Support Services/ Independent Auditor	Ongoing. Provide support services to Board Directors and Valley Water staff applicable to specific initiatives or planning projects to prevent potential service delivery risks.	40	40	40
QEMS/Valley Water Continual Quality Improvement Unit	Ongoing. Provide services to ensure proper oversight and accountability.	As needed	As needed	As needed

Management Reviews/Valley Water Management	Ongoing. Valley Water's Chief Executive Officer ,as needed, will initiate internal quality assurance reviews of business practices and operations. These reviews are to be shared with the audit committee.	As needed	As needed	As needed
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SECTION B

AUDIT SERVICES – INDEPENDENT AND ON-CALL AUDITORS

Labor Summary

Project/Responsible Party	Scope	FY 2022 Planned Hours	FY 2023 Planned Hours	FY 2024 Planned Hours
Independent and On-Call Auditors	Audits and Follow-up Audits Based on the Audit Work Plan	TBD	TBD	TBD

Recommended Audits

The Board Audit Committee will select and recommend audits described below for approval by the Board of Directors.

ID	Risk Area(s)	Risk Factor	Audit Topic	Type of Audit	Suggested Audit Objectives
1	CIP Planning Process Financial Management	<input checked="" type="checkbox"/> Financial <input checked="" type="checkbox"/> Reputational <input checked="" type="checkbox"/> Operational	CIP Planning Process	Cross-Functional Performance Audit	<ol style="list-style-type: none"> Are there opportunities to improve the capital improvement project planning process (project initiation to CIP plan approval)? To what extent can early participation of Valley Water support units (environmental planning, permitting, purchasing, warehousing) on large capital projects prevent project delays and reduce cost overruns? Can the Capital Improvement Plan be better right sized that considers the Agency's funding and staffing levels?
2	Inventory Control	<input type="checkbox"/> Financial <input checked="" type="checkbox"/> Reputational <input checked="" type="checkbox"/> Operational	Inventory Management	Cross-Functional Performance Audit	<ol style="list-style-type: none"> Does Valley Water effectively manage, account for and record inventory across the agency? What resources (e.g., staffing, systems, facilities) and business processes (communication and coordination) are necessary to meet current and future needs including centralizing inventory management?
3	Emergency Response Emergency Detection Emergency Management	<input type="checkbox"/> Financial <input type="checkbox"/> Reputational <input checked="" type="checkbox"/> Operational	Program Monitoring	Cross-Functional Performance Audit	<ol style="list-style-type: none"> To what extent do the emergency management plans variously established by Valley Water contain gaps and activities to ensure proper prevention, detection, response, and recovery activities? Do gaps exist in surveillance and detection of potential problems across Valley Water's infrastructure?

					<ol style="list-style-type: none"> 3. To what extent is the virtual Emergency Operations Center aligned with FEMA best practices? 4. Are there lessons learned from past emergencies to prevent disruptions to regular operations while providing additional manpower and resources to respond to emergencies?
4	Emergency Cost Recovery Data Management & Accuracy	<input checked="" type="checkbox"/> Financial <input type="checkbox"/> Reputational <input type="checkbox"/> Operational	Financial Management	Cross-Functional Performance Audit	<ol style="list-style-type: none"> 1. To what extent has Valley Water been able to claim the full reimbursement of costs for eligible expenses from FEMA? 2. Are business practices aligned with federal and state aid requirements for emergency cost reimbursement? To what extent are information systems and other business processes configured to capture information needed for cost reporting and recovery?
5	Financial Oversight Purchasing and Contracting Processes	<input checked="" type="checkbox"/> Financial <input type="checkbox"/> Reputational <input type="checkbox"/> Operational	Financial Management	Performance Audit	<ol style="list-style-type: none"> 1. To what extent do Valley Water procurement programs for low dollar purchases (i.e., P-Cards, & Standing Orders) comply with established policies and procurement limits? 2. Are added policies and procedures needed to control spending and prevent work arounds to formal competitive bids?
6	Data Management Date Integrity Data Accuracy	<input type="checkbox"/> Financial <input checked="" type="checkbox"/> Reputational <input checked="" type="checkbox"/> Operational	Business Process	Cross Functional Performance Audit	<ol style="list-style-type: none"> 1. To what extent does Valley Water use multiple data stores for the same information?
7	Plan Implementation Plan Monitoring	<input type="checkbox"/> Financial <input type="checkbox"/> Reputational <input checked="" type="checkbox"/> Operational	Organizational Culture	Culture Audit	<ol style="list-style-type: none"> 1. How has Valley Water's organizational culture impacted implementation of plan established across the agency? 2. To what extent does Valley Water demonstrate and practice common cultural characteristics including:

					<ul style="list-style-type: none"> a) Defining organization's values and proactively emphasize and model those values. b) Ensuring strategies are consistent with the values and holding management accountable. c) Executing their duties within the organization's risk appetite. d) Management reinforces the values and culture through clear communication of expectations across the organization. e) Management actively gathers and listens to feedback. f) All levels are open to constructive criticism and problem solving through methods including information obtained from second- and third-line functions via inputs such as well-received and acknowledged employee suggestion/question program, ethics hotlines, open door policies, employees' events, and meetings, and more. g) All employees (to the extent possible) are engaged in objective setting and strategy discussions.
8	Grant Management Financial Management Coord. & Comm. Financial Oversight Data Accuracy	<input checked="" type="checkbox"/> Financial <input type="checkbox"/> Reputational <input type="checkbox"/> Operational	Grant Reimbursement	Performance Audit	1. Can Valley Water's process for tracking labor and expense activities on state grants awarded to Valley Water benefit from updating? 2. How timely are claims for reimbursement submitted to awarding state agencies? 3. What circumstances have contributed to lost opportunities

					for reimbursement by awarding state agencies?
9	Plan Monitoring	<input type="checkbox"/> Financial <input type="checkbox"/> Reputational <input checked="" type="checkbox"/> Operational	Human Resources Management	Cross-Functional Performance Audit	<ol style="list-style-type: none"> 1. What progress has been made in implementing existing workforce development and succession planning plans? 2. What evidenced-based factors have been significant in facilitating the hiring of technical and operational staff? 3. To what extent have position descriptions and classification evolved to ensure that Valley Water has the technical capability to meet future demands to solve complex problems in an agile and creative manner?
10	Aging Infrastructure Detection Aging Infrastructure Monitoring	<input checked="" type="checkbox"/> Financial <input type="checkbox"/> Reputational <input checked="" type="checkbox"/> Operational	Asset Management	Cross-Functional Performance Audit	<ol style="list-style-type: none"> 1. To what extent do Valley Water divisions and units ensure compliance to specification standards to prevent substandard replacements of parts, equipment, and capital assets? 2. Is Valley Water adequately meeting the needs of equipment maintenance?
11	Data Accuracy	<input checked="" type="checkbox"/> Financial <input type="checkbox"/> Reputational <input type="checkbox"/> Operational	Unmetered Groundwater Measurement	Desk Review	<ol style="list-style-type: none"> 1. Is the methodology supporting unmetered groundwater usage measurement valid and include all applicable methodological assumptions?
12	CIP Planning Process Financial Management	<input checked="" type="checkbox"/> Financial <input type="checkbox"/> Reputational <input type="checkbox"/> Operational	Capital Project Budgeting	Performance Audit	<ol style="list-style-type: none"> 1. Are there areas of Valley Water's capital project budgeting practices that can benefit from adopting best practices?
13	IT Security Management	<input type="checkbox"/> Financial <input type="checkbox"/> Reputational <input checked="" type="checkbox"/> Operational	SCADA	Performance Audit	<ol style="list-style-type: none"> 1. What is the status of implementation of prior audit recommendations? 2. Will the recommendations as implemented by Valley Water accomplish intended goals and objectives?

					3. Are changes needed in the frequency of communications to the Board on the progress and status of cybersecurity and other IT needs?
14	Plan Monitoring Management Plan Implementation	<input checked="" type="checkbox"/> Financial <input type="checkbox"/> Reputational <input type="checkbox"/> Operational	Strategy Development and Implementation	Cross-Functional Performance Audit	1. To what extent are management plans underway or completed across Valley Water? 2. To what extent do the plans need a completion date or require updating? 3. Are strategy and management plans developed across the Agency right sized to the divisions and/or units' staffing levels and workloads? 4. What progress has Valley Water made in implementing management plans to manage risks?
15	Program Monitoring Governance Management	<input type="checkbox"/> Financial <input type="checkbox"/> Reputational <input checked="" type="checkbox"/> Operational	Homelessness Programs	Performance Audit	1. To what extent has Valley Water implemented its homelessness plan? 2. Can other cost-effective strategies implemented in other jurisdictions to prevent the creation and establishment of homeless encampments on Valley Water property? 3. How can Valley Water enhance its homelessness encampment clean-up activities to ensure the protection of health and safety of employees?
16	Grant Management	<input checked="" type="checkbox"/> Financial <input checked="" type="checkbox"/> Reputational <input checked="" type="checkbox"/> Operational	Financial Management	Follow-Up Audit	1. Have improvements occurred in the timeliness of grant reimbursements? 2. To what extent has the grant management and administration implemented prior audit recommendations? 3. What improvements in program outcomes have occurred in the timeliness of grant application review, reimbursement, and accomplishment of deliverables?

17	Program Monitoring Management	<input type="checkbox"/> Financial <input checked="" type="checkbox"/> Reputational <input checked="" type="checkbox"/> Operational	Encroachment Program	Performance Audit	1. Is Valley Water implementing its encroachment licensing program consistent with the Board's guiding principles?
18	Data Management Data Accuracy	<input type="checkbox"/> Financial <input checked="" type="checkbox"/> Reputational <input checked="" type="checkbox"/> Operational	Business Process	Cross Functional Performance Audit	1. To what extent have Valley Water units established business processes to ensure accurate data collection and input? 2. What gaps remain in automating data collection and input?
19	Operations	<input type="checkbox"/> Financial <input type="checkbox"/> Reputational <input checked="" type="checkbox"/> Operational	Risk Management	Performance Audit	1. What are the advantages and disadvantages of realigning business functions (i.e., all risk management activities, workers compensation administration, and claim administration)? 2. Can risk management business processes benefit from updating? (i.e., overall operations, data management, contract claims, workers compensation, small claims, claims administration and management, workers compensation administration, and all risk management activities, including insurance & self-insurance.
20	Emergency Management	<input type="checkbox"/> Financial <input type="checkbox"/> Reputational <input checked="" type="checkbox"/> Operational	Peer Review	Best Practices Review	1. Can regulatory permitting practices administered by other utilities districts help reduce barriers and other challenges experienced by Valley Water?
21	IT Project Management & Communication Data Accuracy	<input type="checkbox"/> Financial <input type="checkbox"/> Reputational <input type="checkbox"/> Operational	System Implementation	Post IT Implementation Audit	1. Has the current large ERP project implementation produced the desired functionality? 2. To what extent have all contract deliverables been met? 3. To what extent have data quality issues surfaced post-implementation? 4. What lessons learned can apply to future information system implementations?

22	Emergency Response Emergency Management	<input type="checkbox"/> Financial <input checked="" type="checkbox"/> Reputational <input checked="" type="checkbox"/> Operational	Procurement	Performance Audit	<ol style="list-style-type: none"> 1. Have Valley Water's procurement policies been flexible and agile to effectively and timely respond to and recover from past emergencies? 2. Are other procurement and operational activities needed to ensure prompt and reliable emergency services?
23	Environmental Sustainability Framework Development Program Monitoring Governance	<input type="checkbox"/> Financial <input checked="" type="checkbox"/> Reputational <input checked="" type="checkbox"/> Operational	Program Measurement & Evaluation	Cross-Functional Performance Audit	<ol style="list-style-type: none"> 1. What level of success has Valley Water's environmental stewardship activities had on preventing environmental damage and promoting environmental sustainability? 2. To what extent has Valley Water adopted sustainability indicators on specific projects to measure progress? 3. To what extent has Valley Water adopted sustainability indicators in its decision-making?
24	Program Monitoring Management	<input type="checkbox"/> Financial <input type="checkbox"/> Reputational <input checked="" type="checkbox"/> Operational	Program Outcomes Business Process	Performance Audit	<ol style="list-style-type: none"> 1. To what extent has Valley Water mitigated the environmental hazards caused by non-use of the percolator ponds? 2. In a non-drought year, are barriers present that prevent Valley Water from filling percolator ponds? 3. What processes need development to prevent expiration of groundwater charge permits?
25	Financial Management Coord. & Comm. Financial Oversight	<input checked="" type="checkbox"/> Financial <input type="checkbox"/> Reputational <input type="checkbox"/> Operational	Capital projects	Desk Review	<ol style="list-style-type: none"> 1. What potential financial risks could occur on the California WaterFix project?
26	CIP Monitoring	<input type="checkbox"/> Financial <input checked="" type="checkbox"/> Reputational <input checked="" type="checkbox"/> Operational	Capital Project Evaluation and Monitoring	Cross-Functional Performance Audit	<ol style="list-style-type: none"> 1. Have completed capital projects met their intended goals? 2. To what extent does Valley Water include performance measures to measure success and monitor financial management?

					Are there lessons learned that can be adopted in future capital project plans to ensure goal accomplishments as well as implementation of alternative strategies to facilitate early communication to the Board of Directors of potential and actual problems, and to predict success such as performing cost vs. benefit analysis?
27	IT Security Management	<input type="checkbox"/> Financial <input type="checkbox"/> Reputational <input checked="" type="checkbox"/> Operational	IT Risk Management	Desk review	1. To what extent is IT risk management activities aligned with best practices, such as National Institute of Standards and Technology (NIST) guidance, including whether acceptable risk appetites and risk tolerances have been formally documented and approved by the Board of Directors?
28	Purchasing and Contracting Processes	<input type="checkbox"/> Financial <input type="checkbox"/> Reputational <input checked="" type="checkbox"/> Operational	Financial Oversight	Desk Review	1. Can Valley Water benefit from updating its qualifications and experience criteria to include in future competitive bids for external financial audit services?
29	IT Strategic Planning Emergency Management	<input type="checkbox"/> Financial <input checked="" type="checkbox"/> Reputational <input checked="" type="checkbox"/> Operational	Disaster Planning	Performance Audit	1. Does Valley Water's prioritization for systems and data recovery meet the agency's needs for sustained business continuity? 2. To what extent does Valley Water's process for determining the prioritization of systems and data recovery adhere to best practices (ex. NIST)?
30	Plan Development Plan Implementation Plan Monitoring	<input type="checkbox"/> Financial <input type="checkbox"/> Reputational <input checked="" type="checkbox"/> Operational	Decision-Making	Cross-Functional Performance Audit	1. What lessons has Valley Water learned from its ad hoc cross-functional efforts to proactively address current or emerging risks?
31	Financial Oversight	<input checked="" type="checkbox"/> Financial <input type="checkbox"/> Reputational <input checked="" type="checkbox"/> Operational	Outsourcing of Legal Services	Desk Review	1. How have changes occurred in District Counsel Office spending

for contracting external legal services?

2. To what extent are the nature of services provided by contracted legal firms presently outside of the District Counsel Office's expertise?
 3. Can expanding outsourced legal services prevent project delivery delays?
-

SECTION C**AUDIT SERVICES – VALLEY WATER RESPONSIBILITY****QEMS ACTIVITIES**

Under development

COMPLIANCE AND FINANCIAL AUDITS

FINANCIAL AUDITS
Financial Audits
Treasurer's Report
Appropriation's Limit
Compensation and Benefit Compliance (odd years)
Travel Expenses Reimbursement (even years)
Single Audit (if applicable)
WUE Fund Audit

Risk Management Reporting Structure

Informal Survey of 31 California Agencies

Reports To:	#	%
City Mgr/Asst City Mgr	7	22.58%
Admin	6	19.35%
Human Resources	10	32.26%
Attorney Office	4	12.90%
Finance	3	9.68%
Other	1	3.23%
TOTAL	31	

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Santa Clara Valley Water District

File No.: 22-0384

Agenda Date: 4/20/2022

Item No.: 4.4.

COMMITTEE AGENDA MEMORANDUM Board Audit Committee

SUBJECT:

Discuss the 2022-2024 Annual Audit Work Plan.

RECOMMENDATION:

- A. Discuss the 2022-2024 Annual Audit Work Plan;
- B. Recommend initiation of the CIP Process Audit to the full Board; and
- C. Recommend to the full Board that Sjoberg Evashenk Consulting, Inc., be the auditor for the CIP Process Audit.

SUMMARY:

On January 11, 2022, the proposed 2022-2024 Annual Audit Work Plan (Attachment 1) was approved by the Board. At its January 19th meeting the Board Audit Committee (BAC) identified the top 3 areas of interest to be audited in 2022: 1) ID #1, CIP Process; 2) ID #3, Emergency Response; and 3) ID #6, Data Management.

At the BAC meeting on February 16, 2022, the Chief Audit Executive (CAE) reviewed the audit scoping document for the CIP Process Audit, which is the first audit that is proposed to be conducted in 2022. Staff raised concerns about the proposed field work being optimistic/aggressive. The CAE has refined the scoping document based on a discussion with staff to add clarity about the level of fieldwork that would be done for various parts of the scope (see attachment 2).

The BAC is requested to identify any potential changes to the Annual Audit Work Plan to recommend to the Board for approval, and to approve recommending to the full Board that Sjoberg Evashenk Consulting, Inc., initiate the CIP Process Audit.

ATTACHMENTS:

Attachment 1: 2022-2024 Annual Audit Work Plan

Attachment 2: CIP Performance Audit Scope Document

UNCLASSIFIED MANAGER:

File No.: 22-0384

Agenda Date: 4/20/2022
Item No.: 4.4.

Darin Taylor, 408-630-3068



TAPInternational

FY 2022-2024 Annual Audit Work Plan

November 10, 2021

Final

ANNUAL AUDIT WORK PLAN

The Audit Work Plan serves as a tool for communicating audit priorities as determined by the Santa Clara Valley Water District's Board Audit Committee (BAC) and Board of Directors. The selection of audits for formal review and approval by the Board of Directors is an important responsibility of the Audit Committee.

Audits are an important oversight tool because they provide independent and fact-based information to management and elected officials. Those charged with governance and oversight can use the information to improve program performance and operations, reduce costs, facilitate decision making.

Audits can:

- Verify that programs, services, and operations are working based on your understanding.
- Assess efficiency and effectiveness.
- Identify the root cause or problems.
- Assess the progress of prior audit recommendations.
- Identify the impact of changes
- Identify leading practices.
- Assess regulatory compliance.
- Develop policy options.
- Assess the accuracy of financial information reported.

The types of audits that can be conducted include:

- Internal audits: Internal audits review the environment, information, and activities that are designed to provide proper accountability over District operations.
- Compliance audits: Compliance audits review adherence to policies and procedures, state regulatory requirements, and/or federal regulatory requirements.
- Performance audits (impact or prospective audits): Performance audits review the economy, efficiency, and effectiveness of Valley Water programs, services, and operations.
- Desk reviews: Small and quick audits.
- Follow up audits: Follow up audits assess the implementation status of recommendations included in prior audit reports.
- Best practices reviews: Compares current operations to best practices.

This proposed audit work plan is divided into sections. Section A describes anticipated ongoing support services to be provided by the independent auditor as well as other quality assurance activities planned by Valley Water's executive management. Section B describes the audits planned for implementation by the Independent Auditor.

SECTION A

ONGOING SUPPORT SERVICES AND SPECIAL PROJECTS

The following table lists non-audit services and special projects for the FY 2022 to 2024 audit work plan:

Project/Responsible Party	Scope	FY 2022 Planned Hours	FY 2023 Planned Hours	FY 2024 Planned Hours
Board of Director & Board Audit Committee Requests for Information/ Independent Auditor	Ongoing. Should the Board of Directors request information on activities implemented by other public agencies or on other matters of interests applicable to enhancing the efficiency and effectiveness of operations, the independent auditor will collect and summarize information.	80	80	80
Audit Training/ Independent Auditor	Annual. The Board Audit Committee Charter describes a requirement to provide audit training to Board Audit Committee members at least annually.	2	2	2
Support Services/ Independent Auditor	Ongoing. Provide support services to Board Directors and Valley Water staff applicable to specific initiatives or planning projects to prevent potential service delivery risks.	40	40	40
QEMS/Valley Water Continual Quality Improvement Unit	Ongoing. Provide services to ensure proper oversight and accountability.	As needed	As needed	As needed

Management Reviews/Valley Water Management	Ongoing. Valley Water's Chief Executive Officer ,as needed, will initiate internal quality assurance reviews of business practices and operations. These reviews are to be shared with the audit committee.	As needed	As needed	As needed
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SECTION B

AUDIT SERVICES – INDEPENDENT AND ON-CALL AUDITORS

Labor Summary

Project/Responsible Party	Scope	FY 2022 Planned Hours	FY 2023 Planned Hours	FY 2024 Planned Hours
Independent and On-Call Auditors	Audits and Follow-up Audits Based on the Audit Work Plan	TBD	TBD	TBD

Recommended Audits

The Board Audit Committee will select and recommend audits described below for approval by the Board of Directors.

ID	Risk Area(s)	Risk Factor	Audit Topic	Type of Audit	Suggested Audit Objectives
1	CIP Planning Process Financial Management	<input checked="" type="checkbox"/> Financial <input checked="" type="checkbox"/> Reputational <input checked="" type="checkbox"/> Operational	CIP Planning Process	Cross-Functional Performance Audit	<ol style="list-style-type: none"> 1. Are there opportunities to improve the capital improvement project planning process (project initiation to CIP plan approval)? 2. To what extent can early participation of Valley Water support units (environmental planning, permitting, purchasing, warehousing) on large capital projects prevent project delays and reduce cost overruns? 3. Can the Capital Improvement Plan be better right sized that considers the Agency's funding and staffing levels?
2	Inventory Control	<input type="checkbox"/> Financial <input checked="" type="checkbox"/> Reputational <input checked="" type="checkbox"/> Operational	Inventory Management	Cross-Functional Performance Audit	<ol style="list-style-type: none"> 1. Does Valley Water effectively manage, account for and record inventory across the agency? 2. What resources (e.g., staffing, systems, facilities) and business processes (communication and coordination) are necessary to meet current and future needs including centralizing inventory management?
3	Emergency Response Emergency Detection Emergency Management	<input type="checkbox"/> Financial <input type="checkbox"/> Reputational <input checked="" type="checkbox"/> Operational	Program Monitoring	Cross-Functional Performance Audit	<ol style="list-style-type: none"> 1. To what extent do the emergency management plans variously established by Valley Water contain gaps and activities to ensure proper prevention, detection, response, and recovery activities? 2. Do gaps exist in surveillance and detection of potential problems across Valley Water's infrastructure?

					<ol style="list-style-type: none"> 3. To what extent is the virtual Emergency Operations Center aligned with FEMA best practices? 4. Are there lessons learned from past emergencies to prevent disruptions to regular operations while providing additional manpower and resources to respond to emergencies?
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5	Financial Oversight Purchasing and Contracting Processes	<input checked="" type="checkbox"/> Financial <input type="checkbox"/> Reputational <input type="checkbox"/> Operational	Financial Management	Performance Audit	<ol style="list-style-type: none"> 1. To what extent do Valley Water procurement programs for low dollar purchases (i.e., P-Cards, & Standing Orders) comply with established policies and procurement limits? 2. Are added policies and procedures needed to control spending and prevent work arounds to formal competitive bids?
6	Data Management Data Integrity Data Accuracy	<input type="checkbox"/> Financial <input checked="" type="checkbox"/> Reputational <input checked="" type="checkbox"/> Operational	Business Process	Cross Functional Performance Audit	<ol style="list-style-type: none"> 1. To what extent does Valley Water use multiple data stores for the same information?
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8	Grant Management Financial Management Coord. & Comm. Financial Oversight Data Accuracy	<input checked="" type="checkbox"/> Financial <input type="checkbox"/> Reputational <input type="checkbox"/> Operational	Grant Reimbursement	Performance Audit	1. Can Valley Water's process for tracking labor and expense activities on state grants awarded to Valley Water benefit from updating? 2. How timely are claims for reimbursement submitted to awarding state agencies? 3. What circumstances have contributed to lost opportunities

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29	IT Strategic Planning Emergency Management	<input type="checkbox"/> Financial <input checked="" type="checkbox"/> Reputational <input checked="" type="checkbox"/> Operational	Disaster Planning	Performance Audit	1. Does Valley Water's prioritization for systems and data recovery meet the agency's needs for sustained business continuity? 2. To what extent does Valley Water's process for determining the prioritization of systems and data recovery adhere to best practices (ex. NIST)?
30	Plan Development Plan Implementation Plan Monitoring	<input type="checkbox"/> Financial <input type="checkbox"/> Reputational <input checked="" type="checkbox"/> Operational	Decision-Making	Cross-Functional Performance Audit	1. What lessons has Valley Water learned from its ad hoc cross-functional efforts to proactively address current or emerging risks?
31	Financial Oversight	<input checked="" type="checkbox"/> Financial <input type="checkbox"/> Reputational <input checked="" type="checkbox"/> Operational	Outsourcing of Legal Services	Desk Review	1. How have changes occurred in District Counsel Office spending

for contracting external legal services?

2. To what extent are the nature of services provided by contracted legal firms presently outside of the District Counsel Office's expertise?
 3. Can expanding outsourced legal services prevent project delivery delays?
-

SECTION C

AUDIT SERVICES – VALLEY WATER RESPONSIBILITY

QEMS ACTIVITIES

Under development

COMPLIANCE AND FINANCIAL AUDITS

FINANCIAL AUDITS
Financial Audits
Treasurer's Report
Appropriation's Limit
Compensation and Benefit Compliance (odd years)
Travel Expenses Reimbursement (even years)
Single Audit (if applicable)
WUE Fund Audit

SANTA CLARA VALLEY WATER DISTRICT

Audit Scoping Document

2022 Audit Plan Item

Review of Valley Water's Capital Project Planning Process.

Audit Objectives

To evaluate the capital project planning process employed by Valley Water to determine the extent to which the process is consistent with relevant requirements, policies, and best practices.

Audit Scope

Valley Water activities associated with planning, developing, executing, and monitoring the Capital Improvement Program.

Audit Approach

Phase I—Audit Planning

- Through interviews, document review, and system and process walk-throughs, gain an understanding of Valley Waters procedures and activities related to its CIP.
- Obtain and review criteria relevant to Valley Water's capital project planning process, including statutes, Board policies, management policies and procedures, and best practices.
- Identify roles and responsibilities of key departments, units, and staff in planning, developing, executing, and monitoring the CIP.

Phase II—Audit Fieldwork

- Assess the processes employed to identify projects for inclusion on the CIP, update the CIP, and to prioritize projects to ensure practices are in-line with the Board's intent and goals for the CIP. This includes evaluating aging infrastructure and condition assessments, system monitoring and detection systems, internal and external stakeholder input, Board priorities, and long-term planning.
- Through interviews and process walk-throughs, develop a high-level understanding of the protocols employed to identify and secure funding sources to implement the CIP, including grant funding and administration, rate setting, debt financing.
- Map out the CIP cycle, identifying key parties involved and business processes; identify the time and resources required for each step in the process (depending on information available), as well as potential gaps, inefficiencies, or opportunities for improvement.
- Evaluate historic trends relating to the CIP, including target start and completion dates, project budgets, and project goals, and compare to actual results; evaluate metrics established to define and evaluate project success or measure program performance.
- Evaluate Valley Water's protocols for monitoring the CIP program, project delivery, project outcomes, and overall performance.
- Conduct a high-level evaluation of Valley Water's approach to implementing the CIP and project delivery. This will include interviews with project management staff and reviews of select project files, and will focus on Valley Water's project management approaches, selection of contractors, contract oversight and monitoring, project strategy and organization, project controls and risk

SANTA CLARA VALLEY WATER DISTRICT Audit Scoping Document

management, change order management, project reporting, budget and performance indicators, and schedule management.

- Conduct benchmarking research to identify best practices in CIP planning and monitoring among large water districts and public works agencies in California. Compare results with practices observed at Valley Water, and identify potential opportunities for improvement.

Phase III—Reporting

- Develop Draft Report and obtain management's response.
- Develop Final Report and presentation.

Proposed Project Budget & Schedule

	Partner	Director	Sr. Consultant	Associate Consultant	Total Hours	Total Cost
<i>HOURLY RATE:</i>	\$230	\$180	\$115	\$90		
Task Description						
Project Initiation & Planning	45	45	45		135	\$23,625
Fieldwork	40	150	200	160	550	\$73,600
Draft & Final Report	60	35			95	\$20,100
<i>Total Hours</i>	145	230	245	160	780	
Total Project Costs						\$117,325

MILESTONE	TIMELINE											
	Jan.	Feb.	Mar.	Apr.	May	Jun.	Jul.	Aug.	Sept.	Oct.	Nov.	Dec.
Project Planning												
Fieldwork												
Draft Report												
Final Report												



Santa Clara Valley Water District

File No.: 22-0386

Agenda Date: 4/20/2022

Item No.: 4.5.

COMMITTEE AGENDA MEMORANDUM Board Audit Committee

SUBJECT:

Review and Discuss the 2022 Board Audit Committee Work Plan.

RECOMMENDATION:

Review and discuss topics of interest raised at prior Board Audit Committee (BAC) Meetings and make any necessary adjustments to the BAC Work Plan.

SUMMARY:

Per the BAC's Charter, Article III, Paragraph 6.2, The Committee shall, in coordination with Valley Water's Clerk of the Board, develop a proposed Annual Work Plan. Items shall be included in the Annual Work Plan based upon a majority vote of the Committee.

Under direction of the Clerk, Work Plans are used by all 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. Committee Work Plans also serve as Annual Committee Accomplishments Reports.

Attachment 1 is the 2022 BAC Work Plan. Upon review, the BAC may make changes to be incorporated into the next revision.

ATTACHMENTS:

Attachment 1: 2022 BAC Work Plan

UNCLASSIFIED MANAGER:

Darin Taylor, 408-630-3068

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BOARD AUDIT COMMITTEE 2022 WORKPLAN														
#	ACTIVITY/SUBJECT	Q1			Q2			Q3			Q4			NOTES/RECOMMENDATIONS
		19-Jan	16-Feb	16-Mar	20-Apr	18-May	15-Jun	20-Jul	17-Aug	21-Sep	19-Oct	16-Nov	21-Dec	
	Board Audit Committee Meeting Dates													
	Number of Agenda Items per Meeting Date	8	10	4	5	8	3	4	7	4	2	6	3	Note: For informational purposes only. This value excludes Item 12 because that items is prepared by the Committee Clerk, not the CI Team, and is for the Full Board, not just the BAC. Note: The BAC approved a regular meeting schedule for 2022, to meet monthly, on the third Wednesdays at 2:00 p.m.
	Meeting Dates	•	•	•	•	•	•	•	•	•	•	•	•	
	Board Audit Committee Management													
1	Election of 2022 BAC Chair and Vice Chair		•											Recommendation: Nominate and elect the 2022 Board Audit Committee Chair and Vice Chair.
2	Board Audit Committee Audit Charter		•											Recommendation: Propose modifications to the Board Audit Committee Audit Charter to be presented to the full Board.
3	Review and Update 2022 BAC Work Plan	•	•	•	•	•	•	•	•	•	•	•	•	Recommendation: A. Review and Discuss topics of interest raised at prior Board Audit Committee Meetings and make any necessary adjustments to the Board Audit Committee Work Plan; and B. Approve the updated 2022 Board Audit Committee Work Plan.
4	Discuss Scope of Annual Audit Training from Board Independent Auditor					•								Recommendation: Discuss scope of Annual Audit Training from Board Independent Auditor.
5	Receive Annual Audit Training from Board Independent Auditor						•							Recommendation: Receive Annual Audit Training from Board Independent Auditor.
6	Conduct Annual Self-Evaluation	•		•	•									Recommendation: A. Conduct Annual Self-Evaluation; and B. Discuss the Results of the Annual Self-Evaluation; and C. Prepare Formal Report to provide to the full Board. Note: Jan = Discuss the Eval and provide forms; Feb = Discuss the results of the Eval; Mar = Provide a Summary Report of Evals; Apr = Present Eval Results to Full Board
7	Discuss Chief Audit Executive (CAE) Final Contract Close-out Report from TAP International, Inc. (Jan 2022) Receive and Discuss CAE Activity Report to Evaluate Auditor Performance (Starting in Jan 2023)	•												Recommendation for 2022: Receive Final Contract Close-out Report from TAP International, Inc. Recommendation for 2023: Receive and discuss CAE Activity Report from Sjoberg Evashenk to evaluate CAE Performance.

Note: The • denotes that an item is on the BAC meeting agenda for the corresponding month in which the • is listed. The shading represents that the items have been completed.

BOARD AUDIT COMMITTEE 2022 WORKPLAN														
#	ACTIVITY/SUBJECT	Q1			Q2			Q3			Q4			NOTES/RECOMMENDATIONS
		19-Jan	16-Feb	16-Mar	20-Apr	18-May	15-Jun	20-Jul	17-Aug	21-Sep	19-Oct	16-Nov	21-Dec	
8	Discuss Extension or Termination of Board Chief Audit Executive (CAE) Contract for Board Independent Auditing Services Prior to Expiration of the Agreement around December 2024													Recommendation: A. Discuss option to extend Board Independent Auditor Contract with TAP International, Inc. for Board Independent Auditing Services currently scheduled to expire effective June 30, 2022; and B. Approve recommendation to the full Board to: 1. Allow the expiration of the Board Independent Auditor Contract with TAP International; or 2. Exercise option to extend Board Independent Auditor Contract with TAP International, Inc. Note: Agreement effective date was 12/27/21 or 1/1/22.
9	Chief Audit Executive - Request for Proposal: Review Panel (Apr 2024)													Note: Review Panel for the role of the Chief Board Auditor will be the BAC members
10	Tri-annual Risk Assessment (CY 2024)													Recommendation: Discuss the scope of work for the 2024 Risk Assessment. Note: Initiate discussions in February 2024; Deliverable due by September 2024
	Board Audit Committee Special Requests													
11	External Financial Auditor Meeting with Individual Board members													Note: Schedule as needed.
12	Provide BAC Summary Report to full Board	•	•	•	•	•	•	•	•	•	•	•	•	Note: Report to be provided to Board in non-agenda the month after each BAC meeting, or as part of the Board Committee Reports, prepared by Committee Clerk
13	Risk Management Organization				•									Note: In October 2021 The BAC suggested pushing discussion on this topic out a few months to allow new District Counsel time to ascertain effectiveness of current organizational structure (assume April 2022). Recommendation: Review and discuss Risk Management Organization.
14	Financial Auditor Selection Parameters	•	•											Recommendation: Discuss prior to the selection of the next financial auditor Note: Next procurement scheduled for January 2022.
	Management and Third Party Audits													
15	Review Draft Audited Financial Statements											•		Recommendation: A. Review draft Annual Comprehensive Financial Report for the Fiscal Year Ended June 30, 2022; and B. Direct staff to have Financial Auditor to contact Board Members and present, if necessary. Note: This is a Nov. agenda item

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BOARD AUDIT COMMITTEE 2022 WORKPLAN														
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		19-Jan	16-Feb	16-Mar	20-Apr	18-May	15-Jun	20-Jul	17-Aug	21-Sep	19-Oct	16-Nov	21-Dec	
16	Audit Report of the Water Utility Enterprise Funds for the Fiscal Year								•					Recommendation: Receive and Discuss the Audit Report of the Water Utility Enterprise Funds for the Fiscal Year.
17	Receive QEMS Annual Internal Audit Report								•					Recommendation: Receive information regarding the Quality and Environmental Management System.
18	Audit Recommendations Implementation Status	•				•		•					•	Recommendation: Receive and discuss a status update on the implementation of audit recommendations. Note: This is a December/June item; January 2022 item was delayed from Dec 2021; April May 2022 return to BAC to provide missing updates from Jan. 2022; Return to the BAC every 6 months - Jan. & Jul. 2022 and then Dec. & Jun. thereafter
Board Independent Auditor - Sjoberg Evashenk Items														
19	Review and Update Annual Audit Work Plan	•	•	•	•	•	•	•	•	•	•	•	•	Recommendation: Discuss the Annual Audit Work Plan and update, if necessary.
	Audit - 2019 Contract Change Order Audit													
20	Recommendation Implementation Status (Annual Rpt. in August; Target Completion = TBD)								•					Recommendation: Receive and discuss a status update on the implementation of audit recommendations.
	Audit - 2020 District Counsel Audit													
21	Recommendation Implementation Status (Annual Rpt. in January; Target Completion = TBD)		•											Recommendation: Receive and discuss a status update on the implementation of audit recommendations. Note: This is a January item; February 2022 item was delayed from January
	Audit - 2020 Real Estate Audit													
22	Recommendation Implementation Status (Annual Rpt. in November; Target Completion = TBD)											•		Recommendation: Receive and discuss a status update on the implementation of audit recommendations.
	Audit - 2020 SCW Program Grants Management													
23	Recommendation Implementation Status (Semi-Annual Rpt. in March and September; Target Completion = June 30, 2023)					•				•				Recommendation: Receive and discuss a status update on the implementation of audit recommendations.
	Audit - 2021 Permitting Best Practices													
24	Recommendation Implementation Status (Annual Rpt. in May; Target Completion = TBD)					•								Recommendation: Receive and discuss a status update on the implementation of audit recommendations.
	Pacheco Reservoir Expansion Investigation													

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BOARD AUDIT COMMITTEE 2022 WORKPLAN														
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		19-Jan	16-Feb	16-Mar	20-Apr	18-May	15-Jun	20-Jul	17-Aug	21-Sep	19-Oct	16-Nov	21-Dec	
25	Review Pacheco Project Investigation Progress Report		•											<u>Recommendation:</u> Receive an update on the status of the on-going investigation. <u>Note:</u> Work with District Counsel on this item
Audit - To Be Determined														
26	Receive notification of initiated Audit													<u>Note:</u> Audit Objectives - What is the objective of this audit?
27	Review Audit Progress Report													<u>Recommendation:</u> Receive an update on the status of the on-going audit.
28	Review Audit Draft Report Presentation													<u>Recommendation:</u> Receive and discuss the Final Draft Audit Report.
29	Review Management's Response to Audit Final Draft Report													<u>Recommendation:</u> A. Receive and discuss the Management Response to the Final Draft Audit Report; and B. Authorize staff work with the CAE to finalize the Audit Report and present it to the Board of Directors.
Management Audits - PMA, MGO, and 3rd Party Items														
	Audit - 2014 Transparency Compliance Audit													
30	Recommendation Implementation Status (Annual Rpt. in November; Target Completion = TBD)											•		<u>Recommendation:</u> Receive and discuss a status update on the implementation of audit recommendations.
	Audit - 2015 Mitigation and Monitoring Compliance Audit													
31	Recommendation Implementation Status (Annual Rpt. in January; Target Completion = TBD)		•											<u>Recommendation:</u> Receive and discuss a status update on the implementation of audit recommendations.
	Audit - 2015 Consultant Contracts Audit													
32	Status Update on the Implementation of Recommendations from the 2015 Consultant Contracts Management Process Audit Conducted by Navigant Consulting, Inc. and the Consultant Contracts Improvement Process.		•						•					<u>Note:</u> Staff CAS update every 6 months. <u>Recommendation:</u> Receive and discuss a status update on the implementation of the recommendations made by Navigant in the 2015 Consultant Contracts Management Process Audit and on the Consultant Contracts Improvement Process.
	Audit - 2019 Lower Silver Creek Audit													
33	Recommendation Implementation Status (Annual Rpt. in February; Target Completion = TBD)					•								<u>Recommendation:</u> Receive and discuss a status update on the implementation of audit recommendations.
	Audit - 2022 Human Resources Audit													
34	HR Audit Report - Review and Comment regarding Management's Response	•												<u>Recommendation:</u> Receive and discuss a status update on the implementation of audit recommendations.
	QEMS Improvements Implementation													
35	Recommendation Implementation Status (Annual Rpt. in August; Target Completion = TBD)								•					<u>Recommendation:</u> Receive and discuss a status update on the implementation of audit recommendations.
Miscellaneous BAC Work Plan Items														

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BOARD AUDIT COMMITTEE 2022 WORKPLAN														
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		19-Jan	16-Feb	16-Mar	20-Apr	18-May	15-Jun	20-Jul	17-Aug	21-Sep	19-Oct	16-Nov	21-Dec	
36	Financial Status - Quarterly Update		•			•				•		•		<u>Note:</u> suggested frequency is as follows: February for mid-year review; May for Q3 review; September for unaudited close; November for Q1 review Schedule as needed
37	Financial Audit - Periodic Update							•						
														<u>Recommendation:</u> Discuss the Financial Audit
38	SBCCC Partnership Grant Issue	•		•	•									Added per Darin's comments at the 12/15/21 BAC Meeting <u>Recommendation:</u> Receive and Discuss the SBCCC Partnership Grant Issue

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