

Governance Policies of the Board

IV. Executive Limitations

Governance Policies of the Board

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Title: Global Executive Constraint
Category: Executive Limitations

Policy No. EL-1	Adopted: June 15, 1999 Chair: Larry Wilson	Latest Revision: November 13, 2007 Chair: Tony Estremera
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Board Officer's affirmation of official Board action adopting this policy.

The BAOs shall not cause or allow any practice, activity, decision, or organizational circumstance which is either unlawful, imprudent or in violation of commonly accepted business and professional ethics. The BAOs shall not endanger the organization's public image or credibility, particularly in ways that would hinder its accomplishment of mission.

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Title: Treatment of Consumers
Category: Executive Limitations

Policy No. EL-2	Adopted: December 21, 1999 Chair: Larry Wilson	Latest Revision: November 23, 2010 Chair: Richard Santos
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Board Officer's affirmation of official Board action adopting this policy.

With respect to interactions with consumers or those applying to be consumers, the BAOs shall not cause or allow conditions, procedures, or decisions which fail to fulfill reasonable consumer expectations for good service, are unsafe, undignified, or unnecessarily intrusive. Consumers include any persons transacting business or interacting with the District.

Further, without limiting the scope of the foregoing by this enumeration, a BAO shall not:

- 2.1. Use application forms that elicit information for which there is no clear necessity.
- 2.2. Use methods of collecting, reviewing, transmitting, or storing consumer information that fail to protect against improper access to the material elicited.
- 2.3. Fail to provide appropriate accessibility and privacy in facilities.
- 2.4. Fail to establish with consumers a clear understanding of what may be expected and what may not be expected from the service offered.
- 2.5. Fail to inform consumers of this policy, or to provide a way for persons to be heard who believe they have not been accorded a reasonable interpretation of their protections under this policy.

Further, without limiting the scope of the foregoing by this enumeration, the CEO and COB shall not:

- 2.6. Fail to provide correspondence addressed to the Board to each Board member within 5 working days from receipt and respond within 30 working days of receipt. In those individual situations where it is not possible for the BAOs to respond completely to an inquiry, sending a response to the originator, acknowledging receipt of the inquiry and an explanation of actions being taken and timelines for preparing the complete response is acceptable for complying with this 30 day response time.

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Title: Treatment of Staff
Category: Executive Limitations

Policy No. EL-3	Adopted: June 15, 1999 Chair: Larry Wilson	Latest Revision: July 28, 2011 Chair: Don Gage
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Board Officer's affirmation of official Board action adopting this policy.

With respect to the treatment of staff and persons doing work for or on behalf of the District, the BAOs may not cause or allow conditions which are unfair, undignified, disorganized, or unclear.

Further, without limiting the scope of the foregoing by this enumeration, a BAO shall not:

- 3.1. Operate without written personnel rules which: (a) clarify rules for staff, (b) provide for effective handling of grievances, and (c) protect against wrongful conditions, such as grossly preferential treatment for personal reasons. [See BAO/CEO Interpretation](#)
- 3.2. Retain more than thirty-two (32) unclassified positions without Board approval. [See BAO/CEO Interpretation](#)
- 3.3. Fail to present an appointment of a Chief-level position to the Board for confirmation.
- 3.4. Allow compensated employment by the District for any serving member of the Board of Directors, and for one year following the end of the Board member's term of office.
- 3.5. Retaliate against any staff member for non-disruptive expression of dissent.
- 3.6. Fail to acquaint staff with their protections under this policy.
- 3.7. Operate without written employee health and safety policies which (a) ensure that standards, programs, and procedures meet or exceed acceptable industry standards as written in state and federal regulations, and (b) ensure a healthful and safe work environment for all District employees. [See BAO/CEO Interpretation](#)
- 3.8. Require pre-employment alcohol/drug testing except where mandated by State or Federal laws.
- 3.9. Allow persons doing work for or on behalf of the District to be paid less than a living wage, to be unable to afford health insurance, to not have reasonable time off, to be subject to lay-off merely because the District changes contracts, and to work in an environment where there is not labor peace. [See BAO/CEO Interpretation](#)
- 3.10. Allow consultant service agreements to be used if work can be accomplished at the necessary skill level by available in-house staff without jeopardizing other District priorities.

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Title: Financial Planning/Budgeting
Category: Executive Limitations

Policy No. EL-4	Adopted: September 28, 1999 Chair: Larry Wilson	Latest Revision: March 24, 2009 Chair: Sig Sanchez
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Board Officer’s affirmation of official Board action adopting this policy.

Financial planning for any fiscal year or the remaining part of any budget period shall not deviate materially from Board’s Ends priorities, risk fiscal jeopardy, or fail to be derived from a multi-year plan. [See BAO/CEO Interpretation](#)

Further, without limiting the scope of the foregoing by this enumeration, the CEO shall not:

- 4.1. Fail to include credible projection of revenues and expenses, separation of capital and operational items, cash flow, and disclosure of planning assumptions.
 - 4.1.1. Fail to produce an annual Rolling Five-Year Capital Improvement Plan with the first year serving as the adopted capital budget and the remaining years in place as a projected capital funding plan.
- 4.2. Plan the expenditure in any budget period of more funds than are conservatively projected to be received or appropriated from reserves in that period.
 - 4.2.1. Fail to demonstrate to the Board the planned expenditures for the identified and selected capital projects in the Rolling Five-Year Capital Improvement Plan do not deviate materially from the Board’s priorities.
 - 4.2.2. Restrict the use and/or spending of the District’s share of the 1% ad valorem property taxes to within historical tax rate zone boundaries.
 - 4.2.3. Allocate state subvention reimbursements for use and/or spending.
 - 4.2.4. Reallocate Clean, Safe Creeks funding to other outcomes.
- 4.3. Fail to budget fund reserves at the minimums noted in the District’s reserve policy.
- 4.4. Fail to at least annually present the Board with information about the District’s financial reserves and schedule an opportunity for the public to comment thereon.

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Title: Financial Conditions and Activities
Category: Executive Limitations

Policy No. EL-5	Adopted: June 15, 1999 Chair: Larry Wilson	Latest Revision: October 25, 2011 Chair: Don Gage
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Board Officer’s affirmation of official Board action adopting this policy.

With respect to the actual, ongoing financial condition and activities, the BAOs shall not cause or allow the development of fiscal jeopardy or a material deviation of actual expenditures from Board priorities established in Ends policies.

Further, without limiting the scope of the foregoing by this enumeration, a BAO shall not:

- 5.1. Expend more funds than have been received in the budget period to date unless specifically appropriated from designated reserves, funds available from the proceeds of authorized long-term debt or incurred short-term debt.
- 5.2. Make a single purchase, contract, 3rd party claim settlement of liability, or any other financial commitment in amounts greater than the following, unless authorized by the Board. [See BAO/CEO Interpretation](#)
 - 5.2.1. For Construction Contracts—\$25,000.
 - 5.2.2. For Consultant Service Contracts—\$100,000. In addition, for financial services contracts, the term of the contract shall not exceed (3) fiscal year periods subject to audit and the contract shall not be awarded to the same auditing firm for consecutive terms.
 - 5.2.3. For any other services, supplies and equipment, and other financial commitments—The amount specified in the Board-approved annual District budget project plan for those services, supplies, equipment, and other financial commitments.
 - 5.2.4. For Settlement of 3rd Party Claims—\$50,000.
 - 5.2.5. For Legal Services—No limit, so long as District Counsel informs the Board immediately for the retention of outside counsel and the necessity therefore, pursuant to EL-9.14.
 - 5.2.6. For Imported Water Management Contracts—No limit; the CEO will inform the Board on a timely basis of Imported Water Management Contracts executed.
 - 5.2.7. For Capital Construction Contracts—\$100,000 in budget adjustments to capital projects within the same fund in the fiscal year.

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- 5.3. Make a single purchase, contract, or any other financial commitment without a competitive procurement process, unless authorized by the Board or one of the following exemptions is applicable:
 - 5.3.1. Financial commitments less than or equal to \$2,500.
 - 5.3.2. Leases for District occupied facilities or payments for miscellaneous facility services, such as telephone, electricity, gas, and water, where rates or prices are fixed by legislation or by federal, state, county or municipal regulations.
 - 5.3.3. Financial commitments resulting from an agreement with a governmental agency, including cost-sharing agreements, and grant matching fund commitments.
 - 5.3.4. Payments required by statute, regulation or ordinance.
 - 5.3.5. Rebates and refunds made pursuant to District water conservation rebate and refund programs.
 - 5.3.6. Financial commitments resulting from imported water management agreements, so long as the CEO informs the Board of the commitment on a timely basis.
 - 5.3.7. Financial commitments resulting from the purchase of services, supplies, and equipment that are essential to promptly attend to an emergency as defined in Public Contract Code Section 1102.
 - 5.3.8. Payments to public utilities to relocate or install their utilities made necessary by District public work projects.
 - 5.3.9. Payments for legal services, so long as District Counsel informs the Board immediately for the retention of outside counsel and the necessity for such retention of outside counsel, pursuant to EL-9.14.
 - 5.3.10. Procurements of education services from non-profit institutions such as public schools or universities.
 - 5.3.11. Procurements less than or equal to \$25,000 if, within the period of 1 month, advertising or posting for identical services, supplies, and equipment have failed to secure responsive proposals and, in the opinion of the BAO or BAO's procurement designee, further advertising or posting will not alter this result.

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5.3.12. Procurements less than or equal to \$25,000 or consultant services contracts less than or equal to \$100,000, so long as documented justification for the non-competitive procurement satisfies the standard specified in Executive Limitation 5.3.12.1 or 5.3.12.2 and such documented justification is submitted for review to the BAO or BAO's procurement designee, and is approved.

5.3.12.1. The best interest of the District cannot be served through a competitive procurement because only one firm exists that can provide the service, supply, or equipment, and there is not an available equivalent to meet the District's minimum needs. (sole-source)

5.3.12.2. The District's need for the service, supply, or equipment is of such an unusual and compelling urgency that the District would suffer substantial harm, unless it is permitted to acquire the service, supply, or equipment on a non-competitive basis. (single-source)

5.4. Spend extravagantly, inefficiently, or in ways more costly than necessary. *See BAO/CEO Interpretation*

5.5. Operate without written purchasing policies and procedures that address normally prudent protections assuring legal and fiscal compliance against such items as non-competitive acquisition practices, conflict of interest, favoritism, and non-inclusive vendor policies. *See BAO/CEO Interpretation*

5.6. Allow the District to enter into a consultant agreement without considering the consultant's past performance history with the District.

5.7. Allow the splitting of orders to avoid the limits set forth in Executive Limitation 5.2.1 through 5.2.3; 5.3.1; 5.3.11 through 5.3.12.

5.8. Allow any District division or unit to purchase single-serving bottles of water using District funds.

5.9. Invoice/charge or demand payment from water customers (raw, ground, treated, or recycled) of the District that is not accurate, legal, and consistent with District and Board policies.

Further, without limiting the scope of the foregoing by this enumeration, the CEO shall not:

5.10. Indebt the organization, except as provided in the District Act, and in an amount greater than can be repaid by certain, otherwise unencumbered revenues within 90 days, or prior to the close of the fiscal year.

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- 5.10.1. Issue debt (long or short-term obligations that are sold within the financial marketplace) that conflicts with the District Act or the legal authority of the District, and without Board authorization;
- 5.10.2. Issue debt without a demonstrated financial need;
- 5.10.3. Fail to meet debt repayment schedules and covenants of bond documents;
- 5.10.4. Fail to establish prudent District Debt Policies that are consistent with Board policies and provide guidance to District staff in regards to administering the debt programs and agreements, including consideration for the appropriate level of debt for the District to carry and structuring debt repayment to address intergenerational benefits;
- 5.10.5. Issue debt or enter into financing agreements that are inconsistent with the District Debt Policies including any addendums;
- 5.10.6. Fail to maintain strong credit ratings and good investor relations.
- 5.11. Use any unappropriated long-term reserves or undesignated fund balance.
- 5.12. Conduct unbudgeted interfund transfers in any amount greater than can be repaid by certain, otherwise unencumbered revenues within 90 days, or prior to the close of the fiscal year.
- 5.13. Fail to settle payroll and debts in a timely manner.
- 5.14. Allow tax payments or other government ordered payments or filings to be overdue or inaccurately filed.
- 5.15. Acquire, encumber or dispose of real property interest, unless authorized by the Board or one of the following exemptions is applicable:
 - 5.15.1. The acquisition or dedication is a permanent or temporary real property interest required to be purchased to meet District obligations to provide such interests under a contract eligible for federal cost-sharing, provided that such acquisitions otherwise meet the requirements of state law.
 - 5.15.2. The acquisition is a dedication of real property interests and acceptance of any dedication does not subject the District to unreasonable liability.
 - 5.15.3. The encumbrance is a lease or rental agreement granting the District a possessory real property interests as a lessee or tenant and the District's total financial obligation under the Lease does not exceed the amount specified in the Board-approved annual budget for any such Lease.

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- 5.15.4. The disposition is a lease or rental agreement that: (i) conveys only possessory interests in District real property that the District has no need to use during the term of the Lease, (ii) can unilaterally be terminated at the District's convenience by providing no more than 90 days prior notice, and (iii) it does not provide rights to construct any improvement whatsoever, without the tenant obtaining a written District permit issued pursuant to the District's permitting procedures.
- 5.15.5. The encumbrance is a license or right-of-entry granting the District non-possessory real property interests.
- 5.15.6. The disposition is a revocable license or right-of-entry that grants non-possessory real property interests so long as the term of any such license or right-of-entry does not exceed two years or the District reserves the right to revoke any such license or right-of-entry at will, and any such license or right-of-entry does not grant the right to construct any permanent improvement on District real property that is incompatible with District purposes.
- 5.16. Convey nominal value real property interests to the state, County of Santa Clara, or to any city, school district, or other special district within the Santa Clara Valley Water District exceeding \$25,000 in market value.
- 5.17. Fail to pursue receivables after a reasonable grace period in a timely and business-like manner.
- 5.18. Allow any sponsorship greater than \$2,500, unless authorized by the Board.
- 5.19. Allow for any sponsorships, contributions, or memberships which do not have a nexus to the District's mission, vision or Board governance policies.
- 5.20. Allow the sale of single-serving bottled water at District facilities.
- 5.21. Fail to enact procurement policies that support environmental stewardship to include extended producer responsibility and the reduction of hazardous and solid waste generation. [See BAO/CEO Interpretation](#)
- 5.22. Fail to evaluate support of, and/or participate in public and/or private collaborations, multi-jurisdictional arrangements, and legislative strategies that support extended producer responsibility in a cost-effective way.
- 5.23. Fail to provide access to opportunities for small and local businesses in providing services to the District.
- 5.24. Allow the purchase of expanded polystyrene food service ware for use at District facilities.

Governance Policies of the Board

Title: Emergency BAO Succession
Category: Executive Limitations

Policy No. EL-6	Adopted: June 15, 1999 Chair: Larry Wilson	Latest Revision: September 30, 2008 Chair: Rosemary Kamei
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Board Officer’s affirmation of official Board action adopting this policy.

In order to protect the Board from sudden loss of BAO services, the BAOs may have no fewer than two other staff members familiar with Board and BAO issues and processes.

Governance Policies of the Board

Title: Asset Protection
Category: Executive Limitations

Policy No. EL-7	Adopted: June 15, 1999 Chair: Larry Wilson	Latest Revision: November 23, 2010 Chair: Richard Santos
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Board Officer's affirmation of official Board action adopting this policy.

The CEO shall not allow corporate assets to be unprotected, inadequately maintained or unnecessarily risked.

Further, without limiting the scope of the foregoing by this enumeration, a BAO shall not:

- 7.1. Unnecessarily expose the organization, its Board or staff to claims of liability.
- 7.2. Fail to protect intellectual property, information and files from loss or significant damage.
- 7.3. Receive, process or disburse funds under controls which are insufficient to meet audit standards.
See BAO/CEO Interpretation

Further, without limiting the scope of the foregoing by this enumeration, the CEO shall not:

- 7.4. Fail to ensure the organization is prepared to respond and recover from an emergency or disaster.
- 7.5. Fail to utilize the National Incident Management System.
- 7.6. Subject plant and equipment to improper wear and tear or insufficient maintenance.
- 7.7. Invest or hold funds of the District in accounts or instruments that are inconsistent with the following statement of investment policies:
 - 7.7.1. Public funds not needed for the immediate necessities of the District should, to the extent reasonably possible, be prudently invested or deposited to produce revenue for the District consistent with the Staff Investment Guidelines and applicable law.
 - 7.7.2. The Treasurer or his or her designee shall submit quarterly investment reports to the Board as specified under Government Code Section 53646.
- 7.8. Fail to protect water rights, rights of way and flood control facilities. *See BAO/CEO Interpretation*

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- 7.9. Fail to apply current understanding of climate change mitigation and adaptation measures as relevant to water supply plans, flood management project plans, asset management and infrastructure plans, California Environmental Quality Act assessments and environmental impact reports, energy management plans, business plans, and strategic plans; engineering operations, maintenance and implementing best administrative and purchasing practices.

Further, without limiting the scope of the foregoing by this enumeration, the District Counsel shall not:

- 7.10. Fail to maintain property insurance for occupied buildings and contents to at least the value of probable maximum loss, excluding any insurance for the value of non-occupied facilities such as pipelines, dams, canals, reservoirs and the like, and excluding any insurance for the value of vehicles.
- 7.11. Fail to maintain District Self-Insured Risk Retention for liability at \$2 million with reserve funding at a level of 90 percent actuarial confidence and a policy or policies of insurance for not less than \$40 million excess coverage for Commercial General Liability. However, in the event that losses are paid from this reserve fund during a fiscal year, the fund balance may drop to a level representing 80% actuarial confidence, to be replenished in the next fiscal year.

Governance Policies of the Board

Title: Compensation and Benefits

Category: Executive Limitations

Policy No. EL-8	Adopted: June 15, 1999 Chair: Larry Wilson	Latest Revision: September 30, 2008 Chair: Rosemary Kamei
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Board Officer's affirmation of official Board action adopting this policy.

With respect to employment, compensation, and benefits to employees, consultants, contract workers, and volunteers, the BAOs shall not cause or allow jeopardy to fiscal integrity or public image.

Further, without limiting the scope of the foregoing by this enumeration, a BAO shall not:

- 8.1. Change his or her own compensation and benefits.
- 8.2. Promise or imply permanent or guaranteed employment.
- 8.3. Agree to bargaining unit agreements outside parameters set by the Board.
- 8.4. Create obligations over a longer term than revenues can be safely projected.

Governance Policies of the Board

Title: Communication and Support to the Board
Category: Executive Limitations

Policy No. EL-9	Adopted: June 15, 1999 Chair: Larry Wilson	Latest Revision: July 28, 2011 Chair: Don Gage
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Board Officer’s affirmation of official Board action adopting this policy.

The BAOs shall not permit the Board to be uninformed or unsupported in its work.

Further, without limiting the scope of the foregoing by this enumeration, a BAO shall not:

- 9.1. Neglect to submit monitoring data required by the Board (see policy on Monitoring BAO Performance) in a timely, accurate and understandable fashion, directly addressing provisions of Board policies being monitored.
- 9.2. Let the Board be unaware of relevant trends, anticipated adverse media coverage, or material external and internal changes, particularly changes in the assumptions upon which any Board policy has previously been established.
- 9.3. Fail to inform the Board of the intent to approve a *collaborative* agreement, and keep the Board informed on an ongoing basis.
- 9.4. Fail to inform the Board of the intent to undertake negotiation of any imported water management agreement connected with proposed land development or involving a private or non-governmental party, and to keep the Board informed of imported water management activities on an ongoing basis.
See BAO/CEO Interpretation
- 9.5. Fail to advise the Board if, in the BAO’s opinion, the Board is not in compliance with its own policies on Governance Process and Board Organization Linkage, particularly in the case of Board behavior which is detrimental to the work relationship between the Board and the BAOs.
- 9.6. Fail to marshal for the Board as many staff and external points of view, issues and options as needed for fully informed Board choices. *See BAO/CEO Interpretation*
- 9.7. Present information in unnecessarily complex or lengthy form or in a form that fails to differentiate among information of three types: monitoring, decision preparation, and other.
- 9.8. Fail 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. Formal “Requests for Information” should be given to the entire Board.

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- 9.9. Fail to report in a timely manner an actual or anticipated noncompliance with any policy of the Board.
See BAO/CEO Interpretation
- 9.10. Fail to supply for the consent agenda all items delegated to the BAOs yet required by law or contract to be Board-approved.
- 9.11. Communicate a position on legislation without first obtaining the concurrence of the Chair of the Board of Directors, or the Chair's designee.
- 9.11.1. Fail to inform the Board regarding positions on legislation communicated on behalf of the District no later than the next regularly scheduled Board of Directors meeting.
- 9.12. Fail to respond to individual Board member requests and Board requests within 30 days, except as follows: *See BAO/CEO Interpretation*
- 9.12.1. For Board member and Board requests for information, a BAO shall respond within 30 days of the initial Board member request. In the event that the responsible BAO determines that a Board request will require more than 30 days to complete, the BAO shall inform the Board within 30 days of receiving the request. Upon making this notification, the BAO shall also specify the expected completion date for the request.
- 9.12.2. For Board member requests determined by a BAO to be non-routine and require redirection of District staff to the detriment of their normally assigned duties, the BAO shall agendaize that request and report to the Board that fulfilling the request will require substantive work and request directions from the Board on whether to proceed with fulfilling the request.
- 9.13. Fail to make available to the public staff reports containing recommendations about any item on the agenda of a regular public meeting of the Board, or of a public hearing conducted by the Board no later than 10 days prior to the date of such a meeting or hearing except for the following reports, which shall be made available as soon as possible:
- 9.13.1. reports relating to a contract award, if the contract has been considered at a prior Board meeting;
- 9.13.2. reports recommending Board action necessary to meet a legal deadline, including a deadline for a grant funding application;
- 9.13.3. reports conveying a recommendation from a Board committee;

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- 9.13.4. reports recommending immediate Board action to address urgent health, safety, or financial matters identified in the report;
- 9.13.5. supplemental reports conveying additional information received after the initial report was released.

If a recommendation in a staff report is revised based upon direction from a member of the Board, the revision shall be disclosed in the applicable report.

Further, without limiting the scope of the foregoing by this enumeration, the District Counsel shall not:

- 9.14. Fail to retain or employ adequate legal counsel to advise and represent the District or to report to the Board the retention of employment of such counsel; fail to inform the Board about threatened or pending litigation; or fail to provide quarterly reports to the Board describing legal activity, status of litigation, cost of external legal counsel, and significant current and potential claims against the District.

Further, without limiting the scope of the foregoing by this enumeration, the Clerk of the Board shall not:

- 9.15. Fail to include in minutes of meetings of the Board, a report of the actions taken in closed session at that meeting in accordance with Section 54957.1 of the Government Code.

Governance Policies of the Board

Title: Equal Employment Opportunity, Discrimination/Harassment Prevention and Diversity
Category: Executive Limitations

Policy No. EL-10	Adopted: August 3, 1999 Chair: Larry Wilson	Latest Revision: December 15, 2009 Chair: Sig Sanchez
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Board Officer's affirmation of official Board action adopting this policy.

A BAO shall not:

- 10.1. Allow any of the District's employees, agents, or contractors to discriminate against any applicant, employee, customer, or other person on the basis of race, religion, color, national origin, ancestry, mental or physical disability (including HIV or AIDS), medical condition (including cancer), marital status, gender, age (over 40), pregnancy, special disabled veteran status, Vietnam Era Veteran and all other Veteran status, sexual orientation, or gender identity.
- 10.2. Fail to take positive and innovative action to achieve equal opportunity.
- 10.3. Allow potential barriers to employment of members of protected groups to exist within an individual BAO's jurisdiction.
- 10.4. Consistent with legal requirements, fail to assure that the District's work force fairly represents the composition of individuals in the available labor market who possess the requisite job skills.
- 10.5. Fail to maintain a work environment free of discrimination, including sexual harassment.
- 10.6. Operate without ensuring that employees at all levels of District employment are aware that they share in the responsibility to ensure a work environment free of discrimination and harassment prohibited by this policy.
- 10.7. Fail to assure that managers or supervisors who are aware of unlawful discrimination by their staff but fail to take action are disciplined.

Further, without limiting the scope of the foregoing by this enumeration, the CEO shall not:

- 10.8. Fail to assure that persons from all segments of our community are attracted to qualify for employment and advancement within the District's work force.
- 10.9. Operate without ensuring that employees at all levels of District employment use sound personnel practices that apply equally to all.
- 10.10. Fail to assure there is capable District staff with knowledge and expertise in subject matter integral to the future of water resource management in Santa Clara County.