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March 12, 2014

To: Board of Directors, Marina Coast Water District  
From: Jeanine DeBacker, Special Legal Counsel  
Subject: Investigation Regarding Complaints against Director Peter Le

**Final Report on Investigation of Employee Complaints**

At your March 3, 2014 meeting, you received the Final Report on Investigation of Employee Complaints against Director Peter Le. Investigator Anne F. Olsen provided a written report in the meeting packet and gave a presentation to the Board. At the conclusion of that presentation, Special Legal Counsel was asked to provide information regarding possible outcomes based on Ms. Olsen's findings.

Ms. Olsen made the following findings:

1. Director Le violated the Board's policy and Government Code section 54957 at the December 2, 2013 board meeting.
2. Director Le violated the Board's policy and Government Code section 54957 at the December 16, 2013 board meeting.

Ms. Olsen was also asked to examine Director Le's information requests in advance of Board meetings; without more specific allegations, she was unable to conclude a violation had occurred. However, Ms. Olsen did suggest that Director Le and Interim General Manager Brian Lee work to "discuss how best the staff can meet Director Le's Request and for Director Le to learn how the staff operates and the limitations they have in meeting requests in the timeframe requested."

Finally, Ms. Olsen was asked to examine staff complaints that Director Le publicly made negative comments about staff that caused a downturn of staff morale. She found it "quite evident that staff do feel demoralized and are upset that none of the other board members have interceded." She noted that in

the videos she reviewed, “several times Director Le would criticize staff and be dismissive of their comments. Board policies require that the directors be courteous, professional and respectful and Director Le should modify the tone of his statements in order to comply with Board policies.”

Ms. Olsen highlighted the following sections of the Board Procedures Manual as pertinent to the complaints and investigation: Section 1 (Purpose of the Board Procedures Manual), Section 5 (Harassment-Free Work Environment), Section 7 (Duties of the Directors Acting as Members of the District Board of Directors), Section 13 (Communications) and Section 15 (Comments by Directors Concerning Staff Members).

### **Potential Board Actions in Response to Final Report on Investigation**

The Board may elect to take any, all, or none of the following options: additional training for Director Le; public censure of Director Le; removal of Director Le from committees and positions for a period of time; preventing Director Le from placing items on the agenda without authorization for a period of time. The remainder of this memorandum explains these options in more detail.

### **Training**

Director Le has attended several hours of training regarding his role as Director of the District, including classes focused on leadership and human resources. In September 2013, based on the educational credits he received from the California Special District Association, Director Le received commendation for successful completion of the CSDA Leadership Academy, which required “a high level of knowledge and expertise in the areas of Governance Foundations, Setting Direction and Community Leadership, Board’s Role in Finance and Fiscal Accountability and Board’s Role in Human Resources.” These classes were taken through CSDA over the period January through September 2013 as follows:

- January 15, 2013: Open, Ethical Leadership -- AB 1234 Compliance Training for Special Districts
- January 15, 2013: How to be an Effective Board member
- March 18, 2013: Board’s Role in Human Resources
- March 19, 2013: Setting Direction / Community Leadership
- June 18, 2013: Board’s Role in Finance & Fiscal Accountability
- September 16, 2013: Governance Foundations

The District has provided access to a wide variety of classes and programs to assist him with his understanding of his role as a Director. Director Le has taken advantage of these opportunities and attended several training sessions. It is not apparent that additional training, unless intensive one-to-one training, will change the conduct listed above.

## **Public Censure and Additional Actions**

The Board may elect to publicly censure the Director for his conduct, as well as removing him from committees and positions for a limited period of time and/or limiting his ability to place items on the meeting agenda for a limited period of time.

The Board Procedures Manual provides that “If a Director breaches any of the policies contained in Sections 5 [Harassment-Free Work Environment] . . . 13 [Communications]. . . [and] 15 [Comments by Directors Concerning Staff Members]. . . the Board may, in addition to any other consequences provided by law, publicly censure the offending Director and may as part of the censure take any or all of the following other actions, to be effective for a time determined by the Board:

- a) remove the offending Director from committees and representative positions to which the Director has been appointed or designated by the Board,
- b) prevent the offending Director from placing items on the agenda without the specific, advance authorization of the Board. (Section 43)

I attach for your review a draft Censure that includes a censure, as well as the two options available under Section 43 regarding committees and agenda items. This resolution can be modified regarding these options and language may be added to require Director Le attend one-to-one training.

## **Conclusion**

When considering the options above, please recall past presentations regarding the obligation of the District, under both its Board Procedures Manual and, where appropriate, the law, to undertake reasonable care to prevent and promptly correct harassment. Also, please consider the following: the resistance of Director Le to resolve this matter through an informal meeting with Special Legal Counsel, Director Le’s delays in meeting with the Investigator, the insistence of Director Le as to the identities of the complainants, and the lack of contrition as to even acknowledging that the complaints were made in good faith, or that the perception of the staff is valid.

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I hope this information is helpful. I will be available to discuss this memorandum at your March 17, 2014 meeting.