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December 30, 2013

To: Board of Directors, Marina Coast Water District

From: 
Jeanine DeBacker, Special Counsel

Subject: Employee Complaints Against Director Peter Le and the Board's Responsibilities in Response

On about December 3, 2013, District staff telephoned Special Legal Counsel and stated that a pattern of what staff believes constitute inappropriate, unprofessional, and potentially harassing behavior by Director Peter Le that had been a regular part of Board meetings had continued and apparently escalated during the December 2, 2013 meeting. A copy of the video for that meeting was forwarded to Counsel for review. On December 17, 2013, District staff repeated the complaint to Counsel based on conduct at the December 16 Board meeting.

At your meeting, Special Legal Counsel will present information regarding applicable California and federal laws, as well as the District's policies and the Board Procedure Manual. These rules, policies and laws require that the District take complaints of inappropriate behavior seriously and, if confirmed, take action to prevent such conduct in the future. Complaints by employees need not be made in writing; the District is legally obligated to investigate verbal complaints. Generally, the District must determine what has occurred, whether the conduct violates the law, and/or any policies or the Board Procedures Manual, and determine what actions should be undertaken to prevent such conduct from happening again.

Counsel reviewed a DVD of the December 2 Board meeting and spoke with District Legal Counsel Roger Masuda and three members of District staff. The recording of the December 16, 2013 meeting has not yet been reviewed, but it is anticipated that the recording will be available to Counsel prior to your January 6, 2014 meeting and Counsel will be prepared to discuss the content at that time.

Counsel sought to meet informally with Dir. Le to make him aware of the various state and federal laws and the rules of the District that place limitations on all Directors' conduct so as to ensure that violations those laws, policies and rules do not occur. Dir. Le was reminded that, in lieu of an informal resolution

of the matter, California's Brown Act requires that complaints against a public agency director, when considered by the public agency's Board of Directors, must be conducted at a noticed public meeting in open session. The Brown Act provides that an elected director is not considered an "employee" entitled to a closed session when the Board considers the specific complaints brought against the director. (Cal. Gov. Code § 54957(b)(4)).

Dir. Le refused the request to resolve this meet on this matter. Therefore, in order to satisfactorily address the complaints of District staff, the Board must investigate the employees' complaints and take appropriate action based upon the Board's findings. To collect information for its review, the Board may either:

1. Rely upon the recordings of the December 2, 2013 and December 16, 2013 meetings, and the statements of complaint made to Special Legal Counsel; and/or
2. Retain an outside investigator to determine if there is any additional, relevant evidence of allegedly inappropriate conduct by Dir. Le in his communications with District staff and consultants.

Once the Board provides direction on the collection of information, the Board must set a meeting date to review the evidence and determine the appropriate response to the employees' complaints.