

**BOARD OF DIRECTORS
SANTA CLARA VALLEY WATER DISTRICT**

RESOLUTION NO. 24-

**THE SANTA CLARA VALLEY WATER DISTRICT BOARD OF DIRECTORS
PROVIDING FOR THE CENSURE OF DIRECTOR REBECCA EISENBERG
FOR ACTIONS OF JANUARY 29, 2024**

WHEREAS, Santa Clara Valley Water District (“Valley Water”) Board Members are elected by the residents of Santa Clara County to represent the interests of the community at the local, regional, state, and federal level; and

WHEREAS, the Santa Clara Valley Water District Board of Directors (“Board”) commits itself and its members to ethical, business-like, and lawful conduct of Valley Water business, including proper use of authority and decorum when acting as Board members and at Board meetings; and

WHEREAS, to assure public confidence in the Board’s commitment to its mission, governance, and effective and fair operation, the Board has adopted Board Governance Policies and Board Procedures; and

WHEREAS, these policies and procedures include Board Governance Process 6 – Board Members’ Code of Conduct, as updated on September 12, 2023, and Board of Directors Code of Ethics and Conduct, adopted on September 12, 2023; and

WHEREAS, Governance Process 6 – Board Members’ Code of Conduct, holds that the Board commits itself and its members to ethical, business-like, and lawful conduct; and

WHEREAS, Section A (9) of Valley Water’s Code of Ethics and Conduct holds that Directors will respect the confidentiality appropriate to issues of a sensitive nature; and

WHEREAS, Section B of Valley Water’s Code of Ethics and Conduct holds that the professional and personal conduct of Directors must be above reproach and avoid even the appearance of impropriety; and

WHEREAS, Section B(3)(b) of Valley Water’s Code of Ethics and Conduct holds, in part, that: “Directors are constantly observed by the community every day that they serve in office. Their behavior and comments serve as models for proper deportment at Valley Water...”; and

WHEREAS, on December 22, 2023, confidential reports were prepared by Valley Water’s outside investigator Camille Hamilton-Pating, Esq., of her investigations into allegations made by Rick Callender, Carlos Orellana and other Employees against Director Rebecca Eisenberg, and her investigation into allegations raised by Director Eisenberg (“Confidential Reports”); and

WHEREAS, the Confidential Reports were clearly marked confidential and attorney-client privileged; and

WHEREAS, Board Chair Nai Hsueh directed that the Confidential Reports be made available to all Board members for review at Valley Water offices, that no copies be made of the Confidential Reports, and that it not be emailed to any Board members; and

WHEREAS, Valley Water outside counsel, Samantha Zutler, gave the same instruction to Clerk of the Board Michele King regarding Board review of the Confidential Reports; and

WHEREAS, on January 25, 2024, Director Rebecca Eisenberg received email notification from the Clerk of the Board regarding her ability to review the Confidential Reports at the Clerk of the Board's Office; and

WHEREAS, on January 29, 2024, Director Rebecca Eisenberg appeared at the Clerk of the Board's Office with the intention of reviewing the Confidential Reports and was verbally instructed that pursuant to direction from Board Chair Nai Hsueh and outside counsel Samantha Zutler, the Confidential Reports could only be viewed on the premises and no copies could be made of it; and

WHEREAS, on January 29, 2024, Director Rebecca Eisenberg was given access to the Confidential Reports in the Legal Conference Room at Valley Water headquarters and, contrary to direction given, and without authorization, removed the Confidential Reports from Valley Water's premises; and

WHEREAS, Director Rebecca Eisenberg's removal of the Confidential Report was investigated by Valley Water's security office, and the findings from that investigation were documented in the February 2, 2024, memorandum from CEO Rick Callender to Board Chair Nai Hsueh and Vice Chair Richard P. Santos; and

WHEREAS, Valley Water has an interest in ensuring that its confidential records remain confidential and that records relating to confidential investigations in particular be handled confidentially and with sensitivity given the potential chilling effect the mishandling of such records could have on witnesses in future Valley Water investigations.

NOW, THEREFORE BE IT RESOLVED by the Board of that:

1. The Board of Directors of the Santa Clara Valley Water District finds, based on substantial evidence, that the foregoing recitals are true and correct; and
2. The Board of Directors of the Santa Clara Valley Water District accepts the findings of the security investigation documented in the February 2, 2024, memorandum from CEO Rick Callender to Board Chair Nai Hsueh and Vice Chair Santos as being supported by substantial evidence and adopts the findings as its own; and
3. The Board of Directors of the Santa Clara Valley Water District finds, based on substantial evidence, that Director Rebecca Eisenberg's January 29, 2024, removal of the Confidential Reports from Valley Water offices was without justification, was contrary to instruction from the Chair of the Board, represented a mishandling of confidential records, and constituted serious misconduct; and
4. The Board of Directors of the Santa Clara Valley Water District finds, based on substantial evidence, that Director Rebecca Eisenberg's January 29, 2024, removal of the Confidential Reports from Valley Water offices violated employees' legitimate right to privacy and has resulted in an environment of fear of retaliation; and
5. The Board of Directors of the Santa Clara Valley Water District does hereby Censure Director Rebecca Eisenberg for misconduct for the wrongful removal of the Confidential Report from Valley Water offices on January 29, 2024, as documented in the February 2, 2024, Memorandum from CEO Rick Callender.

PASSED AND ADOPTED by the Board of Directors of the Santa Clara Valley Water District by
the following vote on March 14, 2024:

AYES: Directors

NOES: Directors

ABSENT: Directors

ABSTAIN: Directors

SANTA CLARA VALLEY WATER DISTRICT

NAI HSUEH
Chair, Board of Directors

ATTEST: MICHELE L. KING, CMC

Clerk, Board of Directors