



# Santa Clara Valley Water District

## CONFORMED COPY

\*The Board accepted recommendations A and B, and to combine both censure hearings into the Board meeting approved on February 13, 2024.

File No.: 24-0216

Agenda Date: 2/22/2024

Item No.: 2.1.

### BOARD AGENDA MEMORANDUM

Government Code § 84308 Applies: Yes  No   
(If "YES" Complete Attachment A - Gov. Code § 84308)

#### SUBJECT:

Consider 2024 Board Chair Hsueh's Recommendations to Accept the December 22, 2023, Executive Summary (Report #1) of the Investigation Into Allegations Made by Director Rebecca Eisenberg Against Santa Clara Valley Water District, Rick Callender and John Varela, and Accept the December 22, 2023, Executive Summary (Report #2) of the Investigation Into Allegations Made by Rick Callender, Carlos Orellana and Other Employees Against Director Rebecca Eisenberg.

#### RECOMMENDATION:

- A. Consider 2024 Board Chair Hsueh's recommendation to accept the December 22, 2023, Executive Summary (Report #1) of the investigation into allegations made by Director Rebecca Eisenberg against Santa Clara Valley Water District, Rick Callender and John Varela;
- B. Consider 2024 Board Chair Hsueh's recommendation to accept the December 22, 2023, Executive Summary (Report #2) of the investigation into allegations made by Rick Callender, Carlos Orellana and other Employees against Director Rebecca Eisenberg; and
- C. Take any other actions necessary under Board Governance Policy, Governance Process (GP) 6 - Board Members' Code of Conduct.

#### SUMMARY:

On January 23, 2023, Chief Executive Officer (CEO) Rick Callender sent a memorandum to 2023 Board Chair Varela outlining various complaints from Santa Clara Valley Water District (Valley Water) staff, including allegations of gender-based harassment and violations of Board Governance Policies, regarding Director Rebecca Eisenberg. CEO Callender sent similar memoranda on January 26, 2023, and January 30, 2023. On February 9, 2023, CEO Callender emailed additional allegations to 2023 Board Chair Varela.

On January 24, 2023, a memorandum from Director Rebecca Eisenberg, in which she alleged that Valley Water had discriminated against women, was circulated to the Board. On February 1, 2023, Director Rebecca Eisenberg emailed 2023 Board Chair Varela, stating her objections to the investigation.

2023 Board Chair Varela, with input from the Board Ethics and Conduct Ad Hoc Committee, retained the services of Samantha Zutler, Attorney at Law, Burke, Williams, and Sorensen, LLP, to assist with

an investigation since Valley Water's District Counsel Carlos Orellana was named as a complainant, and was therefore conflicted. Through Ms. Zutler, Valley Water retained Camille Hamilton Pating, Meyers/Nave, to investigate allegations by and against Director Rebecca Eisenberg.

Ms. Hamilton Pating completed her investigations on December 22, 2024. The Executive Summaries of both investigations are included as Attachment 1: Executive Summary #1 and Attachment 2: Executive Summary #2.

### **Review Process**

Pursuant to Board Governance Policies Governance Process (GP) 6.15.3, upon the conclusion of an investigation into a complaint by a non-board member against a board member, the Chair of the Board shall be presented with the written results of the investigation. If the Chair of the Board is satisfied with the completeness of the investigation, he or she shall provide the Board with findings and any recommendations. Following such findings and recommendation, any individual Board member may file a request for admonition, sanction, or censure. A copy of GP-6 (as revised on September 12, 2023) is attached for reference (Attachment 3).

Following GP-6.15.3, I reviewed the investigative reports during the week of January 9, 2024, as the newly elected 2024 Board Chair. I did not solicit assistance from the Board Ethics and Conduct Ad Hoc Committee, and the committee had no role in my review.

For the benefit of the overall process, and to give adequate time for Board members to review the reports in advance of the Executive Summaries being agendized and becoming public information, beginning on Monday, January 29, 2024, the investigation reports and Executive Summaries were lodged in the office of the Clerk of the Board for board members to review.

### **Recommendation**

Based on my review, I found the investigation reports complete and consistent with the scope of services, so, in accordance with GP-6.15.3, I'm submitting the Executive Summaries of the investigations for acceptance consideration by the Board.

### **Next Steps**

Based on GP-6.15.3, following such findings and recommendation, any individual Board member may file a request for admonition, sanction, or censure. If this action is implemented, the Board will follow the process outlined in GP-6.15.5 - Should any Board member file a request for admonition, sanction, or censure following the Chair or Vice Chair's findings and recommendations or determination that an investigation is not warranted as set forth in sections GP-6.15.1 through GP-6.15.4, the matter shall thereafter be considered by the Board at its next public meeting subject to the restrictions of section GP-6.10.5.

### **ENVIRONMENTAL JUSTICE AND EQUITY IMPACT: NO ENVIRONMENTAL JUSTICE AND EQUITY IMPACT**

There are no environmental justice and equity impacts associated with this item.

**FINANCIAL IMPACT:**

There is no financial impact associated with this item.

**CEQA:**

The recommended action does not constitute a project under CEQA because it does not have the potential for resulting in direct or reasonably foreseeable indirect physical change in the environment.

**ATTACHMENTS:**

Attachment 1: Executive Summary, Report #1

Attachment 2: Executive Summary, Report #2

Attachment 3: GP-6 (\*revised September 12, 2023)

\*Handout 2.1-A: NH and TE Memo

\*Handout 2.1-B: John Public

\*Handout 2.1-C: White

\*Handout 2.1-D: Khanna

\*Handout 2.1-E: Eisenberg

**UNCLASSIFIED MANAGER:**

2024 Board Chair Nai Hsueh

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**CONFIDENTIAL**  
**EXECUTIVE SUMMARY**

**for**

**SANTA CLARA VALLEY WATER DISTRICT**

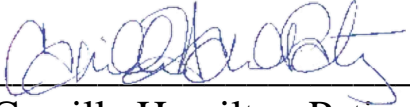
**Complainant:** Rebecca Eisenberg

**Subjects:** SCVWD  
Rick Callender  
John Varela

**Allegations:** Discrimination  
Harassment  
Abusive Conduct  
Retaliation

**Investigators:** Camille Hamilton Pating, Esq.  
Neha R. Shah, Esq.

**Report Submitted:** 12/22/2023

  
\_\_\_\_\_  
Camille Hamilton Pating  
(SBN 122890)

**meyers | nave**

## I. EXECUTIVE SUMMARY

Meyers Nave (“Meyers Nave”) was retained by Santa Clara Valley Water District (“SCVWD” or “District”) to conduct an independent investigation (“Investigation 1”) of allegations of misconduct against Chief Executive Officer Enrique “Rick” Callender (“Callender”) and SCVWD Board Chair John Varela (“Varela”) made by SCVWD Board Director Rebecca Eisenberg (“Eisenberg”).

Starting on January 20, 2023, Eisenberg filed a series of complaints (“Complaint(s)”)¹ against Callender and Varela alleging, among other things, that they engaged in discrimination on the basis of sex, retaliation, and bullying/abusive conduct against Eisenberg, in violation of SCVWD’s policies. The purpose of Confidential Investigation Report 1 (“Report 1”) is to make factual findings, not conclusions of law, and determine whether any of SCVWD’s policies were violated. The purpose of this Executive Summary Investigation 1 is to summarize the allegations, investigation, and findings from Report 1.

No.	Allegation	Policy	Finding²
1.	The District’s failure to take corrective or remedial action based on the investigation findings regarding former Board Directors was an act of discrimination in violation of SCVWD policies.	SCVWD Board Policy GP-11.1	<b>Not Substantiated</b>
2.	Varela made Committee assignments that were inequitable, which was an act of discrimination in violation of SCVWD Policies.	SCVWD Board Policy GP-11.1	<b>Not Substantiated</b>
3.	Varela removed Eisenberg from a Washington D.C. legislative trip, in retaliation for her complaint and was in violation of SCVWD Policies.	SCVWD Policy AD-2.8³	<b>Not Substantiated</b>

¹ (Exh. 1.)

² The standard of proof used in this investigation is the preponderance of evidence, or “more likely than not” standard. The following possible findings were utilized in this investigation:

**SUBSTANTIATED** – There is sufficient evidence, on a more likely than not basis, to prove the allegation.

**NOT SUBSTANTIATED** – There is insufficient evidence, on a more likely than not basis, to prove or disprove the allegation.

**UNFOUNDED** – The allegation has no basis in fact or has been disproved through the investigation.

³ As discussed below, for purposes of this analysis, and other allegations of retaliation between Board members, the Investigators considered AD-2.8 for interpretive assistance since Eisenberg nor Varela are employees of the District and therefore not subject to this policy.

No.	Allegation	Policy	Finding <sup>2</sup>
4.	Varela and Callender yelled at, interrupted, and talked over Eisenberg, which was an act of discrimination or abusive conduct in violation of SCVWD Policies.	SCVWD Board Policy GP-11.1 SCVWD Board Policy GP-6.3.1	<b>Not Substantiated</b>
5.	Callender retaliated against employees who complained about him to Eisenberg in violation of SCVWD Policies.	SCVWD Policy AD-2.8	<b>Not Substantiated</b>
6.	Varela criticizing Eisenberg for her “tone,” was in violation of SCVWD Policies.	SCVWD Board Policy GP-11.1	<b>Not Substantiated</b>
7.	Callender and Varela initiated an investigation against Eisenberg because of her complaint about sex-based Committee assignments, which was retaliation in violation of SCVWD Policies.	SCVWD Policy AD-2.8	<b>Not Substantiated</b>
8.	Varela and/or Callender distributed anonymous complaints against Eisenberg, because of her complaint about sex-based Committee assignments, which was retaliation in violation of SCVWD Policies.	SCVWD Policy AD-2.8	<b>Not Substantiated</b>

## II. METHODOLOGY AND POLICIES

The Investigators, Camille Hamilton Pating, Esq. and Neha R. Shah, Esq. (“Investigators”) consulted Samantha Zutler, Esq., Special Counsel for SCVWD and obtained necessary background information and relevant documents. The Investigators formulated a list of witnesses to be interviewed. Once the initial scope of the investigation was determined and agreed upon, the Investigators operated with complete independence as to identification of issues, interview content, and preparation of findings.

This Executive Summary Report is limited in scope to the *key charges* made by Eisenberg against Callender and Varela. The findings are limited to whether there was sufficient evidence to establish discrimination, retaliation, and/or violations of SCVWD policies as to Eisenberg’s

allegations. The findings, by necessity, do not seek to address each and every contention or response asserted by the complainant or respondents during the course of this investigation. Instead, the findings examine what the Investigators believed to be the key charges in support of the Complaint. Allegations or responses not specifically addressed in this Report were deemed by the Investigators to be redundant, cumulative, not materially different from other charges, or outside the scope of the investigation. The following analysis includes the allegations against all Respondents, and in some instances very limited summations or citations of statements/interviews of relevant witnesses, documentary evidence, and the Investigators' findings, including determinations of credibility.

#### **A. Credibility Of Witnesses**

The evidence gathered in the course of this Investigation supports the findings of fact, based on credibility determinations made pursuant to the U.S. Equal Employment Opportunity Commission's ("EEOC") standards for assessing witness credibility, which are contained in its publication entitled "Enforcement Guidance on Vicarious Employer Liability for Unlawful Harassment by Supervisors."<sup>4</sup>

The Investigators interviewed thirteen individuals believed to be necessary to reach conclusions about the key allegations.

#### **B. Factual Determinations**

Most of the facts were not significantly in dispute. However, where factual disputes existed, the Investigators made factual determinations by applying the standards of credibility set forth in the EEOC Guidance.<sup>5</sup>

#### **C. Standards of Review and Relevant Policies**

The Investigators reviewed allegations of discrimination, retaliation, and abusive conduct made by Eisenberg under the Board's policies prohibiting such behavior by Board members.<sup>6</sup> Where no Board policies existed, or where the Board policies did not provide definitions or examples of prohibited conduct, the Investigators considered policies that apply to SCVWD employees for interpretative guidance.<sup>7</sup>

<sup>4</sup> U.S. Equal Employment Opportunity Commission, *Enforcement Guidance: Vicarious Liability for Unlawful Harassment by Supervisors* (Publication No. 915.002, dated 6/18/99).

<sup>5</sup> According to the EEOC Guidance, the factors to be considered in determining credibility are corroboration/consistency of memory, demeanor, inherent implausibility, and motive to fabricate. *Equal Employment Opportunity Commission's Enforcement Guidance: Vicarious Employer Liability for Supervisor Harassment (1999)*. [www.eeoc.gov](http://www.eeoc.gov)

<sup>6</sup> Attachment 2.

<sup>7</sup> Attachment 1.



## **1. Discrimination**

The Investigators reviewed allegations of sex discrimination under the Board’s policy prohibiting protected class based discrimination, SCVWD Governance Policy of the Board (“GP”) No. GP-11.1, which states in relevant part:

“The Board and its members will not discriminate, harass, or allow harassment against any applicant, employee, customer, or other person on the basis of sex.”

GP-11.1 does not define discrimination or provide examples of prohibited behavior for Board Members. Accordingly, the Investigators considered SCVWD Anti-Discrimination, Harassment, Abusive Conduct, and Retaliation Policy AD-2.8 (“AD-2.8”), which prohibits protected class based discrimination and applies to SCVWD employees but does not explicitly apply to Board members, for guidance on how to interpret GP-11.1. AD-2.8 defines discrimination as follows:

“Adverse employment actions related to hiring, promotions, assignments, performance management, and other terms and conditions of employment where membership in a Protected Category is a substantial motivating reason for the action.”

The policy further states that “Discrimination is a Prohibited Behavior.”

## **2. Abusive Conduct**

The Investigators reviewed allegations of abusive conduct under the Board’s code of conduct policy prohibiting abusive conduct, GP-6.3.1, which states in relevant part:

“Board members shall refrain from abusive conduct, personal charges or verbal assaults upon the character or motives of other members of the board, committees, commissions, staff and the public. Board members shall support the maintenance of a positive and constructive environment for district employees.”

GP-6.3.1 does not define the terms abusive conduct, personal charges or verbal assaults upon the character or motives of others nor does it provide examples of prohibited behavior for Board members. Accordingly, the Investigators again used AD-2.8, which prohibits abusive conduct and applies to SCVWD employees but does not explicitly apply to Board members, for guidance on how to interpret GP-6.3.1. This policy states in relevant part:

“Valley Water employees, including managers, shall refrain from any malicious conduct that a reasonable person would find hostile, offensive, and unrelated to an employer’s legitimate business interest...”

Examples of abusive conduct include, but are not limited to, repeated infliction of verbal abuse, such as the use of malicious, derogatory remarks, insults, epithets, verbal or physical conduct that a reasonable person would find threatening, intimidating or humiliating, or the intentional sabotage or undermining of a person's work performance."

The policy further states that Abusive Conduct that is substantially motivated by one's Protected Category may constitute harassment and that Abusive Conduct is a Prohibited Behavior.

### **3. Retaliation**

At the time of this investigation, there were no Board policies that prohibited retaliation by Board members. AD-2.8 strictly prohibits retaliation by employees against any person by another at SCVWD for:

- making a non-malicious and non-frivolous internal complaint about an allegation of discrimination, harassment, abusive conduct, or retaliation;
- utilizing the complaint procedure of any state or federal agency to report discrimination, harassment, or retaliation;
- opposing discrimination, harassment, abusive conduct, or retaliation;
- reporting discrimination, harassment, abusive conduct, or retaliation;
- requesting an accommodation for religious practice or disability; or
- for filing, testifying, assisting, or participating in any manner in any investigation, proceeding or hearing conducted by Valley Water or a governmental enforcement agency relating to this policy or any state or federal anti-discrimination laws or regulations.

Employees who engage in the protected activity defined above are protected from retaliation because of their protected activity. According to AD-2.8:

"This means that any employee who participates in the protected activity described above shall not be adversely affected or discriminated against in their terms and conditions of employment *because of* their involvement in the protected activity. "*Because of*" means that the employee's involvement in the protected activity must be a substantial motivating reason behind the prohibited retaliatory conduct. In short, there must be a causal connection."

Specific examples of prohibited retaliation includes, but is not limited to:

"termination, demotion, suspension, . . . adversely affecting working conditions or otherwise denying any employment benefit to the person engaging in the protected activity. Prohibited retaliation includes any conduct that is reasonably

likely to impair an employee’s job performance or prospects for advancement or promotion.”

Further, “prohibited retaliation does not include minor or trivial actions or conduct that is not reasonably likely to do more than anger or upset an employee.”

#### **4. Additional Policies**

Additionally, the Investigator’s reviewed allegations under the following Governance Policies.

5.1. The job result of the Chairperson is that the Board behaves consistently with its own policies and those legitimately imposed upon it from outside the organization.

5.1.1. Board meeting discussion content will be only those issues which, according to Board policy, clearly belong to the Board to decide, not the BAOs.

5.1.2. Board deliberation will be fair, open, and thorough, but also timely, orderly, and kept to the point.

6.3. Board members may not attempt to exercise individual authority over the organization.

6.3.1. Members’ interaction with the BAOs or with staff must recognize the lack of authority vested in individual members except when explicitly board authorized. Board members shall refrain from abusive conduct<sup>8</sup>, personal charges or verbal assaults upon the character or motives of other members of the board, committees, commissions, staff and the public. Board members shall support the maintenance of a positive and constructive environment for district employees.

6.3.2. Members’ interaction with public, press or other entities must recognize the same limitation and the inability of any board member to speak for the Board except to repeat explicitly stated Board decisions.

<sup>8</sup> Abusive Conduct is not defined by GP-6.3.1, which was in effect at the time of the complaint and the conduct described therein. Because SCVWD had no standalone Abusive Conduct policy during the time of this investigation, the Investigators considered the definitions of Abusive Conduct contained in SCVWD’s Anti-Discrimination, Harassment, Abusive Conduct, and Retaliation Policy (AD-2.8) and the California Fair Employment and Housing Act. California’s definition of abusive conduct under Government Code Section 129501 is: “...Conduct of an employer or employee in the workplace, with malice, that a reasonable person would find hostile, offensive, and unrelated to an employer’s legitimate business interests. Abusive conduct may include repeated infliction of verbal abuse, such as the use of derogatory remarks, insults, and epithets, verbal or physical conduct that a reasonable person would find threatening, intimidating, or humiliating, or the gratuitous sabotage or undermining of a person’s work performance. A single act shall not constitute abusive conduct, unless especially severe and egregious.” (emphasis added)

10.6.1. Per diem meetings, events, and activities: Compensation after annually making a finding based on substantial evidence that there is an operational need for board members to be paid for more than 10 meetings in a calendar month, board members are eligible to receive compensation per day, up to 15 days per calendar month, in accordance with section 33(c) of the Santa Clara Valley Water District Act, for the meetings, events, and activities listed below, all of which are hereby deemed by the board to constitute the performance of official duties. For the purpose of making a finding, substantial evidence shall include, but is not limited to, such things as the number of meetings in the prior year that were qualified for compensation pursuant to this policy, and how many and how frequently committee meetings of the board of directors occur.

### III. ANALYSIS AND CONCLUSIONS

#### A. **Allegation 1: The District's Failure To Take Corrective Or Remedial Action Based On The Investigation Findings Regarding Former Board Directors, Was An Act Of Discrimination Of SCVWD Policies**

**NOT SUBSTANTIATED.** Eisenberg alleges that the District failed to respond with corrective or remedial action to investigation findings against former Board Director Gary Kremen,<sup>9</sup> and that this failure to respond was discriminatory. Eisenberg reported to the Investigators, and stated publicly in Board meetings, that the investigation of Kremen resulted in substantiated sexual harassment findings against him. Eisenberg suggests that the reason the Board did not take corrective action against Kremen was that several Board members (the male board members) had a close relationship with him, thus lending itself to the sex-based discriminatory decision not to respond with corrective or remedial action.

On November 2, 2022, the Board Ethics and Conduct Ad Hoc Committee ("Committee") met regarding the Investigator's findings regarding Kremen. The Committee was comprised of Estremera, Varela, and Hsueh. On November 8, 2022, the Committee unanimously recommended to the full Board that it accept the Investigator's final summary report. The Committee made no other recommendations.

GP-11.1 states in relevant part "[t]he Board and its members will not discriminate, harass, or allow harassment against any applicant, employee, customer, or other person on the basis of ...sex... [or] gender." GP-11.1 does not provide a definition of sex discrimination or examples of prohibited conduct. Because the SCVWD policy is silent as to these factors, the

<sup>9</sup> On or about May 2, 2022, the Board commenced an independent investigation into allegations against Kremen. The investigator was tasked to determine (1) whether Kremen violated any SCVWD Board Governance Policies during interactions with SCVWD staff, including with respect to sexual harassment; and (2) whether Kremen violated any SCVWD Board Governance Policies with respect to treatment of members of the public at meetings. On October 24, 2022, the independent investigator issued an *Executive Summary: Investigation Report Concerning Santa Clara Valley Water District Director Gary Kremen*. The report substantiated allegations that Kremen engaged in abusive conduct toward employees. The findings did not substantiate allegations that Kremen engaged in sexual harassment toward employees.

Investigators considered non-Board member AD-2.8, for interpretive assistance, which requires an adverse employment action “related to hiring, promotions, assignments, performance management, and other terms and conditions of employment where membership in a Protected Category is a substantial motivating reason for the action” to prove discrimination.

The Board Members’ statements in the interviews are consistent in that no corrective action was taken by the Board based on the investigative findings regarding former Director Kremen’s actions, but their recollections vary as to why. However, the explanation that the Board did not take corrective action because of the timing of Kremen’s departure (in or about end of November 2022) was in close proximity to the reporting of the results is plausible.

The Board was not required to take any corrective action based on investigative findings, and actions against Board members are discretionary pursuant to GP-6.7. Additionally, there was no legal or policy requirement to take corrective action based on the findings of the investigation. Eisenberg’s representations that *sexual harassment* findings were substantiated against the former director are factually incorrect. In fact, the investigation report specifically stated that the investigators “did not identify any material allegations of sexual harassment.” (Executive Summary Investigation Report Concerning Santa Clara Valley Water District Director Gary Kremen, October 24, 2022). Under California law, employers are required to “take reasonable steps to prevent and correct wrongful (harassing, discriminatory, retaliatory) behavior in the workplace.”<sup>10</sup> (Cal. Govt. Code §12940(k).) Had there been a finding of *sexual harassment*, the District would have been legally required to take appropriate corrective action to remedy the current harassment and prevent further harassment in the future. In addition there was no evidence that the Board’s failure to take corrective action based on the investigative findings resulted in an adverse action as to Eisenberg, or that sex or any Protected Category was a substantial motivating reason for the failure to take such action, which is required to establish sex-based discrimination.

**B. Allegation 2: Varela Made Committee Assignments That Were Inequitable, Which Was An Act Of Discrimination In Violation Of SCVWD Policies**

**NOT SUBSTANTIATED.** Eisenberg alleges that Varela made committee assignments based on sex, and that this has an adverse effect on the amount of pay received by women Directors. She further alleges that on average, the female directors have 20% fewer appointments than their male colleagues. Eisenberg specifically questioned why she was not assigned to the Capital Improvement Program (“CIP”) Committee given her background. Varela denied basing committee assignments on sex.

As described in Section A above, GP-11.1 states in relevant part “[t]he Board and its members will not discriminate, harass, or allow harassment against any applicant, employee, customer, or other person on the basis of ...sex... [or] gender.” GP-11.1 does not provide a

<sup>10</sup> See California Department Of Fair Employment And Housing Workplace Harassment Prevention Guide For California Employers; [chrome-extension://efaidnbmnnnibpcajpcgclefindmkaj/https://calcivilrights.ca.gov/wp-content/uploads/sites/32/2017/06/DFEH-Workplace-Harassment-Guide.pdf](https://efaidnbmnnnibpcajpcgclefindmkaj/https://calcivilrights.ca.gov/wp-content/uploads/sites/32/2017/06/DFEH-Workplace-Harassment-Guide.pdf)

definition of sex discrimination or examples of prohibited conduct. Accordingly the Investigators considered non-Board member AD-2.8, for interpretive assistance, which requires an adverse employment action “related to hiring, promotions, assignments, performance management, and other terms and conditions of employment where membership in a Protected Category is a substantial motivating reason for the action” to prove discrimination.

In analyzing this allegation, the Investigators reviewed the process of committee assignment as a potential adverse action. This review included the initial proposed appointments and final appointments, and compensation for service on committees, and interviewing of each Board Member about their experience. The evidence showed that on or about January 12, 2023, Varela prepared an initial draft of committee assignments for which the Investigators summed up the assignments as follows:

<b>Board Director</b>	<b>Board Committee Assignments</b>	<b>Ad Hoc Committee Assignments<sup>11</sup></b>	<b>Totals</b>
Beall	3	9	12
Eisenberg	3	7	10
Estremera	6	12	18
Hsueh	6	9	15
Keegan	7	13	20
Santos	2	10	12
Varela	3	12	15

Varela acknowledges that he subsequently changed Eisenberg’s committee assignments but denies that the changes were based on sex. Varela stated that, as Board Chair he has the discretion to select Directors for committee assignments who best represent the District’s policies, values and mission and that, in Varela’s view, since Eisenberg has joined the Board, “she’s been pushing her own agenda including rallying against reservoirs and dams.” Varela found Eisenberg’s actions to be inappropriate for the CIP committee because the CIP’s work includes reservoirs, pipelines and providing drinking water. Varela reports that Eisenberg has been “given every opportunity to represent that the District provides safe clean

<sup>11</sup> Includes alternate committee assignments.

drinking water, and she provides contrary opinions to that.” Based on a review of the record, the Final Committee Appointments were as follows:

<b>Board Director</b>	<b>Board Committee Assignments</b>	<b>Ad Hoc Committee Assignments<sup>12</sup></b>	<b>Totals</b>
Beall	4	6	10
Eisenberg	6	5	13
Estremera	6	11	17
Hsueh	5	8	13
Keegan	4	11	15
Santos	4	14	18
Varela	1	13	14

The evidence showed that there was no formal committee assignment process. Moreover, GP-5 appears to give wide latitude to the Chair in general decision making. This is significant because, under California law, a deviation from standard procedures could be a factor when considering claims of discrimination. A review of the final committee assignments list shows that, after receiving Eisenberg’s concerns, Varela made several significant changes to the Committee Assignments, including revising the number of assignments to each Board member and moving the assignments around; Varela gave the two longest serving Board members the most assignments, and the remaining Board members between 10-15 assignments, with Beall receiving the fewest assignments (10) and Keegan in third for the most assignments (15). Varela denies that he made assignments based on sex. Instead the evidence supports that Varela may have provided preference and a higher number of committee assignments based on length of service on the Board.

Here, no evidence suggests that Varela made assignments based on sex. Rather, the evidence showed that Varela made subjective decisions about Eisenberg’s committee assignments, including his decision not to assign her to the CIP committee, based on her opposition to certain SCVWD projects, which is within his discretion.

<sup>12</sup> See fn. 8

Compensation:

Pursuant to GP-10, Directors are eligible to receive compensation per day, up to 15 days per calendar month, for their participation and attendance at certain activities and events. A review of the total compensation to Directors from December 1, 2022 - August 18, 2023 shows the following:

<b>Director</b>	<b>Compensation</b>
Jim Beall	\$31,342.98
Rebecca Eisenberg	\$34,792.64
Tony Estremera	\$38,939.15
Nai Hsueh	\$28,851.57
Barbara Keegan	\$27,039.64
Richard Santos	\$42,702.42
John Varela	\$41,099.53
<b>TOTAL</b>	<b>\$244,767.93</b>

Pursuant to District processes, Directors are responsible for self-reporting meetings and submitting expenses. The Compensation Report indicates that : (1) not all Directors are claiming compensation for the maximum 15 days per month. For instance, Eisenberg did not appear to capture every activity and event eligible for compensation,<sup>13</sup> whereas the highest compensated Director, Varela, claimed more than 15 days a month every month; and (2) some months of reporting appear to be incomplete for some Directors.

To the extent that Eisenberg alleges that less favorable committee assignments directly correlate with a director's ability to earn compensation, both Estremera and Beall explained that Directors are compensated whether they are on a committee or not, as compensation is based on number of days of attendance at specified activities and events and not committee assignments. On this record, although Keegan and Hsueh were at the bottom of the list for claimed compensation, and Eisenberg was fourth from the bottom, there was no indication of sex-based discrimination or different treatment because on the number of committees to which they were assigned.

In sum, there was insufficient evidence that Varela made Committee assignments that were inequitable and based on sex. Even if it were found that Varela made Committee

<sup>13</sup> For example, Eisenberg met with Investigators one day in April and three days in July, however those expenses have not yet been reported, thereby reducing her overall compensation. These meetings were reported by other Directors including Hsueh and Santos.



assignments in a discriminatory manner, there was no adverse impact as any decreased payment appears to be due to the Directors own failure to report all of their service.

**C. Allegation 3: Varela Removed Eisenberg From A Washington D.C. Legislative Trip, In Retaliation For Her Complaint And Was In Violation Of SCVWD Policies**

**NOT SUBSTANTIATED.** Eisenberg reports that Varela removed her from the Washington D.C. legislative trip on February 28, 2023 in retaliation for her January 20, 2023 complaint against him regarding committee assignments.

Varela agrees that he withdrew Eisenberg’s invitation to attend the trip, but states that he did so based on her behavior, which caused him to believe that she was not qualified to represent the SCVWD. According to Varela, the District’s purpose in sending Board Directors on the Washington D.C. trip is to secure funding for projects by meeting with senators and representatives to lobby for project funds. Varela reported that he retracted his invitation to Eisenberg after seeing a video of her February 7, 2023 presentation to The Morning Forum of Los Altos in which Eisenberg made disparaging comments about SCVWD projects and told constituents that SCVWD’s dams and reservoirs are “filled with poop water.”

In response to this allegation, Investigators reviewed video of Eisenberg’s February 7, 2023 presentation. Eisenberg appeared at The Morning Forum in her capacity as a Board Member of SCVWD. The evidence showed that Eisenberg made references to “dirty water” from “poop” and “toilet to tap,” and made comments about waste water, generally.<sup>14</sup> She made reference to “poop water” at least six times in the presentation. She suggested in her presentation that SCVWD recycled “poop water” (toilet water) for drinking, even though SCVWD is not involved in processing waste water. Eisenberg stated that she didn’t feel the current Board was doing enough to address sustainability because of the politics. Finally, she stated that the SCVWD was not spending time making water better, but instead spending its money on a dam. In her interview, Eisenberg conceded that this presentation was “not [her] best work” and that she probably used the word “poop” too much.

At the time of this investigation, there was no Board policy that protected Board members from retaliation by fellow Board members. The Investigators considered A.D.-2.8 which applies to employees and strictly prohibits retaliation by employees against any person by another at SCVWD for making a non-malicious and non-frivolous internal complaint or reporting an allegation of discrimination, harassment, abusive conduct, or retaliation. For purposes of this analysis the Investigators considered AD-2.8 for interpretive guidance since Eisenberg and Varela are not employees of the District, and, therefore, are not subject to this policy. Under A.D.-2.8 any employee who participates in protected activity must not be adversely affected or discriminated against in their terms and conditions of employment

<sup>14</sup> For example, during the presentation Eisenberg referenced being covered in “poop” and how having “poop” on you is better than having the pesticide “Round-Up” on you. (Exh. 3.) Eisenberg discussed her views on the benefits of using “poop-filled water” and said that ingredients from “poop water” are energy water. (*Id.*)

because of their protected activity, and there must be a causal connection between the protected activity and the retaliation.

The evidence shows that Varela stated a legitimate business related and non-retaliatory reason for removing Eisenberg from the D.C. legislative trip. It was undisputed that the purpose of the D.C. legislative trip was to secure funding for SCVWD projects. Accordingly it was reasonable for the Chair of the Board to perceive Eisenberg's explicit criticism of the Board and SCVWD projects, during her public presentation at The Morning Forum, as counterproductive to the trip and conflicting with her obligations under GP-6.3.2. Selecting attendees for the D.C. trip, including withdrawing Eisenberg's invitation, was within Varela's discretion as the Chair and not a policy violation. In sum, there was no evidence that Varela removed Eisenberg from the Washington D.C. trip in retaliation for her January 2023 complaint.

**D. Allegation 4: Varela And Callender Yelled At, Interrupted, And Talked Over Eisenberg, Which Was An Act Of Discrimination Or Abusive Conduct In Violation Of SCVWD Policies**

**NOT SUBSTANTIATED.** Eisenberg alleges that Varela and Callender yelled at, interrupted, and talked over her at Board meetings, and that this is based on her sex or is abusive conduct. The Investigators requested that Eisenberg provide specific examples of conduct supporting her allegation. Eisenberg provided the April 26, 2023 Board meeting date. In addition to reviewing video of this Board meeting, the Investigators reviewed 40 hours of video, including the January 24, March 16, and May 3, 2023 Board Meetings, based on information related to Eisenberg's other allegations. In analyzing this allegation, the Investigators considered GP-5.1 - 5.1.2 regarding Board meeting content and the Chairperson's role.

**1. Sex-Based Harassment**

GP-11.1 states in relevant part "[t]he Board and its members will not discriminate, harass, or allow harassment against any applicant, employee, customer, or other person on the basis of ...sex... [or] gender." GP-11.1 does not provide a definition of sex discrimination or examples of prohibited conduct. Because the SCVWD policy is silent as to these factors, the Investigators considered non-Board member AD-2.8, for interpretive assistance, which requires an adverse employment action "related to hiring, promotions, assignments, performance management, and other terms and conditions of employment" to prove discrimination.

Eisenberg alleges that Varela and Callender's conduct constitutes verbal harassment on the basis of her sex. Varela denies that he treats Eisenberg differently on the basis of sex. He contends that his behavior toward her is necessary to fulfill his Chair duties to keep the meetings on the agenda. Varela reports that Eisenberg's comments are off topic and/or constitute inappropriate behavior.<sup>15</sup> According to Varela, Eisenberg uses claims of sex

<sup>15</sup> For example, her behavior includes personal charges or verbal assaults upon the character or motives of other members of the District. (See GP-6.3.1)

discrimination “to give her license to speak. It’s my option to ask her to summarize. She disallows us to do that because she personalizes her comments... I ask her to wrap up because we need to move on in the agenda.” Several of Eisenberg’s colleagues, and the majority of witnesses interviewed, expressed frustration at the disruption caused at Board meetings by Eisenberg’s behavior, and support for Varela’s actions to bring order to Board meetings.

The evidence showed that Eisenberg’s behavior during public meetings was frequently disruptive, including speaking without being recognized by the Chair, speaking on topics off the agenda, talking over other speakers, speaking in a raised voice, speaking on personnel issues that implicated a former employee’s privacy rights, making personal comments to her colleagues and staff, sharing personal anecdotes, and repeatedly referencing her educational background and job experience, even where such did not appear to be relevant to the issue being discussed. To the extent Varela interrupted Eisenberg, it appears that he did so for legitimate non-discriminatory reasons, to keep discussions on the agenda and moving forward, and not based on her sex. As such, it would be permissible in his role as Chair of the Board, and consistent with GP-5.1, to take steps to try to ensure that the Board behave consistently with Board Policy, in this case to keep the meeting focused and on the agenda. The evidence does not support a finding that Varela’s actions are sex based. In addition, there was no evidence that Varela’s interactions with Eisenberg constituted an adverse employment action or rose to the level of verbal harassment, which as described by AD-2.8, requires obscene language, demeaning conduct slurs, threats or similar behavior based on the complainant’s Protected Category.

No witnesses reported that Callender treats Eisenberg differently on the basis of her sex. A review of the recorded meetings reveals that, to the extent Callender interrupts Eisenberg, his comments appear to be directly responsive to personal criticism by Eisenberg of Callender or his staff. Thus, no evidence exists that either Varela or Callender yelled at, interrupted, and talked over Eisenberg at Board meetings based on her sex.

## **2. Abusive Conduct**

Eisenberg alleges that Varela and Callender’s conduct toward her is abusive conduct. However, the Investigators find that neither Varela’s nor Callender’s conduct rises to the level of abusive conduct under District policy.

6.3.1 does not define abusive conduct or provide examples of prohibited conduct. Accordingly, the Investigators considered AD-2.8 which states:

### Abusive Conduct

Valley Water employees, including managers, shall refrain from any malicious conduct that a reasonable person would find hostile, offensive, and unrelated to an employer’s legitimate business interest. Valley Water’s legitimate business interests include employees being held accountable for timeliness, meeting deadlines, producing deliverables adequately, and other general work responsibilities, among other things.

Examples of abusive conduct include, but are not limited to, repeated infliction of verbal abuse, such as the use of malicious, derogatory remarks, insults, epithets, verbal or physical conduct that a reasonable person would find threatening, intimidating or humiliating, or the intentional sabotage or undermining of a person's work performance.

Abusive Conduct that is substantially motivated by one's Protected Category may constitute harassment. Abusive Conduct is a Prohibited Behavior.

The Investigators noted that Varela does show frustration with Eisenberg during one exchange at the April 26 Board meeting, in which he also speaks to Eisenberg in a scolding manner that is rude and unprofessional. While the conduct is subject to fair criticism, considering the record as a whole, Varela articulated legitimate reasons for interrupting Eisenberg or asking her to summarize her responses as described above. Varela's actions did not appear to be malicious nor did they constitute personal charges or verbal assaults upon Eisenberg. Thus, there can be no finding of abusive conduct. No evidence suggests that Callender yelled, interrupted or talked over Eisenberg in a manner that would constitute abusive conduct.

**E. Allegation 6: Callender Retaliated Against Employees Who Complained About Him To Eisenberg In Violation Of SCVWD Policies**

**NOT SUBSTANTIATED.** Eisenberg alleges that when employees come to her with complaints, and she's "tried to escalate matters," employees are separated from the District as retaliation by Callender. When asked for specific examples, Eisenberg stated that a former employee was fired for reporting his concerns to her regarding Callender. She provided no other names, but she did provide a copy of PERB complaint (Case No. SF-CE-2017-M) filed by AFSMCE Local 101 on behalf of a District employee alleging retaliation by Callender when he was suspended for insubordination after an investigation determined that the employee violated a District directive relating to use of District email. She provided no other examples.

A former employee reported that after he was fired mid-April 2023, Eisenberg reached out to him to discuss his separation and was "fishing" for information. According to the former employee, he told Eisenberg that he felt his separation was illegal, but did not report making any other complaint to Eisenberg. The Investigators considered the evidence as to whether the former employee experienced an adverse action (being terminated) because of his protected activity (making complaints) and whether there was evidence that Callender made the decision to terminate the former employee.

The evidence showed that an executive employee in the Information Technology and Administration Services department explained that she made the decision to separate the former employee in December 2022 or January 2023 based on his continued poor performance, potential mismanagement of assets, and years of mismanagement of a department project. According to the executive employee, she considered demoting the former employee as early

as Summer/Fall 2022. The executive said that she did keep Callender apprised of issues related to the former employee's performance throughout 2022 and when she recommended separation in 2023. The executive was not aware that the former employee had made complaints to Eisenberg. Callender stated that the decision to separate the former employee was the executive's and he supported her when she approached Callender about separation in January 2023.

At the time of this investigation, there was no Board policy that protected Board members from retaliation by fellow Board members or SCVWD employees. The Investigators considered AD-2.8 which applies to employees and strictly prohibits retaliation by employees against any person by another at SCVWD for making a non-malicious and non-frivolous internal complaint or reporting an allegation of discrimination, harassment, abusive conduct, or retaliation. AD-2.8 requires that "any employee who participates in the protected activity ...shall not be adversely affected or discriminated against in their terms and conditions of employment because of their involvement in the protected activity. 'Because of' means that the employee's involvement in the protected activity must be a substantial motivating reason behind the prohibited retaliatory conduct. In short, there must be a causal connection."

The evidence shows that the former employee did not consult with Eisenberg prior to his separation despite Eisenberg's allegation. The evidence showed that neither the executive nor Callender believed that the former employee had consulted with Eisenberg before his separation. As such, there is no evidence of retaliation against the former employee on this basis. Further, PERB Complaint SF-CE-2017-M, presented by Eisenberg in support of her allegation, addresses incidents that occurred *prior* to the start of Eisenberg's tenure and does not support her assertion that employees that report concerns to her about Callender are subsequently retaliated against by Callender. In sum, there was no evidence to support a finding that employees who reported their concerns about Callender to Eisenberg have been retaliated against by Callender.

**F. Allegation 7: Varela Criticizing Eisenberg For Her "Tone" Was In Violation Of SCVWD Policies**

**NOT SUBSTANTIATED.** Eisenberg alleges that Varela and Callender constantly criticize her "tone" as an act of sex discrimination. Eisenberg suggests that she is a target of "tone policing" which is generally characterized as a practice of criticizing the charged manner in which a person has expressed a point of view, rather than addressing the substance of the point itself.<sup>16</sup> When asked for specific examples of when Varela and Callender have criticized her tone, Eisenberg was unable to provide any.

Varela and Callender deny criticizing Eisenberg for her tone based on her sex. Varela states that he has no idea what Eisenberg is talking about. Varela says he has provided Eisenberg with examples of how she comports herself in a disruptive and disrespectful manner at meetings and states that she "doesn't respect" him as Chair or Keegan as Vice-Chair. Callender states that he has never complained about the tone of Eisenberg's voice and that is

<sup>16</sup> <https://www.dictionary.com/browse/tone-policing>

not what he is complaining about in his criticism of her conduct. Rather, Callender says he objects to the underlying message of her language which, in his view are “stereotypical attacks” based on race, against African American and Hispanic men.

GP-11.1 states in relevant part “[t]he Board and its members will not discriminate, harass, or allow harassment against any applicant, employee, customer, or other person on the basis of ...sex... [or] gender.” GP-11.1 does not provide a definition of sex discrimination or examples of prohibited conduct. Because the SCVWD policy is silent as to these factors, the Investigators considered non-Board member AD-2.8, for interpretive assistance, which requires an adverse employment action “related to hiring, promotions, assignments, performance management, and other terms and conditions of employment” to prove discrimination.

The Investigators reviewed 40 hours of video, based on the specific board meeting dates identified by complainants and witnesses in this investigation. None of the meetings contained references by Varela or Callender to Eisenberg’s “tone,” or voice. There are also no references to tone policing. The video record did contain multiple examples of Varela’s attempts to moderate or control Eisenberg’s comments. Varela’s actions were reasonable and legitimate in his role as Chair. The evidence did not reveal instances of conduct which could be considered criticism, by Varela or Callender, of Eisenberg’s voice or manner of expression in speaking or writing.

The Investigators also reviewed the January 23, 2023 complaint by Callender, which asserts several allegations against Eisenberg. According to Callender, each individual allegation was based on a verbal or written complaint by staff, and based on their words, or his opinion of a summation of their words, and not his own. A review of the evidence supports Callender’s assertion. In reviewing Callender’s January 23, 2023 complaint and subsequent allegations and reports of discrimination, harassment and abusive conduct and improper direction to staff, there was insufficient evidence that the behavior complained of was the tone of how Eisenberg expresses herself. Rather, the subject of the complaints was the substance of Eisenberg’s statements, which the complaints characterized as discriminatory, harassing, abusive or improper interference with staff and her behavior of not following the agenda, and speaking out of order and without being recognized.

As such, there was insufficient evidence that Eisenberg has been criticized for her “tone” by Varela or Callender based on her sex.

**G. Allegation 8: Callender And Varela Initiated An Investigation Against Eisenberg Because Of Her Complaint About Sex-Based Committee Assignments, Which Was Retaliation In Violation Of SCVWD Policies**

**NOT SUBSTANTIATED.** Eisenberg alleges that Callender and Varela initiated an investigation against her in retaliation for her complaint about sex-based Committee assignments. Eisenberg says that the timing of her January 20, 2023 complaint to the Board juxtaposed with the commencement of the investigation against her three days later, shows retaliatory intent by Callender and Varela. As discussed above, for purposes of this analysis,

because there is no anti-retaliation policy for Board Members, the Investigators considered AD-2.8 for interpretive assistance.

Callender states that it is “absolutely incorrect” that he filed his complaint against Eisenberg based on her January 20, 2023 complaint, and that “[he] wasn’t aware of her [January 20] complaint [when he filed].” Callender filed a series of formal written complaint letters about Eisenberg to Chair Varela starting on January 23, 2023. Further, the complaints he reported against Eisenberg “go back to December,” such as the actions against Orellana, and the complaints made by a director of the Racial Equity, Diversity and Inclusion (“REDI”) program and a supervisor in the Media and Public Relations Department. Callender states that a January 12, 2023 email from Eisenberg to an employee in the Water Supply Division finally “triggered” him to file the complaint. In the email, Eisenberg stated she would vote against “everything until staff proposes to remove Pacheco Dam from CIP.” Callender reports feeling the email from Eisenberg to the employee was a “form of extortion” and an improper direction to a staff member. Callender reported filing his first complaint because he felt he had a legal obligation to report several of the complaints against Eisenberg which he felt were on the basis of several protected characteristics.

As described in Section E, above, AD-2.8 requires that “any employee who participates in the protected activity ... shall not be adversely affected or discriminated against in their terms and conditions of employment because of their involvement in the protected activity. ‘Because of’ means that the employee’s involvement in the protected activity must be a substantial motivating reason behind the prohibited retaliatory conduct. In short, there must be a causal connection.”

A review of the evidence, indicates that Callender has been compiling complaints about Eisenberg by staff since December 2022. Callender’s first complaint, an email from a supervisor in the Media and Public Relations Department on December 13, 2022, was forwarded to Varela on or around December 13, 2022. Here, the evidence shows that it is more likely than not that Callender began reporting complaints against Eisenberg to Varela *before* Eisenberg engaged in protected activity. Therefore, the Investigators conclude that Callender’s actions could not be in retaliation for Eisenberg’s complaint. Moreover, the Investigators find Callender’s explanation regarding his reasons for submitting the complaints to be credible, as they were corroborated by other witness statements and documentary evidence. Setting aside the timing of Callender’s complaint, AD-2.8 makes clear that Callender was required to report the complaints the against Eisenberg in order to remain compliant with District policy. AD-2.8 states in relevant part, “[s]upervisors and managers must refer all complaints of misconduct as described herein to EEOP in Human Resources (Office of Talent and Inclusion). Complaints against the Chief Executive Officer, the Chief People Officer, the Ethics Officer, or a member of the Board will be immediately referred to District Counsel’s office for resolution.” Callender reported that he submitted his complaints based on his belief that he was required to do so. He also stated his belief that his direct reports, as supervisors, also had a mandatory obligation to report. Accordingly, there was insufficient evidence that Callender made complaints or requested an investigation of allegations against Eisenberg because of Eisenberg’s complaint.

The Investigators also find Varela's explanation regarding his reasons for opening an investigation to be credible, as they were corroborated by other witness statements and documentary evidence. The allegations against Eisenberg raised legitimate concern that she had engaged in misconduct, as discussed in the Investigation Report 2, regarding complaints against Eisenberg. As such, the Board was within its discretion to investigate, as permitted by SCVWD policy. Based on the foregoing, there is insufficient evidence that an investigation was initiated against Eisenberg in retaliation for her complaint to Varela about Committee assignments.

**H. Allegation 9: Varela And/Or Callender Distributed Anonymous Complaints Against Eisenberg, Because Of Her Complaint About Sex-Based Committee Assignments, As Retaliation In Violation of SCVWD Policies**

**NOT SUBSTANTIATED.** Eisenberg contends that a Board employee purposely, and in an unprecedented manner, distributed anonymous ad hominem attacks on Eisenberg at Board meetings at the direction of either Varela or Callender in retaliation for Eisenberg's complaint about sex-based Committee assignments.

As described in Section E, above, AD-2.8 requires that "any employee who participates in the protected activity ... shall not be adversely affected or discriminated against in their terms and conditions of employment because of their involvement in the protected activity. 'Because of' means that the employee's involvement in the protected activity must be a substantial motivating reason behind the prohibited retaliatory conduct. In short, there must be a causal connection."

The Board employee acknowledged that she distributed anonymous complaints about Eisenberg to the Board for publication, but denied that either Varela or Callender directed her to do so or that it was in retaliation for Eisenberg's complaint about Committee assignments. The Board employee reported her understanding that, pursuant to the Brown Act, if an email is received from the public, to either the Board email address or the Clerk of the Board email address, and the email sender requests that the email be shared in public comment at a Board meeting, or the email discusses an item on the Board meeting agenda, then SCVWD is required to publicize it. The Board employee explained that such an email is publicized by posting it on the District website and including it in the Directors' meeting packet. However, if a public comment comes in after the agenda is posted, then the employee will also print out a copy for the dais and the public attendees, and circulate a copy to Board members. The Board employee also explained that if a comment comes in that is not related to the agenda, or the commentator does not request to make a public comment pursuant to the Board agenda, then she will circulate the comment to the Board in the weekly non-agenda packet or email it separately. The Board employee explained this has been the standard process since she has been clerk of the Board and consistent with her understanding of her legal obligations under the Brown Act and Executive Limitation 2.6, where applicable.

There is no written policy covering distribution of anonymous emails to the Board, or emails criticizing the performance of Directors. Although Eisenberg and Keegan appear to



believe the Board employee is deviating from practice as it relates to Eisenberg, the documentary evidence shows otherwise. Furthermore, no evidence suggested that the Board employee's decisions to distribute certain emails in the Board packet or to individual Board members by email, or hand distribution, were influenced by Varela or Callender, nor did the evidence suggest that the Board employee or Callender deviated from SCVWD process in doing so. Based on the foregoing, there is insufficient evidence that Varela or Callender directed the Board employee to distribute anonymous complaints about Eisenberg as an act of retaliation.

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# Attachment 1

## 1. POLICY STATEMENT

Santa Clara Valley Water District (“Valley Water”) is committed to providing all its employees with a work environment free of discrimination, harassment, abusive conduct, and/or retaliation (“Prohibited Behavior”). Valley Water prohibits discrimination and harassment based on race, color, national origin (including language use restrictions), ancestry, religion, religious creed (including religious dress and grooming practices), gender, sex (which includes pregnancy, childbirth, breastfeeding and medical conditions related to pregnancy, childbirth, or breastfeeding), disability (mental and physical, including HIV or AIDS), citizenship status, medical condition (cancer and genetic characteristics), genetic information, marital status, military and veteran status, political affiliation, sexual orientation, gender identity and gender expression, age (40 and over), political affiliation, parental status, the exercise of family care leave rights, the exercise of pregnancy disability leave, or the request, exercise, or need for reasonable accommodation or any other basis protected by federal, state, or local law (“Protected Categories”).

No employee is expected to tolerate any conduct prohibited by this policy from anyone while at work or engaged in Valley Water business. Valley Water strictly enforces a Zero Tolerance Policy for harassment or discrimination based upon one’s protected status (e.g., race, gender, age, national origin, etc.). Valley Water also strictly enforces a Zero Tolerance Policy for retaliation and/or abusive conduct. Zero Tolerance means Valley Water will take immediate and effective action, when appropriate, calculated to stop the conduct that violates this Policy.

Employees are subject to discipline, up to and including discharge, for failure to comply with this Policy. Temporary workers, interns and others conducting business for Valley Water are subject to release from their assignments for violations of this Policy. Temporary workers, interns, and others conducting business for Valley Water are protected against the Prohibited Behavior defined in this policy.

### A. Prohibited Behavior

The following, either together or individually, constitute Prohibited Behavior:

#### 1. Discrimination

Adverse employment actions related to hiring, promotions, assignments, performance management, and other terms and conditions of employment where membership in a Protected Category is a substantial motivating reason for the action. Discrimination is a Prohibited Behavior.

#### 2. Retaliation

Valley Water strictly prohibits retaliation against any person by another at Valley Water for:

- making a non-malicious and non-frivolous internal complaint about an allegation of discrimination, harassment, abusive conduct, or retaliation;
- utilizing the complaint procedure of any state or federal agency to report discrimination, harassment, or retaliation;
- opposing discrimination, harassment, abusive conduct, or retaliation;
- reporting discrimination, harassment, abusive conduct, or retaliation;

- requesting an accommodation for religious practice or disability; or
- for filing, testifying, assisting, or participating in any manner in any investigation, proceeding or hearing conducted by Valley Water or a governmental enforcement agency relating to this policy or any state or federal anti-discrimination laws or regulations.

This means that any employee who participates in the protected activity described above shall not be adversely affected or discriminated against in their terms and conditions of employment *because of* their involvement in the protected activity. “*Because of*” means that the employee’s involvement in the protected activity must be a substantial motivating reason behind the prohibited retaliatory conduct. In short, there must be a causal connection.

Prohibited retaliation includes, but is not limited to: termination, demotion, suspension, failure to hire or consider for hire, failure to give equal consideration in making an employment decision, failure to make employment recommendations impartially, adversely affecting working conditions or otherwise denying any employment benefit to the person engaging in the protected activity. Prohibited retaliation includes any conduct that is reasonably likely to impair an employee’s job performance or prospects for advancement or promotion. Prohibited retaliation does not include minor or trivial actions or conduct that is not reasonably likely to do more than anger or upset an employee.

Valley Water does not consider conduct in violation of this Policy to be within the course and scope of employment and does not sanction such conduct on the part of any employee, including management employees. Employees found to have engaged in retaliatory conduct are subject to disciplinary action. Retaliation is a Prohibited Behavior.

### **3. Harassment**

Harassing conduct may include, but is not limited to: verbal harassment (obscene language, demeaning conduct, slurs, or threats); physical harassment such as unwanted touching, assault, or actual physical interference with normal work; visual harassment (offensive posters, drawings, photographs, cartoons, or objects); unwanted sexual advances; and other communicative harassment (offensive emails, text messages, internet postings, letters, etc.) because of a Protected Category. Harassment is a Prohibited Behavior.

### **4. Hostile Work Environment**

A hostile work environment exists where one is subjected to unwanted harassing conduct because of his or her Protected Category, where the harassing conduct is severe or pervasive, where one considers the work environment to be hostile or abusive as a result of the conduct, and where a reasonable person in the same circumstances would also have found the environment to be hostile or abusive. Creating a Hostile Work Environment is a Prohibited Behavior.

### **5. Abusive Conduct**

Valley Water employees, including managers, shall refrain from any malicious conduct that a reasonable person would find hostile, offensive, and unrelated to an employer’s legitimate business interest. Valley Water’s legitimate business interests include employees being held

accountable for timeliness, meeting deadlines, producing deliverables adequately, and other general work responsibilities, among other things.

Examples of abusive conduct include, but are not limited to, repeated infliction of verbal abuse, such as the use of malicious, derogatory remarks, insults, epithets, verbal or physical conduct that a reasonable person would find threatening, intimidating or humiliating, or the intentional sabotage or undermining of a person's work performance.

Abusive Conduct that is substantially motivated by one's Protected Category may constitute harassment. Abusive Conduct is a Prohibited Behavior.

### **B. Malicious Complaints**

Valley Water will not tolerate malicious complaints. Complaints/concerns will not be considered malicious merely because they are determined to be unsubstantiated. A malicious complaint/concern is one that is made in bad faith or with knowledge that the complaint entirely lacks any factual basis. Malicious complaints may result in disciplinary action, up to and including termination.

### **C. Complaint Process**

Employees or other covered parties who believe they have been subjected to Prohibited Behavior, whether specifically noted as an inappropriate behavior as described in this policy, should immediately report the offensive behavior to their supervisor, a member of the management team or Ethics and Equal Opportunity Programs staff (EEOP). Incidents not immediately reported can be reported up to 365 days from the date of the last occurrence or event. This period may be extended up to 90 days if the person allegedly aggrieved by the discrimination first obtained knowledge of the facts after expiration of the 365-day period. Beginning on January 1, 2020, incidents may be reported 3 years after the date of the last occurrence or event. This 3 year period may be extended up to 90 days if the person allegedly aggrieved by the discrimination first obtained knowledge or facts after expiration of the 3 year period.

If an employee or other covered party is aware, either directly or indirectly, of Prohibited Behavior engaged in or suffered by another, regardless of whether such conduct directly affects them, they should immediately report that information to their supervisor, a member of the management team, or EEOP staff.

Supervisors and managers must refer all complaints of misconduct as described herein to EEOP in Human Resources (Office of Talent and Inclusion).

Complaints against the Chief Executive Officer, the Chief People Officer, the Ethics Officer, or a member of the Board will be immediately referred to District Counsel's office for resolution.

Complaints should include details of the incident(s) such as names of individuals involved, the timeframe during which incident(s) occurred, and the names of any witnesses. No adverse action will be taken against an employee who makes a report or cooperates in the investigation of a report of Prohibited Behavior.

EEOP staff shall have access to all information deemed necessary to determine to the validity of a complaint.

Once a complaint is received, EEOP will determine if the complaint requires a consultation, initial inquiry, or full investigation. If EEOP determines the need for a full investigation, it is Valley Water's policy is to conduct a timely, thorough, and impartial investigation of all Prohibited Behavior claims. The investigation will be conducted by qualified personnel, documented, and tracked for reasonable progress and concluded in a timely manner.

After the investigation, EEOP will make a determination as to whether a violation of this policy has occurred. Valley Water will look at the totality of the circumstances, including the nature of the conduct and the context in which it occurred. Valley Water will then timely communicate the findings to the complainant and respondent, and when appropriate, to other persons who are directly concerned.

If it is determined that Prohibited Behavior has occurred, Valley Water will take remedial action commensurate with the severity of the offense. This action may include corrective action against the respondent, up to and including termination. Steps will be taken, as necessary, to prevent any further Prohibited Behavior from occurring.

With the exception of Abusive Conduct claims, all complainants, including those not satisfied with Valley Water's resolution, may pursue a complaint or file concurrently with the Department of Fair Employment and Housing (DFEH) and/or the U.S. Equal Employment Opportunity Commission (EEOC). Federal law typically requires the employee to file an administrative charge with the EEOC within 180 days from the date of the discriminatory violation. California's Fair Employment and Housing Act gives the employee one year to file such a charge with DFEH.

#### **D. Right to Representation**

The complainant and the respondent have the right to representation at each step of the process by a person of their choice.

#### **E. Confidentiality**

Information gathered by EEOP during an investigation will be kept confidential to the extent possible, but complete confidentiality cannot be guaranteed.

#### **F. Communication & Training**

To ensure all employees are aware of their role in support of a work environment free of Prohibited Behavior, EEOP staff will send all employees this Policy on an annual basis. New employees will be required to sign an acknowledgement of receipt. The Policy will also be posted on Valley Water's intranet and on bulletin boards in all Valley Water facilities.

In keeping with its commitment to a harassment and discrimination free environment, Valley Water will comply with all applicable rules and regulations regarding the training of employees.

All new hires and temporary workers will attend an EEO orientation during which they will receive a copy of this Policy and guidance in support of this Policy.

## **2. PURPOSE**

To prevent Prohibited Behavior in the workplace, to enable employees to report Prohibited Behavior before it becomes severe or pervasive, and to stop Prohibited Behavior before it rises to the level of a violation of Valley Water's policies or state or federal law.

## **3. SCOPE, ASSUMPTIONS & EXCEPTIONS**

This Policy applies to all employees (both unclassified and classified), contractors, consultants, temporary employees, and interns.

## **4. ROLES & RESPONSIBILITIES**

### **General**

- Employees who are involved in personnel decisions (including job interviews, candidate selection, and employee progressive disciplinary proceedings) and in business decisions (including all decisions concerning procurement activities, contracting, and service agreements) are expected to be knowledgeable of equal opportunity requirements and comply with them in conducting their responsibilities.
- Managers, supervisors, and all other employees are required to cooperate fully with an investigation and resolution of all Prohibited Behavior discrimination or harassment complaints.

### **Supervisors and Managers**

- Are charged with the responsibility of ensuring that the employees they supervise are not subjected to Prohibited Behavior. They are also responsible for taking timely and effective action calculated to stop Prohibited Behavior about which they are aware, and for taking proactive steps to identify and eradicate Prohibited Behavior of which they should be aware.
- Upon receipt of a complaint, the supervisor or manager must notify EEOP that a harassment complaint has been received.
- Upon awareness of potential Prohibited Behavior, the supervisor or manager must notify EEOP.
- Under this policy, ignorance of Prohibited Behavior is not necessarily an acceptable defense for inaction if the manager or supervisor, through reasonable diligence, should have been aware of the problem.
- Corrective measures taken by Valley Water in response to Prohibited Behavior must attempt to stop the Prohibited Behavior and ensure that the workplace will remain free of Prohibited Behavior. If warranted under the circumstances, supervisors and managers may be subject to discipline for failure to carry out their duties in enforcing this policy even if they have not personally engaged in Prohibited Behavior. In addition, the law provides that managers and supervisors may be held personally responsible in a civil suit if they have engaged in or allowed Prohibited Behavior.

- In consultation with EEOP, must deal proactively with possible Prohibited Behavior situations, process complaints immediately, and take appropriate corrective or disciplinary action against the employee whose conduct violates this policy.
- Are required to take positive steps to comply with this policy. They are required to be aware of potential Prohibited Behavior situations, quickly resolve any Prohibited Behavior issues that arise, and refrain from retaliation or any other Prohibited Behavior against any employee involved in the filing, investigation, or resolution of a Prohibited Behavior claim.
- Must not minimize or otherwise discourage employees from reporting such complaints.

### **Employee**

- Employees who feel they have been the target of Prohibited Behavior in any way may tell the offender that they find such behavior offensive, that such behavior is against Valley Water policy, and that they should immediately stop the behavior.
  - If the employee is uncomfortable taking this action, or if the conduct does not stop after the warning has been given, the employee should immediately contact their supervisor or manager. Employees are not required to confront the offender, but are required to report the behavior.
  - If the employee cannot or does not want to seek help from their supervisor or manager, the employee should contact EEOP staff in Human Resources or higher-level management for assistance.
- If employees or other covered parties are aware of Prohibited Behavior engaged in or suffered by another, regardless of whether such Prohibited Behavior directly affects them, they should immediately report that information to their supervisor, a member of the management team or EEOP staff.

### **Ethics & Equal Opportunity Programs**

- Ensure that when EEOP determines an investigation is necessary, qualified personnel conduct a timely, and thorough investigation that is fair to the employees involved and reaches a reasonable conclusion based on the facts.
- Develop and uphold a process for responding to complaints that is timely, impartial, thorough, and confidential to the extent permissible by law.
- Refer policy violations to Labor Relations Unit or management, as appropriate.
- Complaints are appropriately documented and tracked for reasonable progress and resolution.
- Resolve non-investigation matters at the lowest possible level, including, but not limited to, addressing an employees' conduct with the employee and/or the employees' manager or supervisor.

## **5. REQUIREMENTS**

### **a. Governance Policies**

EL-8 Inclusion, Equal Employment Opportunity, Discrimination/Harassment Prevention, and Diversity. The BAOs shall promote conditions that ensure a work environment that is



diverse and inclusive, free of discrimination and harassment, and that provides equal opportunity employment. Further a BAO shall:

8.2 Not allow District's employees, agents, or contractors to discriminate, harass, or allow harassment against any applicant, employee, customer or other person on the basis of sex (which includes pregnancy, childbirth, breastfeeding and medical conditions related to pregnancy, childbirth or breastfeeding), race, religion, color, national origin (including language use restrictions), ancestry, religious creed (including religious dress and grooming practices, political affiliation, disability (mental and physical, including HIV or AIDS), medical conditions (cancer and genetic characteristics), genetic information, marital status, parental status, gender, age (40 and over), pregnancy, military and veteran status, sexual orientation, gender identity and gender expression, the exercise of family and medical care leave, the exercise of pregnancy disability leave, or the request, exercise, or need for reasonable accommodation.

With respect to employees, these requirements apply to employment actions which include, but are not limited to, the following: recruitment, hiring employment, utilization, promotion, classification or reclassifications, transfer, recruitment advertising, evaluation, treatment, demotion, layoff, termination, rates of pay or other forms of compensation, and selection for professional development training (including apprenticeship).

8.3 Require employees at all levels of District employment be aware that they share in the responsibility to ensure a work environment free of discrimination and harassment prohibited by this policy.

8.6 Not allow potential barriers to employment of members of protected groups to exist within an individual BAO's authority.

Accordingly:

11.1. The Board and its members will not discriminate, harass, or allow harassment against any applicant, employee, customer, or other person on the basis of sex (which includes pregnancy, childbirth, breastfeeding and medical conditions related to pregnancy, childbirth or breastfeeding), race, religion, color, national origin (including language use restrictions), ancestry, religious creed (including religious dress and grooming practices, political affiliation, disability (mental and physical, including HIV or AIDS), medical condition (cancer and genetic characteristics), genetic information, marital status, parental status, gender, age (40 and over), pregnancy, military and veteran status, sexual orientation, gender identity and gender expression, the exercise of family and medical care leave, the exercise of pregnancy disability leave, or the request, exercise, or need for reasonable accommodation.

11.3. The Board will require that the organization's work environment be one in which all people are welcomed and included, and in which all individuals are unique and important and are treated with fairness and dignity.

b. Governing Laws

- The Age Discrimination in Employment Act of 1967
- The Equal Pay Act of 1963
- Title VII of the Civil Rights Act of 1964
- Title I Americans with Disabilities Act of 1990 (ADA)/ADAAA
- Fair Employment and Housing Act
- The Pregnancy Discrimination Act
- The Genetic Information Nondiscrimination Act of 2008 (GINA)

c. Other Requirements (District Policies, MOUs, Standards, etc.)

Memorandum of Understanding between Santa Clara Valley Water District and Employees Association (AFSCME – Local 101). To be administered in accordance with District Policies and Procedures.

Memorandum of Understanding between Santa Clara Valley Water District and Engineers' Society (IFPTE – Local 21). To be administered in accordance with District Policies and Procedures.

Memorandum of Understanding between Santa Clara Valley Water District and Professional Managers Association (IFPTE – Local 21). To be administered in accordance with District Policies and Procedures.

6. ASSOCIATED FORMS & PROCEDURES

DOCUMENT TITLE/ID #	DOCUMENT LOCATION(S)
California Sexual Harassment Brochure DFEH-185	Ethics & Inclusion Intranet Page
Policy Complaint Form	Ethics & Inclusion Intranet Page

7. DEFINITIONS

**Abusive Conduct** - Malicious conduct that a reasonable person would find hostile, offensive, and unrelated to Valley Water's legitimate business interests. Examples of abusive conduct include, but are not limited to, repeated infliction of verbal abuse, such as the use of malicious, derogatory remarks, insults, epithets, verbal or physical conduct that a reasonable person would find threatening, intimidating or humiliating, or the intentional sabotage or undermining of a person's work performance.

**Causal Connection** – An employee's involvement in protected activity must be a substantial motivating reason behind the prohibited retaliatory conduct.

**Complainant** – The person submitting an allegation, claim, concern or information to EEOP indicating a possible breach of Valley Water rules or policies.

**Discrimination** – Adverse employment actions related to hiring, promotions, assignments, performance management, and other terms and conditions of employment where membership in a Protected Category is a substantial motivating reason for the action.

**Employee** – Any individual appointed by the Board, Board Appointed Officer, or a designate, as a regular employee of Valley Water and for purposes of this policy includes temporary or intermittent workers.

**Hostile Work Environment** – Severe or pervasive actions, communications, or behavior that discriminate against a Protected Category such as age, religion, disability, or race. “Severe or pervasive” means conduct that alters the conditions of employment and creates, based on the totality of the circumstances, an abusive work environment.

**Investigative Findings** – Determinations made based on the preponderance of evidence found in the investigation. A preponderance of evidence means it is more likely than not that the allegation(s) did or did not occur.

**Exonerated** – Possible finding in an investigation that indicates that the alleged conduct or failure to act was found to be true; however, such conduct either was appropriate under the circumstances or was not found to constitute a violation of the applicable provisions of the rule and/or policy.

**Not Sustained** – Possible finding in an investigation which indicates that the alleged misconduct could neither be proved or disproved, given the existing evidence.

**Sustained** – Possible finding in an investigation which indicates that the alleged misconduct is found to have occurred, and, where applicable, to have violated an applicable rule and/or policy.

**Unfounded** – Possible finding in an investigation which indicates that the alleged misconduct revealed conclusively that the alleged act did not occur.

**Protected Categories** – race, color, national origin (including language use restrictions), ancestry, religion, religious creed (including religious dress and grooming practices), gender, sex (which includes pregnancy, childbirth, breastfeeding and medical conditions related to pregnancy, childbirth, or breastfeeding), citizenship status, disability (mental and physical, including HIV or AIDS), medical condition (cancer and genetic characteristics), genetic information, marital status, military and veteran status, political affiliation, sexual orientation, gender identity and gender expression, age (40 and over), political affiliation, parental status, the exercise of family care leave rights, the exercise of pregnancy disability leave, or the request, exercise, or need for reasonable accommodation.

**Prohibited Behavior** – Discrimination, harassment, sexual harassment, abusive conduct and/or retaliation all as defined herein.

**Sexual Harassment** – Sexual harassment prohibited by this policy includes any unwanted sexual advances, requests for sexual favors or visual, verbal, or physical conduct of a sexual nature when:

- Submission to such conduct is made a term or condition of employment; or submission to or rejection of such conduct is used as a basis for employment decisions affecting the individual; or
- Such conduct has the purpose or effect of unreasonable interference with an employee's work performance or creating an intimidating, hostile, or offensive working environment.

The following is a partial list of conduct that would be considered sexual harassment:

- Unwanted sexual advances or propositions;
- Offering employment benefits in exchange for sexual favors;
- Making or threatening retaliation after a negative response to sexual advances;
- Visual conduct such as leering, making sexual gestures, displaying offensive, derogatory, obscene, or sexually suggestive objects, e-mails, computer graphics or images, unwelcome notes or letters, photographs, cards, drawings, pictures, cartoons, calendars, or posters placed on walls, bulletin boards or elsewhere on Valley Water premises or circulated in the workplace;
- Verbal conduct such as making or using derogatory sexual comments, epithets, slurs, sexually explicit jokes, negative stereotyping, comments about an employee's body or dress;
- Verbal abuse of a sexual nature, graphic verbal commentary about an individual's body, sexually degrading words to describe an individual;
- Written communications of a sexual nature, including but not limited to, suggestive, or obscene letters, notes, or invitations distributed in hard copy, via computer or other means;
- Physical conduct such as assaults, impeding or blocking movements, and/or unwelcome physical contact.

Sexual harassment can occur between persons who identify as the same or different sex or gender.

### **Other Types of Harassment**

- Harassment on the basis of sex (which includes pregnancy, childbirth, breastfeeding and medical conditions related to pregnancy, childbirth or breastfeeding), race, religion, color, national origin (including language use restrictions), ancestry, religious creed (including religious dress and grooming practices), political affiliation, disability (mental and physical, including HIV or AIDS), medical conditions (cancer and genetic characteristics), genetic information, marital status, parental status, gender, age (40 and over), pregnancy, military and veteran status, sexual orientation, gender identity and gender expression, the exercise of family and medical care leave, the exercise of pregnancy disability leave, or the request, exercise, or need for reasonable accommodation is also prohibited.

Such prohibited harassment includes but is not limited to the following examples of offensive conduct:

- Verbal conduct such as threats, epithets, derogatory comments, or slurs.
- Threatening, intimidating, coercing, or otherwise interfering with the job performance of fellow employees or visitors.
- Visual conduct such as derogatory posters, photographs, cartoons, drawings, or gestures.
- Written communications containing statements that may be offensive to individuals in a protected group, such as racial or ethnics stereotypes or caricatures.
- Any logos or graphics worn by employees that reflect any form of violent, discriminatory, abusive, offensive, demeaning or otherwise unprofessional message.
- Physical conduct such as assault, unwanted touching or blocking of normal movement.
- Retaliation for making harassment reports or threatening to report harassment.

## 8. CHANGE HISTORY

DATE	REVISION	COMMENTS
8/1/2003	A	Incorporating Administration Policy to meet current ISO requirements of separating policy from process per W423D09 Administrative Policy Development, Update, Adoption and Removal Process.
11/22/2019	B	Updated to include Abusive Conduct, updated definitions, complaint procedure.

# Attachment 2

# **Governance Policies of the Board**

## **I. Governance Process**

# Governance Policies of the Board

I.	GOVERNANCE PROCESS	Page
GP-1	Global Governance Commitment.....	I-3
GP-2	Governing Style .....	I-4
GP-3	Board Job Description.....	I-6
GP-4	Governance Policy Review Process and Agenda Planning.....	I-8
GP-5	Chairperson’s Role .....	I-9
GP-6	Board Members’ Code of Conduct.....	I-12
GP-7	Values Statement .....	I-22
GP-8	Board Committee Principles .....	I-23
GP-9	Board Committee Structure .....	I-25
GP-10	Cost of Governance .....	I-26
GP-11	Inclusion, Equal Employment Opportunity, Discrimination/Harassment Prevention, and Diversity .....	I-31
GP-12	Conduct of Board Meetings .....	I-32



# Governance Policies of the Board

**Title:** Global Governance Commitment

**Category:** Governance Process

**Policy No. GP-1**

Adopted: October 19, 1999  
Chair: Larry Wilson

Latest Revision: July 28, 2014  
Chair: Tony Estremera

The Board of Directors revised and adopted this policy at its public meeting on the latest revision date.

The purpose of the Board, on behalf of the people of Santa Clara County, is to see to it that the District provides Silicon Valley safe, clean water for a healthy life, environment, and economy.

In pursuit of this purpose, consistent with the District Act, the Board of the District adopts policies to govern its own processes; delegate its power; communicate the District mission, general principles, and Ends; and to provide constraints on executive authority.

# Governance Policies of the Board

<b>Title: Governing Style</b>		
<b>Category: Governance Process</b>		
<b>Policy No. GP-2</b>	Adopted: June 15, 1999 Chair: Larry Wilson	Latest Revision: August 18, 2015 Chair: Gary Kremen
The Board of Directors revised and adopted this policy at its public meeting on the latest revision date.		

The Board will govern with an emphasis on (a) outward vision, (b) encouragement of diversity in viewpoints, (c) strategic leadership more than administrative detail, (d) clear distinction of Board and Board Appointed Officer (BAO), (e) collective rather than individual decisions, (f) future rather than past or present, and (g) pro-activity rather than reactivity.

Accordingly:

- 2.1. The Board will cultivate a sense of group responsibility. The Board will be responsible for excellence in governing. The Board will be the initiator of policy, not merely a reactor to initiatives. The Board may use the expertise of individual members to enhance the ability of the Board as a body, rather than to substitute the individual judgments for the Board's values.
- 2.2. The Board will direct, control, and inspire the organization through the careful establishment of broad written policies reflecting the Board's values and perspectives. The Board's major policy focus will be on the intended results, not on the administrative or programmatic means of attaining those effects.
- 2.3. The Board will further inform itself, individually and collectively, through extensive outreach to determine community wishes and through continuing education on issues relevant to the District.
- 2.4. The Board will enforce upon itself whatever discipline is needed to govern with excellence. Discipline will apply to matters such as attendance, preparation for meetings, policymaking principles, respect of roles, decorum and ensuring the continuance of governance capability.
  - 2.4.1. Board members may be excused from Board or Board Committee meetings, as defined:
    - Illness or incapacity
    - Illness or incapacity of an immediate family member
    - Jury duty
    - Observance of a religious holiday or ceremony
    - Vacation
    - Conducting District business

# Governance Policies of the Board

- 2.4.2. For all absences, the Board member shall notify the Clerk of the Board prior to the Board or Board Committee meeting in which they will be absent with the reason for the absence. The Clerk of the Board will subsequently notify the Chair of the absence and the reason.
- 2.4.3. In the event of an emergency, in which a Board member is unable to provide advance notification, after the Board or Board Committee meeting, notification will be provided to the Clerk of the Board within 30 days.
- 2.5. Continual Board development will include orientation of new Board members in the Board's governance process and periodic Board discussion of process improvement.
- 2.6. The Board will allow no officer, individual, or committee of the Board to hinder or be an excuse for not fulfilling its commitments.
- 2.7. The Board will monitor the Board's process and performance. Self-monitoring will include comparison of Board activity and discipline to policies in the Governance Process and Board-BAO Linkage categories.
  - 2.7.1. The Board will conduct a Board performance review by the end of March for the previous calendar year and will conduct a mid-year review of Board performance by the end of September.
- 2.8. While serving as a member of the Board of Directors, and for one year immediately following the end of the Board member's term of office, no Board member shall seek or accept compensated employment by the District.
- 2.9. The Board, by ordinance, will adopt regulations governing the activities of persons who lobby the District. Those regulations shall include provisions requiring registration of lobbyists, reporting requirements governing the activities of lobbyists and communications with Board members, and disclosure by Directors of contact with lobbyists prior to voting on matters related to the contact. This ordinance will be adopted no later than July 1, 2010. The list of registered lobbyists will be posted on the District website, for openness and transparency.

# Governance Policies of the Board

<b>Title: Board Job Description</b>		
<b>Category: Governance Process</b>		
<b>Policy No. GP-3</b>	Adopted: June 15, 1999 Chair: Larry Wilson	Latest Revision: April 27, 2021 Chair: Tony Estremera
The Board of Directors revised and adopted this policy at its public meeting on the latest revision date.		

Specific job outputs of the Board, as an informed agent of the ownership, are those that ensure appropriate organizational performance.

Accordingly:

- 3.1. The Board will produce the link between the District and the public.
- 3.2. The Board will produce written governing policies which, at the broadest levels, address each category of organizational decision.
  - 3.2.1. Governance Process: Policies that specify how the Board conceives, carries out, and monitors its own task.
  - 3.2.2. Board Appointed Officer Linkage: Policies that define how power is delegated and its proper use monitored; for the Chief Executive Officer (CEO), District Counsel (DC), and Clerk of the Board (COB) roles, authority and accountability.
  - 3.2.3. Ends: Policies that define who is to benefit from the organization, in what way, or at what cost.
  - 3.2.4. Executive Limitations: Policies that constrain the BAO's authority in choosing the organizational means.
- 3.3. The Board will produce assurance of BAO performance.
- 3.4. In June of each year the Board will approve BAO compensation and benefit decisions at a public meeting and will enact such decisions by Board resolution.
  - 3.4.1. To ensure there are no compaction issues with unclassified staff compensation, the Board will adjust the BAOs' compensation scale at the same time the Board adopts the Classified Employees and Unrepresented Employees Salary Structure.

# Governance Policies of the Board

3.4.2 Annually, BAO compensation will be determined using a two-step performance evaluation process that considers job accomplishments, monitoring reports, other information, including the financial health of the District, and other methods deemed appropriate by the Board.

3.4.2.1 The Board will use the following scale to document the BAOs' fiscal year performance (Step 1):

**Step 1. Evaluate BAOs' performance using the following scale:**

- Performance Level 1: Sustained outstanding performance
- Performance Level 2: Performance usually exceeds expectations
- Performance Level 3: Performance expected at full professional level
- Performance Level 4: Usually meets expectations-improvements needed
- Performance Level 5: Significant improvement required
- Performance Level 6: Unsatisfactory

3.4.2.2 BAOs' compensation for the following fiscal year will be determined according to their individual performances levels as shown below (Step 2):

**Step 2. Match compensation with performance level:**

- Performance Level 1: High point of compensation scale plus one-time extra performance pay
- Performance Level 2: High point of compensation scale
- Performance Level 3: Between Mid-point and High point of compensation scale
- Performance Level 4: Mid-point of compensation scale
- Performance Level 5: Low point of compensation scale
- Performance Level 6: Employment termination consideration

3.4.3. In determining BAO compensation and benefits, the Board may consider data from Board authorized studies of other similarly situated employees in relevant industry comparator agencies.

3.4.4 This Governance Policy Section (GP-3.4) is not applicable when recruiting new BAOs.

3.5. The Board will approve or deny nominations to name or rename District-owned land, facilities, and amenities in accordance with the Naming of District-Owned Land, Facilities, and Amenities procedure.

# Governance Policies of the Board

**Title:** Governance Policy Review Process and Agenda Planning

**Category:** Governance Process

**Policy No. GP-4**

Adopted: June 15, 1999  
Chair: Larry Wilson

Latest Revision: August 18, 2015  
Chair: Gary Kremen

The Board of Directors revised and adopted this policy at its public meeting on the latest revision date.

To govern consistent with Board policies, the Board will:

- 4.1. Conduct an annual review of the Board Governance Policies and adopt new or revised policies by the end of September.
- 4.2. Adopt a Board Policy Planning Calendar for the upcoming fiscal year by the end of June and conduct a mid-year review of the Board Policy Planning Calendar by the end of December, and other reviews when determined necessary by the Board.
  - 4.2.1. The Board's Policy Planning Calendar will include regular and special Board meetings and Board work study sessions, as necessary, to provide the Board with information and education needed to perform its job of linkage with community, setting policies and monitoring organization performance, and engaging with its Advisory Committees.
  - 4.2.2. Examples of items on the Board's Policy Planning Calendar are upcoming fiscal year's budget planning agenda items.
  - 4.2.3. Board's Policy Planning Calendar is intended to be a living document for the designated fiscal year and will be updated regularly.
- 4.3. At the same time and place designated in the public notice for budget review, the Board shall review its financial reserves, including the justification, therefore, and an overview of its reserve management policy. The Board shall receive comments thereon from the public before acting on the budget.

# Governance Policies of the Board

<b>Title: Chairperson’s Role</b>		
<b>Category: Governance Process</b>		
<b>Policy No. GP-5</b>	Adopted: September 7, 1999 Chair: Larry Wilson	Latest Revision: February 22, 2022 Chair: Gary Kremen
The Board of Directors revised and adopted this policy at its public meeting on the latest revision date.		

The Chairperson assures the integrity of the Board’s process and represents the Board to outside parties.

Accordingly:

- 5.1. The job result of the Chairperson is that the Board behaves consistently with its own policies and those legitimately imposed upon it from outside the organization.
  - 5.1.1. Board meeting discussion content will be only those issues which, according to Board policy, clearly belong to the Board to decide, not the BAOs.
  - 5.1.2. Board deliberation will be fair, open, and thorough, but also timely, orderly, and kept to the point.
- 5.2. The authority of the Chairperson consists in making decisions that fall within topics covered by Board policies on Governance Process and Board Appointed Officer Linkage, with the exception of (a) employment or termination of a BAO and (b) where the Board specifically delegates portions of this authority to others. The Chairperson is authorized to use any reasonable interpretation of the provisions in these policies.
  - 5.2.1. The Chairperson is empowered to chair Board meetings with all the commonly accepted power of that position (e.g., ruling, recognizing).
  - 5.2.2. The Chairperson is empowered to modify previously approved Board Standing Committee work plans and agendas in the event returning to the Board would delay distribution of Standing Committee meeting materials.
  - 5.2.3. The Chairperson has no authority to make decisions about policies created by the Board within Ends and Executive Limitations policy areas. Therefore, the Chairperson has no authority to supervise or direct the BAOs.
  - 5.2.4. The Chairperson may represent the Board to outside parties in announcing Board-stated positions and in stating Chair decisions and interpretations within the area delegated to her or him.

# Governance Policies of the Board

- 5.2.5. The Chairperson may delegate this authority but remains accountable for its use.
- 5.2.6. The Chairperson will determine, in concert with the CEO as necessary, whether to place on an agenda consideration of documents of support or recognition (e.g., resolutions, commendations, certificates of appreciation, etc.) for individuals, organizations or efforts in the community by evaluating whether the individual, organization or effort has a clear nexus to issues relevant to the District.
  - 5.2.6.1. A Board member may, at his or her discretion, request the CEO to prepare for the Board member's signature a Certificate of Appreciation for an individual, organization, or effort. The Chair may also sign the certificate.
  - 5.2.6.2. No more than three Board members may sign one of the above-mentioned documents, unless the action was approved by the Board at a Board meeting.
  - 5.2.6.3. Should there be disagreement between the Chair and a Board member over a request for placement of any of the above-mentioned documents on an agenda, the Board member may request that the matter be placed on the next available Board agenda for consideration.
- 5.2.7. The Chair may add agenda items to agendas.
- 5.2.8. The Chair may execute documents on behalf of the Board using electronic and/or digital signatures (such as DocuSign) as allowed by law in lieu of handwritten signatures, including the following Board-approved documents:

- Agreements
- Agreement Amendments
- Contracts
- Resolutions (excluding Resolutions of Appreciation) Ordinances
- Board Meeting Minutes
- Letters

- 5.3. The Board of Directors elects both the Chairperson (Chair) and Vice Chairperson (Vice Chair) of the Board. The Chair and Vice Chair each serve 1-year terms beginning at the first Board meeting in January of each year.

Accordingly:

- 5.3.1. Beginning in the calendar year 2012, the positions of Chair and Vice Chair shall rotate from member to member in numerical order continuing from the 2010 rotation: the District 4 Director



# Governance Policies of the Board

would be Chair and District 5 Director would be Vice Chair; the Vice Chair follows the Chair in sequence.

5.3.2. Any Board member may, at his/her discretion, and on a one-time basis, postpone, by one year, the acceptance of either the Chair or Vice Chair office by “swapping” with the Director immediately following him/her on the list of succession.

5.3.2.1. Provided, however, that newly-elected or appointed Board members will postpone, by one year, the acceptance of the Chair office by “swapping” with the Director immediately following him/her on the list of succession.

5.3.3. Any Board member may, at his/her discretion, decline to serve as Chair or Vice Chair. In the event the Board member declines to serve, that District shall be skipped and the next District Board member shall serve in their stead.

5.3.4. The Clerk of the Board shall maintain the list of Board member service as Chair or Vice Chair.

# Governance Policies of the Board

**Title:** Board Members' Code of Conduct

**Category:** Governance Process

**Policy No. GP-6**

Adopted: June 15, 1999  
Chair: Larry Wilson

Latest Revision: July 28, 2020  
Chair: Nai Hsueh

The Board of Directors revised and adopted this policy at its public meeting on the latest revision date.

The Board commits itself and its members to ethical, business-like, and lawful conduct, including proper use of authority and appropriate decorum when acting as Board members.

Board members who do not adhere to this code of conduct may be subject to the procedures of GP-6.7 through GP-6.9 listed below.

- 6.1. Members must have loyalty to the District and community and not be conflicted by loyalties to staff, other organizations or any personal interest.
- 6.2. Members must avoid conflict of interest with respect to their fiduciary responsibility and are obligated by virtue of their office to discharge their responsibilities with integrity and fidelity and are prohibited from placing themselves in a position where their private, personal interest may conflict with their official duties.
- 6.3. Board members may not attempt to exercise individual authority over the organization.
  - 6.3.1. Members' interaction with the BAOs or with staff must recognize the lack of authority vested in individual members except when explicitly Board authorized. Board members shall refrain from abusive conduct, personal charges or verbal assaults upon the character or motives of other members of the Board, committees, commissions, staff and the public. Board members shall support the maintenance of a positive and constructive environment for District employees.
  - 6.3.2. Members' interaction with public, press or other entities must recognize the same limitation and the inability of any Board member to speak for the Board except to repeat explicitly stated Board decisions.
  - 6.3.3. No member shall contact staff on behalf of a party who is bidding or intends to bid on a District contract or who has or intends to submit a response to a request for proposals or request for qualifications, nor shall a Director inquire about the identity of bidders or proposers prior to the time that staff has made a recommendation for selection of a contractor, vendor, or consultant. Members are not prohibited from making general inquiries about the status of a particular procurement, or from providing a member of the public with information about the appropriate staff contact concerning procurement of goods and services by the District.

# Governance Policies of the Board

6.3.4. After issuance of a request for goods or services, Board members are prohibited from communicating with any current or potential vendor, supplier, contractor, or consultant, except as described in this paragraph, until after issuance by the Chief Executive Officer or his/her designee of a decision on any protest relating to the request for goods or services or resultant contract award. Any communications during this period shall be limited to matters unrelated to the request for goods or services or the contract award. Whenever the member has communicated during the aforementioned period with any current or potential vendor, supplier, contractor, or consultant in violation of these restrictions, the name of the party, the date, and the content of the communications shall be disclosed at the next board meeting after the communication and noted in the minutes.

6.4. Members will respect the confidentiality appropriate to issues of a sensitive nature.

6.4.1. No member shall violate the confidentiality of closed session discussion.

6.5. Members will be properly prepared for Board deliberation.

6.6. The Board may not authorize severance pay for a Board-appointed employee of the District when the employee voluntarily separates from District employment. "Severance pay" does not include any otherwise lawful payment required to be paid by the District under a pre-existing employment agreement or under a separation and release agreement resolving a claim or claims made or threatened against the District. The Board shall not agree to amend an employment contract after the employee announces or requests a voluntary separation, except upon a Board determination, in open session, that an adjustment in compensation is required to retain the employee and is in the best interest of the District.

6.7. This policy applies to the Santa Clara Valley Water District Board of Directors and the following procedures shall be followed when any member of the Board of Directors reasonably believes that another member of the Board has engaged in misconduct or has failed to act in the best interests of the District. The procedures shall not be effective in any case in which a non-board member seeks redress for alleged misconduct by a Board member. While the Board has discretion in deciding the actions it may choose to take in response to a complaint, this policy provides definitions and procedures related to three types of actions: admonition, sanction and censure.

6.7.1. Admonition

Admonition is the least severe form of action. An admonition may typically be directed to all members of the Board, reminding them that a particular type of behavior is not in the best interests of the District, and that, if it occurs or is found to have occurred, could make the member subject to sanction or censure. An admonition may be issued in response to a

# Governance Policies of the Board

particular alleged action or actions, although it would not necessarily have to be triggered by a complaint of misconduct. An admonition may be issued by the Board prior to any findings of fact regarding any complaint, and because it is a warning or reminder, would not necessarily require an investigation or separate public hearing to determine whether a complaint is true.

## 6.7.2. Sanction

Sanction is the next most severe form of action. Sanction should be directed to a particular member of the Board based on a particular action (or set of actions) that is determined to be misconduct but is considered by the Board not to be sufficiently serious to require censure. A sanction is distinguished from censure in that it does not constitute punishment. A written sanction may be based upon the Board's review and consideration of a written complaint. The member accused of such misconduct will have an opportunity to provide a written response to the complaint. A sanction may be issued by the Board, and because it is not punishment or discipline, it would not necessarily require an investigation or separate public hearing.

## 6.7.3. Censure

Censure is the most severe form of action in this policy. Censure is a formal statement of the Board officially reprimanding one of its members. It is a punitive action, which serves as a penalty imposed for misconduct, but it carries no fine or suspension of the rights of the member as an elected official. Censure should be used for cases in which the Board determines that the misconduct is a serious offense. In order to protect the overriding principle of freedom of speech, the Board shall not impose censure on any of its members for the exercise of his or her First Amendment rights, no matter how distasteful the expression was to the Board or the District. However, nothing herein shall be construed to prohibit the Board from collectively condemning and expressing their strong disapprobation of such remarks.

## 6.7.4. Referral to District Attorney

At any point during any of the processes hereinafter described, the Board may refer the matter, as appropriate, to the Santa Clara County District Attorney for investigation. Prior to or following such referral, the Board may proceed with any of the actions described in this policy.

## 6.8. Available Procedures for addressing Misconduct

There are four separate methods for the Board to address Board member misconduct under this Policy: (1) written complaint; (2) request for admonition; (3) request for sanction; and (4) request for censure. Written complaints that specifically seek admonition, sanction, or censure as a specific remedy shall be treated as a request for that remedy (admonition, sanction, or censure), and the provisions of sections GP-6.9 and GP-6.10 shall not apply.

# Governance Policies of the Board

## 6.9. Written Complaints

In the event a Board member reasonably believes another Board member has failed to act in the best interests of the District resulting in misconduct, a written complaint shall be submitted to the Chief People Officer. Upon receipt, the Chief People Officer, Human Resources Division shall transmit the complaint to the District Counsel for review. The District Counsel shall review complaints to determine whether there is a sufficient basis for further action.

6.9.1. If a complaint fails to articulate a sufficient basis for further consideration, the complainant and the accused Board member will be so advised by the District Counsel, and the matter shall be deemed concluded.

6.9.2. If a complaint adequately articulates a sufficient basis for further action, the District Counsel shall present the complaint to the Board Ethics and Conduct Ad Hoc Committee (the "Committee"), which shall be comprised of the Chair and two members of the Board. In the event the subject of a complaint is the Chair or any member of the Committee, the Board shall select another Board member to serve on the Committee in that member's stead. The District Counsel may recommend to the Committee that:

6.9.2.1. Fact finding as to the complaint should be conducted; or

6.9.2.2. Informal resolution of the complaint should occur; or

6.9.2.3. An independent investigation of the complaint should occur.

6.10. Prior to any determination by the Committee to proceed with an investigation, the accused Board member must be given a reasonable opportunity to meet with the Committee or to provide a written response to the complaint. In deciding whether or not to open an investigation, the Committee should consider:

6.10.1. Whether an investigation may compromise investigations regarding the same alleged misconduct, whether the misconduct may result in criminal charges, and whether the right of the accused Board member to a fair jury trial may be compromised by proceeding with an investigation.

6.10.2. Whether persons involved in the allegations may choose to exercise their constitutional right against self-incrimination, which may limit the investigation's ability to present a full and impartial picture of alleged events.

# Governance Policies of the Board

6.10.3. Whether measures can be taken to protect the rights of the member accused of misconduct, the member making such allegations, and those who have information regarding the allegations.

## 6.11. Investigations

6.11.1. If the Committee determines that an investigation is warranted, upon notification of the Board, District Counsel may be directed to conduct the investigation. District Counsel may select and manage an independent investigator to assist in conducting the investigation.

6.11.2. In the course of the investigation, District Counsel shall determine the process by which statements are taken. District Counsel may allow witnesses to choose to provide a signed declaration under penalty of perjury attesting to their knowledge of the facts surrounding the complaint.

6.11.3. At the conclusion of the investigation, the results of the investigation shall be presented in writing to the Committee and CEO. If the Committee is satisfied with the completeness of the investigation, it shall provide the Board with its findings and any recommendations. Following such findings and recommendations, any individual Board member may file a request for admonition, sanction, or censure.

6.11.4. If the Committee determines that an investigation is not warranted, the complainant and the Board shall be notified. Following such notification, any Board member may file a request for admonition, sanction, or censure.

6.11.5. Should any Board member file a request for admonition, sanction, or censure following investigation, the Committee shall submit to the Board a recommendation as set forth in sections GP-6.12.2, GP-6.13.2, or GP-6.14.2, below, and the matter shall thereafter be considered by the Board at its next public meeting subject to the restrictions of section GP-6.14.5, below.

## 6.12. Request for Admonition

6.12.1. Any Board member may make a written request for an admonition which must be submitted to the Committee. The request must contain specific language descriptive of the alleged misconduct and the reason(s) admonition is appropriate. A copy of the request for admonition shall be provided to the Board member accused of the misconduct.

6.12.2. The Committee shall review the request and submit it to the Board with a recommendation. The Committee's recommendation shall provide:

# Governance Policies of the Board

6.12.2.1. Admonition is warranted; or

6.12.2.2. Admonition is not warranted; or

6.12.2.3. No further action is required.

6.12.3. A recommendation by a majority of the Committee shall be based on the Committee's review of the written record.

6.12.4. An admonition can be approved by a majority of the Board.

## 6.13. Request for Sanction

6.13.1. Any Board member may make a written request for sanction which must be submitted to the Committee. The request must contain specific language descriptive of the alleged misconduct and the reason(s) sanction is appropriate. A copy of the request for sanction shall be provided to the Board member accused of the misconduct by personal service within five (5) business days from the date the Committee receives the request. The time for service shall be tolled if the Board member is unavailable for service.

6.13.2. The Committee shall review the request and determine if an investigation is warranted. Following the investigation, or if no investigation was undertaken, following review of the request, the Committee shall submit the request to the Board with a recommendation. The Committee's recommendation shall provide:

6.13.2.1. Admonition, rather than sanction is warranted; or

6.13.2.2. Sanction is warranted; or

6.13.2.3. No further action is warranted.

6.13.3. A recommendation by a majority of the Committee shall be based on the Committee's review of the written record.

6.13.4. The Committee's recommendation shall be subject to a majority vote of the Board.

## 6.14. Request for Censure

6.14.1. Any Board member may make a written request for a censure which must be submitted to the Committee. The request must contain specific language descriptive of the alleged misconduct and the reason(s) censure is appropriate. A copy of the request for censure shall be served

# Governance Policies of the Board

on the Board member accused of the misconduct by personal service within five (5) business days from the date the Committee receives the written request. The time for service shall be tolled if the Board member is unavailable for service.

- 6.14.2. The Committee shall review the request and submit the request to the Board with a recommendation. The Committee's recommendation shall provide:
  - 6.14.2.1. Further investigation of the request for censure is required; or
  - 6.14.2.2. Admonition or sanction is warranted; or
  - 6.14.2.3. The request for censure should be set for a separate Board public hearing; or
  - 6.14.2.4. No further action is required.
- 6.14.3. A recommendation by a majority of the Committee shall be based on the Committee's review of the written record.
- 6.14.4. If the Board determines that further investigation is required, the Board shall direct the Committee to lead the investigation which may be assisted by the CEO and District Counsel. The following guidelines apply to such an investigation:
  - 6.14.4.1. The Committee may be assisted by a separate independent investigator.
  - 6.14.4.2. Upon completion of the investigation, the Committee should determine if taking all the facts and evidence into consideration, there are reasonable grounds to believe or not believe that the misconduct occurred.
  - 6.14.4.3. The Committee shall issue to the Board a final a report and recommendation as approved by a majority of the Committee. The Committee's final report shall be made available to the public.
- 6.14.5. If a separate Board public hearing is required, it must be scheduled far enough in advance to provide the Board member subject to the charges adequate time to prepare a defense, and that Board member shall be given the opportunity to make an opening and closing statement and to question his or her accusers. The Board member subject to the charges may be represented and may have the representative speak or question on his/her behalf. The Chair or Vice Chair, if the Chair is the subject of the charges, shall preside at the public hearing. The rules of evidence shall not apply to the hearing of the matter, which is not a formal adversarial proceeding. If the District Counsel has assisted Board members in the



# Governance Policies of the Board

investigation, independent legal counsel shall provide legal advice to the Board during the hearing of the matter.

6.14.6. A decision to censure requires the adoption of a resolution making findings with respect to the specific charges, based on substantial evidence and approved by a two-thirds vote of Board.

## 6.15. Complaints from non-Board members

This policy applies to the Santa Clara Valley Water District Board of Directors and the following procedure shall be followed when a non-Board member files a written complaint stating his/her reasonable belief that a member of the Board has acted or failed to act in the best interests of the District resulting in misconduct. While the Board has discretion in deciding the actions it may choose to take in response to such a complaint, this policy provides definitions and procedures related to three types of actions: admonition, sanction and censure as defined in sections GP-6.7.1, GP-6.7.2., and GP-6.7.3, of this policy.

6.16. At any point during any of the processes hereinafter described, the Board may refer the matter as appropriate to the Santa Clara County District Attorney for investigation. Following such referral, the Board may proceed with any of the actions described in this policy.

6.17. This policy applies to the Santa Clara Valley Water District Board of Directors and the following procedures shall be followed when a non-Board member reasonably believes that a member of the Board has acted or failed to act in the best interests of the District resulting in misconduct. A written complaint signed by the complainant shall be filed with the Chief People Officer, Human Resources Division. Upon receipt, the Chief People Officer shall transmit the complaint to the Chief Executive Officer (CEO) and the District Counsel for review. The CEO and District Counsel shall review the complaint to determine whether there is a sufficient basis for further action.

6.17.1. If a complaint fails to articulate a sufficient basis for further consideration, the complainant and the accused Board member will be so advised and the matter shall be deemed concluded.

6.17.2. If a complaint adequately articulates a sufficient basis for further action, the CEO and District Counsel shall present the complaint to the Chair of the Board. In the event the subject of the complaint is the Chair, the Vice Chair shall be presented with the complaint. The CEO and District Counsel may recommend to the Chair or Vice Chair that:

6.17.2.1. Fact finding as to the complaint should be conducted; or

6.17.2.2. Informal resolution of the complaint should occur; or

6.17.2.3. An independent investigation of the complaint should occur.

# Governance Policies of the Board

- 6.18. Prior to the determination by the Chair or Vice Chair to proceed with an investigation, the accused Board member must be given a reasonable opportunity to meet with the Chair or Vice Chair or to provide a written response to the complaint. In deciding whether or not to open an investigation, the Chair or Vice Chair should consider:
- 6.18.1. Whether an investigation may compromise investigations regarding the same alleged misconduct and if the misconduct may result in criminal charges, whether the right of the accused Board member to a fair jury trial may be compromised by proceeding with an investigation.
  - 6.18.2. If persons involved in the allegation may choose to exercise their constitutional right against self-incrimination, which may limit the investigation's ability to present a full and impartial picture of the alleged events.
  - 6.18.3. Measures to protect the rights of the member accused of misconduct, the non-Board member making such allegations, and those who have information regarding the allegations.
- 6.19. Investigations
- 6.19.1. If the Chair or Vice Chair determines that an investigation is warranted, upon notification of the Board, District Counsel may be directed to conduct an investigation, and District Counsel may select and manage an independent investigator to assist in conducting such investigation.  
  
Alternatively, at the discretion of the Chair or Vice Chair, the Board's Ethics and Conduct Ad Hoc Committee (as described in Section 6.9.2 of the Board's Governance Policies) shall select an independent investigator to conduct the investigation.
  - 6.19.2. In the course of the investigation, District Counsel shall determine the process by which statements are taken. A witness may choose to provide a signed declaration under penalty of perjury attesting to his/her knowledge of the facts surrounding the complaint. Within ninety (90) days of the date an investigation begins, District Counsel shall inform the Board of the investigation's progress. Investigations should be completed within six (6) months from the date the investigation begins; however, in the event the investigation cannot be completed within the six (6) month time period, District Counsel shall so notify the Board.
  - 6.19.3. At the conclusion of the investigation, the results of the investigation shall be presented in writing to the Chair or Vice Chair. If the Chair or Vice Chair is satisfied with the completeness of the investigation, the Chair or Vice Chair shall provide the Board with findings and any recommendations. Following such findings and recommendation, any individual Board member may file a request for admonition, sanction, or censure.

# Governance Policies of the Board

- 6.19.4. If the Chair or Vice Chair determines that an investigation is not warranted, the complainant and the Board shall be notified. Following such notification, any Board member may file a request for admonition, sanction, or censure as set forth in sections GP-6.12, GP-6.13, or GP-6.14 of this policy, save and except that whenever the term “Committee” appears therein, the term “Chair” or “Vice Chair” shall be applicable.
- 6.19.5. Should any Board member file a request for admonition, sanction, or censure following the Chair or Vice Chair’s findings and recommendations or determination that an investigation is not warranted as set forth in sections GP-6.19.1 through GP-6.19.4 above, the matter shall thereafter be considered by the Board at its next public meeting subject to the restrictions of section GP-6.14.5, above.

# Governance Policies of the Board

**Title:** Values Statement  
**Category:** Governance Process

<b>Policy No. GP-7</b>	Adopted: June 15, 1999 Chair: Larry Wilson	Latest Revision: August 8, 2017 Chair: John L. Varela
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The Board of Directors revised and adopted this policy at its public meeting on the latest revision date.

The values of the Board reflected throughout Board policies are as follows:

The Santa Clara Valley Water District believes, and will exemplify, the following values:

- 7.1. The District is entrusted to serve the public by carrying out its mission for the benefit of the community.
- 7.2. The District is committed to providing excellent service to all customers.
- 7.3. All individuals are unique and important and will be treated with fairness, dignity, and respect.
- 7.4. The District takes pride in its work and is accountable to carry out its responsibilities safely with honesty and integrity.
- 7.5. Initiative, leadership, personal development, and training are vital for continuous improvement.
- 7.6. Open communication, cooperation, and teamwork are shared responsibilities and essential to the successful performance of District work.
- 7.7. The District is committed to creating an inclusive work environment, which reflects and supports the diversity of the community and enriches our perspectives.
- 7.8. The District strives to support a work culture and workplace environment that attracts and retains superior employees empowered to make decisions about, and take responsibility for, how they do their jobs.
- 7.9. The District is committed to its employees and supports market based competitive compensation that is equitable and rewards accomplishment and encourages high performance.
- 7.10. This District is committed to sustaining a healthy work-life balance for its employees and places a high value on all the things that provide enrichment and fulfillment, including work and career, health and fitness, family and relationships, spirituality, community service, hobbies and passions, intellectual stimulation, rest and recreation.

# Governance Policies of the Board

**Title:** Board Committee Principles

**Category:** Governance Process

**Policy No. GP-8**

Adopted: June 15, 1999  
Chair: Larry Wilson

Latest Revision: July 28, 2014  
Chair: Tony Estremera

The Board of Directors revised and adopted this policy at its public meeting on the latest revision date.

The District Act provides for the creation of advisory boards, committees, or commissions by resolution to assist the Board in performing its job, as defined.

Accordingly, the Board may establish the following type of Board Committees to assist it with policy advice, District Mission implementation, respective expertise, and, very importantly, to help produce the link between the District and the community:

**Board Standing Committee** – A Committee created by ordinance, resolution, or formal action of the Board comprised of less than a quorum of the Board and/or external members having continuing subject matter jurisdiction or a meeting schedule fixed by ordinance, resolution, or formal action. Annually, the purpose of an established Standing Committee will be reviewed to determine its relevance.

**Board Ad Hoc Committee** – A Committee comprised of less than a quorum of the Board and/or external members having a limited term, to accomplish a specific task, is established in accordance with the Board Ad Hoc Committee procedure (Procedure No. W723S01), and will be used sparingly. Annually, the purpose of an established Ad Hoc Committee will be reviewed to determine its relevance.

In keeping with the Board’s broader focus, Board Committees will not direct the implementation of District programs and projects, other than to receive information and provide advice and comment.

Accordingly:

- 8.1. When used, Board Standing Committees and Board Ad Hoc Committees will be established so as to reinforce the wholeness of the Board’s job and so as to never interfere with delegation from the Board to the BAOs.
  - 8.1.1. Board Standing Committees and Board Ad Hoc Committees are established for a specific purpose as defined by the Board. The committees’ purpose may also include a definition in authority and limitation in duration. Expectations and authority will be carefully stated in order not to conflict with authority delegated to the BAOs.
  - 8.1.2. Board Standing Committees and Board Ad Hoc Committees will communicate directly with the Board and will not exercise authority over employees. Therefore, because the BAOs work for

# Governance Policies of the Board

the full Board, they will not be required to obtain approval of a Board Standing Committees or Board Ad Hoc Committee before an executive action.

- 8.2. This policy applies to any group which is formed by Board action, whether or not it is called a committee and regardless of whether the group includes Board members. It does not apply to committees formed under the authority of the BAOs.
- 8.3. Board Committees will conduct their meetings in accordance with the provisions of the Brown Act (Open Meetings Law), even when the Brown Act would not otherwise apply to the committee due to its nature, function, or duration. If an exception of this policy is deemed to be in the best interest of the District, the reason for the exception will be identified at the time the Board or Chair creates the committee.
- 8.4. On an annual basis, the Board of Directors will review the structures, functions, and purposes of the Board Committees to ensure that the Board's needs are being met.

# Governance Policies of the Board

<b>Title: Board Committee Structure</b>		
<b>Category: Governance Process</b>		
<b>Policy No. GP-9</b>	Adopted: June 15, 1999 Chair: Larry Wilson	Latest Revision: December 10, 2019 Chair: Linda J. LeZotte
The Board of Directors revised and adopted this policy at its public meeting on the latest revision date.		

Nominations of Board members to committees shall be made by the Chair subject to approval by the Board, subject to annual review.

9.1. Board Committees:

9.1.1. A committee is a Board committee only if its existence and charge come from the Board, regardless whether Board members sit on the committee. Unless otherwise stated, a committee ceases to exist as soon as its task is complete.

9.2. Board Members Representation on Board Standing and Ad Hoc Committees:

9.2.1. Board members who are not the appointed representatives to Board Standing or Ad Hoc Committees shall be permitted to attend open noticed meetings of such committees only as observers to watch and listen, and not participate in discussion, ask questions or make statements. The non-appointed Board member(s) must observe the meeting from the area designated for members of the public. During the course of the meeting, appointed representatives of Board Standing or Ad Hoc Committees shall not speak to or otherwise engage with non-appointed Board members attending the meeting as observers.

9.3. Board Members Representation on External Committees:

9.3.1. Board members serving on external committees or other governing bodies shall serve in the best interest of the District unless otherwise required by statute, ordinance, resolution or other legislative action.

9.3.2. Board members shall serve on appointed committees to maintain effective relationships.

# Governance Policies of the Board

**Title:** Cost of Governance  
**Category:** Governance Process

**Policy No. GP-10**

Adopted: September 28, 1999  
Chair: Larry Wilson

Latest Revision: January 8, 2019  
Chair: Linda J. LeZotte

The Board of Directors revised and adopted this policy at its public meeting on the latest revision date.

The Board will invest in its governance capacity.

Accordingly:

- 10.1. Board skills, methods, and supports will be sufficient to assure governing with excellence.
  - 10.1.1. Training and education will be used by Board members to maintain and increase governance skills and understanding.
  - 10.1.2. Outside monitoring assistance will be arranged so that the Board can exercise confident control over organizational performance. This includes, but is not limited to, fiscal audit.
  - 10.1.3. Outreach mechanisms will be used as needed to ensure the Board's ability to listen to public viewpoints and values.
- 10.2. Adequate funds will be proposed by the COB and budgeted annually by the CEO for support of the Board.
- 10.3. Board members will prepare and submit Director's Expense Claim Forms to request per diem and expense reimbursement in accordance with this policy. Board members will include receipts and any other information necessary to demonstrate that reimbursement is consistent with this policy and with Ch. 700, Stats. 2005 (AB 1234). Expense claims must be submitted within a reasonable time after the expense is incurred.
- 10.4. Board members will briefly report on meetings attended at District expense at the next regular Board meeting following the event at which the member is in attendance. On a quarterly basis, a report of the per diem and expense reimbursements of each Board member shall be placed on an open session Board meeting agenda for review and a determination by the Board whether the reimbursements comply with the Board's reimbursement policies adopted pursuant to Section 53232.3 of the Government Code. Only expenses in compliance with those policies may be reimbursed by the District. Directors Quarterly Expense Reimbursement Reports will be placed on the Directors District web page for public viewing.



# Governance Policies of the Board

- 10.5 Adequate liability insurance will be provided by the CEO at all times for Board members.
- 10.6. It is the policy of the Board that each Board member attend such meetings, events, conferences, and training as each Board member determines will best enable them to serve the District, including such compensation per day and reimbursement for actual and necessary expenses as may be allowed by law and as authorized by this policy. Board members may only receive compensation for one meeting, per day, regardless of the number of meetings attended.

## 10.6.1. Per Diem Meetings, Events, and Activities Compensation

After annually making a finding based on substantial evidence that there is an operational need for Board members to be paid for more than 10 meetings in a calendar month, Board members are eligible to receive compensation per day, up to 15 days per calendar month, in accordance with Section 33(c) of the Santa Clara Valley Water District Act, for the meetings, events, and activities listed below, all of which are hereby deemed by the Board to constitute the performance of official duties. For the purpose of making a finding, substantial evidence shall include, but is not limited to, such things as the number of meetings in the prior year that were qualified for compensation pursuant to this policy, and how many and how frequently committee meetings of the Board of Directors occur.

- 10.6.1.1. Regular and Special Meetings of the Board of Directors.
- 10.6.1.2. Regular and Special Meetings of any Standing or Ad Hoc committee of the Board of Directors in accordance with Governance Process Policy 9.2.1, when the attending member is a member of the committee.
- 10.6.1.3. Regular and Special Meetings of any public entity legislative or advisory body of which the District is a member, or at which an agenda item related to the District's business is discussed.
- 10.6.1.4. Meetings with local, state, and federal legislators and/or officials to discuss matters of District concern.
- 10.6.1.5. Meetings of associations of governmental agencies, water policy organizations, and any other body of which the District is a member or which concerns water supply, flood protection, and/or natural resources.
- 10.6.1.6. Conferences and educational workshops open to the public and/or to public agencies such as the District or concern water supply, flood protection, and/or natural resources. Preference should be given to conferences and educational workshops in California in order to minimize out of state travel.

# Governance Policies of the Board

- 10.6.1.7. Community events sponsored by or featuring the District, or which concern water supply, flood protection, and/or natural resources, or which concern the relationship of the District to the communities it serves.
  - 10.6.1.8. Community meetings at which District projects or programs are presented, featured, or discussed.
  - 10.6.1.9. Meetings with District employees and/or District constituents concerning District business.
  - 10.6.1.10. Media appearances to discuss District issues (including but not limited to interviews and editorial board meetings).
  - 10.6.1.11. Activities constituting direct Board inspection of District operations in accordance with Board-BAO Linkage Policy BL-5.
  - 10.6.1.12. Participation in and completion of an approved online ethics course to meet the requirements of Government Code Sections 53234-53235.5, which shall constitute a single meeting.
  - 10.6.1.13. Any other meeting, event, or activity approved in advance by the Board.
- 10.6.2. Per Diem Meetings, Events, and Activities Compensation Exclusions
- 10.6.2.1. No Board member shall be compensated for attendance at a community/business event as a guest of the District, where the District has purchased a seat or table at said event.
- 10.6.3. Per Diem Meetings, Events, and Activities Expense Reimbursements
- Board members are eligible for reimbursement for actual and necessary expenses incurred by the Board member for travel/transportation, meals, registration fees, lodging and incidental expenses reasonably incurred by the Board member in connection with meetings, events, and activities described in GP-10.6.1.
- 10.6.3.1. Travel reimbursement expenses will not exceed the government or group rate for airline, ground transportation, and rental cars where such rate is available. Air transportation will be economy/coach class. Reimbursement for rental cars will be at the midsize level, unless a group of District officials/personnel are traveling together and choose to use a larger vehicle to accommodate the

# Governance Policies of the Board

group. Shuttles, taxis, and car services are reimbursable in lieu of car rental. Board members wishing to upgrade flight or rental car class for personal convenience, or to combine personal with business travel thereby resulting in an increased fare, must pay the increased cost over the rates set forth in this policy.

- 10.6.3.2. Mileage reimbursement expenses for use of the Board member’s own vehicle will be at the rate established for District employees and in accordance with policies applicable to District employees.
- 10.6.3.3. Lodging reimbursement expenses will not exceed the government or group rate for lodging where such rate is available. Reimbursement for lodging at conferences and organized educational activities will not exceed the maximum group lodging rate published by the activity sponsor if that rate is available at time of booking. Board members wishing to upgrade rooms and/or hotels or to incur additional guest charges will not be reimbursed for the cost difference.
- 10.6.3.4. Meal reimbursement expenses will be provided up to \$60 per day (\$14 for breakfast, \$16 for lunch and \$30 for dinner) for Board members who provide receipts. In addition to the \$60 per day, Board members will be entitled to an additional \$15 per day, with receipts, when traveling to the cities identified by the US General Services Agency as “high cost of living areas” listed below. Board members who do not have receipts may be reimbursed up to \$39 (\$9 for breakfast, \$10 for lunch and \$20 for dinner) per day for meal expenses.

Los Angeles, CA	Boston, MA	New York City, NY
San Francisco, CA	Baltimore, MD	Cincinnati, OH
Denver, CO	Detroit, MI	Pittsburgh, PA
Washington, DC	St. Paul/Minneapolis, MN	Philadelphia, PA
Miami, FL	St. Louis, MO	Dallas, TX
Chicago, IL	Atlantic City, NJ	Arlington, VA
New Orleans, LA	Santa Fe, NM	Seattle, WA

- 10.6.3.5. Incidental expenses, including public transportation to/from airport; parking expenses; fuel for rental cars; tipping in accordance with policies applicable to District employees; expenses related to conducting District business while traveling (such as charges for phone, internet, or facsimile communication), will be reimbursed.

## 10.7. Business-Related Expense Reimbursements

# Governance Policies of the Board

Board members are eligible for reimbursement for actual and necessary expenses incurred by the Board member for the following business-related expenses: communication devices (cell phones/ batteries/chargers), third party charge for internet/phone/fax lines and plans, office equipment and business cards.

10.7.1. Office equipment eligible for reimbursement under GP-10.7. includes:

- Fax/printers
- Fax/printer ink cartridges
- Individual office supplies (pens, day planners, etc);
- Personal digital assistant (PDA) equipment

10.8. Allocated Expense Reimbursements

Board members are eligible for reimbursement for office equipment, communication devices, supplies, publication subscriptions, membership dues, and educational materials utilized by the member for performance of Board duties, up to the amount identified in the Board Resolution Setting Annual Limit of Reimbursement of Directors' Annual and Necessary Expenses.

10.8.1. Publication subscriptions eligible for reimbursement under GP-10.8. include:

- Newspaper/ magazine subscriptions
- Periodicals

10.8.2. Membership dues eligible for reimbursement under GP-10.8. include:

- Organization and association memberships relevant to District business/mission (excludes professional memberships, certifications, licenses, etc)

10.8.3. Educational material eligible for reimbursement under GP-10.8. includes:

- Books, videos, DVDs, computer programs (used in course of District business)

10.8.4. Other expenses eligible for reimbursement under GP-10.8. include:

- Business meal overage reimbursement
- District apparel

10.9 Board member compensation and benefits settlement agreements are not confidential.

# Governance Policies of the Board

**Title:** Inclusion, Equal Employment Opportunity, Discrimination/Harassment Prevention, and Diversity

**Category:** Governance Process

**Policy No. GP-11**

Adopted: August 3, 1999  
Chair: Larry Wilson

Latest Revision: July 28, 2014  
Chair: Tony Estremera

The Board of Directors revised and adopted this policy at its public meeting on the latest revision date.

The Board of Directors is committed to providing equal employment opportunity to all persons and to building a diverse work force that values diversity and inclusion.

The Board firmly believes that such a work force provides advantages both internally, in terms of the human resources potential offered by a variety of diverse perspectives, and externally, in increasing the District's ability to respond to the community we serve.

The Board understands that diversity is more than inclusion of racial or cultural groups, that valuing diversity involves respect for all persons, and that valuing diversity requires a positive change in the way we interact with each other and a change in our organizational culture.

Accordingly:

- 11.1. The Board and its members will not discriminate, harass, or allow harassment against any applicant, employee, customer, or other person on the basis of sex (which includes pregnancy, childbirth, breastfeeding and medical conditions related to pregnancy, childbirth or breastfeeding), race, religion, color, national origin (including language use restrictions), ancestry, religious creed (including religious dress and grooming practices, political affiliation, disability (mental and physical, including HIV or AIDS), medical condition (cancer and genetic characteristics), genetic information, marital status, parental status, gender, age (40 and over), pregnancy, military and veteran status, sexual orientation, gender identity and gender expression, the exercise of family and medical care leave, the exercise of pregnancy disability leave, or the request, exercise, or need for reasonable accommodation.
- 11.2. The Board commits itself and its members to support all actions necessary to make equal employment opportunity at the District a reality for all.
- 11.3. The Board will require that the organization's work environment be one in which all people are welcomed and included, and in which all individuals are unique and important and are treated with fairness and dignity.
- 11.4. The Board will respect all people and seek to accommodate and learn from the different perspectives and values they contribute.

# Governance Policies of the Board

**Title:** Conduct of Board Meetings

**Category:** Governance Process

**Policy No. GP-12**

Adopted: June 9, 2015  
Chair: Gary Kremen

Latest Revision: August 18, 2015  
Chair: Gary Kremen

The Board of Directors revised and adopted this policy at its public meeting on the latest revision date.

## 12.1. Procedural Rules for Board Meetings (“Rules”)

### 12.1.1. Basic Motions Subject to Debate

12.1.1.1. A motion puts forward a decision for consideration.

12.1.1.2. A motion to amend retains the basic motion but modifies it in some way.

12.1.1.3. A motion to substitute the motion under discussion eliminates the basic motion and places a new motion before the Board.

### 12.1.2. Non-Debatable Motions

12.1.2.1. A motion to adjourn. Four affirmative votes needed.

12.1.2.2. A motion to recess. Four affirmative votes needed.

12.1.2.3. A motion to fix the time to adjourn. Four affirmative votes needed.

12.1.2.4. A motion to table item under discussion. Four affirmative votes needed.

12.1.2.5. A motion to limit time for Board debate. Two thirds vote required.

12.1.2.6. A motion calling for a vote on the immediate question. Two thirds vote required.

12.1.2.7. A motion to close nomination. Two thirds vote required.

12.1.2.8. A motion objecting to Board consideration of an item on the agenda. Two thirds vote required.

12.1.3. A motion to suspend the Rules. Two thirds vote required.

### 12.1.4. Motion to Reconsider

12.1.4.1. A motion to reopen debate and discussion after vote has been taken. Four affirmative votes required.

# Governance Policies of the Board

- 12.1.4.2. Motion must be made at the meeting where item first voted upon or at the very next meeting.
- 12.1.4.3. Motion must be made by member who voted in majority on original motion.
- 12.1.5. Courtesy and Decorum
  - 12.1.5.1. Point of Privilege – interrupting a speaking board member to make a ministerial request which addresses physical conditions of the meeting. Chair to inquire why speaker is being interrupted.
  - 12.1.5.2. Point of Order – interrupting a speaking board member questioning whether board meeting is being properly conducted.
  - 12.1.5.3. Appealing Ruling of the Chair. Four affirmative votes needed to reverse Chair's ruling.
  - 12.1.5.4. Call for Order of the Day. Requesting that Board discussion should be redirected to items on published agenda.
  - 12.1.5.5. Withdrawal of motion. Maker of motion seeks to immediately withdraw his/her motion. Motion is withdrawn without debate.
- 12.1.6. Voting
  - 12.1.6.1. All members of the Board, when present, must vote except as hereinafter provided.
  - 12.1.6.2. A member of the Board who has a conflict of interest regarding any matter being considered by the Board shall declare the conflict and abstain from participating in the Board's deliberation and Decision regarding the matter. A board member so abstaining must leave the Board chambers unless an exception otherwise applies.
  - 12.1.6.3. Any member of the Board, once having answered the call of the roll or having been noted by the Clerk of the Board as being present at a meeting, shall advise the Chair of the Board prior to leaving the Board's Chambers for the remainder of the meeting.
  - 12.1.6.4. The vote on any matter being considered by the Board may be delayed by the Chair of the Board until all members of the Board present for the meeting, and not excused as herein provided, are present at the Board's dais.
- 12.1.7. Public Comment
  - 12.1.7.1. Comments from the public on Non-Agenda Items will generally be taken on any item within the subject matter jurisdiction of the Board and not on the published agenda prior to Board discussion on any item of business.

# Governance Policies of the Board

- 12.1.7.2. Comments from the public on Published Agenda Items shall be heard prior to any motion being made by a board member; or, if no motion is appropriate, prior to the Chair of the Board calling the next item of business on the published agenda.
- 12.2. Unless a higher vote is required by ordinance, resolution, state, or federal law, the affirmative vote of at least four members of the Board shall be required in order for the Board to take action on an item of business or the adoption of any ordinance or resolution.
- 12.3. The Board, Standing Committees, and Board Ad Hoc Committees shall conduct their meetings in an open and transparent manner by following the California Open Meeting Act and the District Act.



**CONFIDENTIAL**  
**EXECUTIVE SUMMARY**

**for**

**SANTA CLARA VALLEY WATER DISTRICT**

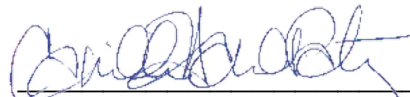
**Complainants:** Rick Callender, Carlos Orellana  
and other employees

**Subject:** Rebecca Eisenberg

**Allegations:** Discrimination  
Harassment/Hostile Work  
Environment  
Retaliation  
Abusive Conduct  
Improper Direction to Staff

**Investigator:** Camille Hamilton Pating, Esq.  
Neha R. Shah, Esq.

**Report Submitted:** 12/22/2023



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Camille Hamilton Pating  
(SBN 122890)

**meyers | nave**

**I. EXECUTIVE SUMMARY**

Meyers Nave (“Meyers Nave”) was retained by Santa Clara Valley Water District (“SCVWD” or “District”) to conduct an independent investigation<sup>1</sup> (“Investigation 2”) of claims of misconduct originally reported by SCVWD Chief Executive Officer (“CEO”) Enrique “Rick” Callender (“Callender”), who filed a series of complaints (“Complaints”) against SCVWD Board Director Rebecca Eisenberg (“Eisenberg”). Some of the complaints were made by Callender and some were made by other SCVWD employees who alleged that Eisenberg engaged in conduct that amounted to discrimination and harassment based on sex, race, age, and national origin, retaliation, abusive conduct and attempts to exercise individual authority over the organization (referenced as “improper direction to staff”). After the investigation was underway, SCVWD General Counsel, Carlos Orellana, also made complaints against Eisenberg alleging discrimination and harassment based on sex and race, sexual harassment of another employee, abusive conduct, and improper direction to staff. The purpose of the Confidential Investigative Report (“Report”) is to make factual findings<sup>2</sup> and determine whether any of SCVWD’s governance policies have been violated. The purpose of this Executive Summary is to summarize the allegations, investigation, and findings from the Confidential Investigation Report.

The following is a summary of the allegations investigated and the findings of fact as to each.

No	Allegation	Policy	Finding <sup>3</sup>
<b>Allegations Regarding Eisenberg’s Interactions with SCVWD Staff</b>			
1.	Eisenberg’s statement that she preferred that the writer of her Nextdoor social media post be a “female of color” was an act of sex discrimination, as defined by SCVWD policies.	SCVWD Board Policy GP-11.1	<b>Not Substantiated</b>

<sup>1</sup> Meyers Nave also conducted an independent investigation of claims made by Eisenberg against Callender and Board Chair John Varela (“Investigation 1”).

<sup>2</sup> This report contains findings of fact, not conclusions of law.

<sup>3</sup> The standard of proof used in this investigation is the preponderance of evidence, or” more likely than not” standard. The following possible findings were utilized in this investigation:

**SUBSTANTIATED** – There is sufficient evidence, on a more likely than not basis, to prove the allegation.

**NOT SUBSTANTIATED** – There is insufficient evidence, on a more likely than not basis, to prove or disprove the allegation.

**UNFOUNDED** – The allegation has no basis in fact or has been disproved through the investigation.

No	Allegation	Policy	Finding <sup>3</sup>
2.	Eisenberg questioning why “male-led” firms were hired to lead the Diversity Initiative followed by her statement that she “does not trust men” to advocate for women’s issues was an act of sex discrimination or discriminatory harassment, as defined by SCVWD policies.	SCVWD Board Policy GP-11.1	<b>Not Substantiated</b>
3.	Eisenberg’s statement to Assistant CEO Melanie Richardson (“Richardson”) that “It’s not good enough to have a male CEO and women in supporting roles” was an act of sex discrimination or discriminatory harassment, as defined by SCVWD policies.	SCVWD Board Policy GP-11.1	<b>Not Substantiated</b> as Sex Discrimination <b>Not Substantiated</b> as Discriminatory Harassment
4.	Eisenberg’s statement that men “love to build things and use concrete,” and flooding exists because of all the concrete poured by “men engineers” was an act of sex discrimination or discriminatory harassment, as defined by SCVWD policies.	SCVWD Board Policy GP-11.1	<b>Not Substantiated</b> as Sex Discrimination <b>Substantiated</b> as Discriminatory Harassment
5.	Eisenberg asked Richardson to help prove Callender is “corrupt” and “getting paid for Pacheco” in exchange for Eisenberg helping Richardson’s family “get millions” under a whistleblower law, which was an act of discrimination or discriminatory harassment, or improper direction to staff, as defined by SCVWD policies.	SCVWD Board Policy GP-6.3 SCVWD Board Policy GP-11.1	<b>Not Substantiated</b> as Sex or Race Discrimination <b>Not Substantiated</b> as Discriminatory Harassment <b>Substantiated</b> as Improper Direction to Staff

No	Allegation	Policy	Finding <sup>3</sup>
6.	Eisenberg’s statement that she would refuse to support recycled water projects until staff committed to bring to the Board a proposal to remove Pacheco from the CIP was an act of improper direction to staff, as defined by SCVWD policies.	SCVWD Board Policy GP-6.3	<b>Not Substantiated</b>
7.	Eisenberg’s statement to Richardson, “You know I’m bisexual” was an act of sexual harassment, as defined by SCVWD policies.	SCVWD Board Policy GP-11.1	<b>Not Substantiated</b>
8.	Eisenberg’s statement to Chief Financial Officer Darin Taylor (“Taylor”) that he was lying, asking him what the CEO told him to do, and criticizing him for smiling, were acts of abusive conduct, as defined by SCVWD policies.	SCVWD Board Policy GP-6.3.1	<b>Not Substantiated</b>
9.	Eisenberg referring to staff as children was an act of abusive conduct, as defined by SCVWD’s policies.	SCVWD Board Policy GP-6.3.1	<b>Not Substantiated</b>
<b>Allegations Regarding Eisenberg’s Statements to or About Board Members</b>			
10.	Eisenberg’s statement that she is the only “Non-Boomer on the Board and it shows” was an act of age discrimination or discriminatory harassment, as defined by SCVWD policies.	SCVWD Board Policy GP-11.1	<b>Not Substantiated</b> as Age Discrimination <b>Substantiated</b> as Discriminatory Harassment
11.	Eisenberg’s conduct toward Director Tony Estremera (“Estremera”) in public meetings was an act of sex or race-based discriminatory harassment, as defined by SCVWD policies.	SCVWD Board Policy GP-11.1	<b>Not Substantiated</b>

No	Allegation	Policy	Finding <sup>3</sup>
12.	Eisenberg’s statement to Director Nai Hsueh (“Hsueh”), “English isn’t your first language so I want to make sure you understand,” in a June 30, 2023 Board Strategic Planning Policy (“BPPC”) meeting, was an act of national origin-based discriminatory harassment, as defined by SCVWD policies.	SCVWD Board Policy GP-11.1	<b>Substantiated</b>
13.	Eisenberg stated that she has “idiots as her colleagues on the Board,” which was an act of abusive conduct, as defined by SCVWD policies.	SCVWD Board Policy GP-6.3.1	<b>Not Substantiated</b>
<b>Allegations Regarding Eisenberg’s Conduct Toward the District Counsel</b>			
14.	Eisenberg’s comments regarding a Water Infrastructure Finance and Innovation Act (“WIFIA”) loan application at the December 13, 2022 open session suggested unethical conduct by Orellana and was an act of race or sex-based discriminatory harassment, or abusive conduct, as defined by SCVWD policies.	SCVWD Board Policy GP-6.3.1 SCVWD Board Policy GP-11.1	<b>Not Substantiated</b>
15.	Eisenberg’s conduct toward Orellana at the December 13, 2022 closed session regarding Baykeeper litigation was an act of race or sex-based discriminatory harassment, or abusive conduct, as defined by SCVWD policies.	SCVWD Board Policy GP-6.3.1 SCVWD Board Policy GP-11.1	<b>Not Substantiated as Race or Sex-based Discriminatory Harassment</b> <b>Substantiated as Abusive Conduct</b>
16.	Eisenberg’s conduct toward Orellana during the December 14, 2022 phone call was an act of abusive conduct, as defined by SCVWD policies.	SCVWD Board Policy GP-6.3.1	<b>Substantiated</b>

No	Allegation	Policy	Finding <sup>3</sup>
17.	Eisenberg's statements to Orellana in a January 20, 2023 email in relation to the Baykeeper litigation, was an act of sex or race-based discrimination, abusive conduct, or improper direction to staff, as defined by SCVWD policies.	SCVWD Board Policy GP-6.3 SCVWD Board Policy GP-6.3.1 SCVWD Board Policy GP-11.1	<b>Not Substantiated</b> as Race Discrimination <b>Substantiated</b> as Abusive Conduct <b>Substantiated</b> as Improper Direction to Staff
18.	Eisenberg's comments about Chile at the May 3, 2023 BPPC meeting were directed to Orellana's Hispanic heritage and were acts of race-based discriminatory harassment, as defined by SCVWD policies.	SCVWD Board Policy GP-11.1	<b>Not Substantiated</b>
<b>Allegations Regarding Eisenberg's Conduct Toward Both the District Counsel and CEO</b>			
19.	Eisenberg's conduct toward Callender, Orellana and Estremera, during public meetings was an act of race or sex-based discrimination or discriminatory harassment, as defined by SCVWD policies.	SCVWD Board Policy GP-11.1	<b>Not Substantiated</b>
20.	Eisenberg's statement that discrimination against men is not a legal violation at the March 6, 2023, BPPC meeting was an act of sex-based discriminatory harassment, as defined by SCVWD policies.	SCVWD Board Policy GP-11.1	<b>Not Substantiated</b>
21.	Eisenberg's social media posts referencing Orellana and Callender were acts of retaliation, as defined by SCVWD policies.	Policy AD-2.8 <sup>4</sup>	<b>Not Substantiated</b>

<sup>4</sup> As discussed below, at the time of this investigation, there were no Board policies that prohibited retaliation by Board members. For purposes of this analysis, and other allegations of retaliation by Eisenberg, the Investigators considered AD-2.8 for interpretive assistance only, as Eisenberg is not an employee of SCVWD District and therefore not subject to this policy.

No	Allegation	Policy	Finding <sup>3</sup>
<b>Allegations Regarding Eisenberg’s Conduct Toward The CEO</b>			
22.	Eisenberg’s request to Callender to explain how many employees have been fired by him at the April 26, 2023 open meeting was an act of sex or race-based discriminatory harassment, as defined by SCVWD policies.	SCVWD Board Policy GP-11.1	<b>Not Substantiated</b>
23.	Eisenberg referenced Callender as “angry and yelling,” “violent” and portrayed him as a “predator,” which were acts of race-based discriminatory harassment, as defined by SCVWD policies.	SCVWD Board Policy GP-11.1	<b>Not Substantiated</b>
24.	Eisenberg refused to meet with or communicate with Callender as retaliation for his complaints against her, in violation of SCVWD policies.	Policy AD-2.8	<b>Not Substantiated</b>
25.	Eisenberg created a hostile work environment for, or engaged in abusive conduct toward, Callender, in violation of SCVWD policies.	SCVWD Board Policy GP-6.3.1 SCVWD Board Policy GP-11.1	<b>Not Substantiated</b> as Hostile Work Environment <b>Substantiated</b> as Abusive Conduct

## II. METHODOLOGY AND POLICIES

The Investigators, Camille Hamilton Pating, Esq. and Neha Shah, Esq. (“Investigators”) consulted with Samantha Zutler, Special Counsel for SCVWD, and obtained necessary background information and relevant documents. The Investigators formulated a list of witnesses to be interviewed. Once the scope of the investigation was determined and agreed upon, the Investigators operated with complete independence as to identification of issues, interview content, and preparation of findings.

This Report is limited in scope to the key charges made in the Complaints against Eisenberg. The findings are limited to whether there was sufficient evidence to establish discrimination, discriminatory harassment, retaliation, improper direction to staff, or abusive conduct as to Complainants’ allegations. The findings, by necessity, do not seek to address each and every contention or response asserted during the course of this investigation. Instead, the findings

examine what the Investigators believed to be the key charges made in the Complaint. Allegations or responses not specifically addressed in this Report were deemed by the Investigators to be redundant, cumulative, not materially different from other charges, or outside the scope of the investigation. The following analysis includes the allegations against Eisenberg, the statements/interviews of relevant witnesses, documentary evidence, and the Investigators' findings, including determinations of credibility. The Investigators requested that SCVWD waive closed session privilege and provide relevant documents, including communications, policies and other documents, which it did.

#### **A. Credibility of Witnesses**

The evidence gathered in the course of this Investigation supports the findings of fact, based on credibility determinations made pursuant to the U.S. Equal Employment Opportunity Commission's ("EEOC") standards for assessing witness credibility, which are contained in its publication entitled "Enforcement Guidance on Vicarious Employer Liability for Unlawful Harassment by Supervisors." These factors are: (1) presence or absence of corroboration; (2) presence or absence of contradictions; (3) whether the facts are inherently improbable; (4) whether the witness has a motive to fabricate; and (5) presence or absence of declarations against interest.<sup>5</sup>

The Investigators interviewed 27 individuals believed to be necessary to reach conclusions about the key allegations.

#### **B. Factual Determinations**

Most of the facts were not significantly in dispute. However, where factual disputes existed, the Investigators made factual determinations by applying the standards of credibility set forth in the EEOC Guidance, discussed above.

#### **C. Standards of Review and Relevant Policies**

The Investigators reviewed allegations of discrimination, harassment, retaliation, abusive conduct, and improper direction to staff made against Eisenberg under the Board's policies prohibiting such behavior by Board members.<sup>6</sup> Where no Board policies existed, or where the Board policies did not provide definitions or examples of prohibited conduct, the Investigators considered policies that apply to SCVWD employees for interpretative guidance.<sup>7</sup>

<sup>5</sup> U.S. Equal Employment Opportunity Commission, *Enforcement Guidance: Vicarious Liability for Unlawful Harassment by Supervisors* (Publication No. 915.002, dated 6/18/99).

<sup>6</sup> Attachment 2.

<sup>7</sup> Attachment 1.



## **1. Discrimination**

The Investigators reviewed allegations of sex, race, age and national origin discrimination under the Board's policy prohibiting protected class based discrimination, SCVWD Governance Policy of the Board ("GP") No. GP-11.1, which states in relevant part:

"The Board and its members will not discriminate, harass, or allow harassment against any applicant, employee, customer, or other person on the basis of sex ... race, religion, color, national origin (including language use restrictions)...."

GP-11.1 does not define discrimination or provide examples of prohibited behavior for Board Members. Accordingly, the Investigators considered SCVWD Anti-Discrimination, Harassment, Abusive Conduct, and Retaliation Policy AD-2.8 ("AD-2.8"), which prohibits protected class based discrimination and applies to SCVWD employees but does not explicitly apply to Board members, for guidance on how to interpret GP-11.1.

AD-2.8 defines discrimination as follows:

"Adverse employment actions related to hiring, promotions, assignments, performance management, and other terms and conditions of employment where membership in a Protected Category is a substantial motivating reason for the action." The policy further stated that "Discrimination is a Prohibited Behavior."

## **2. Discriminatory Harassment and Hostile Work Environment**

The Investigators reviewed allegations of discriminatory harassment based on sex, race, age and national origin, and also an allegation of sexual harassment, utilizing GP-11.1, which prohibits such conduct by Board members. However, as with Discrimination, this policy provides no definitions or examples of prohibited conduct. Accordingly, the investigators used AD-2.8, which prohibits protected class based discriminatory harassment and sexual harassment, and applies to SCVWD employees but does not explicitly apply to Board members, for guidance on how to interpret GP-11.1.

AD-2.8 defines harassment as follows:

"Harassing conduct may include, but is not limited to: verbal harassment (obscene language, demeaning conduct, slurs, or threats); physical harassment such as unwanted touching, assault, or actual physical interference with normal work; visual harassment (offensive posters, drawings, photographs, cartoons, or objects); unwanted sexual advances; and other communicative harassment (offensive emails, text messages, internet postings, letters, etc.) because of a Protected Category."

The policy further states that “Harassment is a Prohibited Behavior.”

AD-2.8 defines a hostile work environment, separately from Harassment, as follows:

“A hostile work environment exists where one is subjected to unwanted harassing conduct because of his or her Protected Category, where the harassing conduct is severe or pervasive, where one considers the work environment to be hostile or abusive as a result of the conduct, and where a reasonable person in the same circumstances would also have found the environment to be hostile or abusive.”

The policy further states that “Creating a Hostile Work Environment is a Prohibited Behavior.”

AD-2.8 provides for a two-part analysis of alleged harassment under the harassment and hostile work environment standards. It is possible to have harassment that violates SCVWD’s policy based on an incident(s) of harassing conduct, even where the harassing conduct does not rise to the level of severe or pervasive conduct necessary to establish a hostile work environment.

### **3. Abusive Conduct**

The Investigators reviewed allegations of abusive conduct under the Board’s code of conduct policy prohibiting abusive conduct, GP-6.3.1, which states in relevant part:

“Board members shall refrain from abusive conduct, personal charges or verbal assaults upon the character or motives of other members of the board, committees, commissions, staff and the public. Board members shall support the maintenance of a positive and constructive environment for district employees.”

GP-6.3.1 does not define the terms abusive conduct, personal charges or verbal assaults upon the character or motives of others nor does it provide examples of prohibited behavior for Board members. Accordingly, the Investigators again used AD-2.8, which prohibits abusive conduct and applies to SCVWD employees but does not explicitly apply to Board members, for guidance on how to interpret GP-6.3.1. This policy states in relevant part:

“Valley Water employees, including managers, shall refrain from any malicious conduct that a reasonable person would find hostile, offensive, and unrelated to an employer’s legitimate business interest...

Examples of abusive conduct include, but are not limited to, repeated infliction of verbal abuse, such as the use of malicious, derogatory remarks, insults, epithets, verbal or physical conduct that a reasonable person would find threatening, intimidating or

humiliating, or the intentional sabotage or undermining of a person's work performance.”

The policy further states that Abusive Conduct that is substantially motivated by one's Protected Category may constitute harassment and that Abusive Conduct is a Prohibited Behavior.

#### **4. Retaliation**

At the time of this investigation, there were no Board policies that prohibited retaliation by Board members. AD-2.8 strictly prohibits retaliation by employees against any person by another at SCVWD for:

- making a non-malicious and non-frivolous internal complaint about an allegation of discrimination, harassment, abusive conduct, or retaliation;
- utilizing the complaint procedure of any state or federal agency to report discrimination, harassment, or retaliation;
- opposing discrimination, harassment, abusive conduct, or retaliation;
- reporting discrimination, harassment, abusive conduct, or retaliation;
- requesting an accommodation for religious practice or disability; or
- for filing, testifying, assisting, or participating in any manner in any investigation, proceeding or hearing conducted by Valley Water or a governmental enforcement agency relating to this policy or any state or federal anti-discrimination laws or regulations.

Employees who engage in the protected activity defined above are protected from retaliation because of their protected activity. According to AD-2.8:

“This means that any employee who participates in the protected activity described above shall not be adversely affected or discriminated against in their terms and conditions of employment *because of* their involvement in the protected activity. “*Because of*” means that the employee's involvement in the protected activity must be a substantial motivating reason behind the prohibited retaliatory conduct. In short, there must be a causal connection.”

Specific examples of prohibited retaliation includes, but is not limited to:

“termination, demotion, suspension, . . . adversely affecting working conditions or otherwise denying any employment benefit to the person engaging in the protected activity. Prohibited retaliation includes any conduct that is reasonably likely to impair an employee's job performance or prospects for advancement or promotion.”

Further, “prohibited retaliation does not include minor or trivial actions or conduct that is not reasonably likely to do more than anger or upset an employee.”

## **5. Improper Direction To Staff**

The Investigators reviewed allegations of improper direction to staff under the Board’s code of conduct policy prohibiting improper direction to staff by Board members, GP-6.3-6.3.1, which states in relevant part that Board members “may not attempt to exercise individual authority over the organization,” and that their interactions with Board Appointed Officers (BAOs) and staff “must recognize the lack of authority vested in individual members.”

### **III. ANALYSIS AND CONCLUSIONS**

#### **A. Allegation 1: Eisenberg’s Statement That She Preferred That The Writer Of Her Nextdoor Social Media Post Be A “Female Of Color” Was An Act Of Sex Discrimination, As Defined By SCVWD Policies**

**NOT SUBSTANTIATED.** Callender reported that Eisenberg stated a preference for a “female of color” author for her Nextdoor social media posts. The employee who was assigned at the time to write Eisenberg’s Nextdoor posts was male. Callender based his report on information he learned from another employee. That employee stated that the Board Liaison asked him if a particular minority woman writer was available to be Eisenberg’s writer. That employee was unsure whether the request came from Eisenberg directly, as he never spoke with her about it. Ultimately, the request was denied.

Eisenberg denied stating a preference for a woman of color writer and denied that she ever asked that her assigned male writer be replaced by a minority woman. Instead, Eisenberg explained that she simply stated a “suggestion” that the Communications Department “amplify the voices of women of color staff.” Eisenberg stated that she did not know who was assigned to be her writer and if the writer was male or female.

GP-11.1 states in relevant part “[t]he Board and its members will not discriminate, harass, or allow harassment against any applicant, employee, customer, or other person on the basis of ...sex... [or] gender.” GP-11.1 does not provide a definition of sex discrimination or examples of prohibited conduct. Because the SCVWD policy is silent as to these factors, the Investigators considered non-Board member AD-2.8, for interpretive assistance, which requires an adverse employment action “related to hiring, promotions, assignments, performance management, and other terms and conditions of employment” to prove discrimination.

Here, the witness statements provided more confusion than clarity. There was insufficient evidence that the Board Liaison’s inquiry about whether a particular employee was available to work for Eisenberg came from Eisenberg or that, if it did, it was based on a derogatory view of male writers because of sex.

Regardless of who made the request, or whether it was made at all, there is no evidence of any adverse action to anyone based on the request. To the contrary, the request was denied.

As a result, the evidence shows that no employee's job assignment, performance, terms and conditions or prospects for promotion or advancement have been adversely impacted by this incident.

**B. Allegation 2: Eisenberg's Questioning Why "Male-Led" Firms Were Hired To Lead The Diversity Initiative Followed By Her Statement That She "Does Not Trust Men" To Advocate For Women's Issues Was An Act Of Sex Discrimination Or Discriminatory Harassment, As Defined By SCVWD Policies**

**NOT SUBSTANTIATED.** Callender alleged that Eisenberg made anti-male statements about SCVWD hiring diversity consultants and the consultants' ability to advocate for women's issues that were discriminatory and harassing based on sex. Callender reported this allegation on behalf an employee in the Office of Racial Equity, Diversity, and Inclusion ("REDI"). The REDI employee was interviewed by the Investigators and reported the following: On December 27, 2022, she and Eisenberg met with representatives of Cordoba Corporation ("Cordoba"), who were hired by SCVWD to consult on the environmental justice aspect of the diversity and inclusion ("D & I") initiative in the District's Master Plan. Representatives from Cordoba's subcontractor Dakota Communications ("Dakota") were also present. According to the employee, Eisenberg "interrogated" the consultants and questioned why SCVWD hired firms that were male-led instead of hiring female-led minority firms. The REDI employee felt Eisenberg's conduct put the consultants "in a very awkward and uncomfortable position of having to defend and justify their qualifications simply because their principals were not women." The REDI employee reported that Eisenberg was questioning them in a hostile way, interrupted them, and "made many anti-male and gender-biased comments" to the point of making the meeting attendees uncomfortable. When one of the consultants clarified to Eisenberg that Cordoba is a minority-men led company, and consider themselves to be "very much allies on issues of gender and equity," Eisenberg responded by saying that she didn't trust any man, except her husband and Director Beall, to advocate for women's issues, and that she appreciated the sentiment but that it was "not good enough" to have men leading D & I efforts.

When asked about this meeting, Eisenberg stated that her intent was to "bring justice and equality to women" at the District and that the first thing that stood out to her is that the consultants were all males. Eisenberg recognized that the staff got "very defensive" based on her comments, but stated that she stands by them. Eisenberg confirmed that although the REDI employee pointed out that the REDI staff are women of color, Eisenberg said, "that's great, but why did you hire a firm of all men?" Eisenberg says she did not intend to say that men can't be allies, but rather it's not appropriate to hire only men and that women should be at the table. Eisenberg said that she did not ask for Cordoba or Dakota to be fired or removed from the project.

GP-11.1 prohibits Board members from engaging in discrimination or discriminatory harassment based on protected status, including race, sex and age. As described above, because GP-11.1 does not define or provide examples of prohibited sex discrimination based on sex,

the Investigators considered the requirements of AD-2.8, which prohibits protected class based discrimination and requires an adverse employment action.

Here, it is undisputed that Eisenberg stated her opinion that a women-led business should have been hired for consulting for the Master Plan instead of Cordoba and Dakota, male-owned businesses. In addition, Eisenberg stated that an all-male, minority owned business was “not good enough” to lead a D & I initiative. However, the Investigators found no evidence of any adverse employment action taken against Cordoba or Dakota by Eisenberg. Eisenberg did not attempt to remove them as contractor and subcontractor, or otherwise replace them with women-owned businesses. There was no evidence that Cordoba’s or Dakota’s status was impacted due to Eisenberg’s comment or that Eisenberg sought to adversely impact their employment status because of sex. In summary, there was insufficient evidence that Eisenberg’s remarks resulted in sex discrimination against Cordoba or Dakota.

The Investigators next examined the question of whether Eisenberg’s comments to the contractors and the REDI employee that hiring male-led companies were “not good enough” and she did not trust such companies to advocate for women were harassing statements based on sex in violation of GP-11.1’s prohibition of discriminatory harassment. As with the previous analyses of GP-11.1, the Investigators considered AD-2.8, for guidance. Verbal harassment as defined in AD-2.8 includes “obscene language, demeaning conduct, slurs, or threats.”

The Investigators determined that Eisenberg’s conduct in the meeting with Cordoba and Dakota representatives was disrespectful and inappropriate, as she was aggressive in her questioning and interrupted the consultants. However, there was no evidence that it rose to the level of obscene, derogatory, demeaning or threatening language based on sex or any protected category.

**C. Allegation 3: Eisenberg’s Statement To Assistant CEO Melanie Richardson That “It’s Not Good Enough To Have A Male CEO And Women In Supporting Roles” Was An Act Of Sex Discrimination Or Discriminatory Harassment, As Defined By SCVWD Policies**

**NOT SUBSTANTIATED.** Callender reported that Eisenberg told Assistant CEO Melanie Richardson (“Richardson”) that it was “not good enough to have a CEO of color, we need a woman of color” as CEO. Callender alleged this statement was sex-based discrimination or discriminatory harassment against him because he perceived Eisenberg as saying that he should be removed from his CEO position because he is a male and not a woman of color.

The Investigators interviewed Richardson regarding the interaction, which occurred sometime in December or January of 2023. Richardson confirmed that Eisenberg said, “It’s not good enough to have a male CEO and top execs that are women in supporting roles” and that “it’s imperative women of color be at ‘the very top’ of Valley Water and not just in second position,” apparently referencing Richardson being in second position as Assistant CEO and a direct report to Callender. Richardson recalled that Eisenberg started the meeting by saying

how proud she was of her feminist viewpoint. According to Richardson, Eisenberg said, “‘It’s not discrimination to want women to advance or to complain about men.’ She started praising me. She said, ‘You do such a good job, I think you would be a great CEO.’” Eisenberg told Richardson she would be a better CEO than Callender. According to Richardson, “It was like she was angling to put a woman in the position.”

Eisenberg acknowledges she made the statement but denies that her statement was discriminatory against Callender based on sex. She says her intention was to advocate to Richardson for female representation at the top of the District. “I didn’t make any statement derogatory against men as a gender. I advocated for greater equality.” Eisenberg states that she was misinterpreted. Eisenberg further states that she is critical of Callender’s performance as CEO in part because she perceives he hasn’t done enough to deal with the problems faced by women in the District. “Misogyny is a big problem in this District. I perceive a problem of sexism and racism. Just because a Black man is in charge doesn’t mean there’s no racism.” Eisenberg further explained, “I probably said it’s not the same to have a female vice CEO and male CEO from the point of view of representation.” According to Eisenberg, to interpret her words as discrimination against males is “a misstatement of reality. They hear what I’m saying as attacks. Men sometimes hear the success of women as their defeat.”

GP-11.1 prohibits Board members from engaging in discrimination or discriminatory harassment based on protected status, including race, sex and age. GP-11.1 does not define or provide examples of prohibited sex discrimination or discriminatory harassment based on sex. As in Sections A and B above, the Investigators considered AD-2.8, for guidance on how to interpret GP-11.1, which requires an adverse employment action and proof that membership in a protected category is a substantial motivating reason for the action.

Here, the undisputed evidence showed that Eisenberg stated her opinion that a woman, or woman of color, should be CEO, and that she also believed Richardson should be CEO. Callender felt Eisenberg’s statement was threatening his job. However, the Investigators found no evidence of an adverse employment action taken against Callender. Callender has not removed from his CEO position, demoted or disciplined. While Eisenberg has criticized Callender’s job performance and stated her opinion that he should not be the CEO, there was no evidence that his job was actually at risk, or that there was any action to replace him with Richardson or another woman, because of his sex. .

The Investigators next examined whether Eisenberg’s comments to Richardson in a private briefing that a man in the CEO position is “not enough” and the position should be held by a woman or woman of color was a harassing statement on the basis of sex or race. As with the Board Policy prohibiting Discrimination, the policy prohibiting harassment provides no definitions or examples of prohibited conduct. Accordingly, the Investigators examined the requirements of the anti-harassment provisions of AD-2.8 and the definition of verbal harassment which includes obscene language, demeaning conduct, slurs, or threats, because of the complainant’s protected category.

Although Eisenberg’s comment identified the protected class status (sex) of Callender and Richardson as the basis for who should be CEO, her remark does not rise to the level of

verbal harassment against Callender based on sex as defined by AD-2.8. There was no evidence of profane or vulgar language, demeaning conduct, slurs or threats against Callender because of his protected category.

**D. Allegation 4: Eisenberg’s Statement That Men “Love To Build Things And Use Concrete,” And Flooding Exists Because Of All The Concrete Poured By “Men Engineers” Was An Act Of Sex Discrimination Or Discriminatory Harassment, As Defined By SCVWD Policies**

**NOT SUBSTANTIATED as sex-based discrimination.** Callender reported this allegation on behalf of an employee in the Watersheds Division. The Investigators interviewed the Watersheds employee, who reported: on December 29, 2022, she met with Eisenberg to provide her with an update on the Permanente Concrete Channel project (“Permanente”); the interaction with Eisenberg was a “crazy meeting” where Eisenberg cut her off every time she started talking; Eisenberg started the meeting in an accusatory and attacking manner about a project that was already completed; Eisenberg then started talking about beavers and how SCVWD should use beavers to build all the dams; finally, Eisenberg discussed how dams cause floods and were constructed by “men engineers” who build them; Eisenberg was accusatory of men and kept repeating that “men engineers” like to build things and commenting on their excessive use of concrete.

Eisenberg admits she did make the statement that flooding exists because of the concrete male engineers had poured in the area. Eisenberg reports this is not a derogatory statement toward men. She said she was merely trying to point out historical facts that many years ago when dams were constructed, men built the dams because women weren’t allowed to be engineers and that it is scientifically proven that concrete poured in the area created flooding. She said she was quoting books and that her statements were not meant to be criticisms of men as a gender. She questioned how this was an insult when dams are named after men and they are celebrated as heroes.

As described in previous sections, the Investigators utilized AD-2.8 to analyze whether Eisenberg’s statement was sex-based discrimination. As in previous sections, although Callender’s protected class status was established, a finding of sex discrimination requires an adverse action be taken on the basis of a protected class, in this case sex (male). Neither the Watersheds employee nor Callender could point to an adverse action taken against any man at SCVWD on the basis of Eisenberg’s statement.

**SUBSTANTIATED as discriminatory harassment.** With respect to discriminatory harassment, because GP-11.1 does not define harassing conduct, the Investigators considered AD-2.8, and the definition of verbal harassment which includes obscene language, demeaning conduct, slurs, or threats, because of the complainant’s protected category.

Eisenberg’s use of the term “men engineers,” standing alone, may have been unnecessary but is not necessarily derogatory or demeaning. The statement about men liking to build things and use concrete is more problematic. Here, Eisenberg’s statement that “men engineers” like to build things and use concrete is based on a stereotype. Accordingly it can



be characterized as derogatory on the basis of sex. Further, Eisenberg attributed flooding to the use of concrete, implying that flooding exists because of “men engineers,” which is demeaning and derogatory towards men. Eisenberg’s statement that men are not a protected class is incorrect.<sup>8</sup>

Finally, although Eisenberg explained she did not intend her statement to be demeaning, as described above, when considering alleged harassment, harmful intent by the harasser is not required to deem the conduct offensive under SCVWD’s policies; instead the Investigators examined the impact of the comments on the recipients and whether they were reasonably deemed offensive. Both Callender and the Watersheds employee reported these comments by Eisenberg because they felt that the comments were anti-male, offensive and inappropriate.

**E. Allegation 5: Eisenberg Asked Richardson To Help Prove Callender Is “Corrupt,” And “Getting Paid For Pacheco” In Exchange For Eisenberg Helping Richardson’s Family “Get Millions” Under A Whistleblower Law, Which Was An Act Of Discrimination Or Discriminatory Harassment Or Improper Direction To Staff, As Defined By SCVWD’s Policies, As Defined By SCVWD Policies**

**NOT SUBSTANTIATED as sex or race discrimination or discriminatory harassment.** Callender initially reported, and Richardson confirmed, that Eisenberg told Richardson she wanted Richardson to help prove that Callender is “corrupt” and “is getting paid for Pacheco.” According to Richardson, Eisenberg twice told Richardson that if she would do this, then Eisenberg would help Richardson “get millions” for her family under whistleblower laws. In her interview, Richardson stated that she met with Eisenberg on or about January 31, 2023 and that during the meeting, Eisenberg was upset because she had recently learned about Callender’s complaint against her. Eisenberg said Callender “has a financial interest [in the Pacheco Dam,] that’s why he protects the dam.” Richardson stated that Eisenberg asked if Richardson was aware of the whistleblower law, and said “if I would turn the CEO in, there would be millions of dollars to come to my family. I was very surprised by her suggesting this.”

Richardson said that Eisenberg repeated this statement on March 1, 2023, in a Zoom meeting attended by Richardson, Eisenberg and another SCVWD Officer, during which Eisenberg went off-topic and discussed how wrong Callender was to accuse her of discrimination. According to Richardson, Eisenberg accused her of revealing Eisenberg’s comments to Callender and stated that she could no longer trust Richardson, or the information she was receiving from Richardson’s staff. Richardson pushed back, saying that her staff provided accurate information to the Board. Richardson said that she “tried so hard to be my friend but it was clear that I liked Rick better than her and that hurt her.” Richardson’s description of the March 1 meeting was corroborated by the SCVWD Officer who was in

<sup>8</sup> Employers are prohibited from discriminating against male employees on the basis of sex. *Sassaman v. Gamache* (2<sup>nd</sup> Cir. 2009) 566 F.3d 307, 312 [suggesting that a male worker harassed a female worker because males are likely to do so would constitute sex discrimination]. Eisenberg made a similar statement, that “discrimination against men is not a thing,” which is analyzed in section T.

attendance, who recalled that Eisenberg just “went off” for over an hour and fifteen minutes and “it was a continuous thing about why Melanie [Richardson] is not her friend, she [Eisenberg] was trying to be on her side.” The SCVWD Officer described Eisenberg’s behavior as dramatic and not professional.

Eisenberg denied that she told Richardson that Callender was “corrupt” or has received money for the Pacheco project but said that “many people” are wondering if certain individuals are receiving “kickbacks.” Eisenberg denied that she told Richardson, or anyone else, that she could help them get millions of dollars for helping her prove corruption claims against Callender. Eisenberg denied that she was trying to obtain such evidence:

“I did not ask for help to prove that Rick is corrupt. It is not any goal of mine to prove anyone corrupt. I did not ask anyone for help. I did not say I can help you get millions of dollars. I’m not that kind of lawyer.”...

She stated that Richardson’s allegation was a “big lie” but acknowledged there were “nuggets of truth” in that she was referencing that the media and the grand jury had created “an existing perception that this organization is corrupt” and that as CEO, Callender is ultimately responsible. Eisenberg stated that a large number of employees have come to her with their belief that there is corruption in the SCVWD related to Pacheco, and she acknowledged that she has encouraged staff to come forward to her with information because “bad acts” are happening at “the highest levels of [the] organization.” When staff has reached out to her, Eisenberg said that she has told them, “if there’s an issue of false claims, you may want to go to an attorney who does false claims act. Maybe there’s a whistleblowing case. BTW whistleblowing cases can produce a ton of money for the whistleblower. I have no idea if it’s a good claim or not. If it’s true, you can make some money.” Eisenberg then said, “Maybe my husband can give a reference.” Eisenberg did not identify the employees to whom she gave this information.

Despite Eisenberg’s denial, the Investigators determined that, on a more likely than not basis, Eisenberg asked Richardson to help Callender is corrupt in exchange for Eisenberg helping Richardson’s family get millions of dollars under a whistleblower law. First, Richardson presented as a highly credible witness who recalled both the January 31 and March 1 incidents very specifically. The detailed information that Richardson presented supporting the context and background of Eisenberg’s ask for her help to prove misconduct by Callender during the March 1, 2023 meeting, was corroborated by the SCVWD Officer who was also present at the meeting. Second, the Investigators determined that Richardson did not have a motive to fabricate such a claim against a sitting Director. Third, following the March 1, 2023 meeting, Richardson contemporaneously documented the statement in a March 2, 2023 memo to Callender (which also references similar comments made by Eisenberg about proving Callender “corrupt” on or about January 31, 2023). Third, the evidence indicated that Eisenberg asking Richardson to help her prove Callender was corrupt, instead of bringing such concerns to the Board, is consistent with Eisenberg’s pattern of seeking out or encouraging employees to come to her regarding accusations against Callender instead of asking for an investigation of such allegations. For example, Eisenberg also alleged that Callender was

wrongfully firing employees who complained about him and that he had wrongfully attempted to claim sex-based discrimination when no such claim exists for males (discussed herein). That Eisenberg has adopted the same approach in reference to Callender's alleged misconduct in other instances supports the plausibility of this occurrence.

Next, the Investigators considered Callender's claim that the statement violated SCVWD policies. As described above, GP-11.1 prohibits Board members from discriminating, allowing or engaging in discriminatory harassment against employees or "other persons" on the basis of sex, age, race, and other protected classes. GP-11.1 does not define discrimination or harassment or give examples of prohibited behavior. In analyzing these allegations, the Investigators therefore considered relevant legal standards, and non-Board member SCVWD policies, for interpretive assistance.

There is insufficient evidence of sex or race discrimination or discriminatory harassment. While the evidence showed that Callender is in a protected class under the policy and that he was currently performing the duties of CEO, there was again, an absence of any adverse employment action, which is necessary to establish employment discrimination. In the end, there was no adverse action against Callender, as neither Richardson nor Callender could point to any adverse action taken against Callender on the basis of Eisenberg's statement. In addition, there was no indication that the evidence regarding Eisenberg's request that Richardson help her prove Callender was "corrupt" or was getting money from Pacheco, implicates Callender's race or sex. This is the case even if considering that Eisenberg had previously inappropriately expressed that Callender, as a male CEO, was "not enough" because of his sex and that Eisenberg desired a woman of color or woman CEO. To the extent that Callender expressed that Eisenberg was inventing a claim against Callender in order to remove him from his position for improper sex-based reasons, there was insufficient evidence of this motivation of a causal connection between the "not enough" statement and Eisenberg's request to Richardson to help her prove Callender was "corrupt."

**SUBSTANTIATED as improper direction to staff.** GP-6.3-6.3.1 governs Board Members' interaction with the Board Appointed Officers ("BAOs") or with staff which states in relevant part that Board members "may not attempt to exercise individual authority over the organization," and that their interactions with BAOs and staff "must recognize the lack of authority vested in individual members."

Pursuant to GP-6.3.1 Eisenberg had no authorization from the Board to prove Callender was getting paid for Pacheco or to conduct her own investigation into misconduct concerns about Callender. Considering her role as an individual Board Director and his role as a BOA, the proper forum for her to do so would have been through the Board and with Board consensus. Instead, the evidence showed that she attempted to pressure Richardson to assist in her own investigation into the action of a BOA without the support or knowledge of the Board. As determined above, it is more likely than not that Eisenberg told Richardson to help prove Callender is corrupt, that he is getting paid for Pacheco, and in exchange Eisenberg could help Richardson's family "get millions" under the whistleblower law. This statement was an act of improper direction to staff and attempt to exercise individual authority over staff.

**F. Allegation 6: Eisenberg’s Statement That She Would Refuse To Support Recycled Water Projects Until Staff Committed To Bring To The Board A Proposal To Remove Pacheco From The CIP Was An Act Of Improper Direction To Staff, As Defined By SCVWD Policies**

**NOT SUBSTANTIATED.** An employee in the Water Supply Division reported that on January 12, 2023, she sent Eisenberg an email describing edits made in a proposed PowerPoint presentation regarding the Purified Water Project, a recycled water project. The next day, Eisenberg responded by email:

“First, I want to say that I am 100% opposed to this and any other project until staff commits to bring to the Board at the next meeting a proposal to remove Pacheco Dam Expansion from the CIP. Yesterday, staff asked the Board to approve Pacheco despite its current \$8billion price tag, yet said it was not "ready" to remove Pacheco. \$8 billion = \$2.9 billion (actual stated cost of the project) + \$3 billion (actual stated cost of interest payments) + underestimate of mitigations. It is beyond belief that it is easier to ask the Board for \$8 billion than it is to ask the Board to remove an \$8 billion expense. I was, and am, confounded by that position.”

Callender reported Eisenberg’s conduct because he felt that Eisenberg’s email to the Water Supply employee was a form of “extortion” in that she was essentially threatening the employee to comply otherwise she would withhold her votes. The Water Supply employee reported that she understood Eisenberg’s words implied a threat to remove support for the employee’s projects if she didn’t work towards stopping the Pacheco Project, but she did not feel personally or professionally coerced or threatened. Two other Water Supply employees, who also received the email, presented conflicting views. One did not think much of the email and the other felt it was unprofessional, disrespectful, and an attempt to direct staff.

Eisenberg admitted that she was angry about the Pacheco Dam, however says she never once withheld a vote or took any action against Water Supply’s projects in order to force them to bring her a Pacheco proposal. Despite what she wrote, Eisenberg said she has advocated for Water Supply’s projects, including the recycled water project in Palo Alto, even meeting with City Council members to advocate for it.

Here, the evidence shows that although Eisenberg ultimately took no action to interfere with projects from the Water Supply Division, the language of her email reasonably caused some recipients to believe that she was attempting to direct their work through threat of negative action. In this situation, the witness statements provide more confusion than clarity as to whether staff felt threatened or improperly directed by Eisenberg’s email comments. However, none of the employees claimed that Eisenberg had implemented her threat by refusing to support Water Supply’s projects. In the end, while Eisenberg’s comments were inappropriate and understandably concerning to staff, the evidence indicates that her words

were not acted upon, and were more puffing and posturing than a real coercion to produce an anti-Pacheco proposal.

**G. Allegation 7: Eisenberg Told Richardson, “You Know I’m Bisexual” As An Act Of Sexual Harassment, As Defined By SCVWD Policies**

**NOT SUBSTANTIATED.** This incident was reported by Orellana, who heard of it second-hand, as potential sexual harassment by Eisenberg toward Richardson. Richardson described the interaction with Eisenberg as follows: in February 2023, Richardson attended a Board meeting. The Board meeting had ended and Richardson was sitting alone on the dais, gathering her notes. “Everyone had left. Rebecca came up behind me. She said, ‘do you know I’m bisexual?’ I said ‘no.’” Richardson said Eisenberg’s comment caught her off guard because it wasn’t relevant to anything. Richardson felt it was “a weird thing to say out of the blue” but she did not see it as an unwelcome sexual overture. Instead, she believes Eisenberg said it to her to be “cool,” like “see how cool I am, I am bisexual,” as a “badge of honor.” Richardson did not feel fearful.

Eisenberg did not deny making this statement to Richardson, however she clarified that she was “not hitting on” Richardson when she made this statement, not explicitly or as a “wink let’s have a drink and have sex” situation. She believes she and Richardson were having a conversation about their husbands or past relationships.

Here, both Eisenberg and Richardson agree that Eisenberg made the statement, “do you know I’m bisexual?” to Richardson. However, there is no evidence that Eisenberg’s comment created offense or intimidation, nor that it was unwelcome by Richardson. Besides thinking the comment was “weird,” Richardson didn’t seem to think much more of Eisenberg’s comment other than it was mere bravado.

**H. Allegation 8: Eisenberg’s Statement To Chief Financial Officer Darin Taylor That He Was Lying, Asking Him What The CEO Told Him To Do, And Criticizing Him For Smiling, Were Acts Of Abusive Conduct, As Defined By SCVWD Policies**

**NOT SUBSTANTIATED.** Darrin Taylor (“Taylor”), the Chief Financial Officer at SCVWD, raised issues concerning Eisenberg’s interactions with him. According to Taylor, on or around January 25, 2023, Eisenberg met with him and insisted that someone was directing him to hold back from providing data to the Board. On March 1, 2023, Eisenberg told Taylor that he was incorrect that the Board directed staff to assume a 35% partnership for Pacheco and questioned whether Callender or other staff, rather than the Board, told him to assume 35%. In the same meeting, Taylor claims Eisenberg criticized him for smiling and said his actions felt condescending and disrespectful. She also told Taylor not to listen to Callender because, “he will be fixed soon” and that Callender and Orellana were telling staff to ignore her. Taylor said that Eisenberg was implying that the CEO or Board Chair were directing him to withhold information from her. He wasn’t sure if her behavior was verbally abusive but that it was “getting there,” as Eisenberg was conveying that she had zero trust in him, and was using an angry and “shame on you sort of tone” which didn’t feel good to him. Taylor feels

that Eisenberg's treatment of people is obnoxious, rude, bullying, angry and confrontational and that "she is a bully in her own way."

Eisenberg denies making any of the alleged comments.

Taylor demonstrated a high level of credibility. His statements were consistent with information he provided to SCVWD staff after a significant passage of time. To the extent he reported that Eisenberg accused him of providing false or inaccurate information to the Board at the direction of Callender or others, this was substantially similar to statements Eisenberg made to Richardson [Richardson reports that Eisenberg "begged" her to present the best information to the Board and went from mad to almost crying and saying, "Please, please" with tears in her eyes regarding information presented to the Board] and other Officers [Eisenberg wrote to an Officer, "four Board members have flagged to you that they want to abandon Pacheco due to, among other reasons, the extraordinary expense that Staff continues to present as 'no big deal,' actually listing it alongside projects that are truly 1/100th of the cost. This is unprofessional and makes us all look bad"]. To the extent Taylor says Eisenberg accused him of lying, this was substantially similar to behavior by Eisenberg reported by Richardson, Orellana, and other SCVWD witnesses. His description of Eisenberg's confrontational behavior in the meetings were consistent with the reports by Richardson, Callender, Orellana and other Board members and SCVWD witnesses, further supporting Taylor's credibility.

GP-6.3.1 governs Board Members' interaction with the BAOs or with staff and states that Board members "shall refrain from abusive conduct, personal charges or verbal assaults upon the character or motives of other members of the Board, committees, commissions, staff and the public." "Abusive conduct" is not defined or explained in GP-11.1. Accordingly, the Investigators considered AD-2.8, which prohibits and defines abusive conduct and applies to all employees (both unclassified and classified), contractors, consultants, temporary employees, and interns of the District for interpretive assistance. Because AD-2.8 does not apply to Board members, it is provided here for interpretive guidance. AD-2.8 defines prohibited abusive conduct as:

"Malicious conduct that a reasonable person would find hostile, offensive, and unrelated to Valley Water's legitimate business interests. Examples of abusive conduct include, but are not limited to, repeated infliction of verbal abuse, such as the use of malicious, derogatory remarks, insults, epithets, verbal or physical conduct that a reasonable person would find threatening, intimidating or humiliating, or the intentional sabotage or undermining of a person's work performance."

With respect to whether Eisenberg's conduct toward Taylor was abusive, Eisenberg's repeated insinuation that Taylor was lying was offensive to Taylor and could be considered a personal charge or verbal assault on Taylor's character under GP-6.3.1. However, the evidence did not support a pattern or repeated infliction of such behavior directed at Taylor. In addition, the evidence did not support malicious conduct that a reasonable person would find hostile,

offensive, and unrelated to legitimate business interests, on Eisenberg's part. The evidence suggests that her comments were based on her perception that she was not getting "accurate" data or information from Taylor, and did not rise to the level of a malicious conduct (*i.e.*, intended to cause harm to Taylor), which is required for a finding of abusive conduct under SCVWD's policy. Nonetheless, the evidence indicates that Eisenberg's comments and combative demeanor toward Taylor were disrespectful and unprofessional. Indeed, Taylor himself stated that he didn't feel her conduct was abusive but that it was "getting there." In the end, there was insufficient evidence that Eisenberg's behavior met the requirements for abusive conduct towards Taylor.

**I. Allegation 9: Eisenberg Referred To Staff As Children, Was An Act Of Abusive Conduct, As Defined By SCVWD Policies**

**NOT SUBSTANTIATED.** An SCVWD Officer reported that, at a Water Storage Exploratory Committee meeting on March 29, 2023, Eisenberg starting "ranting" about the Pacheco project. She asked several times for information she claims that she asked for but did not receive, however the Officer is not certain she had ever asked for it. Eisenberg then made a comment that she "ha[s] to ask [her children] to take out the trash 10 times before it's done" so Eisenberg "would keep asking for it until you do it." The Officer felt it was disrespectful to him personally, his staff, a dig at his professionalism and insulting in a way that created low morale. After Eisenberg made the comment, the Officer looked around the room and said that "people looked blown away."

When asked about it, Eisenberg did not deny making this comment. She explained that she will keep asking someone to do something until they do it and that's one of her hallmarks, but that it doesn't mean she is intending to call someone a child. Eisenberg stated that she was frustrated that she had to ask multiple times for an answer for information but that she wasn't asking them to do something; she just wanted an answer.

While Eisenberg's statement may have been rude or inappropriate, the evidence presented does not support a finding of abusive conduct. There was insufficient evidence of malicious conduct (intention to harm the recipient), or that a reasonable person would find Eisenberg's statement hostile, offensive, and unrelated to legitimate business interests. Similarly, the "children" reference cannot fairly be said to be malicious, derogatory remarks, insults, epithets, verbal or physical conduct that a reasonable person would find threatening, intimidating or humiliating. Finally, abusive conduct generally requires repeated infliction of verbal abuse, and one single act generally does not constitute abusive conduct unless especially severe and egregious<sup>9</sup>. Here, it is undeniable that Eisenberg's comment to staff, and the underlying message infantilizing staff, could be considered offensive, inappropriate and

<sup>9</sup> In California, "abusive conduct" is defined as: "conduct of an employer or employee in the workplace, with malice, that a reasonable person would find hostile, offensive, and unrelated to an employer's legitimate business interests. Abusive conduct may include repeated infliction of verbal abuse, such as the use of derogatory remarks, insults, and epithets, verbal or physical conduct that a reasonable person would find threatening, intimidating, or humiliating, or the gratuitous sabotage or undermining of a person's work performance. A single act shall not constitute 'abusive conduct', unless especially severe and egregious." Cal Gov. Code Section 12950.1(g)(2).

condescending. However, the evidence does not support a finding of malicious or repeated conduct necessary to rise to the level of a policy violation.

**J. Allegation 10: Eisenberg’s Statement That She Is The Only “Non-Boomer” On The Board “And It Shows” Was An Act Of Age Discrimination Or Discriminatory Harassment, As Defined By SCVWD Policies**

**NOT SUBSTANTIATED as age discrimination.** Callender reported that he received at least five age discrimination or harassment complaints about Eisenberg’s reference to herself being the only “Non-Boomer” on the Board “and it shows” in connection with remarks she made criticizing her Board colleagues, who are all in the “Baby Boom” generation. Orellana also complained about Eisenberg’s “Boomer” comment. “Boomers” generally refers to the “Baby Boom” demographic, including individuals born between 1946 and 1964; since these individuals are over 40 years of age, they are a protected class.

A review of the January 24, 2023 Board meeting and transcript reveals that Eisenberg expressed disappointment and criticized her colleagues on the Board, who are all older than Eisenberg<sup>10</sup>, and made the following statements:

“Let’s get in line with best practices, let’s get in line with equity.  
Let’s try to be a meritocracy.

2:21:41

And that is not the direction we’re moving in. And I am disappointed. And I think it’s also it’s I think there are many other people who are going to be disappointed to the only public speakers back to me. So I realized **I’m the only non-Boomer on this board. And it shows.** Thank you.” (emphasis added)  
(Exh. 114 - Excerpt from January 24, 2023 Board meeting.)

Eisenberg does not deny making the “Boomer” comment. She claims that because she is 55 years old, and in a protected age class, she can make that comment, but that, in any case, she was joking. Eisenberg says she was trying to point out that “Boomers” on the Board are squeezing out other generations in representation and that is problematic, because SCVWD’s Board is not a representative Board based on age.

GP-11.1 prohibits protected class based discrimination. In applying AD-2.8 for guidance on defining Discrimination, the required elements are “adverse employment actions related to hiring, promotions, assignments, performance management, and other terms and conditions of employment where membership in a Protected Category is a substantial motivating reason for the action.” Because it is undisputed that there was no adverse

<sup>10</sup> Eisenberg self-reported that she is age 55 and in the Gen X demographic, while her colleagues are in the Baby Boomer Generation.



employment action resulting for any person from Eisenberg's comments, there is insufficient evidence to substantiate an allegation of age based discrimination based on such comments.

**SUBSTANTIATED as discriminatory harassment.** Next the Investigators considered whether Eisenberg's "Boomer" statement could be Harassing Conduct under GP-11.1. Based on the verbal harassment criteria set forth in AD-2.8, the investigators considered whether there was sufficient evidence that Eisenberg's statement included obscene language, demeaning conduct, slurs, or threats.

Eisenberg's "Boomer" comment prompted four (4) individual complaints against her from staff who heard the comments in the Board meeting. The complaints expressed offense at Eisenberg's age-based remarks. Board members had varying reactions to Eisenberg's comments. Director Nai Hsueh ("Hsueh") understood Eisenberg's statement to be a "disparaging comment to all Board members. We are out of date. We don't know what's going on. All Board members are in the Baby Boomer demographic except her." On the other hand, Director Barbara Keegan ("Keegan") was not offended, and also understood Eisenberg to be speaking to an age diversity issue on the Board, not disparaging current members in the "Boomer" demographic. Director John Varela ("Varela") also heard the comment but did not take it personally.

The Investigators considered whether the term "Boomer" is in fact an ageist slur.<sup>11</sup> While there is no conclusive evidence as to this, it is reasonable to conclude that "Boomer" is a negative or pejorative term for an older person, whether or not the person is technically a member of the baby boomer generation.

Notwithstanding Eisenberg's position that she was "joking," the evidence shows that the context of Eisenberg's "Boomer" comment was age-based and demeaning conduct. Just before making these comments, Eisenberg was not speaking about increasing representation on the Board or age diversity. She was expressing anger at her colleagues for being out of touch with reality:

2:18:38 "[...] [CIP] committee is not doing its intended job. Nor will it do its intended job with the continuation of the Board Directors who failed to see their actual responsibilities."

She then stated that the Board was not moving in the direction of "meritocracy," or selecting committee members on the basis of ability, but rather was selecting committee members based on age demographic and perhaps lacking ability. The reasonable interpretation of Eisenberg's comments is that the "Boomers" relied on cronyism and unearned advantages for their appointments as opposed to merit.

<sup>11</sup> Considered by some to be ageist, the phrase has developed into a retort for resistance to technological change, climate change denial, marginalization of members of minority groups, or opposition to younger generations' values.

[https://en.wikipedia.org/wiki/OK\\_boomer#:~:text=Considered%20by%20some%20to%20be,opposition%20to%20younger%20generations%20values.](https://en.wikipedia.org/wiki/OK_boomer#:~:text=Considered%20by%20some%20to%20be,opposition%20to%20younger%20generations%20values.)

SCVWD's policies make clear that, in order to advance diversity and inclusion, the Board commits itself to value diversity with respect for interaction with all groups. GP-11 states:

“The Board understands that diversity is more than inclusion of racial or cultural groups, that valuing diversity involves respect for all persons, and that valuing diversity requires a positive change in the way we interact with each other and a change in our organizational culture.”

AD-2.8 states:

“No employee is expected to tolerate any conduct prohibited by this policy from anyone while at work or engaged in Valley Water business. Valley Water strictly enforces a Zero Tolerance Policy for harassment or discrimination based upon one's protected status (e.g., race, gender, age, national origin, etc.).”

Given SCVWD's stated objectives, these policies support that a single incident of derogatory, or demeaning comment based on protected class may violate the SCVWD's anti-harassment policy. Considering the context of Eisenberg's comments in record as a whole, the evidence shows that Eisenberg's "Boomer" comments were meant to be insulting and demeaning based on age, in that she was essentially saying that the "Boomers" did not understand best practices and were resistant to change, which is consistent with the negative stereotypes associated with the term "Boomer."

Although the Investigators find that these isolated comments by Eisenberg constituted a policy violation as harassing conduct because of a protected category, there is no evidence that Eisenberg's comments created a hostile work environment for any employee, as defined in AD-2.8. There was no evidence that Eisenberg's comments unreasonably interfered with any employee's work performance or created an intimidating, hostile, or offensive working environment.

**K. Allegation 11: Eisenberg's Conduct Toward Director Tony Estremera In Public Meetings Was An Act Of Sex Or Race-Based Discriminatory Harassment, As Defined By SCVWD Policies**

**NOT SUBSTANTIATED.** Multiple complainants asserted that Eisenberg targets Callender, Orellana and Estremera for personal attacks in public meetings, based on their sex or race. Eisenberg's alleged attacks on Orellana and Callender are discussed in sections N-Y of this report.

An anonymous employee complaint received by Callender alleged that Eisenberg, under the guise of promoting "gender equality", has degraded and attacked and "trashed" "all the minority men" referring to Estremera and Callender: "Did you see the faces and motions she was making the entire meeting and mocking every time each minority Board Member talks! She doesn't do that with others Another complaint received from an employee reported

that Eisenberg engages in “Hatred for men of color, blatant sexism and ageism and white privilege” as well as “temper tantrums and gender bashing” against “the male gender.”<sup>12</sup> Finally, a third employee reported that at Board meetings, Eisenberg attacks the CEO, who is Black, the District Counsel, who is Hispanic, and women, but claims she is a “champion of women.” The employee complaints provided few specific incidents of conduct of race or gender based behavior by Eisenberg. Instead, the complainants asked the Investigators to review the recorded meetings to observe Eisenberg’s behavior. The Investigators then viewed 40 hours of recorded Board meetings in order to identify alleged derogatory, insulting or mocking behavior or differential treatment by Eisenberg toward Callender, Orellana or Estremera. The timing of the complaints appears to reference Eisenberg’s statements at the March 6, 2023 Board Strategic Planning Policy meeting.

At the March 6, 2023 meeting, the following exchanges occurred between Eisenberg and Estremera:

At 15:31 to 19:50, Eisenberg and Estremera clashed after Eisenberg referenced Measure A and term limits and how directors created a “continued perception [of] director self-interest” motivating director’s votes, and then referenced “a known systemic problem of abuse of investigations, [including] one [that] has been taken against me.” Eisenberg then said that someone “is uncomfortable with me being vocally feminist, and vocally anti-racist, and arguing that women of color deserve more representation.” Eisenberg did not allege that Estremera was responsible for the perceptions and problems she referenced. Estremera then attempted to get Chair Hsueh to cut off Eisenberg’s statements by repeatedly calling for a “point of order” over Eisenberg’s objections. At the end of the meeting, Eisenberg said, “I was saying Director Estremera that I let you ramble on to all your ramblings”

At 38:32, Eisenberg asks Director Hsueh if she met with Estremera prior to the meeting to discuss any topics because “I noticed that director Estremera was very frustrated. During the last meeting, it seemed his appearance was frustrated when you [Hsueh] agree with me on some stuff.” Hsueh responds that she met with Eisenberg but did not meet with Estremera in advance, and at 40:21, Estremera responds that Eisenberg made a “ridiculous comment.” At 40:22, Eisenberg makes a reference to “Measure A,” but did not refer to Estremera by name or accuse him personally of misconduct.

During his interview, Estremera opined that Eisenberg “trashes the minority men (at SCVWD) at every opportunity.” Estremera reports that he thinks the reason is because Eisenberg erroneously believes that the minority males at SCVWD are “anti-women, that we don’t support women.” Estremera stated that Eisenberg “consistently says the men on the Board are responsible for discrimination against women,” which he strongly disputes.

Eisenberg responds that she has not attacked, insulted or degraded Estremera based on sex or race in public meetings. Eisenberg denied that she treats Estremera differently than White colleagues, or that she makes disrespectful facial expressions or gestures toward Callender, Estremera or Orellana. “If I look unhappy, it’s because I disagree with the person.

<sup>12</sup> In a January 26, 2023, email an employee writes, “I am appalled by the comments and insults she continues to make and that she is allowed to do it! Her temper tantrums and gender bashing is absolutely disgusting.”

I disagree with statements made, that is something I'm allowed to do." Eisenberg says that she has raised legitimate and non-discriminatory issues of concern for the SCVWD which complainants have misconstrued as sex or race-based personal attacks.

Based on a review of the video and audio files, the Investigators noted that Eisenberg demonstrated conduct that was frequently out of order based on speaking on items without being recognized by the committee chair, and speaking on matters that the committee chair indicated were improper or not before the committee. The evidence showed that Eisenberg was at times disrespectful (such as her reference to Estremera "rambling"), addressed colleagues with a raised voice, and at times Eisenberg and Estremera talked over each other. However, there was no evidence that Eisenberg targeted Estremera because of race or gender.

While Eisenberg's opinions and behavior toward Estremera was clearly combative at times, there was nothing in the substance of her comments that showed sex-based or racial animus. The Investigators are mindful of Eisenberg's incorrect statement that discrimination against men was not prohibited by law, but there was no indication that she was motivated by race or sex in her interactions with Estremera.

**L. Allegation 12: Eisenberg's Statement To Director Hsueh, "English Isn't Your First Language So I Want To Make Sure You Understand" Was An Act Of National Origin-Based Discriminatory Harassment, As Defined By SCVWD Policies**

**SUBSTANTIATED.** Orellana, Callender, and two employees complained that Eisenberg made derogatory comments about Hsueh's language proficiency during a June 30, 2023 Board Policy and Planning Committee ("BPPC") meeting, which they say were based on Hsueh's race (Asian) and national origin (Chinese).

The facts are not in dispute regarding this incident. Eisenberg attended the BPPC meeting on June 30, 2023 with Committee Chair Hsueh and Estremera. During the meeting, Hsueh stated that she did not understand the words "*ad hominem*," used by Eisenberg, and that English was Hsueh's second language.

The transcript and video showed that Hsueh initiated the exchange:

Hsueh [1:21:23]: English in my second language. I don't understand that word. I do not know that word.

Eisenberg [1:21:27]: I just defined it about 10 minutes ago.

Hsueh [1:21:31]: [it's] too big word for me. Okay, let's move on to

Eisenberg [1:21:33]: Ad hominem. It's too big of a word for you?

Hsueh: Oh, yeah.

Eisenberg: I literally just defined it about 10 minutes ago. No, no.

The video showed that Eisenberg went on to insist that Hsueh learn the meaning of the term *ad hominem*. Several minutes later, Eisenberg stated:

Eisenberg [1:28:36]: So this is this, you are not accurately repeating what this says. **And you know, I say that mindful of English not being your first language.** So what this says and I agree with what it says is it says that we it basically says that we cannot speak for the board, except for to repeat the decisions the board made, it doesn't say, those are the only things we can say it says those are the only times we can speak for the board. But we still can speak for ourselves. But we need to state that we're speaking for ourselves. That's the part of it that's missing. That's my question. So that is a part that's missing. (emphasis added)

Eisenberg then referred to Hsueh's English language ability a second time:

Eisenberg [3:07:20]: I don't want it to come back. **I just, because the chair admitted that English isn't her first language. I think it's appropriate for me to just confirm that what I said was accurately reflected.** (emphasis added)

Eisenberg raised the issue of Hsueh's English language ability a third time:

Eisenberg [3:08:08]: But I am not requesting deliberation, I am requesting the application of statements that we agreed on. And that I said, it is not additional ideas that I'm going to put forth. **And so it is just confirmation of the language. I mean, that is standard, especially when working with someone who just said a couple times that English isn't their first language.** (emphasis added)

Hsueh: My English is not that bad.

Eisenberg: It's actually...It's excellent. But I'm not saying but it does. I think oh, just I, all I want to do is confirm.

Hsueh stated that Eisenberg's comments about Hsueh's English language proficiency bothered her, acknowledging that everyone has their own prejudices.

Eisenberg denied demeaning Hsueh on the basis of race or national origin by referring to English as Hsueh's second language. Eisenberg recalls that she wanted to accommodate Hsueh's request to define legal terms that were to be used in the BPPC rules that were being drafted. Eisenberg states that Hsueh has criticized Eisenberg in the past for speaking too quickly and urged Eisenberg to remember that English is not Hsueh's first language. Eisenberg recalls she was "shocked" that Hsueh did not know the difference between an *ad hominem* attack and a substance based attack. Eisenberg states that she wanted to be sure Hsueh

understood what Eisenberg was saying when the committee discussed legal ethical rules. Eisenberg further states this is the reason she referred to English being Hsueh's second language, "I was accommodating her language barrier."

The Investigators considered this allegation as to whether Eisenberg engaged in harassing conduct toward Hsueh based on National Origin, under GP-11.1. For interpretive guidance, the investigators considered AD-2.8, which defines verbal harassment as follows: "obscene language, demeaning conduct, slurs, or threats" because of a "Protected Category."

Language discrimination occurs when an individual is treated differently because of their native language or other characteristics of their language skills, including perceptions their English proficiency is not good enough. Under California law, discrimination based on an applicant's or employee's English proficiency is unlawful unless the English proficiency requirement at issue is justified by business necessity.<sup>13</sup> GP-11.1 recognizes the connection between language discrimination and national origin discrimination by specifically referencing language use restrictions in its prohibition of harassment based on National Origin.

Eisenberg's comments regarding Hsueh's language proficiency were demeaning conduct, belittling and suggested that Hsueh lacked competence. Eisenberg's comments were unsupported and insulting to several observers, as well as Hsueh. In the moment, Hsueh reacted to the offensive nature of Eisenberg's comments when she responded that her English was "not that bad." In response, Eisenberg acknowledged that Hsueh's English was "excellent," but Eisenberg still wanted to review Hsueh's notes for accuracy. The Investigators find there was no business necessity for Eisenberg's desire to review Hsueh's notes for accuracy. Further, the evidence does not support Eisenberg's claim that Hsueh somehow invited Eisenberg's comments because Hsueh was struggling with an English language barrier. Hsueh did not understand the meaning of *ad hominem*, a Latin term. Their discussion about the meaning of *ad hominem* had concluded by the time Eisenberg suggested, three times, that Hsueh was not accurately recording Eisenberg's comments or understanding the Board Policy because of Hsueh's alleged lack of English language skills. Hsueh never suggested that she did not understand Eisenberg's comments regarding the policy, or asked for an accommodation regarding her ability to accurately record Eisenberg's comments in the draft policy. Eisenberg apparently assumed that this was the case.

Although the Investigators find that these isolated comments by Eisenberg constituted a policy violation as harassing conduct because of a protected category, there is no evidence that Eisenberg's comments created a hostile work environment for any employee, as defined in AD-2.8. There was no evidence that Eisenberg's comments unreasonably interfered with any employee's work performance or created an intimidating, hostile, or offensive working environment.

<sup>13</sup> Fair Employment & Housing Council Regulations Regarding National Origin Discrimination § 11028.(c).

**M. Allegation 13: Eisenberg Stated That She Has “Idiots As Her Colleagues On The Board,” Which As An Act Of Abusive Conduct, As Defined By SCVWD Policies**

**NOT SUBSTANTIATED.** On January 25, 2023, Eisenberg attended a field meeting in Palo Alto with an Officer and a Manager, to brief Eisenberg on the San Francisquito Creek project. According to the Officer, during the meeting, Eisenberg said that she has “idiots as her colleagues on the Board...well not everyone is but you get what I am saying, some are.” She felt the statement was offensive and concerning that a Board member would make disparaging comments about other Board members in front of staff, and that this created an uncomfortable and hostile work environment.

The Manager doesn’t recall that Eisenberg made the “idiots” statement.

Eisenberg denies that she referred to her fellow Board members as “idiots” during the field briefing.

The Officer’s credibility is bolstered by the fact that she emailed Callender her impressions of the meeting with Eisenberg, including the “idiots” comment from Eisenberg, the same day. However, the Manager was also present during this meeting and did not corroborate the Officer’s report. The Manager also emailed Callender the next day to report his impression of the meeting, in which he included examples of “inappropriate” statements by Eisenberg in the meeting, such as that she planned to join a lawsuit to stop the Pacheco reservoir expansion project and that she wanted employees to come to her in confidence with information to stop the project. His list did not contain the “idiots” statement alleged by the Officer, as he did not recall that this was said.

While it is unlikely that the Officer invented this report, it is equally unlikely that the Manager failed to recall and document it if it was said. Under the circumstances, with respect to the “idiots” statement, it is not possible to determine whether the statement was made on a more likely than not basis.

**N. Allegation 14: Eisenberg’s Comments Regarding A WIFIA Loan Application At The December 13, 2022 Open Session Suggested Unethical Conduct By Orellana And Was An Act Of Race Or Sex-Based Discriminatory Harassment Or Abusive Conduct, As Defined By SCVWD Policies**

**NOT SUBSTANTIATED as sex or race-based discriminatory harassment.** Orellana alleges that Eisenberg engaged in sex-based and race-based discriminatory harassment and abusive conduct toward him during the Board meeting open session on December 13, 2022. At this meeting, the Board was considering whether to take a loan from the E.P.A. for major Capital projects via the Water Infrastructure Finance and Innovation Act (“WIFIA”) program. During the discussion, Eisenberg questioned whether the SCVWD had made a material omission on the application for the WIFIA loan, because the application did not disclose a pending CEQA lawsuit against SCVWD regarding the Pacheco Project. Orellana alleged that Eisenberg suggested in open session that he committed fraud, acted

unethically, and allowed material misstatements in the loan application because he failed to disclose the CEQA case. Orellana stated that Eisenberg’s criticism was incorrect and she mischaracterized the lawsuit as an action that could prevent the Pacheco project from moving forward.

At the December 13, 2022 public Board meeting, Eisenberg voiced concern over the legality of the WIFIA loan application:

01:09:51

“Also, I asked the question about did we disclose the litigation, because when I looked at the application, I didn't see it. Now, I'm aware that they're probably aware of the of the litigation. But that is not how the legal process works. It could be considered a material misrepresentation, that we don't include the litigation front and center. [...] Now, why am I concerned that this application didn't have front and center a material risk? Because well, first because we could be considered unethical and unprincipled. And I don't even want to risk the appearance of that even though it might be strictly legal, not to include it. I think we need to always err on the side of high integrity.”

01:28:30

“I think we are legally prohibited from applying for this loan, given that the board is not in agreement yet, if ever that we're going to do this, and that, I think that troubles me. [...] I think it's unethical for us to approve this. Now. I'm really putting that out there. And I think it's, I just, lawyers disagree. Boy, I believe, you know, our internal counsel said, this is fine. I have different, you know, in my background was commercial loans. And my dad, the bankruptcy judge, I just, I believe differently. And I believe that if there's even a risk that will be called that this application could be considered in breach because we publicly acknowledged we haven't yet approved this.”

In her interview, Eisenberg, made much stronger statements about her belief that the WIFIA loan was “mishandled” by Orellana than what she expressed at the December 13, 2022 Board meeting. Eisenberg said the WIFIA application contained intentional misstatements, and that this is part of a greater pattern of Orellana lying to the Board. Eisenberg did not provide any evidence of such withholding or intentional misstatements in the application. Finally, she cited to the fact that the EPA hasn’t granted the loan application as illustrative of his missteps.

The Investigators considered whether Eisenberg’s comments in the December 13, 2022 meeting constituted sex or race-based discriminatory harassment under GP-11.1, and using AD-2.8 for interpretive guidance, set forth above.



It is not the Investigators' role to determine whether a disclosure of the CEQA case was *actually* required. Although Eisenberg did not provide evidence supporting her view that the application was inadequate, even if Eisenberg was incorrect, there was no evidence that she invented her objections to the WIFIA loan application in order to harass or publicly humiliate Orellana "because of [his] Protected Category." Rather, the evidence shows that Eisenberg simply disagreed with Orellana's recommendation. There is nothing about Eisenberg's disagreement with Orellana's recommendation that was demeaning or offensive.

**NOT SUBSTANTIATED as abusive conduct.** With respect to the abusive conduct claim for this incident, the Investigators considered GP-6.3.1, which prohibits Board Members from engaging in abusive conduct, and AD-2.8 for interpretive guidance, which defines abusive conduct as:

"Malicious conduct that a reasonable person would find hostile, offensive, and unrelated to Valley Water's legitimate business interests. Examples of abusive conduct include, but are not limited to, repeated infliction of verbal abuse, such as the use of malicious, derogatory remarks, insults, epithets, verbal or physical conduct that a reasonable person would find threatening, intimidating or humiliating, or the intentional sabotage or undermining of a person's work performance."

The Investigators reviewed the video and audio from this Board meeting. While making her comments at the open session Board meeting, Eisenberg did not make personal attacks against Orellana or accuse Orellana personally of misconduct or incompetence. She acknowledged his determination and that her view was "different" as "lawyers disagree." During her statements, Eisenberg's demeanor was professional and respectful. While it is understandable that Eisenberg's comments caused Orellana embarrassment because she disagreed with his team's assessment, there was no evidence in the record to support malicious conduct that a reasonable person would find hostile, offensive, and unrelated to legitimate business interests. The evidence suggests that Eisenberg's conduct was based on her legitimate disagreement with Orellana, and did not rise to the level of a malicious conduct (*i.e.*, intended to cause harm to Orellana), which is required for a finding of abusive conduct under SCVWD's policy.

**O. Allegation 15: Eisenberg's Conduct Toward Orellana At The December 13, 2022 Closed Session Regarding Baykeeper Litigation Was An Act Of Race Or Sex-Based Discriminatory Harassment Or Abusive Conduct, As Defined By SCVWD Policies**

**NOT SUBSTANTIATED as race or sex-based discriminatory harassment.** Orellana reports that in the closed session meeting on December 13, 2022, Eisenberg engaged in a "one-sided attack" against him in front of his team, outside counsel and the other Board members regarding his litigation strategy on the defense of the SCVWD against the Baykeeper litigation. Orellana reports that Eisenberg yelled at him and was visibly angry; personally attacked him by calling him "unethical" and "bullying toward a small nonprofit [Baykeeper]"

which he found offensive; and that she questioned his motives, qualifications, credibility and character. Orellana further says that Eisenberg called him a “litigator” in a manner that suggested it “was not good;” told him he exceeded his authority by selecting an expensive outside counsel law firm, and said that he engaged in a litigation strategy that was contrary to Board direction. According to Orellana, Eisenberg repeatedly raised her voice and cut him off when he tried to explain himself.

Orellana identifies as Latino. Orellana says Eisenberg hasn’t engaged in “overt discrimination” against him because of his race. However, he believes “there is unconscious [racial] bias at work” in Eisenberg’s actions toward him. Orellana says Eisenberg implies “the trope of men of color being not qualified” and was questioning his qualifications because of his race. Orellana believes that Eisenberg targets him as a man because she has previously said that men cannot make claims of sex discrimination.

Eisenberg responds that her questioning of Orellana at the closed session was based on her disagreement with his legal strategy decisions and nothing more. Eisenberg denied questioning Orellana’s motives, qualifications, credibility and character. She acknowledged that she questioned Orellana’s veracity and his decisions but says that it was a legitimate criticism about Orellana hiring an expensive law firm as outside counsel when the Board had not approved it. Eisenberg denied that she yelled at Orellana or personally attacked him. According to Eisenberg, “[h]is only allegation was that I disagreed with him.” But, she said, if her legal experience made Orellana look incompetent, “[t]hat is not my problem.”

Eisenberg’s fellow Board members expressed different reactions to Eisenberg’s intense criticism and questioning of Orellana at the closed session, characterizing her behavior as “yelling,” “browbeating,” “abrasive,” “rude,” and “disrespectful.” Some recalled that Eisenberg praised her own qualifications, such as attending Stanford and Harvard, while calling, or insinuating that Orellana was “incompetent.” While one Board member believed Eisenberg’s conduct was justifiable criticism of Orellana’s legal strategy, the remaining Board members found her conduct to be inappropriate.

Staff who observed the closed session stated that Eisenberg was “pretty aggressive” in the meeting and “agitated by the legal direction,” while Orellana was calm.

On balance, the evidence was largely not in dispute. It showed that at the December 13, 2022 closed session, Eisenberg expressed strong disagreement with Orellana’s litigation strategy in defending SCVWD and with Orellana’s decision to hire an outside counsel that she deemed was too expensive. All but two individuals interviewed (Eisenberg and another Board member) found Eisenberg’s behavior to be inappropriate, credibly describing her conduct as disrespectful, animated, yelling, frequently interrupting, abrasive, rude and unnecessarily harsh. The evidence showed that Orellana reacted emotionally to Eisenberg’s treatment of him.

The Investigators examined whether Eisenberg’s behavior toward Orellana during the December 13, 2022 closed sessions meeting was harassing conduct on the basis of sex or race. As discussed above, GP-11.1 prohibiting harassment provides no definitions or examples of

prohibited conduct. Accordingly, the Investigators examined the requirements of the anti-harassment provisions of AD-2.8 and the definition of verbal harassment which includes obscene language, demeaning conduct, slurs, or threats, because of the complainant's "Protected Category."

The Investigators find that some aspects of Eisenberg's criticism of Orellana in the closed session were performance based, such as the effectiveness of his strategic decision-making to effectuate the Board's direction. However, other aspects of Eisenberg's criticisms were personal attacks on Orellana. These comments questioned his integrity, motivation, values and are character based and not related to his performance of his duties and responsibilities as District Counsel. For example, Eisenberg stated that Orellana was dishonest and "a bully" toward Baykeeper, based on his defense of SCVWD against the Baykeeper lawsuit. In addition, the manner in which she addressed Orellana, by berating him in front of his subordinates and others and cutting him off when he attempted to respond, was disrespectful and unprofessional.

While these personal attacks were in some instances verbally abusive and are discussed as abusive conduct below, there was no evidence in this record that Eisenberg targeted Orellana in the December 13, 2022 closed session because of his race or sex. The only evidence presented related to whether Eisenberg's conduct was race-based was Orellana and one Board member's subjective beliefs that Eisenberg's conduct must be racist because they did not believe she would have any other reason to act that way toward him. However, Orellana acknowledges that Eisenberg has not demonstrated any intentional race-based discriminatory or harassing behavior, but in his view was demonstrating unconscious bias. To the extent Orellana alleges that Eisenberg is demonstrating unconscious racial or gender bias, such behavior is not a policy violation of a SCVWD policy. Unconscious bias cannot be the basis of misconduct, precisely because it is unconscious behavior. Eisenberg stated that she only criticized Orellana because she believed his strategy in the Baykeeper litigation showed a lack of legal skill, not because of his sex or race. While Orellana believed that Eisenberg's criticism was motivated by the "unqualified minority" racial trope, there was no evidence that Eisenberg was stereotyping him because of race or sex. Instead, the evidence showed that Eisenberg believed, whether correctly or incorrectly, that Orellana made legal errors in the Baykeeper case.

**SUBSTANTIATED as abusive conduct.** With respect to the abusive conduct claim for this incident, the Investigators considered GP-6.3.1, which prohibits Board Members from engaging in abusive conduct, and AD-2.8 for interpretive guidance, which defines abusive conduct as:

"Malicious conduct that a reasonable person would find hostile, offensive, and unrelated to Valley Water's legitimate business interests. Examples of abusive conduct include, but are not limited to, repeated infliction of verbal abuse, such as the use of malicious, derogatory remarks, insults, epithets, verbal or physical conduct that a reasonable person would find

threatening, intimidating or humiliating, or the intentional sabotage or undermining of a person's work performance.”

The evidence showed that Eisenberg was disrespectful to Orellana by implying he was incompetent and calling him “dishonest,” intermixed with substantive questions about the Baykeeper litigation, while yelling and talking over him, in the presence of his subordinates, as well as his outside counsel. Weighing in favor of a finding of abusive conduct is that Eisenberg engaged in behavior, language, or gestures that were reasonably perceived to humiliate, belittle, or degrade Orellana, including that Eisenberg's criticism or feedback was delivered by yelling and talking over Orellana. Under such circumstances, Eisenberg's conduct showed an intent to harm Orellana, and did significantly impact him, as witnesses observed him to be visibly shaken and near tears after the meeting. On the other hand, while Eisenberg's manner of questioning Orellana was abrasive, rude and unnecessarily harsh, the substance of her comments was predominantly work-related, *i.e.*, Orellana's management of the Baykeeper litigation. However, considering the record as a whole, the fact that some of Eisenberg's substantive concerns were work-related, does not outweigh the verbally abusive and humiliating manner in which she addressed Orellana in the closed session meeting. In making this finding, the Investigators considered the additional instances of Eisenberg's verbally abusive conduct toward Orellana discussed in sections P and Q of this report. Viewed together, these instances establish repeated infliction of verbal abuse, derogatory remarks, insults, and verbal conduct that a reasonable person would find threatening, intimidating or humiliating as described in AD-2.8.

**P. Allegation 16: Eisenberg's Conduct Toward Orellana During The December 14, 2022 Phone Call Was An Act Of Abusive Conduct, As Defined By SCVWD Policies**

**SUBSTANTIATED.** Orellana stated that, during the Baykeeper closed session on December 14, 2022, Eisenberg asked for authority to negotiate a settlement with Baykeeper but that the board said no; she then asked for authority to negotiate a continuance beyond December 16, 2022, to which the Board said yes. Thereafter, she emailed Baykeeper and said, “I would like to talk to you about a continuance and further resolution,” which made Orellana concerned that Eisenberg did not understand the limitations of her authority.

The evidence shows that on the following day, December 14, 2022, Orellana called Eisenberg from his cell phone around 1p.m. Orellana announced that an Assistant District Counsel was in the room with him and stated, “I said I wanted to be clear on what the Board's direction was. She started yelling at me and said I have a problem with a woman in authority. She said she would talk to Baykeeper and say whatever was appropriate. She told me she has far more experience than I do, she went to Stanford undergrad and Harvard law. She said I wasn't qualified to be giving her legal advice. I was ‘mansplaining’ because she was a woman. She threatened my job. I took the entire conversation to be an attempt to give me individual direction with how I manage my direction with the Board.” Orellana states that he was “distracted” that Eisenberg was accusing him of gender bias.

Regarding the December 14, 2022 phone call, Eisenberg denies that she yelled at Orellana or attacked him personally. She states that it was Orellana who behaved improperly toward her during the phone call, “He called me up 30 minutes before I was supposed to make the call [to Baykeeper]. He was disrespectful and demeaning, Baykeeper is a constituent of mine. It was inappropriate, offensive and absurd that I had the call.”

The call was witnessed by an Assistant District Counsel, who was present with Orellana in her office when he called Eisenberg. She corroborated that “Carlos talked about what the scope would be and not accidentally go beyond her scope and clarifying about what they would talk about. So we wanted to call her to clarify so there was no confusion about what she was going to talk about. When Carlos told her this, her reaction was to become agitated.” The Assistant District Counsel confirmed that Eisenberg told Orellana that she perceived that he was really saying that she doesn’t know what she is doing. Eisenberg then told Orellana that she has 30 years of legal experience, more experience than Orellana, and she went to Harvard law school. She indicated she knows what she’s doing and Orellana doesn’t know as much as she does. Orellana attempted to explain that he did not question her ability, but was simply helping her to steer clear of inadvertently going beyond her authority. The Assistant District Counsel confirmed that Eisenberg cut Orellana off and would not allow him to respond.

In the end, the Assistant District Counsel confirmed that Orellana said if his advice wasn’t clear, he could write an explanation of why he had called Eisenberg to the entire Board. Eisenberg became very agitated and said if he did this it would become a discussion about his appointment as District Counsel. The Assistant District Counsel confirmed that she understood Eisenberg’s comment as “a threat, a little bit. It doesn’t have to be direct.” According to the Assistant District Counsel, Eisenberg then said, “You’re not going to email the Board right,” then she hung up the phone. The Assistant District Counsel stated that Orellana appeared shocked and upset. She stated, “I was shocked myself... I think it was a personal attack.”

Like the December 13, 2022 closed session, the Investigators considered the December 14, 2022 incident using the standard of abusive conduct set in GP-6.3.1, which prohibits abusive conduct, personal charges or verbal assaults upon the character or motives of other members of the Board. In addition, the Investigators considered for illustrative purposes SCVWD current policies applicable to employees, which require repeated infliction of verbal abuse, such as the use of malicious, derogatory remarks, insults, epithets, verbal or physical conduct that a reasonable person would find threatening, intimidating or humiliating, or the intentional sabotage or undermining of a person’s work performance.

Like the December 13, 2022 closed session, the phone call on December 14, 2022 boils down to whether Eisenberg’s interaction was essentially a personal attack against Orellana which he reasonably perceived as demeaning and offensive, or whether her comments were a legitimate criticism of his performance, even as negative feedback, as Eisenberg contends.

The credible evidence shows that Eisenberg yelled at and berated Orellana and threatened Orellana’s job without justification when he called her for the purpose of ensuring that her negotiations with Baykeeper did not exceed the scope of her authorization. Eisenberg interpreted Orellana’s actions as insulting and doubting her abilities because she is a woman.

However, there was no evidence to support her perception. Instead, the evidence showed that the motivation for Orellana's call was Eisenberg's email to Baykeeper requesting a time to discuss a "further continuance and a negotiated resolution." The language Eisenberg used in her email caused Orellana concern that Eisenberg would engage in substantive negotiations with Baykeeper, when she did not have the Board's authority to do so. Under these circumstances, Orellana's actions were reasonable and within his purview as District Counsel.

The evidence shows that Eisenberg incorrectly perceived a slight and responded with personal attacks and threats to Orellana's job. She reminded Orellana of her Harvard law school education and told Orellana that she was more qualified than him and he was not qualified to give her legal advice. Eisenberg then directed Orellana not to send the Board a memo regarding his advice on the scope of her call, or she would initiate a discussion about his appointment as District Counsel. This remark can be reasonably seen as threatening to his employment and undermining of his work performance. Finally, that Eisenberg delivered this message while yelling and talking over Orellana and in the presence of an Assistant District Counsel was demeaning and humiliating.

The record of the interactions as a whole shows that Eisenberg's remarks in the December 14, 2022 phone call were reasonably perceived to humiliate, belittle, or degrade Orellana, including that Eisenberg's criticism or feedback was delivered by yelling, threatening his job and talking over Orellana. Such conduct was not based on any legitimate business interest for SCVWD, but, based on the evidence, was more likely than not motivated by intent to harm Orellana.

**Q. Allegation 17: Eisenberg's Statements To Orellana In A January 20, 2023 Email In Relation To The Baykeeper Litigation Was An Act Of Race-Based Discrimination, Abusive Conduct, Or Improper Direction Of Staff, As Defined By SCVWD Policies**

**NOT SUBSTANTIATED as race discrimination.** Both Callender and Orellana complained about Eisenberg's seven-page email sent on January 20, 2023 at 4:42 a.m. to Orellana, which criticized him for filing motions in the Baykeeper case on December 19, 2022, among other things. Eisenberg's comments included: accusing Orellana of lying about the Board directing him to file the motions; telling him that he had made the SCVWD look like "lowlife liars" and "lying scumbags"; directing him to apologize to Baykeeper for "your douchebag move" of filing the motions; and telling him, "To be clear, my role here was saving your ass, which I did. It is not part of my job description to save your ass, so please save your own next time."

Orellana and Callender allege that Eisenberg's email to Orellana violates GP-11.1 which prohibits Board members from engaging in discrimination or discriminatory harassment based on protected status, including race, sex and age.

Orellana makes the same arguments in support of Eisenberg's January 20, 2023 email being motivated by race as he previously made with respect to the December 13 altercation and is addressed above in section O. In essence, Orellana claims that, by attacking him and

his competence, and saying that she is more qualified than him, Eisenberg assumes a racist trope, *i.e.*, that by being Hispanic, he is an “unqualified minority.”

Eisenberg denies discriminating against Orellana. Eisenberg also raises the same responses set forth in sections O and P, that she simply had a difference of opinion with Orellana regarding litigation strategy, that he was disrespecting her and her opinion, and that he was not qualified to dispute her. She states that she is exercising her oversight responsibility by making legitimate criticisms of Orellana’s legal strategy and decisions around Baykeeper.

The same analysis set forth in section O above applies here. There was no evidence in the record that Eisenberg targeted Orellana in the January 20, 2023 email because of his race or sex. Eisenberg stated that she called Orellana “incompetent” because she believed his strategy in the Baykeeper litigation showed a lack of legal skill, not because of his sex or race. While that criticism was personal and heavy handed, the evidence shows that Eisenberg believes this to be true, whether correctly or incorrectly. There was no evidence that Eisenberg was stereotyping Orellana because of his race or sex. Further, there was no evidence that Orellana suffered an adverse employment action as a result of Eisenberg’s criticism, which is required to establish Discriminatory Harassment in interpreting SCVWD’s policies.

**SUBSTANTIATED as abusive conduct.** As with Sections O and P, the Investigators considered the January 20, 2023 incident using the standard of abusive conduct set in GP-6.3.1, which prohibits abusive conduct, personal charges or verbal assaults upon the character or motives of other members of the Board. In addition, the Investigators considered for illustrative purposes SCVWD current policies applicable to employees, which require repeated infliction of verbal abuse, such as the use of malicious, derogatory remarks, insults, epithets, verbal or physical conduct that a reasonable person would find threatening, intimidating or humiliating, or the intentional sabotage or undermining of a person’s work performance.

Eisenberg denied that her comments were abusive. She called her criticism of Orellana in the January 20, 2023 email “constructive criticism.”

The following aspects of Eisenberg’s email, in which she describes and criticizes Orellana’s acts or failures to act regarding the Baykeeper litigation, were relevant to an abusive conduct analysis:

- Eisenberg states Orellana is “lying and untrustworthy,” because “he continued to represent that he would be in violation of a court order by not filing motions. Nothing could be further from the truth. He broke a contract.”
- Eisenberg states Orellana is “too incompetent” to do his job. She states that she has lost confidence in him over his alleged mishandling of the Baykeeper litigation, which she says has cost SCVWD \$1M. “I cannot believe that someone with so much responsibility made these errors. Two different judges agreed with me.”

- Eisenberg says Orellana lacked “common sense, good judgment, humility, and bigger-picture-thinking.”
- Eisenberg states to Orellana that she had to “save your ass.”
- Eisenberg accuses Orellana of making a “douchebag move” by filing two motions.

The evidence shows that the statements by Eisenberg were verbally abusive, character-based personal attacks and vulgar insults, not appropriate job-related feedback. Considering these statements with Eisenberg’s treatment of Orellana in the December 13, 2022 closed session meeting and the December 14, 2022 phone call, the evidence establishes that Eisenberg has engaged in repeated infliction of verbal abuse toward Orellana, such as the use of derogatory remarks, insults, and epithets, verbal or physical conduct that a reasonable person would find threatening, intimidating, or humiliating, or the gratuitous sabotage or undermining of a person’s work performance.

The Investigators also considered that, in May 2023, Eisenberg participated in a quarterly performance review for Orellana. Eisenberg confirmed, and it was undisputed, that Eisenberg gave Orellana only positive comments during this mid-year performance review. She did not raise concerns about his legal skills, truthfulness, alleged disobeying of Board direction, or behaving disrespectfully in interactions with Eisenberg. During the review, Eisenberg did not reference any of the issues she raised in her January 20, 2023 email to Orellana. In her interview in this investigation, Eisenberg responded that she did not raise any concerns about Orellana at that time because she feared retribution from Varela and Estremera and this investigation, which was pending in May 2023. The Investigators find that Eisenberg’s explanation was not supported by the record and her failure to document job related criticism of Orellana during his performance evaluation undermines her statement that the purpose of her January 20, 2023 letter was to provide constructive criticism of Orellana’s job performance.

Eisenberg had the right to criticize Orellana’s performance and to question his responsiveness to Board directives, the effectiveness of his defense of SCVWD, management decisions, litigation strategy and results, among other job-related factors. However the manner in which she provided such criticism was not job related, professional or respectful to the employee.

**SUBSTANTIATED as improper direction to staff.** GP-6.3-6.3.1 governs Board Members’ interaction with the Board Appointed Officers (“BAOs”) or with staff which states in relevant part that Board members “may not attempt to exercise individual authority over the organization,” and that their interactions with BAOs and staff “must recognize the lack of authority vested in individual members.”

Eisenberg’s January 20, 2023 email states, in relevant part,



“And yes, I’m fairly, rightfully, angry that you continue to ignore my good advice and instead opt for your bad choices. Below in Appendix 2 I included a list of 4 times in the past 2 weeks that you ignored advice I gave you, which ended up harming the District and Board. In all instances, I should not have had to intervene; a lawyer at your level would have known what I told you. To be clear, I do not want your job. I want to trust District Counsel to know how to act in these situations. Having made your decisions **against my urging, you can blame no one** -- especially not the Board -- for your errors in judgment. These problems are on you.” (emphasis added)

While Eisenberg correctly states that she is one of Orellana’s seven bosses, as a Board Member, she is prohibited from attempting to exercise individual authority over the organization, including to improperly attempt to direct staff. Therefore, Eisenberg’s statement that “in the past 2 weeks you ignored advice I gave you” indicates that she attempted to direct Orellana.

**R. Allegation 18: Eisenberg’s Comments At The May 3, 2023 Board Strategic Planning Policy Meeting (“BPPC”) About Chile Were Directed To Orellana’s Hispanic Heritage And Were Acts Of Race-Based Discriminatory Harassment, As Defined By SCVWD Policies**

**NOT SUBSTANTIATED.** Orellana alleges that Eisenberg made what he considered to be a race-based comment directed at him when she said at a May 3, 2023 Board Strategic Planning Meeting that “beautiful Chile” had allowed their countryside to be torn up and diminished. Eisenberg then stated that the United States was “better than that.” Orellana recalls feeling the statement by Eisenberg “was white supremacy.” He believes the statement was a racial micro aggression against him because Eisenberg knows that his mother is from Chile.

The only Board member who recalled this “Chile” statement was Estremera. He said that Eisenberg did “trash” Chile and he also understood that Eisenberg was referring to Orellana’s mother, because Eisenberg did this after Orellana said his mother was from Chile.

When asked about the comment, Eisenberg denied that she had knowledge of Orellana’s family affiliation with Chile. She said it’s possible he told her about his mother, but she had no recollection of this fact. Eisenberg denied that her comments were directed at Orellana. Eisenberg explained that she spoke about Chile because her sister lived there, and Eisenberg also lived there for three months. She was referring to the global and economic disaster America caused in Chile, and that her statement had no racial motivations.

A review of the video and meeting transcript showed that Eisenberg made the following comments in relation to a discussion about environmental stewardship and climate change:

“The overwhelming largest victims of climate change are these same disadvantaged communities that we want to serve. So for example, take this is just an extreme example, we could take a

look at Chile, where my sister lived for four years, and I visited her, and such a beautiful, beautiful country. So much of Chile has been literally devastated by the oil and gas industry, just no accountability. Now, we here in the United States are better than that. But the truth is, now we are learning, like I said before about methane gases released by the operation and of course, by the building of dams. And I think we really need to think hard, because every time that we harm the environment, the disadvantaged are harmed the most is always the disadvantaged.”

In analyzing this allegation, the Investigators reviewed whether Eisenberg’s comments violated GP-11.1, which prohibits Board members from engaging in discriminatory harassment based on protected status, including race, sex and age, and considered AD-2.8 for interpretive guidance. The Investigators reviewed audio for the May 3, 2023 meeting and did not find any on-the-record discussion between Orellana and Eisenberg in which he indicated that his mother was from Chile before she made her comments. In her statement, Eisenberg specifically references her sister living there, not Orellana’s mother. Additionally, she stated that she believed Orellana was third generation Latino born in the US, and that though he identifies as Latino, she has spent more time in Chile than him, and questioned whether he had even been there in comparison to her time spent in Chile.

Under these circumstances, there was no factual basis for concluding that her comments in the meeting were directed against Orellana. There was also no factual basis for concluding that Eisenberg’s comments in the meeting were racially derogatory, demeaning or insulting based on race. The comments on their face reference Eisenberg’s opinion about environmental impacts of oil and gas industries on Chile and contrasts the United States. There was nothing in her comments directly or indirectly, referencing race or “White supremacy.” It cannot reasonably be said that any aspect of Eisenberg’s statement rises to the level of being racially-based conduct.

**S. Allegation 19: Eisenberg’s Conduct Toward Callender, Orellana And Estremera During Public Meetings Was An Act Of Race-Based Discrimination Or Discriminatory Harassment, As Defined By SCVWD Policies**

**NOT SUBSTANTIATED.** An anonymous complaint about Eisenberg alleged that Eisenberg “makes faces and motions during the entire meeting and mocking every time each minority board member talks. She doesn’t do that with others.” That complaint calls out Eisenberg’s behavior targeting Estremera, Callender, and Orellana.<sup>14</sup> Callender also states that Eisenberg demonstrates deference to White colleagues Beall or Keegan, even when they oppose her position “but if Tony [Estremera] or I bring it up it is a problem.”

<sup>14</sup> This complaint also names Chair Varela as a “minority” Board member, however he self-identifies as White.

The anonymous complaint and Callender did not provide specific examples of Eisenberg treating Beall and Keegan with deference.

For her part, Eisenberg denied that she rolls her eyes or makes disrespectful gestures to mock Estremera, Callender or Orellana. She denied that she defers to White colleagues Beall and Keegan, based on race. Eisenberg says she is more frequently in agreement with Beall and Keegan because they are more aligned with her views on Pacheco and other issues than Estremera, Varela, Santos or Hsueh. Beall noted that he has a “collegial” relationship with Eisenberg and all his colleagues, and that she seems to agree with him more than other Board members.

Based on a review of the video files of Board Meetings, the Investigators were unable to substantiate the claims that Eisenberg makes disrespectful faces or gestures when Callender, Orellana and Estremera are speaking. After reviewing 40 hours of videos of Board meetings and Committee meetings, there was insufficient evidence that Eisenberg makes mocking facial expressions or gestures, or treated Callender, Orellana and Estremera differently with such behavior because of race or gender.

**T. Allegation 20: Eisenberg’s Statement That Discrimination Against Men Is Not A Legal Violation At The March 6, 2023, BPPC Meeting Was An Act Of Sex-Based Discriminatory Harassment, As Defined By SCVWD Policies**

**NOT SUBSTANTIATED.** Orellana reports that in the March 6, 2023 Board Policy and Planning Committee (“BPPC”) meeting, Eisenberg made comments that that there is no such thing as discrimination against men. Orellana reports that Eisenberg’s words lead him to believe that she discriminates against men. Callender also complained about Eisenberg’s statement, and states that Eisenberg’s words show her behavior is gender based. Callender reported that she has also said in meetings that discrimination against men is not a “thing.” Richardson also recalled that, in her meeting with Eisenberg, Eisenberg said, “there is no such thing” as discrimination against men.

As described previously, the Investigators reviewed allegations of discriminatory harassment based on sex utilizing GP-11.1, which prohibits such conduct by Board members, and considering the robust standards in AD-2.8, for interpretative guidance. In order for a verbal statement to be an act of discriminatory harassment under SCVWD’s policy, there must be language or conduct that is obscene, demeaning, offensive slurs, or threats.

A review of the March 6, 2023 public BPPC meeting video and transcript shows Eisenberg voicing her opinion about whether men can be discriminated against on account of sex. Among them include:

Eisenberg at 34:59

“You know, we are known to be particularly dysfunctional and divisive. And that is the exact time when a third party is relevant. Additionally, it strikes me as completely hypocritical

to require, you know, not to allow a third party [to] spend money on a third party to interview individual board members, when even without Board approval, you know, a different committee, you know, **was able to spend up to how many millions of dollars to interview me, for discrimination against men, when no such claim exists under the law of the state or federal government.**”(emphasis added)

In her interview, Eisenberg offered an additional explanation of her comments. Eisenberg admits she has commented that discrimination against men is “not a thing,” and that “men are not a protected class” and that SCVWD is a “male dominated organization.” Eisenberg further states that the report issued about the behavior of former Director Kremen proves that SCVWD is a “hostile work environment for women.” Eisenberg states she has never seen any example of discriminating behavior against men in this organization where men hold all the highest positions of power. Eisenberg responds that men also hold all of the highest paid positions<sup>15</sup> and there is documented discrimination against women at SCVWD.

The facts regarding this incident are undisputed. Eisenberg stated her opinion that men are not a protected class, and hold advantages and positions of power at SCVWD; therefore she believes they cannot be discriminated against. This is an incorrect statement of SCVWD policy and the law. All classes are protected from unlawful discrimination, whether in the majority or minority and regardless whether they hold power at SCVWD or not. It is well established that Title VII and California’s Fair Employment and Housing Act do not only protect *minorities* from discrimination. These laws protects all *employees* from discrimination, whether or not they are in the majority or represent a historically discriminated against or marginalized group. Thus, a male employee enjoys the same rights as a female employee to a workplace free from discrimination, just as a white employee has the same rights to a discrimination free workplace as a black employee.

Similarly, Eisenberg’s statement is contradicted by GP-11.3, which states that “the Board will require that the organization’s work environment be one in which all people are welcomed and included, and in which all individuals are unique and important and are treated with fairness and dignity.”

Predictably, Eisenberg’s comment that discrimination against men is not illegal was considered offensive by many employees who heard it. It triggered numerous complaints and objections from staff who heard the comments. One employee stated, “I am appalled by the comments and insults she continues to make and that she is allowed to do it! Her temper tantrums and gender bashing is absolutely disgusting. Her professionalism is not existent! It is obvious that she has a problem with the male gender.”

However, although Eisenberg incorrectly stated the law and SCVWD’s anti-discrimination policy as it applies to men as a protected class, there was nothing in her

<sup>15</sup> Eisenberg’s statements on social media regarding Callender’s and Orellana’s salaries are discussed at section U.

statement that suggested taking adverse employment actions against men based on sex, or crossed into conduct that would be discriminatory based on sex.

**U. Allegation 21: Eisenberg’s Social Media Posts Referencing Orellana And Callender Were Acts Of Retaliation, As Defined By SCVWD Policies**

**NOT SUBSTANTIATED.** Callender and Orellana contend that Eisenberg has retaliated against them as a result of their complaints. They claim that Eisenberg has used her X account, formerly Twitter, to attempt to inflame her social media followers against them by repeatedly referencing them as the cause of the investigation, using derogatory remarks, insults, and epithets against them, and spreading misinformation or malicious rumors about them by publishing false, inflated numbers as their salaries. They contend that she has criticized the investigation as “ridiculous” in order to intimidate employees not to participate in the investigation.

Eisenberg denies that her social media posts are intended to influence her followers to attack Orellana or Callender or the investigation. Eisenberg states that her posts merely referenced Callender firing people and that “he responded by yelling and accusing me of slander. I am an oversight Board member. I pointed that out on X [formerly Twitter]. He hears criticism as racist but it’s my job to criticize him and I would say the same about any person of any race.”

At the time of this investigation, there were no Board policies that prohibited retaliation by Board members. However, AD-2.8, which applies to employees but does not specifically apply to Board members, was considered by the investigators for interpretive guidance. AD-2.8 strictly prohibits retaliation by employees against any person at SCVWD for, among other things, making an internal complaint about an allegation of discrimination, harassment, abusive conduct, or retaliation; or for reporting discrimination, harassment, abusive conduct, or retaliation.

Employees who engage in the protected activity defined above are protected from retaliation because of their protected activity. According to AD-2.8:

“This means that any employee who participates in the protected activity described above shall not be adversely affected or discriminated against in their terms and conditions of employment because of their involvement in the protected activity. “Because of” means that the employee’s involvement in the protected activity must be a substantial motivating reason behind the prohibited retaliatory conduct. In short, there must be a causal connection.”

“Specific examples of prohibited retaliation includes, but is not limited to: termination, demotion, suspension, failure to hire or consider for hire, failure to give equal consideration in making an employment decision, failure to make employment recommendations impartially, adversely affecting working

conditions or otherwise denying any employment benefit to the person engaging in the protected activity. Prohibited retaliation includes any conduct that is reasonably likely to impair an employee's job performance or prospects for advancement or promotion. Prohibited retaliation does not include minor or trivial actions or conduct that is not reasonably likely to do more than anger or upset an employee."

A review of Eisenberg's posts on X shows that:

- In a post dated April 29, 2023, Eisenberg refers to Callender as "this angry CEO who bullies me at every Board Meeting."
- In the comment section of that post, also dated April 29, Eisenberg refers to Callender as someone who "beat a man repeatedly with a tennis racket, giving the victim injuries causing 22 stitches," and links to an article regarding Callender's previous conviction for assault. Eisenberg then states, "I guess I should be lucky he only yells at me and doesn't beat me with something."
- On or about February 4, 2023, Eisenberg tweeted from her personal Twitter account (@rle), tagging her Board Director account (@rebeccaEisenbe4), the following, "2 highest paid execs at Valley Water (CEO \$700,000/yr & District Counsel \$550,000/yr. claim discrimination against men-by me! (I make 30,000/yr.) It would be funny if the Board Chair now were not using taxpayer money to attack me @rebeccaEisenbe4."

Both Callender and Orellana stated that Eisenberg's tweet claiming they make \$700K and \$500K in salary was inaccurate and intended to cause public criticism against them. According to Transparent California, Callender's base salary in 2022 was \$405,618.00<sup>16</sup> and his total pay and benefits are valued at \$529,034.00. Orellana's base salary in 2022 was \$338,267.00 and his total pay and benefits are valued at \$381,911.00. According to Transparent California, Eisenberg's statement that Callender and Orellana were the "2 highest paid execs" was also not entirely accurate – Callender was the highest paid, but the second highest was Richardson, Assistant Chief Executive Officer and a woman.<sup>17</sup> Eisenberg admitted that she estimated the salaries in order to calculate these numbers because "The district was out of compliance with salary information. No one will share that with me. I used the comp number I was aware of and grossed up by 25% for benefits. Carlos also has an assistant that should be included." Eisenberg stated that she never asked anyone to attack Callender or Orellana, but instead asked people to come to a meeting to support her. "I feel alone and isolated and marginalized. I was asking people to come to a meeting to support me." She cited her tweets as defending herself against Callender's aggressive behavior toward her in meetings.

Eisenberg was clearly upset about Callender's and Orellana's complaints of discrimination and she expressed her opinion on social media that directly criticized them and

<sup>16</sup> <https://transparentcalifornia.com/salaries/santa-clara-valley-water-district/?&s=-base>.

<sup>17</sup> Richardson earned \$370,687.00 in salary in 2022.

asserted that their complaints were false. Public criticism against persons who have engaged in protected activity can be interpreted as retaliatory. Given Eisenberg's position as a Director in the SCVWD, she should have been careful to avoid posting derogatory and inaccurate comments that could be interpreted as discrediting Callender and Orellana because of their complaints. However, the evidence showed that Eisenberg also tweeted criticism of Callender and Orellana that was separate and distinct from their protected activity, such as her belief that Callender had integrity issues based on past behavior (a sexual harassment lawsuit and criminal assault conviction), and her belief that Callender was angry and "bullying" based on his alleged current behavior toward Eisenberg. In addition, the evidence indicated that Eisenberg also complained about Callender and Orellana being overpaid. All of these complaints had been raised by Eisenberg separate from her social media posts. Even if Eisenberg's claims and concerns were inaccurate or unmeritorious, such as her statements about salaries, there was insufficient evidence that she invented these concerns in order to attack Callender and Orellana for their protected activity. There was insufficient evidence that their involvement in protected activity was a substantial motivating reason behind Eisenberg's posts criticizing them.

Further, there was no evidence that Eisenberg's social media posts were "reasonably likely to impair" Callender or Orellana's job performance or prospects for advancement or promotion, or that their job was affected in any way, which is required by SCVWD's policies in order to find retaliation.

**V. Allegation 22: Eisenberg's Request To Callender To Explain How Many Employees Have Been Fired By Him At The April 26, 2023 Open Meeting Was An Act Of Sex Or Race-Based Discriminatory Harassment, As Defined By SCVWD Policies**

**NOT SUBSTANTIATED.** Callender contends that Eisenberg questioned him during the April 26, 2023 Board meeting, asking Callender to explain how many employees have been "fired" by him at the District. Callender states that this was a disparaging and defamatory remark in violation of Board policy and an act of discriminatory harassment based on his sex or race. In support, Callender says Eisenberg has stated repeatedly to SCVWD staff that she believes a woman should be CEO, and not Callender, and cites her statements to Richardson and Eisenberg's past statements that men cannot make claims for sex discrimination.

Eisenberg says she sought information about fired staff because she received "dozens" of anonymous emails containing complaints against Callender and reports of Callender firing staff. Eisenberg did not share the emails with the Investigators because she says she has been asked to keep the reporters anonymous. Eisenberg states the "CEO started threatening consequences if [staff] reached out to me." Eisenberg denies that she targeted Callender on this issue because of his race and sex. She stated that she raised the issue because she received a report that a former employee was fired after he objected to Callender's practice of using Facebook messenger to communicate, allegedly to avoid public records requests, and reported this information to Eisenberg.

The Investigators reviewed the video of the exchange between Eisenberg and Callender regarding "fired" employees. The Investigators noted that Eisenberg may have been out of

order by on speaking on the firing issue, which was not on the agenda, speaking without being recognized by the chair, and referring to a personnel matter that should not have been discussed in an open session because of the privacy rights of a former employee who was being discussed. Shortly after Eisenberg began speaking about the former employee, Chair Varela cut her off by telling her that if she continued speaking on the topic, she would have to leave.

- During the meeting, Eisenberg tweeted a series of tweets from her @RebeccaEisenbe4 Twitter account, including, “Friends & Supporters: Please zoom into the @valleywater Board meeting right now and count how many times the Chair interrupts me and yells at me. And how often the CEO yells at me and accuses me of slander for asking if he fired people.”
- Three days later, on April 29, 2023, Eisenberg tweeted from her @RebeccaEisenbe4 twitter account, “Start at 50:00 scvwd.granicus.com/Mediaplayer.ph Does CEO Callender answer how many people have separated from @valleywater? Nope he accuses me of ‘slander’ and ‘breaking codes’ for asking! He is paid \$650k in YOUR dollars each year.”
- On or about April 29, 2023, Eisenberg tweeted from her @RebeccaEisenbe4 Twitter account, “Start at 1:07:00 scvwd.granicus.com/Mediaplayer.ph Why won’t the @valleywater CEO tell the Board & Public how many people were taken off payroll each month? Instead, the #BoardChair turns off my Mic. This Chair is behind the deceitful Measure A. #NoConsequences #water #corruption @rle”

As described previously, the Investigators reviewed allegations of discriminatory harassment based on race and sex utilizing GP-11.1, which prohibits such conduct by Board members, and considering the robust standards in AD-2.8, for interpretative guidance. In order for a verbal statement to be an act of discriminatory harassment under SCVWD’s policies, there must be language or conduct that is obscene, demeaning, offensive slurs, or threats.

In reviewing the evidence, the Investigators did not find anything about Eisenberg questioning Callender regarding his involvement in employees’ firing that was obscene, demeaning, offensive, or threatening. Further, there was no evidence that Eisenberg targeted Callender for questioning because of his race.

As to whether Eisenberg was engaging in discriminatory harassment motivated by Callender’s sex (i.e., to remove him from the CEO position and replace him with a woman) based on her past statements, there was insufficient evidence that Eisenberg’s question about Callender’s involvement in firings was going to lead to an attempt to replace him. Eisenberg denied that she is attempting to fire Callender because of his sex. Eisenberg has also stated multiple non-discriminatory reasons that she thinks Callender should be replaced. For example, Eisenberg, has repeatedly stated that she believes, without citing evidence, that Callender is “corrupt” because she believes he supports the Pacheco project. Eisenberg has also criticized what she says is his past history of misconduct in a personal matter more than fifteen years ago, and that he has a criminal conviction for assault, which she says make him



not qualified to serve as CEO. Eisenberg has further claimed that, “I have ethical questions about [Callender’s] leadership and treatment of staff.” In the end, despite Eisenberg’s anti-male statements, there was insufficient evidence to find that she acted based on Callender’s sex.

**W. Allegation 23: Eisenberg Referenced Callender As “Angry And Yelling,” “Violent” And Portrayed Of Him As A “Predator,” Which Were Acts Of Race-Based Discriminatory Harassment, As Defined By SCVWD Policies**

**NOT SUBSTANTIATED.** Callender alleges that in Eisenberg’s statements about him in open session, closed session and on X (formerly Twitter), Eisenberg uses racial “lynching language” to stereotype him as a “violent” and “angry” Black man, who was a “terrifying predator to White women.” Callender says Eisenberg’s characterizations of him are “an angry Black man trope” that is racially motivated, discriminatory and harassing. Specifically, Callender points to Eisenberg stating publicly and on Twitter that Callender had had a “sexual harassment scandal” and has also mentioned that Callender had a criminal conviction for assault in the past. In her Twitter posts about his conviction, set forth in Section U above, Callender says Eisenberg suggests that she currently fears physical violence from him.

Further, Callender says that Eisenberg has mistreated him in closed sessions, stating “In closed sessions there’s no boundaries, it’s the wild west.” As an example, Callender alleges that during his April 11, 2023 closed session quarterly performance review, Eisenberg said he should not be the CEO, and she kept talking over him until Varela jumped in to control the meeting. At one point, Callender says he addressed Eisenberg’s racially charged language: “I told her do not talk to me like a common slave.” On other occasions, he said to Eisenberg, “You’re disrespecting me as a Black man.”

Eisenberg states she attended the April 11, 2023 closed session at which a performance evaluation for CEO Callender took place. Eisenberg states she does not recall the “slave” comment from Callender and feels that she would remember if he said that. Eisenberg denies that any of her criticisms of Callender are race-based. She states that it is her job to criticize Callender’s job performance when appropriate. Eisenberg reports feeling that Callender views her criticisms as attacks because “that is how [Callender] hears everything I say.” Eisenberg states that she is unable to recall “anything negative” that she said about Callender at the April 11, 2023 performance evaluation.

The Board members generally recalled the exchange between Callender and Eisenberg in the April 11, 2023 closed session but have differing views of whether Eisenberg’s and Callender’s interactions in closed sessions were based on race:

- Santos recalls Eisenberg attacking Callender for “two or three” closed sessions, and Callender responding, “you’re not going to talk down to me as a Black man.” Santos observed that Eisenberg “badgers” all three Board Appointed Officers (“BAOs”), causing one to cry. Estremera recalled Callender’s “slave” comment came after Eisenberg questioned why he was CEO and that he didn’t know what he was doing.

- Estremera observed that Eisenberg had a negative opinion of Callender “from day one” without any rational reason. “In my experience when people dislike you without knowing you it’s gotta be because of [race].”
- Hsueh recalls Callender’s “slave” comment but “didn’t think it was racial.” Hsueh observed that “Rebecca treats everyone like that. She treats me that way, too”. Hsueh observed that Eisenberg treats another BAO badly and would not stop attacking her, accusing her of keeping emails from Eisenberg “on purpose.” Hsueh states that Eisenberg doesn’t like Callender because she thinks he hides information from her and from the Board.
- Keegan agreed there is “an equal opportunity pick on people quality to Rebecca,” citing Eisenberg’s attacks on other BAOs. Keegan thought Callender was “overstating things” by referencing himself as a “slave” and that it was an “over the top reaction.” Keegan stated that while Varela, Estremera and Santos think the CEO is “perfect,” she believes that “things could be better because we’ve heard from employees.”
- Beall disagreed with Eisenberg’s perception about Callender having an “angry” demeanor. “Rick is not angry all the time. Very seldom is he angry.” Beall recalled Callender highlighting a perceived racial issue by saying he was disrespected as a Black man. Beall didn’t know why Eisenberg was saying Callender was “angry,” and suggested it could be implicit bias or “I think it might be the history with the employee more than his race.” Beall also recalled that Eisenberg made another BAO cry by berating her and accusing her of “lying” at the April 11, 2023 closed session.

Eisenberg denies stereotyping Callender because of his race. Eisenberg states that, if she points out that Callender exhibited anger or was being angry, “it had nothing to do with his race or gender.” Eisenberg states that Callender has a record of sexual harassment and assault, that she is “standing up to [his] bullying...”

The Investigators reviewed Callender’s allegations of race-based discriminatory harassment under GP-11, which states in relevant part:

“The Board and its members will not discriminate, harass, or allow harassment against any applicant, employee, customer, or other person on the basis of sex ...race, religion, color, national origin (including language use restrictions)...”

GP-11.1 does not define discriminatory harassment or provide examples of prohibited behavior for Board Members. Accordingly, the Investigators considered AD-2.8, which defines harassment, for guidance on how to interpret GP-11.1. AD-2.8 defines harassment as follows:

“Harassing conduct may include, but is not limited to: verbal harassment (obscene language, demeaning conduct, slurs, or threats); physical harassment such as unwanted touching, assault, or actual physical interference with normal work; visual harassment (offensive posters, drawings, photographs, cartoons, or objects); unwanted sexual advances; and other communicative harassment (offensive emails, text messages, internet postings, letters, etc.) because of a Protected Category.”

The policy further states that “Harassment is a Prohibited Behavior.”

The evidence showed that Callender was named as a defendant in a 2009 lawsuit, *Collins vs Santa Clara Valley Water District, et. al, Enrico Callender (A.K.A. Rick Callender)*, Santa Clara County Superior Court Case No. 109CV148445. In the lawsuit, the plaintiff accused Callender of sexually harassing her in 2007-2008. The Court dismissed the lawsuit in February 2010 for the plaintiff’s failure to prosecute.<sup>18</sup>

The evidence also showed that Eisenberg referenced Callender’s sexual harassment case publicly in a Board meeting on May 3, 2023, when she spoke from the dais:

Eisenberg: 1:51:46

“This organization has had years of sexual harassment scandal, including by my present predecessor, **including by the CEO**, nothing has changed. There have been no remedial measures taken. That needs to change. We, I think that an [looks around the room] Oh, I see lots of angry faces. I am not attacking any of you. [interruption by Varela]” (emphasis added)

Eisenberg mentioned Callender’s sexual harassment charges and the assault case against Callender again on Twitter on April 29, 2023 in responding to a comment on a post, at 1:31p.m. Eisenberg wrote:

“[...] since being appointed by a 4-3 vote (**despite his history of sexual harassment and felony assault**), he has appointed numerous other deputy CEOs, all with high six-figure salaries. It sure looks like corruption, yet keeps happening w/long-timers Board support.” (emphasis added)

Eisenberg mentioned Callender’s assault case a second time when she retweeted an article reporting that in 1998, Callender was found guilty of assault with a deadly weapon in Santa Clara County Superior Court.

<sup>18</sup> The Investigators are without information regarding whether the parties settled the case outside of the litigation.

The evidence showed that Eisenberg has repeatedly raised concerns regarding personnel issues<sup>19</sup> about Callender, *i.e.*, her belief that Callender is not suited to be the CEO. Eisenberg has made clear that the sexual harassment complaint and the assault conviction are two reasons she believes Callender should not be CEO. The fact that Callender was sued for sexual harassment or convicted of assault, even many years ago, can be reasonably viewed as legitimate, non-discriminatory reasons to criticize his fitness for the CEO role. To the extent Callender claims that Eisenberg is invoking racial tropes for criticizing him for these issues, the Investigators find insufficient evidence to substantiate that claim. While the manner in which Eisenberg has made such criticisms in public, and especially on social media, instead of during a closed session performance evaluation, is highly inappropriate, there is insufficient evidence that Eisenberg's actions are motivated by race. The evidence indicates that Eisenberg's conduct is based on her perception and belief that Callender's behavior is disqualifying.

As well, Eisenberg's perception that Callender's demeanor is "angry" or that he is "yelling" is a legitimate subject for a performance evaluation. To the extent Callender suggests that Eisenberg made these statements because of race, this is also not supported by evidence. The evidence shows that Eisenberg's comments at the April 26, 2023 meeting and her subsequent Twitter posts three days later were consistent with her statement that she perceives that CEO Callender was angry, yelled at and bullied her at the April 26, 2023 meeting:

- On April 29, 2023, Eisenberg tweeted from her @RebeccaEisenbe4 Twitter account, "For more background **on this angry CEO who bullies me** at every Board meeting (yes is using ratepayer money to go against ME for **made-up claims of discrimination against MEN!**) read here:" Eisenberg inserted a link to an article from sanjoseinside.com titled "Valley Water Names New CEO." (emphasis added)
- On April 29, 2023, Eisenberg tweeted from her @RebeccaEisenbe4 Twitter account, "The thing about being bullied at public meetings is that the public can judge for ourselves."

These tweets, made shortly after the event, corroborate that Eisenberg called Callender angry and a bully because she perceived that he was bullying her based on his conduct toward her at the April 26 Board meeting.

The Investigators reviewed numerous Board meetings and Committee meetings on video and audio, and observed several contentious interactions between Eisenberg, Callender and Varela. However, it was not possible to determine if Callender raised his voice or yelled at Eisenberg or appeared angry in addressing her. There was no indication in the record that Eisenberg called Callender "violent," an "angry Black man," or a "terrifying predator to White

<sup>19</sup> The sexual harassment lawsuit involving Callender and news article about Callender's conviction are both public records, not confidential personnel records. However, the discussion of Callender's performance, including his fitness to serve as CEO, is a personnel matter.

women” or referenced his race or hers with respect to his previous conviction, as Callender alleged.<sup>20</sup>

In the end, the record establishes that Eisenberg has been aggressively critical toward Callender in closed session. However, it cannot reasonably be said that her conduct is race-based. Eisenberg’s perceptions regarding the CEO’s fitness for his position and his qualifications are properly discussed during a performance evaluation in closed session, even if the manner of Eisenberg’s communication is rude, unprofessional, or unwelcomed by Callender. Eisenberg’s perceptions and belief that Callender is angry, yelling or bullying are also appropriate to be discussed in a performance evaluation. There was no evidence presented that Eisenberg’s perceptions and beliefs about Callender, whether correct or incorrect, were racially motivated or based on racial stereotypes. Moreover, the Investigators did not find Eisenberg’s statements to be derogatory conduct and there was no evidence that her statements contained obscene language, slurs, or threats.

**X. Allegation 24: Eisenberg Refused To Meet With Or Communicate With Callender As Retaliation For His Complaints Against Her, In Violation Of SCVWD’s Policies**

**NOT SUBSTANTIATED.** Callender reports that, since he has made his complaint, Eisenberg attempts to ostracize him. Callender states that Eisenberg communicates with Richardson, the Assistant CEO, rather than him. He called out a recent memorandum from Taylor, which prompted a response from Eisenberg. Callender says Eisenberg included Richardson and excluded him in her response, even though it was appropriate for the CEO to be included. He states that Eisenberg has canceled every meeting with him.

Eisenberg denies that she has intentionally excluded Callender on email communications. Eisenberg recalls that she did respond to a memorandum from Taylor via email that did not include Callender as a recipient. Eisenberg states that she assumed that those on the original distribution is who she should have responded to. Eisenberg reports that, “I have not intentionally excluded [Callender] and maybe he wasn’t on [the email response] because it didn’t have him on the original email.” Eisenberg denies that she has cancelled meetings with Callender because of an effort to ostracize him, but says they have not met recently because of schedule conflicts. Eisenberg further states that it is Callender’s practice to cancel meetings. Eisenberg states that she has “reset” meetings with Callender due to schedule conflicts, and when Callender is in town, she has met with him.

As discussed above, at the time of this investigation, there were no Board policies that prohibited retaliation by Board members. Accordingly, the Investigators considered AD-2.8, which strictly prohibits retaliation by employees for complaining about or reporting discrimination or abusive conduct (“protected activity”). Further, AD-2.8 prohibits any employee who participates in a protected activity to be:

<sup>20</sup> To the extent Eisenberg suggested that Callender may be violent because of his previous conviction or that she feared future violent acts from him, there was no indication that she was referencing race, and Eisenberg denied doing so. These actions are analyzed as abusive conduct in section Y of this Report.

“adversely affected or discriminated against in their terms and conditions of employment because of their involvement in the protected activity. “Because of” means that the employee’s involvement in the protected activity must be a substantial motivating reason behind the prohibited retaliatory conduct. In short, there must be a causal connection.

Specific examples of prohibited retaliation includes, but is not limited to: termination, demotion, suspension, failure to hire or consider for hire, failure to give equal consideration in making an employment decision, failure to make employment recommendations impartially, adversely affecting working conditions or otherwise denying any employment benefit to the person engaging in the protected activity. Prohibited retaliation includes any conduct that is reasonably likely to impair an employee’s job performance or prospects for advancement or promotion. Prohibited retaliation does not include minor or trivial actions or conduct that is not reasonably likely to do more than anger or upset an employee.”

The undisputed evidence shows that Callender has engaged in protected activity by making an internal complaint of discrimination, and by reporting discrimination. However, there was no evidence provided that Eisenberg has, in fact, canceled meetings with Callender, or excluded him from emails, or communicated with Richardson to avoid him. Even if these facts had been proved, the evidence does not support that Callender has been adversely affected or discriminated against in his terms and conditions of employment by being excluded from these activities. Pursuant to AD-2.8, prohibited conduct is reasonably likely to impair an employee’s job performance or prospects for advancement or promotion. These exclusions cannot be reasonably characterized as rising to this level. Instead, they are more accurately characterized as minor or trivial actions or conduct that would likely anger or upset an employee.

**Y. Allegation 25: Eisenberg Created A Hostile Work Environment For, Or Engaged In Abusive Conduct Toward, Callender, In Violation Of SCVWD Policies**

**NOT SUBSTANTIATED as hostile work environment.** Callender argues that all of Eisenberg’s actions toward him, discussed above, has created a hostile work environment or was abusive conduct. These actions by Eisenberg include:

- Publicly raising concerns about Callender’s past conduct (claims against him of sexual harassment and an assault conviction) on Twitter, as opposed to addressing these issues in a closed session or requesting an investigation.
- Publicly inflating his salary on Twitter in order to inflame her followers against Callender.

- Publicly making implications that Callender has improperly fired employees in meetings and on Twitter, as opposed to addressing these issues in a closed session or requesting an investigation.
- Publicly calling him an “angry CEO” who “bullies” her and stating that “I guess I should be lucky he only yells at me and doesn’t beat me with something” on Twitter.
- Publicly stating that Callender brought unmeritorious claims against her.
- Yelling at and/or degrading Callender during the closed session on April 11, 2023 regarding his performance evaluation, in which Callender felt “talked down to” and disrespected.
- Saying Callender should not be the CEO during the closed session on April 11, 2023.
- Requesting Richardson to try to find evidence that Callender is corrupt.
- Making repeated statements that Callender has engaged in “misconduct” without providing any specifics.
- Making repeated statements that employees came to her with complaints about Callender without providing any specifics.

Callender alleges that Eisenberg’s actions, as a whole, have created a hostile work environment for him. As discussed above, SCVWD’s policies require an initial finding of discriminatory harassment before there can be a hostile work environment. The Investigators have reviewed each of Eisenberg’s actions in the list above in previous sections and determined that none of her conduct rose to the level of discriminatory harassment against Callender, because it was not based on his sex or race.

**SUBSTANTIATED as abusive conduct.** As explained above, when reviewing whether conduct was abusive, the Investigators utilized the standard of abusive conduct set in GP-6.3.1, which prohibits abusive conduct, personal charges or verbal assaults upon the character or motives of other members of the Board. In addition, the Investigators considered for illustrative purposes SCVWD current policies applicable to employees, which require repeated infliction of verbal abuse, such as the use of malicious, derogatory remarks, insults, epithets, verbal or physical conduct that a reasonable person would find threatening, intimidating or humiliating, or the intentional sabotage or undermining of a person’s work performance.

Eisenberg’s behavior toward Callender has included verbal attacks and accusations of misconduct made during meetings, which could reasonably be interpreted as verbal assaults upon his character. In particular, it is difficult to understand why Eisenberg has not provided details to the Board regarding the misconduct allegations which she says she has received

against Callender, or why she has not requested an investigation. This includes claims that Callender uses Facebook messenger improperly for work communications, or allegations that Callender improperly fired employees or was engaged in “corruption” or “taking money for Pacheco.” Eisenberg has appeared to be investigating allegations against Callender herself, or has made accusations against Callender, in some cases, with no evidence.

Further, Eisenberg’s social media posts regarding Callender are conduct that a reasonable person would find humiliating or the intentional undermining of his work performance. Rather than simply stating facts regarding Callender’s past conviction, from over 15 years ago, Eisenberg’s posts imply that he may still be violent or that she has reason to fear him. Similarly, rather than citing Callender’s actual salary, Eisenberg admitted “I used the comp number I was aware of and grossed up by 25% for benefits,” resulting in a number that was inflated by more than \$100,000.

When viewing Eisenberg’s conduct toward Callender as a whole, a reasonable person would find her behavior to be hostile, offensive and unrelated to SCVWD’s legitimate business interests. Instead, Eisenberg appears to be attempting to undermine Callender’s work performance. The evidence shows that Eisenberg has a perception and belief that Callender’s previous conviction for assault and allegations of sexual harassment make him unqualified to be CEO. However, Eisenberg’s perception and belief is not a reasonable justification for targeting Callender in a way that is humiliating, undermining and demeaning.

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# Attachment 1

## 1. POLICY STATEMENT

Santa Clara Valley Water District (“Valley Water”) is committed to providing all its employees with a work environment free of discrimination, harassment, abusive conduct, and/or retaliation (“Prohibited Behavior”). Valley Water prohibits discrimination and harassment based on race, color, national origin (including language use restrictions), ancestry, religion, religious creed (including religious dress and grooming practices), gender, sex (which includes pregnancy, childbirth, breastfeeding and medical conditions related to pregnancy, childbirth, or breastfeeding), disability (mental and physical, including HIV or AIDS), citizenship status, medical condition (cancer and genetic characteristics), genetic information, marital status, military and veteran status, political affiliation, sexual orientation, gender identity and gender expression, age (40 and over), political affiliation, parental status, the exercise of family care leave rights, the exercise of pregnancy disability leave, or the request, exercise, or need for reasonable accommodation or any other basis protected by federal, state, or local law (“Protected Categories”).

No employee is expected to tolerate any conduct prohibited by this policy from anyone while at work or engaged in Valley Water business. Valley Water strictly enforces a Zero Tolerance Policy for harassment or discrimination based upon one’s protected status (e.g., race, gender, age, national origin, etc.). Valley Water also strictly enforces a Zero Tolerance Policy for retaliation and/or abusive conduct. Zero Tolerance means Valley Water will take immediate and effective action, when appropriate, calculated to stop the conduct that violates this Policy.

Employees are subject to discipline, up to and including discharge, for failure to comply with this Policy. Temporary workers, interns and others conducting business for Valley Water are subject to release from their assignments for violations of this Policy. Temporary workers, interns, and others conducting business for Valley Water are protected against the Prohibited Behavior defined in this policy.

### A. Prohibited Behavior

The following, either together or individually, constitute Prohibited Behavior:

#### 1. Discrimination

Adverse employment actions related to hiring, promotions, assignments, performance management, and other terms and conditions of employment where membership in a Protected Category is a substantial motivating reason for the action. Discrimination is a Prohibited Behavior.

#### 2. Retaliation

Valley Water strictly prohibits retaliation against any person by another at Valley Water for:

- making a non-malicious and non-frivolous internal complaint about an allegation of discrimination, harassment, abusive conduct, or retaliation;
- utilizing the complaint procedure of any state or federal agency to report discrimination, harassment, or retaliation;
- opposing discrimination, harassment, abusive conduct, or retaliation;
- reporting discrimination, harassment, abusive conduct, or retaliation;

- requesting an accommodation for religious practice or disability; or
- for filing, testifying, assisting, or participating in any manner in any investigation, proceeding or hearing conducted by Valley Water or a governmental enforcement agency relating to this policy or any state or federal anti-discrimination laws or regulations.

This means that any employee who participates in the protected activity described above shall not be adversely affected or discriminated against in their terms and conditions of employment *because of* their involvement in the protected activity. “*Because of*” means that the employee’s involvement in the protected activity must be a substantial motivating reason behind the prohibited retaliatory conduct. In short, there must be a causal connection.

Prohibited retaliation includes, but is not limited to: termination, demotion, suspension, failure to hire or consider for hire, failure to give equal consideration in making an employment decision, failure to make employment recommendations impartially, adversely affecting working conditions or otherwise denying any employment benefit to the person engaging in the protected activity. Prohibited retaliation includes any conduct that is reasonably likely to impair an employee’s job performance or prospects for advancement or promotion. Prohibited retaliation does not include minor or trivial actions or conduct that is not reasonably likely to do more than anger or upset an employee.

Valley Water does not consider conduct in violation of this Policy to be within the course and scope of employment and does not sanction such conduct on the part of any employee, including management employees. Employees found to have engaged in retaliatory conduct are subject to disciplinary action. Retaliation is a Prohibited Behavior.

### **3. Harassment**

Harassing conduct may include, but is not limited to: verbal harassment (obscene language, demeaning conduct, slurs, or threats); physical harassment such as unwanted touching, assault, or actual physical interference with normal work; visual harassment (offensive posters, drawings, photographs, cartoons, or objects); unwanted sexual advances; and other communicative harassment (offensive emails, text messages, internet postings, letters, etc.) because of a Protected Category. Harassment is a Prohibited Behavior.

### **4. Hostile Work Environment**

A hostile work environment exists where one is subjected to unwanted harassing conduct because of his or her Protected Category, where the harassing conduct is severe or pervasive, where one considers the work environment to be hostile or abusive as a result of the conduct, and where a reasonable person in the same circumstances would also have found the environment to be hostile or abusive. Creating a Hostile Work Environment is a Prohibited Behavior.

### **5. Abusive Conduct**

Valley Water employees, including managers, shall refrain from any malicious conduct that a reasonable person would find hostile, offensive, and unrelated to an employer’s legitimate business interest. Valley Water’s legitimate business interests include employees being held

accountable for timeliness, meeting deadlines, producing deliverables adequately, and other general work responsibilities, among other things.

Examples of abusive conduct include, but are not limited to, repeated infliction of verbal abuse, such as the use of malicious, derogatory remarks, insults, epithets, verbal or physical conduct that a reasonable person would find threatening, intimidating or humiliating, or the intentional sabotage or undermining of a person's work performance.

Abusive Conduct that is substantially motivated by one's Protected Category may constitute harassment. Abusive Conduct is a Prohibited Behavior.

### **B. Malicious Complaints**

Valley Water will not tolerate malicious complaints. Complaints/concerns will not be considered malicious merely because they are determined to be unsubstantiated. A malicious complaint/concern is one that is made in bad faith or with knowledge that the complaint entirely lacks any factual basis. Malicious complaints may result in disciplinary action, up to and including termination.

### **C. Complaint Process**

Employees or other covered parties who believe they have been subjected to Prohibited Behavior, whether specifically noted as an inappropriate behavior as described in this policy, should immediately report the offensive behavior to their supervisor, a member of the management team or Ethics and Equal Opportunity Programs staff (EEOP). Incidents not immediately reported can be reported up to 365 days from the date of the last occurrence or event. This period may be extended up to 90 days if the person allegedly aggrieved by the discrimination first obtained knowledge of the facts after expiration of the 365-day period. Beginning on January 1, 2020, incidents may be reported 3 years after the date of the last occurrence or event. This 3 year period may be extended up to 90 days if the person allegedly aggrieved by the discrimination first obtained knowledge or facts after expiration of the 3 year period.

If an employee or other covered party is aware, either directly or indirectly, of Prohibited Behavior engaged in or suffered by another, regardless of whether such conduct directly affects them, they should immediately report that information to their supervisor, a member of the management team, or EEOP staff.

Supervisors and managers must refer all complaints of misconduct as described herein to EEOP in Human Resources (Office of Talent and Inclusion).

Complaints against the Chief Executive Officer, the Chief People Officer, the Ethics Officer, or a member of the Board will be immediately referred to District Counsel's office for resolution.

Complaints should include details of the incident(s) such as names of individuals involved, the timeframe during which incident(s) occurred, and the names of any witnesses. No adverse action will be taken against an employee who makes a report or cooperates in the investigation of a report of Prohibited Behavior.

EEOP staff shall have access to all information deemed necessary to determine to the validity of a complaint.

Once a complaint is received, EEOP will determine if the complaint requires a consultation, initial inquiry, or full investigation. If EEOP determines the need for a full investigation, it is Valley Water's policy is to conduct a timely, thorough, and impartial investigation of all Prohibited Behavior claims. The investigation will be conducted by qualified personnel, documented, and tracked for reasonable progress and concluded in a timely manner.

After the investigation, EEOP will make a determination as to whether a violation of this policy has occurred. Valley Water will look at the totality of the circumstances, including the nature of the conduct and the context in which it occurred. Valley Water will then timely communicate the findings to the complainant and respondent, and when appropriate, to other persons who are directly concerned.

If it is determined that Prohibited Behavior has occurred, Valley Water will take remedial action commensurate with the severity of the offense. This action may include corrective action against the respondent, up to and including termination. Steps will be taken, as necessary, to prevent any further Prohibited Behavior from occurring.

With the exception of Abusive Conduct claims, all complainants, including those not satisfied with Valley Water's resolution, may pursue a complaint or file concurrently with the Department of Fair Employment and Housing (DFEH) and/or the U.S. Equal Employment Opportunity Commission (EEOC). Federal law typically requires the employee to file an administrative charge with the EEOC within 180 days from the date of the discriminatory violation. California's Fair Employment and Housing Act gives the employee one year to file such a charge with DFEH.

#### **D. Right to Representation**

The complainant and the respondent have the right to representation at each step of the process by a person of their choice.

#### **E. Confidentiality**

Information gathered by EEOP during an investigation will be kept confidential to the extent possible, but complete confidentiality cannot be guaranteed.

#### **F. Communication & Training**

To ensure all employees are aware of their role in support of a work environment free of Prohibited Behavior, EEOP staff will send all employees this Policy on an annual basis. New employees will be required to sign an acknowledgement of receipt. The Policy will also be posted on Valley Water's intranet and on bulletin boards in all Valley Water facilities.

In keeping with its commitment to a harassment and discrimination free environment, Valley Water will comply with all applicable rules and regulations regarding the training of employees.

All new hires and temporary workers will attend an EEO orientation during which they will receive a copy of this Policy and guidance in support of this Policy.

## **2. PURPOSE**

To prevent Prohibited Behavior in the workplace, to enable employees to report Prohibited Behavior before it becomes severe or pervasive, and to stop Prohibited Behavior before it rises to the level of a violation of Valley Water's policies or state or federal law.

## **3. SCOPE, ASSUMPTIONS & EXCEPTIONS**

This Policy applies to all employees (both unclassified and classified), contractors, consultants, temporary employees, and interns.

## **4. ROLES & RESPONSIBILITIES**

### **General**

- Employees who are involved in personnel decisions (including job interviews, candidate selection, and employee progressive disciplinary proceedings) and in business decisions (including all decisions concerning procurement activities, contracting, and service agreements) are expected to be knowledgeable of equal opportunity requirements and comply with them in conducting their responsibilities.
- Managers, supervisors, and all other employees are required to cooperate fully with an investigation and resolution of all Prohibited Behavior discrimination or harassment complaints.

### **Supervisors and Managers**

- Are charged with the responsibility of ensuring that the employees they supervise are not subjected to Prohibited Behavior. They are also responsible for taking timely and effective action calculated to stop Prohibited Behavior about which they are aware, and for taking proactive steps to identify and eradicate Prohibited Behavior of which they should be aware.
- Upon receipt of a complaint, the supervisor or manager must notify EEOP that a harassment complaint has been received.
- Upon awareness of potential Prohibited Behavior, the supervisor or manager must notify EEOP.
- Under this policy, ignorance of Prohibited Behavior is not necessarily an acceptable defense for inaction if the manager or supervisor, through reasonable diligence, should have been aware of the problem.
- Corrective measures taken by Valley Water in response to Prohibited Behavior must attempt to stop the Prohibited Behavior and ensure that the workplace will remain free of Prohibited Behavior. If warranted under the circumstances, supervisors and managers may be subject to discipline for failure to carry out their duties in enforcing this policy even if they have not personally engaged in Prohibited Behavior. In addition, the law provides that managers and supervisors may be held personally responsible in a civil suit if they have engaged in or allowed Prohibited Behavior.

- In consultation with EEOP, must deal proactively with possible Prohibited Behavior situations, process complaints immediately, and take appropriate corrective or disciplinary action against the employee whose conduct violates this policy.
- Are required to take positive steps to comply with this policy. They are required to be aware of potential Prohibited Behavior situations, quickly resolve any Prohibited Behavior issues that arise, and refrain from retaliation or any other Prohibited Behavior against any employee involved in the filing, investigation, or resolution of a Prohibited Behavior claim.
- Must not minimize or otherwise discourage employees from reporting such complaints.

### **Employee**

- Employees who feel they have been the target of Prohibited Behavior in any way may tell the offender that they find such behavior offensive, that such behavior is against Valley Water policy, and that they should immediately stop the behavior.
  - If the employee is uncomfortable taking this action, or if the conduct does not stop after the warning has been given, the employee should immediately contact their supervisor or manager. Employees are not required to confront the offender, but are required to report the behavior.
  - If the employee cannot or does not want to seek help from their supervisor or manager, the employee should contact EEOP staff in Human Resources or higher-level management for assistance.
- If employees or other covered parties are aware of Prohibited Behavior engaged in or suffered by another, regardless of whether such Prohibited Behavior directly affects them, they should immediately report that information to their supervisor, a member of the management team or EEOP staff.

### **Ethics & Equal Opportunity Programs**

- Ensure that when EEOP determines an investigation is necessary, qualified personnel conduct a timely, and thorough investigation that is fair to the employees involved and reaches a reasonable conclusion based on the facts.
- Develop and uphold a process for responding to complaints that is timely, impartial, thorough, and confidential to the extent permissible by law.
- Refer policy violations to Labor Relations Unit or management, as appropriate.
- Complaints are appropriately documented and tracked for reasonable progress and resolution.
- Resolve non-investigation matters at the lowest possible level, including, but not limited to, addressing an employees' conduct with the employee and/or the employees' manager or supervisor.

## **5. REQUIREMENTS**

### **a. Governance Policies**

EL-8 Inclusion, Equal Employment Opportunity, Discrimination/Harassment Prevention, and Diversity. The BAOs shall promote conditions that ensure a work environment that is

diverse and inclusive, free of discrimination and harassment, and that provides equal opportunity employment. Further a BAO shall:

8.2 Not allow District's employees, agents, or contractors to discriminate, harass, or allow harassment against any applicant, employee, customer or other person on the basis of sex (which includes pregnancy, childbirth, breastfeeding and medical conditions related to pregnancy, childbirth or breastfeeding), race, religion, color, national origin (including language use restrictions), ancestry, religious creed (including religious dress and grooming practices, political affiliation, disability (mental and physical, including HIV or AIDS), medical conditions (cancer and genetic characteristics), genetic information, marital status, parental status, gender, age (40 and over), pregnancy, military and veteran status, sexual orientation, gender identity and gender expression, the exercise of family and medical care leave, the exercise of pregnancy disability leave, or the request, exercise, or need for reasonable accommodation.

With respect to employees, these requirements apply to employment actions which include, but are not limited to, the following: recruitment, hiring employment, utilization, promotion, classification or reclassifications, transfer, recruitment advertising, evaluation, treatment, demotion, layoff, termination, rates of pay or other forms of compensation, and selection for professional development training (including apprenticeship).

8.3 Require employees at all levels of District employment be aware that they share in the responsibility to ensure a work environment free of discrimination and harassment prohibited by this policy.

8.6 Not allow potential barriers to employment of members of protected groups to exist within an individual BAO's authority.

Accordingly:

11.1. The Board and its members will not discriminate, harass, or allow harassment against any applicant, employee, customer, or other person on the basis of sex (which includes pregnancy, childbirth, breastfeeding and medical conditions related to pregnancy, childbirth or breastfeeding), race, religion, color, national origin (including language use restrictions), ancestry, religious creed (including religious dress and grooming practices, political affiliation, disability (mental and physical, including HIV or AIDS), medical condition (cancer and genetic characteristics), genetic information, marital status, parental status, gender, age (40 and over), pregnancy, military and veteran status, sexual orientation, gender identity and gender expression, the exercise of family and medical care leave, the exercise of pregnancy disability leave, or the request, exercise, or need for reasonable accommodation.

11.3. The Board will require that the organization's work environment be one in which all people are welcomed and included, and in which all individuals are unique and important and are treated with fairness and dignity.



b. Governing Laws

- The Age Discrimination in Employment Act of 1967
- The Equal Pay Act of 1963
- Title VII of the Civil Rights Act of 1964
- Title I Americans with Disabilities Act of 1990 (ADA)/ADAAA
- Fair Employment and Housing Act
- The Pregnancy Discrimination Act
- The Genetic Information Nondiscrimination Act of 2008 (GINA)

c. Other Requirements (District Policies, MOUs, Standards, etc.)

Memorandum of Understanding between Santa Clara Valley Water District and Employees Association (AFSCME – Local 101). To be administered in accordance with District Policies and Procedures.

Memorandum of Understanding between Santa Clara Valley Water District and Engineers' Society (IFPTE – Local 21). To be administered in accordance with District Policies and Procedures.

Memorandum of Understanding between Santa Clara Valley Water District and Professional Managers Association (IFPTE – Local 21). To be administered in accordance with District Policies and Procedures.

6. ASSOCIATED FORMS & PROCEDURES

DOCUMENT TITLE/ID #	DOCUMENT LOCATION(S)
California Sexual Harassment Brochure DFEH-185	Ethics & Inclusion Intranet Page
Policy Complaint Form	Ethics & Inclusion Intranet Page

7. DEFINITIONS

**Abusive Conduct** - Malicious conduct that a reasonable person would find hostile, offensive, and unrelated to Valley Water's legitimate business interests. Examples of abusive conduct include, but are not limited to, repeated infliction of verbal abuse, such as the use of malicious, derogatory remarks, insults, epithets, verbal or physical conduct that a reasonable person would find threatening, intimidating or humiliating, or the intentional sabotage or undermining of a person's work performance.

**Causal Connection** – An employee's involvement in protected activity must be a substantial motivating reason behind the prohibited retaliatory conduct.

**Complainant** – The person submitting an allegation, claim, concern or information to EEOP indicating a possible breach of Valley Water rules or policies.

**Discrimination** – Adverse employment actions related to hiring, promotions, assignments, performance management, and other terms and conditions of employment where membership in a Protected Category is a substantial motivating reason for the action.

**Employee** – Any individual appointed by the Board, Board Appointed Officer, or a designate, as a regular employee of Valley Water and for purposes of this policy includes temporary or intermittent workers.

**Hostile Work Environment** – Severe or pervasive actions, communications, or behavior that discriminate against a Protected Category such as age, religion, disability, or race. “Severe or pervasive” means conduct that alters the conditions of employment and creates, based on the totality of the circumstances, an abusive work environment.

**Investigative Findings** – Determinations made based on the preponderance of evidence found in the investigation. A preponderance of evidence means it is more likely than not that the allegation(s) did or did not occur.

**Exonerated** – Possible finding in an investigation that indicates that the alleged conduct or failure to act was found to be true; however, such conduct either was appropriate under the circumstances or was not found to constitute a violation of the applicable provisions of the rule and/or policy.

**Not Sustained** – Possible finding in an investigation which indicates that the alleged misconduct could neither be proved or disproved, given the existing evidence.

**Sustained** – Possible finding in an investigation which indicates that the alleged misconduct is found to have occurred, and, where applicable, to have violated an applicable rule and/or policy.

**Unfounded** – Possible finding in an investigation which indicates that the alleged misconduct revealed conclusively that the alleged act did not occur.

**Protected Categories** – race, color, national origin (including language use restrictions), ancestry, religion, religious creed (including religious dress and grooming practices), gender, sex (which includes pregnancy, childbirth, breastfeeding and medical conditions related to pregnancy, childbirth, or breastfeeding), citizenship status, disability (mental and physical, including HIV or AIDS), medical condition (cancer and genetic characteristics), genetic information, marital status, military and veteran status, political affiliation, sexual orientation, gender identity and gender expression, age (40 and over), political affiliation, parental status, the exercise of family care leave rights, the exercise of pregnancy disability leave, or the request, exercise, or need for reasonable accommodation.

**Prohibited Behavior** – Discrimination, harassment, sexual harassment, abusive conduct and/or retaliation all as defined herein.

**Sexual Harassment** – Sexual harassment prohibited by this policy includes any unwanted sexual advances, requests for sexual favors or visual, verbal, or physical conduct of a sexual nature when:

- Submission to such conduct is made a term or condition of employment; or submission to or rejection of such conduct is used as a basis for employment decisions affecting the individual; or
- Such conduct has the purpose or effect of unreasonable interference with an employee's work performance or creating an intimidating, hostile, or offensive working environment.

The following is a partial list of conduct that would be considered sexual harassment:

- Unwanted sexual advances or propositions;
- Offering employment benefits in exchange for sexual favors;
- Making or threatening retaliation after a negative response to sexual advances;
- Visual conduct such as leering, making sexual gestures, displaying offensive, derogatory, obscene, or sexually suggestive objects, e-mails, computer graphics or images, unwelcome notes or letters, photographs, cards, drawings, pictures, cartoons, calendars, or posters placed on walls, bulletin boards or elsewhere on Valley Water premises or circulated in the workplace;
- Verbal conduct such as making or using derogatory sexual comments, epithets, slurs, sexually explicit jokes, negative stereotyping, comments about an employee's body or dress;
- Verbal abuse of a sexual nature, graphic verbal commentary about an individual's body, sexually degrading words to describe an individual;
- Written communications of a sexual nature, including but not limited to, suggestive, or obscene letters, notes, or invitations distributed in hard copy, via computer or other means;
- Physical conduct such as assaults, impeding or blocking movements, and/or unwelcome physical contact.

Sexual harassment can occur between persons who identify as the same or different sex or gender.

### **Other Types of Harassment**

- Harassment on the basis of sex (which includes pregnancy, childbirth, breastfeeding and medical conditions related to pregnancy, childbirth or breastfeeding), race, religion, color, national origin (including language use restrictions), ancestry, religious creed (including religious dress and grooming practices), political affiliation, disability (mental and physical, including HIV or AIDS), medical conditions (cancer and genetic characteristics), genetic information, marital status, parental status, gender, age (40 and over), pregnancy, military and veteran status, sexual orientation, gender identity and gender expression, the exercise of family and medical care leave, the exercise of pregnancy disability leave, or the request, exercise, or need for reasonable accommodation is also prohibited.

Such prohibited harassment includes but is not limited to the following examples of offensive conduct:

- Verbal conduct such as threats, epithets, derogatory comments, or slurs.
- Threatening, intimidating, coercing, or otherwise interfering with the job performance of fellow employees or visitors.
- Visual conduct such as derogatory posters, photographs, cartoons, drawings, or gestures.
- Written communications containing statements that may be offensive to individuals in a protected group, such as racial or ethnics stereotypes or caricatures.
- Any logos or graphics worn by employees that reflect any form of violent, discriminatory, abusive, offensive, demeaning or otherwise unprofessional message.
- Physical conduct such as assault, unwanted touching or blocking of normal movement.
- Retaliation for making harassment reports or threatening to report harassment.

## 8. CHANGE HISTORY

DATE	REVISION	COMMENTS
8/1/2003	A	Incorporating Administration Policy to meet current ISO requirements of separating policy from process per W423D09 Administrative Policy Development, Update, Adoption and Removal Process.
11/22/2019	B	Updated to include Abusive Conduct, updated definitions, complaint procedure.

# Attachment 2

# **Governance Policies of the Board**

## **I. Governance Process**

# Governance Policies of the Board

I.	GOVERNANCE PROCESS	Page
GP-1	Global Governance Commitment.....	I-3
GP-2	Governing Style .....	I-4
GP-3	Board Job Description.....	I-6
GP-4	Governance Policy Review Process and Agenda Planning.....	I-8
GP-5	Chairperson’s Role .....	I-9
GP-6	Board Members’ Code of Conduct.....	I-12
GP-7	Values Statement .....	I-22
GP-8	Board Committee Principles .....	I-23
GP-9	Board Committee Structure .....	I-25
GP-10	Cost of Governance .....	I-26
GP-11	Inclusion, Equal Employment Opportunity, Discrimination/Harassment Prevention, and Diversity .....	I-31
GP-12	Conduct of Board Meetings .....	I-32

# Governance Policies of the Board

**Title:** Global Governance Commitment

**Category:** Governance Process

**Policy No. GP-1**

Adopted: October 19, 1999  
Chair: Larry Wilson

Latest Revision: July 28, 2014  
Chair: Tony Estremera

The Board of Directors revised and adopted this policy at its public meeting on the latest revision date.

The purpose of the Board, on behalf of the people of Santa Clara County, is to see to it that the District provides Silicon Valley safe, clean water for a healthy life, environment, and economy.

In pursuit of this purpose, consistent with the District Act, the Board of the District adopts policies to govern its own processes; delegate its power; communicate the District mission, general principles, and Ends; and to provide constraints on executive authority.



# Governance Policies of the Board

<b>Title: Governing Style</b>		
<b>Category: Governance Process</b>		
<b>Policy No. GP-2</b>	Adopted: June 15, 1999 Chair: Larry Wilson	Latest Revision: August 18, 2015 Chair: Gary Kremen
The Board of Directors revised and adopted this policy at its public meeting on the latest revision date.		

The Board will govern with an emphasis on (a) outward vision, (b) encouragement of diversity in viewpoints, (c) strategic leadership more than administrative detail, (d) clear distinction of Board and Board Appointed Officer (BAO), (e) collective rather than individual decisions, (f) future rather than past or present, and (g) pro-activity rather than reactivity.

Accordingly:

- 2.1. The Board will cultivate a sense of group responsibility. The Board will be responsible for excellence in governing. The Board will be the initiator of policy, not merely a reactor to initiatives. The Board may use the expertise of individual members to enhance the ability of the Board as a body, rather than to substitute the individual judgments for the Board's values.
- 2.2. The Board will direct, control, and inspire the organization through the careful establishment of broad written policies reflecting the Board's values and perspectives. The Board's major policy focus will be on the intended results, not on the administrative or programmatic means of attaining those effects.
- 2.3. The Board will further inform itself, individually and collectively, through extensive outreach to determine community wishes and through continuing education on issues relevant to the District.
- 2.4. The Board will enforce upon itself whatever discipline is needed to govern with excellence. Discipline will apply to matters such as attendance, preparation for meetings, policymaking principles, respect of roles, decorum and ensuring the continuance of governance capability.
  - 2.4.1. Board members may be excused from Board or Board Committee meetings, as defined:
    - Illness or incapacity
    - Illness or incapacity of an immediate family member
    - Jury duty
    - Observance of a religious holiday or ceremony
    - Vacation
    - Conducting District business

# Governance Policies of the Board

- 2.4.2. For all absences, the Board member shall notify the Clerk of the Board prior to the Board or Board Committee meeting in which they will be absent with the reason for the absence. The Clerk of the Board will subsequently notify the Chair of the absence and the reason.
- 2.4.3. In the event of an emergency, in which a Board member is unable to provide advance notification, after the Board or Board Committee meeting, notification will be provided to the Clerk of the Board within 30 days.
- 2.5. Continual Board development will include orientation of new Board members in the Board's governance process and periodic Board discussion of process improvement.
- 2.6. The Board will allow no officer, individual, or committee of the Board to hinder or be an excuse for not fulfilling its commitments.
- 2.7. The Board will monitor the Board's process and performance. Self-monitoring will include comparison of Board activity and discipline to policies in the Governance Process and Board-BAO Linkage categories.
  - 2.7.1. The Board will conduct a Board performance review by the end of March for the previous calendar year and will conduct a mid-year review of Board performance by the end of September.
- 2.8. While serving as a member of the Board of Directors, and for one year immediately following the end of the Board member's term of office, no Board member shall seek or accept compensated employment by the District.
- 2.9. The Board, by ordinance, will adopt regulations governing the activities of persons who lobby the District. Those regulations shall include provisions requiring registration of lobbyists, reporting requirements governing the activities of lobbyists and communications with Board members, and disclosure by Directors of contact with lobbyists prior to voting on matters related to the contact. This ordinance will be adopted no later than July 1, 2010. The list of registered lobbyists will be posted on the District website, for openness and transparency.

# Governance Policies of the Board

<b>Title: Board Job Description</b>		
<b>Category: Governance Process</b>		
<b>Policy No. GP-3</b>	Adopted: June 15, 1999 Chair: Larry Wilson	Latest Revision: April 27, 2021 Chair: Tony Estremera
The Board of Directors revised and adopted this policy at its public meeting on the latest revision date.		

Specific job outputs of the Board, as an informed agent of the ownership, are those that ensure appropriate organizational performance.

Accordingly:

- 3.1. The Board will produce the link between the District and the public.
- 3.2. The Board will produce written governing policies which, at the broadest levels, address each category of organizational decision.
  - 3.2.1. Governance Process: Policies that specify how the Board conceives, carries out, and monitors its own task.
  - 3.2.2. Board Appointed Officer Linkage: Policies that define how power is delegated and its proper use monitored; for the Chief Executive Officer (CEO), District Counsel (DC), and Clerk of the Board (COB) roles, authority and accountability.
  - 3.2.3. Ends: Policies that define who is to benefit from the organization, in what way, or at what cost.
  - 3.2.4. Executive Limitations: Policies that constrain the BAO's authority in choosing the organizational means.
- 3.3. The Board will produce assurance of BAO performance.
- 3.4. In June of each year the Board will approve BAO compensation and benefit decisions at a public meeting and will enact such decisions by Board resolution.
  - 3.4.1. To ensure there are no compaction issues with unclassified staff compensation, the Board will adjust the BAOs' compensation scale at the same time the Board adopts the Classified Employees and Unrepresented Employees Salary Structure.

# Governance Policies of the Board

3.4.2 Annually, BAO compensation will be determined using a two-step performance evaluation process that considers job accomplishments, monitoring reports, other information, including the financial health of the District, and other methods deemed appropriate by the Board.

3.4.2.1 The Board will use the following scale to document the BAOs' fiscal year performance (Step 1):

**Step 1. Evaluate BAOs' performance using the following scale:**

Performance Level 1: Sustained outstanding performance  
Performance Level 2: Performance usually exceeds expectations  
Performance Level 3: Performance expected at full professional level  
Performance Level 4: Usually meets expectations-improvements needed  
Performance Level 5: Significant improvement required  
Performance Level 6: Unsatisfactory

3.4.2.2 BAOs' compensation for the following fiscal year will be determined according to their individual performances levels as shown below (Step 2):

**Step 2. Match compensation with performance level:**

Performance Level 1: High point of compensation scale plus one-time extra performance pay  
Performance Level 2: High point of compensation scale  
Performance Level 3: Between Mid-point and High point of compensation scale  
Performance Level 4: Mid-point of compensation scale  
Performance Level 5: Low point of compensation scale  
Performance Level 6: Employment termination consideration

3.4.3. In determining BAO compensation and benefits, the Board may consider data from Board authorized studies of other similarly situated employees in relevant industry comparator agencies.

3.4.4 This Governance Policy Section (GP-3.4) is not applicable when recruiting new BAOs.

3.5. The Board will approve or deny nominations to name or rename District-owned land, facilities, and amenities in accordance with the Naming of District-Owned Land, Facilities, and Amenities procedure.

# Governance Policies of the Board

**Title:** Governance Policy Review Process and Agenda Planning

**Category:** Governance Process

**Policy No. GP-4**

Adopted: June 15, 1999  
Chair: Larry Wilson

Latest Revision: August 18, 2015  
Chair: Gary Kremen

The Board of Directors revised and adopted this policy at its public meeting on the latest revision date.

To govern consistent with Board policies, the Board will:

- 4.1. Conduct an annual review of the Board Governance Policies and adopt new or revised policies by the end of September.
- 4.2. Adopt a Board Policy Planning Calendar for the upcoming fiscal year by the end of June and conduct a mid-year review of the Board Policy Planning Calendar by the end of December, and other reviews when determined necessary by the Board.
  - 4.2.1. The Board's Policy Planning Calendar will include regular and special Board meetings and Board work study sessions, as necessary, to provide the Board with information and education needed to perform its job of linkage with community, setting policies and monitoring organization performance, and engaging with its Advisory Committees.
  - 4.2.2. Examples of items on the Board's Policy Planning Calendar are upcoming fiscal year's budget planning agenda items.
  - 4.2.3. Board's Policy Planning Calendar is intended to be a living document for the designated fiscal year and will be updated regularly.
- 4.3. At the same time and place designated in the public notice for budget review, the Board shall review its financial reserves, including the justification, therefore, and an overview of its reserve management policy. The Board shall receive comments thereon from the public before acting on the budget.

# Governance Policies of the Board

<b>Title: Chairperson’s Role</b>		
<b>Category: Governance Process</b>		
<b>Policy No. GP-5</b>	Adopted: September 7, 1999 Chair: Larry Wilson	Latest Revision: February 22, 2022 Chair: Gary Kremen
The Board of Directors revised and adopted this policy at its public meeting on the latest revision date.		

The Chairperson assures the integrity of the Board’s process and represents the Board to outside parties.

Accordingly:

- 5.1. The job result of the Chairperson is that the Board behaves consistently with its own policies and those legitimately imposed upon it from outside the organization.
  - 5.1.1. Board meeting discussion content will be only those issues which, according to Board policy, clearly belong to the Board to decide, not the BAOs.
  - 5.1.2. Board deliberation will be fair, open, and thorough, but also timely, orderly, and kept to the point.
- 5.2. The authority of the Chairperson consists in making decisions that fall within topics covered by Board policies on Governance Process and Board Appointed Officer Linkage, with the exception of (a) employment or termination of a BAO and (b) where the Board specifically delegates portions of this authority to others. The Chairperson is authorized to use any reasonable interpretation of the provisions in these policies.
  - 5.2.1. The Chairperson is empowered to chair Board meetings with all the commonly accepted power of that position (e.g., ruling, recognizing).
  - 5.2.2. The Chairperson is empowered to modify previously approved Board Standing Committee work plans and agendas in the event returning to the Board would delay distribution of Standing Committee meeting materials.
  - 5.2.3. The Chairperson has no authority to make decisions about policies created by the Board within Ends and Executive Limitations policy areas. Therefore, the Chairperson has no authority to supervise or direct the BAOs.
  - 5.2.4. The Chairperson may represent the Board to outside parties in announcing Board-stated positions and in stating Chair decisions and interpretations within the area delegated to her or him.

# Governance Policies of the Board

- 5.2.5. The Chairperson may delegate this authority but remains accountable for its use.
- 5.2.6. The Chairperson will determine, in concert with the CEO as necessary, whether to place on an agenda consideration of documents of support or recognition (e.g., resolutions, commendations, certificates of appreciation, etc.) for individuals, organizations or efforts in the community by evaluating whether the individual, organization or effort has a clear nexus to issues relevant to the District.
  - 5.2.6.1. A Board member may, at his or her discretion, request the CEO to prepare for the Board member's signature a Certificate of Appreciation for an individual, organization, or effort. The Chair may also sign the certificate.
  - 5.2.6.2. No more than three Board members may sign one of the above-mentioned documents, unless the action was approved by the Board at a Board meeting.
  - 5.2.6.3. Should there be disagreement between the Chair and a Board member over a request for placement of any of the above-mentioned documents on an agenda, the Board member may request that the matter be placed on the next available Board agenda for consideration.
- 5.2.7. The Chair may add agenda items to agendas.
- 5.2.8. The Chair may execute documents on behalf of the Board using electronic and/or digital signatures (such as DocuSign) as allowed by law in lieu of handwritten signatures, including the following Board-approved documents:

- Agreements
- Agreement Amendments
- Contracts
- Resolutions (excluding Resolutions of Appreciation) Ordinances
- Board Meeting Minutes
- Letters

- 5.3. The Board of Directors elects both the Chairperson (Chair) and Vice Chairperson (Vice Chair) of the Board. The Chair and Vice Chair each serve 1-year terms beginning at the first Board meeting in January of each year.

Accordingly:

- 5.3.1. Beginning in the calendar year 2012, the positions of Chair and Vice Chair shall rotate from member to member in numerical order continuing from the 2010 rotation: the District 4 Director

# Governance Policies of the Board

would be Chair and District 5 Director would be Vice Chair; the Vice Chair follows the Chair in sequence.

5.3.2. Any Board member may, at his/her discretion, and on a one-time basis, postpone, by one year, the acceptance of either the Chair or Vice Chair office by “swapping” with the Director immediately following him/her on the list of succession.

5.3.2.1. Provided, however, that newly-elected or appointed Board members will postpone, by one year, the acceptance of the Chair office by “swapping” with the Director immediately following him/her on the list of succession.

5.3.3. Any Board member may, at his/her discretion, decline to serve as Chair or Vice Chair. In the event the Board member declines to serve, that District shall be skipped and the next District Board member shall serve in their stead.

5.3.4. The Clerk of the Board shall maintain the list of Board member service as Chair or Vice Chair.



# Governance Policies of the Board

**Title:** Board Members' Code of Conduct

**Category:** Governance Process

**Policy No. GP-6**

Adopted: June 15, 1999  
Chair: Larry Wilson

Latest Revision: July 28, 2020  
Chair: Nai Hsueh

The Board of Directors revised and adopted this policy at its public meeting on the latest revision date.

The Board commits itself and its members to ethical, business-like, and lawful conduct, including proper use of authority and appropriate decorum when acting as Board members.

Board members who do not adhere to this code of conduct may be subject to the procedures of GP-6.7 through GP-6.9 listed below.

- 6.1. Members must have loyalty to the District and community and not be conflicted by loyalties to staff, other organizations or any personal interest.
- 6.2. Members must avoid conflict of interest with respect to their fiduciary responsibility and are obligated by virtue of their office to discharge their responsibilities with integrity and fidelity and are prohibited from placing themselves in a position where their private, personal interest may conflict with their official duties.
- 6.3. Board members may not attempt to exercise individual authority over the organization.
  - 6.3.1. Members' interaction with the BAOs or with staff must recognize the lack of authority vested in individual members except when explicitly Board authorized. Board members shall refrain from abusive conduct, personal charges or verbal assaults upon the character or motives of other members of the Board, committees, commissions, staff and the public. Board members shall support the maintenance of a positive and constructive environment for District employees.
  - 6.3.2. Members' interaction with public, press or other entities must recognize the same limitation and the inability of any Board member to speak for the Board except to repeat explicitly stated Board decisions.
  - 6.3.3. No member shall contact staff on behalf of a party who is bidding or intends to bid on a District contract or who has or intends to submit a response to a request for proposals or request for qualifications, nor shall a Director inquire about the identity of bidders or proposers prior to the time that staff has made a recommendation for selection of a contractor, vendor, or consultant. Members are not prohibited from making general inquiries about the status of a particular procurement, or from providing a member of the public with information about the appropriate staff contact concerning procurement of goods and services by the District.

# Governance Policies of the Board

6.3.4. After issuance of a request for goods or services, Board members are prohibited from communicating with any current or potential vendor, supplier, contractor, or consultant, except as described in this paragraph, until after issuance by the Chief Executive Officer or his/her designee of a decision on any protest relating to the request for goods or services or resultant contract award. Any communications during this period shall be limited to matters unrelated to the request for goods or services or the contract award. Whenever the member has communicated during the aforementioned period with any current or potential vendor, supplier, contractor, or consultant in violation of these restrictions, the name of the party, the date, and the content of the communications shall be disclosed at the next board meeting after the communication and noted in the minutes.

6.4. Members will respect the confidentiality appropriate to issues of a sensitive nature.

6.4.1. No member shall violate the confidentiality of closed session discussion.

6.5. Members will be properly prepared for Board deliberation.

6.6. The Board may not authorize severance pay for a Board-appointed employee of the District when the employee voluntarily separates from District employment. "Severance pay" does not include any otherwise lawful payment required to be paid by the District under a pre-existing employment agreement or under a separation and release agreement resolving a claim or claims made or threatened against the District. The Board shall not agree to amend an employment contract after the employee announces or requests a voluntary separation, except upon a Board determination, in open session, that an adjustment in compensation is required to retain the employee and is in the best interest of the District.

6.7. This policy applies to the Santa Clara Valley Water District Board of Directors and the following procedures shall be followed when any member of the Board of Directors reasonably believes that another member of the Board has engaged in misconduct or has failed to act in the best interests of the District. The procedures shall not be effective in any case in which a non-board member seeks redress for alleged misconduct by a Board member. While the Board has discretion in deciding the actions it may choose to take in response to a complaint, this policy provides definitions and procedures related to three types of actions: admonition, sanction and censure.

6.7.1. Admonition

Admonition is the least severe form of action. An admonition may typically be directed to all members of the Board, reminding them that a particular type of behavior is not in the best interests of the District, and that, if it occurs or is found to have occurred, could make the member subject to sanction or censure. An admonition may be issued in response to a

# Governance Policies of the Board

particular alleged action or actions, although it would not necessarily have to be triggered by a complaint of misconduct. An admonition may be issued by the Board prior to any findings of fact regarding any complaint, and because it is a warning or reminder, would not necessarily require an investigation or separate public hearing to determine whether a complaint is true.

## 6.7.2. Sanction

Sanction is the next most severe form of action. Sanction should be directed to a particular member of the Board based on a particular action (or set of actions) that is determined to be misconduct but is considered by the Board not to be sufficiently serious to require censure. A sanction is distinguished from censure in that it does not constitute punishment. A written sanction may be based upon the Board's review and consideration of a written complaint. The member accused of such misconduct will have an opportunity to provide a written response to the complaint. A sanction may be issued by the Board, and because it is not punishment or discipline, it would not necessarily require an investigation or separate public hearing.

## 6.7.3. Censure

Censure is the most severe form of action in this policy. Censure is a formal statement of the Board officially reprimanding one of its members. It is a punitive action, which serves as a penalty imposed for misconduct, but it carries no fine or suspension of the rights of the member as an elected official. Censure should be used for cases in which the Board determines that the misconduct is a serious offense. In order to protect the overriding principle of freedom of speech, the Board shall not impose censure on any of its members for the exercise of his or her First Amendment rights, no matter how distasteful the expression was to the Board or the District. However, nothing herein shall be construed to prohibit the Board from collectively condemning and expressing their strong disapprobation of such remarks.

## 6.7.4. Referral to District Attorney

At any point during any of the processes hereinafter described, the Board may refer the matter, as appropriate, to the Santa Clara County District Attorney for investigation. Prior to or following such referral, the Board may proceed with any of the actions described in this policy.

## 6.8. Available Procedures for addressing Misconduct

There are four separate methods for the Board to address Board member misconduct under this Policy: (1) written complaint; (2) request for admonition; (3) request for sanction; and (4) request for censure. Written complaints that specifically seek admonition, sanction, or censure as a specific remedy shall be treated as a request for that remedy (admonition, sanction, or censure), and the provisions of sections GP-6.9 and GP-6.10 shall not apply.

# Governance Policies of the Board

## 6.9. Written Complaints

In the event a Board member reasonably believes another Board member has failed to act in the best interests of the District resulting in misconduct, a written complaint shall be submitted to the Chief People Officer. Upon receipt, the Chief People Officer, Human Resources Division shall transmit the complaint to the District Counsel for review. The District Counsel shall review complaints to determine whether there is a sufficient basis for further action.

6.9.1. If a complaint fails to articulate a sufficient basis for further consideration, the complainant and the accused Board member will be so advised by the District Counsel, and the matter shall be deemed concluded.

6.9.2. If a complaint adequately articulates a sufficient basis for further action, the District Counsel shall present the complaint to the Board Ethics and Conduct Ad Hoc Committee (the "Committee"), which shall be comprised of the Chair and two members of the Board. In the event the subject of a complaint is the Chair or any member of the Committee, the Board shall select another Board member to serve on the Committee in that member's stead. The District Counsel may recommend to the Committee that:

6.9.2.1. Fact finding as to the complaint should be conducted; or

6.9.2.2. Informal resolution of the complaint should occur; or

6.9.2.3. An independent investigation of the complaint should occur.

6.10. Prior to any determination by the Committee to proceed with an investigation, the accused Board member must be given a reasonable opportunity to meet with the Committee or to provide a written response to the complaint. In deciding whether or not to open an investigation, the Committee should consider:

6.10.1. Whether an investigation may compromise investigations regarding the same alleged misconduct, whether the misconduct may result in criminal charges, and whether the right of the accused Board member to a fair jury trial may be compromised by proceeding with an investigation.

6.10.2. Whether persons involved in the allegations may choose to exercise their constitutional right against self-incrimination, which may limit the investigation's ability to present a full and impartial picture of alleged events.

# Governance Policies of the Board

6.10.3. Whether measures can be taken to protect the rights of the member accused of misconduct, the member making such allegations, and those who have information regarding the allegations.

## 6.11. Investigations

6.11.1. If the Committee determines that an investigation is warranted, upon notification of the Board, District Counsel may be directed to conduct the investigation. District Counsel may select and manage an independent investigator to assist in conducting the investigation.

6.11.2. In the course of the investigation, District Counsel shall determine the process by which statements are taken. District Counsel may allow witnesses to choose to provide a signed declaration under penalty of perjury attesting to their knowledge of the facts surrounding the complaint.

6.11.3. At the conclusion of the investigation, the results of the investigation shall be presented in writing to the Committee and CEO. If the Committee is satisfied with the completeness of the investigation, it shall provide the Board with its findings and any recommendations. Following such findings and recommendations, any individual Board member may file a request for admonition, sanction, or censure.

6.11.4. If the Committee determines that an investigation is not warranted, the complainant and the Board shall be notified. Following such notification, any Board member may file a request for admonition, sanction, or censure.

6.11.5. Should any Board member file a request for admonition, sanction, or censure following investigation, the Committee shall submit to the Board a recommendation as set forth in sections GP-6.12.2, GP-6.13.2, or GP-6.14.2, below, and the matter shall thereafter be considered by the Board at its next public meeting subject to the restrictions of section GP-6.14.5, below.

## 6.12. Request for Admonition

6.12.1. Any Board member may make a written request for an admonition which must be submitted to the Committee. The request must contain specific language descriptive of the alleged misconduct and the reason(s) admonition is appropriate. A copy of the request for admonition shall be provided to the Board member accused of the misconduct.

6.12.2. The Committee shall review the request and submit it to the Board with a recommendation. The Committee's recommendation shall provide:

# Governance Policies of the Board

6.12.2.1. Admonition is warranted; or

6.12.2.2. Admonition is not warranted; or

6.12.2.3. No further action is required.

6.12.3. A recommendation by a majority of the Committee shall be based on the Committee's review of the written record.

6.12.4. An admonition can be approved by a majority of the Board.

## 6.13. Request for Sanction

6.13.1. Any Board member may make a written request for sanction which must be submitted to the Committee. The request must contain specific language descriptive of the alleged misconduct and the reason(s) sanction is appropriate. A copy of the request for sanction shall be provided to the Board member accused of the misconduct by personal service within five (5) business days from the date the Committee receives the request. The time for service shall be tolled if the Board member is unavailable for service.

6.13.2. The Committee shall review the request and determine if an investigation is warranted. Following the investigation, or if no investigation was undertaken, following review of the request, the Committee shall submit the request to the Board with a recommendation. The Committee's recommendation shall provide:

6.13.2.1. Admonition, rather than sanction is warranted; or

6.13.2.2. Sanction is warranted; or

6.13.2.3. No further action is warranted.

6.13.3. A recommendation by a majority of the Committee shall be based on the Committee's review of the written record.

6.13.4. The Committee's recommendation shall be subject to a majority vote of the Board.

## 6.14. Request for Censure

6.14.1. Any Board member may make a written request for a censure which must be submitted to the Committee. The request must contain specific language descriptive of the alleged misconduct and the reason(s) censure is appropriate. A copy of the request for censure shall be served

# Governance Policies of the Board

on the Board member accused of the misconduct by personal service within five (5) business days from the date the Committee receives the written request. The time for service shall be tolled if the Board member is unavailable for service.

- 6.14.2. The Committee shall review the request and submit the request to the Board with a recommendation. The Committee's recommendation shall provide:
  - 6.14.2.1. Further investigation of the request for censure is required; or
  - 6.14.2.2. Admonition or sanction is warranted; or
  - 6.14.2.3. The request for censure should be set for a separate Board public hearing; or
  - 6.14.2.4. No further action is required.
- 6.14.3. A recommendation by a majority of the Committee shall be based on the Committee's review of the written record.
- 6.14.4. If the Board determines that further investigation is required, the Board shall direct the Committee to lead the investigation which may be assisted by the CEO and District Counsel. The following guidelines apply to such an investigation:
  - 6.14.4.1. The Committee may be assisted by a separate independent investigator.
  - 6.14.4.2. Upon completion of the investigation, the Committee should determine if taking all the facts and evidence into consideration, there are reasonable grounds to believe or not believe that the misconduct occurred.
  - 6.14.4.3. The Committee shall issue to the Board a final a report and recommendation as approved by a majority of the Committee. The Committee's final report shall be made available to the public.
- 6.14.5. If a separate Board public hearing is required, it must be scheduled far enough in advance to provide the Board member subject to the charges adequate time to prepare a defense, and that Board member shall be given the opportunity to make an opening and closing statement and to question his or her accusers. The Board member subject to the charges may be represented and may have the representative speak or question on his/her behalf. The Chair or Vice Chair, if the Chair is the subject of the charges, shall preside at the public hearing. The rules of evidence shall not apply to the hearing of the matter, which is not a formal adversarial proceeding. If the District Counsel has assisted Board members in the

# Governance Policies of the Board

investigation, independent legal counsel shall provide legal advice to the Board during the hearing of the matter.

6.14.6. A decision to censure requires the adoption of a resolution making findings with respect to the specific charges, based on substantial evidence and approved by a two-thirds vote of Board.

## 6.15. Complaints from non-Board members

This policy applies to the Santa Clara Valley Water District Board of Directors and the following procedure shall be followed when a non-Board member files a written complaint stating his/her reasonable belief that a member of the Board has acted or failed to act in the best interests of the District resulting in misconduct. While the Board has discretion in deciding the actions it may choose to take in response to such a complaint, this policy provides definitions and procedures related to three types of actions: admonition, sanction and censure as defined in sections GP-6.7.1, GP-6.7.2., and GP-6.7.3, of this policy.

6.16. At any point during any of the processes hereinafter described, the Board may refer the matter as appropriate to the Santa Clara County District Attorney for investigation. Following such referral, the Board may proceed with any of the actions described in this policy.

6.17. This policy applies to the Santa Clara Valley Water District Board of Directors and the following procedures shall be followed when a non-Board member reasonably believes that a member of the Board has acted or failed to act in the best interests of the District resulting in misconduct. A written complaint signed by the complainant shall be filed with the Chief People Officer, Human Resources Division. Upon receipt, the Chief People Officer shall transmit the complaint to the Chief Executive Officer (CEO) and the District Counsel for review. The CEO and District Counsel shall review the complaint to determine whether there is a sufficient basis for further action.

6.17.1. If a complaint fails to articulate a sufficient basis for further consideration, the complainant and the accused Board member will be so advised and the matter shall be deemed concluded.

6.17.2. If a complaint adequately articulates a sufficient basis for further action, the CEO and District Counsel shall present the complaint to the Chair of the Board. In the event the subject of the complaint is the Chair, the Vice Chair shall be presented with the complaint. The CEO and District Counsel may recommend to the Chair or Vice Chair that:

6.17.2.1. Fact finding as to the complaint should be conducted; or

6.17.2.2. Informal resolution of the complaint should occur; or

6.17.2.3. An independent investigation of the complaint should occur.



# Governance Policies of the Board

- 6.18. Prior to the determination by the Chair or Vice Chair to proceed with an investigation, the accused Board member must be given a reasonable opportunity to meet with the Chair or Vice Chair or to provide a written response to the complaint. In deciding whether or not to open an investigation, the Chair or Vice Chair should consider:
- 6.18.1. Whether an investigation may compromise investigations regarding the same alleged misconduct and if the misconduct may result in criminal charges, whether the right of the accused Board member to a fair jury trial may be compromised by proceeding with an investigation.
  - 6.18.2. If persons involved in the allegation may choose to exercise their constitutional right against self-incrimination, which may limit the investigation's ability to present a full and impartial picture of the alleged events.
  - 6.18.3. Measures to protect the rights of the member accused of misconduct, the non-Board member making such allegations, and those who have information regarding the allegations.
- 6.19. Investigations
- 6.19.1. If the Chair or Vice Chair determines that an investigation is warranted, upon notification of the Board, District Counsel may be directed to conduct an investigation, and District Counsel may select and manage an independent investigator to assist in conducting such investigation.  
  
Alternatively, at the discretion of the Chair or Vice Chair, the Board's Ethics and Conduct Ad Hoc Committee (as described in Section 6.9.2 of the Board's Governance Policies) shall select an independent investigator to conduct the investigation.
  - 6.19.2. In the course of the investigation, District Counsel shall determine the process by which statements are taken. A witness may choose to provide a signed declaration under penalty of perjury attesting to his/her knowledge of the facts surrounding the complaint. Within ninety (90) days of the date an investigation begins, District Counsel shall inform the Board of the investigation's progress. Investigations should be completed within six (6) months from the date the investigation begins; however, in the event the investigation cannot be completed within the six (6) month time period, District Counsel shall so notify the Board.
  - 6.19.3. At the conclusion of the investigation, the results of the investigation shall be presented in writing to the Chair or Vice Chair. If the Chair or Vice Chair is satisfied with the completeness of the investigation, the Chair or Vice Chair shall provide the Board with findings and any recommendations. Following such findings and recommendation, any individual Board member may file a request for admonition, sanction, or censure.

# Governance Policies of the Board

- 6.19.4. If the Chair or Vice Chair determines that an investigation is not warranted, the complainant and the Board shall be notified. Following such notification, any Board member may file a request for admonition, sanction, or censure as set forth in sections GP-6.12, GP-6.13, or GP-6.14 of this policy, save and except that whenever the term “Committee” appears therein, the term “Chair” or “Vice Chair” shall be applicable.
- 6.19.5. Should any Board member file a request for admonition, sanction, or censure following the Chair or Vice Chair’s findings and recommendations or determination that an investigation is not warranted as set forth in sections GP-6.19.1 through GP-6.19.4 above, the matter shall thereafter be considered by the Board at its next public meeting subject to the restrictions of section GP-6.14.5, above.

# Governance Policies of the Board

**Title:** Values Statement  
**Category:** Governance Process

<b>Policy No. GP-7</b>	Adopted: June 15, 1999 Chair: Larry Wilson	Latest Revision: August 8, 2017 Chair: John L. Varela
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The Board of Directors revised and adopted this policy at its public meeting on the latest revision date.

The values of the Board reflected throughout Board policies are as follows:

The Santa Clara Valley Water District believes, and will exemplify, the following values:

- 7.1. The District is entrusted to serve the public by carrying out its mission for the benefit of the community.
- 7.2. The District is committed to providing excellent service to all customers.
- 7.3. All individuals are unique and important and will be treated with fairness, dignity, and respect.
- 7.4. The District takes pride in its work and is accountable to carry out its responsibilities safely with honesty and integrity.
- 7.5. Initiative, leadership, personal development, and training are vital for continuous improvement.
- 7.6. Open communication, cooperation, and teamwork are shared responsibilities and essential to the successful performance of District work.
- 7.7. The District is committed to creating an inclusive work environment, which reflects and supports the diversity of the community and enriches our perspectives.
- 7.8. The District strives to support a work culture and workplace environment that attracts and retains superior employees empowered to make decisions about, and take responsibility for, how they do their jobs.
- 7.9. The District is committed to its employees and supports market based competitive compensation that is equitable and rewards accomplishment and encourages high performance.
- 7.10. This District is committed to sustaining a healthy work-life balance for its employees and places a high value on all the things that provide enrichment and fulfillment, including work and career, health and fitness, family and relationships, spirituality, community service, hobbies and passions, intellectual stimulation, rest and recreation.

# Governance Policies of the Board

**Title:** Board Committee Principles

**Category:** Governance Process

**Policy No. GP-8**

Adopted: June 15, 1999  
Chair: Larry Wilson

Latest Revision: July 28, 2014  
Chair: Tony Estremera

The Board of Directors revised and adopted this policy at its public meeting on the latest revision date.

The District Act provides for the creation of advisory boards, committees, or commissions by resolution to assist the Board in performing its job, as defined.

Accordingly, the Board may establish the following type of Board Committees to assist it with policy advice, District Mission implementation, respective expertise, and, very importantly, to help produce the link between the District and the community:

**Board Standing Committee** – A Committee created by ordinance, resolution, or formal action of the Board comprised of less than a quorum of the Board and/or external members having continuing subject matter jurisdiction or a meeting schedule fixed by ordinance, resolution, or formal action. Annually, the purpose of an established Standing Committee will be reviewed to determine its relevance.

**Board Ad Hoc Committee** – A Committee comprised of less than a quorum of the Board and/or external members having a limited term, to accomplish a specific task, is established in accordance with the Board Ad Hoc Committee procedure (Procedure No. W723S01), and will be used sparingly. Annually, the purpose of an established Ad Hoc Committee will be reviewed to determine its relevance.

In keeping with the Board’s broader focus, Board Committees will not direct the implementation of District programs and projects, other than to receive information and provide advice and comment.

Accordingly:

- 8.1. When used, Board Standing Committees and Board Ad Hoc Committees will be established so as to reinforce the wholeness of the Board’s job and so as to never interfere with delegation from the Board to the BAOs.
  - 8.1.1. Board Standing Committees and Board Ad Hoc Committees are established for a specific purpose as defined by the Board. The committees’ purpose may also include a definition in authority and limitation in duration. Expectations and authority will be carefully stated in order not to conflict with authority delegated to the BAOs.
  - 8.1.2. Board Standing Committees and Board Ad Hoc Committees will communicate directly with the Board and will not exercise authority over employees. Therefore, because the BAOs work for

# Governance Policies of the Board

the full Board, they will not be required to obtain approval of a Board Standing Committees or Board Ad Hoc Committee before an executive action.

- 8.2. This policy applies to any group which is formed by Board action, whether or not it is called a committee and regardless of whether the group includes Board members. It does not apply to committees formed under the authority of the BAOs.
- 8.3. Board Committees will conduct their meetings in accordance with the provisions of the Brown Act (Open Meetings Law), even when the Brown Act would not otherwise apply to the committee due to its nature, function, or duration. If an exception of this policy is deemed to be in the best interest of the District, the reason for the exception will be identified at the time the Board or Chair creates the committee.
- 8.4. On an annual basis, the Board of Directors will review the structures, functions, and purposes of the Board Committees to ensure that the Board's needs are being met.

# Governance Policies of the Board

<b>Title: Board Committee Structure</b>		
<b>Category: Governance Process</b>		
<b>Policy No. GP-9</b>	Adopted: June 15, 1999 Chair: Larry Wilson	Latest Revision: December 10, 2019 Chair: Linda J. LeZotte
The Board of Directors revised and adopted this policy at its public meeting on the latest revision date.		

Nominations of Board members to committees shall be made by the Chair subject to approval by the Board, subject to annual review.

9.1. Board Committees:

9.1.1. A committee is a Board committee only if its existence and charge come from the Board, regardless whether Board members sit on the committee. Unless otherwise stated, a committee ceases to exist as soon as its task is complete.

9.2. Board Members Representation on Board Standing and Ad Hoc Committees:

9.2.1. Board members who are not the appointed representatives to Board Standing or Ad Hoc Committees shall be permitted to attend open noticed meetings of such committees only as observers to watch and listen, and not participate in discussion, ask questions or make statements. The non-appointed Board member(s) must observe the meeting from the area designated for members of the public. During the course of the meeting, appointed representatives of Board Standing or Ad Hoc Committees shall not speak to or otherwise engage with non-appointed Board members attending the meeting as observers.

9.3. Board Members Representation on External Committees:

9.3.1. Board members serving on external committees or other governing bodies shall serve in the best interest of the District unless otherwise required by statute, ordinance, resolution or other legislative action.

9.3.2. Board members shall serve on appointed committees to maintain effective relationships.

# Governance Policies of the Board

**Title:** Cost of Governance  
**Category:** Governance Process

<b>Policy No. GP-10</b>	Adopted: September 28, 1999 Chair: Larry Wilson	Latest Revision: January 8, 2019 Chair: Linda J. LeZotte
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The Board of Directors revised and adopted this policy at its public meeting on the latest revision date.

The Board will invest in its governance capacity.

Accordingly:

- 10.1. Board skills, methods, and supports will be sufficient to assure governing with excellence.
  - 10.1.1. Training and education will be used by Board members to maintain and increase governance skills and understanding.
  - 10.1.2. Outside monitoring assistance will be arranged so that the Board can exercise confident control over organizational performance. This includes, but is not limited to, fiscal audit.
  - 10.1.3. Outreach mechanisms will be used as needed to ensure the Board's ability to listen to public viewpoints and values.
- 10.2. Adequate funds will be proposed by the COB and budgeted annually by the CEO for support of the Board.
- 10.3. Board members will prepare and submit Director's Expense Claim Forms to request per diem and expense reimbursement in accordance with this policy. Board members will include receipts and any other information necessary to demonstrate that reimbursement is consistent with this policy and with Ch. 700, Stats. 2005 (AB 1234). Expense claims must be submitted within a reasonable time after the expense is incurred.
- 10.4. Board members will briefly report on meetings attended at District expense at the next regular Board meeting following the event at which the member is in attendance. On a quarterly basis, a report of the per diem and expense reimbursements of each Board member shall be placed on an open session Board meeting agenda for review and a determination by the Board whether the reimbursements comply with the Board's reimbursement policies adopted pursuant to Section 53232.3 of the Government Code. Only expenses in compliance with those policies may be reimbursed by the District. Directors Quarterly Expense Reimbursement Reports will be placed on the Directors District web page for public viewing.

# Governance Policies of the Board

- 10.5 Adequate liability insurance will be provided by the CEO at all times for Board members.
- 10.6. It is the policy of the Board that each Board member attend such meetings, events, conferences, and training as each Board member determines will best enable them to serve the District, including such compensation per day and reimbursement for actual and necessary expenses as may be allowed by law and as authorized by this policy. Board members may only receive compensation for one meeting, per day, regardless of the number of meetings attended.

## 10.6.1. Per Diem Meetings, Events, and Activities Compensation

After annually making a finding based on substantial evidence that there is an operational need for Board members to be paid for more than 10 meetings in a calendar month, Board members are eligible to receive compensation per day, up to 15 days per calendar month, in accordance with Section 33(c) of the Santa Clara Valley Water District Act, for the meetings, events, and activities listed below, all of which are hereby deemed by the Board to constitute the performance of official duties. For the purpose of making a finding, substantial evidence shall include, but is not limited to, such things as the number of meetings in the prior year that were qualified for compensation pursuant to this policy, and how many and how frequently committee meetings of the Board of Directors occur.

- 10.6.1.1. Regular and Special Meetings of the Board of Directors.
- 10.6.1.2. Regular and Special Meetings of any Standing or Ad Hoc committee of the Board of Directors in accordance with Governance Process Policy 9.2.1, when the attending member is a member of the committee.
- 10.6.1.3. Regular and Special Meetings of any public entity legislative or advisory body of which the District is a member, or at which an agenda item related to the District's business is discussed.
- 10.6.1.4. Meetings with local, state, and federal legislators and/or officials to discuss matters of District concern.
- 10.6.1.5. Meetings of associations of governmental agencies, water policy organizations, and any other body of which the District is a member or which concerns water supply, flood protection, and/or natural resources.
- 10.6.1.6. Conferences and educational workshops open to the public and/or to public agencies such as the District or concern water supply, flood protection, and/or natural resources. Preference should be given to conferences and educational workshops in California in order to minimize out of state travel.



# Governance Policies of the Board

- 10.6.1.7. Community events sponsored by or featuring the District, or which concern water supply, flood protection, and/or natural resources, or which concern the relationship of the District to the communities it serves.
  - 10.6.1.8. Community meetings at which District projects or programs are presented, featured, or discussed.
  - 10.6.1.9. Meetings with District employees and/or District constituents concerning District business.
  - 10.6.1.10. Media appearances to discuss District issues (including but not limited to interviews and editorial board meetings).
  - 10.6.1.11. Activities constituting direct Board inspection of District operations in accordance with Board-BAO Linkage Policy BL-5.
  - 10.6.1.12. Participation in and completion of an approved online ethics course to meet the requirements of Government Code Sections 53234-53235.5, which shall constitute a single meeting.
  - 10.6.1.13. Any other meeting, event, or activity approved in advance by the Board.
- 10.6.2. Per Diem Meetings, Events, and Activities Compensation Exclusions
- 10.6.2.1. No Board member shall be compensated for attendance at a community/business event as a guest of the District, where the District has purchased a seat or table at said event.
- 10.6.3. Per Diem Meetings, Events, and Activities Expense Reimbursements
- Board members are eligible for reimbursement for actual and necessary expenses incurred by the Board member for travel/transportation, meals, registration fees, lodging and incidental expenses reasonably incurred by the Board member in connection with meetings, events, and activities described in GP-10.6.1.
- 10.6.3.1. Travel reimbursement expenses will not exceed the government or group rate for airline, ground transportation, and rental cars where such rate is available. Air transportation will be economy/coach class. Reimbursement for rental cars will be at the midsize level, unless a group of District officials/personnel are traveling together and choose to use a larger vehicle to accommodate the

# Governance Policies of the Board

group. Shuttles, taxis, and car services are reimbursable in lieu of car rental. Board members wishing to upgrade flight or rental car class for personal convenience, or to combine personal with business travel thereby resulting in an increased fare, must pay the increased cost over the rates set forth in this policy.

- 10.6.3.2. Mileage reimbursement expenses for use of the Board member’s own vehicle will be at the rate established for District employees and in accordance with policies applicable to District employees.
- 10.6.3.3. Lodging reimbursement expenses will not exceed the government or group rate for lodging where such rate is available. Reimbursement for lodging at conferences and organized educational activities will not exceed the maximum group lodging rate published by the activity sponsor if that rate is available at time of booking. Board members wishing to upgrade rooms and/or hotels or to incur additional guest charges will not be reimbursed for the cost difference.
- 10.6.3.4. Meal reimbursement expenses will be provided up to \$60 per day (\$14 for breakfast, \$16 for lunch and \$30 for dinner) for Board members who provide receipts. In addition to the \$60 per day, Board members will be entitled to an additional \$15 per day, with receipts, when traveling to the cities identified by the US General Services Agency as “high cost of living areas” listed below. Board members who do not have receipts may be reimbursed up to \$39 (\$9 for breakfast, \$10 for lunch and \$20 for dinner) per day for meal expenses.

Los Angeles, CA	Boston, MA	New York City, NY
San Francisco, CA	Baltimore, MD	Cincinnati, OH
Denver, CO	Detroit, MI	Pittsburgh, PA
Washington, DC	St. Paul/Minneapolis, MN	Philadelphia, PA
Miami, FL	St. Louis, MO	Dallas, TX
Chicago, IL	Atlantic City, NJ	Arlington, VA
New Orleans, LA	Santa Fe, NM	Seattle, WA

- 10.6.3.5. Incidental expenses, including public transportation to/from airport; parking expenses; fuel for rental cars; tipping in accordance with policies applicable to District employees; expenses related to conducting District business while traveling (such as charges for phone, internet, or facsimile communication), will be reimbursed.

## 10.7. Business-Related Expense Reimbursements

# Governance Policies of the Board

Board members are eligible for reimbursement for actual and necessary expenses incurred by the Board member for the following business-related expenses: communication devices (cell phones/batteries/chargers), third party charge for internet/phone/fax lines and plans, office equipment and business cards.

10.7.1. Office equipment eligible for reimbursement under GP-10.7. includes:

- Fax/printers
- Fax/printer ink cartridges
- Individual office supplies (pens, day planners, etc);
- Personal digital assistant (PDA) equipment

10.8. Allocated Expense Reimbursements

Board members are eligible for reimbursement for office equipment, communication devices, supplies, publication subscriptions, membership dues, and educational materials utilized by the member for performance of Board duties, up to the amount identified in the Board Resolution Setting Annual Limit of Reimbursement of Directors' Annual and Necessary Expenses.

10.8.1. Publication subscriptions eligible for reimbursement under GP-10.8. include:

- Newspaper/ magazine subscriptions
- Periodicals

10.8.2. Membership dues eligible for reimbursement under GP-10.8. include:

- Organization and association memberships relevant to District business/mission (excludes professional memberships, certifications, licenses, etc)

10.8.3. Educational material eligible for reimbursement under GP-10.8. includes:

- Books, videos, DVDs, computer programs (used in course of District business)

10.8.4. Other expenses eligible for reimbursement under GP-10.8. include:

- Business meal overage reimbursement
- District apparel

10.9 Board member compensation and benefits settlement agreements are not confidential.

# Governance Policies of the Board

<b>Title:</b> Inclusion, Equal Employment Opportunity, Discrimination/Harassment Prevention, and Diversity		
<b>Category:</b> Governance Process		
<b>Policy No. GP-11</b>	Adopted: August 3, 1999 Chair: Larry Wilson	Latest Revision: July 28, 2014 Chair: Tony Estremera
The Board of Directors revised and adopted this policy at its public meeting on the latest revision date.		

The Board of Directors is committed to providing equal employment opportunity to all persons and to building a diverse work force that values diversity and inclusion.

The Board firmly believes that such a work force provides advantages both internally, in terms of the human resources potential offered by a variety of diverse perspectives, and externally, in increasing the District's ability to respond to the community we serve.

The Board understands that diversity is more than inclusion of racial or cultural groups, that valuing diversity involves respect for all persons, and that valuing diversity requires a positive change in the way we interact with each other and a change in our organizational culture.

Accordingly:

- 11.1. The Board and its members will not discriminate, harass, or allow harassment against any applicant, employee, customer, or other person on the basis of sex (which includes pregnancy, childbirth, breastfeeding and medical conditions related to pregnancy, childbirth or breastfeeding), race, religion, color, national origin (including language use restrictions), ancestry, religious creed (including religious dress and grooming practices, political affiliation, disability (mental and physical, including HIV or AIDS), medical condition (cancer and genetic characteristics), genetic information, marital status, parental status, gender, age (40 and over), pregnancy, military and veteran status, sexual orientation, gender identity and gender expression, the exercise of family and medical care leave, the exercise of pregnancy disability leave, or the request, exercise, or need for reasonable accommodation.
- 11.2. The Board commits itself and its members to support all actions necessary to make equal employment opportunity at the District a reality for all.
- 11.3. The Board will require that the organization's work environment be one in which all people are welcomed and included, and in which all individuals are unique and important and are treated with fairness and dignity.
- 11.4. The Board will respect all people and seek to accommodate and learn from the different perspectives and values they contribute.

# Governance Policies of the Board

**Title:** Conduct of Board Meetings

**Category:** Governance Process

**Policy No. GP-12**

Adopted: June 9, 2015  
Chair: Gary Kremen

Latest Revision: August 18, 2015  
Chair: Gary Kremen

The Board of Directors revised and adopted this policy at its public meeting on the latest revision date.

## 12.1. Procedural Rules for Board Meetings (“Rules”)

### 12.1.1. Basic Motions Subject to Debate

12.1.1.1. A motion puts forward a decision for consideration.

12.1.1.2. A motion to amend retains the basic motion but modifies it in some way.

12.1.1.3. A motion to substitute the motion under discussion eliminates the basic motion and places a new motion before the Board.

### 12.1.2. Non-Debatable Motions

12.1.2.1. A motion to adjourn. Four affirmative votes needed.

12.1.2.2. A motion to recess. Four affirmative votes needed.

12.1.2.3. A motion to fix the time to adjourn. Four affirmative votes needed.

12.1.2.4. A motion to table item under discussion. Four affirmative votes needed.

12.1.2.5. A motion to limit time for Board debate. Two thirds vote required.

12.1.2.6. A motion calling for a vote on the immediate question. Two thirds vote required.

12.1.2.7. A motion to close nomination. Two thirds vote required.

12.1.2.8. A motion objecting to Board consideration of an item on the agenda. Two thirds vote required.

12.1.3. A motion to suspend the Rules. Two thirds vote required.

### 12.1.4. Motion to Reconsider

12.1.4.1. A motion to reopen debate and discussion after vote has been taken. Four affirmative votes required.

# Governance Policies of the Board

- 12.1.4.2. Motion must be made at the meeting where item first voted upon or at the very next meeting.
- 12.1.4.3. Motion must be made by member who voted in majority on original motion.
- 12.1.5. Courtesy and Decorum
  - 12.1.5.1. Point of Privilege – interrupting a speaking board member to make a ministerial request which addresses physical conditions of the meeting. Chair to inquire why speaker is being interrupted.
  - 12.1.5.2. Point of Order – interrupting a speaking board member questioning whether board meeting is being properly conducted.
  - 12.1.5.3. Appealing Ruling of the Chair. Four affirmative votes needed to reverse Chair's ruling.
  - 12.1.5.4. Call for Order of the Day. Requesting that Board discussion should be redirected to items on published agenda.
  - 12.1.5.5. Withdrawal of motion. Maker of motion seeks to immediately withdraw his/her motion. Motion is withdrawn without debate.
- 12.1.6. Voting
  - 12.1.6.1. All members of the Board, when present, must vote except as hereinafter provided.
  - 12.1.6.2. A member of the Board who has a conflict of interest regarding any matter being considered by the Board shall declare the conflict and abstain from participating in the Board's deliberation and Decision regarding the matter. A board member so abstaining must leave the Board chambers unless an exception otherwise applies.
  - 12.1.6.3. Any member of the Board, once having answered the call of the roll or having been noted by the Clerk of the Board as being present at a meeting, shall advise the Chair of the Board prior to leaving the Board's Chambers for the remainder of the meeting.
  - 12.1.6.4. The vote on any matter being considered by the Board may be delayed by the Chair of the Board until all members of the Board present for the meeting, and not excused as herein provided, are present at the Board's dais.
- 12.1.7. Public Comment
  - 12.1.7.1. Comments from the public on Non-Agenda Items will generally be taken on any item within the subject matter jurisdiction of the Board and not on the published agenda prior to Board discussion on any item of business.

# Governance Policies of the Board

- 12.1.7.2. Comments from the public on Published Agenda Items shall be heard prior to any motion being made by a board member; or, if no motion is appropriate, prior to the Chair of the Board calling the next item of business on the published agenda.
- 12.2. Unless a higher vote is required by ordinance, resolution, state, or federal law, the affirmative vote of at least four members of the Board shall be required in order for the Board to take action on an item of business or the adoption of any ordinance or resolution.
- 12.3. The Board, Standing Committees, and Board Ad Hoc Committees shall conduct their meetings in an open and transparent manner by following the California Open Meeting Act and the District Act.

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<b>Title: Board Members' Code of Conduct</b>		
<b>Category: Governance Process</b>		
<b>Policy No. GP-6</b>	Adopted: June 15, 1999 Chair: Larry Wilson	Latest Revision: September 12, 2023 Chair: John L. Varela
The Board of Directors revised and adopted this policy at its public meeting on the latest revision date.		

The Board commits itself and its members to ethical, business-like, and lawful conduct, including proper use of authority and appropriate decorum when acting as Board members.

Board members who do not adhere to this code of conduct may be subject to the procedures of GP-6.3 through GP-6.5 listed below.

- 6.1. Board members shall refrain from abusive conduct, personal charges or verbal assaults upon the character or motives of other members of the Board, committees, commissions, staff and the public.
- 6.2. The Board may not authorize severance pay for a Board-appointed employee of the District when the employee voluntarily separates from District employment. "Severance pay" does not include any otherwise lawful payment required to be paid by the District under a pre-existing employment agreement or under a separation and release agreement resolving a claim or claims made or threatened against the District. The Board shall not agree to amend an employment contract after the employee announces or requests a voluntary separation, except upon a Board determination, in open session, that an adjustment in compensation is required to retain the employee and is in the best interest of the District.
- 6.3. This policy applies to the Santa Clara Valley Water District Board of Directors and the following procedures shall be followed when any member of the Board of Directors reasonably believes that another member of the Board has engaged in misconduct or has failed to act in the best interests of the District. The procedures shall not be effective in any case in which a non-board member seeks redress for alleged misconduct by a Board member. While the Board has discretion in deciding the actions it may choose to take in response to a complaint, this policy provides definitions and procedures related to three types of actions: admonition, sanction and censure.

6.3.1. Admonition

Admonition is the least severe form of action. An admonition may typically be directed to all members of the Board, reminding them that a particular type of behavior is not in the best interests of the District, and that, if it occurs or is found to have occurred, could make the member subject to sanction or censure. An admonition may be issued in response to a particular alleged action or actions, although it would not necessarily have to be triggered by a

complaint of misconduct. An admonition may be issued by the Board prior to any findings of fact regarding any complaint, and because it is a warning or reminder, would not necessarily require an investigation or separate public hearing to determine whether a complaint is true.

#### 6.3.2. Sanction

Sanction is the next most severe form of action. Sanction should be directed to a particular member of the Board based on a particular action (or set of actions) that is determined to be misconduct but is considered by the Board not to be sufficiently serious to require censure. A sanction is distinguished from censure in that it does not constitute punishment. A written sanction may be based upon the Board's review and consideration of a written complaint. The member accused of such misconduct will have an opportunity to provide a written response to the complaint. A sanction may be issued by the Board, and because it is not punishment or discipline, it would not necessarily require an investigation or separate public hearing.

#### 6.3.3. Censure

Censure is the most severe form of action in this policy. Censure is a formal statement of the Board officially reprimanding one of its members. It is a punitive action, which serves as a penalty imposed for misconduct, but it carries no fine or suspension of the rights of the member as an elected official. Censure should be used for cases in which the Board determines that the misconduct is a serious offense. In order to protect the overriding principle of freedom of speech, the Board shall not impose censure on any of its members for the exercise of his or her First Amendment rights, no matter how distasteful the expression was to the Board or the District. However, nothing herein shall be construed to prohibit the Board from collectively condemning and expressing their strong disapprobation of such remarks.

#### 6.3.4. Referral to District Attorney

At any point during any of the processes hereinafter described, the Board may refer the matter, as appropriate, to the Santa Clara County District Attorney for investigation. Prior to or following such referral, the Board may proceed with any of the actions described in this policy.

### 6.4. Available Procedures for addressing Misconduct

There are four separate methods for the Board to address Board member misconduct under this Policy: (1) written complaint; (2) request for admonition; (3) request for sanction; and (4) request for censure. Written complaints that specifically seek admonition, sanction, or censure as a specific remedy shall be treated as a request for that remedy (admonition, sanction, or censure), and the provisions of sections GP-6.5 and GP-6.6 shall not apply.

## 6.5. Written Complaints

In the event a Board member reasonably believes another Board member has failed to act in the best interests of the District resulting in misconduct, a written complaint shall be submitted to the Chief People Officer. Upon receipt, the Chief People Officer, Human Resources Division shall transmit the complaint to the District Counsel for review. The District Counsel shall review complaints to determine whether there is a sufficient basis for further action.

6.5.1. If a complaint fails to articulate a sufficient basis for further consideration, the complainant and the accused Board member will be so advised by the District Counsel, and the matter shall be deemed concluded.

6.5.2. If a complaint adequately articulates a sufficient basis for further action, the District Counsel shall present the complaint to the Board Ethics and Conduct Ad Hoc Committee (the "Committee"), which shall be comprised of the Chair and two members of the Board. In the event the subject of a complaint is the Chair or any member of the Committee, the Board shall select another Board member to serve on the Committee in that member's stead. The District Counsel may recommend to the Committee that:

6.5.2.1. Fact finding as to the complaint should be conducted; or

6.5.2.2. Informal resolution of the complaint should occur; or

6.5.2.3. An independent investigation of the complaint should occur.

6.6. Prior to any determination by the Committee to proceed with an investigation, the accused Board member must be given a reasonable opportunity to meet with the Committee or to provide a written response to the complaint. In deciding whether or not to open an investigation, the Committee should consider:

6.6.1. Whether an investigation may compromise investigations regarding the same alleged misconduct, whether the misconduct may result in criminal charges, and whether the right of the accused Board member to a fair jury trial may be compromised by proceeding with an investigation.

6.6.2. Whether persons involved in the allegations may choose to exercise their constitutional right against self-incrimination, which may limit the investigation's ability to present a full and impartial picture of alleged events.

6.6.3. Whether measures can be taken to protect the rights of the member accused of misconduct, the member making such allegations, and those who have information regarding the allegations.

## 6.7. Investigations

6.7.1. If the Committee determines that an investigation is warranted, upon notification of the Board, District Counsel may be directed to conduct the investigation. District Counsel may select and manage an independent investigator to assist in conducting the investigation.

6.7.2. In the course of the investigation, District Counsel shall determine the process by which statements are taken. District Counsel may allow witnesses to choose to provide a signed declaration under penalty of perjury attesting to their knowledge of the facts surrounding the complaint.

6.7.3. At the conclusion of the investigation, the results of the investigation shall be presented in writing to the Committee and CEO. If the Committee is satisfied with the completeness of the investigation, it shall provide the Board with its findings and any recommendations. Following such findings and recommendations, any individual Board member may file a request for admonition, sanction, or censure.

6.7.4. If the Committee determines that an investigation is not warranted, the complainant and the Board shall be notified. Following such notification, any Board member may file a request for admonition, sanction, or censure.

6.7.5. Should any Board member file a request for admonition, sanction, or censure following investigation, the Committee shall submit to the Board a recommendation as set forth in sections GP-6.8.2, GP-6.9.2, or GP-6.10.2, below, and the matter shall thereafter be considered by the Board at its next public meeting subject to the restrictions of section GP-6.10.5, below.

## 6.8. Request for Admonition

6.8.1. Any Board member may make a written request for an admonition which must be submitted to the Committee. The request must contain specific language descriptive of the alleged misconduct and the reason(s) admonition is appropriate. A copy of the request for admonition shall be provided to the Board member accused of the misconduct.

6.8.2. The Committee shall review the request and submit it to the Board with a recommendation. The Committee's recommendation shall provide:

6.8.2.1. Admonition is warranted; or

6.8.2.2. Admonition is not warranted; or

6.8.2.3. No further action is required.

6.8.3. A recommendation by a majority of the Committee shall be based on the Committee's review of the written record.

6.8.4. An admonition can be approved by a majority of the Board.

#### 6.9. Request for Sanction

6.9.1. Any Board member may make a written request for sanction which must be submitted to the Committee. The request must contain specific language descriptive of the alleged misconduct and the reason(s) sanction is appropriate. A copy of the request for sanction shall be provided to the Board member accused of the misconduct by personal service within five (5) business days from the date the Committee receives the request. The time for service shall be tolled if the Board member is unavailable for service.

6.9.2. The Committee shall review the request and determine if an investigation is warranted. Following the investigation, or if no investigation was undertaken, following review of the request, the Committee shall submit the request to the Board with a recommendation. The Committee's recommendation shall provide:

6.10.2.1. Admonition, rather than sanction is warranted; or

6.10.2.2. Sanction is warranted; or

6.10.2.3. No further action is warranted.

6.9.3. A recommendation by a majority of the Committee shall be based on the Committee's review of the written record.

6.9.4. The Committee's recommendation shall be subject to a majority vote of the Board.

#### 6.10. Request for Censure

6.10.1. Any Board member may make a written request for a censure which must be submitted to the Committee. The request must contain specific language descriptive of the alleged misconduct and the reason(s) censure is appropriate. A copy of the request for censure shall be served

on the Board member accused of the misconduct by personal service within five (5) business days from the date the Committee receives the written request. The time for service shall be tolled if the Board member is unavailable for service.

- 6.10.2. The Committee shall review the request and submit the request to the Board with a recommendation. The Committee's recommendation shall provide:
  - 6.10.2.1. Further investigation of the request for censure is required; or
  - 6.10.2.2. Admonition or sanction is warranted; or
  - 6.10.2.3. The request for censure should be set for a separate Board public hearing; or
  - 6.10.2.4. No further action is required.
- 6.10.3. A recommendation by a majority of the Committee shall be based on the Committee's review of the written record.
- 6.10.4. If the Board determines that further investigation is required, the Board shall direct the Committee to lead the investigation which may be assisted by the CEO and District Counsel. The following guidelines apply to such an investigation:
  - 6.10.4.1. The Committee may be assisted by a separate independent investigator.
  - 6.10.4.2. Upon completion of the investigation, the Committee should determine if taking all the facts and evidence into consideration, there are reasonable grounds to believe or not believe that the misconduct occurred.
  - 6.10.4.3. The Committee shall issue to the Board a final a report and recommendation as approved by a majority of the Committee. The Committee's final report shall be made available to the public.
- 6.10.5. If a separate Board public hearing is required, it must be scheduled far enough in advance to provide the Board member subject to the charges adequate time to prepare a defense, and that Board member shall be given the opportunity to make an opening and closing statement and to question his or her accusers. The Board member subject to the charges may be represented and may have the representative speak or question on his/her behalf. The Chair or Vice Chair, if the Chair is the subject of the charges, shall preside at the public hearing. The rules of evidence shall not apply to the hearing of the matter, which is not a formal adversarial proceeding. If the District Counsel has assisted Board members in the

investigation, independent legal counsel shall provide legal advice to the Board during the hearing of the matter.

6.10.6. A decision to censure requires the adoption of a resolution making findings with respect to the specific charges, based on substantial evidence and approved by a two-thirds vote of Board.

6.11. Complaints from non-Board members

This policy applies to the Santa Clara Valley Water District Board of Directors and the following procedure shall be followed when a non-Board member files a written complaint stating his/her reasonable belief that a member of the Board has acted or failed to act in the best interests of the District resulting in misconduct. While the Board has discretion in deciding the actions it may choose to take in response to such a complaint, this policy provides definitions and procedures related to three types of actions: admonition, sanction and censure as defined in sections GP-6.3.1, GP-6.3.2., and GP-6.3.3, of this policy.

6.12. At any point during any of the processes hereinafter described, the Board may refer the matter as appropriate to the Santa Clara County District Attorney for investigation. Following such referral, the Board may proceed with any of the actions described in this policy.

6.13. This policy applies to the Santa Clara Valley Water District Board of Directors and the following procedures shall be followed when a non-Board member reasonably believes that a member of the Board has acted or failed to act in the best interests of the District resulting in misconduct. A written complaint signed by the complainant shall be filed with the Chief People Officer, Human Resources Division. Upon receipt, the Chief People Officer shall transmit the complaint to the Chief Executive Officer (CEO) and the District Counsel for review. The CEO and District Counsel shall review the complaint to determine whether there is a sufficient basis for further action.

6.13.1. If a complaint fails to articulate a sufficient basis for further consideration, the complainant and the accused Board member will be so advised and the matter shall be deemed concluded.

6.13.2. If a complaint adequately articulates a sufficient basis for further action, the CEO and District Counsel shall present the complaint to the Chair of the Board. In the event the subject of the complaint is the Chair, the Vice Chair shall be presented with the complaint. The CEO and District Counsel may recommend to the Chair or Vice Chair that:

6.13.2.1. Fact finding as to the complaint should be conducted; or

6.13.2.2. Informal resolution of the complaint should occur; or

6.13.2.3. An independent investigation of the complaint should occur.

- 6.14. Prior to the determination by the Chair or Vice Chair to proceed with an investigation, the accused Board member must be given a reasonable opportunity to meet with the Chair or Vice Chair or to provide a written response to the complaint. In deciding whether or not to open an investigation, the Chair or Vice Chair should consider:
- 6.14.1. Whether an investigation may compromise investigations regarding the same alleged misconduct and if the misconduct may result in criminal charges, whether the right of the accused Board member to a fair jury trial may be compromised by proceeding with an investigation.
  - 6.14.2. If persons involved in the allegation may choose to exercise their constitutional right against self-incrimination, which may limit the investigation's ability to present a full and impartial picture of the alleged events.
  - 6.14.3. Measures to protect the rights of the member accused of misconduct, the non-Board member making such allegations, and those who have information regarding the allegations.
- 6.15. Investigations
- 6.15.1. If the Chair or Vice Chair determines that an investigation is warranted, upon notification of the Board, District Counsel may be directed to conduct an investigation, and District Counsel may select and manage an independent investigator to assist in conducting such investigation.  
  
Alternatively, at the discretion of the Chair or Vice Chair, the Board's Ethics and Conduct Ad Hoc Committee (as described in Section 6.5.2 of the Board's Governance Policies) shall select an independent investigator to conduct the investigation.
  - 6.15.2. In the course of the investigation, District Counsel shall determine the process by which statements are taken. A witness may choose to provide a signed declaration under penalty of perjury attesting to his/her knowledge of the facts surrounding the complaint. Within ninety (90) days of the date an investigation begins, District Counsel shall inform the Board of the investigation's progress. Investigations should be completed within six (6) months from the date the investigation begins; however, in the event the investigation cannot be completed within the six (6) month time period, District Counsel shall so notify the Board.
  - 6.15.3. At the conclusion of the investigation, the results of the investigation shall be presented in writing to the Chair or Vice Chair. If the Chair or Vice Chair is satisfied with the completeness of the investigation, the Chair or Vice Chair shall provide the Board with findings and any recommendations. Following such findings and recommendation, any individual Board member may file a request for admonition, sanction, or censure.



- 6.15.4. If the Chair or Vice Chair determines that an investigation is not warranted, the complainant and the Board shall be notified. Following such notification, any Board member may file a request for admonition, sanction, or censure as set forth in sections GP-6.8, GP-6.9, or GP-6.10 of this policy, save and except that whenever the term "Committee" appears therein, the term "Chair" or "Vice Chair" shall be applicable.
- 6.15.5. Should any Board member file a request for admonition, sanction, or censure following the Chair or Vice Chair's findings and recommendations or determination that an investigation is not warranted as set forth in sections GP-6.15.1 through GP-6.15.4 above, the matter shall thereafter be considered by the Board at its next public meeting subject to the restrictions of section GP-6.10.5, above.

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# MEMORANDUM

FC 14 (01-02-07)

**TO:** Board of Directors

**FROM:** Director Nai Hsueh and  
Director Tony Estremera

**SUBJECT:** Violations of Board Policy and Request for  
Board Action

**DATE:** February 21, 2024

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We are writing to request the Board to consider taking official Board actions that will compel Director Eisenberg cease her inappropriate behavior, as substantiated in the Executive Summary of Investigative Report #2, and behave in a constructive and professional fashion going forward.

### **Pertinent Board Policies Governing Our Recommendations**

GP 6.15.3 Provides for any individual Board member to file a request for admonition, sanction, or censure upon the Chair or Vice Chair providing the Board with his/her findings and recommendation of the results of the investigation of a Board member filed by a non-Board member.

GP 6.3.1 Admonition. Admonition is the least severe form of action. An admonition may typically be directed to all members of the Board, reminding them that a particular type of behavior is not in the best interests of the District, and that, if it occurs or is found to have occurred, could make the member subject to sanction or censure.

GP 6.3.2. Sanction. Sanction is the next most severe form of action. Sanction should be directed to a particular member of the Board based on a particular action (or set of actions) that is determined to be misconduct but is considered by the Board not to be sufficiently serious to require censure. A Sanction is distinguished from censure in that it does not constitute punishment.

GP 6.3.3. Censure. Censure is the most severe form of action in this policy. Censure is a formal statement of the Board officially reprimanding one of its members. It is a punitive action, which serves as a penalty imposed for misconduct, but it carries no fine or suspension of the rights of the member as an elected official.

GP 6.3.4. Referral to District Attorney. At any point during any of the processes hereinafter described, the Board may refer the matter, as appropriate, to the Santa Clara County District Attorney for investigation. Prior to or following such referral, the Board may proceed with any of the actions described in this policy.

### **Analysis**

The Investigative Report #2 substantiated 8 out of 25 complaints about Director Eisenberg's conduct against District employees, both classified and unclassified, as Discriminatory Harassment, Abusive Conduct, and Improper Direction to Staff. These substantiated complaints demonstrated that:

1. Director Eisenberg has, on repeated occasions, demonstrated that she is unwilling to follow the Board Governance Policies of the Santa Clara Valley Water District.
2. Director Eisenberg's behavior, occurring on a constant and ongoing basis, created, and continues to create an environment where both staff and Board members are unable to operate in a constructive environment. Most importantly, the negative impact of such behavior to District employees is unacceptable and cannot be continued. It is imperative that we treat all District employees with the respect and trust they are entitled to.

3. We welcome and appreciate constructive criticism when it is delivered in the spirit of camaraderie and in pursuit of improvement. We encourage our colleagues to engage in spirited discussion and active expression of our public positions. But there is no place for the above-described behaviors which discourages democratic participation and an open sharing of disparate ideas.

### **Recommendations**

Pursuant to the Findings in the Executive Summary of the Investigative Report #2, and the Analyses above, we therefore request that the Board consider the following actions:

Censure of Director Eisenberg for her conduct per Board Policy GP 6.15.4 and GP-10, or other action as defined in GP-6.8 (Admonition) or GP-6.9 (Sanction).

In addition to censure, we recommend the following actions, pursuant to Board Policy GP 6.3, noting that the “Board has discretion in deciding the actions it may choose to take in response to a complaint.”

1. Remove Director Eisenberg from all roles and responsibilities representing the Board and District, including participating on any Board Committees.

District employees should not be subjected to such abusive conduct from anyone, much less from an elected Board Member. It is our responsibility as Board Members to protect District employees. We should prevent Director Eisenberg from any opportunity to continue her abusive conduct against District employees. Restricting her participation on Board Committees will prevent her from any further opportunity to harass our employees.

2. Director Eisenberg should not be allowed to be compensated for auditing Board Committee meetings (participating as an observer).
3. Director Eisenberg should not receive any approval for future travel expenses to any conferences on behalf of the District.
4. Director Eisenberg must attend and participate in appropriate anti-discrimination training within two months as a result of the finding regarding discrimination on the basis of national origin.
5. Director Eisenberg should not be allowed to meet with any employees who object to meeting with her.
6. Director Eisenberg should not be allowed to request any information directly from employees and must make any such request from a Board Appointed Officer.

If it wishes, the Board can review whether we should return Director Eisenberg to serve on committees after at least a year, and only if we are satisfied that her conduct during public Board meetings improves.

### **Next Steps**

If the Board elects to censure Director Eisenberg, the next steps will be to set a public hearing, which can be scheduled to occur at the same special Board meeting where the Board will hold a public hearing to consider censure of Director Rebecca Eisenberg for the alleged misconduct that occurred on January 29, 2024.

## Michele King

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**From:** John Public <civilian9898@gmail.com>  
**Sent:** Tuesday, February 20, 2024 11:32 PM  
**To:** Rebecca Eisenberg; Board of Directors; Clerk of the Board  
**Subject:** Fwd: Director Rebecca Eisenberg

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**\*\*\* This email originated from outside of Valley Water. Do not click links or open attachments unless you recognize the sender and know the content is safe. \*\*\***

Director Eisenberg. Public Comment Agenda Item 1.3 Special Board Meeting on Thursday, February 22, 2024

Reading over the Agenda Packet and Attachments ( Both Executive Summaries) in addition to the Public Board meetings it is very clear that there are attempts to silence you for bringing up issues that should be looked into for accountability and transparency. Never have we witnessed such hostility during Valley Water Board Meetings to another Director who is speaking obviously to silence them. The selective outrage of complaints in the Executive Summary from CEO Rick Calendar and Carlos Orellana over words read out like yet another attempt to silence you.

It has been common knowledge that the District does have a reputation of targeting and retaliation that seems to always persist throughout the years. An audit should be conducted into the CEO, CAO/COO ( Current and Previous , Beau Goldie and Sharon Judkins) with the Labor Relations Unit on retaliation treatment to employees and how much public funds were spent. The previous CAO/COO Sharon Judkins (under CEO Beau Goldie) who oversaw Labor Relations had a notorious run targeting employees. In one example 2 male employees who were dismissed came back after their names were cleared shortly thereafter Sharon Judkins left the District. How much public funds were spent on that only for the District to have them both come back to work?

Around that same time morale was so bad that when a survey was conducted it showed employees' concern of Retaliation/Hostile Work Environment from Management/ Labor Relations and consultants were called in to work on it. The Consultants strayed away from accountability from management and provided team group activities and pushed to "Trust management" presentations. You have heard first hand of complaints of retaliation and hostile work environment under the current CEO.

Reading that you have been excluded from Closed Sessions to review litigation, not receiving emails, and the conduct in the Public Board Meetings towards you from other Directors cutting you off etc, begs the question what are they trying to keep away from you ? More info that supports your claims?

Tina Yoke, COO , should have had your email issue resolved within an hour . It is common knowledge that your request was a Board Director request , thus red flagged, Tina would have contacted the Deputy and or the IT unit manager to resolve ASAP. Was this done? Why the long time to resolve your email issues?

My emails have seemed to go unacknowledged and never read into the minutes by anyone at District during Board Meetings public comment agenda time. Directors never respond, they get a handout along with another stack of papers, but is that a sufficient way to relay messages from the constituents? How many others go unacknowledged when you want them read into the minutes? There should be new requirements for the directors to respond and follow up, not lost in a stack of papers handed out at Board Meetings.

In reviewing the Executive Summary Attachment 1,

E. Allegation 6: Callender Retaliated Against Employees Who Complained  
*About Him To Eisenberg In Violation Of SCVWD Policies "*

*"The evidence showed that an executive employee in the Information Technology and Administration Services department explained that she made the decision to separate the former employee in December 2022 or January 2023"*

*"The executive was not aware that the former employee had made complaints to Eisenberg. Callender stated that the decision to separate the former employee was the executive's and he supported her when she approached Callender about separation in January 2023."*

**There is an alliance there.. I would not trust that statement ..**

One just needs to ask what happened to the Health and Safety manager under the current CEO/COO . She is on video as the Director of the Covid-19 EEOC Pandemic during Town-hall she claimed she does not have the any numbers on vaccinated employees when in the prior Town-hall a month earlier Larry Lopez had the numbers when asked but was never heard from again after he reported out numbers and percentages regarding Covid cases. As the Director of the Covid-19 pandemic is this is this believable no data to give? Furthermore she goes to give an explanation that has nothing to do with the question..See for yourself. Did we just witness retaliation since Larry Lopez is never heard from again in video to report out?

(Time mark 34:00) Town-hall Q/A September 9, 2021

[https://www.youtube.com/watch?v=XZAoffGqC\\_E&list=PLiwed0IBI8IIWf0NLRnCviJbfDxEwslco&index=8](https://www.youtube.com/watch?v=XZAoffGqC_E&list=PLiwed0IBI8IIWf0NLRnCviJbfDxEwslco&index=8)

There were also claims about Death Threats in a Board Meeting to update Rules of Decorum. Myself and inquired about the proof of credible death threats that invoked new rules of decorum and extra security . Emails were unacknowledged once again by the Board of Directors and not read into the minutes during public comment. Nai Hsue and others who form the Board Planning Policy Committee did ask for information but the minutes where Rules of Decorum were being discussed. No credible Death Threat proof was confirmed.

(Time code 2:37:40) Board Meeting March 22, 2022

[https://scvwd.granicus.com/MediaPlayer.php?view\\_id=3&clip\\_id=2011](https://scvwd.granicus.com/MediaPlayer.php?view_id=3&clip_id=2011)

Concerns from public on Rules of Decorum

<https://scvwd.legistar.com/LegislationDetail.aspx?ID=5523477&GUID=4501C804-57A3-48A3-911B-3A638BB48CC2>

Can Chair of the Board Nai Hsue respond as to why there was no followup to her request ? If you review the minutes from 4/5/2022 BPPC

4/5/2022 BPPC

<https://s3.us-west-2.amazonaws.com/valleywater.org.us-west-2/f2-live/s3fs-public/040522> BPPC Minutes.pdf

4.2 RULES OF DECORUM ORDINANCE

"Director Hsueh requested that the purpose and intent of the ordinance be clarified and identify why it's important to have such an ordinance for board and committee meetings."

May 11, 2022 BPPC

<https://s3.us-west-2.amazonaws.com/valleywater.org.us-west-2/f2-live/s3fs-public/051122> BPPC Amended Agenda Packet1.pdf

There is no mention of any Death Threat claimed in the Board Meeting, should this been addressed when Nai Hsueh requested information?

12/5/22 BBPC

<https://s3.us-west-1.amazonaws.com/valleywater.org.us-west-1/s3fs-public/120522> BPPC Minutes.pdf

Where is the follow up Nai requested ?

I do hope Director Rebecca Eisenberg that you continue to push back on the hostile attempts to silence and intimidate you. From what I have witnessed it's not in you to fold! Keep up the good work for accountability and transparency at Valley Water District your way over target! Unfortunately many employees who had to endure and experience the exact same thing you're going through presently know what a battle it is!. Lets hold our Public Servants accountable for their actions instead of spending public funds to retaliate and go after people for their own agenda. 600K for this investigation into you is not Fiscal Responsible and not inline with the District Mission Statement.

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

From: **John Public** <[civilian9898@gmail.com](mailto:civilian9898@gmail.com)>

Date: Wed, Jun 14, 2023 at 2:13 PM

Subject: Re: Director Rebecca Eisenberg

To: <[clerkoftheboard@valleywater.org](mailto:clerkoftheboard@valleywater.org)>, <[Board@valleywater.org](mailto:Board@valleywater.org)>

Correction 6/13/23 Board Meeting

On Wed, Jun 14, 2023 at 2:12 PM John Public <[civilian9898@gmail.com](mailto:civilian9898@gmail.com)> wrote:

Please publish this email to Director Eisenberg For the next Board Meeting under public comment 6/3/23.  
Thank you!

On Wed, Jun 14, 2023 at 2:08 PM John Public <[civilian9898@gmail.com](mailto:civilian9898@gmail.com)> wrote:

Writing in to give thanks and support to Director Eisenberg. As we have watched the Board Meetings since you were elected and how you have been treated for asking for Transparency and Accountability. I do believe you when you said many employees have talked to you regarding different issues. You have a lot of support of the employees more than is publicly acknowledged I am sure as there has always been corruption, cover ups and retaliation at the district DESPITE the mission statement and many do not speak up for fear of retaliation. You are over the target on how many employees have been terminated and or left under the current CEO and over the target on the CIP and committee meetings this is why you get such a hostile reaction as you know. Keep fighting the good fight for all of us! I hope you did receive the emails that were sent in from me when you first came aboard. We need more Directors like you on the Water Board.

BRAVO!!!

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## Michele King

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**From:** Santa Clara Valley Water <system-generated@valleywater.org>  
**Sent:** Wednesday, February 21, 2024 3:43 PM  
**To:** Clerk of the Board  
**Subject:** SCVWD Agenda Comment Form

\*\*\* This email originated from outside of Valley Water. Do not click links or open attachments unless you recognize the sender and know the content is safe. \*\*\*

Submitted on Wed, 02/21/2024 - 3:42 PM

Submitted values are:

**Name**

Raymond R. White

**Address**

2468 Whitney Dr  
Mountain View, California. 94043

**Telephone**

(165) 049-3507

**Email**

rrweditha@yahoo.com

**Board Meeting Date**

2024-02-22

**Agenda Item Number**

2, not 1

**I would like to**

Express Opposition

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## Michele King

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**From:** Dhruv Khanna <dhruvkhanna2002@yahoo.com>  
**Sent:** Wednesday, February 21, 2024 4:47 PM  
**To:** Board of Directors  
**Subject:** Government gone awry

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

\*\*\* This email originated from outside of Valley Water. Do not click links or open attachments unless you recognize the sender and know the content is safe. \*\*\*

Dear Valley Water Board,

I realize that it is not easy to manage a budget of the sorts that Gavin Newsom and Valley Water are tasked to managing.

We are living in very extreme times. Some of us in the private sector are being faulted for not attending enough meetings. The reality is that we in the private sectors are being treated very shabbily: the tech rich are getting away with tax loopholes, and our administrative agencies are bent on increasing the power of the administrative state as their sole objective no matter how much of our rain water flows into the Pacific Ocean.

What is happening now at Valley Water is a microcosm of our national malaise: the tentacles and control of the Administrative State and the kowtowing of our elected officials. The beneficiaries of the current regime are the ultra-rich and our do-little governmental employees who populate the Administrative State.

Rebecca Eisenberg is someone who has voted to increase agricultural groundwater production charges. I disagree with her, but democracy is about respecting people we disagree with. Now she is being faulted for working from home, which we all do in the private sector. We work 24 hours of the day if needed: from work, from home and while on vacation or attending our parent's funeral overseas.

Our Valley Water has become a microcosm of the bullying by the Administrative State. Are you as Board members as elected officials going to do your jobs and represent those who voted for you or are you going to become slaves of the Administrative State? What payroll cuts are you instituting? Pre-COVID through today many of us the private sector are CONSTANTLY considering budget cuts, lay-offs and payroll reductions. Have you? I suggest you start with your time and money-wasting CEO.

Thank you.

Dhruv Khanna, 742 Alester Avenue, Palo Alto, CA 94303, CEO of Kirigin Cellars, 11550 Watsonville Road, Gilroy CA 95020

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For those not following the saga of “did Rebecca Eisenberg steal classified [as in national-security-grade] documents?” I wish I could join you. Unfortunately, my colleagues and the CEO whom we are supposed to be overseeing, is committed to nailing me for bringing home a printout of information that is confidential ... **to me**. And now they want to censure me for breaking a rule that did not exist at the time I am alleged to have broken it. It’s boring and besides the point. This is particularly the case because I never denied bringing home a printout of the investigation of me that Valley Water spent 13 months and \$600,000 of taxpayer and ratepayer money creating. I told the District I was taking it. I had the right to take it. I would have preferred the digital file but they wouldn’t give it to me. And they never asked for it back. Why is this an issue?

The District has been using a lot of taxpayer and ratepayer money to distribute nasty lies about me, but in a way I appreciate it. Their unrelenting dedication to putting me in the spotlight has the positive consequence of putting me in the spotlight! I hope to embrace this exciting moment but talking to you about the serious misrepresentations and startling material omissions in Valley Water’s loan application for its EPA WIFIA loans, where it is seeking hundreds of millions of dollars in long-term debt secured by the future revenues of the theoretical Pachedo Dam & Reservoir and also in its application for \$500 million in California’s Prop 1 Grant Funds, which already have been disbursed to Valley Water free and clear.

We could talk about whether or not Valley Water lied on loan and grant applications for federal and state public funds, or we can hold a

hearing on whether I should be punished for bringing home a printout of an investigation about whether or not I discriminated against men, which apparently is perceived to be a big problem by the men who run Valley Water, especially those with the highest ranking positions and are paid in the high six figures to do their jobs. Which is the Board going to talk about? It's going to hold a hearing about whether I should be censured for bringing home a printout, of course! That printout, of course, being one of countless copies of the report that the CEO spent \$600,000 of public money in trying to prove that I discriminated against him because he is male. Which, despite 13 months of trying, and two lawyers on the project: an independent investigator to conduct the investigation, and an adverse (to me) non-independent lawyer to fix the investigation, the CEO failed to prove. Obviously.

So below is the official statement that my attorney helped me draft about whether or not I brought home the printout. Spoiler alert: I did bring it home. I had a right to bring it home. It's information was not "classified." It was in fact "confidential" — as in, confidential to **me**. And until the Board Chair wrote and distributed a new Board Governance Code provision a few days **after** I brought it home and stored it in a locked, secure location, it was literally impossible to say that bringing it home violated any rule or code. To this day, Valley Water **still** has not asked me for it back. One may think that Valley Water **wants** these 2000 pages to be stored at my home, given the countless opportunities they had to collect it but chose not to. Maybe they want to focus on that in part because that 2000 pages tries really hard to say I say I did something wrong, but all it could, and did,

determine, is that I am a woman who tells men that they are wrong when the men are wrong. Hand raised high!

At any rate, here is my statement in response to many (not all — there are too many!) of the things that Valley Water and especially its (known to be corrupt) CEO are saying about me. I apologize for its length as well as its typos, which I know exist but which I won't be looking for right now because I prefer to work on other things, including but not limited to creating a presentation that consolidates some of the information I collected to help answer the question of whether or not Valley Water has received government funds under false pretenses, and whether it is spending it without legally required transparency, accountability, and honesty.

<image002.jpg>

If a publication uses a terrible photo of me when good photos like this one exist, that publication is literally showing me in a bad light. I will do my best to redirect that light, and any other light I am fortunate to receive, in a more appropriate direction: towards the egregious corruption being committed by the Golden Spigot: the \$10 billion public agency I am honored to have been elected to help oversee.

My statement:

Dear all,

Below is my official response to the accusations made against me regarding “theft” of a print-out.

I am maintaining an integrity set of the investigative reports pursuant to the Brown Act. By way of background:

1. I was elected as a Valley Water director for District 7 in November 2022, and I was sworn in December 2022. In early January 2023, after seeing draft Board committee assignments, I requested that the Board

Chair consider gender equity in committee assignments or at least to make transparent how the decisions are being made to assign directors to committees. I suggested that there was significant gender inequity in the proposed assignments. I made the Board aware of these concerns in early January 2023. Although I never requested or sought an “investigation,” the Board initiated an investigation into my concerns, but only in response to the demand for an investigation filed by the CEO and District Counsel filed a few days after I raised my concern. The CEO and District Counsel, who are both Board Appointed Officers that report to me and the rest of the Board, based their complaints only on their own claims and no claims from staff. They accused me of gender discrimination.

2. The secretive “Ethics Committee” then met without public notice or agenda, in violation of the Brown Act, and voted to use public funds to investigate me, even though the only complainants were Board Appointed Officers, and the Governance Codes did not authorize public funds to be used for investigations of Board Directors made by Board-Appointed Officers. It only authorized investigations in response to “staff” or community members. My predecessor’s investigation was based on 20 complaints made by staff and community members. (Months after authorizing the investigation of me, the CEO and Chair attempted to change the Governance Code to cover Board-Appointed Officers.)

3. The Board never voted on whether to use public funds for this investigation, as in previous investigations against Board Directors, including the investigation of my predecessor. Also, unlike past



practice, I was not given an opportunity to speak on my behalf the Committee (or Board) made its decision.

4. The “Ethics Committee,” again outside of public purview or notice to me, retained Samantha Zutler, of Burke Williams and Sorenson, who confirmed that her firm was engaged to “serve[] as outside counsel for the Water District regarding complaints by and against Director Eisenberg.” During the course of this investigation, Ms. Zutler treated me as if she were adverse to me, communicating only with my counsel and not with me directly.

5. Ms. Zutler then hired to Camille Pating of the law firm Meyers Nave to conduct the “independent investigation” at Ms. Zutler’s direction. In all previous investigations, the outside investigator had worked directly with the Board. In this instance, the investigation was handled by an attorney who admitted she was, and was, adverse to me. Additionally, I was told that Ms. Pating was being paid out of Ms. Zutler’s budget, and that Ms. Zutler was responsible to confirming that the investigation met Ms. Zutler’s needs. These facts compromised the independence of the investigation from its inception.

6. The investigation also had irregularities in the way it was conducted. From its start there were problems with the integrity and independence of the investigation. For example, the investigator Ms. Pating had not been briefed on the matter I had raised before the CEO launched his investigation against me: material lack of gender equity in Committee Assignments (which the Chair admitted). My attorney and I had to explain to the investigator that the “allegations” against me all

arose after the time that I raised the gender equity before the public and the Board.

7. [REDACTED]

8. [REDACTED]

[REDACTED]

[REDACTED]

Notably, in the communications released from privilege, I had urged the District Counsel, who reports to me and my colleagues, not to pursue his course of action because if he did, he would lose, and the District would be hit with penalties. District Counsel, instead of listening to my advice based on far greater experience in these matters, complained that I was oppressing him by attempting to steer his actions in a more productive direction (even though I am one of his 7 managers, and the only practicing attorney on the Board). While complaining that I was applying undue influence, the District Counsel successfully ignored my advice and made his poor choices. As a result – as I had warned him – the District lost all the court filings he made against my advice, and, as I predicted, the District was assessed substantial monetary penalties in mid six figures. Had the District Counsel heeded my advice, he would have saved ratepayers the costs of filing and losing his motions – a total of approximately \$2 million.

9. During the course of this 13-month investigation, the CEO has bullied me and bullied staff. From the beginning, staff and employees contacted me to state their support of me and ask me for protection from the CEO, often providing lengthy person experiences of malevolent actions taken against them and others by the CEO. Staff talked to me conditions of strict anonymity, even though under the law and practice they are entitled to speak to me as their elected official. They required anonymity because the CEO has a record of firing staff and employees when they are judged to be “disloyal.”

<image003.jpg>

Lisa Simpson nails it.

10. When the CEO heard that staff had been contacting me, he demanded to know which employees had contacted me, which I denied. In a meeting, he told me he had a “right” to know which employees complained, and I told him he did not. He then initiated a new rule amongst all employees and staff that they were not allowed to speak with me, denying them their Constitutional right to speak with their elected officials. In apparent pursuit of the names of the staff who had spoken with me, the CEO through a representative filed a public records request demanding “all email and texts” (official or not) of mine. The CEO then used ratepayer funds to create a propaganda campaign internally and with the press, claiming that I was not complying with public records requests. Every day, one of his staff members contacted me to obtain my personal phone. Despite the bullying, I protected the identity of these staff members, whom I will continue to protect, knowing the risk they face should the CEO learn their identities.

11. In April 2023, I participated in an initial interview with the investigators regarding the complaints. In July 2023, when the rest of the Board was given vacation, I participated in almost 30 hours of multiple follow-up interviews with Ms. Pating and her team from Meyers Nave. Ms. Pating advised me that her work was completed in late August 2023. Ms. Pating assured me and my counsel that even though the investigation would be submitted to Ms. Zutler, that Ms.

Zutler would make no changes to it, and it would be delivered in the investigator's original form as is standard practice.

12. Ms. Pating also advised me, upon the conclusion of our interviews, that the only two complainants were the CEO Rick Callender and the District Counsel Carlos Orellana, both of whom are Board Appointed Officers and thus were excluded from the Governance Codes upon which this investigation was based and paid for using ratepayer funds. At no point was I ever asked to respond to any complaint made by a staff member or an employee — only by Board Appointed Officers, who enjoy special privileges and benefits (including high six-figure salaries) and who report directly to the Board, including me.

13. Despite the investigator Ms. Pating's assurance that her work had concluded in late August, in September 2023, after she had completed her work, Ms. Zutler notified the Board that the investigative reports were delayed because of additional allegations. Having been informed that the investigation was complete, I was not notified of any purported additional charges, nor was I given an opportunity to respond as is required in an independent investigation.

14. When September and October 2023 passed without the release of any report(s), my counsel reached out to the investigator Ms. Pating in mid-November to check on the status of the investigation and to provide examples from mid-September of continuing harassment against me, including the CEO and Chair raising their voice at me several times in public meetings; the CEO angrily dismissing staff from public meetings with me; the CEO and Chair distributing anonymous ad hominem personal attacks on me; and other incidents, the

investigator Ms. Pating responded that the investigation “has concluded, so I won’t be able to add new allegations from Director Eisenberg at this time.”

15. Even though we were told that the investigative reports were completed in December 2023, they were not made available to the Board until January 29, 2024. In past and common practice, a digital copy of the executive summary is distributed to the Board, all of whom are bound by strict requirements of confidentiality. For this investigation, however, I was advised that no digital copy would be made available because the reports were still in “draft” rather than final form. When asked, Ms. Zutler, who had originally received the investigator’s report in September 2023, admitted that the report was “draft” because changes still were being made, including, if necessary, changes to the identities of witnesses.

16. Because the reports were in the process of being changed, I was advised that Valley Water would only make one physical copy for the directors to review, and that the review was only being made available to one director at a time. I asked the clerk Michele King, a Board Appointed Officer, who reports to me and the rest of the Board, to please provide me with a digital copy pursuant to past practice. Ms. King objected. I then asked her if she had possession of the digital file, and she confirmed that she did. I asked her to print another copy so that I could review in privacy and with my attorney. Ms. King instructed me that she did not have time to print another copy. She also told me that I do not have the right to show the report to my attorney, even though I do have that right. I told her that without a

digital file, I may be required to take home the copy she had already printed, and she could print another copy when she had time. With that said, I left her office to review the print-out of the report.

17. When I arrived at the private room where that print-out of the report was available, I saw that the print-out was thousands of pages long, and therefore I could not complete a comprehensive review in a single sitting. I also observed that, even though I was the purported subject of the investigation, I was not the first person to have access to it. It was dated December 22, 2023. Given the irregularities in the process, the closed sessions, the inconsistencies between what the investigator stated and what the District's counsel was reporting as the scope and status of the investigation, I believed and still believe in good faith that consistent with the Brown Act, an integrity copy of the report is necessary to provide a record of a version absent future changes.

18. It creates the perception of tampering that Ms. Zutler, a non-independent intermediary, spent four months with the investigative report before approving it for distribution to the Board. In the past, independent investigators reported to the Board without intervention. It also is unknown why, although the investigation was completed by August 2023, and draft reports were clearly provided to Ms. Zutler by September 2023, the report was not marked "complete" by the investigator on December 22, 2023, following which it was not made available for viewing until a month later. During that month after it was submitted by Ms. Zutler and delivered to the Board, additional changes may have been made, especially since Ms. Zutler admits that

changes continue to be made to the investigator's report, presumably without the investigator's input.

19. In a series of communications about a "New" investigations process, the Chair, the Clerk, and Ms. Zutler all confirmed that what was distributed was a draft and that it was subject to change. For these reasons, it was essential that I had access to print-out before it was modified again.

20. I maintain that my actions as an elected director were and are reasonable under the circumstances. I had told the Clerk I needed a print-out, and making printouts is part of her job. The Clerk confirmed she had the digital file and thus she can print more copies. When I left with the report, I left through the front door because it was the door closest to the room where they had placed me to view the report and I had nothing to hide. I returned through the secure Directors' door to collect my belongings and notify the clerk, who was not in her office when I returned through the restricted Board area. When I arrived home, I immediately placed the report and all its supporting documents in a secure, locked location. I still have not reviewed it, and I have shared none of it with any other person. I have strictly adhered to the confidentiality in which it was transmitted to the directors. I even have not shared it with my attorney, based on the District's demand that I not do so. To the extent I will be asked to vote on anything at the Board Meeting on February 13, 2024, I am forced to vote without the advice of my counsel, which violates my rights and harms my interests. Worse, it undermines the public's trust in our institutional safeguards and process, which the ratepayers and



taxpayers fund and by extension, to whom we answer as stewards of their trust and public monies.

21. I never — even today — was asked by anyone at the District to return the printout I took home, so I rationally concluded that the clerk printed another copy as was in her power. When I appeared at the District for an event a few days after I had taken the print-out home, I communicated with several of my colleagues, none of them asked me to return the print-out. I first learned that the District wanted it back when a writer from a post in a San Jose news gossip website on whose Board the CEO used to sit, and to whom the CEO has made using public funds, significant donations of at least \$10,000.

22. In the meantime, I still have not been able to show the printout to my counsel. When my counsel continued to contact Ms. Zutler to inquire as to when she would be allowed to review and what portions of the executive summary and reports would be made available for her review, Ms. Zutler responded that my counsel and other parties/witnesses who were represented by counsel in this investigation would not get copies until the Board approved its release and that only executive summaries would be made available. Ms. Zutler's decision is knowingly requiring me to decide whether to approve a report about me without the advice of my counsel whom I hired to defend me.

23. Worse, Ms. Zutler continued to insist to my counsel that the reason that my counsel cannot see the investigation of me is that it is still being changed and is subject to "further edits." These "edits," she said, may include clerical or ministerial changes such as if the report cited

the name of a witness/interviewee incorrectly. In this way, Ms. Zutler admitted that she can make material changes to the reports completed by the independent investigator which destroy its independence.

24. These facts and the sequence of these events give rise to a strong inference that the law firm Meyers Nave retained to perform the investigation has been working on behalf of the complainants and were not independent. This inference is also supported by the fact that Ms. Zutler held the report and investigation in her hands for 5 months after receiving it from Ms. Pating, and for a month and a half since its completion date signed by Ms. Pating of December 22, 2023. As such, it is reasonable to conclude that Ms. Zutler continued to provide direction regarding disclosure and substance of the investigative reports without any transparency to the Valley Water directors, to achieve results favorable to its client Valley Water. The lack of transparency is wholly inconsistent with the Brown Act. Without an integrity set of the investigative reports and executive summaries, Valley Water's outside counsel could conceivably continue to edit and revise the reports without the directors' and the public's knowledge.

25. During this entire time, no one at Valley Water, including the Chair, CEO, or other Board members, asked me why I took the printout, nor did they ask for its return. Nonetheless, the CEO began another publicly funded campaign of propaganda against me, alerting the press and all employees, staff, and the public falsely that I had "stolen classified documents." His representatives spread this false statement throughout the community, including to Palestinian activist groups such as CAIR.

26. The CEO also directed staff to harass me and my family at my home in Palo Alto. On February 7, 2023, after both of my children were in bed asleep, at approximately 9.30 PM, a District employee came to my home and began ringing my doorbell. Rather than ringing once and waiting, he rang continuously. When I opened the door, I asked if he was a “Process Server,” an individual who is paid to deliver official notices, usually involving that a person is being sued. He said that yes, he is a process server. I asked him to wait while I could call my partner, and could he please stop ringing the bell so I could use the phone. He did not stop ringing the bell. It took me five minutes to get in touch with my partner, during which time both of my children were awoken. One of my children is an athlete and had to wake up at 4 am for workouts. The other of my children is attending college, working at an internship, and is also on the autism spectrum, so loud noises like continual doorbell ringing causes her considerable discomfort and distress. With my daughter experiencing physical pain from the constant noise, and her asking me to call the police, and my two dogs barking, I went back to the door. I was also prepared to give back the print-out I had taken home. Instead of being asked for the print-out, the Valley Water representative handed me a packet of papers including an investigation on whether I “stole” the print-out I had been prepared to give back. Although the “investigator” interviewed approximately a dozen people and spent time and money on accessing security camera footage, the investigator did not interview me. I asked the Valley Water representative if he needed a signature, and he declined. I asked him if he needed anything from me, and he said no. He walked back to his car, and I left the print-out in its safe and secure

location. Given that the representative took no signature, and asked nothing from me, he could have emailed the file rather than come to my home in the dark without notice or permission.

27. The following day February 8th, I received a phone call from Detective Sahnic from the San Jose Police Department. I told him that I had a right to the documents, that I took a print-out of infinite printouts, maintained its confidentiality, that I have kept it secure and shared it with no one, and, importantly, that no one asked for them back, not even the night before when Valley Water sent a representative to my house and woke my kids with his 10 minutes of doorbell ringing. The detective informed me that he would submit his completed report to the Office of the District Attorney, and the DA's Office would decide. I submit that a recusal would be appropriate given that the DA Jeffrey Rosen strongly backed my predecessor, whom I beat in his re-election campaign.

28. For these reasons, I stand on the fact that I took home a print-out to which I was entitled. I never was asked for it back. Even under the Chair's analysis, she did not conclude that I violated any code or rule. The District made a false police report for flagrantly political reasons — indeed, the District has not and cannot articulate any violation of Board ethics or other authority that requires that directors be confined in a room to review a report that is for directors' eyes only. The very worst that the District could claim is that I took home a print-out, and the most they could ask for is that I bring it back or reimburse them for the costs of printing. They did not ask for it back. I am happy to

reimburse them for the costs of printing, through my District Budget as a Board Director. No harm was alleged, and no harm has occurred.

29. As to the ironic contention that I would intimidate staff members by having their witness accounts, I respond as follows: (A) The investigator Ms. Pating stated multiple times that the only complainants were the CEO and District Counsel, so there should be no staff witness accounts. (B) If there are staff complaints, they all were added after the investigator told me she was completed, and I was never told about them or given an opportunity to respond to them. They cannot be considered part of the independent investigation, so they are to be disregarded. (C) There never has been any contention or complaint from staff that I intimidate them or abuse them. (D) Rather, for 14 months, and still today, staff have continuously reached out to me for protection from the CEO's hostile intimidation and arbitrary firing decisions.

30. I have living proof of the types of hostility that the CEO inflicts on those with whom he disagrees or, potentially, views as a threat to his authority. From the time that the CEO demanded the investigation against me, I have faced a barrage of different forms of harassment and exclusion from the CEO and certain colleagues on the Board. In addition to the 13-month inappropriate and unauthorized \$600,000 investigation against me, the former Board Chair also rescinded his previous invitation to me to participate in a trip to meet with congressional leaders in Washington DC. He also "prohibited" me from speaking at press events. The CEO continues to warn all employees, most or all of whom are constituents, that they will face employment

discipline if they speak with me. Additionally, the CEO insists on attending all scheduled meetings I have with staff, often interrupting these meetings with his emotional outbursts and accusations. The CEO does not attend and interrupt my colleague's meetings with staff in such an unwelcome and offensive way. The CEO continues to direct his representatives to distribute inflammatory false accusations of me. The most recent of these accusations was sent to a broad group that included several activists from Palestinian activist organizations, creating a presumption that his problems with me may include my religious status as a Jewish woman.

31. It is known that CEO, not I, is considered an “autocratic tyrant” and “narcissist” who has “created a culture of terror” at Valley Water. Many of those allegations appeared in the investigation report of Director Kremen last year (where the CEO allegedly turned a blind eye on employees, even as they broke down in tears), and in the investigation that the CEO launched against Directors Keegan and LeZotte, claiming that they were racist for voting against his appointment as CEO. In that investigation, for example, the CEO alleged that it was racist for these female Board Directors to have mentioned the CEO's conviction of a violent crime. The investigator concluded that their mentioning of the felony record was not racist because of its truth. There is ample evidence in the record of the CEO's well-established retaliation and retribution, his temper tantrums in public meetings, his misappropriation of public funds to pay for retaliatory investigations against political foes, his dismissal of staff for no reason, and his combative and defensive tone. This evidence exists even though Valley

Water illegally expunged 10 years of the CEO's employment records from the official file, including the settlement he reached with the District when the CEO sued the woman whom he had sexually harassed, and the investigative report that recommended that the CEO be fired years ago.

32. Given that the CEO has, for more than a year, threatened employees that he would fire them or otherwise sanction if they speak with me, it is highly unlikely that any staff would have the opportunity to fear interaction with me because they have little beyond the ones who contact me anonymously — not to mention that the CEO, not I, has the power to make firing decisions. If I had any power in this organization, I would have replaced the CEO, would have stopped the unauthorized and inappropriate use of public funds to wage a campaign of propaganda against me, and would have stopped all work on the egregiously expensive, environmentally devastating, and irreparably destructive to indigenous ancient artifacts Pacheco Dam.

33. I mention the CEO's retaliatory actions and the statements made about the culture he creates not to disparage the CEO, but rather to counter his claim that it is I who somehow have access to his power to fire people, to control the conditions under which his staff work, or to otherwise harm the staff in the ways he has been described as doing. It is irrational to think that I, the newest Board Director who sits on the fewest committees and who is not allowed to interact with staff, could somehow impact their employment, rather than the person who impacts it directly, their ultimate boss the CEO. Because he opened the door to these allegations, I must respond to them with the truth.

34. The District stated that it spent almost \$600,000 on its investigation — an investigation I never asked for or believed had merit or justification.

<image004.jpg>

I am no Greta Thunberg, sadly... but at age 55 I am the youngest Director on Valley Water's elected Board — by 15 years. I also am the only Director who pushes for climate action, not just sometimes but all the time. I am proud of the work I am doing to bring positive change to a dirty place!

35. I stand by my actions. I have no regrets about standing up for myself, standing up for employees, including the three labor unions at Valley Water, and standing up for my constituents, who elected me for this very purpose: to expose and rid this \$10 billion agency of corruption, harassment, and misappropriation of ratepayer and taxpayer funds.

Sincerely,

Rebecca Eisenberg

Director, District 7  
Santa Clara Valley Water District