

## Memorandum to Colleagues

To: Valley Water Board Chair Hsueh, Vice Chair Santos, Directors Beall, Ballard, Estremera, and Varela, and District Counsel Carlos Orellana

From: Rebecca Eisenberg, Director, District 7, Santa Clara Valley Water District (Valley Water)

Regarding: Board Fiduciary Obligations

Original Date: December 17, 2024

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Dear Colleagues

In November, the Board of Directors was advised about what appear to be serious, pervasive, and ongoing allegations, as well as allegations of retaliation, that are alleged to involve a high-ranking officer of the organization. The Board was notified in late November, although the complainant had filed the complaint in October.

The reason for this Memorandum is my continuing serious concern that the Board of Directors and District Counsel are not willing to hold further discussions or engage in further action to explore whether the high-ranking officer should be placed on temporary administrative leave pending a thorough and independent investigation into the claims in this matter. The Board was presented with what I understand to be only a small portion of the available information at its informational meetings. I encourage the Board to review all the information available thus far and that all information be provided to the Board if any is being held back at this point. So far, the Board has not been directly provided, in writing, any of the written evidence, nor has the Board been shown directly, in writing, any of the written complaints.

The complainant's union has at least twice issued public statements admonishing the Agency for failing to place the high-ranking officer on administrative leave pending a full investigation and decision in the matter. The union has stated that the Agency has typically placed personnel on administrative leave during such investigations and that failure to do so in this instance is a deviation from normal practice. The union raises myriad concerns about the serious allegations, complaints of retaliation, and potential influence and intimidation on the investigation and employee witnesses if the high-ranking officer is not placed on administrative leave, among other concerns. There is also the concern that the employee complainant and witnesses continue to be exposed to the high-ranking officer within the employer-employee environment during the investigation.

A full Board discussion needs to occur to discuss how to proceed regarding potential administrative leave pending the investigation and resolution of the matter. To do so effectively, the Board of Directors must be provided all the information currently available to make that interim decision. *The multiple allegations of retaliation make this imperative.* The allegations in the claim and the retaliation claims are in the investigation stage; therefore, no conclusions have yet been reached. This discussion is to address what should be done while the investigation is ongoing.

## Fiduciary Obligations

I take my fiduciary obligations as a Director seriously, and I desire to fulfill them thoroughly and completely. Failure to act creates personal liability and liability for the Board and the Agency. To the extent my fellow Board of Director Members impede my ability to fulfill my fiduciary obligations, silently allow others to do so, or fail to take necessary actions to meet our collective fiduciary obligations, please understand that I object to each of these. I also believe each Board Member is accountable for their own failures in meeting their fiduciary obligations and for their part in impeding me in meeting mine.

Accordingly, I believe that the Board will fail to meet its fiduciary obligations if it fails to require that the Board be provided *all* the available information as to claimant that is not personally identifying to the claimant, including the claimant's full account of the alleged misconduct, abuse claims, and any other claims, including all the written and digital information that the claimant has provided as evidence of the claims and any alleged retaliation, so that each Board Member can read and review the material, and the Board can meet, discuss, and assess whether to place the officer on administrative leave pending the investigation. In my mind, that has not remotely happened.

In sum, I fear that by failing to take reasonable steps to evaluate the current risks posed to the claimant, the Board is breaching its fiduciary duty to the District, the public, and the staff. Only by addressing these allegations with the seriousness they deserve will we as a Board fulfill our statutory and ethical duties. Because I appear to be alone in this opinion among my colleagues, if I fail to convince them of the importance of acting as we are required, at least it is noted for the record that I disagree with and dissent from the Board's actions.

Attached (below) are the two public statements made by the victim's union that have been presented to the Board.

Sincerely,

Rebecca Eisenberg  
Director, District 7

### **FIRST PUBLIC UNION STATEMENT VALLEY WATER REGULAR BOARD MEETING**

TUESDAY, November 26, 2024

Agenda Item 3.3, Time Open for Public Comment on any Item not on the Agenda.

- *AFSCME Local 101 is here tonight to publicly request that the Board take action to protect its members vis a vis an ongoing investigation..*
- *As the Board knows, an AFSCME-represented employee has made several serious allegations against a management official.*
- *We understand that these are allegations and that there have been no factual findings and we agree the official has the right to due process before any actions are taken.*
- *However, given the level of authority that the management official holds in the agency, their possible contact with the complainant and witnesses, and the seriousness of these allegations, we believe that it is improper for the official to continue working. Simply, any presence at the*

workplace of the person being investigated during the investigation creates a potential chilling effect towards AFSCME members .

- Additionally, their presence while the investigation is being conducted could harm the integrity of the investigation as it may alter and interfere with employees providing truthful and accurate information.
- Many of those who will be involved in this investigation, including the accuser, are our members and it is our obligation to protect them and ensure that they have the right to participate in this process without the fear of intimidation and retaliation, and even the perception of such conduct.
- In my years with the AFCME, representing valley water, the standard practice for Valley Water when there are serious allegations of this sort is to put the accused on administrative leave while the investigation is in-progress . We see no reason why that practice should be deviated from in this instance.
- In fact, we believe that it is even more important in this circumstance because the individual's stature in the agency and the power that they hold over those who will be critical parts of the investigation.
- This is the best course of action for the employees involved and the Agency, and honestly, we believe it is also in the interest of the management official to ensure that there is a thorough and fair investigation that all, including the public, can have confidence in the outcome.
- We believe this is a crucial action that must be taken immediately and urge you to do so.

## **SECOND PUBLIC UNION STATEMENT**

Valley Water Regular Board Meeting  
Tuesday, December 10, 2024

*Good afternoon, Board. Welcome Director Ballard.*

*I am Salam Baqleh the VP of the Employees Association here today to reiterate our business agent's statement from the last Board meeting. As Abul stated last time, we believe that the executive management official who is under investigation should be placed on administrative leave pending the outcome of this investigation.*

*Our member has brought many serious allegations against a member of executive leadership. Given the authority this person has over our member and all of the potential witnesses, we believe that it is improper for the official to continue working here during the investigation.*

*Many of those who will be involved in this investigation are our members and it is our obligation to protect them and ensure that they have the right to participate in this process without the fear of intimidation and retaliation. We understand that some of the allegations already include retaliation for filing this very complaint. Not to mention, if the allegations are substantiated, Valley Water would have knowingly allowed continued contact between our member and the person they have made serious accusations against. Given the amount of evidence turned over to Valley Water already, not putting this person on leave would be a very risky decision. Ultimately, not taking this course of action is not only incredibly harmful to our members but also Valley Water.*

*In my 9 years with Valley Water, many of them conducting investigations myself as the EEO Program Administrator, I know that the standard practice for Valley Water – and indeed all agencies - when there are serious allegations of this sort. The practice is, and has always been, to put the accused on administrative leave until the investigation is complete. We see no reason why that practice should be*

*deviated from in this instance. In fact, I have not heard of allegations this severe in all of my time here. The allegations, if proven, span many years and paint a picture of a pattern of behavior that is simply unacceptable in the workplace. Indeed, the allegations are seemingly worse than those lodged against an executive official at Metropolitan Water District, and that official is on leave. We see no reason for VW to deviate from its own long standing practice which is also the industry best practice.*

*Finally, I want to say that even though Labor Relations called me to give me a “heads up” that our member was going to be disciplined after they filed their complaint, and even though HR made it a point to speak with my colleague union President Robert Ewing in that very pre-function lobby after our business agent made a statement to relay that she was “disappointed” in our union’s statement, we will not stop advocating for the rights and safety of our members.*

*We hope to not have to return to the next meeting to make yet another statement but find that it would be a breach of our duty to our members to not continue to advocate for this course of action.*

*Thank you for your time.*