

CONFIDENTIAL
EXECUTIVE SUMMARY
for
SANTA CLARA VALLEY WATER DISTRICT

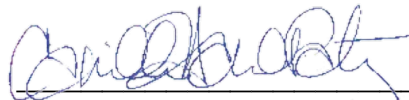
Complainants: Rick Callender, Carlos Orellana
and other employees

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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(SBN 122890)



I. EXECUTIVE SUMMARY

Meyers Nave (“Meyers Nave”) was retained by Santa Clara Valley Water District (“SCVWD” or “District”) to conduct an independent investigation¹ (“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 findings² 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 ³
Allegations Regarding Eisenberg’s Interactions with SCVWD Staff			
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	Not Substantiated

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

² This report contains findings of fact, not conclusions of law.

³ 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 ³
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	Not Substantiated
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	Not Substantiated as Sex Discrimination Not Substantiated 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	Not Substantiated as Sex Discrimination Substantiated 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	Not Substantiated as Sex or Race Discrimination Not Substantiated as Discriminatory Harassment Substantiated as Improper Direction to Staff

No	Allegation	Policy	Finding ³
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	Not Substantiated
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	Not Substantiated
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	Not Substantiated
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	Not Substantiated
Allegations Regarding Eisenberg's Statements to or About Board Members			
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	Not Substantiated as Age Discrimination Substantiated 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	Not Substantiated

No	Allegation	Policy	Finding ³
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	Substantiated
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	Not Substantiated
Allegations Regarding Eisenberg's Conduct Toward the District Counsel			
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	Not Substantiated
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	Not Substantiated as Race or Sex-based Discriminatory Harassment Substantiated as Abusive Conduct
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	Substantiated

No	Allegation	Policy	Finding ³
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	Not Substantiated as Race Discrimination Substantiated as Abusive Conduct Substantiated 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	Not Substantiated
Allegations Regarding Eisenberg's Conduct Toward Both the District Counsel and CEO			
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	Not Substantiated
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	Not Substantiated
21.	Eisenberg's social media posts referencing Orellana and Callender were acts of retaliation, as defined by SCVWD policies.	Policy AD-2.8 ⁴	Not Substantiated

⁴ 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 ³
Allegations Regarding Eisenberg's Conduct Toward The CEO			
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	Not Substantiated
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	Not Substantiated
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	Not Substantiated
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	Not Substantiated as Hostile Work Environment Substantiated 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.⁵

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.⁶ 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.⁷

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

⁶ Attachment 2.

⁷ 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.⁸

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

⁸ Employers are prohibited from discriminating against male employees on the basis of sex. *Sassaman v. Gamache* (2nd 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 \$8 billion 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 egregious⁹. Here, it is undeniable that Eisenberg's comment to staff, and the underlying message infantilizing staff, could be considered offensive, inappropriate and

⁹ 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 Eisenberg¹⁰, 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

¹⁰ 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.¹¹ 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.

¹¹ 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.

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.”¹² 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.

¹² 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.¹³ 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.

¹³ 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.

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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.¹⁴ 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.”

¹⁴ 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 positions¹⁵ 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

¹⁵ 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 \$405,618.00¹⁶ 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.¹⁷ 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

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

¹⁷ 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.¹⁸

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.

¹⁸ 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 issues¹⁹ 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

¹⁹ 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.²⁰

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:

²⁰ 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

<div><div>Santa Clara Valley Water District</div><div></div></div>	Anti-Discrimination, Harassment, Abusive Conduct, and Retaliation Policy	DOCUMENT NO.: AD - 2.8
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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;

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- 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



Anti-Discrimination, Harassment, Abusive Conduct, and Retaliation Policy

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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.

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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.

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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.

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- 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

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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, 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.

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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.

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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.

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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:



Anti-Discrimination, Harassment, Abusive Conduct, and Retaliation Policy

DOCUMENT NO.: **AD - 2.8**
REVISION: **B**
EFFECTIVE DATE: **Nov. 22, 2019**
PROCESS OWNER: **Anna Noriega**

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- 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

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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

Title: Governing Style Category: Governance Process		
Policy No. GP-2	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

Title: Board Job Description		
Category: Governance Process		
Policy No. GP-3	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

Title: Chairperson's Role Category: Governance Process		
Policy No. GP-5	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.

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- 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

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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.

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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.

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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

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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.

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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.

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- 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:

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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

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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

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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.

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- 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.

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- 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		
Policy No. GP-7	Adopted: June 15, 1999 Chair: Larry Wilson	Latest Revision: August 8, 2017 Chair: John L. Varela
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

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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

Title: Board Committee Structure

Category: Governance Process

Policy No. GP-9

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.

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- 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

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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

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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.

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