



# Santa Clara Valley Water District

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**File No.:** 21-0066

**Agenda Date:** 1/26/2021  
**Item No.:** 4.1.

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## BOARD AGENDA MEMORANDUM

### **SUBJECT:**

Report of Former Board of Directors Chairperson Nai Hsueh, Upon Review of Investigation of May 27, 2020 Complaint Filed by Rev. Jethroe Moore, Against Directors Keegan and LeZotte.

### **RECOMMENDATION:**

Review and Consider Findings in the Executive Summary of the investigative report.

### **SUMMARY:**

On May 27, 2020, Rev. Jethroe Moore submitted a complaint to Valley Water alleging that Directors Keegan and LeZotte engaged in discriminatory and retaliatory conduct with respect to CEO Enrique L. Callender during the process for his selection to that position. Since Rev. Moore is a non-board member, the complaint was handled in accordance with the provisions of Board Governance Process 6.15 through 6.19, which is 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. For reference, Rev. Moore's May 27, 2020 complaint is attached as Attachment 1<sup>1</sup>.

District Counsel, with input from Board Ethics and Conduct Ad Hoc Committee, retained the services of Amy Oppenheimer, Attorney at Law, to serve as the impartial and independent investigator. Ms. Oppenheimer served as the principal investigator and was assisted by Julie M. Kennedy.

During the course of the investigation, Rev. Moore supplemented his complaint with a letter to the investigator dated August 10, 2020<sup>1</sup>. Based upon the allegations in the two letters and the investigators' interviews with Rev. Moore and CEO Callender, the investigator addressed four discrete issues:

1. Did Keegan and LeZotte release confidential information from Mr. Callender's personnel or EEO files to the media and the public?
2. Did Keegan and LeZotte spread information about Mr. Callender being a sexual harasser or a convicted felon as part of their "lobbying" against his appointment to the CEO position?
3. Did Keegan and LeZotte seek criminal background checks on Mr. Callender in connection with his application for the CEO position?
4. If any of the above conduct occurred, was it due to Mr. Callender's race?

Ms. Oppenheimer has completed her investigation, the Executive Summary of which is attached as Attachment 2. As noted in more detail in the Executive Summary, the investigator determined that for:

Issue 1: The allegations were not sustained

Issue 2: The allegations were sustained in part and not sustained in part.

Issue 3: The allegations were sustained

Issue 4: The allegations were not sustained

In summary, Ms. Oppenheimer determined that a preponderance of the evidence did not support a finding that the actions of Directors Keegan or LeZotte were based on race.

### **Review Process**

Pursuant to Board Governance Process 6.19.3, upon the conclusion of an investigation into a complaint by a non-board member against a board member, the Chair of the Board shall be presented with the written results of the investigation. If the Chair of the Board is satisfied with the completeness of the investigation, he or she shall provide the Board with findings and any recommendations.

Following 6.19.3, I reviewed the investigative report during the 1st week of January 2021 while I was still in the capacity of the Chair of the Board. I did not solicit assistance from the Board Ethics and Conduct Ad Hoc Committee, and the committee had no role in my review.

Based on my review, I found the investigative report complete and consistent with the scope of services, and I do not have any separate recommendations to the Board as a result of my review. I'm submitting the Executive Summary of the investigation to the Board under this agenda item.

### **Next Step**

Pursuant to Governance Process 6.19.3, following such review, any individual Board member may file a request for admonition, sanction, or censure. If such a request is filed, the subsequent procedure is set forth in Governance Process 6.19.5

Attachment-1 does not include the copy of agenda item 2.1 from Valley Water's September 13, 2011 board meeting Rev. Moore included in his email conveying the complaint.

Rev. Moore's August 10, 2020 letter is referenced on page 2 of the Executive Summary of the investigation by Amy Oppenheimer, Attachment 2.

### **FINANCIAL IMPACT:**

There is no financial impact associated with this item.

### **CEQA:**

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

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**ATTACHMENTS:**

Attachment 1: 052720 Complaint, Rev. Jethroe Moore

Attachment 2: 011221 Confidential Executive Summary, Investigative Report

**UNCLASSIFIED MANAGER:**

Former Chairperson Nai Hsueh