

DATE: January 23, 2023

TO: John Varela, Board Chair and Carlos Orellana, District Counsel

FROM: Rick Callender, Chief Executive Officer

SUBJECT: **Reported Alleged Gender Based Discriminatory Comments, Potential Behavior Which May Violate Board Policy and/or the Law, and Individual Board Member Direction to Staff.**

It's with a heavy heart that I have to send this memo. I genuinely like and appreciate Director Eisenberg and look forward to her new ideas and thoughts on policy. I fully understand and appreciate how being a new member of the Board may make it challenging to accomplish her goals as a Director, and the frustrations it may cause. I sincerely appreciate her passion, strong legal background, thoughtful ideas, intelligence, and commitment to serve the residents of Santa Clara County.

As CEO when I receive a report about behavior which appears to be in conflict with Board policy or the law, I normally directly counsel a Board member, as I have done in the past, particularly if I believed that the Board member is potentially violating Board policy and/or the law.

To date I have received several written reports, emails, and verbal complaints of comments made by Director Eisenberg which I believe are in conflict with Board policy and/or the law. Unfortunately, I believe I am the incorrect person to counsel Director Eisenberg, because I too have been allegedly part of her targeted comments. However, under the law and Valley Water policy I am required to appropriately address comments and behaviors which may violate policy and the law, and I am concerned about the liability that Valley Water may assume if the alleged behaviors and comments listed below continue, or worse, expand even further.

Consequently, I am turning this over to the Chair and to General Counsel to investigate and determine how this allegedly reported conduct should be remedied, and if it continues to occur, be corrected.

The objective of this memo to you is to request the appropriate remedy based on the following policies and law:

- All employees of Valley Water are entitled to protections under Valley Water policies and both State and Federal law.
- GP-11.1 holds in part that the Board and its members will not discriminate, harass, or allow harassment against any employee on the basis of sex or gender.
- Valley Water's Administrative Policy 2.8 - Anti-Discrimination, Harassment, Abusive Conduct, and Retaliation Policy (Ad-2.8) states that Valley Water is committed to providing all its

employees with a work environment free of discrimination and harassment. The policy prohibits discrimination and harassment based on gender, sex, and other protected categories.

- Ad-2.8, section 1 states that no employee is expected to tolerate any conduct prohibited by this policy by anyone while at work or engaged in Valley Water business.
- Ad-2.8, section 4, holds that employees who are aware, directly or indirectly, of prohibited behavior engaged in or suffered by another must report it to a supervisor. Supervisors and managers are required to refer all complaints of misconduct to EEOP in Human Resources. Complaints against any member of the Board must be immediately referred to the District Counsel's Office for resolution.
- GP-6.3 holds Board members may not attempt to exercise individual authority over the organization.
- GP- 6.3.1 holds that Board 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.

The behaviors of Director Eisenberg have been reported to me both orally and in writing, and as such I am reporting what I have been informed of, and raising it to the Board and Counsel in light of both Board policy and my legal responsibility as a manager and employee to report knowledge of potential violations of law.

Alleged Discriminatory Comments Based on Gender

I have received multiple written and oral complaints/reports, that Director Eisenberg has made statements in meetings and during discussions with various staff members which are discriminatory relative to gender. These reported statements made to staff, contractors, and others have caused great discomfort, fear, and concern by the receiving persons, and those in the meetings. Below is just a partial list of reported statements which I have been informed of.

1. Director Eisenber allegedly asked if at the top of a Nextdoor post there could be an introduction saying this was written by the author of the post and preferred that the writer of the post was female, because she wants to elevate (showcase) women at Valley Water. The post and the key writer on Valley Water staff is Male.
2. Director Eisenberg allegedly started off with Cordoba Corporation's equity assessment conversation by asking why the leadership & Board hired Cordoba and their sub-contractor Dakota Communications for this work as they are male-led companies and why not female/ women of color led? She said perception is everything and women of color are constantly marginalized and why aren't they heading up this work instead? When the representative from Cordoba tried to respond by saying while minority males are the principals of their two

firms, they are very much allies to issues of gender discrimination- she jumped in to state it's "not good enough"- it's not the same thing at all and she does not trust men to advocate for women's issues.

3. Director Eisenberg allegedly stated that "Dir. Beall is the only man, besides her husband, that she thinks is truly amazing and a real ally."
4. Director Eisenberg allegedly said it's imperative women of color be at the very top and asked why we don't have a woman of color CEO. "It's not good enough to have a male CEO and top execs that are women in supporting roles."
5. Director Eisenberg allegedly has stated that Valley Water needs a woman of color at the very top – not just in second position. It's very important to her.
6. Director Eisenberg allegedly stated that when the Permanente concrete channel was built it was built by "men" because they love to build things and use concrete. This has caused the problems we are seeing today.
7. Director Eisenberg also was reported as saying how she believes flooding exists because of all the concrete 'men engineers' had poured in our area. She further noted that we wouldn't have flooding if it wasn't for the 'men engineers' who constructed all our dams because 'men' just like to build things.
8. Director Eisenberg allegedly said "Men made rules that we are not allowed to spend public money on private trees because they don't care about sustainability."

If these reports are indeed true, I am concerned about gender based discrimination and decisions involving gender discrimination occurring at Valley Water in violation of State and Federal law.

Reported Behaviors Which Potentially Violates Board Policies and/or the Law

I am concerned with emails I have read, sent from Director Eisenberg to staff which I believe directly violate GP- 6.3.1, and my concern is that the comments in her emails may be directly tied to the alleged gender based comments which I have described above.

These behaviors have had a direct chilling effect on both male and female members of staff who have directly expressed to me fear, concern and trepidation about past and potential future interactions with Director Eisenberg. This fear has created an environment where staff can not perform at their best.

More than one member of staff has expressed the desire to retire or quit, if the behavior continues, and another has directly told me that their mental health is being compromised due to interactions with the Director.

Disconcerting comments from emails include the following:

1. Telling staff that they are lying and untrustworthy.
2. Insinuating that staff is too incompetent to do their job.

3. Belittling and bullying staff by stating that they lacked “common sense, good judgment, humility, and bigger-picture-thinking.”
4. Informing staff that the Director has to “micromanage them” so that they can be effective.
5. Using abusive and inappropriate words such as douchebag and ass.

Reported Behavior Which Constitutes Direction to Staff

I am concerned that both oral and written direction is being given to staff which directly constitutes direction to staff and sometimes is in conflict with already voted upon Board direction.

Below are direct excerpts of emails sent to staff from Director Eisenberg. This is only a sampling of direction to staff.

1. Email about assisting with negotiations on Project A. Note: I have changed the name of the project to Project A and Project B. No other changes to the email have been made, including bold and underlines.

“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 [Project B] from the CIP. Yesterday, staff asked the Board to approve [Project B] despite its current \$8 billion price tag, yet said it was not “ready” to remove [Project B]. \$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. This is why so many in the public and press view our Agency as corrupt. What motivates an agency to continue to cling so hard to such an unprecedentedly expensive project? I am told that some are wondering, who is being paid off ?”

2. Directing staff to follow their advice and direction

“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.”

Your direct assistance with an investigation and resolution of the above identified assertions by Valley Water staff would be greatly appreciated so that staff can continue to move forward with the

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business of serving the people of Santa Clara County through Board policy direction, in a professional manner without fear of being subjected to discriminatory comments, bullying, being belittled and humiliated, being called out of their name, harassed, or yelled at by any Director in potential violation of law or policy.

Please let me know if you have any questions or need clarification.

A handwritten signature in black ink, appearing to read "R. Callender", followed by a horizontal line.

Rick L. Callender, Esq.
Chief Executive Officer