



MEMORANDUM

TO: SLDMWA Finance & Administration Committee, Board of Directors

FROM: Pablo Arroyave, Chief Operating Officer

DATE: July 6, 2020

RE: Adoption of RESOLUTION Adopting the San Luis & Delta-Mendota Water Authority Reporting and Anti-Retaliation Policy

BACKGROUND

In 2019, Richardson & Company, the Water Authority's auditor, prepared a management letter to provide recommendations for improvements in the Authority's business practices. Specifically, the auditors recommended that the Water Authority develop a Fraud Prevention/Whistleblower Policy. The auditors recommended that the policy should include a discussion regarding the types of activities that constitute fraud or contracting improprieties, how an employee should report such suspected fraud or contracting improprieties, and to whom or where an employee should report such activities, including reporting procedures if an employees' supervisor or a member of senior management is suspected of these activities. Given the recommendation and the fact that the Water Authority did not have such a policy, the Authority engaged with inside and outside legal counsel to develop the policy.

ISSUE FOR DECISION

Whether the Finance & Administration Committee should recommend to the Board of Directors, and the Board of Directors should take action to adopt the attached resolution and authorize adoption of the Reporting and Anti-Retaliation Policy.

RECOMMENDATION

Staff recommends adoption of the attached resolution and proposed Reporting and Anti-Retaliation Policy.

ANALYSIS

The proposed Reporting and Anti-Retaliation Policy describes the Water Authority's process for addressing protected disclosures related to improper governmental activity. The policy is organized as follows:

- Article 1: Introduction
- Article 2: Definitions
- Article 3: Basic Principles

Article 1, entitled Introduction, states the Water Authority commitment to fostering a culture of integrity and encouraging employees to report good faith concerns regarding business-related conduct that may be unlawful.

Article 2 defines “Protected Disclosure” and “Improper Governmental Activity,” which are key terms throughout the remainder of the policy.

Article 3 describes the Water Authority’s commitment to maintaining accountability and compliance with law and maintaining confidentiality. It also contains provisions governing false disclosures, disclosure procedure, evaluation of complaints, investigation, finding of improper governmental activity. Article 3 also explains how employees who make protected disclosures will be protected from retaliation, and lays out the Water Authority’s commitment to providing appropriate training to its employees.

The proposed policy includes a discussion regarding the types of activities that constitute fraud or contracting improprieties, as far as those activities constitute “improper governmental activity” as those terms are defined within the policy, and outlines reporting procedures, consistent with the auditors’ recommendations. To the extent the policy also outlines steps to prevent and correct wrongful behavior in the workplace, it also constitutes a key component of the Water Authority’s overall anti-harassment program in compliance with state and federal law.¹

BUDGET

Adoption of the Reporting and Anti-Retaliation Policy will reduce the Authority’s risk of legal and financial liability.

¹ See, e.g., Cal. Gov. Code §§ 12927, 12940 (provisions of the California Fair Employment and Housing Act), and § 8547 et seq. (the California Whistleblower Protection Act).

SAN LUIS & DELTA-MENDOTA WATER AUTHORITY

RESOLUTION NO. 2020-___

RESOLUTION ADOPTING A REPORTING AND ANTI-RETALIATION POLICY

WHEREAS, the Board of Directors of the San Luis & Delta-Mendota Water Authority (the “Board” and the “Water Authority,” respectively), pursuant to the Water Authority’s procedures and the California Government Code, from time to time, may adopt policy for the administration of the Water Authority; and

WHEREAS, the adoption of a Reporting and Anti-Retaliation Policy would outline steps to prevent and correct wrongful behavior in the workplace, and would therefore constitute a key component of the Water Authority’s overall anti-harassment program in compliance with state and federal law, and provide specific protections for whistleblowers modeled after the California Whistleblower Protection Act, Gov. Code § 8547 et seq.; and

WHEREAS, the purpose of the Reporting and Anti-Retaliation Policy is to memorialize and communicate procedures in connection with protected disclosures related to improper governmental activity; and

WHEREAS, the Board, by adoption of this Resolution, desires to memorialize a Reporting and Anti-Retaliation Policy of the Water Authority.

NOW, THEREFORE, BE IT RESOLVED, AS FOLLOWS, THAT:

Section 1. The facts stated in the recitals above are true and correct, and the Board so finds and determines.

Section 2. The Board hereby approves that certain document entitled “San Luis & Delta-Mendota Water Authority Reporting and Anti-Retaliation Policy,” dated July 9, 2020, a copy of which is attached to this resolution as Exhibit 1, has been presented to the Board, and is on file with the Secretary hereof.

Section 3. With the consent of the Executive Director, Chief Operating Officer, and General Counsel, updates are hereby authorized to be made to the Reporting and Anti-Retaliation Policy based on changed requirements of state or federal law without further action by the Board.

Section 4. The San Luis & Delta-Mendota Water Authority Reporting and Anti-Retaliation Policy shall become effective immediately and shall remain in effect unless revoked or modified by the Board or updated pursuant to Section 3 above.

PASSED, APPROVED AND ADOPTED this 9th day of July, 2020, by the Board of Directors of the San Luis & Delta-Mendota Water Authority.

Cannon Michael, Chairman
San Luis & Delta-Mendota Water Authority

Attest:

Federico Barajas, Secretary

I hereby certify that the foregoing Resolution No. 2020- was duly and regularly adopted by the Board of Directors of the San Luis & Delta-Mendota Water Authority at the meeting thereof held on the 9th day of July, 2020.

Federico Barajas, Secretary

EXHIBIT 1

SAN LUIS & DELTA-MENDOTA WATER AUTHORITY REPORTING AND ANTI-RETALIATION POLICY

1. ARTICLE 1. Introduction.

The **San Luis & Delta Mendota Water Authority (Authority)** is committed to fostering a culture of integrity and to encouraging employees to report good-faith concerns regarding business-related conduct that may be unlawful. The **Authority** does not tolerate any retaliatory, fraudulent, illegal or unethical business-related conduct. This **Reporting and Anti-Retaliation Policy (Policy)** constitutes a key component of the Authority's overall anti-harassment program in compliance with state and federal law, and provides specific protections for whistleblowers modeled after the California Whistleblower Protection Act, Gov. Code § 8547 et seq.

2. ARTICLE 2. Definitions.

- 2.1. Protected Disclosure. A protected disclosure is any good faith communication that discloses or demonstrates an intention to disclose information that may evidence (1) an improper governmental activity or (2) any condition that may significantly threaten the health or safety of employees or the public if the disclosure or intention to disclose was made for the purpose of remedying that condition.
- 2.2. Improper Governmental Activity. Improper governmental activity as used in Section 2.1 above means any activity by the **Authority** or by an employee of the **Authority** that is undertaken in the performance of the employee's official duties, whether or not that action is within the scope of his or her employment, and that (1) is in violation of any state or federal law or regulation, including, but not limited to, corruption, malfeasance, bribery, theft of government property, fraudulent claims, fraud, coercion, conversion, malicious prosecution, misuse of government property, or willful omission to perform duty, or (2) is economically wasteful, or involves gross misconduct, incompetency, or inefficiency.
- 2.3. Whistleblower. A whistleblower is an individual who informs a supervisor, employer, government agency, or other authority figure about Improper Governmental Activity.

3. ARTICLE 3. Basic Principles.

- 3.1. Misconduct. The **Authority** is committed to maintaining a high standard of accountability and compliance with the law. The **Authority** is dedicated to ensuring that its officers and employees comply with all provisions of the law.
- 3.2. Confidentiality. The **Authority** will make all efforts to maintain confidentiality of all disclosures. However, confidentiality is not guaranteed, and the identity of the whistleblower may need to be revealed in order to facilitate the investigation and resolve the issue.
- 3.3. Non-Protected Disclosures. This policy applies to employees who raise good-faith concerns relating to Improper Governmental Activity as defined. This policy is not intended to address every concern that may arise in the workplace. For example, complaints of a personal nature or mere disagreements with the **Authority's** business decisions do not constitute whistleblowing and are not covered by this Policy. Complaints

of this nature may be addressed under other **Authority** policies, such as anti-harassment policies, using other available channels of communication.

- 3.4. False Disclosures. In the event that a disclosure turns out to be unfounded, the following standards apply:
 - 3.4.1. If the disclosure was made in good faith, no adverse action will be taken against the individual who made the disclosure.
 - 3.4.2. If the disclosure was intentionally false, made with malice, or otherwise lacks good faith, such as when an employee makes a disclosure with reckless disregard for the truth, the individual who made this disclosure may be disciplined up to and including termination.
- 3.5. Disclosure Procedure. Any director, manager, supervisor, or employee of the Authority may disclose information related to Improper Governmental Activity. The procedure for making a Protected Disclosure is as follows:
 - 3.5.1. Complaints may be submitted to an employee's immediate supervisor. If the employee is not comfortable doing so, then the employee is encouraged to report their concern to the Director of Human Resources or Chief Operating Officer.
 - 3.5.2. Complaints may be submitted in writing to Director of Human Resources or Chief Operating Officer. The complaint should include the name and title of the alleged violator and any supporting evidence that the whistleblower has to support the allegation.
 - 3.5.3. If the complaint is directly or indirectly related to the conduct of the Executive Director, the complaint may be submitted to the Chair of the Board of Directors.
- 3.6. Evaluation of Complaints.
 - 3.6.1. The Director of HR will evaluate the complaint to determine if it concerns an issue covered by this Policy. If the complaint is not covered by this Policy, or any other **Authority** Policy requiring investigation of the complaint, the Director of HR shall end the investigation and inform the complaining employee that no further action will be taken and explain the reason for the decision.
 - 3.6.2. If the Director of HR determines that the complaint involves an issue covered by this Policy, the complaint shall be sent to Chief Operating Officer. If the complaint is directly or indirectly related to the conduct of the Chief Operating Officer, the complaint may be submitted to the Executive Director.
- 3.7. Investigation. The **Authority** is committed to fully investigating all allegations of Improper Governmental Activity covered by this Policy. At a minimum, such an investigation must include allowing accused parties to confront all evidence relating to the allegations made against them as well as being given the opportunity to answer the allegations made against them. The investigation process will include the following steps:
 - 3.7.1. A file should be opened for the investigation that should contain any documents, notes of interviews or any other information obtained during the investigation.
 - 3.7.2. The investigator may contact the accused party and inform them that an investigation has commenced. Depending on the nature of the allegations, the **Authority** should determine whether administrative leave pending the outcome of the investigation is appropriate.

- 3.7.3. The investigator should contact any other parties necessary to facilitate the investigation such as financial auditors or law enforcement if the allegations concern criminal conduct.
- 3.7.4. Any relevant witnesses should be contacted and interviewed. All correspondence with witnesses should be documented and signed by the investigator and the witness.
- 3.7.5. Once the investigation has concluded, the investigator should prepare a written report summarizing the details of the investigation and any recommendations on how to proceed. This report shall be submitted to Executive Director, who will make a final decision.
- 3.8. Finding of Improper Governmental Activity. If an employee is found to have engaged in Improper Governmental Activity, the employee may be disciplined up to and including termination. If an employee is determined to have engaged in criminal conduct, the **Authority** will report the criminal activity to the appropriate law enforcement agency and will cooperate with law enforcement in any criminal proceedings that may result.
- 3.9. Protection. Any employee of the **Authority** who makes a Protected Disclosure or participates in an investigation of a Protected Disclosure will be protected from retaliation. Discipline should not result from the Protected Disclosure provided that the disclosure is made in good faith and the employee complies with the **Authority's** policy for disclosing misconduct.
- 3.10. Retaliation. Any director, supervisor, or employee who retaliates against an individual who has made a Protected Disclosure or participated in an investigation of a Protected Disclosure because of the employee's action may face discipline up to and including termination. Retaliation includes, but is not limited to, the following actions:
 - 3.10.1. Termination;
 - 3.10.2. Demotion;
 - 3.10.3. Denial of promotion;
 - 3.10.4. Denial of leave or benefits;
 - 3.10.5. Intimidation;
 - 3.10.6. Making threats; and/or
 - 3.10.7. Any other adverse employment consequences causally related to the employee making the Protected Disclosure.
- 3.11. Training. All employees shall receive appropriate ethics and/or compliance training upon beginning employment at the **Authority**. The training shall include the following:
 - 3.11.1. Explanation of the **Authority's** Standards of Conduct;
 - 3.11.2. Summary of applicable laws with which the **Authority** must comply;
 - 3.11.3. Training on whistleblower laws and anti-retaliation protections;
 - 3.11.4. Training on how to report possible wrongdoing; and
 - 3.11.5. Review of this Reporting and Anti-Retaliation Policy.
- 3.12. Right to Amend Policy. The **Authority** reserves the right to amend, delete or revise parts of this policy at any time, consistent with direction from the **Authority's** Board of Directors.

- 3.13. Nothing in this policy prohibits an employee from reporting concerns, making lawful disclosures, or communicating with any governmental authority about conduct that the employee believes violates any laws or regulations.