



Topic: **Authority Board Agenda Item 2.13**

2020 October 21

Subject: **Approve Revised Conflict of Interest Code per FPPC**

Requested Action:

Approve Revised Conflict of Interest Code per FPPC and receive legal counsel advise related to evaluating potential conflict areas for members.

Detailed Description/Background:

On August 12, 2020, the Sites Project Authority initiated a proposed update to its Conflict of Interest Code (COI) to reflect recent changes in the organization's management structure. The proposed changes are minor and include renaming the positions of General Manager to Executive Director and Local Coordination Manager to External Affairs Manager.

Staff distributed the COI revision Notice of Intent and proposed COI code via email on August 12th to Authority Board members and alternates as well as and Reservoir Committee participants and alternates.

The Authority established a comment period commencing on August 12, 2020 and closing on September 26, 2020 to solicit feedback from participants regarding the proposed changes.

The comment period closed on September 26, 2020. No comments were received. Legal Counsel and staff have submitted the final COI to the FPPC for review and final approval.

At the October 16th Reservoir Committee meeting and the October 21st Authority Board Meeting, General Counsel Scott Kuney will provide the members with a briefing on Political Reform Act and other government code sections that apply to COI and discuss potential areas of COI that may arise over the 3-5 years on the project. There are currently no COI issues at this time, however as the project advances over the next few years there are areas of potential COI that members and participants will need to be aware of.

Prior Action:

September 17, 2020: Staff provided an overview of the revised COI Code at the September 17th Joint Authority Board/Reservoir Committee meeting.

August 12, 2020: The Authority initiated a revision to the COI code, distributed the revised COI to Authority Board and Reservoir Committee members and alternates, and established a comment period that closed on September 26, 2020.

Fiscal Impact/Funding Source:

None.

Staff Contact:

Kevin Spesert

Attachments:

Attachment A: Political Reform Act/Conflict of Interest Memo



TO: Sites Project Authority Board and Reservoir Committee
FROM: Scott K. Kuney; Alan F. Dond
DATE: October 8, 2020
RE: Review of the Rules Governing Conflicts of Interest

I. Background

Members of the Authority’s Board of Directors and of the Reservoir Committee (each a “Board” and together the “Boards”), as well as select Authority consultants, are considered public officials subject to the State of California’s various laws and rules governing conflicts of interest.

The following addresses the request for a memorandum outlining the conflict of interest statutes, and advising how to identify and respond to the presence of such conflicts.

II. Conflict of Interest Statutes

Conflicts of interest are principally governed by two statutes: (a) the Political Reform Act (Government Code §81000 *et seq.*); and (b) Government Code §1090 *et seq.* (“Section 1090”).

a. Political Reform Act—Financial Interests

The Political Reform Act provides, among other things, that “Public officials, whether elected or appointed, should perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them.” (Gov. Code §81001(b).) To that end, “No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest. (Gov. Code §87100.)

As required by the Political Reform Act, the Authority has adopted a Conflict of Interest Code. In order to enable the public to identify potential or actual conflicts of interest, Board Members, Reservoir Committee Members, and designated Authority consultants are required to submit Statements of Economic Interests, or Form 700, either under the Political Reform Act (87200 Filers) or the Authority’s Conflict of Interest Code (Code Filers). The extent of a Filer’s disclosure is governed by the Political Reform Act or the Code, as applicable. The Form must be filed upon assuming office and annually thereafter.

b. Section 1090--Contract

Section 1090 provides that public officials “shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members.” Section 1090 is distinct from the Political Reform Act in that it is specific to contracts. There are statutory exceptions to the Section 1090 prohibition, but they require careful analysis and are to be narrowly construed. Public officials are advised to be extremely careful to avoid violation of Section 1090, as penalties to the official and to the public agency can be severe.

c. Section 1099—Incompatible Offices

Section 1099 is a subset of Section 1090 and provides that a public official “shall not simultaneously hold two public offices that are incompatible.” Incompatibility can result when, “(1) Either of the offices may audit, overrule, remove members of, dismiss employees of, or exercise supervisory powers over the other office or body. (2) Based on the powers and jurisdiction of the offices, there is a possibility of a significant clash of duties or loyalties between the offices. (3) Public policy considerations make it improper for one person to hold both offices. (Gov. Code §1099(a)(1)-(3).) If a public official assumes an incompatible office, he or she is deemed to have forfeited the first office. (Gov. Code §1099(b).) In other words, there is no selection to be made—the law makes it for you.

III. Identifying and Managing Conflicts of Interest

In the case of the Political Reform Act, if you identify a matter before the Authority Board or Reservoir Committee in which you have a financial interest you should:

1. Refrain from participating in a decision on the matter.
2. Refrain from participating in any discussion regarding the matter.
3. Disclose the financial interest so that it can be included in the record of the Authority Board/Reservoir Committee’s proceedings.
4. Disqualify yourself.

It is critical that each interested public official be vigilant in evaluating their financial interests in matters relating to the Authority and Reservoir Committee.

In the case of Section 1090, if you become aware of the possibility of the Authority entering into a contract in which you are financially interested, immediately identify the interest, do not discuss the contract with any other public official representing the Authority, and dismiss yourself from the proceeding until the discussion on that matter has concluded.

Ideally you will become aware of a potential or actual conflict of interest prior to a meeting of the Authority Board or Reservoir Committee. If that happens, it is helpful to immediately notify the Authority Executive Director and legal counsel, management and counsel of the member agency you represent, and if you so desire to your personal legal advisor.

There can be considerable factual inquiry and legal analysis involved in properly navigating conflicts of interest and in determining whether or not the Authority can proceed with making a decision or undertaking a project. In most cases the sooner that analysis occurs, the better the outcome for the Authority and the financially interested public official.