



Meeting: **Reservoir Committee & Authority Board**  
**Agenda Item 3.1**

**December 15, 2023**

Subject: **Discussion Regarding Conflicts of Interest**

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**Requested Action:**

Receive an annual overview of various laws concerning conflicts of interest applicable to public officials.

**Detailed Description/Background:**

Conflicts of interest are principally governed by two statutes: The Political Reform Act (Government Code §81000 et seq.) and Government Code §1090 et seq. ("Section 1090").

**Political Reform Act—Financial Interests Generally**

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 the official knows or has reason to know the official 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 Agents and 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 of the Code, as applicable. The Form must be filed upon assuming office and annually thereafter. At this time all Form 700's are up to date and on file for all those involved in the Project that are required to file.

Over the past year, there have been accusations made in public comment about potential conflicts of interest on the part of Authority Board members. The Staff and General Counsel evaluated these accusations and determined that they were not substantiated.

**Section 1090—Financial Interests in a 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. An important distinction of Section 1090 from the Political Reform Act is that an official's abstention from the contracting process does not cure a Section 1090 conflict.

### **Section 1099—Incompatible Offices**

Section 1099 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.

### **Identifying and Managing Conflicts of Interest**

It is critical that public officials be vigilant in evaluating their financial interests in matters relating to the Sites Project. Public officials have an independent responsibility to ensure their continued compliance with the laws and statutes regarding conflicts..

In the case of the Political Reform Act, upon identifying a financial interest in a matter that is before the Authority Board or Reservoir Committee, a public official 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. Self-disqualify.

In the case of Section 1090, upon identifying the possibility of the Authority entering into a contract in which a financial interest exists, a public official should immediately identify the interest, refrain from discussing the contract with any other public official representing the Authority, and refrain from the proceedings until the discussion on that matter has concluded.

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 entering into a contract. In most cases the sooner that analysis occurs, the better the outcome for the Project, the Authority, and the financially interested public official.

**Prior Action:** September 2022, approved the Sites Project Authority amended Conflict of Interest Code and directed Authority staff and consultants to take such actions as are necessary and appropriate to process and finalize the code.

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