



Meeting: **Reservoir Committee & Authority Board Agenda
Item 3.2**

November 15, 2024

Subject: **Discussion Regarding Conflicts of Interest**

Requested Action:

Provide periodic 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 or the Code, as applicable. The Form must be filed upon assuming office and annually thereafter.

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 feature of Section 1090 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.

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. 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: December 15, 2023 Discussion Regarding Conflicts of Interest.

Fiscal Impact/Funding Source:

None

Staff Contact:

Jerry Brown / Alan Doud

Primary Service Provider:

Young Wooldridge, LLP

Attachments:

None