

TEHACHAPI-CUMMINGS COUNTY WATER DISTRICT

Resolution No. 15-18

A RESOLUTION OF THE BOARD OF DIRECTORS
OF THE TEHACHAPI-CUMMINGS COUNTY WATER DISTRICT
AMENDING THE DISTRICT'S CONFLICT OF INTEREST CODE

WHEREAS, by Resolution Nos. 19-96, 1-01, 18-10, 15-12, and 21-16 the Board amended its Conflict of Interest Code (the "Code") pursuant to Government Code section 87300; and

WHEREAS, Government Code section 87306 authorizes the Board to amend the Code when change is necessitated by changed circumstances; and

WHEREAS, the Board desires to amend and restate the Code due to changed circumstances;

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the TEHACHAPI-CUMMINGS COUNTY WATER DISTRICT as follows:

1. Each of the matters set forth above is true and correct and the Board so finds and determines.
2. The Code shall be, and hereby is, amended and restated to read in the form attached as **Exhibit A** which, by this reference, is made a part hereof, subject to approval of the Board of Supervisors of Kern County.
3. The Secretary and Board is authorized and directed to forthwith transmit a certified copy of this resolution to the Clerk of the Board of Supervisors of the County of Kern with a request that such board approve the amended Code in the manner required by law.

PASSED, APPROVED AND ADOPTED by the Board of Directors of TEHACHAPI-CUMMINGS COUNTY WATER DISTRICT this 17th day of October 2018.


Richard Zamatto, President

ATTEST:


Catherine Adams, Secretary

TEHACHAPI-CUMMINGS COUNTY WATER DISTRICT

SECRETARY'S CERTIFICATION

I, Catherine Adams, Secretary of the Board of Directors of Tehachapi-Cummings County Water District do hereby certify that the forgoing Resolution No. 15-18 was introduced at a regular meeting of the Board held on the 17th day of October 2018 and was passed by the following vote:

Ayes: Hall, Pack, Prel, Worden, Zanutto

Noes: None

Absent: None

Abstain: None




Catherine Adams, Secretary

STATE OF CALIFORNIA
COUNTY OF KERN

I, Catherine Adams, Secretary of the Board of Directors, Tehachapi-Cummings County Water District, Tehachapi, California, hereby certify the foregoing and annexed to be a full, true and correct copy of the original Resolution No. 15-18 on file in this office and that I compared the same with the original.

WITNESS my hand and seal this 17th day of October, 2018.

ATTEST:



Catherine Adams, Secretary

TEHACHAPI-CUMMINGS COUNTY WATER DISTRICT

CONFLICT OF INTEREST CODE (Revised October 17, 2018)

ARTICLE 1. PURPOSE AND SCOPE

1.00. Purpose.

The people of the State of California enacted the Political Reform Act of 1974 (the "Act") on June 4, 1974. (Gov. Code, Title 9 [commencing with § 81000].¹ The Act became effective on January 7, 1975. (§ 81016.) One of the purposes of the Act is to require (a) the disclosure of assets and income of public officials which may be materially affected by their official actions and (b) in appropriate circumstances, the disqualification of public officials from acting so that conflicts of interest may be avoided. (§ 81002(c).) The District must adopt and promulgate a Conflict of Interest Code ("Conflict of Interest Code" or "Code"). (§ 87300.) The Conflict of Interest Code must (a) provide reasonable assurance that all foreseeable potential conflict of interest situations will be disclosed or prevented; (b) provide to each designated employee a clear and specific statement of his or her duties under the Code; and (c) adequately differentiate between designated employees with different powers and responsibilities. (§ 87309.) The purpose of this Code is to comply with Article 3 (commencing with section 87300) of Chapter 7 of the Act.

1.01. Scope.

(a) General. Compliance with the provisions of section 87309 is not easy since many of the provisions of the Act are highly technical. Many words and phrases are defined by the Act (§§ 82000-82054) and, in some instances, a word or phrase is given a technical meaning different from its ordinary meaning. A review of the provisions of this Code will not answer every question that a designated employee may pose. When a situation arises which is not clearly covered by the provisions of this Code, the designated employee should seek a written opinion from Legal Counsel for the District or legal counsel of his or her own choice.

(b) Section 87200 Public Officials. This Code does not apply to any public official who manages public investments within the meaning of section 87200. Any public official who manages public investments must file a statement of economic interests and comply with Article 2 (commencing with section 87200) of Chapter 7 of the Act. (See 2 Cal. Code Regs., §§ 18701 and 18723.) A public official who manages public investments is not required to file a statement of economic interests under this Code even though he or she may be a designated employee under section 2.04 hereof.

(c) Other Public Officials. The public officials who are designated employees under section 2.04 hereof are required to file statements of economic interests under this Code.

¹ All statutory citations are to the Government Code unless otherwise indicated.

ARTICLE 2. DEFINITIONS

2.00. General.

When the following words or phrases are used in this Code, unless otherwise defined, they shall have the meanings ascribed to them in this article. These definitions are intended to supplement and clarify, but not to replace or negate, the definitions used in the Act or the Regulations, or both.

2.01. Act.

"Act" means the Political Reform Act of 1974, as amended from time-to-time. (§ 81000.)

2.02. Board.

"Board" means the Board of Directors of the District.

2.03. Code.

"Code" means the Conflict of Interest Code adopted and promulgated by the District under Article 3 (commencing with section 87300) of Chapter 7 of Title 9.

2.04. Designated Employee.

"Designated employee" means any officer, employee, member or consultant of the District whose position with the District is elective or is designated in this Code because the position entails the making or participation in the making of decisions which may foreseeably have a material effect on any financial interest. (§ 82019.) The designated employees of the District are those designated in the attached **EXHIBIT A** which, by this reference, is made a part hereof.

2.05. District.

"District" means Tehachapi-Cummings County Water District.

2.06. District Office.

"District office" means the principal headquarters of the District located at 22901 Banducci Road, Tehachapi, California 93561.

2.07. Manager.

"Manager" means the General Manager of the District.

2.08. Regulations.

"Regulations" means the regulations adopted and promulgated by the Fair Political Practices Commission for implementation of the Act, as amended from time-to-time.

ARTICLE 3. INCORPORATION OF ACT AND REGULATIONS

3.00. Incorporation of Act.

The provisions of the Act are hereby incorporated by reference. In the event the Act is amended, such amendment shall be incorporated in this Code from the operative date thereof, without further action by the Board. This Code shall be construed consistent with the Act and, in the event any provision hereof is inconsistent with the provisions of the Act, the provisions of the latter shall prevail to the extent of such inconsistency.

3.01. Incorporation of Regulations.

The provisions of the Regulations are hereby incorporated by reference. In the event that the Regulations are amended, such amendment shall be incorporated in this Code from the date the Regulations required that this Code conform thereto, without any further action by the Board. This Code shall be construed consistent with the Regulations and, in the event any provisions of this Code are inconsistent with the Regulations, the provisions of the Regulations shall prevail to the extent of such inconsistency.

ARTICLE 4. DISCLOSURE STATEMENTS

4.00. Time of Filing Statements.

(a) Initial Statements of Incumbent Designated Employees. Initial statements shall be filed by each designated employee within 30 days after the effective date of this Code. (§ 87302(b).)

(b) New Designated Employees. Each new designated employee shall file a statement within 30 days after assuming office.

(c) Annual Statements. Each designated employee shall file an annual statement on or before April 1. (§ 87302(b).)

(d) Designated Employees Leaving Office. Every designated employee who leaves office and does not assume another designated position for the District shall file a statement within 30 days after leaving office. (§ 87302(b).)

4.01. Reporting Periods.

(a) Initial Statements of Incumbent Designated Employees. The reporting period for the initial statements of incumbent designated employees shall be calendar year 1975.

(b) Statements of New Designated Employees. The reporting period for new designated employees shall be for the previous 12 months. (§ 87302(b).)

(c) Annual Statements. The reporting period for annual statements shall be the previous calendar year unless a statement for all or a portion of such period has previously been filed in which case the reporting period shall only be that portion of the previous calendar year for which no statement has been filed. (§ 87302(b).)

(d) Statements of Designated Employees Leaving Office. The reporting period for statements of designated employees leaving office shall be the period between the date of the last statement required to be filed and the date of leaving office. (§ 87302(b).)

4.02. Contents of Statements.

(a) General. Each incumbent designated employee, candidate, and new designated employee shall file statements disclosing such person's interests in investments, business positions, real property and income which are designated as reportable in EXHIBIT A. For the purpose of this section, "interest in real property" does not include the principal residence of a designated employee. (See § 87206(f).)

(b) Initial Statements of Incumbent Designated Employees. The initial statements of incumbent designated employees shall disclose any reportable investments, business positions, interests in real property and income. (§ 87302(b).)

(c) Statements of New Designated Employees. The statements of new designated employees shall disclose reportable investments, business positions, and interests in real property held on, and income received during the 12 months before, the date of assuming office or the date of being appointed or nominated. (§ 87302(b).)

(d) Annual Statements. The annual statements shall disclose reportable investments, business positions, interest in real property and income held or received at any time during the previous calendar year or since the designated employee took office if during the calendar year.

(e) Statements of Designated Employees Leaving Office. The statements of persons leaving office shall disclose reportable investments, business positions, interests in real property and income held or received any time during the closing date of the last statement required to be filed and the date of leaving office. (§ 87302(b).)

(f) Acquisition or Disposal During Reporting Period. If any otherwise reportable investment or interest in real property was partially or wholly acquired or disposed of during the period covered by any annual or leaving office statement, the statement shall include the date of acquisition or disposal of such reportable investment or interest in real property.

(g) Contents of Investment or Real Property Reports. When an investment or an interest in real property is required to be disclosed under this Code, the statement shall contain:

- (1) A statement of the nature of the investment or interest.
- (2) The name of the business entity in which each investment is held, and a general description of the business activity in which the business entity is engaged.
- (3) The address or other precise location of the real property.
- (4) A statement whether the fair market value of the investment or interest in real property equals or exceeds \$2,000 but does not exceed \$10,000, exceeds \$10,000 but does not exceed \$100,000, exceeds \$100,000 but does not exceed \$1,000,000 or exceeds \$1,000,000. (§§ 87302(b) and 87206.)

(h) Contents of Income Reports. If income is required to be reported under this Code, the statement shall contain:

- (1) The name and address of each source of income aggregating \$500 or more in value, or \$50 or more in value if the income was a gift, and a general description of the business activity, if any, of each source.
- (2) A statement of whether the aggregate value of the income from each source, or in the case of a loan, the highest amount owed to each source, was at least \$500 but no more than \$1,000, whether it was greater than \$1,000 but no more than \$10,000, whether it was greater than \$10,000 but no more than \$100,000 or whether it was greater than \$100,000.
- (3) A description of the consideration, if any, for which the income was received.
- (4) In the case of a gift, the amount and date on which the gift was received, and the travel destination for purposes of a gift that is a travel payment, advance, or reimbursement.
- (5) In the case of a loan, the annual interest rate, the security, if any, given for the loan, and the term of the loan. (§§ 87302(b) and 87207.)

(i) Contents of Business Entity Reports. If income of a business entity, including income of a sole proprietorship, is required to be reported under this Code, the statement shall contain:

(1) The name, address and a general description of the business activity of the business entity.

(2) The name of every person from whom the business entity received payments if the designated employee's distributable share of such payments from such person was equal to or greater than \$10,000 during the immediately preceding calendar year; provided, however, that the disclosure of the name of such person is only required if such person is within the classification of a "reportable interest" as set forth in Exhibit A. (§§ 87302(b) and 87207.)

(j) Contents of Business Position Report. When business positions are required to be reported under this Code, the statement shall contain:

(1) The name and address of each business entity in which he or she is a director, officer, partner, trustee, employee, or in which he or she holds any position of management.

(2) A description of the business activity in which the business entity is engaged.

(3) The designated employee's position with the business entity. (See 2 Cal. Code Regs., § 18730.)

4.03. Place of Filing Statements.

The original of all statements shall be filed with the Secretary of the Board at the District office. (§ 87500(o).)

4.04. Disclosure Statement Forms.

All disclosure statements shall be made on forms supplied by the District. (§§ 81010(a) and 82027.)

4.05. Verification.

All statements shall be signed under penalty of perjury and verified by the designated employee. The verification shall state that the designated employee has used all reasonable diligence in the preparation of the statement and that to the best of his or her knowledge it is true and complete. (§ 81004(a).)

4.06. Public Records.

The copies of statements retained by the Secretary of the Board shall be preserved for a period of four years from and after the date of filing and shall constitute public records of the District open to inspection and reproduction during regular business hours. No conditions shall be imposed on persons asking to inspect or reproduce such statements during regular business hours, nor shall any information or identification be required; provided, however, that copying charges may be imposed as provided by law. (§ 81008(a).)

ARTICLE 5. DISQUALIFICATION

5.00. General Rule.

A designated employee shall not make, participate in making or in any way attempt to use his position to influence a governmental decision in which he knows or has reason to know he has a financial interest. A designated employee has a financial interest in a decision when it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on any financial interest described in section 87103. (§§ 87100 and 87103; see 2 Cal. Code Regs., §§ 18700-18703.)

5.01. Exceptions.

Nothing contained in section 5.00 hereof shall prevent a designated employee from:

(a) Making or participating in the making of a governmental decision to the extent his participation is legally required for the action or decision to be made (§§ 87101 and 87302(c));

(b) Making or participating in the making of, or attempting to use his official position to influence, a governmental decision the sole effect of which is to establish or adjust assessments, taxes, fees or rates for water, utility or other broadly provided public services or facilities (see 2 Cal. Code Regs., § 18703(e)(1));

(c) Making or participating in the making of, or attempting to use his official position to influence, a governmental decision when such decision relates to the compensation or terms or conditions of employment of the designated employee or others similarly situated (see 2 Cal. Code Regs., § 18704(d)(3)); and

(d) Submitting information or expressing views on the same basis as any other citizen, provided the same be done in public and the designated employee clearly indicates that he or she is acting in a private capacity (see 2 Cal. Code Regs., § 18704(d)(2)).

5.02. Disqualification Procedure.

If a designated employee is disqualified by reason of section 5.00 hereof, the following procedure is recommended:

(a) If the designated employee is the Manager or a Director, he should announce to the Board at the earliest opportunity in open session for the public record that he has a conflict of interest, stating the nature of the conflict and thereafter, he should not participate in the decision making process except and to the extent authorized by section 5.01 hereof.

(b) Any other designated employee should report in writing to the Manager at the earliest opportunity that he has a conflict of interest, stating the nature of the conflict, and, thereafter, he should not participate in the decision making process except and to the extent authorized by section 5.01 hereof.

5.03. Requalification Procedure.

If the provisions of section 5.01 (a) hereof become applicable, then the President of the Board shall select one or more of the previously disqualified individuals (including himself) so that when the selected disqualified individuals are added to the qualified individuals the Board may legally act upon or decide the matter before it. The President of the Board shall select those disqualified individuals by lot or other means of random selection. (See 4 FPPC Opinions 13 (1978).)

ARTICLE 6. GENERAL PROVISIONS

6.00. Opinions of the Commission and Counsel.

(a) Opinion Requests. Any designated employee who is unsure of any right or obligation arising under this Code may request an opinion with respect to his duties under this Code from Legal Counsel for the District or the Fair Political Practices Commission.

(b) Evidence of Good Faith. If an opinion is rendered by Legal Counsel for the District and such opinion states all material facts and the law upon which such opinion is based, compliance therewith by a designated employee shall be evidence of good faith in any proceedings, civil, criminal, or otherwise, brought pursuant to the provisions of the Act or this Code. A designated employee's good faith compliance with the opinion of Legal Counsel for the District shall be a complete defense to any disciplinary action that the District might initiate under Government Code section 91003.5 or this Code. (See §§ 83114 and 91003.)

6.01. Statute of Limitations.

No action shall be brought under Government Code section 91003(b) to restrain the execution of or to set aside official action of the District unless the complaint or petition is filed in the Superior Court in and for the County of Kern or filed and served upon the District within 90 days following the official action.

6.02. Partial Invalidity.

In the event of any part of the provisions of this Code shall be determined to be invalid, the remaining portions thereof which can be separated from the invalid, unenforceable provisions, shall nevertheless continue in full force and effect.

6.03. Effective Date.

This Code shall be effective when approved by the Board of Supervisors of the County of Kern, State of California.

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EXHIBIT A

TEHACHAPI-CUMMINGS COUNTY WATER DISTRICT

DESIGNATED EMPLOYEES AND REPORTABLE INTERESTS IN INVESTMENTS, BUSINESS POSITIONS, REAL PROPERTY AND INCOME

Designated Employee¹

Reportable Interests²

A. Manager

1. Investments within the meaning of Government Code section 82034.³

2. Business positions in any business entity located within the District or any business entity that plans to do business with the District or has done business with the District at any time during the two years prior to the time any statement must be filed.⁴

3. Any interest in real property within the meaning of Government Code section 82033.

4. Any income within the meaning of Government Code section 82030.⁵

B. Operations Manager

1. Same as those reportable by the Manager.

C. Business Manger

1. Same as those reportable by the Manager.

D. Treasurer

1. Same as those reportable by the Manager.

E. Legal Counsel

1. Same as those reportable by the Manager.

F. Special Counsel

1. Same as those reportable by the Manager.

G. Consultants

1. Except for registered professional engineers and licensed land surveyors who do not have a financial interest in a governmental decision as specified in Government Code section 87100.1, same as those reportable by the Manager unless the Manager determines in writing that the consultant is hired to perform duties that are limited in scope and thus is not required to comply with the disclosure requirements.⁶

NOTES:

1. "Designated employee," for the purpose of this exhibit, includes incumbent designated employees and new designated employees.
2. Interests in investments, real property and income are not required to be reported unless the value thereof exceeds the threshold values set forth in Government Code section 87103 which provides as follows:

"87103. Financial interest in decision by official.

A public official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, a member of his or her immediate family, or on any of the following:

(a) Any business entity in which the public official has a direct or indirect investment worth two thousand dollars (\$2,000) or more.

(b) Any real property in which the public official has a direct or indirect interest worth two thousand dollars (\$2,000) or more.

(c) Any source of income, except gifts or loans by a commercial lending institution made in the regular course of business on terms available to the public without regard to official status, aggregating five hundred dollars (\$500) or more in value provided or promised to, received by the public official within 12 months prior to the time when the decision is made.

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

(e) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made. The amount of the value of gifts specified by this subdivision shall be adjusted biennially by the commission to equal the same amount determined by the commission pursuant to subdivision (f) of Section 89503.

For purposes of this section, indirect investment or interest means any investment or interest owned by the spouse or dependent child of a public official, by an agent on behalf of a public official, or by a business entity or trust in which the official, the official's agents, spouse, and dependent children own directly, indirectly, or beneficially a 10-percent interest or greater."

3. Government Code section 82034 provides as follows:

"§ 82034. Investment

'Investment' means any financial interest in or security issued by a business entity, including, but not limited to, common stock, preferred stock, rights, warrants, options, debt instruments, and any partnership or other ownership interest owned directly, indirectly, or beneficially by the public official, or other filer, or his or her immediate family, if the business entity or any parent, subsidiary, or otherwise related business entity has an interest in real property in the jurisdiction, or does business or plans to do business in the jurisdiction, or has done business within the jurisdiction at any time during the two years prior to the time any statement or other action is required under this title. An asset shall not be deemed an investment unless its fair market value equals or exceeds two thousand dollars (\$2,000). The term 'investment' does not include a time or demand deposit in a financial institution, shares in a credit union, any insurance policy, interest in a diversified mutual fund registered with the Securities and Exchange Commission under the Investment Act of 1940 or in a common trust fund created pursuant to Section 1564 of the Financial Code, interest in a government defined-benefit pension plan, or any bond or other debt instrument issued by any government or government agency. Investments of an individual includes a pro rata share of investments of any business entity, mutual fund, or trust in which the individual or immediate family owns, directly, indirectly, or beneficially, a 10-percent interest or greater. The term 'parent, subsidiary or otherwise related business entity' shall be specifically defined by regulations of the commission."

4. Government Code section 82033 provides as follows:

"82033. Interest in real property

'Interest in real property' includes any leasehold, beneficial or ownership interest or an option to acquire such an interest in real property located in the jurisdiction owned directly, indirectly or beneficially by the public official, or other filer, or his or her immediate family if the fair market value of the interest is two thousand dollars (\$2,000) or more. Interests in real property of an individual includes a pro rata share of interests in real property of any business entity or trust in which the individual or immediate family owns, directly, indirectly or beneficially, a 10-percent interest or greater."

5. Government Code section 82030 provides as follows:

"82030. Income

(a) 'Income' means, except as provided in subdivision (b), a payment received, including but not limited to any salary, wage, advance, dividend, interest, rent, proceeds from any sale, gift, including any gift of food or beverage, loan, forgiveness or payment of indebtedness received by the filer, reimbursement for expenses, per diem, or contribution to an insurance or pension program paid by any person other than an employer, and including any community property interest in the income of a spouse. Income also includes an outstanding loan. Income of an individual also includes a pro rata share of any income of any business entity or trust in which the individual or spouse owns, directly, indirectly or beneficially, a 10-percent interest or greater. 'Income,' other than a gift, does not include income received from any source outside the jurisdiction and not doing business within the jurisdiction, not planning to do business within the jurisdiction, or not having done business within the jurisdiction during the two years prior to the time any statement or other action is required under this title.

(b) 'Income' also does not include:

(1) Campaign contributions required to be reported under Chapter 4 (commencing with Section 84100).

(2) Salary and reimbursement for expenses or per diem, and social security, disability, or other similar benefit payments received from a state, local, or federal government agency and reimbursement for travel expenses and per diem received from a bona fide nonprofit entity exempt from taxation under Section 501(c)(3) of the Internal Revenue Code.

(3) Any devise or inheritance.

(4) Interest, dividends, or premiums on a time or demand deposit in a financial institution, shares in a credit union or any insurance policy, payments received under any insurance policy, or any bond or other debt instrument issued by any government or government agency.

(5) Dividends, interest, or any other return on a security which is registered with the Securities and Exchange Commission of the United States government or a commodity future registered with the Commodity Futures Trading Commission of the United States government, except proceeds from the sale of these securities and commodities futures.

(6) Redemption of a mutual fund.

(7) Alimony or child support payments.

(8) Any loan or loans from a commercial lending institution which are made in the lender's regular course of business on terms available to members of the public without regard to official status.

(9) Any loan from or payments received on a loan made to an individual's spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, uncle, aunt, or first cousin, or the spouse of any such person, provided that a loan or loan payment received from any such person shall be considered income if he or she is acting as an agent or intermediary for any person not covered by this paragraph.

(10) Any indebtedness created as part of a retail installment or credit card transaction if made in the lender's regular course of business on terms available to members of the public without regard to official status.

(11) Payments received under a defined benefit pension plan qualified under Internal Revenue Code Section 401(a).

(12) Proceeds from the sale of securities registered with the Securities and Exchange Commission of the United States government or from the sale of commodities futures registered with the Commodity Futures Trading Commission of the United States government if the filer sells the securities or the commodities futures on a stock or commodities exchange and does not know or have reason to know the identity of the purchaser."

6. The Manager's written determination shall include a description of the consultant's duties and a statement of the extent of the disclosure requirements. The Manager's determination is a public record and shall be retained for public inspection in the same manner and location as the Code.