

RESOLUTION No. 20140707

RESOLUTION OF THE BOARD OF DIRECTORS OF THE DEL PASO MANOR WATER DISTRICT AMENDING THE DISTRICT'S CONFLICT OF INTEREST CODE

WHEREAS, the Political Reform Act of 1974, Government Code Section 81000 et seq., as approved by the voters (hereinafter referred to as "The Act"), contains provisions relating to conflict of interests which potentially affect all officers, employees, and consultants of the DEL PASO MANOR COUNTY WATER DISTRICT(hereinafter referred to as "District"); and

WHEREAS, the potential penalties for violation of the said provisions of the Act are substantial and may include potential criminal and civil liability, as well as equitable relief, which could result in the District being restrained or prevented from acting in cases where the said provisions of the Act may have been violated; and

WHEREAS, the said provisions of the Act also contain a requirement that all public agencies, including the District, shall adopt and promulgate a conflict of interest code; and

WHEREAS, the Fair Political Practices Commission has adopted a regulation, 2 Cal. Code Regs. Section 18730, which contains the terms of the standard model of Conflict of Interest Code, which can be incorporated by reference, and which may be amended by the Fair Political Practices Commission after public notice and hearings to conform to amendments to the Political Reform Act; and

WHEREAS, the District may incorporate in its Conflict of Interest Code, by reference, regulations, 2 Cal. Code Regs. Section 18730; and

WHEREAS, the existing conflict of interest code adopted by the Board of Directors on November 2, 1992 and amended September 6, 1994, is hereby repealed in its entirety and hereby superseded by this resolution.

NOW, THEREFORE, BE IT RESOLVED that the District hereby adopts the Conflict of Interest Code attached hereto and incorporated herein by this reference; and

BE IT FURTHER RESOLVED that this Code is intended to provide reasonable assurance that all foreseeable conflict of interest situations will be disclosed or prevented, to provide to each affected person a clear and specific statement of his duties under the Code, and to adequately differentiate between designated employees with different powers and responsibilities.

Section 1. Definitions.

The definitions contained in the Political Reform Act of 1974, regulations of the Fair Political Practices Commission (2 Cal. Code Regs. section 18100 et seq ), and any amendments to the Act or regulations, are incorporated by reference into this Conflict of Interest Code.

Section 2. Incorporation of State Regulations by Reference.

With the additions noted below, the terms of 2 Cal. Code Regs. section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission are hereby incorporated by reference and made a part of this Conflict of Interest Code.

Section 3. Purpose.

It is the purpose of this Code to provide for the disclosure of assets and income of designated employees which may be materially affected by their official actions, and, in appropriate circumstances, to provide that designated employees should be disqualified from acting in order that conflicts of interest may be avoided. Nothing contained herein is intended to modify or abridge the provisions of the Political Reform Act of 1974 (Government Code section 81000 et seq.)

Section 4. Designated Employees.

The persons holding positions listed in Appendix A are designated employees. It has been determined that these persons make or participate in the making of decisions which may foreseeably have a material effect on economic interest.

Section 5. Disclosure Categories.

The disclosure categories set forth in the second column of Appendix A specify which kinds of economic interest are reportable. Such a designated employee shall disclose in his or her statement of economic interests those economic interests he or she has which are of the kind described in the disclosure categories to which he or she is assigned in Appendix A. It has been determined that the economic interest set forth in a designated employee's disclosure categories are the kinds of economic interest which he or she foreseeably can affect materially through the conduct of his or her office.<sup>1</sup>

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<sup>1</sup>The Fair Political Practices Commission does not agree that "public generally" language is permitted with respect to disclosure requirements but does agree that it applies to the disqualifying conflict of interest provisions. If the official can establish that the reasonably foreseeable material financial effect on his or her economic interest is indistinguishable from the effect on the public generally, he or she does not have a conflict of interest within the meaning of the Political Reform Act. If the reasonably foreseeable material financial effect on the public official's economic interest is distinguishable from the effect on the public generally, he or she has a conflict of interest within the meaning of the Political Reform Act. (See 2 Cal. Code Regs. § 18707.)

Section 6. Statements of Economic Interest: Place of Filing.

All designated employees shall file an original statement of economic interest with the Secretary of the District, who shall in the case of directors and managers of districts make and retain a copy and forward the original to the Clerk of the Board of Supervisors (multi-county districts forward an original to FPPC.) (Government Code section 81010 and 2 Cal. Code of Regs. section 18115.) Disclosure statement forms will be supplied by the District.

Section 7. Statement of Economic Interest: Time of Filing

(A). Initial Statements. All designated employees employed by the District on the effective date of this Conflict of Interest Code, as originally adopted, promulgated and approved by the code reviewing body, shall file statements within 30 days after the effective date of this Code. Thereafter, each person already in a position when it is designated by an amendment to this Code shall file an initial statement within 30 days after the effective date of the amendment.

(B). Assuming Office Statements. All persons assuming designated positions after the effective date of this Code shall file statements within 30 days after assuming the designated positions, or if subject to State Senate confirmation, 30 days after being nominated or appointed.

(C). Annual Statements. All designated employees shall file statements no later than April 1, disclosing reportable investments, business positions, interest in real property and income held or received at any time during the previous calendar year or since the date the designated employee took office if during the calendar year.

(D). Leaving Office Statements. All persons who leave designated positions shall file statements within 30 days after leaving office.

Section 7.1. Statements for Persons Who Resign Prior to Assuming Office.

Any person who resigns within 12 months of initial appointment, or within 30 days of the date of notice provided by the filing officer to file an assuming office statement, is not deemed to have assumed office or left office, provided he or she did not make or participate in the making of, or use his or her position to influence any decision and did not receive or become entitled to receive any form of payment as a result of his or her appointment. Such persons shall not file either an assuming or leaving office statement.

(A). Any person who resigns a position within 30 days of the date of a notice from the filing officer shall do both of the following:

(1). File a written resignation with the appointing officer; and

(2). File a written statement with the filing officer declaring under penalty of perjury that during the period between appointment and resignation he or she did not make, participate in the making, or use the position to influence any decision of the agency or receive,

or become entitled to receive, any form of payment by virtue of being appointed to the position.

Section 8. Contents of and Period Covered by Statements of Economic Interest.

(A). Contents of Initial Statements. Initial statements shall disclose any reportable investments, interest in real property and business positions held on the effective date of the Code and income received during the 12 months prior to the effective date of the Code.

(B). Contents of Assuming Office Statements. Assuming office statements shall disclose any reportable investments, interests in real property and business positions held on the date of assuming office or, if subject to State Senate confirmation or appointment, on the date of nomination, and income received during the 12 months prior to the date of assuming office or the date of being appointed or nominated, respectively.

(C). Contents of Annual Statements. Annual statements shall disclose any reportable investments, interests in real property, income and business positions held or received during the previous calendar year provided, however, that the period covered by an employee's first annual statement shall begin on the effective date of the code or the date of assuming office whichever is later, or for a board or commission member subject to Government Code section 87302.6, the day after the closing date of the most recent statement filed by the member pursuant to 2 Cal. Code Regs. section 18754.

(D). Contents of Leaving Office Statements. Leaving office statements shall disclose reportable investments, interests in real property, income and business positions held or received during the period between the closing date of the last statement filed and the date of leaving office.

Section 9. Manner of Reporting.

Statements of economic interests shall be made on forms prescribed by the Fair Political Practices Commission and supplied by the District, and shall contain the following information:

(A). Investments and Real Property Disclosure. When an investment or an interest in real property<sup>2</sup> is required to be reported,<sup>3</sup> the statement shall contain the following:

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<sup>2</sup>For purposes of disclosure only (not disqualification), an interest in real property does not include the principal residence of the filer.

<sup>3</sup> Investments and interests in real property which have a fair market value of less than \$2,000 are not investments and interests in real property within the meaning of the Political Reform Act. However, investments or interests in real property of an individual include those held by the individual's spouse and dependent children as well as a pro rata share of any investment or interest in real property of any business entity or trust in which the individual, spouse and dependent children own, in the aggregate, a direct, indirect or beneficial interest of 10 percent or greater.

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 two thousand dollars (\$2,000), exceeds ten thousand dollars (\$10,000), exceeds one hundred thousand dollars (\$100,000), or exceeds one million dollars (\$1,000,000).

(B). Personal Income Disclosure. When personal income is required to be reported<sup>4</sup>, the statement shall contain:

1. The name and address of each source of income aggregating five hundred dollars (\$500) or more in value, or fifty dollars (\$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 whether the aggregate value of income from each source, or in the case of a loan, the highest amount owed to each source, was one thousand dollars (\$1,000) or less, greater than one thousand dollars (\$1,000), greater than ten thousand dollars (\$10,000), or greater than one hundred thousand dollars (\$100,000);
3. A description of the consideration, if any, for which the income was received;
4. In the case of a gift, the name, address and business activity of the donor and any intermediary through which the gift was made; a description of the gift; the amount or value of the gift; and the date on which the gift was received;
5. In the case of a loan, the annual interest rate and the security, if any, given for the loan and the term of the loan.

(C). Business Entity Income Disclosure. When income of a business entity, including income of a sole proprietorship, is required to be reported,<sup>5</sup> the statement shall contain:

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<sup>4</sup> A designated employee's income includes his or her community property interest in the income of his or her spouse but does not include salary or reimbursement for expenses received from a state, local or federal government agency.

<sup>5</sup> Income of a business entity is reportable if the direct, indirect or beneficial interest of the filer and the filer's spouse in the business entity aggregates a 10 percent or greater interest. In addition, the disclosure of persons

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 filer's pro rata share of gross receipts from such person was equal to or greater than ten thousand dollars (\$10,000).

(D). Business Position Disclosure. When business positions are required to be reported, a designated employee shall list 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, a description of the business activity in which the business entity is engaged, and the designated employee's position with the business entity.

(E). Acquisition or Disposal During Reporting Period. In the case of an annual or leaving office statement, if an investment or an interest in real property was partially or wholly acquired or disposed of during the period covered by the statement, the statement shall contain the date of acquisition or disposal.

#### Section 10. Prohibition on Receipt of Honoraria.

No member of a state board or commission, and no Designated Employee shall accept any honorarium from any source, if the member or Designated Employee would be required to report the receipt of income or gifts from that source on his or her statement of economic interests.

Government Code section 89501 (a), (b) and (c) shall apply to the prohibitions in this section. This section shall not limit or prohibit payments, advances, or reimbursements for travel and related lodging and subsistence authorized by Government Code section 89506.

#### Section 10.1 Prohibition on Receipt of Gifts In Excess of \$440.

No Designated Employee shall accept gifts with a total value of more than four hundred forty dollars (\$440) in a calendar year from any single source, if the Designated Employee would be required to report the receipt of income or gifts from that source on his or her statement of economic interests. Government Code section 89503(e), (f), and (g) shall apply to the prohibitions in this section.

#### Section 10.2 Loans to Public Officials

(A). No elected officer of a state or local government agency shall, from the date of his or her election to office through the date that he or she vacates office, receive a personal loan

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who are clients or customers of a business entity is required only if the clients or customers are within one of the disclosure categories of the filer.

from any officer, employee, member, or consultant of the state or local government agency in which the elected officer holds office or over which the elected officer's agency has direction and control.

(B). No public official who is exempt from the state civil service system pursuant to subdivisions (c), (d), (e), (f), and (g) of Section 4 of Article VII of the Constitution shall, while he or she holds office, receive a personal loan from any officer, employee, member, or consultant of the state or local government agency in which the public official holds office or over which the public official's agency has direction and control. This subdivision shall not apply to loans made to a public official whose duties are solely secretarial, clerical, or manual.

(C). No elected officer of a state or local government agency shall, from the date of his or her election to office through the date that he or she vacates office, receive a personal loan from any person who has a contract with the state or local government agency to which that elected officer has been elected or over which that elected officer's agency has direction and control. This subdivision shall not apply to loans made by banks or other financial institutions or to any indebtedness created as part of a retail installment or credit card transaction, if the loan is made or the indebtedness created in the lender's regular course of business on terms available to members of the public without regard to the elected officer's official status.

(D). No public official who is exempt from the state civil service system pursuant to subdivisions (c), (d), (e), (f), and (g) of Section 4 of Article VII of the Constitution shall, while he or she holds office, receive a personal loan from any person who has a contract with the state or local government agency to which that elected officer has been elected or over which that elected officer's agency has direction and control. This subdivision shall not apply to loans made by banks or other financial institutions or to any indebtedness created as part of a retail installment or credit card transaction, if the loan is made or the indebtedness created in the lender's regular course of business on terms available to members of the public without regard to the elected officer's official status. This subdivision shall not apply to loans made to a public official whose duties are solely secretarial, clerical, or manual.

(E). This section shall not apply to the following:

1. Loans made to the campaign committee of an elected officer or candidate for elective office.

2. Loans made by a public official's spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin, or the spouse of any such persons, provided that the person making the loan is not acting as an agent or intermediary for any person not otherwise exempted under this section.

3. Loans from a person which, in the aggregate, do not exceed five hundred dollars (\$500) at any given time.

4. Loans made, or offered in writing, before January 1, 1998.

### Section 10.3. Loan Terms.

(A). Except as set forth in subdivision (B), no elected officer of a state or local government agency shall, from the date of his or her election to office through the date he or she vacates office, receive a personal loan of \$500 or more, except when the loan is in writing and clearly states the terms of the loan, including the parties to the loan agreement, date of the loan, amount of the loan, term of the loan, date or dates when payments shall be due on the loan and the amount of the payments, and the rate of interest paid on the loan.

(B). This section shall not apply to the following types of loans:

1. Loans made to the campaign committee of the elected officer.
2. Loans made to the elected officer by his or her spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin, or the spouse of any such person, provided that the person making the loan is not acting as an agent or intermediary for any person not otherwise exempted under this section.
3. Loans made, or offered in writing, before January 1, 1998.

(C). Nothing in this section shall exempt any person from any other provision of Title 9 of the Government Code.

### Section 10.4 Personal Loans.

(a) Except as set forth in subdivision (b), a personal loan received by any Designated Employee shall become a gift to the Designated Employee for the purposes of this section in the following circumstances:

1. If the loan has a defined date or dates for repayment, when the statute of limitations for filing an action for default has expired.
2. If the loan has no defined date or dates for repayment, when one year has elapsed from the later of the following:
  - The date the loan was made.
  - The date the last payment of one hundred dollars (\$100) or more was made on the loan.
  - The date upon which the debtor has made payments on the loan aggregating to less than two hundred fifty dollars (\$250) during the previous 12 months.

(b) This section shall not apply to the following types of loans:

1. A loan made to the campaign committee of an elected officer or candidate



for elective office.

2. A loan that would otherwise not be a gift as defined in this Code.

3. A loan that would otherwise be a gift as set forth under subdivision (a), but on which the creditor has taken reasonable action to collect the balance due.

4. A loan that would otherwise be a gift as set forth under subdivision (a), but on which the creditor, based on reasonable business considerations, has not undertaken collection action. Except in a criminal action, a creditor who claims that a loan is not a gift on the basis of this paragraph has the burden of proving that the decision for not taking collection action was based on reasonable business considerations.<sup>5</sup> A loan made to a debtor who has filed for bankruptcy and the loan is ultimately discharged in bankruptcy.

(c) Nothing in this section shall exempt any person from any other provisions of Title 9 of the Government Code.

Section 11. Disqualification.

No designated employee shall make, participate in making, or in any way attempt to use his or her official position to influence the making of any governmental decision which he or she knows or has reason to know will have a reasonably foreseeable material financial effect<sup>6</sup>, distinguishable from its effect on the public generally, on the official or a member of his or her immediate family or on:

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

(B). Any real property in which the designated employee has a direct or indirect interest worth two thousand dollars (\$2,000) or more;

(C). Any source of income, other than gifts and other than loans by a commercial lending institution 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 to, received by or promised to the designated employee within 12 months prior to the time when the decision is made;

(D). Any business entity in which the designated employee is a director, officer,

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<sup>6</sup> As a general rule, disqualification is required by this section if, at the time a designated employee is about to make or participate in the making of a governmental decision, and in light of all the circumstances and facts known at the time of the decision, he or she knows or has reason to know that the existence of a financial interest might interfere with the performance of his or her duties in an impartial manner, free from bias. (Government Code § 87103.)

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 (\$440) or more provided to, received by, or promised to the designated employee within 12 months prior to the time when the decision is made; or

(F). An investment, interest in real property, income, or source of income of a designated employee shall not be a basis for disqualification under this section where such interest will foreseeably be affected only by the decision to fix an ad valorem property tax rate for the District.<sup>7</sup>

#### Section 11.1. Legally Required Participation.

No designated employee shall be prevented from making or participating in the making of any decision to the extent his or her participation is legally required for the decision to be made. The fact that the vote of a designated employee who is on a voting body is needed to break a tie does not make his or her participation legally required for purposes of this section.

#### Section 11.2 Disqualification of State Officers and Employees.

In addition to the general disqualification provisions of section 9, no state administrative official shall make, participate in making, or use his or her official position to influence any governmental decision directly relating to any contract where the state administrative official knows or has reason to know that any party to the contract is a person with whom the state administrative official, or any member of his or her immediate family has, within 12 months prior to the time when the official action is to be taken:

(A). Engaged in a business transaction or transactions on terms not available to members of the public, regarding any investment or interest in real property; or

(B). Engaged in a business transaction or transactions on terms not available to members of the public regarding the rendering of goods or services totaling in value \$1,000 or more.

#### Section 11.3. Disclosure of Disqualifying Interest.

When a designated employee determines that he or she is disqualified under this section, the following steps shall be taken:

(A). The designated employee should immediately refrain from making or

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<sup>7</sup> While there was some sympathy among Commission members to specify that decisions on water rates, electrical rates, and other assessments be subject to the "public generally" exemptions, there was some reluctance to make this a conclusive presumption as they were willing to do for tax rates. Therefore, agencies are urged to consider the water rate, electrical rate and assessment question on a case-by-case basis in deciding whether the setting of such rates may be different from the effect on the public generally.

participating in the making of the decision; and

(B). For members of the Board of Directors, the fact that a disqualifying interest exists shall be announced and made a part of the District's official record, and in the case of other designated employees shall be reported in writing to his or her superior.

(C). After disqualification, a designated employee may make an appearance, submit information or express views on the same basis as any other citizen on matters related solely to his or her personal interest, provide that it is done in public and provided that the person clearly indicated he or she is acting in a private capacity.

Section 12. Assistance of the Commission and Counsel.

Any designated employee who is unsure of his or her duties under this code may request assistance from the Fair Political Practices Commission pursuant to Government Code section 83114 and 2 Cal. Code Regs. sections 18329 and 18329.5 or from the attorney for his or her agency, provided that nothing in this section requires the attorney for the agency to issue any formal or informal opinion.

No person who acts in good faith on an opinion issued to him or her by the Commission shall be subject to criminal or civil penalties for so acting, provided that the material facts are as stated in the opinion request.

Section 13. Violations.

This code has the force and effect of law. Designated employees violating any provision of this code are subject to the administrative, criminal and civil sanctions provided in the Political Reform Act, Government Code sections 81000 – 91014. In addition, a decision in relation to which a violation of the disqualification provisions of this code or of Government Code section 87100 or 87450 has occurred may be set aside as void pursuant to Government Code section 91003.

Section 13.1. Statute of Limitations.

No action based on a disqualification provision of this Code shall be brought pursuant to 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 and served upon the District within 90 days following the official action.

Section 14. Revisions to the District's Conflict of Interest Code.

No later than July 1 of each even-numbered year, the code reviewing body shall direct every local agency which as adopted a Conflict of Interest Code in accordance with the Political Reform Act to review its Conflict of Interest Code and, if a change in its code is necessitated by changed circumstances, submit an amended Conflict of Interest Code in accordance with

subdivision (a) of section 87302 and section 87303 of the Government Code to the code reviewing body.

Upon review of its code, if no change in the code is required, the District shall submit a written statement to that effect to the code reviewing body no later than October 1 of the same year.

PASSED AND ADOPTED this 7<sup>th</sup> day of July, 2014.

AYES: *Allen, Matteoli, Saunders & Wilson*

NOES: *None*

ABSENT: *Ripplinger*

DEL PASO MANOR WATER DISTRICT

By: *Richard H. H. H.*

ATTEST:

By: *Debra J. Sedwick*

APPENDIX A

DEL PASO MANOR WATER DISTRICT  
CONFLICT OF INTEREST CODE  
APPENDIX OF DESIGNATED EMPLOYEES AND  
DISCLOSURE CATEGORIES

I. Designated Positions<sup>1</sup>. The positions listed below are designated employees and are deemed to make, or participate in the making of, decisions which may foreseeably have a material effect on financial interests. The designated employees and officers listed shall disclose interests and investments in accordance with the corresponding disclosure categories, which are defined below.

<u>Designated Positions</u>	<u>Disclosure Category</u>
District Officers (other than Directors and General Manager)	1, 2, 3
Legal Counsel	1, 2, 3
Field Manager	1, 2, 3
Consultants <sup>2</sup>	1, 2, 3

II. Disclosure Categories.

1. Investments and business positions in business entities, and sources of income, which provide services, supplies, materials, machinery, or equipment of the type utilized by the District.

2. All interests in real property in the District. All investments and business positions in any business entity and income from any source which is (1) a private water company; or (2) an entity or person engaged in real estate development or an owner of real property.

3. In the case of an annual or leaving office statement, if an investment or an interest in real property was partially or wholly acquired or disposed during the period covered by the statement, the statement shall contain the date of acquisition or disposal.

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<sup>1</sup> Officials who manage public investments: It has been determined that the following positions manage public investments (within the meaning of Govt. Code, § 18720), and persons holding these positions must file FPPC Form 721 under state law, instead of FPPC Form 730 for positions covered by the District conflict of interest code: Members of Board of Directors and General Manager. Therefore, in 1994 after adoption of section 18720 by the FPPC, these

positions were deleted from the District's conflict of interest code appendix of designated positions.

<sup>2</sup> Consultants shall be included in the list of designated employees and shall disclose pursuant to the broadest disclosure category in the code subject to the following limitation:

The General Manager may determine in writing that a particular consultant, although a "designated position," is hired to perform a range of duties that is limited in scope and thus is not required to fully comply with the disclosure requirements described in this section. Such written determination shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The General Manager's determination is a public record and shall be retained for public inspection in the same manner and location as this conflict of interest code.