

ORDINANCE 95-C

AN ORDINANCE OF THE BOARD OF DIRECTORS OF THE
NORTH OF THE RIVER MUNICIPAL WATER DISTRICT REPEALING
ORDINANCE 92-A ADOPTING AN AMENDED CONFLICT OF INTEREST CODE

A. RECITALS

I. On October 21, 1992, this Board of Directors of the North of the River Municipal Water District adopted its Ordinance No. 92-A, thereby adopting a revised Conflict of Interest Code, certain provision of which now need additional modification, due to subsequently adopted statutes and regulations of the State.

B. ORDINANCE

NOW, THEREFORE, BE IT ORDAINED that Ordinance No. 92-A of this Board of Directors of the North of the River Municipal Water District is repealed, and the District hereby adopts and promulgates the Conflict of Interest Code attached hereto, and incorporated herein by reference subject to approval of the Board of Supervisors of Kern County.

This ordinance was duly PASSED and ADOPTED by the BOARD OF DIRECTORS of the NORTH OF THE RIVER MUNICIPAL WATER DISTRICT, 4000 Rio Del Norte Street, Bakersfield, California at a regular meeting thereof held on the 18th day of September, 1995, by the following vote, to wit:

AYES: All
NOES: None
ABSENT: None
ABSTAIN: None

DIRECTORS: Brocco, Cross, Holson,
McCune, Pearson

CAROLYN BROCCO, PRESIDENT
BOARD OF DIRECTORS, NORTH OF THE RIVER
MUNICIPAL WATER DISTRICT

I HEREBY CERTIFY that the above and foregoing resolution was passed and adopted by the BOARD OF DIRECTORS of the NORTH OF THE RIVER MUNICIPAL WATER DISTRICT, Kern County, California on the date and by the vote above stated.

WILLIAM R. MILLER, SECRETARY
BOARD OF DIRECTORS, NORTH OF THE RIVER
MUNICIPAL WATER DISTRICT

NORTH OF THE RIVER MUNICIPAL WATER DISTRICT CONFLICT OF INTEREST CODE

ARTICLE 1: PURPOSE AND SCOPE

1.00 Purpose

The people of the State of California enacted the Political Reform Act of 1974 on June 4, 1974. (Gov. Code, Title 9 (commencing with § 81000]. The Act became effective on January 7, 1975. (Gov. Code, § 81016.) One of the several purposes of the Act is to require the disclosure of assets and income of public officials which may be materially affected by their official actions and, in appropriate circumstances, the disqualification of public officials from acting so that conflicts of interest may be avoided. (Gov. Code, § 81002(c).) The District must adopt and promulgate a Conflict of Interest Code. (Gov. Code, § 87300.) The adopted and promulgated 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 duties under the Code; and

c. Adequately differentiate between designated employees with different powers and responsibilities. (Gov. Code, § 87309.) The purpose of this Code is to comply with the mandate of the Act.

1.01 Scope

It is difficult to comply with the provisions of Government Code section 87309 since the provisions of the Act are highly technical and, in some instances, inconsistent. Many terms are defined by the Act (Gov. Code, §§ 82000-82054) and, in some instances, the terms are given a technical meaning different from their ordinary meaning. Future legislative amendments to, and judicial interpretations of the Act will enable the District to more clearly define the rights and responsibilities of designated employees. 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.

ARTICLE 2: DEFINITIONS

2.00 General

When the following terms 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 same may be amended from time to time. (Gov. Code, § 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 of the Government Code.

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. (Gov. Code, § 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 North of the River Municipal Water District.

2.06 District Office

"District office" means the principal headquarters of the District located at 4000 Rio del Norte Street, Bakersfield, California-93308.

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, as same may be 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. (Gov. Code, § 87302 (b); see Gov. Code, § 87202.)

b. Statements of Non-incumbent Candidates:

Candidates for election to District offices shall file statements no later than the final filing date of a declaration of candidacy. (See Gov. Code, § 87201.)

c. New Designated Employees:

Each person appointed or nominated to an office specified in Government Code section 87200 shall file statements not less than 10 days before assuming office. (Gov. Code, § 87202(a).) All other new designated employees shall file statements within 30 days after assuming office.

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. (Gov. Code, § 87302(b).)

e. Annual Statements:

Each designated employee shall file an annual statement on or before April 1, unless a designated employee has previously filed a statement for such calendar year under section 4.00(b) hereof or has or will file a statement for such calendar year under section 4.00(d) hereof. (Gov. Code, § 87302 (b); see Gov. Code, § 87203.)

ARTICLE 4: DISCLOSURE STATEMENTS

4.01 Reporting Periods

a. Section 4.00(a) Statements:

The reporting period for statements filed under section 4.00(a) hereof shall be calendar year 1975.

b. Section 4.00(b) Statements:

The reporting period for statements filed under section 4.00(b) hereof shall be the calendar year within which the statement is filed.

c. Section 4.00(c) Statements:

The reporting period for statements filed under section 4.00(c) hereof shall be for the previous 12 months. (Gov. Code, § 87302(b).)

d. Section 4.00(d) Statements:

The reporting period for statements filed under section 4.00(d) hereof shall be the period between the date of the last statement required to be filed and the date of leaving office. (Gov. Code, § 87302(b).)

e. Section 4.00(e) Statements:

The reporting period for statements filed under section 4.00(e) hereof 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. (Gov. Code, § 87302(b).)

ARTICLE 4: DISCLOSURE STATEMENTS

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 article "interest in real property" does not include the principal residence of a designated employee. (See Gov. Code, § 87206(f).) Except for statements filed under section 4.00(e) hereof, investments and interests in real property which have been disclosed on a statement filed with the District within the previous 60 days may be incorporated by reference. (See Gov. Code, § 87208.)

b. Contents of Section 4.00(a) and (b) Statements:

The initial statements of incumbent designated employees and candidates shall disclose any reportable investments and interests in real property. (Gov. Code, § 87302 (b); see Gov. Code, § 87201 and § 87202.)

c. Contents of Section 4.00(c), (d) and (e) Statements:

The statements of new designated employees, the annual statements, and the statements of persons leaving office shall disclose reportable investments, business positions, interests in real property and income during the reporting period. (Gov. Code, § 87302(b); see Gov. Code, § 87203 and § 87204.)

d. 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 the statement, the statement shall include the date of acquisition or disposal of such reportable investment or interest in real property.

e. Contents of Investment and 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, exceeds \$1,000, exceeds \$10,000.00 or exceeds \$100,000.00.

ARTICLE 4: DISCLOSURE STATEMENTS

4.02 Contents of Statements

In the event that an investment constitutes fifty percent (50%) or more of the ownership interest in a business entity, the statement must disclose the investments and interest in real property of the business entity. (Gov. Code,

§ 87206.)

f. Contents of Income Reports:

When income is required to be reported under this Code, the statement shall contain:

1. The name and address of each source of income aggregating \$250.00 or more in value, or \$50.00 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 \$1,000.00 or less, and whether it was greater than \$1,000, or greater than \$10,000.00.
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 date on which the gift was received. (Gov. Code, § 87207.)

g. Contents of Business Entity Reports:

When income of a business entity, including income of a solo 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. In the case of a business entity, 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 \$10,000.00 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.

ARTICLE 4: DISCLOSURE STATEMENTS

4.02 Contents of Statements

h. 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 is a director, officer, partner, trustee, employee, or in which he 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.

4.03 Prohibition on Receipt of Honoraria

a. No member of a state board or commission, and no designated employee of a state agency, shall accept any honorarium from any source, if the member or employee would be required to report the receipt of income or gifts from that source on his or her statement of economic interests. This section shall not apply to any part-time member of the governing board of any public institution of higher educations, unless the member is also an elected official.

Subdivisions (b), (c), (d), and (e) of the Government Code Section 89502 shall apply to the prohibitions in this section.

b. No member of the governing board of a special district or designated employee of a local government agency shall accept any honorarium.

Subdivisions (b), (c), and (e) of Government Code Section 89502 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.

4.03 (1)Prohibition on Receipt of Gifts of \$280 or More

a. No member of a state board or commission, and no designated employee of a state agency, shall accept gifts with a total value of more than two hundred eighty dollars (\$280) in a calendar year from any single source, if the member or employee would be required to report the receipt of income or gifts from that source on his/her statement of economic interests. This section shall not apply to any part-time member of the governing board of any public institution of higher education, unless the member is also an elected official.

ARTICLE 4: DISCLOSURE STATEMENTS

4.03 (1)Prohibition on Receipt of Gifts of \$280 or More

Subdivisions (b), (c), (d), and (e) of Government Code Section 89504 shall apply to the prohibitions in this section.

b. No member of the governing board of a special district, or designated employee of a local government agency shall accept any gifts with a total value of more than two hundred eighty dollars (\$280) in a calendar year from any single source.

Subdivision (d) of Government Code Section 89504 shall apply to this section.

4.04 Place of Filing Statements

The original of all statements shall be filed with the Secretary of the Board at the District office. In the case of statements filed by members of the Board, the Secretary of the Board shall make and retain a copy of the original and forward the original to the Clerk of the Board of Supervisors of the County of Kern, State of California. (See Gov. Code, § 84215.)

4.05 Disclosure Statement Forms

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

4.06 Verification

All statements shall be signed under penalty of perjury and shall be 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 knowledge, it is true and complete. (Gov. Code, § 81004(a).)

4.07 Public Records

The copies of statements retained by the Secretary of the Board shall be preserved for a period of 4 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 desiring to inspect or reproduce such statements during regular business hours, nor shall any information or identification be required; provided, however, that a retrieval and copying charges may be imposed as provided by law. (Gov. Code, § 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 or on a significant segment thereof, on any financial interest described in Government Code section 87103. (Gov. Code, § 87100; see Gov. Code, § 87101 and 87103 and 2 Cal. Code of Regs., § 18700-18703.1.)

a. Any business entity in which the designated employee has a direct or indirect investment worth one thousand dollars (\$1,000) or more;

b. Any real property in which the designated employee has a direct or indirect interest worth one thousand dollars (\$1,000) or more;

c. Any source of income, other than gifts and other loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250), 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, partner, trustee, employee, or holds any position of management; or

e. Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating two hundred and eighty dollars (\$280) 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.

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. (Gov. Code, § 87101, 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 property tax rates, water rates, tolls, charges or assessments for any lawful District purpose;

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 and conditions of employment of the designated employee or others similarly situated;

ARTICLE 5: DISQUALIFICATION

5.01 Exceptions

d. Submitting information or expressing views on the same basis as any other citizen, provided the same be done in public and further provided the designated employee clearly indicates that he is acting in a private capacity.

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. In making his selections, the President of the Board shall select those disqualified individuals who appear to have the least financial interest in the matter before the Board. (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 Gov. Code, § 83114, 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.

EXHIBIT A
NORTH OF THE RIVER MUNICIPAL WATER DISTRICT
DESIGNATED EMPLOYEES AND REPORTABLE INTERESTS IN INVESTMENTS, BUSINESS
POSITIONS, REAL PROPERTY AND INCOME

<u>Designated Employee</u> [~]	Reportable Interests [^]
A. Directors	<p>1. Investments in any business entity which has an interest in real property located within the District or within two miles of the boundaries of 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. (See Gov. Code, § 82034.)</p> <p>2. Business positions in any business entity located within the District or within two miles of the boundaries of 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.</p> <p>3. Any interest in real property within the District or within two miles of the boundaries of the District. (See Gov. Code, § 82033.)</p> <p>4. Any income received from any source located or doing business within the District or expecting to do business within the District. (See Gov. Code, § 82030.)</p>
B. Manager	1. Same as those reportable by Directors.
C. Legal Counsel	1. Same as those reportable by Directors.
D. Consulting Engineer	1. Same as those reportable by Directors <u>except</u> there need be no disclosure of an investment in a business entity, a business position in a business entity or any income received from any source located or doing business within the District or expecting to do business within the District, pursuant to 1, 2 and 4 above, <u>unless</u> such business or source relates to the design, acquisition or construction of District projects.
E. Treasurer	1. Same as those reportable by Directors.
F. Other Consultants	1. Same as those reportable by Directors 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. ^v

NOTES: EXHIBIT A

**NORTH OF THE RIVER MUNICIPAL WATER DISTRICT
DESIGNATED EMPLOYEES AND REPORTABLE INTERESTS IN INVESTMENTS, BUSINESS
POSITIONS, REAL PROPERTY AND INCOME**

—"Designated employee, for the purpose of this exhibit, includes incumbent designated employees, candidates and new designated employees.

^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:

An 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 or a member of his or her immediate family or on:

a. Any business entity in which the public official has a direct or indirect investment worth one thousand dollars (\$1,000) or more.

b. Any real property in which the public official has a direct or indirect interest worth one thousand dollars (\$1,000) or more.

c. Any source of income, other than gifts and other loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, 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.

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.

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 any 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."

∨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.

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