



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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July 27, 2023

Anniken Lydon
Senior Planner, Insignia Environmental
545 Middlefield Road, Suite 210
Menlo Park, CA 94025

Re: Your Request for Advice
Our File No. A-23-084

Dear Ms. Lydon:

This letter responds to your request for advice regarding the post-governmental employment provisions of the Political Reform Act (the “Act”).¹ Please note that we are only providing advice under the post-government employment provisions of the Act. We therefore offer no opinion on the application, if any, of other post-government employment laws, such as Public Contract Code section 10411, or other general conflict of interest prohibitions such as common law conflict of interest.

Further, we are not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), and any advice we provide assumes your facts are complete and accurate. If this is not the case or if the facts underlying these decisions should change, you should contact us for additional advice.

QUESTIONS

Does the Act’s “permanent ban” prohibit you from working on matters for a private employer related to the following projects of which you have knowledge from your former role as a Regulatory Supervisor at the San Francisco Bay Conservation and Development Commission (BCDC):

- 1) the Collinsville Substation and Transmission Cable Project?
- 2) an existing Pacific Gas & Electric (PG&E) permit with BCDC?
- 3) a pending PG&E permit with BCDC?

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18104 through 18998 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

CONCLUSIONS

1) The permanent ban does not prohibit you from working and consulting on the Collinsville Substation and Transmission Cable Project, as this was not a “proceeding” in any state court or administrative agency.

2) The permanent ban prohibits you from working and consulting on implementation of the current PG&E contract, including monitoring and compliance work. It also prohibits you from consulting on any efforts to alter or modify the current permit or seek changes that would affect the same proceeding.

3) The permanent ban prohibits you from working on any matters related to the issuance or modification of the pending permit.

FACTS AS PRESENTED BY REQUESTER

You are currently a Senior Planner at an environmental consulting firm, Insignia Environmental. You recently vacated a Senior Environmental Scientist Supervisor level position at the San Francisco Bay Conservation and Development Commission (BCDC)—a state agency—in the Regulatory Division. In your capacity at BCDC you supervised a small team of coastal program analysts that worked on processing and writing permits for projects, and you worked on writing permits as well. Your last day of employment with the state agency was April 7, 2023. You understand that as a consultant you are subject to the one-year ban, prohibiting you from being compensated by any other person to appear before, or communicate with, your former agency in an effort to influence certain actions and proceedings.

However, you have questions regarding the permanent ban as it relates to projects you may work on for your new employer. There are three specific projects your current employer has that you have knowledge of from your time as a regulatory supervisor at BCDC: the Collinsville Substation and Transmission Cable Project; an existing PG&E permit; and a pending PG&E permit.

Collinsville Substation and Transmission Cable Project

In the recent past, the California Independent System Operators (CAISO), a private entity, put out a bid solicitation for the construction of a new substation near Collinsville and a transmission cable line connecting this area to the existing substation in Pittsburg, CA. (Hereafter, the “Collinsville Project.”) During the time that proposals were due (around April-July 2022), you were contacted by two environmental consulting firms that were representing clients putting together proposals in response to the bid solicitation. Each of the environmental consulting companies had questions regarding BCDC’s jurisdiction near the project area and what might be the applicable policies for the any part of the project running through BCDC jurisdiction. In your regulatory supervisor role, you provided both firms with the same information regarding BCDC’s jurisdiction in this area and potential policies/requirements that would be applicable if the alignment were to go through BCDC’s jurisdiction. Following that correspondence, you did not hear anything more from the consulting firms on behalf of their clients.

Your current employer, Insignia Environmental, is now the environmental consultant for the company that won the project bid for the Collinsville project from CAISO. You were unaware of this at the time you accepted employment at Insignia Environmental. At the time that you worked at BCDC and discussed BCDC's jurisdiction and relevant policies near the project area with both of the environmental consulting firms, the exact project and alignment were not known and neither of the firms you spoke with was Insignia Environmental. Now that you are working for Insignia Environmental, you wish to know whether your prior conversations regarding jurisdiction and relevant policies with the other two firms during their proposal development constituted a "proceeding" subject to the permanent ban.

PG&E Operations and Maintenance around the Bay Area

Existing PG&E Permit

In regard to an existing PG&E permit with BCDC, Insignia's work includes planning for annual maintenance activities, annual post-construction monitoring and reporting, and vegetation monitoring. This is largely compliance work to ensure that PG&E is conducting the work consistent with the permits from BCDC and other regulatory agencies. While at BCDC, you supervised an employee when he issued two time extensions to the existing BCDC permit for PG&E's operations and maintenance work. These were extensions of time for the permit authorization period with no changes to the conditions or analysis of the existing permit and were meant to cover PG&E's operations and maintenance work until such time as they could obtain a new permit from BCDC.

Likely your scope of work at Insignia regarding the current PG&E permit would involve compiling reports and data for the annual compliance reporting under the existing BCDC permit and other agency permits, and potentially assisting with the preparation of environmental documents and applications for any permits that need to be renewed or applications for any new work not currently covered by existing permits.

Pending PG&E Permit

You participated in a number of pre-application discussions with PG&E as the supervisor of an employee who was working with PG&E on a new operations and maintenance permit application for the work they conduct in BCDC's jurisdiction throughout the nine Bay Area counties. You and your employee provided PG&E advice and input on minimization measures for their operations to reduce environmental impacts and discussed potential permitting conditions with PG&E ahead of their permit application submittal. PG&E submitted an application for all their operations and maintenance work to BCDC in March 2023 and your employee was assigned the review of the permit application materials for completeness. You reviewed your employee's letter regarding the application and engaged in additional discussions with the employee about permit condition requirements and the eventual structure of the permit. At the time you left the agency, additional information was still pending, and the permit has not been issued to date.

ANALYSIS

For purposes of the permanent ban, Section 87400(b) defines “state administrative official” as “every member, officer, employee or consultant of a state administrative agency who as part that person’s official responsibilities engages in any judicial, quasi-judicial or other proceeding in other than a purely clerical, secretarial or ministerial capacity.”

The permanent ban prohibits the representation for compensation of any person, other than the State of California, in any proceeding you participated in as a public official. Section 87401 states:

A former state administrative official, after the termination of the official’s employment or term of office, shall not, for compensation, act as agent or attorney for, or otherwise represent, any other person (other than the State of California) before any court or state administrative agency or any officer or employee thereof by making any formal or informal appearance, or by making any oral or written communication with the intent to influence, in connection with any judicial, quasi-judicial, or other proceeding if both of the following apply:

- (a) The State of California is a party or has a direct and substantial interest.
- (b) The proceeding is one in which the former state administrative official participated.

“Proceeding,” in part, means any application, request for a ruling, contract, or other particular matter involving specific parties in any court or state agency (Section 87400(c)), while “participated” means to have taken part personally and substantially through decision, approval, disapproval or rendering advice (Section 87400(d)).

Relevant to your role as a Senior Environmental Scientist Supervisor, Regulation 18741.1(a)(4) specifies that a supervisor is “deemed to have participated” in any proceeding that was pending before the official's agency and that was under the supervisor's supervisory authority. For purposes of this regulation, a proceeding is under a supervisor's “supervisory authority” if any of the following applies to the supervisor:

- (A) The supervisor's duties include the primary responsibility within the agency for directing the operation or function of the program where the proceeding is initiated or conducted. However, this provision does not apply to a supervisor who is only responsible for the general oversight of the administrative actions or functions of a program in which the responsibilities concerning the specific or final review of the proceeding are expressly delegated to other persons in the agency.
- (B) The supervisor directly supervises the person performing the investigation, review, or other action involved in the proceeding including, but not limited to, assigning the matter for which the required conduct is taken.
- (C) The supervisor reviews, discusses, or authorizes any action in the proceeding.

(D) The supervisor has contact with any of the participants in the proceeding regarding the subject of the proceeding.

Notably, the permanent ban does not apply to a “new” proceeding even in cases where the new proceeding is related to or grows out of a prior proceeding in which the official had participated. A “new” proceeding not subject to the permanent ban typically involves different parties, a different subject matter, or different factual issues from those considered in previous proceedings. (See, e.g., the *Rist* Advice Letter, No. A-04-187 and the *Goldberg* Advice Letter, No. I-05-225.)

The facts presented indicate that you engaged in BCDC proceedings in more than a clerical, secretarial, or ministerial manner while employed by the agency. Additionally, you permanently left state service on April 7, 2023. Therefore, you are subject to the permanent ban with respect to the proceedings you participated in while employed by BCDC.

Collinsville Substation and Transmission Cable Project

In regard to the Collinsville Project, it does not appear this was a “proceeding” subject to the Act and, based upon the facts provided, the decision at issue was not a matter in any state court or administrative agency. (See *Bradbury* Advice Letter, I-19-037 [“... working to acquire permits from *federal* or *local* agencies would not violate the permanent ban if the work does not involve proceedings before a court or state administrative agency.”]) Here, a private entity, the CAISO, put out a bid for proposals, and was ultimately the entity deciding on the project. While you did supply relevant information concerning jurisdictional issues as they related to BCDC to two bidding entities, no state agency, including BCDC, had a role in making this determination. Your assistance in the matter did not involve a proceeding before a state court or administrative agency. Barring any other past participation in a proceeding involving the Collinsville Project before the BCDC or state court or administrative agency, the permanent ban does not apply and you may work on matters pertaining to the Collinsville Project.

Pacific Gas and Electric Operations and Maintenance Around the Bay Area

Existing PG&E Permit

While employed at BCDC, you supervised an employee verifying PG&E’s compliance with an existing permit initially issued around 1998. You conferred with the employee on extensions of time for PG&E to provide further information, and while the extensions did not materially alter the terms of the permit, these are considered permit amendments by BCDC. Through this supervisory role, you participated in the existing PG&E permit proceeding such that you are now prohibited under the permanent ban from working on it for your new employer. (See, e.g., *Scholl* Advice Letter, I-02-083.)

Additionally, you noted that you may “potentially” assist with the preparation of and applications for any permits that need to be renewed, or applications for any new work not covered by existing permits. We caution that each renewal or separate application for new permits would need to be evaluated as to whether the permanent ban would apply or if these would constitute “new” proceedings.

Pending PG&E Permit

While employed at BCDC you participated in the proceeding regarding the pending PG&E permit through discussing the application with PG&E and the employee you supervised, providing advice on the permitting process to PG&E, and reviewing your employee's work in regard to evaluation of the permit application. The permanent ban, therefore, prohibits you from assisting or advising your new employer with securing or negotiating the permit.

In regard to future work should the permit be issued, this may be prohibited under Government Code Section 1090 [prohibition on making or participating in contracts in which the official or employee has a financial interest]. We urge you to seek additional advice should the permit be awarded.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Dave Bainbridge
General Counsel



By: Erika M. Boyd
Senior Counsel, Legal Division

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