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MICHAEL G. SLATER

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OUR FILE NO. 01236-503

September 20, 2011

Fair Political Practices Commission
428 J Street, Suite 620
Sacramento, CA 95814

Re: Request for Opinion on Behalf of the City Council of the City of Selma Relative to Participation and/or Votes Taken by Mayor Kenneth Grey and Council Member Michael Derr

Dear Sir or Madam:

This is a request for a formal opinion of the Commission with respect to the duties of the above-named Council Members of the City Council of the City of Selma pursuant to subdivision (a) of Government Code §83114. The undersigned is the City Attorney of the City of Selma who has been duly authorized by the City Council of the City of Selma to make this request on behalf of the City of Selma pursuant to an action taken by the City Council of the City of Selma at its meeting on August 15, 2011. The name, title and position and mailing addresses of the persons whose duties are in question are as follows:

Kenneth Grey, Mayor
City of Selma
1710 Tucker Street
Selma, CA 93662
ph: (559) 891-2200
fax: (559) 896-7903

Michael Derr, City Council Member of the
City Council of the City of Selma
1710 Tucker Street
Selma, CA 93662
ph: (559) 891-2200
fax: (559) 896-7903

On July 18, 2011, the City Council of the City of Selma had a regular meeting. On the closed session agenda, there was one item of potential litigation under Government

Code §54956.9 for the purpose of allowing the Council to consider whether to begin the process of initiating eminent domain proceedings aimed at acquiring the assets, infrastructure and operation of the company that provides water service within the City, California Water Service Company (Cal Water), a public utility regulated by the California Public Utilities Commission. Also included on the agenda for July 18, 2011, was approval of the fiscal year 2011-2012 budget for the City of Selma. A copy of the minutes for the July 18, 2011, workshop/pre-council meeting and minutes of the July 18, 2011, regular meeting, approved by the City Council and which reflects the items on the agenda for that meeting, are attached as Exhibit A.

Following that meeting, statements were made to the local press, the Selma Enterprise, by Council Member Dennis Lujan to the effect that with respect to the vote on the approval of the budget as reflected in the July 18, 2011, minutes, Council Member Derr had a disqualifying financial conflict of interest under the provisions of the Political Reform Act, Government Code §83000, et seq. The following week, Council Member Lujan made statements to the local press indicating that Mayor Grey had a financial conflict of interest with respect to votes taken or participation in matters considered by the City Council relating to Cal Water. Copies of the articles from the Selma Enterprise from August 3 and August 10, 2011, which relate to the conflict of interest claimed to exist with respect to Derr and Grey, respectively, are attached as Exhibit B. Staff was requested to and did include on the Council's regular meeting agenda for August 15, 2011, the "Consideration and Determination of whether" both Council Members had a disqualifying interest in votes or participation in matters relating to the 2011-2012 budget with respect to Member Derr and Cal Water with respect to Mayor Grey. A copy of the agenda for the Selma City Council meeting of August 15, 2011, is attached as Exhibit C. Included with the agenda packet received by Council and made available publically prior to the meeting, were two "City Manager/Staff Reports for two items of regular business as follows:

> "Item 3. Consideration and determination of whether Councilperson had a disqualifying interest in votes on or participation in matters relating to the fiscal year (FY) 2011-2012 budget; and
>
> Item 4. Consideration and determination of whether Councilperson had a disqualifying interest in votes on or participation in matters relating to California Water Service Company (Cal Water)."

Those staff reports are attached to this request as Exhibit D. The staff reports, in addition to the information stated on the record, or provided to Council Members during their consideration of these two items of regular items of business, state the facts material to the consideration of the issue with respect to which an opinion of the Commission is requested. The recommendation of the staff report with respect to Item 3, relating to

Council Member Derr and involving the Council's decision on whether to approve the fiscal year 2011-2012 budget was as follows:

> "That the Council find and determine that the employment of Councilman Derr's wife by the Chamber of Commerce did not give rise to any material, foreseeable, financial impact on this source of income for Council man Derr, that the Councilman was not required to recuse himself and properly participated and voted for approval of the 2011-2012 budget."

The recommendation on Item 4, relating to Mayor Grey as set forth in the staff report is as follows:

> "That the Council find and determine that Mayor Grey may have a financial interest in a decision to acquire, or not acquire, Cal Water but had no financial interest in a decision to seek and adjustment of water rates that was distinguishable from the effect on the public in general and was, therefore, not disqualified from participating in the proceedings concerning Cal Water prior to July 18, 2011, and properly recused himself from considering acquisition of Cal Water on the July 18, 2011, agenda."

At the time of the City Council's meeting, staff further provided an oral report, and in connection therewith, with respect to Item No. 4, the matter relating to Mayor Grey and California Water Service Company, distributed copies of the Form 700 for Mayor Grey for 2008 and 2010 in addition to a copy of a April 20, 2011, letter from Mayor Grey to Council Member Dennis Lujan. These documents are attached as Exhibit E. Mayor Grey recused himself and did not participate in the Council's consideration of either Item 3 or 4 on the August 15, 2011 agenda. Council Member Derr did not participate in the Council's consideration of Item 3 on the City Council's agenda for August 15, 2011. The Council meeting was tape recorded. A digital recording was made of the entire meeting is in my possession and will be provided on request. In addition, the City Council's discussion of Item's 3 and 4 of regular business on the agenda for August 15, 2011, as reflected in the recording, has been transcribed by a certified court reporter and a transcript of the City Council's discussion and staff's report on that item is attached to this letter as Exhibit F. The August 15, 2011, meeting are attached as Exhibit G.

The transcript, at many locations, does not identify the speaker by name. It refers to "unidentified male 1" at pages 2-14. That identified male is the undersigned. The "unidentified male" referred to at page 15 is the City Manager and the "unidentified male 1" at page 15, lines 14 through 9 is Council Member Jim Avalos. The "unidentified male 2" appearing at page 17, lines 10 through 19 is the undersigned and the "unidentified male" appearing at page 17, lines 21 through page 18, line 4 is also the undersigned. The "unidentified male" appearing on page 18 is the City Manager, whereas the "unidentified

male 1" is the undersigned. The "unidentified male" referred to on page 19 is Councilman Avalos. On page 20, the first "unidentified male 1" at lines 11-16 is the City Manager and the second unidentified male at lines 20 and 21 is the undersigned. The unidentified males on page 21 are all the City Manager and the unidentified male on pages 22-33 are all to the undersigned. The "unidentified male 2" on page 33, line 23 is a reference to Jim Avalos. At page 34, line 25 the "unidentified male" is Council Member Michael Derr. At pages 36-37, with the exception of the unidentified male at lines 5-6 and 12-13 all such references to the undersigned. All other references at this location are to Michael Derr. The unidentified male speaking at page 37 is the undersigned and the "unidentified male 1" identified on page 38 is the undersigned, while the "unidentified male" at page 38, lines 13 through 15 is the City Manager. The "unidentified male 2" at page 39, line 24 is Jim Avalos. The "unidentified male 2" at page 40, lines 4-16 is Jim Avalos and the "unidentified male" at line 23 of that page is also Jim Avalos. The "unidentified male" at lines 17-18 at page 40 is Michael Derr and the "unidentified male 1" on that page is the undersigned.

The record consisting of the transcription and the tape recording, in addition to the staff reports for the above items on the August 15th agenda disclose all facts relevant to the determination of whether a disqualifying conflict of interest exists on the part of either Mayor Grey or Council Member Derr that are available either to the undersigned or to the City Council. No additional facts, other than the disclosures made in the Forms 700 that are enclosed with respect to Councilman Grey were disclosed at the meeting or in the discussion concerning these items. At the conclusion of their consideration of Item 3, on a motion by Council Member Lujan, seconded by Councilman Avalos, the Council voted 2-1 to direct the City Attorney to submit the question presented to the Council concerning whether Council Member Derr had a disqualifying interest in votes on or participation in matters relating to the fiscal year 2011-2012 budget referred to the Fair Political Practices Commission for a formal opinion.

With respect to Item 4, on motion by Council Member Lujan, seconded by Councilman Avalos, the City Council voted 3-1 to direct the City Attorney to request a formal opinoin from the Fair Political Practices Commission with respect to the question presented to Council, whether Councilman/Mayor Grey had an disqualifying financial interests in votes on or participation in matters relating to California Water Service Company.

Please acknowledge your receipt of this request for a formal opinion and provide to me the name of the staff person to whom this request has been assigned, the staff person's office telephone number and the date on which the period prescribed by subdivision (a) of Section 83114 of the Government Code expires.

Sincerely,

COSTANZO & ASSOCIATES

Neal E. Costanzo

NEC/js
Enc.

A

CITY OF SELMA
WORKSHOP/PRE-COUNCIL MEETING
JULY 18, 2011

The workshop/pre-Council meeting was called to order at 5:30 p.m. in the Council chambers. Council members answering roll call were: Avalos, Derr, Lujan, Mayor Pro Tem Rodriguez and Mayor Grey.

Also present were City Manager Heusser, City Attorney Costanzo, Interim Police Chief Dyck, Acting Fire Chief Kain, Financial Consultant Yribarren, the press, and interested citizens.

The agenda for this meeting was duly posted in a location visible at all times by the general public seventy-two hours prior to this meeting.

EXECUTIVE SESSION: Mayor Grey recessed the meeting into Executive Session at 5:31 p.m. to discuss three pending litigation cases (Carsey Trucking v City of Selma, Calaveras Materials v City of Selma, 1145 Valley View v City of Selma (2 cases)), three potential litigation cases, conference with labor negotiator re. the Selma Police Officers Association, Selma Firefighter's Association (IAFF Local 3716), all other Employee Associations, and public employment of the Fire Chief, Public Works Director and City Clerk.

The meeting reconvened at 6:57 p.m. with the City Attorney making the following announcements. **Labor Negotiations:** That the Council had approved the 10% furlough and 5% retirement contribution by all non-safety bargaining groups; that the Council had approved the no furloughs and 8% retirement contribution from the Public Safety Mid-Management bargaining group; and that there had been no agreement reached with the remaining Police and all of the Fire bargaining group. **Public Employment:** That there had been 1) no action on the Fire Chief position 2) elimination of the Public Works Director position, and 3) no action on the City Clerk position.

ADJOURNMENT: There being no further business, the meeting was adjourned at 6:58 p.m.

Respectfully submitted,

Melanie A. Carter

Melanie A. Carter, CMC
City Clerk

Kenneth Grey

Kenneth Grey
Mayor of the City of Selma

CITY OF SELMA
REGULAR CITY COUNCIL MEETING
JULY 18, 2011

The regular meeting of the Selma City Council was called to order at 7:05 p.m. in the Council chambers. Council members answering roll call were: Avalos, Derr, Lujan, Mayor Pro Tem Rodriguez and Mayor Grey.

Also present were City Manager Heusser, City Attorney Costanzo, Interim Police Chief Dyck, Acting Fire Chief Kain, Financial Consultant Yribarren, the press, and interested citizens.

The agenda for this meeting was duly posted in a location visible at all times by the general public seventy-two hours prior to this meeting.

SPECIAL PRESENTATION: Council member Derr read and presented the Selma High School Football Team with a certificate recognizing them for winning the "Best of the West" Football Passing Tournament in Beverly Hills. They were congratulated on a job well done.

ORAL COMMUNICATIONS: Mr. Jim Wilson , a Selma resident, stepped forward to ask for copies of the independent audit reports on the Measure S funds.

CONSENT CALENDAR: Motion to approve the Consent Calendar was made by Council member Lujan and seconded by Mayor Pro Tem Rodriguez. Motion carried with the following vote:

AYES:	Lujan, Rodriguez, Avalos, Derr, Grey
NOES:	None
ABSTAIN:	None
ABSENT:	None

a. Minutes of the June 20, 2011 workshop/pre-Council meeting approved as written.

b. Minutes of the June 20, 2011 regular meeting approved as written.

c. Minutes of the June 29, 2011 special meeting approved as written.

d. RESOLUTION NO. 2011-29R, A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SELMA APPROVING AGREEMENT FOR ARCHITECTURAL SERVICES WITH DSJ ARCHITECTS AT 1935 HIGH STREET FOR NEW PERFORMING ARTS CENTER. Resolution approved by standard motion.

e. RESOLUTION NO. 2011-30R, A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SELMA ADOPTING ANNUAL APPROPRIATIONS (GANN) LIMIT. Resolution approved by standard motion.

f. Letter to the Fresno County Board of Supervisors opposing the cultivation of marijuana along SR 99 and the Golden State Corridor approved by standard motion.

g. Check register dated July 13, 2011 approved by standard motion.

CONSIDERATION AND NECESSARY ACTION ON APPLICATION FOR FENCE VARIANCE AT 2504 NORTHHILL – LINDA SANCHEZ, APPLICANT: After staff's presentation, motion to approve the fence variance for 2504 Northhill, Linda Sanchez-applicant, was made by Council member Lujan and seconded by Council member Derr. Motion carried with the following vote:

AYES: Lujan, Derr, Avalos, Rodriguez, Grey

NOES: None

ABSTAIN: None

ABSENT: None

CONSIDERATION AND NECESSARY ACTION ON RESOLUTION IMPLEMENTING BENEFIT AND OTHER CHANGES IN TERMS AND CONDITIONS OF EMPLOYMENT FOR SELMA POLICE OFFICER'S ASSOCIATION AND SELMA FIREFIGHTER'S ASSOCIATION: City Manager Heusser reported that in order to balance the 2011/2012 budget recommendations had been made to the various bargaining groups. Offers presented were, to the Miscellaneous bargaining groups (Public Works, Secretarial/Clerical, Technical, and Mid-Management), 10% furloughs and a 5% contribution to PERS and to the Public Safety groups (Police and Fire), no furloughs and an 8% contribution to PERS. However, after meeting with the groups, only the miscellaneous groups and the Public Safety Mid-Management group had agreed to the proposal.

He reported that after presenting the City's "Last, Best and Final" offer to Police and Fire and having the offer rejected he is declaring an impasse and asking Council to adopt the Police and Fire proposal (no furloughs and an 8% contribution to PERS).

He then asked City Attorney Costanzo to clarify the process for Council.

After discussion, Mayor Pro Tem Rodriguez stated that he feels it is time to get rid of the furloughs and that this is the first step.

Ms. Yolanda Torres, a Selma resident, stepped forward to ask Council to slow down and take a step back. She also volunteered to help locate areas in the budget that could be cut.

City Manager Heusser stated that the longer adoption of the budget is delayed the more expenses there are and that it would delay the City getting the annual operational TRAN.

Mr. Mario Alvarado stepped forward and asked Council to not lay-off any Public Safety personnel.

City Manager Heusser clarified the proposal stating that the City is not proposing the layoff of any Public Safety personnel, only asking them to contribute 8% to their retirement, which in one way or another, they will get back later.

Ms. Naomi Solis stepped forward to ask how long the "no furlough's" will last?

City Manager Heusser stated that the proposal is for the 2011-2012 fiscal year.

Firefighter Jeremy Owens stated that he feels the Fire bargaining group had not been given enough time for negotiations prior to the impasse being declared.

Police Officer Mark Clifton stated that he feels the City is once again balancing the budget on the backs of its employees.

City Manager Heusser stated that negotiations began in March. He also stated that adoption of the City's budget could not take place without adoption of these concessions.

After discussion, motion to approve RESOLUTION NO. 2011-31R, A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SELMA IMPLEMENTING BENEFIT AND OTHER CHANGES IN TERMS AND CONDITIONS OF EMPLOYMENT FOR THE SELMA POLICE OFFICER'S ASSOCIATION AND THE SELMA FIREFIGHTER'S ASSOCIATION was made by Mayor Pro Tem Rodriguez and Council member Derr. Motion carried with the following vote:

AYES:	Rodriguez, Derr, Grey
NOES:	Avalos, Lujan
ABSTAIN:	None
ABSENT:	None

CONSIDERATION AND NECESSARY ACTION ON RESOLUTION AMENDING A PORTION OF THE ADOPTED SELMA BICYCLE TRANSPORTATION PLAN ROUTE FROM A CLASS I BIKE PATH WITHIN THE UNION PACIFIC RAILROAD RIGHT-OF-WAY TO A CLASS II BIKE PATH ON WEST FRONT STREET RIGHT-OF-WAY: Mayor Grey opened the public hearing at 7:54 p.m. There being no one to speak for or against the proposal, the public hearing was closed at 7:55 p.m.

After discussion, motion to adopt RESOLUTION NO 2011-32R, A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SELMA AMENDING A PORTION OF THE ADOPTED SELMA BICYCLE TRANSPORTATION PLAN ROUTE FROM A CLASS I BIKE PATH WITHIN THE UNION PACIFIC RAILROAD RIGHT-OF-WAY TO A CLASS II BIKE PATH ON WEST FRONT STREET RIGHT-OF-WAY was made by Council member Lujan and seconded by Mayor Pro Tem Rodriguez. Motion carried with the following vote:

AYES: Lujan, Rodriguez, Avalos, Derr, Grey

NOES: None

ABSTAIN: None

ABSENT: None

CONSIDERATION AND NECESSARY ACTION ON RESOLUTION APPROVING 2011-2012 FISCAL YEAR BUDGET: City Manager Heusser explained this years' budget process and stated that the document the Council has is a summary budget and that a line item budget will be distributed later.

Mayor Grey opened the public hearing at 7:55 p.m. There being no one to speak for or against the budget the public hearing was closed at 7:56 p.m.

Council member Avalos questioned the numbers and stated that he feels there are areas that can still be cut.

Mayor Pro Tem Rodriguez stated that he feels the City is finally living within its means.

Motion to adopt RESOLUTION NO. 2011-33R, A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SELMA APPROVING THE 2011-2012 FISCAL YEAR BUDGET was made by Mayor Pro Tem Rodriguez and seconded by Mayor Grey. Motion carried with the following vote:

AYES: Rodriguez, Grey, Derr

NOES: Avalos, Lujan

ABSTAIN: None

ABSENT: None

DEPARTMENTAL REPORTS: City Manager Heusser reported on the Council chambers microphone system and a grant for electric vehicles the City has received.

COUNCIL REPORTS: Council member Avalos thanked all of the City's employees for their hard work.

Council member Derr reported on attending a S-K-F meeting.

Mayor Pro Tem Rodriguez reported on attending a 5-Cities Board meeting and on the City of Reedley going "green". He also reported that his daughter's softball team is going to the Jr. Olympics.

ORAL COMMUNICATIONS: Ms. Naomi Solis stepped to the podium and admonished the Council for bringing up the four Police Department positions with employment problems last year.

ADJOURNMENT: There being no further business, the meeting was adjourned at 8:15 p.m.

Respectfully submitted,

Melanie A. Carter

Melanie A. Carter, CMC
City Clerk

Kenneth Grey

Kenneth Grey
Mayor of the City of Selma

Resolution Nos: 2011-29R, 2011-30R, 2011-31R, 2011-32R, 2011-33R

B

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Wednesday, August 3, 2011 1:11 PM PDT

News

Is there a conflict with council vote? Derr says no; Lujan, yes

By Doug Hoagland
dhoagland@selmaenterprise.com

City Council Member Dennis Lujan opposed the new city budget that gives $14,000 to the Selma District Chamber of Commerce. He lost that vote on July 18. Lujan now says that Council Member Mike Derr should have disclosed before he voted for the budget that his wife works for the chamber. Jeanette Derr started a part-time job in the chamber office on July 1. Lujan said Derr might have a conflict of interest because the city gives money to the chamber and the chamber pays Jeanette Derr. However, City Attorney Neal Costanzo said Mike Derr had no conflict of interest that would have kept him from voting on the budget. Derr said he did nothing wrong. The city's $14,000 is 8 percent of the chamber's budget, and the city money is earmarked for business and retail promotion, according to chamber Executive Director Cindy Howell. The city money is not used for salaries, Howell added.

The chamber gets most of its money from other sources, including membership fees and fundraisers.

Said Mike Derr: "Dennis just doesn't like the chamber. That's his problem. Anything he can do to attack the chamber, he's doing."

Lujan said he's had differences with the chamber, but they aren't a factor in this matter.

Lujan said Derr is a veteran council member -- he was first elected in 1990 -- and he should have known that disclosing his wife's job was the right thing to do.
Jeanette Derr had been volunteering at the chamber before getting the job. She was one of 29 applicants and seven finalists, according to Executive Director Howell.

Mike Derr said he would have a conflict of interest -- according to Lujan's reasoning -- if he voted for a budget that paid for streets in front of his home and business. "Under Dennis' definition, I would have to move out of the city not to have a conflict of interest," Derr said.

The city council voted 3-2 on July 18 to approve a 2011-12 budget. Derr was one of three "yes" votes on the five-member council. Lujan voted against the $17.5 million budget, and the chamber contribution wasn't the only reason for his opposition.

Sometime after July 18, Lujan said, a customer at his barber shop told him about Jeanette Derr's connection to the chamber.

Lujan said he has not spoken to Mike Derr about his concerns: "It didn't seem appropriate outside the council environment."

Meanwhile, City Attorney Costanzo explained why Mike Derr has no conflict of interest. Costanzo was responding to questions from The Enterprise.

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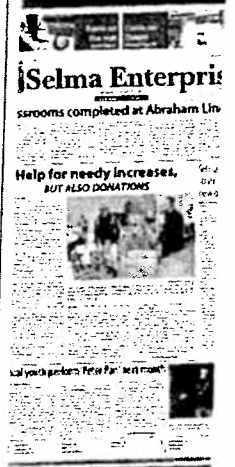

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Costanzo said there'd be a problem only if Jeanette Derr received a "direct benefit" from the city's money and if the money was intended only for her.

"You can't say the $14,000 is going to pay her salary," Costanzo said.

Lujan said he's not bringing up this issue because of his tense relationship with the chamber.

A flap occurred last year after Lujan, then the mayor, attended a ribbon-cutting ceremony for RPS Realty. Lujan made comments there that some people -- including chamber leaders -- considered offensive. Lujan said his comments were meant as jokes.

Lujan said last week that the flap hurt his feelings.

However, he noted, his opposition to city funding for the chamber started before the RPS incident. He said the city can't afford the chamber contribution during the recession.

Since the recession started, the city has reduced the money going to the chamber. Officials who support the contribution say the chamber does economic development for Selma, which benefits the city.

Mike Derr said Lujan is angry that he's no longer mayor "and can't push people around. All he does is bad mouth the chamber. I suspect someone will now say let's run someone good against him."

Lujan said: "Of course I disagree with his opinion, but he has the right to it. If someone comes at me, I will push back, but that's the only pushing I do."

Lujan will be up for re-election in 2012, and he said that he plans to run again.

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Gary Alexander wrote on Aug 3, 2011 2:41 PM:

" I love it.
NOW someone screams "conflict of interest".
When Sandi Niswander was the 3rd vote needed to put her husband on the planning commission, not one member of the city council thought that was a conflict of interest. Including Dennis.
Maybe the issue is the City Attorney. He doesn't see a conflict of interest anywhere. He (the City Attorney) also said at a city council meeting that it was just dandy that the city got to pick and choose what laws they wanted to enforce, or not enforce.
So when the council changes their minds and starts enforcing a law they hadn't previously (the 2 hour

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Selma Enterprise
SelmaEnterprise.com
50 Cents Volume 127, No. 21 WEDNESDAY, AUGUST 10, 2011 An Edition of The Sentinel

Lujan accuses mayor of Cal Water conflict

By Doug Hoagland
dhoagland@selmaenterprise.com

Mayor Ken Grey says he won't take part in city council discussions about Selma buying the community's water system. The reason: Grey has done business with the system's owner, California Water Service Co.

Council Member Dennis Lujan says Grey still has a conflict of interest problem.

Grey told the council of his decision about Cal Water in a closed-door session in mid-July. He later told The Enterprise.

Grey said he's eliminated any conflict of interest by bowing out of discussions, future contract negotiations and council votes on a city takeover of the water system.

"It's in the best interest of the city that I don't participate . . ." he said.

Meanwhile, Lujan said Grey should have told the public months ago about his business relationship with Cal Water.

"Huge conflict of interest. Oh my God," Lujan said.

Lujan has talked the most about the city buying the water system since Cal Water increased its rates in Selma in January.

He has said a city-owned system is one way to prevent big rate increases. Others question whether that's true, and the council has taken no public votes on a takeover.

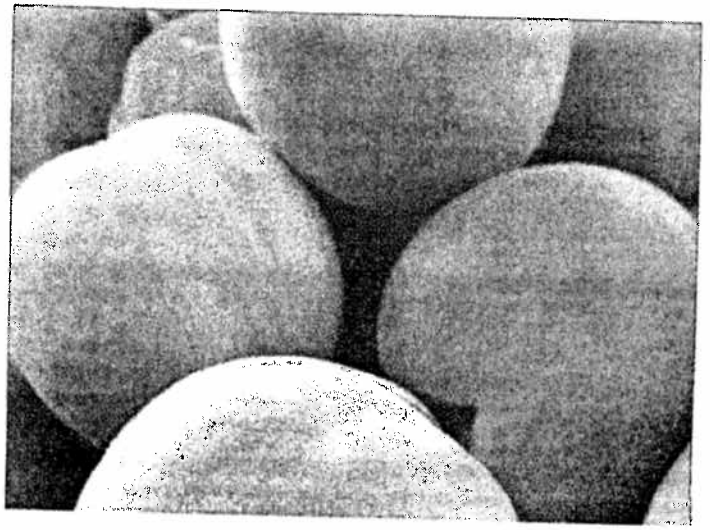
City Attorney Neal Costanzo said Grey made a smart decision in pulling out of Cal Water discussions.

He said Grey's work for Cal Water could have the appearance of a conflict of interest.

Grey said his company, BVI Construction, has built two pump stations for Cal Water's Selma division in the last eight years. He said he did his last work for Cal

See Grey; Back Page

Fresh fruit



Selma man to go to court in sex case

By Doug Hoagland
dhoagland@selmaenterprise.com

Shawn Patrick Gonzales of Selma could appear in court later this month to face a charge of a sexual crime involving a child.

A pre-preliminary hearing is set for Aug. 29 in Fresno, according to the district attorney's office.

Selma Police re-arrested Gonzales on July 29.

Police found Gonzales, 40, near Thompson Avenue and Burnham Street. He didn't resist arrest, said

7th Ave., in Kingsburg. Farmers Jonathan and Keren Farley and their children welcome visitors to the only u-pick experience on the trail. Come prepared for your shoes to

bers, jalapeño peppers, apricots, tomatoes and grapes (when available) are all available for the picking.

"You know exactly what you're getting here," Jonathan Farley says. "At the grocery store, you can only

of grapes that we work on all year," he says. "People get to do our favorite thing, too."

The farm, started by Patrick and LaVerne Farley, has a 26-year history. However, this is the first year the farm has been

comes from," Farley says.

Also listed on the Fruit Trail are: Sun-Maid Growers of California, 13525 S. Bethel Ave., Kingsburg; Friesen Family Farms, 15496 E. Saginaw Ave., Kingsburg; Circle K

farms, fruit stands and map.

"We are grateful for our inclusion in the Fresno County Fruit Trail and hope it continues to boost the agri-tourism in our area," Farley says.

Details: 600-4271.

Grey

Continued from page A1

Water-Selma four years ago.

Grey's firm also has built two pump stations for Cal Water's Visalia division in the last four years. BVI built one of those stations over the last year and just recently finished it, Grey said.

It's that just-completed project that created a conflict of interest for Grey, Lujan said. "That should have been brought up right away when Cal Water's rates first became an issue. That was nine months ago," Lujan said. "Did he just have an attack of conscience?"

Grey said he didn't believe it was necessary to publicly announce that his company was doing work for Cal Water-Visalia this year. His reasoning: Selma and Cal Water don't have a contract or any kind of formal business relationship. Selma residents pay Cal Water for water service, and the city gets no money from Cal Water.

Grey said he acted ethically when it appeared the council might vote in closed session July 18 on Lujan's idea that Selma buy the water system.

Grey left the council's closed-door meeting on July 18 for about 10 minutes while the council apparently considered the issue. The council reported taking no action about Cal Water after that closed-door meeting.

What happens now? City Attorney Costanzo said he will research and report to the city council at its Aug. 15 meeting. Costanzo will look into whether Grey did anything that equals a conflict of interest before he said in July that he wouldn't discuss or vote on a takeover of the water system.

The council has been talking about Cal Water since the first of the year.

During that period, Lujan said, Grey has resisted taking a more aggressive approach with Cal Water over the rate increase.

Grey said that's not true. Furthermore, he said, he privately asked Lujan to lead the city's efforts to work with Cal Water on a rate adjustment. He said Lujan refused.

Lujan said Grey never made that offer: "He never said anything like that, that I can recall."

This is the second time in recent weeks that Lujan has charged a fellow council member with a possible conflict of interest.

Lujan questioned Council Member Mike Derr voting for the new city budget that gives $14,000 to the Selma Chamber of Commerce while Derr's wife works part time at the chamber.

Derr said he did nothing wrong and City Attorney Costanzo agreed.

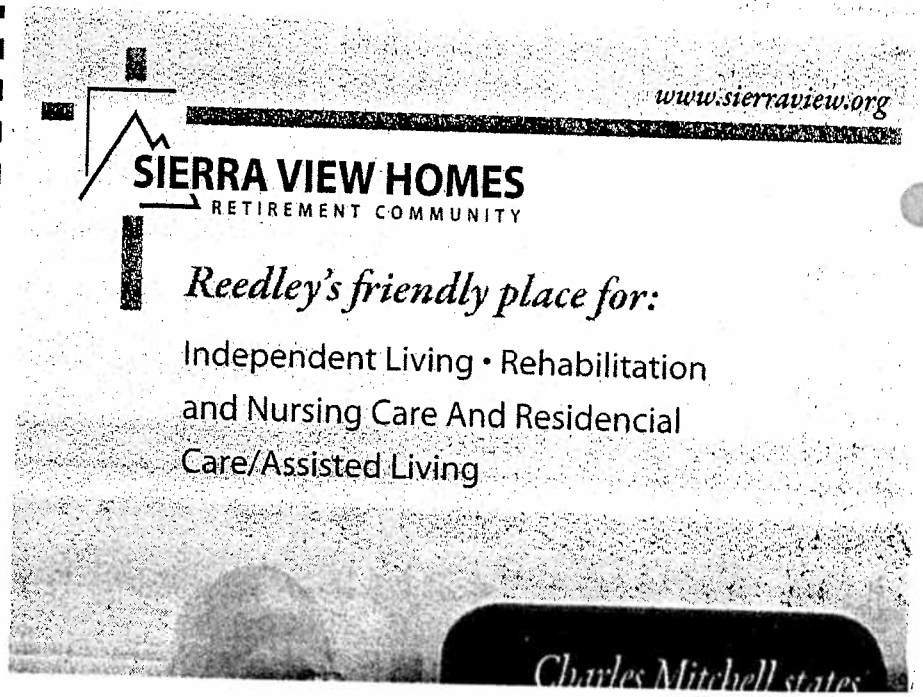
Arrest

Continued from page A1

additional investigation involved. However, he noted, it's not unusual for the DA to request extra investigation in cases.

Selma Police maintained contact with Gonzales between the time he got out of jail on July 22 and his re-arrest a week later. "We weren't following hi but we wanted him to know that we were keeping tabs on him," Dyck said.

Gonzales has not been in serious legal trouble before, Dyck added: "Anything he had was minor. Traffic tickets. He didn't have anything in this realm."



C

AGENDA
SELMA CITY COUNCIL
REGULAR MEETING

August 15, 2011

Next Ordinance No. 2011 - 3
Next Resolution No. 2011 - 42R

Call to order at 7:00 p.m.
Flag salute led by Mayor Pro Tem Rodriguez
Roll Call: Council members Avalos, Derr, Lujan, Mayor Pro Tem Rodriguez and Mayor Grey

SPECIAL PRESENTATIONS

None Scheduled

ORAL COMMUNICATIONS

NOTICE(S) TO THE PUBLIC: *This is the time for any citizen to come forward and address the City Council on any issue within its jurisdiction but not on the agenda. Citizens may also address the Council on any item appearing on the agenda at the time of consideration. The time allowed to speak is limited to three minutes (pursuant to City Council Resolution No. 2009-12R) unless an extension is granted by the City Council through the Mayor.*

CONSENT CALENDAR

All items listed under the Consent Calendar category are considered routine. The complete Consent Calendar will be enacted by one motion by ROLL CALL VOTE. For purposes of discussion, any Councilmember may have an item removed from the Consent Calendar and made part of the regular agenda. The Council can then approve the remainder of the Consent Calendar.

Item No.

1.a. Consideration and necessary action on minutes of the August 1, 2011 workshop/pre-Council meeting. — Carter

b. Consideration and necessary action on minutes of the August 1, 2011 regular mtg. — Carter

c. _____ Consideration and necessary action on Resolution re-adopting the 2003 Selma Bicycle Transportation Plan with approved change. — Heusser

d. Consideration and necessary action on check register dated August 9, 2011. — Yribarren

PUBLIC HEARINGS

2. _____ Consideration and necessary action on Resolution accepting State Citizens Option for Public Safety (COPS) Grant – *public hearing and adoption.* — Heusser

REGULAR BUSINESS

3. Consideration and determination of whether Council member had a disqualifying interest in votes on or participation in matters relating to the fiscal year 2011-2012 budget. — Costanzo

4. Consideration and determination of whether Council member had a disqualifying interest in votes on or participation in matters relating to California Water Service Company. — Costanzo

DEPARTMENTAL REPORTS

- City Manager
- City Attorney
- Community Development
- Finance
- Public Works
- Fire
- Police
- Recreation

COUNCIL REPORTS

ORAL COMMUNICATIONS

NOTICE(S) TO THE PUBLIC: *This is the final opportunity for any citizen to come forward and address the City Council on any issue within its jurisdiction but not on the agenda. The time allowed to speak is limited to three minutes (pursuant to City Council Resolution No. 2009-12R) unless an extension is granted by the City Council through the Mayor.*

EXECUTIVE SESSION

ADJOURNMENT

- *Any writings or documents provided to a majority of the Selma City Council regarding any item on this agenda will be made available for public inspection in the City Clerk's office located at 1710 Tucker Street during normal business hours.*
- *A speech amplification device is available for use by the general public at all City Council meetings. Please call 891-2200 to reserve its use.*

D

CITY MANAGER'S/STAFF'S REPORT
REGULAR CITY COUNCIL MEETING DATE: August 1, 2011

ITEM NO: 3.
SUBJECT: Consideration and Determination of Whether Councilperson Had a Disqualifying in Votes on or Participation in Matters Relating to the Fiscal Year (FY) 2011-2012 Budget.

DISCUSSION: On July 18, 2011 Councilman Derr was in the 3-2 majority of the Council voting to adopt the fiscal year 2011-2012 budget. That budget includes an appropriation of $14,000 to the Selma Chamber of Commerce. Councilman Derr's wife was recently employed, part time, by the Chamber beginning July 1.

The Political Reform Act (PRA) prohibits a public official from participating in governmental decisions in which the official has a "financial interest". (Government Code §87100). When a disqualifying conflict of the interest exists, the PRA requires the official to abstain from participating in every aspect of the decision making process. (*Hamilton v. Town of Los Gatos* (1989) 213 Cal.App.3d 150, 158-1058). The PRA only applies to conflicts arising from an "economic interest" which, as relevant to Councilman Derr's vote on the Budget includes "any source of income which aggregates $500 or more within 12 months prior to the decision". The decision approving the Budget was made July 18, 2011. It is assumed, for purposes of this report, that Ms. Derr earned more than $500 before July 18 when the decision was made.

A public official has a community property interest and, therefore, an economic interest in the source of his spouse's income. Here, Councilman Derr has a financial interest in the income his spouse receives from the Chamber. That financial interest is only a disqualifying financial interest if there are reasonably foreseeable, material financial effects by a governmental decision on that source of income. To determine if a governmental decision has a reasonably foreseeable effect, on a given economic interest and whether the impact is material, it must first be determined if the official's interest is directly or indirectly involved in the governmental decision. (FPPC Regulation 18704). The regulations define an investment or economic interest owned by the spouse or dependent child of the public official as an indirect interest. Councilman Derr's financial interest in his spouse's source of income is, therefore, only indirectly involved in the approval of the 2011-2012 budget.

Where, as here, a source of income is not directly involved in the governmental decision a financial interest can only be a disqualifying interest if it is reasonably foreseeable that there will be a material effect on the public official's economic interests.

The state agency charged with enforcement and interpretation of the PRA is the Fair Political Practices Commission (FPPC). With respect to state agencies, which are subject to almost identical conflict of interest laws, the Attorney General issues opinions, in appropriate circumstances, addressing whether a state official has a disqualifying conflict of interest according to law. Because the FPPC is the agency charged with enforcement and interpretation of the PRA and, with respect to state officials, the Attorney General performs that function, the courts accord "great weight" to their opinions. The FPPC issues opinions, in the form of advice letters and the Attorney General issues formal opinions. Both are published and publically available. Both the FPPC and the Attorney General have adopted a multi-step analysis for determining whether or not an individual has a disqualifying conflict of interest. The most difficult question to be addressed in evaluating whether a public official has a disqualifying conflict of interest is whether the governmental decision has any material and reasonably foreseeable effect of the public official's economic interests. Both determinations are fact specific and are made on a case by case basis. The courts have only rarely issued published decisions addressing the PRA or its interpretation. FPPC advice letters and opinions of the Attorney General, have all concluded that the mere fact that an entity is a source of income for the spouse of a public official is insufficient to satisfy the reasonably foreseeable and materiality requirements of the conflict of interest laws. (FPPC adv. I-98-175 (1998); A-01-125 (2001)). This is particularly true where the spouse of the public official is employed as a mid-level employee without any direct influence or control over the management or policy decisions of the entity which employs them and has no ownership interest in the firm or apparent responsibility for financial policy or management decisions.

The financial consequences of a given governmental decision are only reasonably foreseeable at the time the decision is made if there is a substantial likelihood that it will occur. The fact that a financial consequence is a mere possibility does not make it reasonably foreseeable. Here, there is no reasonably foreseeable or material financial consequence to this indirect source of income for Councilman Derr. His wife's employment by the Chamber does not create any disqualifying financial interest and the Councilman was not required to disqualify himself from considering or voting upon the 2011-2012 budget.

While it is true that decisions involving a source of income for a spouse can create disqualifying financial interest on the part of a City Council person or other elected official, determinations concerning whether there is a material or a foreseeable effect on that source of income are highly fact specific determinations. A disqualifying interest has only been found in situations where the income of the spouse is directly tied to and depends upon the income of the employer, as is typically the case only for the highest level of management employees.

Every decision, either of the California Attorney General, or the FPPC which considers a situation involving the mere employment in a non-managerial capacity of a public official's spouse has found that a financial impact on the spouse's employer was not reasonably foreseeable and material enough to qualify as a disqualifying financial interest because the financial impact to the spouse's employer is not substantially likely to translate into an increase or decrease in wages payable to a non-managerial employee. No similar situation has been considered by the courts.

COST: *(Enter cost of item to be purchased in box below)*		***BUDGET IMPACT:*** *(Enter amount this non-budgeted item will impact this years' budget in box below – if budgeted, enter NONE).*
None		None
FUNDING: *(Enter the funding source for this item in box below – if fund exists, enter the balance in the fund).*		**ON-GOING COST:** *(Enter the amount that will need to be budgeted each year in box below – if one-time cost, enter NONE).*
Funding Source: None Fund Balance:		None

RECOMMENDATION: That the Council find and determine that the employment of Councilman Derr's wife by the Chamber of Commerce did not give rise to any material, foreseeable financial impact on this source of income for Councilman Derr, that the Councilman was not required to recuse himself and properly participated and voted for approval of the 2011-2012 Budget.

/s/ Neal E. Costanzo — *August 11, 2011*

Neal E. Costanzo, City Attorney — Date

D-B Heusser, City Manager — 11 Aug 2011 Date

We _____ *and* _____

D-B Heusser, Executive Director — *Steve Yribarren, Financial Consultant*

do hereby agree that the funding for the above is correct and that enough funds exist to cover the expenditure.

CITY MANAGER'S/STAFF'S REPORT
REGULAR CITY COUNCIL MEETING DATE: August 1, 2011

ITEM NO: 4
SUBJECT: Consideration and Determination of Whether Councilperson had a Disqualifying Interest in Votes on or Participation in Matters Relating to California Water Service Company (Cal Water).

DISCUSSION:

1) Factual Background

On July 18, 2011, this Council had on its closed session agenda one item of potential litigation, specifically to allow the Council to consider whether to initiate eminent domain proceedings, offer to purchase or otherwise acquire Cal Water. At that meeting, Mayor Grey recused himself from participating in that discussion as to which no action was ultimately taken or announced in open session. Mayor Grey has an ownership interest in and operates BVI Construction, Inc., a corporation that is a licensed construction contractor and does work on specific projects for public and private entities. In the past, BVI has provided construction services for Cal Water pursuant to a contract.

Cal Water was on the agenda, both in open and closed session, on a number of occasions between April 18, 2011, and July 18, 2011. On April 18, 2011, Cal Water made a presentation concerning its rate increases. Comments were made at this and a prior meeting by at least one Councilperson concerning the possibility of acquiring Cal Water. On May 2, 2011, approval of a letter to Cal Water requesting that they take action to reduce the rate increases voluntarily or by application to CPUC was on the Council's agenda. The response by Cal Water was on the agenda for May 16, 2011, in closed session. That response proposed the making of a joint application to the CPUC for modification of the rate increases.

On May 19, 2011, there was a conference call involving Mayor Grey, the City Manger and City Attorney, staff of the Rate Payer Advocates Division of the CPUC and Cal Water relating to the possibility of that joint application. The Council received a report concerning the joint application, in closed session, on June 20, 2011.

With the exception of the meeting on July 18, 2011, Cal Water appeared on the agenda, either in closed or open session, for the purpose of discussing a modification to the rate increases or the mechanics of accomplishing that through a petition to the CPUC. None of these items was ever on the agenda for the purpose of, with the exception of the meeting on July 18, 2011, considering whether to exercise the right of eminent domain or otherwise acquire Cal Water, although on most occasions, comments were made by at least one Councilperson to the effect that the City should acquire Cal Water.

Because the Mayor disqualified himself from the discussion of whether to acquire Cal Water that occurred on July 18, 2011, the question is whether he had a disqualifying conflict of interest with respect to consideration of and/or votes taken on the matters that appeared on this Council's agenda between April 18, 2011, and June 20, 2011.

2) Conflict of Interest Law

Section 87100 of the Government Code prohibits any public official from making, participating in making, or using his or her official influence position to influence a governmental decision in which the official has a financial interest. A public official has a "financial interest" in a governmental decision if it is reasonably foreseeable that the decision will have a material effect on the public official's economic interests. (Section 87103; Reg. 18700(a)). The Fair Political Practices Commission (FPPC) has adopted a multi-step analysis to determine whether an individual has a disqualifying conflict of interest. The first two steps are easily satisfied because Mayor Grey is a public official participating in proceedings relating to Cal Water.

The third step is determining whether there is a financial interest. A public official has an economic interest in a business entity in which he is a director, officer, or holds any position of management. He also has an economic interest in any source of income aggregating more than $500 within the 12 months prior to the decision. (Section 87103(c); Reg. 18703.3). Income includes income of any business entity in which the official owns a 10 percent or greater interest. For purposes of this evaluation, it is assumed that Mayor Grey owns at least 10 percent of BVI, that he is an officer or manager of that company and that the work performed by BVI for Cal Water generated more than $500 in income within the 12 months prior to any decision taken concerning Cal Water between April and July 18, 2011. When a public official owns a 10 percent or greater interest in any business, customers of that business are also considered to be

sources of income to the public official. Consequently, based on those assumptions, Mayor Grey has a financial interest in Cal Water.

The fourth step requires that a determination of whether the business entity or source of income of the public official is either directly or indirectly involved in the decision. A business entity or source of income is deemed to be directly involved in a governmental decision when it is the subject of a proceeding before the City Council. Here, Cal Water was the subject of each agenda item referred to above occurring between April 18 and July 18, 2011. Generally, when, as here, the source of income or business entity that gives rise to a financial interest is directly involved in the governmental decision, the effect of the governmental decision is presumed to be material to the public official. (Reg. 18705.1, 18705.3).

The fifth step is to determine whether it is "reasonably foreseeable that the governmental decision will have an effect on the public official's economic interests. A material financial effect is reasonably foreseeable if it is "substantially likely to occur". (Reg. 18706). A material financial effect need not be a certainty, but it must be more than a mere possibility (Reg. 18706). The determination of whether financial consequences of a governmental decision are substantially likely is a highly fact specific determination, made on a case-by-case basis. The FPPC will provide advice letters stating their opinions as to whether there is a conflict of interest, but it will not act as a fact finder in providing advice on foreseeability determinations of a particular financial effect. The FPPC has decided that such determinations must normally be left to the informed judgment of the public official. (*In re Ronald R. Ball, CAFPPC adv. I-11*-044). The governmental decision will have an effect on the economic interest of the public official if the decision will result in the personal expenses, income, assets or liabilities of the official or his immediate family increasing or decreasing. (Reg. 18703.5).

3) <u>Conclusion</u>

Because Cal Water only generates income for Mayor Grey or BVI pursuant to a contract for construction services to be provided with respect to a specific project, to conclude there is any reasonably foreseeable financial impact from a governmental decision on whether to acquire, or not to acquire, Cal Water, it is necessary to assume that Cal Water would either reward the Mayor for voting against an acquisition, or punish him for voting in favor of one by awarding or refusing to award future construction contracts.

To make that assumption is to presume that Cal Water will act in a manner that is inconsistent with its legal obligations as a public utility. Public utilities are not required to observe the same type of competitive bidding requirements as are governmental entities, but the CPUC often requires them to do so. Even in those situations when they do not, in their rate proceedings, public utilities are required to demonstrate that they have acted reasonably in awarding construction contracts because their capital expenditures are a component in determining their rates, which must be reasonable. For that reason, they typically adhere to a competitive bidding process in awarding such contracts. (See, *General Telephone Co. v. Public Utilities Commission* (1983) 34 Cal.3d 817).

On the other hand, it is not uncommon for business entities to act in a manner that rewards or punishes those who have taken actions they agree or disagree with. Thus, a decision on whether or not to acquire Cal Water gives rise to more than the mere possibility that the governmental decision will have a financial impact to Mayor Grey. But, it likely falls short of creating a substantial likelihood of that occurring. The difficulty involved in determining whether a financial impact is reasonably foreseeable is why most municipal practitioners will advise a public official that if there is any possibility that he will derive a financial benefit or detriment from a given decision, it is best to recuse himself. Here, Mayor Grey recused himself from the consideration of the acquisition of Cal Water that was on the agenda for July 18, 2011. It is certainly possible that the FPPC or a court would determine that he was required to recuse himself because of a financial conflict of interest, but that outcome cannot be predicted with any certainty.

The final step in assessing whether a financial conflict of interest exists is whether any exceptions are applicable. To amount to an impermissible financial interest, the consequences of a given governmental decision must have a reasonably foreseeable material, financial effect on the public official that is distinguishable from its effect on the public in general. Each of the matters on the Council's agenda relating to Cal Water prior to July 18, 2011, related only to receiving information concerning the basis of Cal Water's rate increases, the request by the Council reflected by the letter approved on May 2, and to the processing of the joint petition for an adjustment of those rates. Although comments relating to the possible acquisition of Cal Water were made by one or more Councilpersons during those proceedings, the question of whether to acquire Cal Water was never on the Council's agenda before July 18, 2011. The proceedings involving the adjustment to Cal Water's rates would not appear to have any foreseeable material, financial effect on Mayor Grey or BVI

that is distinguishable from its effect on the public in general. The only effect of a decision as a result of those agenda items would have been either the effect that did occur, the processing of a petition seeking a rate adjustment, or a determination that Cal Water would refuse to take any action to adjust those rates. In either event, the effect on Mayor Grey or BVI is indistinguishable from the impact to the rate paying public in general.

COST: *(Enter cost of item to be purchased in box below)*		***BUDGET IMPACT:*** *(Enter amount this non-budgeted item will impact this years' budget in box below – if budgeted, enter NONE).*
None		None
FUNDING: *(Enter the funding source for this item in box below – if fund exists, enter the balance in the fund).*		**ON-GOING COST:** *(Enter the amount that will need to be budgeted each year in box below – if one-time cost, enter NONE).*
Funding Source: None Fund Balance:		None

RECOMMENDATION: That the Council find and determine that Mayor Grey may have a financial interest in a decision to acquire, or not acquire, Cal Water but had no financial interest in a decision to seek an adjustment of water rates that was distinguishable from the effect on the public in general, and was, therefore, not disqualified from and properly participated in the proceedings concerning Cal Water prior to July 18, 2011 and properly recused himself from considering acquisition of Cal Water on the July 18, 2011 agenda.

Neal E. Costanzo, City Attorney — *August 11, 2011* Date

D-B Heusser, City Manager — 11 Aug 2011 Date

We _____ *and* _____

D-B Heusser, Executive Director — *Steve Yribarren, Financial Consultant*

do hereby agree that the funding for the above is correct and that enough funds exist to cover the expenditure.

E

April 20, 2011

Councilmember Dennis Lujan
1435 Lewis Street
Selma, CA 93662

Re: Contact for the CPUC for Water Rate Adjustment

Dear Dennis:

In following up on the concerns you have voiced and the issues Selma citizens have raised about the water rates for our community, I am requesting that you head up the effort to make contact with the California Public Utilities Commission. The original hearings for this rate increase took place during your term as Selma's mayor and as you have indicated at the council meetings, you have had contact with this commission on a number of occasions in the past to request reductions in the rates. Therefore, it seems to be in everyone's best interest that you continue to keep that continuity with the CPUC and make this contact.

I understand that the contacts for the CPUC are:

Danilio Sanchez
Program Manager
Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Telephone: 415-703-2771
Email: des@cpuc.ca.gov

Patrick Hogland
Program Manager
Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Telephone: 415-703-2479
Email: phh@cpuc.ca.gov

Karen Miller
Public Advisor
Public Utilities Commission, Room 2103
505 Van Ness Avenue
San Francisco, CA 94102
Telephone: 866-849-8390 or 415-703-2074
Email: knr@cpuc.ca.gov

Please make a formal request for a hearing to be held in Selma for the purpose of securing a reduction in the current water rate increase. When you have secured a time and date please report back to me and I will schedule a City Council meeting so that all of the Council can be present without conflicting with the Brown Act. To that end, and to make the meeting most accessible to the public, it would be best if it is set up for the evening, maybe at 6:00 p.m. just before one of our regular meetings. However, I know we may have to be flexible on the date and time in order to get the CPUC here, given their schedule.

Thank you for following through on this and I look forward to the meeting.

Sincerely,

Ken Grey
Mayor of the City of Selma
1610 East front Street
Selma, CA 93662
kgreyselma@att6.net

cc: D-B Heusser
City Manager

304.01.013

CALIFORNIA FORM 700
FAIR POLITICAL PRACTICES COMMISSION
A PUBLIC DOCUMENT

STATEMENT OF ECONOMIC INTERESTS

COVER PAGE

RECEIVED
Date Received
FEB 7 -2011 REC'D

Please type or print in ink.

BY

NAME OF FILER (LAST) GREY (FIRST) KENNETH (MIDDLE) A.

1. Office, Agency, or Court

Agency Name: City of Selma

Mayor - City Council

Division, Board, Department, District, if applicable: City Council

Your Position:

► If filing for multiple positions, list below or on an attachment.

Agency: _____ Position: _____

2. Jurisdiction of Office *(Check at least one box)*

- ☐ State
- ☐ Multi-County _____
- ☒ City of Selma
- ☐ Judge (Statewide Jurisdiction)
- ☐ County of _____
- ☐ Other _____

3. Type of Statement *(Check at least one box)*

☒ **Annual:** The period covered is January 1, 2010, through December 31, 2010.

-or-

The period covered is ___/___/___, through December 31, 2010.

☐ **Assuming Office:** Date ___/___/___

☐ **Candidate:** Election Year _____

☐ **Leaving Office:** Date Left ___/___/___ *(Check one)*

○ The period covered is January 1, 2010, through the date of leaving office.

○ The period covered is ___/___/___, through the date of leaving office.

Office sought, if different than Part 1: _____

4. Schedule Summary

Check applicable schedules or "None."

► Total number of pages including this cover page: 5

- ☒ **Schedule A-1** - *Investments* – schedule attached
- ☒ **Schedule A-2** - *Investments* – schedule attached
- ☐ **Schedule B** - *Real Property* – schedule attached
- ☒ **Schedule C** - *Income, Loans, & Business Positions* – schedule attached
- ☐ **Schedule D** - *Income – Gifts* – schedule attached
- ☐ **Schedule E** - *Income – Gifts – Travel Payments* – schedule attached

-or-

☐ **None** - *No reportable interests on any schedule*

5. Verification

MAILING ADDRESS (Business or Agency Address Recommended - Public Document) STREET	CITY	STATE	ZIP CODE
1610 East Front Street	Selma	CA	93662

DAYTIME TELEPHONE NUMBER	E-MAIL ADDRESS
(559) 896-6450	kgreyselma@att.net

I have used all reasonable diligence in preparing this statement. I have reviewed this statement and to the best of my knowledge the information contained herein and in any attached schedules is true and complete. I acknowledge this is a public document.

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date Signed 2-7-2011 *(month, day, year)*

Signature Kenneth A. Grey *(File the originally signed statement with your filing official.)*

SCHEDULE A-1
Investments
Stocks, Bonds, and Other Interests
(Ownership Interest is Less Than 10%)

Do not attach brokerage or financial statements.

CALIFORNIA FORM 700
FAIR POLITICAL PRACTICES COMMISSION

Name: Kenneth A. Grey

► NAME OF BUSINESS ENTITY: BVI Construction, Inc.

GENERAL DESCRIPTION OF BUSINESS ACTIVITY: General Contractor

FAIR MARKET VALUE
- ☐ $2,000 - $10,000
- ☐ $10,001 - $100,000
- ☐ $100,001 - $1,000,000
- ☒ Over $1,000,000

NATURE OF INVESTMENT
- ☒ Stock
- ☐ Other _____ (Describe)
- ☐ Partnership
  - ○ Income Received of $0 - $499
  - ○ Income Received of $500 or More *(Report on Schedule C)*

IF APPLICABLE, LIST DATE:

___/___/ 10 ACQUIRED ___/___/ 10 DISPOSED

► NAME OF BUSINESS ENTITY

GENERAL DESCRIPTION OF BUSINESS ACTIVITY

FAIR MARKET VALUE
- ☐ $2,000 - $10,000
- ☐ $10,001 - $100,000
- ☐ $100,001 - $1,000,000
- ☐ Over $1,000,000

NATURE OF INVESTMENT
- ☐ Stock
- ☐ Other _____ (Describe)
- ☐ Partnership
  - ○ Income Received of $0 - $499
  - ○ Income Received of $500 or More *(Report on Schedule C)*

IF APPLICABLE, LIST DATE:

___/___/ 10 ACQUIRED ___/___/ 10 DISPOSED

► NAME OF BUSINESS ENTITY

GENERAL DESCRIPTION OF BUSINESS ACTIVITY

FAIR MARKET VALUE
- ☐ $2,000 - $10,000
- ☐ $10,001 - $100,000
- ☐ $100,001 - $1,000,000
- ☐ Over $1,000,000

NATURE OF INVESTMENT
- ☐ Stock
- ☐ Other _____ (Describe)
- ☐ Partnership
  - ○ Income Received of $0 - $499
  - ○ Income Received of $500 or More *(Report on Schedule C)*

IF APPLICABLE, LIST DATE:

___/___/ 10 ACQUIRED ___/___/ 10 DISPOSED

► NAME OF BUSINESS ENTITY

GENERAL DESCRIPTION OF BUSINESS ACTIVITY

FAIR MARKET VALUE
- ☐ $2,000 - $10,000
- ☐ $10,001 - $100,000
- ☐ $100,001 - $1,000,000
- ☐ Over $1,000,000

NATURE OF INVESTMENT
- ☐ Stock
- ☐ Other _____ (Describe)
- ☐ Partnership
  - ○ Income Received of $0 - $499
  - ○ Income Received of $500 or More *(Report on Schedule C)*

IF APPLICABLE, LIST DATE:

___/___/ 10 ACQUIRED ___/___/ 10 DISPOSED

► NAME OF BUSINESS ENTITY

GENERAL DESCRIPTION OF BUSINESS ACTIVITY

FAIR MARKET VALUE
- ☐ $2,000 - $10,000
- ☐ $10,001 - $100,000
- ☐ $100,001 - $1,000,000
- ☐ Over $1,000,000

NATURE OF INVESTMENT
- ☐ Stock
- ☐ Other _____ (Describe)
- ☐ Partnership
  - ○ Income Received of $0 - $499
  - ○ Income Received of $500 or More *(Report on Schedule C)*

IF APPLICABLE, LIST DATE:

___/___/ 10 ACQUIRED ___/___/ 10 DISPOSED

► NAME OF BUSINESS ENTITY

GENERAL DESCRIPTION OF BUSINESS ACTIVITY

FAIR MARKET VALUE
- ☐ $2,000 - $10,000
- ☐ $10,001 - $100,000
- ☐ $100,001 - $1,000,000
- ☐ Over $1,000,000

NATURE OF INVESTMENT
- ☐ Stock
- ☐ Other _____ (Describe)
- ☐ Partnership
  - ○ Income Received of $0 - $499
  - ○ Income Received of $500 or More *(Report on Schedule C)*

IF APPLICABLE, LIST DATE:

___/___/ 10 ACQUIRED ___/___/ 10 DISPOSED

Comments: _____

SCHEDULE A-2
Investments, Income, and Assets of Business Entities/Trusts
(Ownership Interest is 10% or Greater)

CALIFORNIA FORM 700
FAIR POLITICAL PRACTICES COMMISSION

Name: Kenneth A. Grey

1. BUSINESS ENTITY OR TRUST

Name: BVI Construction, Inc.

Address (Business Address Acceptable): 1610 East Front, Selma, CA 93662

Check one: ☐ Trust, go to 2 ☒ Business Entity, complete the box, then go to 2

GENERAL DESCRIPTION OF BUSINESS ACTIVITY: Construction - General Contractor

FAIR MARKET VALUE
- ☐ $2,000 - $10,000
- ☐ $10,001 - $100,000
- ☐ $100,001 - $1,000,000
- ☒ Over $1,000,000

IF APPLICABLE, LIST DATE: ACQUIRED __/__/10 DISPOSED __/__/10

NATURE OF INVESTMENT: ☐ Sole Proprietorship ☐ Partnership ☒ Corporation (Other)

YOUR BUSINESS POSITION: CEO/President

2. IDENTIFY THE GROSS INCOME RECEIVED (INCLUDE YOUR PRO RATA SHARE OF THE GROSS INCOME TO THE ENTITY/TRUST)

- ☐ $0 - $499
- ☐ $500 - $1,000
- ☐ $1,001 - $10,000
- ☐ $10,001 - $100,000
- ☒ OVER $100,000

3. LIST THE NAME OF EACH REPORTABLE SINGLE SOURCE OF INCOME OF $10,000 OR MORE (Attach a separate sheet if necessary)

See attached sheet

4. INVESTMENTS AND INTERESTS IN REAL PROPERTY HELD BY THE BUSINESS ENTITY OR TRUST

Check one box: ☐ INVESTMENT ☐ REAL PROPERTY

Name of Business Entity or Street Address or Assessor's Parcel Number of Real Property:

Description of Business Activity or City or Other Precise Location of Real Property:

FAIR MARKET VALUE
- ☐ $2,000 - $10,000
- ☐ $10,001 - $100,000
- ☐ $100,001 - $1,000,000
- ☐ Over $1,000,000

IF APPLICABLE, LIST DATE: ACQUIRED __/__/10 DISPOSED __/__/10

NATURE OF INTEREST: ☐ Property Ownership/Deed of Trust ☐ Stock ☐ Partnership ☐ Leasehold ____ Yrs. remaining ☐ Other

☐ Check box if additional schedules reporting investments or real property are attached

1. BUSINESS ENTITY OR TRUST

Name: Kenneth Grey Family Trust

Address (Business Address Acceptable): 1610 East Front, Selma, CA 93662

Check one: ☒ Trust, go to 2 ☐ Business Entity, complete the box, then go to 2

GENERAL DESCRIPTION OF BUSINESS ACTIVITY: Family Trust

FAIR MARKET VALUE
- ☐ $2,000 - $10,000
- ☐ $10,001 - $100,000
- ☐ $100,001 - $1,000,000
- ☒ Over $1,000,000

IF APPLICABLE, LIST DATE: ACQUIRED __/__/10 DISPOSED __/__/10

NATURE OF INVESTMENT: ☐ Sole Proprietorship ☐ Partnership ☒ Trust (Other)

YOUR BUSINESS POSITION: Trustee

2. IDENTIFY THE GROSS INCOME RECEIVED (INCLUDE YOUR PRO RATA SHARE OF THE GROSS INCOME TO THE ENTITY/TRUST)

- ☐ $0 - $499
- ☐ $500 - $1,000
- ☐ $1,001 - $10,000
- ☒ $10,001 - $100,000
- ☐ OVER $100,000

3. LIST THE NAME OF EACH REPORTABLE SINGLE SOURCE OF INCOME OF $10,000 OR MORE (Attach a separate sheet if necessary)

4. INVESTMENTS AND INTERESTS IN REAL PROPERTY HELD BY THE BUSINESS ENTITY OR TRUST

Check one box: ☐ INVESTMENT ☒ REAL PROPERTY

Name of Business Entity or Street Address or Assessor's Parcel Number of Real Property: 2220 Jasper - Selma; 3239 Lee - Selma; 2387 Sierraview - Selma; 1610/1616 East Front - Selma

Description of Business Activity or City or Other Precise Location of Real Property: Rental Homes and Rental Office

FAIR MARKET VALUE
- ☐ $2,000 - $10,000
- ☐ $10,001 - $100,000
- ☒ $100,001 - $1,000,000
- ☐ Over $1,000,000

IF APPLICABLE, LIST DATE: ACQUIRED 6/1/10 DISPOSED __/__/10

NATURE OF INTEREST: ☒ Property Ownership/Deed of Trust ☐ Stock ☐ Partnership ☐ Leasehold ____ Yrs. remaining ☐ Other

☐ Check box if additional schedules reporting investments or real property are attached

Comments:

California Form 700
Schedule A-2
#3, Reportable Sources of Income on BVI Construction, Inc.

Fresno Unified School District
State Center Community College District
County of Kings
County of Fresno
California Water Service Company
Hanford Elementary School District

SCHEDULE C
Income, Loans, & Business Positions
(Other than Gifts and Travel Payments)

CALIFORNIA FORM 700
FAIR POLITICAL PRACTICES COMMISSION

Name: Kenneth A. Grey

1. INCOME RECEIVED

NAME OF SOURCE OF INCOME: BVI Construction, Inc.

ADDRESS (Business Address Acceptable): 1610 East Front, Selma, CA 93662

BUSINESS ACTIVITY, IF ANY, OF SOURCE: Construction, General Contractor

YOUR BUSINESS POSITION: CEO - President

GROSS INCOME RECEIVED
- [ ] $500 - $1,000
- [ ] $1,001 - $10,000
- [ ] $10,001 - $100,000
- [x] OVER $100,000

CONSIDERATION FOR WHICH INCOME WAS RECEIVED
- [x] Salary
- [ ] Spouse's or registered domestic partner's income
- [ ] Loan repayment
- [ ] Partnership
- [ ] Sale of _____ (Property, car, boat, etc.)
- [ ] Commission or
- [ ] Rental Income, list each source of $10,000 or more
- [ ] Other _____ (Describe)

1. INCOME RECEIVED

NAME OF SOURCE OF INCOME: BVI Construction, Inc.

ADDRESS (Business Address Acceptable): 1610 East Front, Selma CA 93662

BUSINESS ACTIVITY, IF ANY, OF SOURCE: Construction, General Contractor

YOUR BUSINESS POSITION: CFO - Sec. Marla J. Grey

GROSS INCOME RECEIVED
- [ ] $500 - $1,000
- [ ] $1,001 - $10,000
- [x] $10,001 - $100,000
- [ ] OVER $100,000

CONSIDERATION FOR WHICH INCOME WAS RECEIVED
- [ ] Salary
- [x] Spouse's or registered domestic partner's income
- [ ] Loan repayment
- [ ] Partnership
- [ ] Sale of _____ (Property, car, boat, etc.)
- [ ] Commission or
- [ ] Rental Income, list each source of $10,000 or more
- [ ] Other _____ (Describe)

2. LOANS RECEIVED OR OUTSTANDING DURING THE REPORTING PERIOD

* You are not required to report loans from commercial lending institutions, or any indebtedness created as part of a retail installment or credit card transaction, made in the lender's regular course of business on terms available to members of the public without regard to your official status. Personal loans and loans received not in a lender's regular course of business must be disclosed as follows:

NAME OF LENDER*

ADDRESS (Business Address Acceptable)

BUSINESS ACTIVITY, IF ANY, OF LENDER

HIGHEST BALANCE DURING REPORTING PERIOD
- [ ] $500 - $1,000
- [ ] $1,001 - $10,000
- [ ] $10,001 - $100,000
- [ ] OVER $100,000

INTEREST RATE: _____% [ ] None

TERM (Months/Years)

SECURITY FOR LOAN
- [ ] None
- [ ] Personal residence
- [ ] Real Property _____ Street address _____ City
- [ ] Guarantor
- [ ] Other _____ (Describe)

Comments:

CALIFORNIA FORM 700
FAIR POLITICAL PRACTICES COMMISSION

STATEMENT OF ECONOMIC INTERESTS
COVER PAGE

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CITY OF SELMA

Please type or print in ink.

NAME (LAST)	(FIRST)	(MIDDLE)	DAYTIME TELEPHONE NUMBER
Grey	Kenneth	A.	(559) 896-6450

MAILING ADDRESS (May use business address) STREET	CITY	STATE	ZIP CODE	OPTIONAL: FAX / E-MAIL ADDRESS
1610 East Front Street,	Selma,	CA	93662	

1. Office, Agency, or Court

Name of Office, Agency, or Court: Selma City Council

Division, Board, District, if applicable:

Your Position: City Councilman

▶ If filing for multiple positions, list additional agency(ies)/ position(s): (Attach a separate sheet if necessary.)

Agency:

Position:

2. Jurisdiction of Office *(Check at least one box)*

- ☐ State
- ☐ County of
- ☒ City of Selma
- ☐ Multi-County
- ☐ Other

3. Type of Statement *(Check at least one box)*

☐ Assuming Office/Initial Date: ___/___/___

☒ Annual: The period covered is January 1, 2008, through December 31, 2008.

-or-

○ The period covered is ___/___/___, through December 31, 2008.

☐ Leaving Office Date Left: ___/___/___ (Check one)

○ The period covered is January 1, 2008, through the date of leaving office.

-or-

○ The period covered is ___/___/___, through the date of leaving office.

☐ Candidate Election Year:

4. Schedule Summary

▶ **Total number of pages including this cover page:** 4

▶ **Check applicable schedules or "No reportable interests."**

I have disclosed interests on one or more of the attached schedules:

Schedule A-1 ☐ Yes – schedule attached
Investments (Less than 10% Ownership)

Schedule A-2 ☒ Yes – schedule attached
Investments (10% or greater Ownership)

Schedule B ☒ Yes – schedule attached
Real Property

Schedule C ☒ Yes – schedule attached
Income, Loans, & Business Positions (Income Other than Gifts and Travel Payments)

Schedule D ☐ Yes – schedule attached
Income – Gifts

Schedule E ☐ Yes – schedule attached
Income – Gifts – Travel Payments

-or-

☐ No reportable interests on any schedule

5. Verification

I have used all reasonable diligence in preparing this statement. I have reviewed this statement and to the best of my knowledge the information contained herein and in any attached schedules is true and complete.

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date Signed March 6, 2009
(month, day, year)

Signature Kenneth A. Grey
(File the originally signed statement with your filing official.)

SCHEDULE A-2
Investments, Income, and Assets of Business Entities/Trusts
(Ownership Interest is 10% or Greater)

CALIFORNIA FORM 700
FAIR POLITICAL PRACTICES COMMISSION

Name: Kenneth A. Grey

1. BUSINESS ENTITY OR TRUST

Name: BVI Construction, Inc.

Address: 1610 E. Front St., Selma, CA 93662

Check one
- [ ] Trust, go to 2
- [x] Business Entity, complete the box, then go to 2

GENERAL DESCRIPTION OF BUSINESS ACTIVITY: General Building Contractor

FAIR MARKET VALUE
- [ ] $2,000 - $10,000
- [ ] $10,001 - $100,000
- [ ] $100,001 - $1,000,000
- [x] Over $1,000,000

IF APPLICABLE, LIST DATE:
ACQUIRED __/__/08 DISPOSED __/__/08

NATURE OF INVESTMENT
- [ ] Sole Proprietorship
- [ ] Partnership
- [x] Corporation
- [ ] Other

YOUR BUSINESS POSITION: President/CEO

2. IDENTIFY THE GROSS INCOME RECEIVED (INCLUDE YOUR PRO RATA SHARE OF THE GROSS INCOME TO THE ENTITY/TRUST)
- [ ] $0 - $499
- [ ] $500 - $1,000
- [ ] $1,001 - $10,000
- [ ] $10,001 - $100,000
- [x] OVER $100,000

3. LIST THE NAME OF EACH REPORTABLE SINGLE SOURCE OF INCOME OF $10,000 OR MORE (attach a separate sheet if necessary)

California Water Service Company

4. INVESTMENTS AND INTERESTS IN REAL PROPERTY HELD BY THE BUSINESS ENTITY OR TRUST

Check one box:
- [ ] INVESTMENT
- [ ] REAL PROPERTY

Name of Business Entity or Street Address or Assessor's Parcel Number of Real Property

Description of Business Activity or City or Other Precise Location of Real Property

FAIR MARKET VALUE
- [ ] $2,000 - $10,000
- [ ] $10,001 - $100,000
- [ ] $100,001 - $1,000,000
- [ ] Over $1,000,000

IF APPLICABLE, LIST DATE:
ACQUIRED __/__/08 DISPOSED __/__/08

NATURE OF INTEREST
- [ ] Property Ownership/Deed of Trust
- [ ] Stock
- [ ] Partnership
- [ ] Leasehold ____ Yrs. remaining
- [ ] Other

- [ ] Check box if additional schedules reporting investments or real property are attached

1. BUSINESS ENTITY OR TRUST

Name

Address

Check one
- [ ] Trust, go to 2
- [ ] Business Entity, complete the box, then go to 2

GENERAL DESCRIPTION OF BUSINESS ACTIVITY

FAIR MARKET VALUE
- [ ] $2,000 - $10,000
- [ ] $10,001 - $100,000
- [ ] $100,001 - $1,000,000
- [ ] Over $1,000,000

IF APPLICABLE, LIST DATE:
ACQUIRED __/__/08 DISPOSED __/__/08

NATURE OF INVESTMENT
- [ ] Sole Proprietorship
- [ ] Partnership
- [ ] Other

YOUR BUSINESS POSITION

2. IDENTIFY THE GROSS INCOME RECEIVED (INCLUDE YOUR PRO RATA SHARE OF THE GROSS INCOME TO THE ENTITY/TRUST)
- [ ] $0 - $499
- [ ] $500 - $1,000
- [ ] $1,001 - $10,000
- [ ] $10,001 - $100,000
- [ ] OVER $100,000

3. LIST THE NAME OF EACH REPORTABLE SINGLE SOURCE OF INCOME OF $10,000 OR MORE (attach a separate sheet if necessary)

4. INVESTMENTS AND INTERESTS IN REAL PROPERTY HELD BY THE BUSINESS ENTITY OR TRUST

Check one box:
- [ ] INVESTMENT
- [ ] REAL PROPERTY

Name of Business Entity or Street Address or Assessor's Parcel Number of Real Property

Description of Business Activity or City or Other Precise Location of Real Property

FAIR MARKET VALUE
- [ ] $2,000 - $10,000
- [ ] $10,001 - $100,000
- [ ] $100,001 - $1,000,000
- [ ] Over $1,000,000

IF APPLICABLE, LIST DATE:
ACQUIRED __/__/08 DISPOSED __/__/08

NATURE OF INTEREST
- [ ] Property Ownership/Deed of Trust
- [ ] Stock
- [ ] Partnership
- [ ] Leasehold ____ Yrs. remaining
- [ ] Other

- [ ] Check box if additional schedules reporting investments or real property are attached

Comments:

CALIFORNIA FORM 700
FAIR POLITICAL PRACTICES COMMISSION

Name
Kenneth A. Grey

SCHEDULE B
Interests in Real Property
(Including Rental Income)

► STREET ADDRESS OR PRECISE LOCATION
1610 and 1616 E. Front Street

CITY
Selma, CA 93662

FAIR MARKET VALUE
- ☐ $2,000 - $10,000
- ☐ $10,001 - $100,000
- ☒ $100,001 - $1,000,000
- ☐ Over $1,000,000

IF APPLICABLE, LIST DATE:
___/___/08 ACQUIRED ___/___/08 DISPOSED

NATURE OF INTEREST
- ☒ Ownership/Deed of Trust
- ☐ Easement
- ☐ Leasehold _____ Yrs. remaining
- ☐ _____ Other

IF RENTAL PROPERTY, GROSS INCOME RECEIVED
- ☐ $0 - $499
- ☐ $500 - $1,000
- ☐ $1,001 - $10,000
- ☒ $10,001 - $100,000
- ☐ OVER $100,000

SOURCES OF RENTAL INCOME: If you own a 10% or greater interest, list the name of each tenant that is a single source of income of $10,000 or more.
BVI Construction, Inc.

► STREET ADDRESS OR PRECISE LOCATION

CITY

FAIR MARKET VALUE
- ☐ $2,000 - $10,000
- ☐ $10,001 - $100,000
- ☐ $100,001 - $1,000,000
- ☐ Over $1,000,000

IF APPLICABLE, LIST DATE:
___/___/08 ACQUIRED ___/___/08 DISPOSED

NATURE OF INTEREST
- ☐ Ownership/Deed of Trust
- ☐ Easement
- ☐ Leasehold _____ Yrs. remaining
- ☐ _____ Other

IF RENTAL PROPERTY, GROSS INCOME RECEIVED
- ☐ $0 - $499
- ☐ $500 - $1,000
- ☐ $1,001 - $10,000
- ☐ $10,001 - $100,000
- ☐ OVER $100,000

SOURCES OF RENTAL INCOME: If you own a 10% or greater interest, list the name of each tenant that is a single source of income of $10,000 or more.

* You are not required to report loans from commercial lending institutions made in the lender's regular course of business on terms available to members of the public without regard to your official status. Personal loans and loans received not in a lender's regular course of business must be disclosed as follows:

NAME OF LENDER*

ADDRESS

BUSINESS ACTIVITY OF LENDER

INTEREST RATE _____% ☐ None

TERM (Months/Years)

HIGHEST BALANCE DURING REPORTING PERIOD
- ☐ $500 - $1,000
- ☐ $1,001 - $10,000
- ☐ $10,001 - $100,000
- ☐ OVER $100,000

☐ Guarantor, if applicable

NAME OF LENDER*

ADDRESS

BUSINESS ACTIVITY OF LENDER

INTEREST RATE _____% ☐ None

TERM (Months/Years)

HIGHEST BALANCE DURING REPORTING PERIOD
- ☐ $500 - $1,000
- ☐ $1,001 - $10,000
- ☐ $10,001 - $100,000
- ☐ OVER $100,000

☐ Guarantor, if applicable

Comments:

SCHEDULE C
Income, Loans, & Business Positions
(Other than Gifts and Travel Payments)

CALIFORNIA FORM 700
FAIR POLITICAL PRACTICES COMMISSION

Name: Kenneth A. Grey

1. INCOME RECEIVED

NAME OF SOURCE OF INCOME: BVI Construction, Inc.

ADDRESS: General Building Contractor

BUSINESS ACTIVITY, IF ANY, OF SOURCE: President / CEO

YOUR BUSINESS POSITION:

GROSS INCOME RECEIVED
- ☐ $500 - $1,000
- ☐ $1,001 - $10,000
- ☐ $10,001 - $100,000
- ☒ OVER $100,000

CONSIDERATION FOR WHICH INCOME WAS RECEIVED
- ☒ Salary
- ☐ Spouse's or registered domestic partner's income
- ☐ Loan repayment
- ☐ Sale of _____ (Property, car, boat, etc.)
- ☐ Commission or
- ☐ Rental Income, *list each source of $10,000 or more*
- ☐ Other _____ (Describe)

1. INCOME RECEIVED

NAME OF SOURCE OF INCOME:

ADDRESS:

BUSINESS ACTIVITY, IF ANY, OF SOURCE:

YOUR BUSINESS POSITION:

GROSS INCOME RECEIVED
- ☐ $500 - $1,000
- ☐ $1,001 - $10,000
- ☐ $10,001 - $100,000
- ☐ OVER $100,000

CONSIDERATION FOR WHICH INCOME WAS RECEIVED
- ☐ Salary
- ☐ Spouse's or registered domestic partner's income
- ☐ Loan repayment
- ☐ Sale of _____ (Property, car, boat, etc.)
- ☐ Commission or
- ☐ Rental Income, *list each source of $10,000 or more*
- ☐ Other _____ (Describe)

2. LOANS RECEIVED OR OUTSTANDING DURING THE REPORTING PERIOD

* You are not required to report loans from commercial lending institutions, or any indebtedness created as part of a retail installment or credit card transaction, made in the lender's regular course of business on terms available to members of the public without regard to your official status. Personal loans and loans received not in a lender's regular course of business must be disclosed as follows:

NAME OF LENDER*:

ADDRESS:

BUSINESS ACTIVITY, IF ANY, OF LENDER:

HIGHEST BALANCE DURING REPORTING PERIOD
- ☐ $500 - $1,000
- ☐ $1,001 - $10,000
- ☐ $10,001 - $100,000
- ☐ OVER $100,000

INTEREST RATE: _____% ☐ None

TERM (Months/Years):

SECURITY FOR LOAN
- ☐ None
- ☐ Personal residence
- ☐ Real Property _____ *Street address*
- _____ *City*
- ☐ Guarantor _____
- ☐ Other _____ (Describe)

Comments: _____

F

ORIGINAL

SELMA CITY COUNCIL MEETING

-ooo-

CD TRANSCRIPTION OF COUNCIL MEETING HELD ON

AUGUST 15, 2011

REPORTED BY: ASHLEY L. PROXMIRE

NL
Nisbett Lucas
Worldwide Reporting & Videography

1 SELMA CITY COUNCIL MEETING

2 AUGUST 15, 2011

3 -oOo-

4 MAYOR GRAY: Under regular business, our
5 first item is consideration of determination whether
6 Council member had a disqualifying interest in votes on
7 or participation in matters relating to the fiscal year
8 budget of 2011-2012.

9 UNIDENTIFIED MALE 1: Members of the
10 Council, I am simply providing a report on this item and
11 on the next item. I'm not per se asking for any action
12 by the Council other than perhaps acceptance of the
13 report and perhaps concurrence in that report. That
14 being said, however I am going to ask that -- or advise
15 Councilman, that he recuse himself of the item that
16 relates to him, which is the Item No. 3. And I'll ask
17 the same of the Mayor when we get to Item 4.

18 Let me tell you why I'm advising you of
19 that, however. It's not because there is any financial
20 interest. You'll notice that in the staff report, which
21 addresses conflict of interest matters, I have addressed
22 only one conflict of interest rule, which is the -- the
23 Political Reform Act rules that prohibit a financial
24 interest that has a foreseeable affect on your economic
25 status.

1 You don't have any disqualifying financial
2 conflict of interest with respect to this matter because
3 your source of income that underlies this matter is not
4 involved. That's because the -- the matter that you
5 dealt with before, which is the subject of this item was
6 a legislative proceeding. You weren't enacting a policy
7 or law or standard. You were adopting a budget.
8 This matter here is really an adjudicatory
9 matter. You're essentially being asked to determine
10 what the facts are and to apply the law to the facts to
11 make a decision or a conclusion. And it's -- it's
12 subject to different conflict of interest rules, which
13 are Judge-made conflict of interest rules not found in
14 any statute anywhere that prohibits a person with a
15 personal stake in the outcome of the proceeding from
16 participating in that proceeding. You -- and Mayor
17 Derr -- or Mayor Greg, with respect to his matter, have
18 a personal stake in the outcome of that determination
19 because it relates to your conduct. And that's why I'm
20 advising you that you should recuse yourself from this
21 matter, and we will ask you to rejoin us when we get to
22 the Mayor's matter.
23 Incidentally when I -- when I advise someone
24 to recuse them self, that's all it is is advice. I am
25 not allowed -- don't have the power, nor does anybody on

1 this Council have the power to require anybody to recuse
2 themselves. There are consequences that flow from not
3 recusing yourself. In fact, you have a disqualifying
4 conflict of interest. The decision to recuse yourself
5 or not, is your decision and your decision only.
6 We are considering matters related to
7 conflict of interests because they have found their way
8 into the public domain. In this matter, Item No. 3,
9 this relates to Councilman Derr and whether or not
10 Councilman Derr had a disqualifying financial conflict
11 of interest when he voted on the adoption of the budget.
12 With respect to Mr. Derr, the claim was that he had a
13 conflict of interest on voting on the budget because the
14 budget includes the -- the usual $14,000 appropriation
15 to the Chamber of Commerce.
16 And it just so happens that on -- on
17 July 1st Mayor -- Councilman Derr's wife became employed
18 on a part-time nonmanagerial capacity with the Chamber
19 of Commerce. I am working on the assumption that she
20 earned more than $500 in the period of time between
21 July 1st and July 18th when that vote was taken. And
22 that -- that would give rise to a financial interest, by
23 definition.
24 The Public Political Reform Act basically
25 requires -- basically provides that you have a financial

1 interest in a source of income, whether that be your
2 spouse's income or dependant spouse income or your
3 income that is in excess of $500 within 12 months before
4 the vote. So based on those assumptions that she made
5 that much before the time of the vote, that means at the
6 time of the vote, Councilman Derr did in fact have a
7 financial interest. And -- and I think it's very easy
8 to understand why the claim was made by Councilman Lujan
9 that this is a disqualifying conflict of interest.
10 It's not in fact the case. It's very easy
11 to understand why he concludes there's a financial
12 conflict of interest because by definition there is a
13 financial interest. But in order to determine whether
14 or not there is a disqualifying financial conflict of
15 interest you have to take that financial interest, look
16 at the governmental decision that is being made and
17 determine whether or not it is reasonably foreseeable,
18 which means substantially likely that that decision will
19 have either an -- either an adverse or a favorable
20 effect on that source of income.
21 The -- the reasonable foreseeability
22 determination is key to determining whether or not there
23 is a disqualifying financial conflict of interest. The
24 fact that you have a near conflict of interest does not
25 require your disqualification.

1 COUNCILMAN LUJAN: But it does -- it does
2 require disclosure, doesn't it?
3 UNIDENTIFIED MALE 1: It requires disclosure
4 in your Form 700 at the appropriate time and
5 Michael's -- Mike's case, she became employed July 1st
6 and I believe you file these Forms 700 in February --
7 early March. So he has to file a Form 700 that covers
8 that time period. That is the only disclosure
9 obligation that a Council person has with respect to
10 financial interests.
11 There's no requirement that when a financial
12 interest arises on a part of a Council person that he
13 come to his it fellow Councilman or to the public in
14 general and announce that fact. It just -- that's a
15 requirement that just doesn't exist. The law places on
16 him the obligation for discerning whether or not his
17 financial interest results in a disqualifying interest
18 with respect to anything that comes before the City
19 Council. If that answers your question.
20 COUNCILMAN LUJAN: Well, I don't agree.
21 Every ethics class that I've ever taken says that you
22 have to make a public disclosure of potential conflicts
23 of interest. When -- when -- when you're dealing with
24 budgets and line items, that particular line item was --
25 was brought out. I brought it out. Because I thought

it was inappropriate to be dealing money out when we're laying people off and cutting -- cutting the staff and different things like that. I think -- I think someone that had taken the same ethic -- ethics classes, which I think Mike has probably taken the same amount that I have, which I'm just guessing, maybe five, would have known that -- that when I brought that up -- that subject up about, "Hey, should we be giving money to the Chamber when we're laying folks off?"

He probably should have said, "You know I'm going to have to -- to have to step down. My wife works for the Chamber. I don't think that's in -- I think that's a reasonable request.

UNIDENTIFIED MALE 1: You're saying -- you're saying on the one hand he has a disclosure obligation. There's -- there's nothing in the law that gives rise to a disclosure obligation other than the Form 700 requirement which is a public disclosure. It's a public document. It's mailable to anybody who wishes to ask for it.

With respect to your ethics classes, that's what they're teaching is ethics. Whether it's ethical to sit and hear a matter as which you have at appearance of impropriety or potential for a conflict of interest, which are things I as a lawyer I -- I'm required to

1 disclose those things. I'm required to get written
2 waivers from clients if I even have the potential for a
3 conflict of interest.
4 Those same requirements do not apply to
5 Council persons. They are required only to disqualify
6 themselves when there is a disqualifying financial
7 interest. I agree with you. It would be -- it's a very
8 good idea. And I think -- I think the reason you have
9 come to the conclusion to do is that this is the advice
10 that you typically get from any city attorney out there.
11 We will all tell you, if you're willing to come to us
12 and ask -- you know, "I've got this situation. My wife
13 works for so-and-so and they're on the agenda." Um,
14 typically most city attorneys will tell you that Joe --
15 if you have a question about it, Joe Blow out on the
16 street is bound to have a question about it. And what
17 you want as a Council person is to engender confidence
18 in your decisions. You don't want people out there
19 questioning your motivations.
20 So I think if you were to come to me I would
21 tell you invariably, that's a good idea to disqualify
22 yourself. And I think that's why -- that's why I
23 understand why it is you're making these -- these
24 accusations.
25 COUNCILMAN LUJAN: You know this information

on -- on his wife's employment with the Chamber was brought to me after -- the next day. The following day by -- by a (Inaudible) board member. And he said, "Did you know --" and I said, "I didn't know that." And I -- you know that's something you're not going to -- you don't forget where your wife works. You know. You're talking specifically about a line item that -- that could be related to that business relationship and -- and there are ethics classes -- I thought those ethic classes were (Inaudible) in law. Hilda Cantu, very well thought of city attorney. She does a lot of useful stuff. She's the one that gave that class here at this city hall. And I know the mayor attended. And I know Jim -- I think, Jim you were here weren't you, too, Jim?

JIM: No, we --

COUNCILMAN LUJAN: (Inaudible) and -- and -- and just you know she stands up there, and she's never said at least and she's never said, "As long as you put it on your 700 Form, you don't have to make a public disclosure of this." Actually, it's just the opposite. She said, "You need to -- you need to state that relationship. You need to get up and leave of the room."

UNIDENTIFIED MALE 1: When you disqualify yourself, you're correct. The statute requires you

1 to -- if you're in open session and you decide to
2 disqualify yourself, you're required to identify it.
3 What it is that causes you to recuse yourself. That's
4 not a requirement if that occurs in session. I think
5 that may be what she was referring to. But there is
6 literally nothing in the law that requires you to just
7 voluntarily disclose in a Council meeting or publically,
8 or any other context other than your Form 700, your
9 financial interests. With respect to -- with respect to
10 Mr. Derr, the interest is a financial interest because
11 it meets the definition of more than $500 within
12 12 months before the decision to a family member.
13 Determining whether or not it disqualifies him and
14 whether he was required to recuse himself requires you
15 to look at whether there was a foreseeable impact by
16 that particular governmental decision he was making --
17 approval of the budget on the source of income.
18 There are lots of -- situations in the
19 conflicts of interest law, especially as it relates to
20 the Political Reform Act that are very unclear as to
21 whether or not there is a foreseeable effect, which
22 essentially means it is substantially likely that
23 something will happen. Just by the very nature of the
24 thing which you're engaged in is speculation, but in
25 certain circumstances there are repeating situations

1 which -- which occur all the time, and which are the
2 subject of multiple published decisions by both the
3 Attorney General and FPPC, which are the two agencies
4 that essentially enforce this law.
5 Very few of these issues ever reach the
6 court, but we have numerous decisions by both of those
7 agencies, and all of them have come to the same
8 conclusion in every single case where this has occurred.
9 Where you have a -- a spouse of a Council person who is
10 employed by an entity that has a matter for the Council
11 as to which your decision may hurt or assist that entity
12 in some fashion. Unless that employee is a high-level
13 management employee with power over policy and financial
14 matters, or unless that person has a financial -- a --
15 an ownership interest of more than ten percent on that
16 entity, both FPPC and the Attorney General have always
17 concluded, repeatedly concluded, that that source of
18 income -- an impact to that source of income is either
19 financially -- or is either reasonably foreseeable or
20 material. It's just too attenuated and remote of a
21 situation to say that -- by -- by -- in the Chambers
22 case giving them the $14,000 allocation that that's
23 going to translate into some increase or maintenance of
24 her salary. You just don't know enough about the entity
25 to say that's the case. You -- you -- it's -- it's just

1 completely speculative and there's nothing in those
2 circumstances that should lead a reasonable person to
3 conclude that there's any disqualifying financial
4 interest.
5 And -- and they've done it time and time
6 again. So -- so I think I'm in very good company saying
7 that in Mr. Derr's case, he had no disqualifying
8 financial interest or conflict of interest in voting on
9 this budget even though it included the $14,000 to the
10 Chamber and even though his wife was a part-time
11 employee at the time, because that's the way the
12 enforcing agencies interpreted the law. And those
13 enforcing the agencies, if this sort of thing were ever
14 to get to a court, the courts are required to give those
15 opinions great weight, and that's exactly what they do.
16 They -- they typically carry the (Inaudible) --
17 COUNCILMAN LUJAN: You know, just to kind of
18 wrap it up, I know we want to get into the other one,
19 but I think because there's only two people that run the
20 Chamber and she's one of them. I think -- I think that
21 that's a situation that bears weight. I'm sure the
22 money that she's making isn't changing their lifestyle,
23 but it -- it's hard to be impartial, and any -- any
24 little thing could tip you one way or the other. And
25 I'm sure your wife working in the place would kind of

1 maybe help to lean toward their wellbeing, and because
2 of that I would like to see a copy of this portion of
3 the Council sent to the FPPC, and let them hear the.
4 And they can decide.
5 They hear this all the time. That's what
6 they're paid for. They know more about it than anybody
7 in this room. And -- and I don't know if that's a
8 simple consensus. It's a very simple matter, you know.
9 You get somebody to go ahead and just -- just block this
10 portion of this meeting out and send it to a (Inaudible)
11 cover letter stating, "Can you hear this?" All the
12 relevant information is within this dialog, which is
13 probably less than ten minutes. So what would we need
14 to do to make that happen? PB, do we need a consensus
15 here of the Council?
16 UNIDENTIFIED MALE 1: You would need more
17 than simply a copy of the minutes and the staff report,
18 and --
19 COUNCILMAN LUJAN: Just this side of it, not
20 the whole meeting.
21 UNIDENTIFIED MALE 1: You would have to
22 initiate a complaint with the FPPC, otherwise -- they
23 don't have any jurisdiction to do anything.
24 COUNCILMAN LUJAN: Well, why not just
25 publically issue that complaint and ask the Council to

1 -- to give this portion of this meeting to the FPPC, and
2 have them listen to it, read it, and let them determine
3 it, if something's been breached. Um, I'd be
4 happy either way, but I've just -- I've been to too many
5 ethics classes to -- to have anybody tell me, "Don't
6 believe your lying eyes."
7 I know what I see. And when I see things
8 happen like this, I'm going to call people on it. If
9 you see me do that, call me on it, too, because maybe we
10 do it unknowingly. Subconsciously. But, um, any
11 reasonable city elective official that has been around
12 for any length of time is going to tell you about
13 disclosure. And it's a very simple matter, and it's not
14 debatable. And -- and -- you can -- you know, you can
15 (Inaudible) from home. But when -- when a persons
16 sitting up here dealing with an issue, if they have
17 anything that may be a conflict, they need to disclose
18 it. That wasn't done. What do we need to -- to --
19 launch a complaint?
20 UNIDENTIFIED MALE 1: I was simply going to
21 recommend that you accept the report. If you want to
22 propose some different action --
23 COUNCILMAN LUJAN: I think I already have.
24 I already have done as you have directed a person to
25 initiate, would have to file a complaint -- or be a

1 complaintee (sic), but I'll take that position just to
2 let this go through the proper channels and let them
3 determine if there's been a -- a breach in the law or
4 whatever you call it.
5 UNIDENTIFIED MALE 1: Well, I would think
6 that a motion to initiate a complaint with the FPPC
7 premise upon the factual --
8 UNIDENTIFIED MALE: Nondisclosure --
9 COUNCILMAN LUJAN: -- that's disclosed in our
10 agenda, and in our meeting, minutes, be forwarded to the
11 FPPC.
12 UNIDENTIFIED MALE: Does it have to be in
13 the form of a motion.
14 UNIDENTIFIED MALE 1: Yes. Let me touch a
15 little more (Inaudible) Costanzo, what you brought up
16 the bottom line. I'm just going to -- I'm just going to
17 run it back a little bit to the what you said earlier.
18 The -- the disclosure pack and the ethics class
19 (Inaudible)
20 The keyword's ethics. And -- and -- and
21 I've gone through several ethics classes, and -- and
22 there's been occasions when I first became a counsel, I
23 had to excuse myself. There was a particular issue
24 and -- yeah -- and I had to -- and I got advice from the
25 state and everything. And -- and they give the same

1 speech you just gave right now, and -- and -- but I did
2 disqualify myself because the -- the public -- like you
3 said earlier, the trust with the public -- you know
4 you're here to serve. And when you're here to serve --
5 before you can serve you have to gain the trust of the
6 citizens out there. You know it's not a question --
7 it's hard, you know, when you're elected officials, a
8 lot of decisions have to be made. You can't please
9 everybody. I'll tell you that right. But -- but
10 it's -- but, you know, what? You do the best you can,
11 and the (Inaudible) you cannot please the entire
12 population. But so long as you get this 70 percent
13 happy, you're doing great.
14 But when it comes down to certain items,
15 ethics and stuff like this in the class, sometimes
16 you -- you have to really think for the -- if there's a
17 conflict of any question in your mind, sometimes it's
18 best to -- like you said ask an attorney or call the --
19 the public (Inaudible) you know, election. I did, and I
20 had two -- attorney and them, they both said the same
21 thing you said. So I excused myself because in my mind
22 there was -- any kind of reasonable doubt, it's best to
23 excuse yourself. And really that's just a smart way to
24 be.
25 You know and I -- I understand what Dennis

is saying as well. You know we're -- we're in the public eye quite a bit and we have gain the trust of the public. And it's -- sometimes it's very hard. You know, it's not -- because they don't see us 24/7. You know. They only see us maybe once a month, a year, twice a month. You know. Sometimes -- it's -- it's um. But -- and it's -- it's a tough job. But again as a public official you -- you're -- you're under the 24-hour watchful eye.

UNIDENTIFIED MALE 2: And I agree with you that it is a very good idea for any public official to bend over backwards to try to avoid any kind of an appearance of impropriety. Try to avoid potentials for conflict of interest. I think that's the admirable and bright thing to do, because it does engender public trust and confidence in this (Inaudible) as a body. You don't want people questioning you. What we're talking about here is not ethics but whether or not the law has been violated.

UNIDENTIFIED MALE: Yeah, and so --

UNIDENTIFIED MALE 1: And that. That I think is the basis of the motion that the law has been violated and in my position -- and frankly I think I've got some grounds in this in the form of FPPC decisions is that that sort of thing is viewed as not foreseeable

1 and immaterial -- in the very same circumstance, has
2 been ruled, time and time again, not to amount to a
3 disqualifying conflict of interest. And I think --
4 that's the correct interpretation.
5 UNIDENTIFIED MALE: We have a number of
6 school districts that have spouses that have been
7 elected to serve on -- on school districts and yet they
8 have they have spouses or teachers in that district.
9 And routinely that's not considered a conflict of
10 interest.
11 UNIDENTIFIED MALE 1: It's the same rule
12 that applies here.
13 COUNCILMAN LUJAN: You can't be an employee
14 of the school district and serve on that board.
15 UNIDENTIFIED MALE 2: A spouse.
16 COUNCILMAN LUJAN: Maybe a spouse. You cant
17 be an employee.
18 UNIDENTIFIED MALE 1: It's the same rule
19 that I've described to you that happens time and time
20 again at the FPPC level, when you've got a spouse that
21 is working for an employer that has got a matter before
22 you. They have said that unless that person has a
23 managerial position or unless that person has an
24 ownership interest in this employer, it's not
25 foreseeable. Your -- your decisions are not going to

1 have a foreseeable impact on that persons income.
2 COUNCILMAN LUJAN: But they could sway your
3 vote.
4 MAYOR GRAY: Well, I'll tell you what I'm
5 going to do at this point in time here, because
6 obviously the next item is referencing the same kind of
7 issues, and one would -- have an issue about how I would
8 vote on this particular thing relevant to my issue, um,
9 coming up. I think it's best that I abstain from any
10 precedence relevant to this since I'm going to be
11 recusing myself from the next item, I think I'm going to
12 turn over the podium to Mayor Pro Tem and let you folks
13 proceed with these items, and let me know when you're
14 ready for me to come back.
15 UNIDENTIFIED MALE 1: Very good move.
16 COUNCILMAN LUJAN: There's a motion, I'm
17 going to turn this over to the FPPC.
18 MAYOR PRO TEM RODRIGUEZ: Any further
19 discussion from the Council members?
20 UNIDENTIFIED MALE: No, you know. If you
21 wish to -- I have no problem with turning -- to the
22 deal, get back some fact findings. I have no problem
23 with that.
24 COUNCILMAN LUJAN: Do you second the motion?
25 UNIDENTIFIED MALE: Yeah, I'll second the

1 motion. Yeah. I have no problem with that.
2 MAYOR PRO TEM RODRIGUEZ: Roll call.
3 CITY CLERK: Council member Lujan?
4 COUNCILMAN LUJAN: I.
5 CITY CLERK: Council member Avalos?
6 COUNCILMAN AVALOS: I.
7 CITY CLERK: Mayor Pro Tem Rodriguez?
8 MAYOR PRO TEM RODRIGUEZ: Nay.
9 COUNCILMAN LUJAN: Before we send this off
10 I'd like to review it.
11 UNIDENTIFIED MALE 1:. I'm not sending it.
12 I think -- if you -- this should not come from the city
13 managers office. This is a -- this should come from
14 either your city attorneys office or from you as an
15 individual I shouldn't -- I shouldn't be sending it I
16 don't think.
17 UNIDENTIFIED MALE 2: For informational
18 purposes, would Councilman Derr need to file a written
19 complaint with the FPPC?
20 UNIDENTIFIED MALE 1: Actually Councilman
21 Lujan needs to file the written complaint and -- and
22 then we can send along that information. But the
23 complaint needs to be -- as I understand now how their
24 political practices works is that -- is that you have to
25 file the complaint.

1 COUNCILMAN LUJAN: Is that correct Neal?
2 He's -- he's refusing to take part in this, DP.
3 UNIDENTIFIED MALE 1: I said I felt it
4 shouldn't -- the complaint should come from him, from
5 the attorney's office.
6 COUNCILMAN LUJAN: Then -- then he needs
7 direction from -- from -- as a matter of fact, I can
8 amend that motion. To require the City Manager to -- to
9 go ahead and -- and do the labor on this thing. You
10 know I've always wondered you know --
11 UNIDENTIFIED MALE: As I understand the --
12 the outcome here, um, we are forwarding to FPPC simply
13 the --
14 COUNCILMAN LUJAN: Facts.
15 UNIDENTIFIED MALE: -- needed there's
16 disclose the facts, which to my mind would be the staff
17 report, the agenda, the meeting minutes, along with a
18 cover letter, which I will be happy to write for you,
19 asking them to look at it and give us an opinion.
20 COUNCILMAN LUJAN: Thank you.
21 UNIDENTIFIED MALE 1: This is what I'm
22 saying, it should come from the City Attorney's Office
23 and not from my office.
24 COUNCILMAN LUJAN: I knew you were going to
25 say that. But listen, listen if you need DP to help

1 you, I think DP should be at your disposal. Okay.
2 Because the majority of the councilmen that voted, voted
3 to go ahead and send the --
4 UNIDENTIFIED MALE 1: (Inaudible)
5 COUNCILMAN LUJAN: But -- but maybe you
6 should let him know or just (Inaudible) make the
7 determination on this. We're going to send in what we
8 believe to be the facts and let the FPPC decide if
9 something's been breached. Okay. That -- that's fair.
10 MAYOR PRO TEM RODRIGUEZ: Moving on to Item
11 4. We have a staff report.
12 UNIDENTIFIED MALE 1: We -- we do. Mayor
13 Pro Tem, members of the Council, we are again dealing
14 with a conflict of interest matter that has found it's
15 way into the public domain. This one relates to Mayor
16 Ken Gray.
17 For Councilman Derr's, benefit let me just
18 repeat some of what I said during the previous item.
19 The only conflict of interest rule that applies here is
20 the rules under the Political Reform Act. There are
21 other conflict of interest rules out there such as
22 Government Code Section 1090 and the judge-made laws
23 that I -- I referred to earlier that have other conflict
24 of interest rules, but because -- all of the matters in
25 which mayor Gray is alleged to have taken part in are a

1 legislative proceedings of this Council.
2 The only conflict of interest rules that
3 apply are to -- are the Political Reform Act
4 requirements with respect to the a financial interest.
5 I also explained during the previous item that although
6 a Council person may have a financial interest within
7 the definition of the statute, which includes such
8 things as income in the amount of $500 or more in the
9 preceding 12 months and or 10 percent ownership interest
10 in something that has a matter pending before the
11 Council. Those are all financial interests, but in
12 order to determine whether or not those financial
13 interests are disqualifying financial interests, what
14 you need to do is assess whether or not there is a
15 reasonably foreseeable affect by a governmental decision
16 that you're involved in on that economic interest. It
17 either -- it either increases or decreases that economic
18 interest in some fashion.
19 With respect to Mayor Gray, there is no
20 published decision of the FPPC or of the Attorney
21 General or of any court which evaluates whether or not
22 someone in -- in his situation has a disqualifying
23 financial interest. It is clear he has a financial
24 interest with respect to Cal Water, because Cal Water is
25 a source of income or a business that he owns more than

1 ten percent of. With respect to Councilman Lujan's
2 assertion that one is required to disclose those
3 financial interests, I looked at the Mayor's Form 700
4 for all of the relevant time periods, and all of them
5 disclose the fact that he does work for Cal Water.
6 So, I -- I believe that the only disclosure
7 requirement with respect to a financial interest is a
8 disclosure you're required to make in Form 700. And I
9 think that Councilman -- or Mayor Gray has made the
10 appropriate disclosures by disclosing that his company
11 earns money on occasion from Atwater with respect to
12 construction projects that he succeeds in getting the
13 contract on. So those have been disclosed. The -- the
14 question in -- in Mayor Gray's case is whether or not he
15 impermissibly participated in a governmental decision
16 that has a foreseeable impact on that source of income.
17 You can only determine that by examining whether or not
18 there is a reasonably foreseeable affect of whatever
19 governmental decision he is making on that source of
20 income and to be reasonably foreseeable, it has to be
21 much more than just a possibility, it has to be a
22 substantial likelihood.
23 With respect to Mayor Gray, we have a little
24 bit of a nuance relative to what -- when it is he's
25 accused of engaging in, while having a disqualifying

1 interest.

2 He disqualified himself from what I

3 understand and what I view as the only occasion on which

4 this Council had before it the issue of whether or not

5 to exercise eminent domain or to otherwise acquire Cal

6 Water. So I don't think that the question is whether or

7 not that governmental decision might have a foreseeable

8 impact on his source of income. I think the question is

9 instead whether or not the decisions that he

10 participated in relating to determining what Cal -- Cal

11 Water's rate increases were. Determining how to address

12 that -- excuse me -- and whether or not to seek an

13 adjustment of that are the decisions that we need to

14 look into. Excuse me.

15 With respect to the -- to the acquisition

16 question. That's a very close question as to whether or

17 not he would have a disqualifying financial interest on

18 that issue. -- excuse me -- unfortunately he's taken

19 that issue away from us. We don't -- we don't really

20 need to consider that, but just to give you some

21 background as to why I conclude the way I conclude with

22 respect to the rate increase issues, let me tell you

23 where I would be with respect to the acquisition issue:

24 I think it's clear there's a financial interest there,

25 but in order to say that there will substantially be an

1 impact on this source of income for Ken Gray by a
2 decision on the acquisition question, I think you
3 necessarily have to assume -- because this is how he
4 makes his money from Cal Water -- you have to
5 necessarily assume that Cal Water is going to punish him
6 or reward him, as the case may be, by withholding or
7 granting additional contracts for construction projects.
8 That's how he makes his money.
9 To -- to make that assumption is to assume
10 that Cal Water will act in a manner which it's
11 privileged from acting. It -- it's a public utility.
12 They're not required to go out, examine, get bids, and
13 take the low bidder, but that is normally what they do.
14 Sometimes the CUP specifically requires them to do that.
15 In all cases every three years we worry that
16 Cal Water will make an application for a rate increase
17 before the DUC. They -- they include in that
18 application for a rate increase their capital
19 expenditures for construction projects that they do and
20 the CPUC and these things in addition to their -- their
21 operational costs, like fuel, electricity -- what have
22 you.
23 They examine these things to determine
24 whether or not Cal Water is acting reasonably because
25 their rates are a function of what their capital

1 investment is and their operational cost is, plus a
2 reasonable rate of return. And if Cal Water is not able
3 to demonstrate to the CPUC that it has reasonably
4 collected and paid a reasonable price for a capital
5 improvement, that capital improvement is not going to
6 get incorporated into their rates.
7 And I am told -- I don't -- I don't have any
8 written proof of this, but I am told that they adhere to
9 a practice of -- of soliciting bids and they decide on
10 what the most reasonable bid is, which may or may not be
11 the lowest bid. It may have something to do with them
12 having experience with a particular contractor and
13 knowing that he's a good contractor. But they do --
14 they do carefully look at these things and they do
15 carefully disclose to the CPUC what they're doing.
16 So I -- I think that while it's -- it's
17 certainly possible, and it wouldn't be out of the
18 ordinary for a corporation to behave in that fashion
19 to -- to punish or award according to whether or not a
20 vote went their way or not is -- is certainly a
21 possibility. But I -- I just don't think that rises to
22 the level of being substantially likely to occur.
23 Simply for that reason, because if -- if they're
24 behaving that way they're not adhering to that law. And
25 -- and I've got to presume that CAL Waters is adhering

1 to the law.

2 MAYOR PRO TEM RODRIGUEZ: Any discussion

3 from the Council?

4 COUNCILMAN LUJAN: I mean, for me there's a

5 lot of nuances here just, like the Councilman said. I

6 think we should handle this exactly how we're handling

7 Councilman Derr's situation. We shouldn't be the judge.

8 Turn over any relevant information to the Fair Political

9 Practice Commission and let them decide. They'll review

10 it, they'll look at it, send us their opinion. We don't

11 have to do this. In my opinion there's clearly been a

12 breach of ethics, maybe -- maybe of law. But I'm not

13 going to be the one to determine that. But I think we

14 hand it to the Fair Political Practice Commission review

15 it and like you said before, they'll send us their

16 opinion.

17 UNIDENTIFIED MALE 1: Just a -- just a

18 clarification question for you. Are you agreeing with

19 me that the only thing we're dealing with here are

20 decisions relevant to the rate increases?

21 COUNCILMAN LUJAN: No, no. My

22 understanding, the information that I was given, is that

23 he said contracts as far back as '04, right?

24 UNIDENTIFIED MALE 1: Right. I understand

25 that.

1 COUNCILMAN LUJAN: (Inaudible) the planning
2 commission. He would expect our planning commissioners
3 to have full disclosure at all of their meetings and --
4 and we yet to have -- and -- and Mike too, Mike still
5 hasn't done a public -- public disclosure. And Mayor
6 Gray still hasn't done a public disclosure of their
7 relationships. I think that still has to be done if
8 only -- if only to be ethical. And -- and like I said,
9 I think this goes back to '04.
10 UNIDENTIFIED MALE 1: But you are
11 referencing only the rate increase though (Inaudible)
12 COUNCILMAN LUJAN: I'm referencing the
13 take-over discussion. I'm referencing the Mayor going
14 to San Jose to represent the city on negotiations never
15 disclosing that they've had a working relationship. As
16 a matter of fact I think -- as -- as late as -- what the
17 first of July, I think he turned in his -- his financial
18 with Cal Water on two -- two wells in Visalia.
19 You know, these are things the Fair
20 Political Practice Commission needs to review and weigh.
21 Let them decide.
22 UNIDENTIFIED MALE 1: Those are all matters
23 that had nothing to do with a question of whether or not
24 to acquire Cal Water as I understand.
25 COUNCILMAN LUJAN: Well he's -- he was fully

1 engaged in those discussions and -- and I can tell you
2 one thing right now. He was no friend of the folks
3 advocating take-over. I asked many times to put a vote
4 on the agenda as an action item so that Council could
5 vote whether to start proceeding to take over Cal Water
6 or not. Every time we were shot down 3-2 with -- with
7 Council -- Mayor Pro Tem Rodriguez, Mayor Gray,
8 Councilman Derr, saying "No. No. We don't want --
9 don't put it on the agenda. We're still talking." I
10 think the closest we ever got to this thing was a
11 consensus and it was 3-2 also. It was only until --
12 what was it -- three weeks ago in closed session, and
13 this came out -- out of left field. You know he got up
14 and he said, "Hey, I've got a working relationship with
15 Cal Water I can't participate in this discussion."
16 MAYOR PRO TEM RODRIGUEZ: You know, I have a
17 comment here to make.
18 COUNCILMAN LUJAN: Well, let me finish.
19 And then I thought to myself, "Well, gee.
20 You're about nine months too late. We've been talking
21 about this for -- for over nine months. And today you
22 decide to tell us this." It -- it doesn't pass the
23 smell test.
24 MAYOR PRO TEM RODRIGUEZ: You know, I can
25 vouch for Mayor Gray, in a sense, that when these

1 discussions began to occur, he instructed you -- as a
2 matter of fact -- he offered you the job to represent
3 the City on our behalf.
4 COUNCILMAN LUJAN: He did.
5 UNIDENTIFIED MALE 1: (Inaudible)
6 MAYOR PRO TEM RODRIGUEZ: You had every
7 opportunity.
8 COUNCILMAN LUJAN: I'm going to explain what
9 you are trying to say. What you are trying to say --
10 not very well -- is that I was told I can't use city
11 staff to do this. There was one other time I was told I
12 can't use city staff to investigate -- a -- misconduct.
13 MAYOR PRO TEM RODRIGUEZ: It has no
14 representation of city staff. This is more an
15 invitation to a Council member since you were so
16 passionate about it.
17 COUNCILMAN LUJAN: My friend -- (Inaudible)
18 -- letter. What the letter says, "Here's three phone
19 numbers, go at it." You know, this is something that
20 comes up time and time again. You know that we have
21 very well paid staff, and you know that to have -- have
22 our esteemed DB tell me, "You do the letter," and -- and
23 you know (Inaudible) Hey, I'm getting 210 bucks a
24 week -- a month. That's my (Inaudible) to be a
25 Councilman. He's knocking down at least a hundred, 40

1 grand. Let him write the damn letter. You've got to
2 earn your pay.
3 MAYOR PRO TEM RODRIGUEZ: Let's finish up
4 the talking and come to a solution here.
5 COUNCILMAN LUJAN: Well, I think I have a
6 solution. Let's just handle it the way we're
7 handling --
8 MAYOR PRO TEM RODRIGUEZ: Is that a motion?
9 UNIDENTIFIED MALE 1: Let's try to get?
10 Clarification from Councilman Lujan as to whether or not
11 he considered the -- the acquisition issue to be one of
12 the matters (Inaudible)
13 COUNCILMAN LUJAN: It is one of the
14 matters -- it is one of the matters, yes.
15 MAYOR PRO TEM RODRIGUEZ: Let's continue
16 here.
17 UNIDENTIFIED MALE 1: I was just going to
18 say, in my view, the only time that's been on the agenda
19 was July 18th; and, in my view, I don't believe this
20 Council has ever taken a vote.
21 COUNCILMAN LUJAN: No.
22 UNIDENTIFIED MALE 1: Is whether or not to
23 include a matter on the agenda.
24 COUNCILMAN LUJAN: I've said it time and
25 time again. Put it on as an action item. I want a vote

as to whether or not to take over the Water Company. We have three people staunch, staunch supporters of Cal Water that are, the Mayor, Mayor Pro Tem, and Councilman Derr. They want (Inaudible) their increase of 48 percent in less than three years is just -- I -- I hear that, and something would just ring so -- so wrong. How could any -- a normal, a sensible individual look at a 48 percent increase in water rates in less than three years and say that is justifiable? That just doesn't wash. And it all -- now with this -- this relation, maybe it's all starting to make sense now.

Like I said, it's very difficult to be bias -- to be unbiassed and any little thing can tilt you one way or another, and having a working relationship with an entity definitely, definitely will slant your thinking. With that I'd like to make a motion to handle this situation exactly like we're handling Councilman Derr's.

MAYOR PRO TEM RODRIGUEZ: Mike, you have a comment? (Inaudible)

MAYOR PRO TEM RODRIGUEZ: Do we have a second?

UNIDENTIFIED MALE 2: I'll second. That way -- you know, let's clear the air. Let's let the public relations handle it. That's no problem.

UNIDENTIFIED MALE 1: July 18th was the only time that that item came into a decision mode. We talked about this before. We've been bothered by the fact that the rates were high. We -- we have sent people out to negotiate. We sent Cal Water out to negotiate. We sent everybody else --

COUNCILMAN LUJAN: But we never sent the mayor, he just went on his own and came back and reported.

MAYOR PRO TEM RODRIGUEZ: Let's let him finish.

COUNCILMAN LUJAN: Okay.

UNIDENTIFIED MALE 1: But on July 18th was the first time this came into a decision mode. And July 18th is when the Mayor recused himself, stepped away from the discussion, and left it to the four of us, at which point we decided not to move ahead with it. I'm not sure why the discussions between April the 18th and July 18th fall to the classification of something that's evil, or inappropriate, and I appreciate just a little bit of input as to what you think was wrong between that.

COUNCILMAN LUJAN: The take-over of the Water Company has been debated for nine months. Okay.

UNIDENTIFIED MALE 1: The take over of the

1 Water Company's been debated for four years.
2 COUNCILMAN LUJAN: Okay, okay. That's fine.
3 CITY CLERK: 60 years.
4 COUNCILMAN LUJAN: (Inaudible) we've all
5 been fully engaged in this debate. And anybody that had
6 any kind of working relationship with Cal Water, which
7 is the (Inaudible) talking about. Hey, do we keep them,
8 do we take it over -- that's been a discussion and we've
9 all been fully engaged in that, and don't you think it's
10 just common ethics? And we've all been taught that in
11 the ethics classes that we've all taken that we disclose
12 these things. You know, it's called full disclosure.
13 Takes about ten seconds.
14 "Hey, I've got a working relationship with
15 Cal Water. I'm not going to sit down on this one."
16 That's all you've got to do, and you're legal. You're
17 ethical. And that didn't happen. And it didn't just
18 happen on -- on the water take over. What's happened is
19 the chair man of the planning commission -- this is the
20 first I've heard. We've probably all heard of it. Did
21 anybody else know that Ken had contractual relationships
22 with Cal Water since 2004. You did? Well, maybe you
23 should have told us.
24 CITY CLERK: It's on his forms.
25 COUNCILMAN LUJAN: Well, maybe you should

have told us. You know how many forms we go through. I've never gone through yours Mike.

UNIDENTIFIED MALE 1: It is a matter of public record.

UNIDENTIFIED MALE: It is a matter of public record since 2008.

COUNCILMAN LUJAN: But not since he was planning commissioner?

CITY CLERK: It is listed on his form.

COUNCILMAN LUJAN: (Inaudible) DB, did you know about it, DB?

UNIDENTIFIED MALE: I did not look at the forms.

COUNCILMAN LUJAN: You know, I mean -- you know. The City Clerk, she handles this, so I understand that she knows it. But god -- you know maybe Cal Waters should have said -- maybe -- you know just for the record.

UNIDENTIFIED MALE: (Inaudible)

COUNCILMAN LUJAN: Well, you are Visalia.

UNIDENTIFIED MALE: I am Selma, California. (Inaudible)

UNIDENTIFIED MALE: Go back to Mike's question.

UNIDENTIFIED MALE 1: What happened from

1 April to July that has you bothered here? (Inaudible)
2 COUNCILMAN LUJAN: No, no, no, no, no.
3 There was a relation when he told us, "Hey, I've got
4 contracts with Cal Water. I've got to sit this out." I
5 thought to myself, why did you wait so long to tell us?
6 UNIDENTIFIED MALE: There was nothing to
7 tell about.
8 COUNCILMAN LUJAN: Listen. Listen. I've
9 been trying to make motions to try to take over the
10 Water Company. As a matter of fact, when we had those
11 folks here -- when we were able -- when DB allowed me to
12 use our telephone system, and we had people here
13 advocating the take-over. At that time I was going to
14 make a motion. I was told you can't make a motion --
15 blah blah blah.
16 And you know I have been stone --
17 stonewalled in making a motion to take over Cal Water.
18 Okay. And -- and that to me you know didn't make sense.
19 It was illogical. But -- but I can see, maybe there was
20 some influences there.
21 Now, I say let the Fair Political Practice
22 Commission make the determination. (Inaudible)
23 MAYOR PRO TEM RODRIGUEZ: Can I reiterate
24 some fact? Has he filled out his Form 700?
25 UNIDENTIFIED MALE 1: Yes.

1 MAYOR PRO TEM RODRIGUEZ: Has he indicated
2 that he has done work with Cal Water?
3 UNIDENTIFIED MALE 1: Yes.
4 MAYOR PRO TEM RODRIGUEZ: Did he recuse
5 himself on the one and only vote in talks with Cal
6 Water?
7 UNIDENTIFIED MALE 1: The one and only time
8 in which the acquisition or possible acquisition of Cal
9 Water has been --
10 COUNCILMAN LUJAN: (Inaudible)
11 MAYOR PRO TEM RODRIGUEZ: And he recused
12 himself?
13 UNIDENTIFIED MALE 1: And he recused
14 himself.
15 COUNCILMAN LUJAN: That wasn't a vote, sir.
16 That was a consensus. Okay.
17 UNIDENTIFIED MALE 1: No, no.
18 COUNCILMAN LUJAN: Nobody made a motion to
19 take it over. That was -- that was a closed session
20 consensus. Because I said, "Hey -- listen we don't have
21 the votes," (Inaudible) and boom, boom, boom, and he
22 said, "Hey, I work for them. I've got to step out."
23 And I thought to myself, what the --
24 UNIDENTIFIED MALE 1: It was specifically
25 if, you recall placed on the closed session agenda

because eminent domain is a legal proceeding and the question specifically before you on that occasion was whether or not you wanted to -- to start eminent domain proceedings. And that's the first and only time other than the 16 years prior to that, that acquisition of Cal Water, the decision to do that has actually been on the agenda.

I recognize that Councilman Derr, has -- on every occasion, you know, from April -- whatever that date is -- up to July 18th. He has indeed said things like, "We should be taking over Cal Water during the course of these meetings." That doesn't mean that that matter was on your agenda. What was on your agenda was what we should be about the rate increase.

UNIDENTIFIED MALE: It -- it isn't Derr.

(Inaudible)

UNIDENTIFIED MALE 1: I meant Lujan.

MAYOR PRO TEM RODRIGUEZ: Any further discussion from the Council? We have a first and a second on the table.

UNIDENTIFIED MALE 1: That's it.

MAYOR PRO TEM RODRIGUEZ: Now, call the roll.

UNIDENTIFIED MALE 2: Dennis -- now (Inaudible) let's just clear the air. Let the Political

1 Fair Practice know, and like you said, resolve this and,
2 like you said, you know. No big deal, and that way the
3 public knows too, you know.
4 CITY CLERK: We're not hiding anything.
5 UNIDENTIFIED MALE 2: We're not you know and
6 I want to get the conflicts of these people up front
7 that we are making right decisions and let the
8 proceedings follow through, that's all. Because you've
9 got to gain the trust of the people out there you know,
10 and it's stuff like this, Dennis, and it -- it puts
11 distrust of people out there, and I don't want that to
12 make place out there in the public, you know. I don't
13 care if it's, you know, any situation. The citizens,
14 fire police, or anybody -- you know, that we deal with
15 and -- and in any basis, I want to make sure that they
16 trust us in decisions that we make.
17 UNIDENTIFIED MALE: Does it cost us anything
18 to do that?
19 UNIDENTIFIED MALE 1: Other than what you
20 pay me for my time, no.
21 MAYOR PRO TEM RODRIGUEZ: Any further
22 discussion.
23 UNIDENTIFIED MALE: No, I'm done.
24 CITY CLERK: Just to let you know, the FPPC
25 is running about a year behind on decisions.

UNIDENTIFIED MALE: Beautiful.

CITY CLERK: They're short-staffed.

UNIDENTIFIED MALE: I don't think anybody's in a big hurry.

MAYOR PRO TEM RODRIGUEZ: Thank you. Call the roll, please.

CITY CLERK: Council member Lujan?

COUNCILMAN LUJAN: I.

CITY CLERK: Council member Avalos?

COUNCILMAN AVALOS: I.

CITY CLERK: Council member Derr?

COUNCILMAN DERR: I.

CITY CLERK: Mayor Pro Tem Rodriguez?

MAYOR PRO TEM RODRIGUEZ: Nay.

STATE OF CALIFORNIA

COUNTY OF FRESNO

I, ASHLEY L. PROXMIRE, commissioned in the County of Fresno, State of California, hereby certify that the foregoing pages represent a full, complete, and accurate transcription of the CD proceedings represented to me.

This CD has been transcribed to the best of my ability to hear and comprehend the said recording.

I further certify that I am not related to any of the parties or counsel for any of the parties in the foregoing action or in any way interested in the outcome of the cause herein.

Ashley L. Proxmire

ASHLEY L. PROXMIRE, CSR No. 13664

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CITY OF SELMA
WORKSHOP/PRE-COUNCIL MEETING
AUGUST 15, 2011

The workshop/pre-Council meeting was called to order at 6:00 p.m. in the Council chambers. Council members answering roll call were: Avalos, Derr, Lujan, Mayor Pro Tem Rodriguez, and Mayor Grey.

Also present were City Manager Heusser, City Attorney Costanzo, Interim Police Chief Dyck, Acting Fire Chief Kain, Financial Consultant Yribarren, the press, and interested citizens.

The agenda for this meeting was duly posted in a location visible at all times by the general public seventy-two hours prior to this meeting.

EXECUTIVE SESSION: Mayor Grey recessed the meeting into closed session at 6:02 p.m. to discuss one (1) Potential Litigation case and a conference with the city's labor negotiator regarding Fire Department negotiations.

The meeting reconvened at 7:03 p.m. with nothing to declare in the open session of the meeting.

ADJOURNMENT: There being no further business, the meeting was adjourned at 7:04 p.m.

Respectfully submitted,

Melanie A. Carter, CMC
City Clerk

_____
Kenneth Grey
Mayor of the City of Selma

CITY OF SELMA
REGULAR CITY COUNCIL MEETING
AUGUST 15, 2011

The workshop/pre-Council meeting was called to order at 7:10 p.m. in the Council chambers. Council members answering roll call were: Avalos, Derr, Lujan, Mayor Pro Tem Rodriguez, and Mayor Grey.

Also present were City Manager Heusser, City Attorney Costanzo, Interim Police Chief Dyck, Acting Fire Chief Kain, Financial Consultant Yribarren, the press, and interested citizens.

The agenda for this meeting was duly posted in a location visible at all times by the general public seventy-two hours prior to this meeting.

ORAL COMMUNICATIONS: Pastor Ming stepped to the podium and invited the Council and all present to a special 10-year remembrance of the 9-11 tragedy.

Mr. Quannah Morgan, stepped forward to report on an illegal carport structure on his street. Staff reported that they would look into the matter.

CONSENT CALENDAR: Council member Derr asked that agenda item 1.c. be pulled for separate discussion. Motion to approve the remainder of the Consent Calendar was made by Mayor Pro Tem Rodriguez and seconded by Council member Avalos. Motion carried with the following vote:

AYES: Rodriguez, Avalos, Derr, Lujan, Grey

NOES: None

ABSTAIN: None

ABSENT: None

a. Minutes of the August 1, 2011 workshop/pre-Council meeting approved as written.

b. Minutes of the August 1, 2011 regular meeting approved as written.

c. Pulled for separate discussion

d. Check register dated August 9, 2011 approved by standard motion.

AGENDA ITEM 1.c. – RESOLUTION RE-ADOPTING THE 2003 SELMA BICYCLE TRANSPORTATION PLAN WITH APPROVED CHANGES: Council member Derr stated that he had asked for this to be pulled in order to show Council a walkway/bicycle route map for the City of Clovis

After discussion, motion to approve RESOLUTION NO. 2011-42R, A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SELMA RE-ADOPTION THE 2003 SELMA BICYCLE TRANSPORTATION PLAN WITH APPROVED CHANGE was made by Council member Derr and seconded by Council member Lujan. Motion carried with the following vote:

AYES: Derr, Lujan, Avalos, Rodriguez, Grey

NOES: None

ABSTAIN: None

ABSENT: None

CONSIDERATION AND NECESSARY ACTION ON RESOLUTION ACCEPTING STATE CITIZENS OPTION FOR PUBLIC SAFETY (COPS) GRANT – *PUBLIC HEARING AND ADOPTION*: Mayor Grey opened the public hearing at 7:20 p.m. There being no one to speak for or against the proposal, the public hearing was closed at 7:21 p.m.

After discussion, motion to approve RESOLUTION NO. 2011-43R, A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SELMA ACCEPTING STATE CITIZENS OPTION FOR PUBLIC SAFETY (COPS) GRANT was made by Council member Derr and seconded by Mayor Pro Tem Rodriguez. Motion carried with the following vote:

AYES: Derr, Rodriguez, Avalos, Lujan, Grey

NOES: None

ABSTAIN: None

ABSENT: None

CONSIDERATION AND DETERMINATION OF WHETHER COUNCIL MEMBER DERR HAD A DISQUALIFYING INTEREST IN VOTES ON OR PARTICIPATION IN MATTERS RELATING TO THE FISCAL YEAR 2011-2012 BUDGET ADOPTION: Before beginning discussion, Council member Derr recused himself from discussion and left the room.

City Attorney Costanzo reviewed for the Council the allegations that have arisen regarding Council member Derr's lack of disclosure that his wife works for the Selma Chamber of Commerce prior to voting for adoption of the 2011-2012 fiscal year budget.

He reviewed the applicable sections of the Public Records Act and stated that in his opinion a disqualifying Conflict of Interest did not exist since Mrs. Derr is part time, or does not hold a managerial position or ownership interest in the Chamber of Commerce.

Since the next item on the agenda pertained to him and is similar, Mayor Grey recused himself from the meeting and left the room.

Discussion then occurred and Council member Lujan moved to send the matter to the Fair Political Practices Commission (FPPC) for opinion. The motion was seconded by Council member Avalos and carried with the following vote:

AYES: Lujan, Avalos

NOES: Rodriguez

ABSTAIN: None

ABSENT: None

RECUSED: Derr, Grey

CONSIDERATION AND DETERMINATION OF WHETHER COUNCIL MEMBER GREY HAD A DISQUALIFYING INTEREST IN VOTES ON OR PARTICIPATION IN MATTERS RELATING TO CALIFORNIA WATER SERVICE COMPANY: Before beginning discussion, Council member Derr returned to the dais. Mayor Grey was not present.

City Attorney Costanzo reviewed for the Council the allegations which have arisen regarding Mayor Grey's lack of disclosure that his company, BVI Construction, has had construction contracts with California Water Service Company (in the past), prior to discussion of Selma's water rates and possible takeover, by eminent domain, of the water system.

He reviewed the applicable sections of the Public Records Act and reported that in his opinion no disqualifying Conflict of Interest exists because prior to the July 18, 2011 Council meeting nothing had appeared on an agenda regarding the take-over of the water system, from Cal Water, and that the only time it had been scheduled (July 18, 2011 as potential litigation in closed session) Mayor Grey had recused himself and left the room. He also stated that all discussion prior to July 18 had only been about contacting the California Public Utilities Commission (CPUC) regarding a possible reduction in the water

rates for the citizens of Selma and representing the City at a meeting regarding those rates. He also reported that Mayor Grey had reported California Water Service Company as a source of income on his 2008 and 2010 Form 700 (Conflict of Interest form) filed with the FPPC.

Discussion then occurred and Council member Lujan moved to send the matter to the Fair Political Practices Commission (FPPC) for opinion. The motion was seconded by Council member Avalos and carried with the following vote:

AYES:	Lujan, Avalos, Derr
NOES:	Rodriguez
ABSTAIN:	None
ABSENT:	None
RECUSED:	Grey

DEPARTMENTAL REPORTS: City Manager Heusser reported on attending a League meeting regarding high-speed rail and its proposed route, and a meeting with the County regarding medical marijuana. He also reported that the City's TRAN will close on Thursday and that the City has received plans for 66 homes in the Valley View tract. He also reminded the Council of the Hyundai ribbon cutting on Wednesday.

COUNCIL REPORTS: Council member Avalos reported on attending an event at Valley Life Church in which Alan Autry spoke.

Council member Lujan reported on problems with Police Department dispatching and his disappointment with Senator Rubio's position on the high-speed rail route.

Council member Derr stated and consensus was given for him to miss the Annual League Conference in September since the City will be represented by another individual. He reported on attending a retirement event at S-K-F and that he will be playing music at the next "Concert in the Park" and that he will be paid by the Chamber of Commerce.

Mayor Pro Tem Rodriguez reported on attending a ribbon cutting at the new cupcake store and that the Shock U10 girls softball team had placed 5th in their recent event.

Mayor Grey also reported on dispatching problems and the need for clean up at a vacant lot on Sierra View Street.

ORAL COMMUNICATIONS: Mr. Dennis McKenry, 1315 Evergreen stepped forward to report on two vacant houses in his neighborhood that need clean up due to weeds.

ADJOURNMENT: There being no further business, the meeting was adjourned at 8:41 p.m.

Respectfully submitted,

Melanie A. Carter, CMC
City Clerk

Kenneth Grey
Mayor of the City of Selma

Resolution Nos: 2011-42R, 2011-43R