

State of California



Fair Political Practices Commission

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December 10, 1984

Dennis Barlow
Yuba County Counsel
Courthouse -3rd Floor
215 Fifth Street
Marysville, CA 95901

Re: Your Request for Advice;
Our No. A-84-273

Dear Mr. Barlow:

You have written requesting advice pursuant to Government Code Section 83114(b) on behalf of all seven of the members of the Board of Directors of the Yuba County Water Agency ("Agency"). At our request, you have forwarded additional information, including the Statements of Economic Interests for six of the seven board members. One of the board members, Mr. Shintaffer, has apparently never filed one. Because he has failed to comply with the requirements of the Agency's Conflict of Interest Code, I am therefore unable to verify his potential financial interests; consequently, my advice regarding him may be incomplete. Mr. Shintaffer should forthwith file his Statement of Economic Interests.

QUESTION

You have asked for general advice as to whether any of the members of the board may be required to disqualify themselves from participating in various agency decisions relating to the construction of a canal to bring water to that portion of Yuba County located south of the Yuba River.

FACTS

You have provided the following background information in your letter:

Originally as part of the project to construct the New Bullards Bar Dam in the late sixties and early seventies, a canal was planned to take a portion of the water thereby retained through a canal system to that portion of Yuba County located south of the Yuba

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River. Due to lack of funding that portion of the project was deleted. However, in recent years plans were made to reactivate the South Yuba Canal project. To attempt to fund this project applications were filed for a loan from the federal government as authorized by Public Law 984. This loan was for \$21,600,000 and was authorized by Congress in 1983. As originally envisioned, the South Yuba Canal would bring 107,200 acre feet of water to the south part of the County and would provide irrigation water to Wheatland Water District and Brophy Water District. The South Yuba Water District was later formed to serve an unorganized portion of the south part of the County and was also included. In addition, municipal and industrial water would be made available to Linda County Water District, Olivehurst Public Utility District, the City of Wheatland, and Beale Air Force Base. The water would be delivered to the recipient district's boundaries and the districts would provide the distribution system and set the rates to their water users. Subsequently, Brophy Water District and South Yuba Water District decided to withdraw from the project. It is apparently their proposal to obtain water through the development of another conveyance system also from the Yuba River and funded from another source. The Water Agency is proceeding with a scaled-down version of the original PL 984 project to bring water to Wheatland Water District and the other municipal and industrial users.

In respect to the primary South Yuba Project, the Yuba County Water Agency Board will be required to approve a water allocation contract with Wheatland Water District, Linda Water District, Olivehurst Public Utility District, the City of Wheatland and Beale Air Force Base. In addition, the Board will be required to approve a repayment contract for the Wheatland Water District to provide that Wheatland repays the PL 984 loan. As far as the distribution of water to Brophy and South Yuba Water Districts, the agency will be required to approve a water allocation agreement with these two districts.

The Board of Directors of the Yuba County Water Agency consists of the five members of the Yuba County Board of Supervisors and two other members chosen to represent the water districts in the County, one, the districts to the north of the Yuba River and one, the districts to the south of the river.

In your letter, the Statements of Economic Interests for the six board members and our several telephone conversations you have provided the following material facts regarding the members of the board and their respective interests.

Mr. George Deveraux is the Chair of the Yuba County Board of Supervisors. He owns two residential properties in the Linda County Water District (Marysville). He also owns a parcel where a Mobil Service Station is situated, which is also located in Marysville and in the Linda County Water District. In addition, he owns 33 acres of agricultural property located, at least in part, in the same district. Five acres are in almonds, the remainder is fallow. Mr. Deveraux also has a source of income, in the form of a loan, who is Dr. William Vasquez, a Marysville physician.

Mr. Charles Center is a member of the Board of Supervisors. Together with his spouse, Mr. Center owns and operates the Olivehurst Drugstore, in Olivehurst, and the parcel on which it is located. In addition, Mr. Center owns five other parcels in Olivehurst and one in Marysville. Two are residential and three are vacant lots. All of his Olivehurst properties are in the Olivehurst Public Utility District. Irene Curtis is a source of income to Mr. Center as a result of an outstanding loan. Mr. Center owns no agricultural property in the jurisdiction.

Mr. Douglas Waltz is a member of the Board of Supervisors. Mr. Waltz owns two residential properties in the City of Wheatland. He also owns 908 acres of agricultural land in the Wheatland Water District, of which 503 acres are in rice, 300 acres are in almonds, and 105 acres are nonproductive. Mr. Waltz has an investment in the Rice Growers Association of California and it is also a source of income to him, as is Clyde Waltz, Tenneco West, Inc., and Continental Grain. The Rice Growers, Tenneco and Continental Grain all purchase crops from Mr. Waltz. Clyde Waltz rents farm lands from Douglas Waltz.

Mr. John Dower is also a member of the Board of Supervisors. Mr. Dower owns two residential properties in Marysville. In addition, his spouse owns approximately 20 acres in the south part of the County, but not in any organized water district. Sixteen acres of the property are in walnuts, the other four acres are nonproductive. He also holds an investment in Bank of America and in Credit-Finance.

Mr. J. E. McGill is a member of the Board of Supervisors. he is the owner of and has an investment in JETCO Underground, a construction company. He is the owner of and has an investment in Cathedral Oaks Water Company, which provides domestic water

services. The Company purchases water from Browns Valley Irrigation District. Browns Valley, in turn, acquires water from Yuba County Water Agency. The water which Browns Valley provides comes out of Collins Lake which it owns. Browns Valley purchases other water from Yuba County Water Agency. Because Browns Valley is a very old district it also has some water rights which preexist, and are therefore independent of, those of the Yuba County Water Agency.

In addition to the foregoing investments, Mr. McGill also owns and operates a cattle ranch on approximately 40 acres in the foothill area north of the Yuba River. He has a leasehold interest for gravel extraction in the New York Flat Basin at Brownsville. Apparently, this lease is with the Yuba County Water District. He also has a parcel of property at Oregon House and another at Loma Rica, both in Yuba County.

Mr. Michael Rue is a non-Board of Supervisors member. Mr. Rue has an investment interest in Catlett Warehouse, a grain storage partnership. He also has an investment in Payne, Rue and Forsman, a cattle ranching partnership. He also holds an investment in Rue, Thomas and Hoppin, another cattle ranching partnership. He receives income from each of the cattle ranching partnerships and has an outstanding loan from Catlett Warehouse in Pleasant Grove. In addition, Mr. Rue personally owns 753 acres in the South Yuba Water District which are in rice, cattle and wheat. He serves as the President of that water district.

Mr. Sam Shintaffer also is not a member of the Board of Supervisors. In your letter, you have stated that he owns 2,600 acres in the north area of Yuba County in rice and clover and 200 acres just south of the Yuba River in walnuts and fruits, the latter parcel is not in an organized water district. Mr. Shintaffer also serves as an officer in the Hallwood Irrigation Company which is located north of the Yuba River.

You have also provided a copy of the "Yuba County Agricultural Crops Report" which contains the relevant information shown in Exhibit "A," attached, with respect to agricultural activities in Yuba County. You have also provided me with the following information regarding water usage for growing various crops. This information represents a statewide average compiled by the University of California at Davis' California Water Resources Center.

Annual Water Usage Per Acre

Rice	7.94 acre feet
Irrigated Pasture	5.21 acre feet
Nuts	3.10 acre feet
Tree Fruits.	2.92 acre feet
Wheat	1.88 acre feet
Dry Pasture	0.00 acre feet (rainfall only)

ANALYSIS

The Political Reform Act (the "Act")^{1/} requires that a public official not "make, participate in making, or use his official position to influence" any governmental decision in which he has a financial interest. Section 87100.

Section 87103 defines those economic interests which can give rise to an official having a financial interest in a decision. Section 87103 states that a financial interest in a decision will exist if it is reasonably foreseeable that the decision will have a "material financial effect" upon any of the defined economic interests and that effect will be distinguishable from the decision's effect upon the "public generally." These economic interests are defined as follows:

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

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

(c) Any source of income, other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to,

^{1/} Government Code Sections 81000-91014. All statutory references are to the Government Code unless otherwise specified. You have previously requested and received an Attorney General's Opinion which considered and resolved any issues regarding common law conflicts of interest and Government Code Section 1090.

received by or promised to the public official within 12 months prior to the time when the decision is made.

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

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

Section 87103.

The Commission has adopted regulations defining the terms "material financial effect" (2 Cal. Adm. Code Section 18702) and "public generally" (2 Cal. Adm. Code Section 18703). In order to answer the questions which you have posed, it must be determined as to each member of the board whether any specific decision will have a reasonably foreseeable material financial effect upon any of his economic interests which will be distinguishable from the decision's effect upon the public generally.

The major decisions involved will affect the amount and cost of water available to the various districts involved. At present, none of the districts have in effect or planned any moratoriums relative to additional development as a result of existing water availability. However, you have stated that in the Linda County Water District and in the Olivehurst Public Utility District they are contracting to get municipal water in the future, which is contingent upon construction of the South Yuba Canal. If the canal is not constructed, then these locales would have to seek another source for their water. The outcome of these interrelated factors could have some effect on water rates and property uses in these two districts. In addition, the repayment of the PL 984 loan may well have some effect upon water rates in the affected areas.

We shall turn now to the analysis of the circumstances of the board members.

Real Property Interests

Generally, the real property interests can be divided into the following types of interests.

Inside the Affected Areas

Several board members hold real property interests situated in the areas or districts which would be serviced by the South Yuba Project. Some of these interests are in developed residential or commercial property. For these interests, the only likely effect would be on water rates. In the past, we have advised the Metropolitan Water District and East Bay Municipal Utility District that across-the-board rate changes effect everyone in the same manner (regardless of the quantity of use) and that, as a result, the "public generally" exception will apply. Consequently, so long as any effect on water rates will be uniform (or will be determined not by the Board but by the individual districts acting on their own), there will be no need to disqualify as to these developed properties.

At least one board member (Mr. Center) has undeveloped residential properties. Because no moratoriums have been proposed or implemented, it is unlikely that the South Yuba Project construction will have a material financial effect on these properties; however, if, as a result of special circumstances, their uses or values will change significantly, disqualification might well be required. If such special circumstances exist, please contact us for further advice.

Several of the members own agricultural properties within the affected area. The properties are either nonproductive or planted in various crops. Again, to the extent that any reasonably foreseeable effects on water rates will be across-the-board, or to the extent that those rates are set independently by the individual districts, not subject to the Board's control, there will be no requirement for disqualification.

As to the amount and availability of water to these properties, if it is reasonably foreseeable that a change will result from the South Yuba Project which will alter the use of the property significantly, thereby affecting its value or its income-producing potential disqualification may well be required. For instance, if unproductive acreage could be converted to rice production (or almonds, etc.) because of

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additional water made available from the Project, disqualification would be required. If such factors are present, please contact us for further advice.

Outside the Affected Areas

The properties outside the areas to be affected by the South Yuba Project will only be affected, if at all, by the loss of water which is being diverted by the canal. The same would be the case for Mr. McGill's Cathedral Oaks Water Company and Mr. Shintaffer's Hallwood Irrigation Company. If the South Yuba Project will produce such a result, then as to each interest thereby affected, the reasonably foreseeable effect must be measured against the standards set forth in 2 Cal. Adm. Code Section 18702(b). If this will be the case, you should provide us with specific facts so that we may provide further advice, particularly regarding the "public generally" exception.

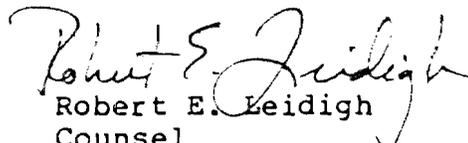
Investments and Sources of Income

The Board members also have various investments and sources of income which also require analysis to determine if any of these will be materially affected by the South Yuba Project. The analysis for each of these will follow the guidelines set forth above. Across-the-board rate changes will not require disqualification. However, effects resulting from changes in the amount and availability of water may be significant and may require disqualification.

CONCLUSION

The foregoing represents the best advice which this agency can provide to you and your clients at this time. As specific decisions arise, whose foreseeable impacts in terms of water rates or water rights can be quantified, we stand ready to provide you with additional assistance should you so desire.

Sincerely,


Robert E. Leidigh
Counsel
Legal Division

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Attachments