



# California Fair Political Practices Commission

March 5, 1986

Jonathan T. Smith  
Staff Counsel  
San Francisco Bay Conservation  
and Development Commission  
Thirty Van Ness Avenue, Suite 2011  
San Francisco, CA 94102-6080

Re: Your Request for Advice  
Our File No. A-86-041

Dear Mr. Smith:

Thank you for your letter requesting advice on behalf of the Commissioners and staff of the San Francisco Bay Conservation and Development Commission concerning their duties under the conflict of interest provisions of the Political Reform Act.<sup>1/</sup>

## FACTS

The San Francisco Bay Conservation and Development Commission ("Commission") has permit authority over filling, extraction of materials, and any substantial change in use that occurs within San Francisco Bay, a 100-foot shoreline band that surrounds the Bay, salt ponds, managed wetlands, and certain waterways that empty into the Bay. In addition, under federal law the Commission must agree that activities that are supported by a federal grant and that affect land or water uses within the Commission's jurisdiction are consistent with the Commission's authorities before the federal agency can make the grant. The Commission is composed of 27 members who represent local governments, the public, the Legislature, and various state and federal agencies. Of those 27 members, local governments are represented by one supervisor from each of the nine surrounding counties and four members of the Association of Bay Area Governments (ABAG).

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1/ Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated.

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Recently, the Commission received for its review documents submitted by the East Bay Municipal Utilities District (the "District") concerning two proposed District projects. The District is responsible for the collection, treatment, and discharge of sewage within the East Bay. Like most of the nation's older urban sewage treatment systems, the District's system frequently overflows during wet weather and spills untreated sewage into storm drainage courses or directly into San Francisco Bay. The District currently holds a National Pollutant Discharge Elimination System permit that contains a schedule requiring the District to achieve secondary treatment of all of its discharges. The District is presently advancing its two proposed projects for review by the San Francisco Bay Regional Water Quality Control Board, other interested agencies, and the public to correct the District's overflow problem and to comply with federal law.

The first project would upgrade the District's storage and treatment capacity and limit or relocate its overflow discharges. The District's studies have developed a range of four project alternatives from which the District will choose a final project. Construction costs increase substantially with the higher treatment levels among the four alternatives. Estimated user charges would range from \$10 to \$44 per month on the average bill. Essentially the severity of the impact on Bay water quality will vary inversely with the cost and user charges associated with the chosen alternative.

The second project would replace sewer collection systems within the communities that make up the District's Special District No. 1 and that discharge into the District's interceptor lines. The District estimates that the construction of the inflow/infiltration correction program would cost between \$200 and \$300 million. Coupled with the cost of the first project, average user charges would increase between \$30 and \$74 per month, exclusive of operation and maintenance costs.

The first project would involve the construction of facilities that require a Commission permit. Both projects may involve some use of federal funds. In addition, because of the Commission's interest in Bay water quality and the Commission's trust responsibilities, the Commission staff is currently involved in an ongoing review of all documents dealing with these two projects that the District releases for public review.

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#### QUESTION

Does the Political Reform Act prohibit Commissioners and Commission staff members who live within the District's service area from participating in the Commission's review of the District's projects because the Commission's actions on the project could affect the utility rates that the Commissioners and Commission staff members pay?

#### CONCLUSION

The Political Reform Act does not prohibit the Commissioners and Commission staff from participating in the Commission's review of the District's projects because of the potential effect the projects could have on utility rates paid by the Commissioners and Commission staff.

#### ANALYSIS

Section 87100 prohibits a public official from making, participating in, or using his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest. An official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official or a member of his or her immediate family or on specified economic interests. Section 87103. Commission regulation 2 Cal. Adm. Code Section 18702.1(a)(4) clarifies the underlined language by specifying that disqualification will be required if it is reasonably foreseeable that the personal expenses, income, assets, or liabilities of the official or his or her immediate family will be increased or decreased by at least \$250 by the decision. However, disqualification is not required if the effect on the official or on his or her immediate family will not be distinguishable from its effect on the public generally. 2 Cal. Adm. Code Section 18702.1(c)(1).

It is clear that the personal expenses of some staff members could be affected by at least \$250 by the Commission's actions. The question then becomes whether the impact of the Commission's actions on those staff members will be distinguishable from the impact on the "public generally." A material financial effect of a governmental decision on an official's financial interests is distinguishable from its effect on the public generally unless the decision will affect

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the official's interest in substantially the same manner as it will affect all members of the public or a significant segment of the public. 2 Cal. Adm. Code Section 18703. The Commission's present action, while not affecting everyone within the Commission's jurisdiction, will affect all customers of the District. Clearly, this constitutes a significant segment of the public. (See Commission Opinions: Owen, 2 FPPC Opinions 77, No. 76-005, June 2, 1976; and Legan, 9 FPPC Opinions 1, No. 85-001, August 20, 1985.) Furthermore, we have in the past advised that across-the-board rate changes affect everyone in the same manner, regardless of the quantity of use. Advice letter to Dennis Barlow, A-84-273. Consequently, so long as any effect on utility rates will be uniform throughout the District, the "public generally" exception will apply and disqualification will not be required.

Should you have any questions regarding this advice, please do not hesitate to call me at (916) 322-5901.

Sincerely,

John G. McLean  
Counsel  
Legal Division

JGM:plh

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**SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION**

THIRTY VAN NESS AVENUE, SUITE 2011

SAN FRANCISCO, CA 94102-6080

PHONE: (415) 557-3686



January 29, 1986

Ms Barbara A. Milman  
Fair Political Practices Commission  
P.O. Box 807  
Sacramento, California 95804

**SUBJECT: Possible Disqualification of Bay Commissioners and Staff Members**

Dear Ms Milman:

Recently, the San Francisco Bay Conservation and Development Commission ("the Commission") has received for its review documents submitted by the East Bay Municipal Utilities District ("the District") concerning two proposed District projects. The question has arisen whether Commissioners and Commission staff members who live within the District's service area can participate in the Commission's review of the District's projects because the Commission's actions on the projects could affect the utility rates that the Commissioners and Commission staff members pay. To resolve this question, staff now requests pursuant to Government Code Section 83114(b) and 2 California Administrative Code Section 18329 that you provide us with formal written advice concerning the application of Government Code Section 87100 to this situation.

Before I provide our staff analysis of the problem, let me provide some background information on the Commission and on the District's projects. The Commission has permit authority over filling, extraction of materials, and any substantial change in use that occurs within San Francisco Bay, a 100-foot shoreline band that surrounds the Bay, salt ponds, managed wetlands, and certain waterways that empty into the Bay. In addition, under federal law the Commission must agree that activities that are supported by a federal grant and that affect land or water uses within the Commission's jurisdiction are consistent with the Commission's authorities before the federal agency can make the grant. The Commission is composed of 27 members who represent local governments, the public, the Legislature, and various state and federal agencies.

The District is responsible for the collection, treatment, and discharge of sewage within the East Bay. Like most of the nation's older urban sewage treatment systems, the District's system

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frequently overflows during wet weather and spills untreated sewage into storm drainage courses or directly into San Francisco Bay. The District currently holds a National Pollutant Discharge Elimination System permit that contains a schedule according for the District to achieve secondary treatment of all of its discharges. The District is presently advancing two projects for review by the San Francisco Bay Regional Water Quality Control Board, other interested agencies, and the public to correct the District's overflow problem and to comply with the Act.

The first project would upgrade the District's storage and treatment capacity and limit or relocate its overflow discharges. The District's studies have developed a range of four project alternatives from which the District will choose a final project. One alternative would meet the present requirement for secondary treatment of all discharges, but it would be very costly. The other three alternatives range from relatively simple improvements to one that would achieve a high level of treatment, but not secondary treatment, for most flows. These three alternatives would have varying adverse impact on Bay water quality that would all exceed the impact of the first alternative and would all require the Regional Board to waive the secondary treatment requirement that the District's permit now imposes. Construction costs increase substantially with the higher treatment levels among the four alternatives. Estimated user charges would range from \$10 to \$44 per month on the average bill. See attached District summary. Essentially the severity of the impact on Bay water quality will vary inversely with the cost and user charges associated with the chosen alternative.

The second project would replace sewer collection systems within the communities that make up the District's Special District No. 1 and that discharge into the District's interceptor lines. These community systems are subject to heavy inflow and infiltration by ground and surface waters that increase the wet weather volume that the District's downstream interceptors and treatment plans must handle. Although this project involves work that is almost entirely inland, this second project is integrally related to the first project and to the ultimate quality of the District's wastewater discharges into the Bay. The District estimates that the construction of the inflow/infiltration correction program would cost between \$200 and \$300 million. Coupled with the costs of the first project, average user charges would increase between \$30 and \$74 per month, exclusive of added operation and maintenance costs.

The first project would involve the construction of facilities that require a Commission permit. Both projects may involve some use of federal funds. In addition, because of the Commission's interest in Bay water quality and the Commission's trust responsibilities, the Commission staff is currently involved in an ongoing review of all documents that deal with these two projects that the District releases for public review.

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California Government Code Section 87100 prohibits any public official from participating in any way in a governmental decision in which the official knows or has reason to know that he or she has a financial interest. Government Code Section 87103 and 2 California Administrative Code Section 18702.1(c) provide, however, that a public official does not need to disqualify himself if the financial effect on the official would not be distinguishable from the financial effect on the public generally. Commission staff contacted the FPPC staff informally on this question and received copies of four FPPC opinions that support a conclusion that Commissioners and Commission staff members who reside within the District's service area need not disqualify themselves because the impact of the Commission's actions would not affect the Commissioners or staff members in a way that is distinguishable from the impact on the general public. These four opinions are In the Matter of: Opinion requested by John Ferraro (4 FPPC Ops 62 November 7, 1978), In the Matter of: Opinion requested by James Callanan, et al. (4 FPPC Ops 33 April 5, 1978), In the Matter of: Opinion requested by Gary Gillmor (3 FPPC 38 April 6, 1977), and In the Matter of: Opinion requested by William Owen (2 FPPC 77 June 2, 1976).

Nevertheless, because of the potential impact of this question on the Commission members and staff members who reside within the District's service area, we believe that it is important to obtain written advice from the FPPC on this issue. Thank you very much for your cooperation in this matter. If you have any questions or need any further information, please feel free to contact me at your convenience.

Very truly yours,



JONATHAN T. SMITH  
Staff Counsel

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## EVALUATION OF ALTERNATIVES

### Summary

The four alternatives provide a wide range of benefits for a wide range in costs. These alternatives were evaluated using 12 criteria, 7 of which are presented here:

- . Water Quality Protection
- . Capital Costs
- . Overflow Frequency
- . Overflow Volume
- . Cost-Effectiveness of Overflow Control
- . Reduction in Mass Emissions
- . Impact on District User Charges

The matrix below summarizes the evaluations. Additional details are presented on the following pages.

TABLE 1-1  
EVALUATION MATRIX OF THE DISTRICT'S  
WET WEATHER CONTROL ALTERNATIVES

Evaluation Parameter	Units	Existing Conditions	Secondary Treatment <sup>(2)</sup>	Enhanced Primary	Primary Treatment	Hydraulic Improvements
Water Quality Protection		-	Maximum	San Leandro Bay	Substantial	Minimum
Capital Costs <sup>(1)</sup>	(\$ million)	-	440	240	120	67
Overflow Frequency	(times/year)	10	0.05	0.5	0.5	4
Overflow Volume	(mg/year)	180	<1	18	28	67
Cost-Effectiveness	(\$ million/overflow prevented)	-	6.2	3.6	1.8	1.6
Wet Weather Emissions						
BOD	(% existing)	100	<10	32	33	37
Chromium	(% existing)	100	<10	32	33	37
Coliform Bacteria	(% existing)	100	<1	10	14	43
District User Charge	(\$/month)	4	44	25	15	10

(1) ENR=\$100

(2) The development of Alternative 1 Secondary Treatment consisted of three subalternatives, resulting in a range of annual overflow volumes and emissions. The actual overflow volume and mass emissions will depend on the balance between specific storage volumes and treatment capacities finally selected to achieve secondary treatment.



# California Fair Political Practices Commission

February 6, 1986

Jonathan T. Smith  
Staff Counsel  
San Francisco Bay Conservation  
and Development Commission  
Thirty Van Ness Avenue, Suite 2011  
San Francisco, CA 94102-6080

Re: 86-041

Dear Mr Smith:

Your letter requesting advice under the Political Reform Act has been received by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact me directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or unless more information is needed to answer your request, you should expect a response within 21 working days.

Very truly yours,

A handwritten signature in cursive script that reads "John G. McLean".

John G. McLean  
Counsel  
Legal Division

JGM:plh