



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street • Suite 3000 • Sacramento, CA 95811
(916) 322-5660 • Fax (916) 322-0886

July 15, 2020

Chris Moskal
Attorney
Ca Water Boards
State Water Resources Control Board
1001 I Street
Sacramento CA 95814

Re: Your Request for Informal Assistance
Our File No. I-20-071

Dear Mr. Moskal:

This letter responds to your request for advice on behalf of Hector Bedolla, Board Member of the Regional Water Quality Control Board, North Coast Region, regarding the conflict of interest provisions of the Political Reform Act (the “Act”).¹

Please note that we are only providing advice under the conflict of interest provisions of the Act and not under other general conflict of interest prohibitions such as common law conflict of interest or Section 1090.

Also note that we are not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), and any advice we provide assumes your facts are complete and accurate. If this is not the case, or if the facts underlying these decisions should change, you should contact us for additional advice. Because you have not been able to provide pertinent facts pertaining to the applicable materiality standard under the Act’s conflict of interest provisions, we can offer only informal assistance.²

QUESTION

Does the development and adoption of the North Coast Water Board’s regulatory program for discharges from vineyards (the “Vineyard Permit”) have a reasonably foreseeable and material financial impact on Mr. Bedolla’s financial interests such that his participation would be prohibited under the Act?

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

² Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

CONCLUSION

Yes. Mr. Bedolla has a prohibited financial interest in the Vineyard Permit decision. Chenoweth Vineyard Management, a source of income to him, would be subject to fees and compliance costs through participation in the Vineyard Permit, and based upon the facts provided, the fees and costs would be material under the Act. (Regulation 18702.1(a).)

FACTS AS PRESENTED BY REQUESTER

The Regional Water Quality Control Board, North Coast Region (North Coast Water Board) is in the process of developing an Order to regulate discharges from vineyards (the “Vineyard Permit”). The purpose of the Vineyard Permit is to ensure that owners and operators of vineyards (dischargers) develop plans to monitor and report on irrigation and storm water runoff to ensure that vineyards are not polluting waters of the state. Failing to take actions required by the Vineyard Permit may subject dischargers to progressive enforcement and possible monetary penalties.

The Vineyard Permit will be a general permit and will not name specific dischargers. All dischargers in the region may enroll under the Vineyard Permit or seek an individual waste discharge permit. Control Board staff anticipates that nearly all dischargers will enroll in the general Vineyard Permit rather than electing to seek coverage under an individual permit. They anticipate up to 6,300 dischargers may enroll in the Vineyard Permit.

Control Board staff and the North Coast Water Board will engage in workshops and hearings with representatives from relevant stakeholder groups in the process of developing the Vineyard Permit. The final draft of the Vineyard Permit will then be brought before the North Coast Water Board for adoption. Based upon similar existing Orders, Control Board staff anticipates the following costs for participation in the Vineyard Permit:

- \$8-10 per acre for development of a Farm Plan (one-time cost)
- \$1-2 per acre for Vineyard Permit enrollment (one-time cost)
- \$6-12 per acre for group monitoring costs (annual cost)
- Additional costs associated with implementation of best management practices (BMPs) on vineyards and riparian management zones.

Mr. Bedolla is currently a Board Member of the North Coast Water Board. He is also a salaried employee of Chenoweth Vineyard Management (CVM), where he serves as a Vineyard Manager. In this capacity, he receives a set annual income, and does not hold equity in CVM.

CVM is a privately held company that owns and farms approximately 150 acres of vineyard land within the North Coast Region. CVM is also currently providing consulting services for the development of 60 additional acres of vineyard in multiple locations within the North Coast Region. And CVM is in the process of developing a 16-acre vineyard project near Sebastopol. Combined, this brings CVM’s total current and anticipated acreage to 226 acres within the jurisdiction of the North Coast Water Board. Mr. Bedolla estimates that CVM’s annual gross revenues exceed \$1,000,000.

ANALYSIS

Section 87100 prohibits any public official from making, participating in making, or otherwise using his or her official 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, within the meaning of the Act, if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on one or more of the public official’s interests. (Section 87103; Regulation 18700(a).) The interests relevant to Mr. Bedolla are:

- *Source of Income*: CVM has paid Mr. Bedolla a salary of more than \$500 in the 12 months preceding the decision. (Section 87103(c).)
- *Business Entity*: Mr. Bedolla is an employee of CVM. (Section 87103(d).)

Foreseeability and Materiality

A financial effect on a financial interest is presumed to be reasonably foreseeable if the financial interest is explicitly involved in a decision, and an interest is explicitly involved in a decision if the interest is a named party in, or the subject of, a governmental decision before the official or the official's agency. Where a financial interest is not explicitly involved in a decision, the foreseeability standard is whether the financial effect can be recognized as a “realistic possibility and more than hypothetical or theoretical.” (Regulation 18701(b).)

When a governmental decision would have a reasonably foreseeable financial effect on a public official’s source of income, and that source of income is a business entity, Regulation 18702.1 provides the relevant standards for determining whether that financial effect is material. (See Regulation 18702.3(a)(4).) Regulation 18702.1 provides that such a financial effect is material where the decision may result in an increase or decrease of the entity’s annual gross revenues, or the value of the entity’s assets or liabilities, in an amount equal to or greater than \$1,000,000 or five percent of the entity’s annual gross revenues and the increase or decrease is at least \$10,000. (Regulation 18702.1(a)(2).) Similarly, such an effect is material where the decision may cause the entity to incur or avoid additional expenses or to reduce or eliminate expenses in an amount equal to or more than \$250,000, or one percent of the entity’s annual gross revenues and the change in expenses is at least \$2,500. (Regulation 18702.1(a)(3).)

Working from a total of 226 acres and using the highest estimates provided, CVM is likely to incur one-time costs of \$2,712 to enroll in the Vineyard Permit program. Control Board staff then estimates that ongoing annual costs would be around \$2,712 for group monitoring; plus any additional costs associated with compliance including implementation of best management practices (BMPs) for vineyard and riparian management zones. Further information provided via email indicates that BMP costs may vary widely for different dischargers, based upon the compliance requirements as applicable to unique geographic parcels.

At this time, Mr. Bedolla has only indicated that the annual gross revenue of CVM “exceeds” \$1,000,000. While we have requested a more accurate estimate of CVM’s annual gross revenues, you have not been able to provide one. Accordingly, we can only generally advise that based on the information provided, and based on a the materiality threshold applicable to a business with \$1,000,000 in annual gross revenues, it appears the decisions will have a foreseeable and material effect on CVM as the decision will affect CVM’s expenses by at least one percent (\$10,000). Accordingly, we generally advise that Mr. Bedolla is disqualified from taking part in the decision.³

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

Sincerely,

Dave Bainbridge
General Counsel

A handwritten signature in blue ink, appearing to read "EM Boyd", is positioned above the typed name of the signatory.

By: Erika M. Boyd
Senior Counsel, Legal Division

EMB:aja

³ We note that the public generally exception permits an official to take part in certain decisions that establish or adjust assessments, taxes, fees, or rates for water, utility, or other broadly provided public services or facilities that are applied equally, proportionally, or by the same percentage to the official's interest and other businesses, properties, or individuals subject to the assessment, tax, fee, or rate. (Regulation 18703(e)(1).) Based on the facts provided, the exception would not apply to decisions identified as the decisions also establish the parameters of the permit program including but not limited to BMPs. However, to the extent that the permit fee amount is discussed and determined only after the parameters of the permit program are established and the decision regarding the permit fee can be segmented as provided in Regulation 18706, Mr. Bedolla may wish to seek additional advice regarding the potential application of the public generally exception.