FAIR POLITICAL PRACTICES COMMISSION
428 J Street • Suite 620 • Sacramento, CA 95814-2329
(916) 322-5660 • Fax (916) 322-0886

October 29, 2013

Bennett Drake
Drake Enterprises, Inc.

REDACTED

Re: Warning Letter
FPPC No. 11/257: Bennett Drake

Dear Mr. Drake:

The Fair Political Practices Commission (the "Commission") enforces the provisions of the Political Reform Act (the "Act")[1] found in California Government Code Section 81000 and following. This case was opened by the Commission based upon a sworn complaint which alleged that 1) you proposed to the RCWD staff and Board that your clients should be allowed to participate in the RCWD's irrigation monitoring pilot program – Wireless Telemetry Pilot Project (WTPP) – and 2) you proposed that the RCWD should enter into negotiations with compost providers to get compost for free for yourself and your clients.

Under the Act, no public official at any level of state or local government may make, participate in making, or in any way use or attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a disqualifying conflict of interest. (Section 87100.) To determine whether an individual has a disqualifying conflict of interest, the Commission generally employs the following sequenced analysis: (1) is the individual a public official; (2) did the official make, participate in making, or use or attempt to use the official position to influence a governmental decision; (3) what are the official's economic interests, (4) are the official's economic interests directly or indirectly involved in the governmental decision; (5) what is the applicable materiality standard for each economic interest involved; and (6) is it reasonably foreseeable that the governmental decision will have a material financial effect on the official's economic interest. (See Regulation 18700.)

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[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.

Wireless Telemetry Pilot Project (WTPP)

Decisions regarding which farms would participate in the WTPP:

The Commission has completed its investigation of the facts in this case. Specifically, the Commission found that in or about 2009 and/or 2010, you: 1) were a member of the Board of Directors for the Rancho California Water District (RCWD); 2) attempted to influence a governmental decision when you recommended to RCWD staff to include farms you managed to participate in the WTPP; 3) the farms you recommended were sources of income to you; 4) the farms you recommended were directly involved in the decision; 5) the financial effect of the decision on the farms you recommended was material; and 6) the material financial effect was reasonably foreseeable. Thus, you had a disqualifying conflict of interest under the Act and should have refrained from recommending to RCWD staff to include farms you managed to participate in the WTPP.

However, upon review of the evidence available, it appears there are several mitigating factors. After the initial contacts between you and RCWD staff, an RCWD staff member told you that no properties you managed could be part of the WTPP because of a previous "advice letter" from RCWD counsel regarding a different, but similar, project in which your clients could not participate because there would be a Section 1090 conflict. It appears that after you learned of the possible Section 1090 conflict, you did not attempt any further contact with RCWD staff in this regard. Additionally, no farms managed by you participated in the WTPP. Thus, the totality of the circumstances shows that there was minimal public harm in this regard.

This letter serves as a written warning. You are advised that your failure to comply with the provisions of the Political Reform Act in the future could result in an enforcement action. Additionally, the information in this case will be retained, and may be used against you should an enforcement action later become necessary based on future conduct and/or newly discovered information. Please be advised that your failure to comply with the provisions of the Act in the future may result in monetary penalties of up to $5,000 for each violation.

A warning letter is an FPPC case resolution without administrative prosecution or fine. However, the warning letter resolution does not provide you with the opportunity for a probable cause hearing or hearing before an Administrative Law Judge or the Fair Political Practices Commission. If you wish to avail yourself of these proceedings by requesting that your case proceed with prosecution rather than a warning, please notify us within ten (10) days from the date of this letter. Upon your notification, the FPPC will rescind this warning letter and proceed with administrative prosecution of this case. If we do not receive such notification, this warning letter will be posted on the FPPC's website ten (10) days from the date of this letter.

Decisions regarding approval of the WTPP by the RCWD Board:

The evidence obtained during our investigation showed that the RCWD Analyst who was leading the WTPP chose six farms to participate in the program without any input or approval from the RCWD Board. None of the participating farms were owned or managed by you. When

the RCWD staff presented the WTPP to the RCWD Board (at both the RCWD Governmental Affairs sub-Committee and the full RCWD Board) for approval, the participating farms had already been chosen. Thus, even though you commented at RCWD Governmental Affairs and RCWD Board meetings that it was unfair to exclude your clients from such programs as the WTPP, none of your clients were involved in the decisions to approve the WTPP since their farms were not part of the WTPP. Thus, there was no violation of the Act in this regard.

Compost

After a full investigation, the Enforcement Division has found insufficient evidence to find a violation of the Act. The evidence obtained shows that you were not advocating for free compost for you and your clients, but rather, for all RCWD members. Thus, there was no violation of the Act in this regard.

If you have any questions regarding this matter, please feel free to contact me at 916-322-5660.

Sincerely,

REDACTED

Angela J. Brereton
Senior Commission Counsel
Enforcement Division