



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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December 06, 2021

Brandon A. Criss
MPA
Siskiyou County Supervisor District One
P.O. Box 183
Macdoel CA 96058

Re: Your Request for Advice
Our File No. A-21-121

Dear Mr. Criss:

This letter responds to your request for advice 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. Lastly, the Commission does not provide advice with respect to past conduct. (Regulation 18329(b)(6)(A).) Therefore, nothing in this letter should be construed to evaluate any conduct that may have already taken place, and any conclusions contained in this letter apply only to prospective actions.

QUESTION

May you participate in the adoption of a Groundwater Sustainability Plan (“GSP”) for the Groundwater Basins in Siskiyou County, including the one for the Butte Valley, where property owned by a family LLC in which you have an interest, is located?

CONCLUSION

Yes. Based on the facts provided, it is not reasonably foreseeable that the GSP adoption will have a material financial effect on your financial interests. Thus, you do not have a prohibitive financial interest in the decision to approve the GSP for Butte Valley and may participate in that

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 18109 through 18998 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.

decision, as well as the decisions to approve GSPs for the other groundwater basins. However, we note that this conclusion is limited to your participation in GSP adoption decision as described, and you may have a prohibitive financial interest in future decisions implementing aspects of the Butte Valley GSP such as subsequent decisions related to the Project Management Actions specified by the GSP. As specific decisions regarding the implementation of the GSP are identified, you wish to seek further advice once the details of these decisions are known.

FACTS AS PRESENTED BY REQUESTER

You are a board member with the Siskiyou County Flood and Water Control District (“District”) as well as member of the Siskiyou County Board of Supervisors. The District is the governing body charged with implementing the Sustainable Ground Water Management Act (“SGMA”) for Siskiyou County.

Sustainable Groundwater Management Act

The 2014 Sustainable Groundwater Management Act (“SGMA”) was established to provide local and regional agencies the authority to sustainably manage groundwater resources through the development and implementation of GSPs for high and medium priority subbasins (e.g., Butte Valley). Locally controlled and governed Groundwater Sustainability Agencies (“GSAs”) must be formed for all high-and medium-priority groundwater basins in California. In accordance with SGMA, a GSP was developed and will be implemented by the District, the GSA representing the Basin. The California Department of Water Resources (“DWR”) and the State Water Resources Control Board (“SWRCB”) provide primary oversight for implementation of SGMA. DWR is the state’s management agency for SGMA and will review the GSP’s once submitted.

There are four medium priority basins in Siskiyou County; Butte, Scott, Shasta and Tulelake. These basins are required to develop and submit a GSP by January 31, 2022. The District is the GSA for the Butte, Scott, and Shasta Valley basins. The Siskiyou County Board of Supervisors serve as a member of the Tulelake GSA along with Tulelake Irrigation District, Modoc County, and the City of Tulelake.

The District will be deciding on a Groundwater Sustainability Plan that establishes the path that the Butte Valley basin will take to achieve sustainable groundwater management within 20 years. Among other things, the plan sets forth the existing water conditions in the basin, sets a sustainability goal for the basin, and sets forth a series of Project Management Actions (“PMAs”) to be implemented in the basin to achieve sustainability, and then describes how the plan will be implemented. The final GSP will be presented to the District Board for adoption in December 2021 and will be submitted to DWR no later than January 31, 2022.

Near-term management actions (2022-2027) listed in the Butte Valley Plan include:

- Avoiding Significant Increase of Total Net Groundwater Use from the Basin
- Management of Groundwater Use and Recharge
- Conservation Easements
- Dorris Water Meter Installation Project
- Irrigation Efficiency Improvements

- Voluntary Managed Land Repurposing (not including Conservation Easements)
- Well Replacement (Note: This project is in the planning phase and funding options to assist well owners will be explored during the first five years of GSP implementation.)

Potential Future projects and management actions include:

- Strategic Groundwater Pumping Reductions
- Alternate Lower ET Crops
- Butte Creek Diversion Relocation
- Butte Valley National Grasslands Groundwater Recharge Project

You also state that some PMAs are only in a conceptual phase, such as strategic groundwater pumping curtailments and voluntary managed land repurposing to reduce groundwater use. Subsequent conditions and decisions would be necessary to implement such actions. Other actions are currently in their planning phase, such as a PMA for well owners to increase their irrigation efficiency (and in some cases, yields) through infrastructure or equipment improvements. PMAs do not include limits on pumping groundwater. Such limits could be implemented through subsequent action in the event of overdraft or subsidence. As explained in the GSP: “The PMAs listed in Chapter 4 reflect a collection of potential options that may be employed to support the sustainability goals outlined in this plan. Although PMAs have been categorized into three tiers based on the anticipated timeframe for initiation and implementation, these categorizations may change as additional monitoring data, information, and sources of funding are gained and as conditions change.” After the GSP is adopted, District staff will begin to evaluate the feasibility of PMAs, will rank them, and seek funding for them. So, the GSP creates a road map for implementing future PMAs that could impact well owners, but that map will be continually refined as more information on the feasibility, costs and anticipated benefits of these PMAs becomes available.

Chapter 4 of the Butte Valley GSP notes that, to reach sustainable groundwater levels, PMAs such as strategic groundwater pumping reductions to prevent well outages may need to be temporarily or permanently implemented. This may involve reductions in groundwater pumping during particular months of the year near impacted groundwater wells. The GSA has the authority to impose pumping reductions. However, as you noted in a telephone conversation, the plan itself sets sustainability goals, but does not set limits for groundwater pumping.

Your Financial Interests

You have an ownership interest of less than 10 percent in L & R Properties, a family LLC, which owns farmland in the Butte Valley. It will therefore be subject to the Butte Valley GSP, once adopted. This farmland is currently leased by a tenant. In a follow-up telephone call, you noted that the tenant leases 230 acres, and operates a nursery growing strawberry plants. You do not receive \$500 or more from rental income in a 12-month period. There are existing wells on the property that provide water for agriculture. The business that leases the farmland is seeking to drill a new agricultural well. The LLC is the permit applicant, but the business leasing the property will be responsible for the well drilling.

You state that well permits are issued by the Siskiyou County Community Development Department, Division of Environmental Health, and well permit decisions are made at the staff level. In the future, the District may share information with the County that assists them in evaluating well applications in the Butte Valley, but at present the GSP would not impact a pending a well application.

You also note that GSP implementation will require the District to either set fees for those subject to SGMA within the Butte Valley, or the County will have to pass a special tax to cover the cost of the program. The LLC will be impacted by the setting of those fees or the implementation of the tax however, that this decision will not be made now.

In addition, you run about 25 head of sheep on land irrigated from a well subject to SGMA. This is on property owned by the LLC, but not subject to the lease by the tenant. Gross income depends on the year. This year you anticipate approximately \$2,225 in gross income, but state this is basically a hobby for you and your son.

ANALYSIS

The Act's conflict of interest provisions ensure that public officials will perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them. (Section 81001(b).) Section 87100 prohibits a 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. Section 87103 provides that a public official has a "financial interest" in a decision, within the meaning of the Act, if it is reasonably foreseeable that the decision will have a material financial effect on one or more of the public official's interests that is distinguishable from the decision's effect on the public generally.

Section 87103 also describes the interests from which a conflict of interest may arise under the Act. As pertinent to the facts provided, those economic interests include "[a]ny business entity in which the public official has a direct or indirect investment worth two thousand dollars (\$2,000) or more." (Section 87103(b).) In this case, you have business interests in L & R Properties and the sheep raising enterprise.²

Foreseeability and Materiality

We must determine whether the financial effect of those decisions on each of the respective interests is both foreseeable and material.

When a public official's economic interest is explicitly involved in a governmental decision, Regulation 18701(a) provides that "[a] financial effect on a financial interest is presumed to be reasonably foreseeable if the financial interest is a named party in, or the subject of, a governmental

² Section 82033 defines "interest in real property" for purposes of the Act and provides that an individual has a real property interest in the real property of any business or trust in which the individual or immediate family owns a 10-percent interest or greater. You state that you have an ownership interest of less than a 10-percent in your family's LLC. Therefore, you do not have a real property interest in your family LLC's farmland.

decision before the official or the official's agency. A financial interest is the subject of a proceeding if the decision involves the issuance, renewal, approval, denial, or revocation of any license, permit, or other entitlement to, or contract, with the financial interest, including any decision affecting a property interest as described in Regulation 18702.2(a)(1)-(6)." (Regulation 18701(a).) Where the financial interest is not explicitly involved in a decision, the financial effect is reasonably foreseeable if it can be recognized as a realistic possibility, more than hypothetical or theoretical. (Regulation 18701(b).) The decision at issue involves the adoption of a GSP which will establish groundwater sustainability goals for the Butte Valley. As such, your interests in L & R Properties and the sheep raising enterprise are not a named party in or the subject of the decision. Under Regulation 18701(b), you will have a financial interest in the adoption of a GSP if there is a realistic possibility that the decision will have a material financial effect on any of your economic interests.

Business Entities

Regulation 18702.1 provides, in relevant part, that the reasonably foreseeable financial effect of a governmental decision on an official's financial interest in a business entity, including a business entity that is a source of income to the official, 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 at least \$10,000. (Regulations 18702.1(a)(2)(A)-(B), 18702.3(a)(4).) The reasonably foreseeable financial effect of a governmental decision on an official's business entity interest is also material where the decision may cause the entity to incur, avoid, reduce, or eliminate expenses equal to or greater than \$250,000, or one percent of the entity's annual gross revenues and at least \$2,500. (Regulation 18702.1(a)(3)(B).)

Also under the business entity materiality standard, the reasonably foreseeable financial effect of a governmental decision on an official's financial interest in a business entity is material if the official knows or has reason to know that the business has an interest in property and:

- The property is the subject of the proceeding under Regulations 18701(a) and 18702.2(a)(1) through (6).
- There is clear and convincing evidence that the decision would have a substantial effect on the property. (Regulation 18702.1(a)(1) and (4).)

Under Regulation 18702.2(a)(1) through (6), property is the subject of the decision if the decision:

- Involves the adoption of or amendment to a development plan or criteria applying to the parcel.
- Determines the parcel's zoning or rezoning, other than a zoning decision applicable to all properties designated in that category; annexation or de-annexation; inclusion in or exclusion from any city, county, district, or local government subdivision or other boundaries, other than elective district boundaries.
- Would impose, repeal, or modify any taxes, fees, or assessments that apply to the parcel.
- Authorizes the sale, purchase, or lease of the parcel.

- Involves the issuance, denial or revocation of a license, permit or other land use entitlement authorizing a specific use of or improvement to the parcel or any variance that changes the permitted use of, or restrictions placed on, the property.
- Involves construction of, or improvements to, streets, water, sewer, storm drainage or similar facilities, and the parcel will receive new or improved services that provide a benefit or detriment disproportionate to other properties receiving the services.

In regard to the potential financial effect on the property owned by the LLC, the facts do not indicate that the property is the subject of the decision to approve the GSP for Butte Valley. As described, the GSP establishes goals for achieving sustainable groundwater management within 20 years, many aspects of the GSP are only at a conceptual phase, and subsequent conditions and decisions would be necessary to implement future actions. You have provided no indication that the GSP and of the decisions identified in Regulation 18702.2(a)(1) through (6), above, such as the adoption or amendment of a development plan or criteria applying to the property; imposition, repeal, or modification of taxes, fees, or assessments applying to the property; or the issuance, denial, or revocation of a land use entitlement. Moreover, there is no clear and convincing evidence that the approval the plan would have a substantial effect on the property.

Turning to the potential financial effect of the decision to adopt a GSP on your interests in L & R Properties, LLC and the sheep raising enterprise, the facts also do not indicate that a change in either entities' annual gross revenues, or the value of either entities' assets or liabilities, is anticipated as a result of the decision to adopt a GSP.

More specifically, you have noted that the District will need to approve a GSP for each Groundwater Basin, including the Butte Valley. The District must then submit the GSPs to the DWR for approval. Many aspects of the GSPs are in a conceptual phase, as the GSPs creates a road map for implementing future PMAs. The plan itself establishes goals for achieving sustainable groundwater management within 20 years. The GSP does not set limits on pumping, or include any funding mechanisms, such as taxes or fees. While these PMAs could impact well owners, the District will need to make subsequent implementation decisions. Due to the lack of foreseeable and material impacts on your financial interests, you do not have a prohibitive financial interest in these decisions to approve the GSPs, including the GSP for Butte Valley. However, we note that you may have a prohibitive financial interest in future decisions implementing aspects of the Butte Valley GSP including subsequent decisions related to the Project Management Actions specified by the GSP. You may wish to seek further advice once the specific details of any implementation decisions are known.³

³ Concerning the Well Permit Application, we caution that "using your official position to attempt to influence a decision" is defined as contacting or appearing before any other officer or employee of your agency. Because, in addition to being a member of the District board, you serve as a County Supervisor, staff with the County Community Development Department, Division of Environmental Health are officers or employees of your agency. Under the Act, you are prohibited from directly taking part in any decision as well as attempting to influence any County official regarding a decision on the well permit application. (Sections 87100 and 87103.)

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

Sincerely,

Dave Bainbridge
General Counsel

Zachary W. Norton

By: Zachary W. Norton
Senior Counsel, Legal Division

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