



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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March 15, 2022

Steven C. Gross  
Porter Simon Law Office  
40200 Truckee Airport Road, Suite One  
Truckee, CA 96161

Re: Your Request for Advice  
**Our File No. A-22-009**

Dear Mr. Gross,

This letter responds to your request for advice on behalf of the Tahoe City Public Utility District (“District”) District Board member Elleyne Beals (“Director Beals”) regarding the conflict of interest provisions of the Political Reform Act (the “Act”).<sup>1</sup>

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.

## QUESTIONS

May District Director Beals take part in decisions regarding the repairs or replacements to the Tahoe Cedars Water System infrastructure (“Project”), where she owns two parcels served by this system that are subject to the Project funding decision and a portion of the work may occur within 500 feet of her property?

## CONCLUSIONS

Yes. Director Beals may take part in the Project decisions because she has demonstrated that the financial effect of the decisions on her interests is indistinguishable from its effect on the public generally. (Regulation 18703.) The Project decisions will affect at least 21.5 percent of the District’s residential customers, including all of residences in the Tahoe Cedars Water System that

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<sup>1</sup> 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.

are within a close proximity of the work that will be performed. Because these properties make up a significant segment of the jurisdiction and will all be similarly affected by the repair work and funding decisions, the facts provided do not indicate a unique effect for Director Beal in comparison to other properties within the significant segment.

### **FACTS AS PRESENTED BY REQUESTER**

The District provides water, wastewater and parks and recreation services. The District's jurisdictional boundaries include portions of Placer and El Dorado Counties along the north and west shores of Lake Tahoe. It is a local agency governed by a five-member board of directors whose members are elected at-large. Director Beals was elected to the Board in 2020 and her term expires in 2024. In addition to serving on the District's Board of Directors, she currently is a member of the Sewer and Water and Finance Committees.

In 2018, the District acquired the Tahoe Cedars Water System, which had been owned and operated by Mid Sierra Utilities. It was (and still is) unmetered, with a distribution system severely undersized and in very poor condition. The Tahoe Cedars Water System is now part of the District's water system, and the District provides water service to customers served by that system. However, it is still referred to as the Tahoe Cedars Water System. The District has 5,740 total water customers, of which 1,235 are located within the Tahoe Cedars Water System. Of the District's 5,740 total water customers, 5,532 are residential customers and 1,222 residential customers are located within the Tahoe Cedars Water System.

Director Beals owns two parcels of real property within the Tahoe Cedars Water System. One parcel includes her primary residence in which she resides full-time year-round. The other parcel is a vacant lot adjacent to the parcel which is her primary residence. The parcels are separate parcels with separate assessor's parcel numbers. In response to our request for additional information, you state that Director Beals treats the vacant lot as part of her residence, using both parcels as the "yard" with no barriers, such as fencing, between the parcels. There are unimproved footpaths crossing both parcels. There are two storage sheds on the vacant parcel which she accesses regularly. The vacant parcel is non-buildable per the Tahoe Regional Planning Agency (TRPA), the bi-state regional environmental planning agency with land use authority in the Lake Tahoe Basin where the parcels are located.

The District recently performed two capital improvement projects within the Tahoe Cedars Water System and Director Beals recused herself from any and all participation in decisions regarding those projects and did not influence or attempt to influence the District in any way with respect to the decisions for those projects. Despite the work already done, the Tahoe Cedars Water System still requires significant capital infrastructure repairs or replacement (the "Project") that is roughly estimated to cost upwards of \$40,000,000.00. Some of the capital repairs or replacement will occur within 500 feet of both of the parcels owned by Director Beals. Because of the scope of work and estimated cost, the District must decide whether to perform all or some of the work, to perform the work all at one time or through a phased program of projects and how it will fund the work, including whether it will be funded through a charge, assessment, tax, fee, or rate or some other funding mechanism paid by all District water customers, including those in the Tahoe Cedars Water System, or whether it will be paid through a charge, assessment, tax, fee, or rate or some other funding mechanism payable only by the customers in the Tahoe Cedars Water System, or some combination of the two options.

In response to our request for additional information, you note that the potential work within 500 feet of her parcels would involve the removal of water pipelines on private property to be relocated to the street, a public right of way. This construction project would last no less than one construction season (May to November), and likely spanning 2-3 construction seasons. The water pipeline replacement construction will result in noise, dust migration, traffic detours to the street in front of the Director's properties, and traffic disruptions requiring a change in accessing her parcels. The District has already made emergency repairs and changes to infrastructure affecting her parcels which resulted in upsizing the water lines, fire hydrants installed on her street, new water meters affecting approximately 545 feet of the water system. The total length of pipeline in the Tahoe Cedars water system in need of replacement is 79,000 feet. You estimate that the scope of the Project work to be performed, replacement of existing water pipelines, installation of fire hydrants and water meters will likely occur within 500 feet of other Tahoe Cedars Water System customers, and due to the proximity of the proposed work to the residences, it is likely that all these customers will be within 500 feet of the Project work. If the water system repairs and replacements occurred within 500 feet of every customer in the Tahoe Cedars Water System, approximately 21.5% of all District water customers.

### 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. (Section 81001(b).) Section 87100 prohibits any public official from making, participating in making, or using his or her 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)). Relevant to these facts, Section 87103 defines financial interests to include an interest in real property in which the official has a direct or indirect interest of \$2,000 or more. (Section 87103(b).) Director Beals identified a real property financial interest in her two parcels.

Regulation 18701(a) provides the applicable standard for determining the foreseeability of a financial effect on an economic interest explicitly involved in the governmental decision. It states, "[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 decision before the official or the official's agency. A financial interest is the subject of a proceeding if the decision affects a real property financial interest as described in Regulation 18702.2(a)(1)-(6). Pertinent to these facts, Regulation 18702.2(a)(3) states that the reasonably foreseeable financial effect of a governmental decision on a parcel of real property in which an official has a financial interest is material whenever the governmental decision would impose or modify any taxes, fees, or assessments that apply to the parcel. The Project decisions relate to the funding as well as the timing and scope of the repairs and replacements. The funding decision, to impose an assessment, tax or fee, will apply to her two parcels. Therefore, Director Beals has a reasonably foreseeable and material financial interest in the Project decisions.

Although Regulation 18702.2(d)(12) provides an exception for a decision that "solely concerns repairs, replacement or maintenance" on an existing water system, it appears that the

decision regarding the Project's funding does not "solely concern" repair and replacement. This decision raises additional issues of whether to allocate the Project's costs among all the District water customers or just those, such as the Director, in the Tahoe Cedars Water System. However, it is unnecessary to determine if the above exception applies or may apply to those Project decisions regarding scope and timing, because we find the public generally exception applies, as analyzed below.

### *Public Generally Exception*

A public official that has financial interest in a decision may still participate if the official demonstrates that the financial effect is indistinguishable from its effect on the public generally. (Regulation 18703.) A decision's financial effect on a public official's financial interest is indistinguishable if the official establishes that a significant segment of the public is affected and the effect on the official's financial interest is not unique compared to the effect on the significant segment. (Regulation 18703(a).)

A significant segment of the public includes 25 percent of all residential real property within the official's jurisdiction or at least 15 percent if the only interest the official has is the official's primary residence. (Regulation 18703(b).) A "unique effect" on an official's financial interest relevant to these facts includes a disproportionate effect on the development potential or use of the official's real property, official's property due to the proximity of the project, or on the official's personal finances. (Regulation 18703(c)(1), (2), and (6).)

Under the facts presented, the Director has demonstrated that the financial effect of the Project decision on her financial interests is indistinguishable from its effect on a significant segment, 21.5 percent, of the District water customers. First, we find that it is appropriate in these circumstances to apply the 15 percent standard to determine the "significant segment." Due to restrictions in the Tahoe Region, her adjacent vacant parcel is not a buildable parcel, and she treats it as a part of her residential property. Second, the facts demonstrate that the effect of the repair and replacement Project on her parcels is not "unique" as compared to the significant segment. The Tahoe Cedars Water System residential customers are likely to have similar disruptions to their residences because the Project involves repair work on 79,000 feet of water pipelines in close proximity to their residences. And, while Director Beals' property will be subject to the Project funding decision, the significant segment will be subject to the same imposition of an assessment, tax or fee that applies to the Tahoe Cedars Water System residential customers. Therefore, Director Beals may participate in the Project decision under the public generally exception. (Regulation 18703.)

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

Sincerely,

Dave Bainbridge  
General Counsel

*L. Karen Harrison*

By: L. Karen Harrison  
Senior Counsel, Legal Division

LKH:dkv