STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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April 22, 2022

Daniel Dudak
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Long Beach, CA
ddudak@dmeenviro.com

Re: Your Request for Advice
Our File No. A-22-031

Dear Mr. Dudak:

This letter responds to your request for advice regarding the post-governmental employment ("revolving door") provisions of the Political Reform Act (the "Act").[1]

Please note we offer no opinion on the application of laws other than the Political Reform Act, such as the post-employment provisions of Public Contract Code Section 10411.

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.

QUESTION

Do the Act's "revolving door" provisions prohibit you, as former District Deputy of the California Department of Conservation's (DOC) Geologic Energy Management Division's ("CalGEM") Southern District, from accepting a litigation consulting position for the defense in a lawsuit related to an emergency that you managed before you retired from state service?

CONCLUSION

Under the Act, the "one-year ban" does not apply to you with respect to DOC or CalGEM because you left that agency and department more than one year ago. The Act's "permanent ban" also does not prohibit you from taking part in a new proceeding that you did not work on as a state employee, even if the proceeding is related to or grows out of prior proceedings you worked on as a state employee.

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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 18104 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.

FACTS AS PRESENTED BY REQUESTER

Between 2012 and 2020, you served as District Deputy (Career Executive Assignment) for the Southern District of California with the Department of Conservation, CalGEM.[2] As a District Deputy at CalGEM, you managed a staff of engineers, geologists, and administrative personnel responsible for the permitting and oversight of oil, gas, and geothermal wells, as well as related infrastructure. In addition, you participated in decisionmaking on most high-level oil, gas, and geothermal issues in the district, including emergency situations such as spills and blowouts.[3] You left CalEGM in May of 2020 (on leave) and retired from State service in December 2020. Now retired from CalGEM, you have been offered a position as a paid litigation consultant for the defense in a lawsuit stemming from a 2019 well blowout in Marina Del Ray, the response to which you oversaw on behalf of CalGEM.

The dispute concerns a parcel of land belonging to Los Angeles County, on which there is an abandoned oil well (well number Dow R.G.C. 10), originally drilled in 1931. The well's previous operators Dow Chemical Company ("Dow") and Marathon Oil Company ("Marathon," formerly the Ohio Oil Company) permanently sealed, plugged and abandoned the well in the 1950s.[4] In, 2017, MDR Hotels, LLC ("MDR"), a hotel developer, took on a 60-year lease of the property and became the operator of the well under state law. In June of 2018, your staff at CalGEM approved a permit for MDR to re-plug and abandon the well according to current standards, as part of MDR's plans to develop a hotel the surface property. The re-abandonment permit (DOGGR no. 7000607) required MDR to install and maintain certain blowout prevention equipment and meet certain other safety standards.

In December and then again on January 11, 2019, as MDR's re-abandonment contractors were performing well re-abandonment procedures, the well experienced a blowout of natural gas and other fluids. After the second, larger blowout in January 2019, MDR's contractors used the well's blowout prevention equipment to temporarily seal the well and stop the flow of gas and other fluids. The contractors brought the well under control and "killed" the well on January 15, 2019. On January 18, 2019, CalGEM issued an emergency administrative order (Order 1143) to MDR, requiring 24-hour operations, methane monitoring, and specific abandonment requirements beyond MDR's original re-abandonment permit. As District Deputy of the district in which the well is located, you made recommendations to the State Oil and Gas Supervisor regarding the emergency order and formed a team of staff who oversaw well operations under the order until routine abandonment operations resumed. MDR completed abandonment of the well on April 6, 2019.

On July 31, 2020, MDR filed a complaint in Los Angeles Superior Court against the well's original operators—Dow, Marathon, and others— alleging that the defendants engaged in several negligent acts in the construction, operation, and abandonment of the well, which proximately caused or contributed to the contamination of soils and the conditions that caused the well to blow-out. MDR claims that complying with CalGEM's emergency order cost MDR over $100,000 per day, and that the developer ultimately incurred at least $40 million in damages due to the cost of completely re-abandoning the well, increased construction expenses of the development, and the

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[2] Formerly the Division of Oil, Gas, and Geothermal Resources (DOGGR).

[3] A "blowout" is an uncontrolled release of oil or gas from a well.

[4] "Plugging" and "abandoning" a well involves permanently sealing the well with cement in order to isolate the oil or gas formation from water and prevent leakage to the surface.

loss of business due to the delayed opening of the hotel. In December 2020, the action was transferred to the US District Court for the Central District of California. To your knowledge, the State of California is not a party to the lawsuit. You now ask whether you may serve as a paid litigation consultant—specifically providing technical insight based on your expertise in oil and gas drilling, wells, permitting, etc.—for the law firm representing defendants Dow Chemical, et al. in this suit, given that you oversaw CalGEM's response to the Marina del Ray blowout as a state employee.

ANALYSIS

Public officials who leave state service are subject to two types of post-governmental employment provisions under the Act: the "one-year ban" and the "permanent ban." These provisions are commonly referred to as the "revolving door" prohibitions.

The One-Year Ban

The Act's "one-year ban" prohibits designated employees of state administrative agencies, for one year after leaving state service, from representing any other person by appearing before or communicating with, for compensation, their former agency in an attempt to influence agency decisions that involve the making of general rules (such as regulations or legislation), or to influence certain proceedings involving a permit, license, contract, or transaction involving the sale or purchase of property or goods. (Section 87406(d)(1).)

You left state service in December 2020, so the one-year ban is no longer applicable to you.

The Permanent Ban

The "permanent ban" prohibits a former state employee from "switching sides" and participating, for compensation, in any specific proceeding involving the State of California or assisting others in the proceeding if the proceeding is one in which the former state employee participated while employed by the state. (See Sections 87401-87402; Regulation 18741.1.)

The permanent ban is a lifetime ban and applies to any judicial, quasi-judicial, or other proceeding in which you participated while you served as a state administrative official, in which the State of California is a party or has a direct and substantial interest. (Section 87401). "'Judicial, quasi-judicial or other proceeding' means any proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties in any court or state administrative agency ...." (Section 87400(c).)

An official is considered to have "participated" in a proceeding if the official took part in the proceeding "personally, and substantially through decision, approval, disapproval, formal written recommendation, rendering advice on a substantial basis, investigation, or use of confidential information . . .." (Section 87400(d).) Additionally, a supervisor is deemed to have participated in any proceeding where the supervisor's duties include the primary responsibility within the agency for directing the operation or function of the program where the proceeding is initiated. (Regulation 18741.1 (a)(4)(A).)

You are a former employee of CalGEM, a state agency, and thus the permanent ban applies to you. MDR's lawsuit is, by definition, a judicial proceeding. You, and the team of CalGEM staff you supervised, participated in CalGEM permit and emergency order proceedings concerning MDR. Nevertheless, MDR's lawsuit against Dow and marathon is a separate and distinct proceeding. MDR completed abandonment of the well under the order in April in 2019; it did not file suit until July of 2020, after you had left CalGEM (on leave) in May 2020. And while we have previously advised that a "new" proceeding for purposes of the permanent ban typically involves different parties, a different subject matter, or different factual issues from those considered in previous proceedings, we have also advised that the "permanent ban does not apply to a 'new' proceeding even in cases where the new proceeding is related to or grows out of a prior proceeding in which the official had participated." (*Rist* Advice Letter, No. A-04-187, emphasis added; also see *Donovan* Advice Letter, No. 1-03-119.)

In this case, the lawsuit involves only one of the parties to the CalGEM permit and emergency order proceedings you participated in as a state employee: MDR. Importantly, the State of California is not involved in the lawsuit and both MDR and the other participants—previous well operators Dow and Marathon—are private parties. MDR's claims against Dow and Marathon did grow out of some of the same factual issues that you oversaw as part of CalGEM's response to the Marina del Ray well blowout, but the lawsuit does not challenge the re-abandonment permit or emergency order you worked on as a state employee. Rather, the lawsuit concerns whether the negligence of private parties, including former well operators Dow and Marathon, caused the Marina del Ray blowout, and whether they should therefore be required to compensate MDR for losses MDR sustained as a result of the blowout.

Therefore, even though MDR's lawsuit against Dow and Marathon et al. is related to or grows out of the re-abandonment permit and emergency order proceedings in which you participated as a state employee, because the suit constitutes a new proceeding for purposes of the Act's revolving door rules, the permanent ban does not prohibit you from serving as a paid litigation consultant for Dow's law firm.

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

Sincerely,

Dave Bainbridge
General Counsel

By: Toren Lewis
Counsel, Legal Division

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