STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street • Suite 3050 • Sacramento, CA 95811

April 1, 2025

Ms. Linda Ackerman, Board Member
Metropolitan Water District of Southern California
c/o Ms. Sarah Lang, Esq.
Bell, McAndrews & Hiltachk, LLP
slang@bmhlaw.com

Warning Letter re: FPPC Case No. 2023-00339; Linda Ackerman

Dear Ms. Ackerman:

The Enforcement Division of the Fair Political Practices Commission enforces the provisions of the Political Reform Act. Also, the Enforcement Division enforces the conflict of interest provisions of Government Code section 1090 (when authorized to do so, as in the current case, by the local District Attorney's office—pursuant to Gov. Code, § 1097.1).

You are a member of the board of directors for the Metropolitan Water District of Southern California (MWDSC). In 2008, you were appointed to this position by the Municipal Water District of Orange County (MWDOC). Your appointment is at-will, without any known term length.

This case arises from a referral that we received from the MWDSC Ethics Officer, based on information that you self-reported to the MWDSC General Counsel in September 2021 to the effect that you may have inadvertently failed to disclose a potentially conflicting financial interest prior to a June 8, 2021 vote. We are closing this case with this warning letter, as discussed in more detail below. In regard to this determination, we are required to advise you that this "decision applies only to proceedings brought by the Commission." (Gov. Code, § 1097.1, subd. (d).)

On June 8, 2021, the MWDSC held a regular board meeting. The meeting agenda described item 7-5 as follows:

> Review and consider the Santa Margarita Water District's approved Final Mitigated Negative Declaration and Addendum and take related CEQA actions; and authorize the General Manager enter into an agreement with the Municipal Water District of Orange County [MWDOC] and Santa Margarita Water District [SMWD] for the Las Flores Recycled Water Expansion Project.

A board letter/staff recommendation for this agenda item included the following additional information:

> The Project would provide up to 209 acre-feet per year (AFY) of recycled water for irrigation use. The Project would help Metropolitan to increase regional water supply reliability, reduce future demands for imported water supplies, and achieve its

> Integrated Water Resources Plan (IRP) goals. In addition, the Project helps Metropolitan comply with a legislative direction under Senate Bill 60 (SB 60) to expand water conservation, recycling, and groundwater storage and replenishment.
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> To increase local supply development, staff recommends that the Board authorize the General Manager to enter into an LRP Agreement with MWDOC and SMWD to provide financial incentives for the proposed Project. The Project will be located within the unincorporated community of Las Flores in south Orange County. The Project will convert up to 209 AFY of potable water demands to recycled water for irrigation purposes in Las Flores. The Project includes construction of over 12,000 feet of new recycled water distribution pipelines and repurposing a surplus sewer lift station to serve as a recycled water booster pump station. Source water for the Project is tertiary treated wastewater from either SMWD's Oso Creek Water Reclamation Plant or Chiquita Water Reclamation Plant. SMWD will own and operate the Project and plans to deliver water in 2022.

Another agenda packet item, identified as a presentation, noted that the agreement terms for the Project included: "$1.5 million maximum lifetime contract payment" and "5,225 AF maximum contract yield over 25 years."

Meeting minutes reflect that you disclosed for the record—pursuant to Government Code section 1090—that you were receiving a per diem from one of the contracting parties, MWDOC, for serving as their representative on the MWDSC. You further stated you were advised that you could participate. (This appears to be a correct application of the non-interest exception that applied to your per diem under Gov. Code, § 1091.5, subd. (a)(9), as later discussed in the Salinas/MWDSC advice letter (A-23-056). Although the per diem issue was disclosed at the meeting, you failed to disclose your husband's status as an attorney for both of the contracting parties (MWDOC and SMWD), as discussed in more detail below.)

Minutes reflect the agenda item in question was on the consent calendar, which was approved, with you voting aye. (The approval was to accept staff's above-described recommendation.)

Later that year, the MWDSC board revisited this matter at its meeting of November 9, 2021—with agenda item 7-13.

In connection with this meeting, a staff memo/recommendation provided the following executive summary:

> In September 2021, Director Ackerman reported to Metropolitan's General Counsel that she inadvertently failed to disclose a potentially conflicting financial interest and voted on an LRP agreement with MWDOC and SMWD for the Las Flores Project, which the Board authorized on June 8, 2021. . . .

> After consultation with the Ethics Office and outside counsel, it was determined that it is *likely* that Director Ackerman had a financial interest in the agreements . . . in June 2021 . . . under Government Code Section 1090, although that interest fell within the *"remote interest"* exception under Section 1090. [Italics added.] In order to comply with Section 1090, Director Ackerman needs to disclose the remote financial interest, such disclosure needs to be noted in Metropolitan's records, and Director Ackerman cannot participate in the discussion or vote on these items.
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> In order to correct any potential violation of Section 1090, it is recommended that the Metropolitan Board rescind its prior authorizations and consider the . . . LRP agreements anew, after the disclosure of the remote financial interest and Director Ackerman's recusal from the vote on the items.

This same memo explained the nature of your 1090 conflict, under the "*Recommended Rescissions and Authorizations*" section, as follows:

> In September 2021, Director Ackerman reported to the General Counsel that she may have inadvertently failed to disclose a remote financial interest and recuse herself from voting on the Board action taken on June 8, 2021, which authorized the General Manager to enter into an LRP agreement with MWDOC and SMWD for the Las Flores Project. Director Ackerman's spouse has consulting contracts with both MWDOC and SMWD.
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> The consulting contract with MWDOC was originally entered into in 2009, between MWDOC and the Nossaman law firm where Senator Ackerman was employed. He did not have an ownership interest in the law firm. Although, as Senator Ackerman's spouse, Director Ackerman has a financial interest in his income, his income from the law firm was classified as a "noninterest" and Director Ackerman was not precluded from participating in contracts involving MWDOC. In January 2013, the contract between MWDOC and Senator Ackerman changed to be an agreement between MWDOC and Ackerman Consulting.
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> The consulting contract between Ackerman Consulting and SMWD was entered into in February 2013, has been renewed annually and is still in effect. None of the work pursuant to the consulting contracts with either MWDOC or SMWD pertained to LRP agreements and the approval of the LRP agreements had no effect on the income received by Senator Ackerman's consulting firm.
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> After Director Ackerman notified the General Counsel of a possible conflict, the General Counsel had discussions with Metropolitan's

> outside counsel, Senator Ackerman's personal counsel, and MWDOC counsel. The General Counsel also discussed the issue with the Ethics Office. Although there were positions advanced that the current arrangement between Senator Ackerman and MWDOC could continue to be a noninterest as it was when the contract was with the Nossaman law firm, Metropolitan's General Counsel, the Ethics Office, and Metropolitan's outside counsel concluded that, based upon a review of Attorney General opinions, California Fair Political Practices Commission (FPPC) regulations, and multiple FPPC advice letters, the current arrangements between Senator Ackerman and MWDOC, and between Senator Ackerman and SMWD, create a "remote interest" requiring both Director Ackerman's disclosure and recusal from the vote on contracts with those entities. Although all of the agreements would have been approved without Director Ackerman's vote, because the procedure for approval . . . was arguably not compliant with Section 1090, the contracts could be considered legally void.

Minutes for the meeting of 11/9/21 reflect that:

> Director Ackerman stated Item 7-13 involves authorizing agreements with the Municipal Water District of Orange County (MWDOC) and Santa Margarita Water District. Her spouse performs consulting services for Municipal Water District of Orange County and Santa Margarita Water District on unrelated matters. The laws are unsettled as to whether or not this income could create a conflict of interest and whether one of the many exceptions applies, such as the non-interest exception or the remote interest exception. She also receives per diem from MWDOC for her service on the Metropolitan Board. Out of abundance of caution, she will therefore recuse herself from all participation in this matter.

Minutes reflect the above-described staff recommendation for agenda item 7-13 was approved on the consent calendar, with you recusing yourself.

This MWDSC board action of November 9, 2021 effectively rescinded the prior vote of June 8, 2021, resulted in disclosure of your interest in your husband's consulting business, and resulted in ratification of the prior board vote—this time with your recusal.

The Enforcement Division agrees with the above-described opinion of the MWDSC General Counsel, Ethics Office, and outside counsel that the "arrangements between Senator Ackerman and MWDOC, and between Senator Ackerman and SMWD, create[d] a 'remote interest' requiring both Director Ackerman's disclosure and recusal from the vote on contracts with those entities."

Ackerman Consulting was a law firm—solely owned by Mr. Ackerman—which provided legal services to MWDOC and SMWD, meaning that Senator Ackerman was a contract attorney for

MWDOC and SMWD. Under these circumstances, your remote interests included those which are described in Government Code section 1091, subdivisions (b)(6) and (13), as follows:

> **(a)** An officer shall not be deemed to be interested in a contract entered into by a body or board of which the officer is a member within the meaning of this article if the officer has only a remote interest in the contract and if the fact of that interest is disclosed to the body or board of which the officer is a member and noted in its official records, and thereafter the body or board authorizes, approves, or ratifies the contract in good faith by a vote of its membership sufficient for the purpose without counting the vote or votes of the officer or member with the remote interest.
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> **(b)** As used in this article, "remote interest" means any of the following:
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> > **(6)** That of an attorney of the contracting party or that of an owner, officer, employee, or agent of a firm that renders, or has rendered, service to the contracting party in the capacity of stockbroker, insurance agent, insurance broker, real estate agent, or real estate broker, if these individuals have not received and will not receive remuneration, consideration, or a commission as a result of the contract and if these individuals have an ownership interest of 10 percent or more in the law practice or firm, stock brokerage firm, insurance firm, or real estate firm.
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> > . . .
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> > **(13)** That of a person receiving salary, per diem, or reimbursement for expenses from a government entity.

For the foregoing reasons, your vote of June 8, 2021 was in violation of Government Code section 1090—due to your undisclosed remote interest in your husband's law firm, which had consulting contracts with the contracting parties: MWDOC and SMWD.

In mitigation, you do not have a history of prior, similar violations. As noted above, you self-reported your violation to the MWDSC General Counsel. In response, the MWDSC rescinded the vote in question—and disclosure was provided for the public regarding the source of your remote interest. Upon rescinding the prior vote, the board ratified the prior vote, this time with your recusal. (Of note, the remote interests involved are set forth in Gov. Code, § 1091, and Subdivision (a) of that statute provides: "An officer shall not be deemed to be interested in a contract entered into by a body or board of which the officer is a member within the meaning of this article if the officer has only a remote interest in the contract and if the fact of that interest is disclosed to the body or board of which the officer is a member and noted in its official records, and *thereafter* the body or board authorizes, approves, or *ratifies* the contract in good faith by a vote of its membership sufficient for the purpose *without counting the vote or votes of the officer or member with the remote interest*." Emphasis added. This appears to be exactly what the MWDSC board did to correct the situation and disclose the matter for the public.) It appears that your violation was inadvertent—and resulted in minimal public harm.

This letter serves as a written warning. The information in this matter will be retained and may be considered should an enforcement action become necessary based on newly discovered information or future conduct. Failure to comply with the provisions of the Act in the future will result in monetary penalties of up to $5,000 for each violation.

A warning letter is an Enforcement Division 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 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 days from the date of this letter. Upon this notification, the Enforcement Division 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 Commission's website ten days from the date of this letter.

If you need guidance regarding your obligations in the future, please visit our website at www.fppc.ca.gov/advice.html or call the Commission's Toll-Free Advice Line at 1-866-ASK-FPPC (1-866-275-3772).

Thank you for your attention to this matter. Do not hesitate to call if you have any questions.

Very truly yours,

Neal Bucknell

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