

July 27, 1978

98-124

Ms. Barbara Meyers
Office of the County Clerk
Election Department
P.O. Box 431
Riverside, California 92502

Dear Barbara:

This letter will confirm our telephone conversation of July 26, 1978.

You indicated that there is an upcoming election for a special district in your area. The district is located primarily in Riverside County with a small portion of the district located in San Bernardino County. Further, you indicated that the portion of the district located in San Bernardino County contains no persons who can vote in the election.

You ask for clarification of Government Code Section 81005(c) which states that an original and a copy of campaign disclosure statements must be filed with the clerk of the county having the largest population for a multi-county jurisdiction in which a candidate or measure is being voted upon.

Given the set of facts described by you, I advised you that Riverside County, not San Bernardino County, is the "county having the largest population" under Government Code Section 81005(c) because a candidate or measure on the ballot for the special district election cannot be voted upon in San Bernardino County.

If I can be of further assistance, please contact me.

Sincerely,

John C. Greenwood
Program Coordinator

JCG:bw

State of California



Fair Political Practices Commission

P.O. BOX 807 • SACRAMENTO, 95804 • • • 1100 K STREET BUILDING, SACRAMENTO, 95814

Technical Assistance • • Administration • • Executive/Legal • • Enforcement
(916) 322-5662 322-5660 322-5901 322-6441

January 4, 1984

Clayton P. Roche
Deputy Attorney General
Department of Justice
350 McAllister Street, Rm. 6000
San Francisco, CA 94102

Re: Opinion No. 83-1008; Our
Advice No. A-83-292

Dear Mr. Roche:

You have requested the Commission's input regarding Attorney General's Opinion No. 83-1008 relating to possible conflicts of interest involving the Yuba County Water Agency. We will address only the issues raised under the Political Reform Act^{1/} (the "Act"). The material facts presented for our analysis are as follows:^{2/}

FACTS

The Yuba County Water Agency (the "Agency") is an "agency" within the meaning of the Act,^{3/} whose board members are "public officials" within the meaning of the Act.^{4/} The Agency board consists of the five members of the Yuba County Board of Supervisors plus two representatives from the member units, selected by the Advisory Council. The Advisory Council

^{1/} Government Code Sections 81000-91014. All statutory references made are to the Government Code unless otherwise specified.

^{2/} If this were a direct request to us for advice pursuant to Section 83114, we would require more factual detail before rendering specific advice.

^{3/} Section 82003.

^{4/} Section 82048.

is comprised of members of the boards of directors of the member units. The two non-supervisory positions on the Agency's board must be selected by the Advisory Council from its membership. Consequently, two members of the Agency's board must be members of the member units' boards.

Among the member districts of the Agency are the following:

Irrigation Districts

South Yuba Water District
Wheatland Water District
Brophy Water District

Municipal and Industrial

Olivenurst Public Utility District
Linda County Water District
City of Wheatland

The Agency sells water to the member districts and has the power to construct water storage, flood control and power generation facilities and has done so in constructing the New Bullards Bar Dam. In addition, the Agency has been planning to construct a canal^{5/} taking water from the Yuba River to the southern part of the County for sale to the three water districts organized in that area.^{6/} Recently two of the districts^{7/} have expressed a desire to withdraw from the joint project, leaving only the Wheatland Water District still interested. Apparently this has caused some strife amongst the various districts involved, as evidenced by the October 26, 1983, letter from Paul R. Minasian, attorney for the South Yuba Water District, to your office. The three districts are apparently battling for water allocation.

The Board of Directors of the Yuba County Water Agency consists of the following seven members, described as follows in

^{5/} This canal construction project would be financed by a PL984 Federal Loan.

^{6/} South Yuba Water District, Brophy Water District and Wheatland Water District.

^{7/} South Yuba Water District and Brophy Water District.

Mr. Minasian's letters (including background information as to their relationships with water issues facing the Agency).

1. Michael Rue is a Director and President of the Board of South Yuba Water District, elected by the [Advisory Council] to the Yuba County Water Agency. He is, of course, a landowner within South Yuba Water District.

2. Doug Waltz, Supervisor in Yuba County, and also a landowner within the Wheatland Water District. Mr. Waltz is the brother of a director of the Wheatland Water District, Price Waltz.^{8/}

3. Sam Shintaffer, a landowner within the Hallwood Water Company, a member unit holding a contract for waters from the Yuba River which lies north of the River. The amount or quantity of waters which are contracted for by the Yuba County Water Agency south of Yuba River may in the future have some impact upon the ability of Hallwood Water Company to purchase water under a clause in their water contract permitting them to so purchase and to the application of deficiency clauses during dry periods. The application of those deficiency clauses will probably be more strict and occur more often after contracts are entered into for water service in the South County area.

^{8/} It should be noted here that the fact they are brothers is not a basis for a conflict of interest under the Act. This fact is included here only because it has been raised in the correspondence and rather than ignore it, we decided to formally lay it to rest. In addition to the facts provided in Mr. Minasian's letter, Yuba County Counsel Dennis Barlow provides the following salient information regarding Mr. Waltz. He "is a rice grower and owner of substantial property within the Wheatland Water District. The actions of the Agency in securing a [PL984] loan for a canal system and then selling the water to the [D]istrict which would in turn develop a distribution system and sell water to the individual landowners on the district would be of benefit to him in that his costs in securing water would be decreased."

4. Charles Center, a member of the Board of Supervisors, who lives and owns property within the boundaries of the Olivenhurst Public Utility District. The costs of water to the Olivenhurst Public Utility District, Linda County Water District, South Yuba, Brophy or Wheatland or the City of Wheatland, would all vary to some degree with the question of whether or not South Yuba and Brophy are denied a water contract from the river or whether they are required to participate in the PL984 project. Further, the question of allocation of amounts of water among these districts will have a dramatic affect [sic] upon the costs of their water service.

5. John Dower, Supervisor from the Marysville area, is a landowner within the City of Marysville. The City buys water under a contract with the Agency for recreational filling of a lake.

6. Mr. McGill is a Supervisor, and a resident landowner within the Yuba County Water District, a California water district within Yuba County. This District does not presently have [a] contract for water, but has been allocated a large amount of water by the Agency under its minutes in the past. Any water contract entered into in the South County area affects the chances that the Agency will live up to its original premises or will apply the deficiency clause on a strict basis should a contract be entered into hereafter with Yuba County Water District.

7. Mr. Devereaux is the Supervisor from the Linda area and we are informed that he lives and owns land within the boundaries of the Linda County Water [District]. Under the PL984 project, this District, like the Olivenhurst Public Utility District, would obtain substantial amounts of water with no financial contribution or guarantees until those agencies elected to take water from the project.

QUESTIONS

Questions have been presented to you regarding at least two of these board members. The two general questions asked by Yuba County Counsel Dennis A. Barlow are as follows:

1. May a director of the Yuba County Water Agency who is also a director of a California Water District lawfully act on matters which directly affect the water district?

2. May a director of the Yuba County Water Agency who owns land within a California Water District lawfully participate in Agency actions which will provide water to such district?

ANALYSIS

The Act prohibits officials from acting on matters in which they are financially interested. Section 87100 states:

No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.

A financial interest is defined in Section 87103, which reads as follows:

An official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on:

(a) Any business entity in which the public official has a direct or indirect investment worth more than one thousand dollars (\$1,000).

(b) Any real property in which the public official has a direct or indirect interest worth more than one thousand dollars (\$1,000).

(c) Any source of income, other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

For purposes of this section, indirect investment or interest means any investment or interest owned by the spouse or dependent child of a public official, by an agent on behalf of a public official, or by a business entity or trust in which the official, the official's agents, spouse, and dependent children own directly, indirectly, or beneficially a 10-percent interest or greater.

In order for any of the directors of the Agency to have a conflict of interest^{9/} which would require disqualification, the tests set forth in Section 87103 must be met, i.e.:

1. There must exist one or more of the four specified financial relationships;

2. There must be a reasonably foreseeable financial effect flowing from the official action;

3. The effect must be material as to the company in which the investment is held, the real property in which an interest is held, the source of income, or the business entity of which the official is a partner, officer, employee, etc.

4. The material financial effect upon any of the above must be distinguishable from its effect upon the public generally. The "public generally" has been defined to include a "significant segment of the public generally." 2 Cal. Adm. Code Section 18703.^{10/}

^{9/} We stress, again, that we are only considering issues raised under the Political Reform Act and only the facts presented here.

^{10/} 2 Cal. Adm. Code Section 18703 states:

A material financial effect of a governmental decision on an official's interests, as described in Government Code Section 87103(a) through (d), is distinguishable from its effect on the public generally unless the decision will affect the official's interest

(continued next page)

Responding to the first question posed by Mr. Barlow, there is no basis under the Act for a conflict of interest. The directors of the Agency who are selected from the directors of the member units (water/irrigation districts) have no investment in the districts (they are not business entities^{11/}), the districts are not an interest in real property of the board members, nor are the districts a source of income^{12/} or a business entity for which they are a director, etc. None of the bases for satisfying the first test, discussed above, is met. Consequently, the fact that there may be a reasonably foreseeable material financial effect upon the district is not sufficient to give rise to the requirement of disqualification under Sections 87100 and 87103.

Responding to Mr. Barlow's second question, there is the potential that any or all of the Agency's directors at some time may be required to disqualify themselves because an agency

(Footnote 10, continued)

in substantially the same manner as it will affect all members of the public or a significant segment of the public. Except as provided herein, an industry, trade or profession does not constitute a significant segment of the general public.

(a) In the case of an elected state officer, an industry, trade or profession constitutes a significant segment of the public generally.

(b) In the case of any other elected official, an industry, trade or profession of which that official is a member may constitute a significant segment of the public generally if that industry, trade or profession is a predominant industry, trade or profession in the official's jurisdiction or in the district represented by the official.

* * *

^{11/} Business entities must be operated for profit.
Section 82005.

^{12/} Section 82030(b) (2) excludes from the term "income" salary and reimbursement for expenses received by an official from a governmental entity.

decision will affect their interests in a material manner which is distinguishable from the effect on the public generally.

In the case of Director Waltz, he apparently owns a large amount of land which needs water for the purpose of growing rice. Obviously, he has an interest in real property worth more than \$1,000 and an investment in his rice growing business worth more than \$1,000. Presumably his rice growing business is a source of income of \$250 to him and he is probably an officer, director, partner, etc., of the business. Consequently, the first of the tests is met. It is alleged that there will be a financial effect upon Mr. Waltz' business which will be a reasonably foreseeable result of the decision, i.e., lowered water costs. We are given no facts to establish the magnitude of the effect to determine if it is material under the guidelines established by our regulation, 2 Cal. Adm. Code Section 18702. Assuming that the materiality test is met, we then must address the "public generally" question. The test is articulated in our regulation, 2 Cal. Adm. Code Section 18703, quoted in relevant part in footnote 10, supra.

The Commission has determined on numerous occasions that the public generally is the public in the entire jurisdiction.^{13/} The jurisdiction of the Agency is apparently the entire County and also includes the jurisdictions of all of the member units, not just the Wheatland Water District.^{14/} An industry, such as rice growing, cannot be considered a significant segment of the public generally unless it is the predominant industry in the jurisdiction. 2 Cal. Adm. Code Section 18703(b). Even then, this exception to the general rule that an industry is not a significant segment of the public generally applies only if the official is an elected official. 2 Cal. Adm. Code Section 18703(b). While Mr. Waltz is an elected official when he serves as a member of the Board of Supervisors of Yuba County, he is not elected to the Board of the Agency, where he serves

^{13/} Jurisdiction is defined in Section 82035. In relevant part, it states:

"Jurisdiction" means the state with respect to a state agency and, with respect to a local government agency, the region, county, city, district or other geographical area in which it has jurisdiction.

^{14/} Water Code Appendix, Section 84-1.

ex officio.^{15/} Consequently, even if rice growing was a predominant industry within the jurisdiction of the Agency, the exception in Section 18703(b) would not apply in this circumstance.

As a result, Mr. Waltz' business and land would have to be affected by the decision "in substantially the same manner as it will affect all members of the public [in the Agency's jurisdiction] or a significant segment of the public" (2 Cal. Adm. Code Section 18703) in order for there to be no requirement of disqualification.

We are told that he will be affected in a similar fashion to most other landowners in the Wheatland Water District. We have insufficient information to determine if this group would constitute a "significant segment" of the public for the Agency. However, it is unlikely that large landowners (presumably rice growers or other members of the agri-business industry) would meet the tests for diversity established in the Commission's opinions on this topic.^{16/} Furthermore, if those who would be affected "in substantially the same manner" as Mr. Waltz will each be affected in that manner because they are large growers, then they would constitute an "industry, trade or profession"^{17/} thereby precluding them from constituting a "significant segment of the public generally."^{18/}

^{15/} Water Code Appendix, Section 84-7(a). We have made a similar determination in our interpretation of Section 84308 of the Act. See 2 Cal. Adm. Code Section 18438.1.

^{16/} See the following published opinions of the Commission (copies enclosed for your convenience):

Owen, 2 FPPC Ops. 77, No. 76-005
Ferraro, 4 FPPC Ops. 62, No. 78-009
Gilmor, 3 FPPC. Ops. 38, No. 76-089
Ogelsby, 1 FPPC Ops. 71, No. 75-083
Overstreet, 6 FPPC Ops. 12, No. 80-010

^{17/} 2 Cal. Adm. Code Section 18703.

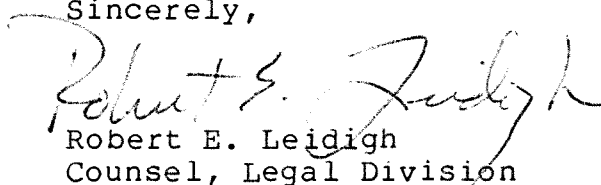
^{18/} See Ferraro Opinion, supra, fn. 16, and 2 Cal. Adm. Code Section 18703.

Clayton P. Rocne
January 4, 1984
Page 10

It should be pointed out that this analysis has not focused on any potential Section 1090 issues which may be raised by this request as that is your agency's province. Furthermore, we have not addressed in any detail the potential conflicts of interest under the Political Reform Act for other members of the Agency's board, such as Mr. Shintaffer, Mr. Center and Mr. Devereaux, to name just a few, who would appear to be in somewhat similar situations to that of Mr. Waltz. The analysis as to each of their situations would parallel that above. However, we have no information on whether they are rice growers, farmers, or merely homeowners. Obviously, the material facts are necessary to a full analysis of their duties under the Act.

Should you obtain additional information on any of the members' situations, including Mr. Waltz', we would be pleased to review those new facts and to provide our input to you.

Sincerely,



Robert E. Leidigh
Counsel, Legal Division

REL:km

78125

**AMADOR
COUNTY**

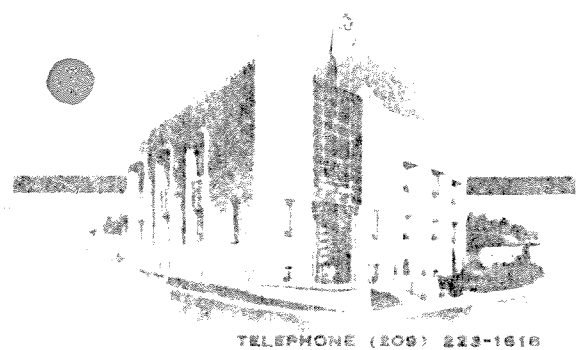
JOHN F. HANN

COUNTY COUNSEL

114 MAIN STREET

JACKSON, CALIFORNIA

95642



TELEPHONE (209) 223-1618

13 June 1978

Commissioner Daniel Lowenstein
Fair Political Practices Commission
1100 K Street
Sacramento, California

Dear Commissioner Lowenstein:

In my capacity as the County Counsel for the County of Amador, I have been directed by the Board of Supervisors of said County to request an opinion from you on the issue of whether or not two members of the Board of Supervisors and I have conflicts of interest, so as to prevent our taking part in decision-making regarding the Arroyo Ditch, as is described herein.

The Board of Supervisors has adopted a conflict of interest code, which code is attached hereto as Attachment I. The various departments of the County have not as yet adopted conflict of interest codes, so that there is no specific local code relative to me.

The issue is based on the following factual context: to the north of Amador County, and in part comprising the northern boundary of the County, is the Cosumnes River, a substantial river down which flows the precipitation from a wide area of the Sierra. The flow of the river is essentially from east to west, with the river eventually having a confluence with the Sacramento River.

As I am sure you know, Amador County is in the heart of the Mother Lode, in which mining operations were extensive commencing with the gold rush in 1848. The principal method of extracting gold ore from the surface rock and earth holding the ore was the use of hydraulic force. For some of the larger operations, substantial quantities of water had to be moved substantial distances, and one of the common methods of accomplishing that was the use of hand-dug open ditches which followed the contour of hills so as to accomplish the transporting of water by gravity from one watershed to another. In the northern part of Amador County is the City of Plymouth, with a population of approximately 600. During the post-gold rush period, extensive mining activities in and near Plymouth required

the use of large quantities of water which had to be imported. A ditch was constructed by private individuals to transport water from the Cosumnes River southwest to Plymouth and to the area southwest of Plymouth. That ditch has long been known as the Arroyo Ditch. It is 17 miles long from the points of diversion on the South Fork and Middle Fork of the Cosumnes River to Plymouth. For part of the distance between the Cosumnes and Plymouth, the Ditch runs horizontally along the north side of a gorge, approximately half-way between the bottom and the top. From the top, extending southward, is the northern part of a rolling upland, part of which is known as the Shenandoah Valley. At the bottom of the gorge is an intermittent creek called Big Indian Creek and east of Big Indian Creek's confluence with the Cosumnes lies the Cosumnes itself. In this area, the upland is quite good for raising cattle and the growing of premium quality wine grapes; from the upland to the gorge the land slopes fairly steeply, is of poor quality, and the terrain is quite rough. Closer to Plymouth, the Ditch runs through areas of relatively rolling cattle grazing foothill land.

Immediately southwest of Plymouth, the Ditch separates into several water courses, both natural and man-made. In the unincorporated area west of Plymouth lies the Willow Springs Water District, a California water district composed of several non-contiguous ranches lying adjacent to the several channels of the Ditch.

In the early 1960's the County purchased for a substantial sum the rights to divert water from the Cosumnes and the Ditch itself in order to provide water to Plymouth and to the Willow Springs Water District. Since that time the County has spent substantial sums on the Ditch. The Ditch and Cosumnes water have been used as a municipal water supply for Plymouth and for somewhat haphazard stock watering and irrigation west of Plymouth, including in the Willow Springs Water District. Plymouth has paid the County for the water; the ranchers in the Willow Springs Water District have generally not paid for it. The only treatment of the water occurs in Plymouth after the City has diverted water from the Ditch.

At least since the County acquired the Ditch, its physical state has gradually been deteriorating so that it is now apparent that the cost to make the Ditch viable as a conduit for the Cosumnes water is very high. As a result, the financing of the Ditch has become an important issue in the County.

Two supervisors and I own ranches or significant interests in ranches over which the Ditch runs. The Ditch itself is located on an easement that was acquired with the water rights. Each of the ranches should be described in some detail:

1. Kirkland property. One supervisor, Howard Kirkland, owns a ranch of 120 acres approximately 1 1/2 miles southwest of the point of diversion on the South Fork of the Cosumnes, and approximately 10 to 12 miles southwest of the diversion point on the Middle Fork. The ranch is 6 miles northeast of Plymouth. The bulk of his ranch is on the upland and east of the Big Indian Creek and Cosumnes gorge, with the northern and western flanks dropping off sharply into the gorge along the side of

which runs the Ditch. Mr. Kirkland's ranch raises no agricultural commodities of any significance; he is a retired business executive. Some of the property could be irrigated but it is not. Mr. Kirkland has substantial wells and a dam and reservoir on his property which are more than adequate for his ranch's needs.

2. Hahn property. I am a limited partner in an entity which owns 550 acres almost immediately to the south and west of the Kirkland ranch. The western portion of the ranch drops off steeply into the Big Indian Creek gorge, and the Ditch crosses the western edge of the property there. Moving to the east, the land rises from the gorge to the upland and becomes relatively flat, with good soil capable of being good pasturage and for growing grapes. Further to the east, the ranch has a substantial dam and reservoir with 128 acre feet of water storage, along with two licenses from the state for diversion and storage of water. It may be noted that the partnership in which I am a partner only acquired the property two weeks ago.

3. Begovich property. Just east of Plymouth is the ranch owned by John Begovich, also a supervisor. The ranch is of 142 acres and is unused except for a cattle lease. The soil is of relatively poor quality and does not have much potential for any agricultural use other than cattle ranching. It is located on Highway 49 just west of where the highway goes into the Big Indian Creek gorge and subsequently the Cosumnes gorge and is being held for development purposes.

Mr. Kirkland has never used any water from the Ditch and does not intend to do so. Because the Ditch is located at a substantially lower elevation than the rest of the ranch, Mr. Kirkland would have to install pumping facilities and pump the water from the Ditch to the productive area of the ranch if he wanted to use water from the Ditch, and that would be substantially more expensive than using the water from his reservoir and wells.

As to my ranch, we have no intention of using water from the Ditch for the same reason: we have ample water, even for a vineyard, and the cost of pumping up to the top of the gorge would be prohibitive.

Cattle on Mr. Begovich's ranch drink the water from the Ditch; however, there is no diversion of water from the Ditch into any ponds or tanks.

At the moment, the County is in the process of entering into a formal contractual relationship with Plymouth, the Willow Springs Water District, and one individual whose property is located immediately southwest of Plymouth to take and pay for water from the Ditch. There are no other persons or entities whom the County has permitted to take water from the Ditch, although it has been common practice for ranchers whose property abut the Ditch to allow their cattle to drink from the Ditch, both east and west of Plymouth. They also fill stockponds with water from the Ditch.

Since the Ditch and the water rights are the property of the County, the Board of Supervisors has plenary jurisdiction over them. There are several issues concerning the Ditch and water rights currently before the Board of Supervisors, among them:

1. How much County money should be spent on the upkeep of the Ditch, from the diversion points on the Cosumnes to the areas southwest of Plymouth?
2. At what rates should the County contract with Plymouth, the Willow Springs Water District, and others for the use of the water from the Ditch?
3. How extensive a program of renovation, maintenance, and repair of the Ditch should the County embark upon?
4. If the Ditch is too expensive to maintain, should it and the appurtenant water rights be sold or given away to Plymouth and/or the Willow Springs Water District (an idea which has been seriously considered by the Board)?
5. Should the County continue to subsidize the users of the Ditch by maintaining and repairing the Ditch at a cost greater than the revenue produced by selling the water from the Ditch?
6. To whom should the County provide water from the Ditch?

The issues surrounding the Arroyo Ditch have engendered substantial controversy in the County with a sharp divergence of opinion among the members of the Board. Assuming Messrs. Kirkland and Begovich are prevented from participating in any decision making regarding the Ditch, it appears unlikely that the remaining three supervisors would agree on any issue regarding the Ditch; Government Code 25005 requires that a majority of the entire board vote affirmatively in order to take valid action. Consequently, without the participation of Messrs. Begovich and Kirkland, it is unlikely that the remaining three can effectuate County policy relative to the Ditch.

As the population of the County is very small, I have no deputies. Consequently, there is no deputy in my office to act in my place.

I apologize for the length of this letter, but I felt that a description of the factual setting is the best point at which to begin the discussion of the legal issues. Please let me know if further information is required in order for your opinion to be issued. The Board and I would very much appreciate your prompt response to this request, because I feel unable legally to offer to the Board my opinion on the conflict of interest issues set forth herein.

Yours very truly,



JOHN F. HAHN
County Counsel

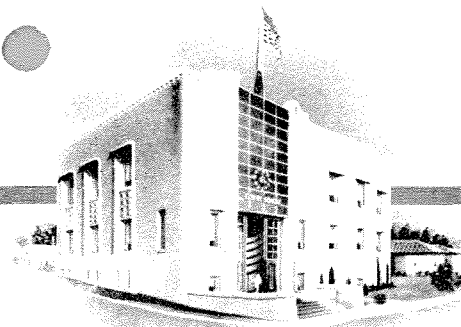
JFH/p

AMADOR COUNTY

JOHN F. HAHN

F P P C
COUNTY COUNSEL
JUN 16 11 08 AM '78
114 MAIN STREET

JACKSON, CALIFORNIA
95642



TELEPHONE (209) 223-1618

13 June 1978

Commissioner Daniel Lowenstein
Fair Political Practices Commission
1100 K Street
Sacramento, California

Dear Commissioner Lowenstein:

In my capacity as the County Counsel for the County of Amador, I have been directed by the Board of Supervisors of said County to request an opinion from you on the issue of whether or not two members of the Board of Supervisors and I have conflicts of interest, so as to prevent our taking part in decision-making regarding the Arroyo Ditch, as is described herein.

The Board of Supervisors has adopted a conflict of interest code, which code is attached hereto as Attachment 1. The various departments of the County have not as yet adopted conflict of interest codes, so that there is no specific local code relative to me.

The issue is based on the following factual context: to the north of Amador County, and in part comprising the northern boundary of the County, is the Cosumnes River, a substantial river down which flows the precipitation from a wide area of the Sierra. The flow of the river is essentially from east to west, with the river eventually having a confluence with the Sacramento River.

As I am sure you know, Amador County is in the heart of the Mother Lode, in which mining operations were extensive commencing with the gold rush in 1848. The principal method of extracting gold ore from the surface rock and earth holding the ore was the use of hydraulic force. For some of the larger operations, substantial quantities of water had to be moved substantial distances, and one of the common methods of accomplishing that was the use of hand-dug open ditches which followed the contour of hills so as to accomplish the transporting of water by gravity from one watershed to another. In the northern part of Amador County is the City of Plymouth, with a population of approximately 600. During the post-gold rush period, extensive mining activities in and near Plymouth required

the use of large quantities of water which had to be imported. A ditch was constructed by private individuals to transport water from the Cosumnes River southwest to Plymouth and to the area southwest of Plymouth. That ditch has long been known as the Arroyo Ditch. It is 17 miles long from the points of diversion on the South Fork and Middle Fork of the Cosumnes River to Plymouth. For part of the distance between the Cosumnes and Plymouth, the Ditch runs horizontally along the north side of a gorge, approximately half-way between the bottom and the top. From the top, extending southward, is the northern part of a rolling upland, part of which is known as the Shenandoah Valley. At the bottom of the gorge is an intermittent creek called Big Indian Creek and east of Big Indian Creek's confluence with the Cosumnes lies the Cosumnes itself. In this area, the upland is quite good for raising cattle and the growing of premium quality wine grapes; from the upland to the gorge the land slopes fairly steeply, is of poor quality, and the terrain is quite rough. Closer to Plymouth, the Ditch runs through areas of relatively rolling cattle grazing foothill land.

Immediately southwest of Plymouth, the Ditch separates into several water courses, both natural and man-made. In the unincorporated area west of Plymouth lies the Willow Springs Water District, a California water district composed of several non-contiguous ranches lying adjacent to the several channels of the Ditch.

In the early 1960's the County purchased for a substantial sum the rights to divert water from the Cosumnes and the Ditch itself in order to provide water to Plymouth and to the Willow Springs Water District. Since that time the County has spent substantial sums on the Ditch. The Ditch and Cosumnes water have been used as a municipal water supply for Plymouth and for somewhat haphazard stock watering and irrigation west of Plymouth, including in the Willow Springs Water District. Plymouth has paid the County for the water; the ranchers in the Willow Springs Water District have generally not paid for it. The only treatment of the water occurs in Plymouth after the City has diverted water from the Ditch.

At least since the County acquired the Ditch, its physical state has gradually been deteriorating so that it is now apparent that the cost to make the Ditch viable as a conduit for the Cosumnes water is very high. As a result, the financing of the Ditch has become an important issue in the County.

Two supervisors and I own ranches or significant interests in ranches over which the Ditch runs. The Ditch itself is located on an easement that was acquired with the water rights. Each of the ranches should be described in some detail:

1. Kirkland property. One supervisor, Howard Kirkland, owns a ranch of 120 acres approximately 1½ miles southwest of the point of diversion on the South Fork of the Cosumnes, and approximately 10 to 12 miles southwest of the diversion point on the Middle Fork. The ranch is 6 miles northeast of Plymouth. The bulk of his ranch is on the upland and east of the Big Indian Creek and Cosumnes gorge, with the northern and western flanks dropping off sharply into the gorge along the side of

which runs the Ditch. Mr. Kirkland's ranch raises no agricultural commodities of any significance; he is a retired business executive. Some of the property could be irrigated but it is not. Mr. Kirkland has substantial wells and a dam and reservoir on his property which are more than adequate for his ranch's needs.

2. Hahn property. I am a limited partner in an entity which owns 550 acres almost immediately to the south and west of the Kirkland ranch. The western portion of the ranch drops off steeply into the Big Indian Creek gorge, and the Ditch crosses the western edge of the property there. Moving to the east, the land rises from the gorge to the upland and becomes relatively flat, with good soil capable of being good pasturage and for growing grapes. Further to the east, the ranch has a substantial dam and reservoir with 178 acre feet of water storage, along with two licenses from the state for diversion and storage of water. It may be noted that the partnership in which I am a partner only acquired the property two weeks ago.

3. Begovich property. Just east of Plymouth is the ranch owned by John Begovich, also a supervisor. The ranch is of 142 acres and is unused except for a cattle lease. The soil is of relatively poor quality and does not have much potential for any agricultural use other than cattle ranching. It is located on Highway 49 just west of where the highway goes into the Big Indian Creek gorge and subsequently the Cosumnes gorge and is being held for development purposes.

Mr. Kirkland has never used any water from the Ditch and does not intend to do so. Because the Ditch is located at a substantially lower elevation than the rest of the ranch, Mr. Kirkland would have to install pumping facilities and pump the water from the Ditch to the productive area of the ranch if he wanted to use water from the Ditch, and that would be substantially more expensive than using the water from his reservoir and wells.

As to my ranch, we have no intention of using water from the Ditch for the same reason: we have ample water, even for a vineyard, and the cost of pumping up to the top of the gorge would be prohibitive.

Cattle on Mr. Begovich's ranch drink the water from the Ditch; however, there is no diversion of water from the Ditch into any ponds or tanks.

At the moment, the County is in the process of entering into a formal contractual relationship with Plymouth, the Willow Springs Water District, and one individual whose property is located immediately southwest of Plymouth to take and pay for water from the Ditch. There are no other persons or entities whom the County has permitted to take water from the Ditch, although it has been common practice for ranchers whose property abut the Ditch to allow their cattle to drink from the Ditch, both east and west of Plymouth. They also fill stockponds with water from the Ditch.

Since the Ditch and the water rights are the property of the County, the Board of Supervisors has plenary jurisdiction over them. There are several issues concerning the Ditch and water rights currently before the Board of Supervisors, among them:

1. How much County money should be spent on the upkeep of the Ditch, from the diversion points on the Cosumnes to the areas southwest of Plymouth?
2. At what rates should the County contract with Plymouth, the Willow Springs Water District, and others for the use of the water from the Ditch?
3. How extensive a program of renovation, maintenance, and repair of the Ditch should the County embark upon?
4. If the Ditch is too expensive to maintain, should it and the appurtenant water rights be sold or given away to Plymouth and/or the Willow Springs Water District (an idea which has been seriously considered by the Board)?
5. Should the County continue to subsidize the users of the Ditch by maintaining and repairing the Ditch at a cost greater than the revenue produced by selling the water from the Ditch?
6. To whom should the County provide water from the Ditch?

The issues surrounding the Arroyo Ditch have engendered substantial controversy in the County with a sharp divergence of opinion among the members of the Board. Assuming Messrs. Kirkland and Begovich are prevented from participating in any decision making regarding the Ditch, it appears unlikely that the remaining three supervisors would agree on any issue regarding the Ditch; Government Code 25005 requires that a majority of the entire board vote affirmatively in order to take valid action. Consequently, without the participation of Messrs. Begovich and Kirkland, it is unlikely that the remaining three can effectuate County policy relative to the Ditch.

As the population of the County is very small, I have no deputies. Consequently, there is no deputy in my office to act in my place.

I apologize for the length of this letter, but I felt that a description of the factual setting is the best point at which to begin the discussion of the legal issues. Please let me know if further information is required in order for your opinion to be issued. The Board and I would very much appreciate your prompt response to this request, because I feel unable legally to offer to the Board my opinion on the conflict of interest issues set forth herein.

Yours very truly,



JOHN F. HAHN
County Counsel

JFH/p

BEFORE THE BOARD OF SUPERVISORS OF THE
COUNTY OF AMADOR, STATE OF CALIFORNIA

IN THE MATTER OF:

RESOLUTION OF THE BOARD OF SUPERVISORS OF THE COUNTY OF)
AMADOR ADOPTING A CONFLICT OF INTEREST CODE APPLICABLE) RESOLUTION NO. 4077
TO THE MEMBERS OF THE BOARD OF SUPERVISORS PURSUANT TO)
THE POLITICAL REFORM ACT OF 1974)

THE BOARD OF SUPERVISORS OF THE COUNTY OF AMADOR HEREBY RESOLVED AS
FOLLOWS:

SECTION 1. ADOPTION OF CONFLICT OF INTEREST CODE. In compliance with §87300
of the Government Code, the Board of Supervisors hereby adopts this Conflict of
Interest Code.

SECTION 2. APPLICATION OF CODE. This Conflict of Interest Code shall be
applicable to members of the County Board of Supervisors, whether acting as Board
members or as members of any county board or commission.

SECTION 3. DISCLOSURE. Members of the Board of Supervisors are required,
pursuant to Government Code §87200, to disclose investments, interest in real
property and income. No other or no additional disclosure requirements are imposed
by this Conflict of Interest Code.

SECTION 4. CIRCUMSTANCES REQUIRING DISQUALIFICATION. Any member of the Board
of Supervisors, whether acting as a Board member or as governing board member or
commissioner of any county agency, must disqualify himself or herself from making
or participating in the making of any decisions which will foreseeably have a
material financial effect, distinguishable from its effect on the public generally,
on any economic interest, as defined in Government Code §87103. No member shall be
prevented from making or participating in the making of any decision to the extent
his or her participation is legally required for the decision to be made.

SECTION 5. DEFINITIONS. Except as otherwise indicated, the definitions con-
tained in the Political Reform Act of 1974 (Government Code §81000) and Regulations
adopted pursuant thereto are incorporated into this Conflict of Interest Code.

SECTION 6. The County Clerk is directed to forward a certified copy of this
resolution to the Fair Political Practices Commission.

The foregoing Resolution was duly passed and adopted by the Board of Supervisors of the County of Amador at a regular meeting thereof, held on the 1st day of June 1976 by the following vote:

AYES: Supervisors Myron Questo, Angelo DePaoli, Harry "Glenn" Smith,
Howard Kirkland, Robert Knudson
NOES: None
ABSENT: None

Myron Questo
Chairman, Board of Supervisors

ATTEST:

JOHN KIRKPATRICK, County Clerk and
Ex-officio Clerk of the Board of
Supervisors, Amador County, California.

By Sue Ellen Miller
Deputy

I, JOHN KIRKPATRICK, County Clerk and Ex-officio Clerk of the Board of Supervisors of the County of Amador, a political subdivision of the State of California, hereby certify the foregoing to be a full, true and correct copy of a Resolution passed by the Board of Supervisors of Amador County on the 1st day of June, 1976.

Sue Ellen Miller
Deputy
County Clerk and Ex-officio Clerk
of the Board of Supervisors of
Amador County, California

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DECLARATION OF MYRON D. QUESTO:

I, Myron D. Questo, do declare as follows:

1. My name is Myron D. Questo.

2. I am the chairman of the board of supervisors of the County of Amador and have been since January 6, 1976. As such I am the chief executive officer of the County of Amador. Said County of Amador has no administrative officer.

3. After having given notice as prescribed by law, said board of supervisors held a public hearing preliminary to formulation and adoption of said board's Conflict of Interest Code, as required by Government Code 87311.

4. After said public hearing had been conducted, said board of supervisors adopted Resolution No. 4077, a certified copy of which is attached hereto as Attachment "A".

5. A summary of said public hearing with identification of areas of controversy and their manner of resolution is attached hereto as Attachment "B".

I declare under penalty of perjury that the foregoing is true and correct.

Executed at Jackson, California on
June 4, 1976.



Myron D. Questo, Chairman
Board of Supervisors, County of Amador

1 SUMMARY OF PUBLIC HEARING HELD PURSUANT TO GOVERNMENT CODE
2 87311 WITH IDENTIFICATION OF AREAS OF CONTROVERSY AND MANNER
3 OF THEIR RESOLUTION.

4 1. On June 1, 1976, the board of supervisors of the County of Amador
5 held a public hearing on its proposed Conflict of Interest Code. Said
6 public hearing had been duly noticed as prescribed by law.

7 2. At said public hearing the role of the Conflict of Interest Code
8 as it pertains to the board of supervisors was discussed. It was stated
9 by the legal advisor to said board of supervisors that said resolution
10 adopting a Conflict of Interest Code had the force of law equal to any
11 ordinance or other resolution and will stay in effect until repealed by
12 action of this board.

13 3. There were no areas of controversy. No issues were raised by any
14 member of the public nor members of the board of supervisors other than
15 described above.

16 4. No written submissions or verbal submissions were made to the
17 board of supervisors regarding the proposed Code.

18 5. There were no materials describing generally the reasons for
19 the designations of the disclosure responsibilities of said board of
20 supervisors.

21 6. No persons participated in the public hearing on the proposed
22 Code or requested copies of the Code from the board of supervisors or
23 clerk thereof.

24
25
26
27
28
APPENDIX
EXHIBIT "B"