



# California Fair Political Practices Commission

September 14, 1994

Gary Grimm  
Legal Counsel  
California Regional Water Quality Control Board  
San Francisco Bay Region  
2101 Webster Street, Suite 500  
Oakland, CA 94612

Re: Your Requests For Advice  
Our File Nos. A-94-281 and  
A-94-277

Dear Mr. Grimm:

We respond to your request for advice on behalf of Regional Water Quality Control Boardmembers Pamela Lloyd and Denny McLeod regarding application of the conflict-of-interest provisions of the Political Reform Act (the "Act").<sup>1</sup> Because your separate requests contain similar facts and require application of the same principles of law, we have consolidated your requests in this response.

#### QUESTION PRESENTED

Do Boardmembers Lloyd and McLeod have a conflict of interest under the Act with regard to a board decision on Unocal's selenium discharge permit based on their respective ownership of Chevron and Exxon stock?

#### CONCLUSION

Under the facts you have presented, Boardmember Lloyd does not have a conflict of interest which would prohibit her participation in the decision regarding Unocal's permit for selenium discharge based on her ownership of Chevron stock. Similarly, Boardmember McLeod does not have a conflict of interest in the Unocal decision based on his ownership of Chevron and Exxon stock.

---

<sup>1</sup> Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations, Sections 18000-18954. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

### FACTS

The San Francisco Bay Regional Water Quality Control Board (the "Board") regulates the wastewater emission of oil refineries within its region. Unocal, Chevron and Exxon each operate a refinery within the region. Boardmember Lloyd owns an investment in Chevron stock valued at over \$10,000. Boardmember McLeod owns an investment interest in both Exxon and Chevron, each valued at \$10,000. The Board is currently considering a renewal of Unocal's pollution discharge permit.

Previously, the oil companies who operate refineries within the region sued the Board over waste discharge limits. Unocal, Chevron and Exxon were among the oil company plaintiffs. The suit resulted in a stipulated judgment setting discharge limits. Boardmember Lloyd disqualified herself from all decisions regarding that litigation and all decisions regarding the implementation of the stipulated judgment.

The Unocal renewal permit would carry forward the limits established by the stipulated judgment. Chevron is in full compliance with its discharge limits and the Board's staff does not foresee any financial effect on Chevron from the implementation of the proposed discharge limit involved in Unocal's renewal permit. Exxon is not in compliance with its discharge limits. However, Exxon is bound by the limits imposed by the stipulated judgment and Unocal's renewal permit merely implements the limits imposed by the stipulated judgment.

### ANALYSIS

The conflict-of-interest provisions of the Act prohibit a public official from participating in or otherwise attempting to influence a governmental decision if it is reasonably foreseeable that the public official's financial interest may be affected by the decision in a material manner. (Sections 87100, 87103.) Conflict-of-interest analysis, under the Act, is dependent on the facts of each case. The standard analysis would necessarily seek to determine: (1) if the decision-maker is a public official; (2) if the public official is making or participating in making a governmental decision, or is otherwise using his official status to influence a governmental decision; (3) if the official has an economic interest in the decision; (4) if it is reasonably foreseeable that the decision will have an effect on the official's financial interest; (5) if the reasonably foreseeable effect identified in item (4) is material; and (6) if the effect identified in item (4) is distinguishable from the effect the decision will have on the public generally. (Reviczky Advice Letter, No. A-94-203.)

In the instant matter before the Board, it is obvious that Ms. Lloyd and Mr. McLeod are public officials. (Section 82048.) It is equally obvious that these boardmembers are making a governmental decision. (Regulation 18700(b).) As the decision

does not directly affect either Chevron or Exxon, neither Ms. Lloyd nor Mr. McLeod have an economic interest directly affected by the decision. Therefore, Ms. Lloyd and Mr. McLeod will only have a conflict if it is reasonably foreseeable that the decision before the Board will have an indirect material effect on their respective financial interests.

Foreseeability is a question of fact. A financial effect is reasonably foreseeable when it is substantially likely to occur. Although certainty is not required, a mere possibility is insufficient to trigger the conflict-of-interest provisions of the Act. (See Downey Cares v. Downey community Development Com., 196 Cal. App. 3d 983, 989-991 (1987); Witt v. Morrow, 70 Cal. App. 3d 817, 822 (1977); In re Thorner, 1 FPPC Ops. 198 (1975).)

The Lloyd advice request states that the Unocal discharge limits will not have a financial effect on Chevron. Where there is no financial effect, there is no conflict of interest under the Act. The mere fact that Chevron and Unocal shared a unity of interest with regard to the previous lawsuit does not create a permanent link between these two otherwise independent entities. (See Regulation 18236.) Accordingly, Boardmember Lloyd does not have a conflict of interest under the Act with regard to the renewal of the Unocal discharge permit.

The McLeod advice request states that Exxon is not in compliance with the previously agreed discharge limits; however, both Exxon and Unocal are bound by the stipulated judgment and the Unocal discharge renewal permit does no more than implement the stipulated judgment. From these facts, it does not appear reasonably foreseeable that the decision regarding the Unocal discharge permit renewal will affect the financial interests of Boardmember McLeod.<sup>2</sup>

The materiality of an indirect effect on a business investment of a public official would be determined by reference to Regulation 18702.2, however, as there is no foreseeable effect on the financial interest of Ms. Lloyd and Mr. McLeod, it is not necessary to continue the conflict of interest analysis.

2

Mr. McLeod owns a direct interest in both Exxon and Chevron. Although you note that Mr. McLeod's interests were purchased through a Prudential Securities plan in which his investment is automatically divided between the top ten industrial companies, the shares are purchased directly for his account and are held in his own name. Accordingly, the investment interest is directly owned by Mr. McLeod and, unlike a diversified registered mutual fund, the investment interest is potentially disqualifying. (Section 82034.) Nothing in this letter should be construed to mean that Mr. McLeod will never have a conflict arising out of his ownership of these investments.

We trust that this letter adequately responds to the issues raised in your two requests for advice. Should you have any further questions, you may contact the undersigned at (916) 322-5901.

Sincerely,

Steven G. Churchwell  
General Counsel

A handwritten signature in black ink that reads "Daniel E. Muallem". The signature is written in a cursive style with a large, prominent initial "D".

By: Daniel E. Muallem  
Counsel, Legal Division