

# REGIONAL WATER AUTHORITY POLICIES AND PROCEDURES MANUAL

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## ETHICS POLICY FOR DIRECTORS OF THE REGIONAL WATER AUTHORITY

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#### **Section 1. Purpose and Scope.**

The policy of the Regional Water Authority (“Authority”) is to maintain the highest standards of ethics by its Board members. The proper operation of the Authority requires decisions and policy to be made in the proper channels of governmental structure, that public office not be used for personal gain, and that Board members remain objective and responsive to the needs of the public they serve. Accordingly, it is the policy of the Authority that Board members will maintain the highest standard of personal honesty and fairness in carrying out their duties. This policy sets forth the basic ethical standards to be followed by the Board of Directors of the Authority. The objectives of this policy are to: (1) provide guidance for dealing with ethical issues; (2) heighten awareness of ethics and values as critical elements in Board members’ conduct; and (3) improve ethical decision-making and values-based management.

Because the Authority does not provide Board members with any type of compensation, salary or stipend, or any reimbursement for actual and necessary expenses incurred by Board members in the performance of their official duties for the Authority, Board members are not required to comply with the ethics training mandate provided in Government Code section 53235(a). Nothing in this policy is intended to authorize a Board member to not obtain periodic ethics training if required by the laws, ordinances, rules or regulations applicable to service with his or her member entity. All Board members not otherwise required to receive ethics training are encouraged to participate in such training periodically.

## **Section 2. Responsibilities of Public Office.**

Board members are obligated to uphold the Constitution of the United States and the Constitution of the State of California. Board members will comply with applicable laws regulating their conduct, including conflict of interest, financial disclosure and open government laws. Board members will strive to work in cooperation with other public officials unless prohibited from so doing by law or officially-recognized confidentiality of their work, or if doing so would be contrary to the best interests of the Authority.

(Article 20, section 3 of the California Constitution; Government Code section 1360.)

## **Section 3. Fair and Equal Treatment.**

Board members, in the performance of their official duties and functions, will not discriminate against or harass any person on the basis of race, religion, color, creed, age, marital status, national origin, ancestry, sex, sexual preference, medical condition or disability. A Board member will not grant any special consideration, treatment or advantage to any person or group beyond that which is available to every other person or group in similar circumstances.

(See, e.g., Article 1, section 31 of the California Constitution; Age Discrimination in Employment Act of 1967 (29 U.S.C., sections 621 and following); Americans with Disabilities Act of 1990 (42 U.S.C., sections 12101 and following); California Fair Employment and Housing Act (Government Code sections 12900 and following); Rehabilitation Act of 1973 (29 U.S.C., sections 701 and following); Title VII of the Civil Rights Act of 1964 (42 U.S.C., sections 2000e and following).)

## **Section 4. Proper Use and Safeguarding of Authority Property and Resources.**

Except as specifically authorized, a Board member will not use or permit the use of Authority-owned vehicles, equipment, telephones, materials or property for personal benefit or profit. A Board member will not ask or require an Authority employee to perform services for the personal benefit or profit of a Board member or employee. Each Board

member must protect and properly use any Authority asset within his or her control, including information recorded on paper or in electronic form. Board members will safeguard Authority property, equipment, moneys and assets against unauthorized use or removal, as well as from loss due to criminal act or breach of trust.

(Article 16, section 6 of the California Constitution, Government Code Section 8314; Penal Code Section 424; see *People v. Battin* (1978) 77 Cal.App.3d 635.)

## **Section 5. Use of Confidential Information.**

A. A Director is not authorized, without approval of the Board of Directors, to disclose information that qualifies as confidential information under applicable provisions of law to a person not authorized to receive it, that: (1) has been received for, or during, a closed session meeting of the Board; (2) is protected from disclosure under the attorney/client or other evidentiary privilege; or (3) is not required to be disclosed under the California Public Records Act. It is within the Board's discretion to allow a Director who serves as a member of the legislative body of a member agency of the Authority to disclose information obtained in a closed session that has a direct financial or liability implication for that member agency, to the following individuals: (1) legal counsel of that member local agency for purposes of obtaining advice on whether the matter has direct financial or liability implications for that member local agency; or (2) other members of the legislative body of the member agency present in a closed session of that member agency.

B. This section does not prohibit any of the following: (1) making a confidential inquiry or complaint to a district attorney or grand jury concerning a perceived violation of law, including disclosing facts to a district attorney or grand jury that are necessary to establish the alleged illegality of an action taken by the Authority; (2) expressing an opinion concerning the propriety or legality of actions taken by the Authority in closed session, including disclosure of the nature and extent of the allegedly illegal action; or (3) disclosing information acquired by being present in a closed session that is not confidential information. Prior to disclosing confidential information pursuant to (1) or (2), above, however, a Board member will first bring the matter to the attention of either the Chair of the Board or the full Board, to provide the Board an opportunity to cure an alleged violation.

C. A Director who willfully and knowingly discloses for pecuniary gain confidential information received by him or her in the course of his or her official duties may be guilty of a misdemeanor under Government Code Section 1098.

(Government Code sections 54956.96 and 54963.)

## **Section 6. Conflict of Interest.**

A. A Board member will not have a financial interest in a contract with the Authority, or be purchaser at a sale by the Authority or a vendor at a purchase made by the Authority, unless the Board member's participation was authorized under Government Code sections 1091 or 1091.5, or other provisions of law. A Board member will not participate in the discussion, deliberation or vote on a matter before the Board of Directors, or in any way attempt to use his or her official position to influence a decision of the Board, if he or she has a prohibited interest with respect to the matter, as defined in the Political Reform Act, Government Code sections 81000, and following, relating to conflicts of interest. Generally, a Director has a financial interest in a matter if it is reasonably foreseeable that the Board decision would have a material financial effect (as defined by the Fair Political Practices Commission's ("FPPC") regulations) that is distinguishable from the effect on the public generally on: (a) a business entity in which the Director has a direct or indirect investment in the amount specified in the then-effective FPPC regulations; (b) real property in which the Director has a direct or indirect investment interest, with a worth in the amount specified in the then-effective FPPC regulations; (c) a source of income of the Director in the amount specified in the then-effective FPPC regulations, within twelve months before the Board decision; (d) a source of gifts to the Director in an amount specified in the then-effective FPPC regulations within twelve months before the Board decision; (e) a business entity in which the Director holds a position as a director, trustee, officer, partner, manager or employee; or (f) the Director's personal expense, income, assets or liabilities, and those of his or her immediate family, are likely to go up or down in a 12-month period as a result if the decision by the amount specified in the then-effective FPPC regulations. An "indirect interest" means any investment or interest owned by the spouse or dependent child of the Director, by an agent on behalf of the Director, or by a business entity or trust in which the Director, or the Director's spouse, dependent child or agent, owns directly, indirectly or beneficially a ten percent interest or greater. An elected official will not accept honoraria, or gifts that exceed the limitations specified in the Fair Political Practices Act or FPPC regulations. Board members will report all gifts, campaign contributions, income and financial information as required under the Authority's Conflict of Interest Code and the provisions of the Fair Political Practices Act and the FPPC Regulations.

(Government Code sections 87100 and following.)

B. If a member of the Board believes that he or she may be disqualified from participation in the discussion, deliberations or vote on a particular matter due to a conflict of interest, the following procedure will be followed: (a) if the Director becomes aware of the potential conflict of interest before the Board meeting at which the matter will be discussed or acted on, the Director will notify the Authority's Executive Director and the Authority's legal counsel of the potential conflict of interest, so that a determination can be made whether it is a disqualifying conflict of interest; (b) if it is not possible for the Director to discuss the potential conflict with the Executive Director and the Authority's legal counsel before the meeting, or if the Director does not become aware of the potential conflict until during the meeting, the Director will immediately disclose the potential conflict

during the Board meeting, so that there can be a determination whether it is a disqualifying conflict of interest; and (c) upon a determination that there is a disqualifying conflict of interest, the Director: (1) will not participate in the discussion, deliberation or vote on the matter for which a conflict of interest exists, which will be so noted in the Board minutes; and (2) leave the room until after the discussion, vote and any other disposition of the matter is concluded, unless the matter has been placed on the portion of the agenda reserved for uncontested matters (i.e., the consent calendar), in which case the Director will identify the nature of the conflict and not vote on the specified item on the consent calendar. If the item is agendized for discussion and possible action, the Director may speak on his or her personal interests in the matter during the time that the general public speaks on the issue but must leave the room during Board discussion and action on that item.

C. A Board member will not recommend the employment of a relative by the Authority. A Board member will not recommend the employment of a relative to any person known by the Board member to be bidding for or negotiating a contract with the Authority.

D. A Board member who knowingly asks for, accepts or agrees to receive any gift, reward or promise thereof for doing an official act, except as may be authorized by law, may be guilty of a misdemeanor under Penal Code Section 70.

(Government Code sections 1090 and following, 81000 and following and 87105; Penal Code sections 68 and 70.)

## **Section 7. Soliciting Political Contributions.**

Board members are prohibited from soliciting political funds or contributions at Authority facilities, or from Authority employees. A Board member will not accept, solicit or direct a political contribution from: (a) Authority employees, officers, consultants or contractors; or (b) vendors or consultants who have a material financial interest in a contract or other matter while that contract or other matter is pending before the Authority. A Director will not use the Authority's seal, trademark, stationary or other indicia of the Authority's identity, or facsimile thereof, in any solicitation for political contributions contrary to state or federal law.

(Government Code section 3205.)

## **Section 8. Incompatible Offices.**

Any Board member appointed or elected to a public office of another public entity, the duties of which may require action contradictory or inconsistent with Board action (as determined under applicable law) will be deemed to have resigned from the former office. Serving on the Board of a member of the Authority is not incompatible with serving on the Board of the Authority.

(Government Code section 1099; see also, 73 Cal.Op.Atty.Gen. 357 (1990).)

## **Section 9. Board Member-Executive Director Relationship.**

A. The Board sets the policy for the Authority. The Authority's Executive Director has the authority that is delegated to him or her by the Board as set forth in the Policy entitled "*Authority Delegated to the Executive Director*," as amended from time to time. The Executive Director will install and maintain a system of auditing and accounting that will completely and at all times show the financial condition of the Authority. The Board will retain and periodically review the work of an auditor as an independent contractor of the Authority (other than the Executive Director), who will report to the Board, to conduct an annual audit of the Authority's books, records and financial affairs.

B. The Authority's Executive Director serves at the pleasure of the Board, pursuant to an employment agreement. The Board will provide policy direction and instructions to the Executive Director on matters within the authority of the Board by majority vote of the Board during duly-convened Board and Board committee meetings. Members of the Board will deal with matters within the authority of the Executive Director through the Executive Director, and not through other Authority employees. Members of the Board will refrain from making requests directly to Authority employees (rather than to the Executive Director) to undertake analyses, perform other work assignments or change the priority of work assignments. Members of the Board may request non-confidential, factual information regarding Authority operations from Authority employees.

## **Section 10. Improper Activities and the Reporting of Such Activities; Protection of "Whistle Blowers."**

A. The Executive Director has primary responsibility for: (1) ensuring compliance with the Authority's Policies and Personnel Manual, and ensuring that Authority employees do not engage in improper activities; (2) investigating allegations of improper activities; and (3) taking appropriate corrective and disciplinary actions. Board members are encouraged to fulfill their obligation to the public and the Authority by disclosing to the Executive Director to the extent not expressly prohibited by law, improper activities within their knowledge. Board members will not interfere with the Executive Director's responsibilities in identifying, investigating and correcting improper activities, unless the Board determines that the Executive Director is not properly carrying out these responsibilities.

B. A Board member will not directly or indirectly use or attempt to use the authority or influence of his or her position for the purpose of intimidating, threatening, coercing, commanding or influencing any other person for the purpose of preventing such person from acting in good faith to report or otherwise bring to the attention of the Executive Director or the Board any information that, if true, would constitute: a work-related violation by a Board member or Authority employee of any law or regulation, gross

waste of Authority funds, gross abuse of authority, a specified and substantial danger to public health or safety due to an act or omission of a Authority official or employee, use of a Authority office or position or of Authority resources for personal gain, or a conflict of interest of a Authority Board member or Authority employee.

C. A Board member will not use or threaten to use any official authority or influence to effect any action as a reprisal against a Authority Board member or Authority employee who reports or otherwise brings to the attention of the Executive Director any information regarding the subjects described in this section.

D. Any person who believes that he or she has been subjected to any action prohibited by this section may file a confidential complaint with: (1) the Executive Director, or (2) a member of the Board of Directors if the complaint involves the conduct of the Executive Director, who thereupon will refer the matter to the full Board to investigate the complaint. Upon conclusion of the investigation, the Executive Director (or the Board in case of a complaint against the Executive Director) will take appropriate action consistent with applicable law and Authority policy.

(Labor Code sections 1102.5 and following; Government Code Sections 53298 and 53298.5.)

#### **Section 11. Compliance with the Brown Act.**

The members of the Board of Directors, and persons appointed but who have not yet assumed office as members of the Board, will fully comply with the provisions of the State's open meeting law for public agencies (the Brown Act).

(Government Code sections 54950 and following, and 54952.1 and 54959.)

#### **Section 12. Violation of Ethics Policy.**

A perceived violation of this policy by a Board member should be referred to the Chair of the Board or the full Board of Directors for investigation, and consideration of any appropriate action warranted. A violation of this policy may be addressed by the use of such remedies as are available by law to the Authority, including but not limited to: (a) adoption of a resolution expressing disapproval of the conduct of the Board member who has violated this policy, (b) injunctive relief, or (c) referral of the violation to the District Attorney and/or the Grand Jury.