



25 April 2025

Via email: WRAPubliccomment@co.monterey.ca.us

Mike LeBarre, Chair
Monterey County Water Resources
Board of Directors

Re: Conflict of Interest – “public generally” exception

Chair LeBarre:

This comment letter¹ is in response to the detailed and insightful presentation given by Monterey County Water Resources Agency (MCWRA or WRA) counsel Ms. Kelly Donlon on March 17, 2025. The remarks by especially Directors Sullivan and Gonzalez suggest that the “public generally” exception is or will be a topic of concern as the 2026 budget process and certain fees or levies are addressed. Cal. Code Regs, tit. 2, § 18703.

The key discussion in Ms. Donlon’s presentation on the “public generally” exception was subsection (1) of section 18703. It reads (in relevant part) as follows (emphasis added):

(1) Public Services and Utilities. The decision sets or adjusts the amount of an assessment, taxes, fee, or rate for water, utility, or other broadly provided public services that is applied equally, proportionally, or by the same percentage to the official's interest and all businesses, properties, or individuals subject to the assessment, tax, fee, or rate. This exception does not apply if the decision would impose the assessment, tax or fee, or determine the boundaries of a property, or who is subject to the assessment, tax, or fee.

The WRA imposes a variety of levies under various authority. One such levy is a water delivery fee for each unit of project water, which is only provided to the CSIP growers. Arguably, providing water delivery service to some 200 or so parcels only in the project boundary is the antithesis of a “broadly provided public service.” If so, the public generally exception of subsection (1) may not apply to any decisions about the CSIP water delivery fee. The same arithmetic suggests that the more general exception in section 18703 also cannot be met, as

¹ This letter was prepared for transmittal on or about March 18, 2025 directly after Ms. Donlon’s prestation at the March 17, 2025 Board of Directors meeting on, inter alia, the Political Reform Act. The events at the most recent MCWRA caused me to double-check and it appears I never actually sent the letter (at least I can find no verifiable record of transmittal). This comment letter has been updated to reflect the current date and to include this explanatory footnote. I apologize for my oversight.

Mike LeBarre, Chair
 MCWRA Board of Directors
 25 April 2025

220 businesses, properties, payers, etc. are orders of magnitude below a 25% threshold for the jurisdiction of the WRA, i.e., the “significant segment” metric.

In addition to the state authority, the organic authority (the Act) of the WRA requires that Directors – including those who “represent” industries or seats², be free of conflict. Section 49 of the Act lists the qualification of the nine Directors, including certain designated seats, and concludes with a catch-all prohibition against conflicts of interest (emphasis added):

(c) No person shall be appointed pursuant to this section that, because of his or her employment or other financial interest, is likely to be disqualified from a substantial number of decisions to be made by the Board of the Agency on the basis of conflict-of-interest requirements.

In other words, any state allowed leeway that may exist in 18703 (5) is negated by the narrower appointment authority within the Act.

This comment letter in no way purports to be a comprehensive exploration of conflicts of interest, whether under the Political Reform Act, statutory, or common law. Such comprehensive analysis falls to independent counsel employed by a Director when facts (Form 700, public comments, etc.) suggest that there may be at least an appearance of a conflict, or what Director Sullivan termed “public perception.” The most responsive approach for maintaining a conflict-free process is for any Director who meets the “public perception” standard under a given set of facts is to publicly disclose and, if warranted, recuse, and if not warranted, to share the underlying comprehensive legal analysis to assure the public that despite “appearances” all is well, especially given the still fresh history of the cost of looking the other way.³

Thank you for your consideration of these comments.

Very truly yours,

Thomas S. Virsik

Thomas S. Virsik

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 Kelly Donlon, DonlonKL@co.monterey.ca.us

² The reserved seats are quite general and do not require the individual be associated with a narrow geographic area or within specific project boundaries, with the possible exception of the seat at subsection (b)(3) (mayor select committee).

³ In the not-so-distant past not only was a Director convicted of a felony for a financial conflict, but the underlying facts triggered a spate of litigation that cost the WRA millions – if not tens of millions – of dollars in collateral outcomes. Surely a personal choice about recusal is not worth putting the public in jeopardy.