

RESOLUTION NO. 1091-20

**A RESOLUTION OF THE BOARD OF DIRECTORS
OF THE MOJAVE WATER AGENCY
ADOPTING A CONFLICT OF INTEREST CODE**

WHEREAS, the Mojave Water Agency (“the Agency”) is a public entity organized and operating pursuant to California Water Code Appendix Section 97-1 seq., and a local government agency subject to the requirements of the Political Reform Act of 1974 (“the Act”), California Government Code Section 81000 et seq.;

WHEREAS, Section 87300 of the Act requires all local government agencies to adopt and promulgate conflict of interest codes pursuant to the provisions of the Act;

WHEREAS, the Fair Political Practices Commission (“the FPPC”) has adopted a regulation, 2 Cal. Code of Regs. Section 18730, which contains the terms of a standard conflict of interest code which can be incorporated by reference, and which may be amended by the FPPC after public notice and hearings to conform to amendments in the Act; and

WHEREAS, the Agency desires to comply with its statutory requirements under the Act and to provide a method to ensure that its Conflict of Interest Code is current and consistent with the prevailing provisions of the Act and the regulations of the FPPC.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Mojave Water Agency as follows:

Section 1.

The terms of 2 Cal. Code of Regulations Section 18730, and any amendments to it duly adopted by the FPPC, are hereby incorporated herein by this reference and, along with the attached Appendix in which members and employees are designated and disclosure categories are set forth, shall constitute the Agency’s Conflict of Interest Code. In the event of any inconsistency between the attached Appendix and the prevailing provisions of the Act and/or the applicable regulations of the FPPC, the Act and the FPPC regulations shall control.

Section 2.

Designated officials shall file statements of economic interest with the Agency which will then be made available to the public for inspection and reproduction. Upon receipt of the statements from the Agency’s Board of Directors and General Manager, the Secretary of the Agency shall make and retain a copy and forward the original of said statements to the County Clerk of the County of San Bernardino. Statements for all other designated employees will be retained by the Agency’s Secretary.

Section 3.

This Resolution supersedes Resolution No. 1057-18 adopted by the Agency's Board of Directors on September 13, 2018, and shall take effect immediately upon its adoption.

ADOPTED this 10th day of September, 2020.

AYES: 6
NOES: 0
ABSTAIN: 0
ABSENT: 1



President, Board of Directors
Thurston Smith

ATTEST: 

Secretary, Board of Directors
Jeanette Hayhurst

APPENDIX

CONFLICT OF INTEREST AND DISCLOSURE CODE

The Mojave Water Agency (“Agency”) in the County of San Bernardino hereby adopts this Conflict of Interest and Disclosure Code (“Code”).

SECTION 100. Definitions.

The definitions contained in the Political Reform Act of 1974, California Government Code Section 81000 et seq. (“the Act”), the regulations of the Fair Political Practices Commission adopted in connection therewith, 2 Cal. Code of Regs. Section 18110 et seq. (“the Regulations”), and any amendments to the Act or Regulations, are incorporated herein by this reference and this Code shall be interpreted in a manner consistent with the Act and the Regulations.

SECTION 200. Designated Employees, Directors, and Consultants.

The persons holding positions listed in Exhibit “B” are designated employees, directors, and consultants. It has been determined that these persons make or participate in the making of decisions which may foreseeably have a material effect on economic interests.

SECTION 300. Disclosure Categories.

This Code does not establish any disclosure obligation for those designated employees who are also specified in Government Code Section 87200 if they are designated in this Code in that same capacity or if the geographical jurisdiction of this Agency is the same as or is wholly included within the jurisdiction in which those persons must report their economic interests pursuant to Article 2 of Chapter 7 of the Act, Government Code Section 87200 et seq.

In addition, this Code does not establish any disclosure obligation for any designated employees who are designated in a conflict of interest code for another agency, if all of the following apply:

- A. The geographical jurisdiction of this Agency is the same as or is wholly included within the jurisdiction of the other agency;
- B. The disclosure assigned in the code of the other agency is the same as that required under Article 2 of Chapter 7 of the Act, Government Code Section 87200; and
- C. The filing officer is the same for both agencies.

Such persons are covered by this Code for disqualification purposes only. With respect to all other designated employees, the disclosure categories set forth in Exhibit “A” specify which kinds of economic interests are reportable. Such a designated employee shall disclose in his or her statement of economic interests those economic interests he or she has which are of the kind described in the disclosure categories to which he or she is assigned in Exhibit “B.” It has been determined that the economic interests set forth in a designated employee's disclosure categories are the kinds of

economic interests which he or she foreseeably can affect materially through the conduct of his or her office.

SECTION 400. Statements of Economic Interests: Place of Filing.

The Code reviewing body shall instruct all designated employees within its Code to file statements of economic interests with the Agency or with the Code reviewing body, as provided by the Code reviewing body in the Agency's Code.

SECTION 500. Statements of Economic Interests: Time of Filing.

- A. Initial Statements.** All designated employees employed by the Agency on the effective date of this Code, as originally adopted, promulgated and approved by the Code reviewing body, shall file statements within 30 days after the effective date of this Code. Thereafter, each person already in a position when it is designated by an amendment to this Code shall file an initial statement within 30 days after the effective date of the amendment.
- B. Assuming Office Statements.** All persons assuming designated positions after the effective date of this Code shall file statements within 30 days after assuming the designated positions, or if subject to State Senate confirmation, 30 days after being nominated or appointed.
- C. Annual Statements.** All designated employees shall file statements no later than April 1.
- D. Leaving Office Statements.** All persons who leave designated positions shall file statements within 30 days after leaving office.

SECTION 550. Statements for Persons Who Resign Prior to Assuming Office.

Any person who resigns within 12 months of initial appointment, or within 30 days of the date of notice provided by the filing officer to file an assuming office statement, is not deemed to have assumed office or left office, provided he or she did not make or participate in the making of, or use his or her position to influence any decision and did not receive or become entitled to receive any form of payment as a result of his or her appointment. Such persons shall not file either an assuming or leaving office statement.

- A.** Any person who resigns a position within 30 days of the date of a notice from the filing officer shall do both of the following:
 - (1) File a written resignation with the appointing power; and
 - (2) File a written statement with the filing officer declaring under penalty of perjury that during the period between appointment and resignation he or she did not make, participate in the making, or use the position to influence any decision of the Agency or receive, or become entitled to receive, any form of payment by virtue of being appointed to the position.

SECTION 600. Contents of and Period Covered by Statements of Economic Interests.

A. Contents of Initial Statements. Initial statements shall disclose any reportable investments, interests in real property and business positions held on the effective date of the Code and income received during the 12 months prior to the effective date of the Code.

B. Contents of Assuming Office Statements. Assuming office statements shall disclose any reportable investments, interests in real property and business positions held on the date of assuming office or, if subject to State Senate confirmation or appointment, on the date of nomination, and income received during the 12 months prior to the date of assuming office or the date of being appointed or nominated, respectively.

C. Contents of Annual Statements. Annual statements shall disclose any reportable investments, interests in real property, income and business positions held or received during the previous calendar year provided, however, that the period covered by an employee's first annual statement shall begin on the effective date of the Code or the date of assuming office whichever is later, or for a board or commission member subject to Government Code Section 87302.6, the day after the closing date of the most recent statement filed by the member pursuant to Section 18754 of the Regulations.

D. Contents of Leaving Office Statements. Leaving office statements shall disclose reportable investments, interests in real property, income and business positions held or received during the period between the closing date of the last statement filed and the date of leaving office.

SECTION 700. Manner of Reporting.

Statements of economic interests shall be made on forms prescribed by the Fair Political Practices Commission and supplied by the Agency, and shall contain the following information:

A. Investment and Real Property Disclosure. When an investment or an interest in real property is required to be reported, the statement shall contain the following:

- (1) A statement of the nature of the investment or interest;
- (2) The name of the business entity in which each investment is held, and a general description of the business activity in which the business entity is engaged;
- (3) The address or other precise location of the real property;
- (4) A statement whether the fair market value of the investment or interest in real property equals or exceeds two thousand dollars (\$2,000), exceeds ten thousand dollars (\$10,000), exceeds one hundred thousand dollars (\$100,000), or exceeds one million dollars (\$1,000,000).

B. Personal Income Disclosure. When personal income is required to be reported, the statement shall contain:

- (1) The name and address of each source of income aggregating five hundred dollars (\$500) or more in value, or fifty dollars (\$50) or more in value if the income was a gift, and a general description of the business activity, if any, of each source;
- (2) A statement whether the aggregate value of income from each source, or in the case of a loan, the highest amount owed to each source, was one thousand dollars (\$1,000) or less, greater than one thousand dollars (\$1,000), greater than ten thousand dollars (\$10,000), or greater than one hundred thousand dollars (\$100,000);
- (3) A description of the consideration, if any, for which the income was received;
- (4) In the case of a gift, the name, address and business activity of the donor and any intermediary through which the gift was made; a description of the gift; the amount or value of the gift; and the date on which the gift was received;
- (5) In the case of a loan, the annual interest rate and the security, if any, given for the loan and the term of the loan.

C. Business Entity Income Disclosure. When income of a business entity, including income of a sole proprietorship, is required to be reported, the statement shall contain:

- (1) The name, address, and a general description of the business activity of the business entity;
- (2) The name of every person from whom the business entity received payments if the filer's pro rata share of gross receipts from such person was equal to or greater than ten thousand dollars (\$10,000).

D. Business Position Disclosure. When business positions are required to be reported, a designated employee shall list the name and address of each business entity in which he or she is a director, officer, partner, trustee, employee, or in which he or she holds any position of management, a description of the business activity in which the business entity is engaged, and the designated employee's position with the business entity.

E. Acquisition or Disposal During Reporting Period. In the case of an annual or leaving office statement, if an investment or an interest in real property was partially or wholly acquired or disposed of during the period covered by the statement, the statement shall contain the date of acquisition or disposal.

SECTION 800. Prohibition on Receipt of Honoraria.

No member of the Agency shall accept any honorarium from any source, if the member or employee would be required to report the receipt of income or gifts from that source on his or her statement of economic interests. This section shall not apply to any part-time member of the governing board of any public institution of higher education, unless the member is also an elected official. Subdivisions (a), (b), and (c) of Government Code Section 89501 shall apply to the prohibitions in this section. This section shall not limit or prohibit payments, advances, or

reimbursements for travel and related lodging and subsistence authorized by Government Code Section 89506.

SECTION 810. Prohibition on Receipt of Gifts in Excess of \$500.

No member of the Agency shall accept gifts with a total value of more than \$500 in a calendar year from any single source, if the member or employee would be required to report the receipt of income or gifts from that source on his or her statement of economic interests. This section shall not apply to any part-time member of the governing board of any public institution of higher education, unless the member is also an elected official. Subdivisions (e), (f), and (g) of Government Code Section 89503 shall apply to the prohibitions in this section.

SECTION 820. Loans to Public Officials.

- A.** No elected officer of the Agency shall, from the date of his or her election to office through the date that he or she vacates office, receive a personal loan from any officer, employee, member, or consultant of the Agency in which the elected officer holds office or over which the Agency has direction and control.
- B.** No public official who is exempt from the state civil service system pursuant to subdivisions (c), (d), (e), (f), and (g) of Section 4 of Article VII of the Constitution shall, while he or she holds office, receive a personal loan from any officer, employee, member, or consultant of the Agency in which the public official holds office or any state or local government agency over which the Agency has direction and control. This subdivision shall not apply to loans made to a public official whose duties are solely secretarial, clerical, or manual.
- C.** No elected officer of the Agency shall, from the date of his or her election to office through the date that he or she vacates office, receive a personal loan from any person who has a contract with the Agency or any state or local government agency or over which the Agency has direction and control. This subdivision shall not apply to loans made by banks or other financial institutions or to any indebtedness created as part of a retail installment or credit card transaction, if the loan is made or the indebtedness created in the lender's regular course of business on terms available to members of the public without regard to the elected officer's official status.
- D.** No public official who is exempt from the state civil service system pursuant to subdivisions (c), (d), (e), (f), and (g) of Section 4 of Article VII of the Constitution shall, while he or she holds office, receive a personal loan from any person who has a contract with the Agency or any state or local government agency over which the Agency has direction and control. This subdivision shall not apply to loans made by banks or other financial institutions or to any indebtedness created as part of a retail installment or credit card transaction, if the loan is made or the indebtedness created in the lender's regular course of business on terms available to members of the public without regard to the elected officer's official status. This subdivision shall not apply to loans made to a public official whose duties are solely secretarial, clerical, or manual.
- E.** This section shall not apply to the following:

- (1) Loans made to the campaign committee of an elected officer or candidate for elective office.
- (2) Loans made by a public official's spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin, or the spouse of any such persons, provided that the person making the loan is not acting as an agent or intermediary for any person not otherwise exempted under this section.
- (3) Loans from a person which, in the aggregate, do not exceed five hundred dollars (\$500) at any given time.
- (4) Loans made, or offered in writing, before January 1, 1998.

SECTION 830. Loan Terms.

- A. Except as set forth in subdivision B, no elected officer of the Agency shall, from the date of his or her election to office through the date he or she vacates office, receive a personal loan of five hundred dollars (\$500) or more, except when the loan is in writing and clearly states the terms of the loan, including the parties to the loan agreement, date of the loan, amount of the loan, term of the loan, date or dates when payments shall be due on the loan and the amount of the payments, and the rate of interest paid on the loan.
- B. This section shall not apply to the following types of loans:
 - (1) Loans made to the campaign committee of the elected officer.
 - (2) Loans made to the elected officer by his or her spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin, or the spouse of any such person, provided that the person making the loan is not acting as an agent or intermediary for any, person not otherwise exempted under this section.
 - (3) Loans made, or offered in writing, before January 1, 1998.
- C. Nothing in this section shall exempt any person from any other provision of Title 9 of the Government Code.

SECTION 840. Personal Loans.

- A. Except as set forth in subdivision B, a personal loan received by any designated employee shall become a gift to the designated employee for the purposes of this section in the following circumstances:
 - (1) If the loan has a defined date or dates for repayment, when the statute of limitations for filing an action for default has expired.

- (2) If the loan has no defined date or dates for repayment, when one year has elapsed from the later of the following:
 - i. The date the loan was made.
 - ii. The date the last payment of one hundred dollars (\$100) or more was made on the loan.
 - iii. The date upon which the debtor has made payments on the loan aggregating to less than two hundred fifty dollars (\$250) during the previous 12 months.

B. This section shall not apply to the following types of loans:

- (1) A loan made to the campaign committee of an elected officer or a candidate for elective office.
- (2) A loan that would otherwise not be a gift as defined in this title.
- (3) A loan that would otherwise be a gift as set forth under subdivision (A), but on which the creditor has taken reasonable action to collect the balance due.
- (4) A loan that would otherwise be a gift as set forth under subdivision (A), but on which the creditor, based on reasonable business considerations, has not undertaken collection action. Except in a criminal action, a creditor who claims that a loan is not a gift on the basis of this paragraph has the burden of proving that the decision for not taking collection action was based on reasonable business considerations.
- (5) A loan made to a debtor who has filed for bankruptcy and the loan is ultimately discharged in bankruptcy.

C. Nothing in this section shall exempt any person from any other provisions of Title 9 of the Government Code.

SECTION 900. Disqualification.

No designated employee shall make, participate in making, or in any way attempt to use his or her official position to influence the making of any governmental decision which he or she knows or has reason to know will have a reasonably foreseeable material financial effect, distinguishable from its effect on the public generally, on the official or, a member of his or her immediate family or on:

- A.** Any business entity in which the designated employee has a direct or indirect investment worth two thousand dollars (\$2,000) or more;
- B.** Any real property in which the designated employee has a direct or indirect interest worth two thousand dollars (\$2,000) or more;

- C. Any source of income, other than gifts and 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 five hundred dollars (\$500) or more in value provided to, received by or promised to the designated employee within 12 months prior to the time when the decision is made;
- D. Any business entity in which the designated employee is a director, officer, partner, trustee, employee, or holds any position of management; or
- E. Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating \$500 or more provided to, received by, or promised to the designated employee within 12 months prior to the time when the decision is made.

SECTION 930. Legally Required Participation.

No designated employee 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. The fact that the vote of a designated employee who is on a voting body is needed to break a tie does not make his or her participation legally required for purposes of this section.

SECTION 950. Disqualification of State Officers and Employees.

In addition to the general disqualification provisions of Section 900, no state administrative official shall make, participate in making, or use his or her official position to influence any governmental decision directly relating to any contract where the state administrative official knows or has reason to know that any party to the contract is a person with whom the state administrative official, or any member of his or her immediate family has, within 12 months prior to the time when the official action is to be taken:

- A. Engaged in a business transaction or transactions on terms not available to members of the public, regarding any investment or interest in real property; or
- B. Engaged in a business transaction or transactions on terms not available to members of the public regarding the rendering of goods or services totaling in value one thousand dollars (\$1,000) or more.

SECTION 1000. Disclosure of Disqualifying Interest.

When a designated employee determines that he or she should not make a governmental decision because he or she has a disqualifying interest in it, the determination not to act may be accompanied by disclosure of the disqualifying interest.

SECTION 1100. Assistance of the Commission and Counsel.

Any designated employee who is unsure of his or her duties under this Code may request assistance from the Fair Political Practices Commission pursuant to Government Code Section 83114 and Sections 18329 and 18329.5 of the Regulations or from the attorney for his or her Agency, provided

that nothing in this section requires the attorney for the Agency to issue any formal or informal opinion.

SECTION 1200. Violations.

This Code has the force and effect of law. Designated employees violating any provision of this Code are subject to the administrative, criminal and civil sanctions provided in the Act, Government Code Sections 81000-91014. In addition, a decision in relation to which a violation of the disqualification provisions of this Code or of Government Code Section 87100 or 87450 has occurred may be set aside as void pursuant to Government Code Section 91003.

- (1) Designated employees who are required to file statements of economic interests under any other agency's conflict of interest code, or under article 2 for a different jurisdiction, may expand their statement of economic interests to cover reportable interests in both jurisdictions, and file copies of this expanded statement with both entities in lieu of filing separate and distinct statements, provided that each copy of such expanded statement filed in place of an original is signed and verified by the designated employee as if it were an original. See Government Code Section 81004.
- (2) See Government Code Section 81010 and Section 18115 of the Regulations for the duties of filing officers and persons in agencies who make and retain copies of statements and forward the originals to the filing officer.
- (3) For the purpose of disclosure only (not disqualification), an interest in real property does not include the principal residence of the filer.
- (4) Investments and interests in real property which have a fair market value of less than \$2,000 are not investments and interests in real property within the meaning of the Act. However, investments or interests in real property of an individual include those held by the individual's spouse and dependent children as well as a pro rata share of any investment or interest in real property of any business entity or trust in which the individual, spouse and dependent children own, in the aggregate, a direct, indirect or beneficial interest of 10 percent or greater.
- (5) A designated employee's income includes his or her community property interest in the income of his or her spouse but does not include salary or reimbursement for expenses received from a state, local or federal government agency.
- (6) Income of a business entity is reportable if the direct, indirect or beneficial interest of the filer and the filer's spouse in the business entity aggregates a 10 percent or greater interest. In addition, the disclosure of persons who are clients or customers of a business entity is required only if the clients or customers are within one of the disclosure categories of the filer.

CONFLICT OF INTEREST AND DISCLOSURE CODE

Exhibit “A”

CATEGORY 1

Persons in this category shall disclose all interest in real property within the jurisdiction. Real property shall be deemed to be within the jurisdiction if the property or any part of it is located within or not more than two miles outside the boundaries of the jurisdiction or within two miles of any land owned or used by the Agency.

CATEGORY 2

Persons in this category shall disclose all investments and business positions.

The Act defines investment as follows:

“Investment” means any financial interest in or security issued by a business entity, including, but not limited to, common stock, preferred stock, rights, warrants, options, debt instruments, and any partnership or other ownership interest owned directly, indirectly, or beneficially by the public official, or other filer, or his or her immediate family, if the business entity or any parent, subsidiary, or otherwise related business entity has an interest in real property in the jurisdiction, or does business or plans to do business in the jurisdiction, or has done business within the jurisdiction at any time during the two years prior to the time any statement or other action is required under this title. An asset shall not be deemed an investment unless its fair market value equals or exceeds two thousand dollars (\$2,000). The term “investment” does not include a time or demand deposit in a financial institution, shares in a credit union, any insurance policy, interest in a diversified mutual fund registered with the Securities and Exchange Commission under the Investment Company Act of 1940 or in a common trust fund created pursuant to Section 1564 of the Financial Code, interest in a government defined-benefit pension plan, or any bond or other debt instrument issued by any government or government agency. Investments of an individual includes a pro rata share of investments of any business entity, mutual fund, or trust in which the individual or immediate family owns, directly, indirectly, or beneficially, a 10-percent interest or greater.

According to the Act, a business position is a position of director, officer, partner, trustee, employee, or any position of management in any organization or enterprise operated for profit, including but not limited to a proprietorship, partnership, firm, business trust, joint venture, syndicate, corporation or association.

CATEGORY 3

Persons in this category shall disclose all income as defined in Government Code Section 82030.

CATEGORY 4

Persons in this category shall disclose all business positions, investments in, or income (including gifts and loans) received from business entities that manufacture, provide or sell service and/or supplies of a type utilized by the Agency and associated with the job assignment of designated positions assigned to this disclosure category.

CATEGORY 5

Consultants who are not employed as full-time staff members of the Agency shall nonetheless be included as a designated employee and subject to the disclosure requirements herein. However, those consultants whose positions are marked with an asterisk (*) in Exhibit "B" of this Code, or any other consultants which may be hired, may not be required to fully comply with the disclosure requirements herein where the range of duties which they are hired to perform is limited in scope. Such determination shall be made in writing by the General Manager of the Agency and shall include a description of the consultant's duties and, based upon that description, a statement of the extent of the consultant's disclosure requirements, if any. This determination is a public record and shall be retained for public inspection in the same manner and location as this Code.

CONFLICT OF INTEREST AND DISCLOSURE CODE

Exhibit "B"

<u>DESIGNATED POSITIONS</u>	<u>DISCLOSURE CATEGORIES</u>
1. Director	1-4
2. General Manager	1-4
3. Assistant General Manager	1-4
4. Chief Financial Officer	1-4
5. Director of Basin Management/Resource Planning	1-4
6. Director of Engineering	1-4
7. Director of Community Outreach and Cultural Relations	1-4
8. Director/Superintendent of Operations	1-4
9. Controller	1-4
10. Information Systems Manager	1-4
11. Watermaster Services Manager	1-4
12. Imported Water and Engineering Manager	1-4
13. Water Resources Principal Hydrogeologist	1-4
14. Senior Project Manager/Engineering Controller	1-4
15. Accounting Manager	1-4
16. Finance Manager	1-4
17. Human Resources Manager	1-4
18. Senior Hydrogeologist/Engineer	1-4
19. Senior Engineer	1-4
20. Water Conservation and Forecast Manager	1-4
21. Executive Assistant	1-4

22.	Auditor*	5
23.	Attorneys	5
24.	Consulting Engineer	5