

BOARD POLICY
Lake Oroville Area Public Utility District

TITLE: CONFLICT OF INTEREST
ADOPTION DATE: February 8, 1984

NUMBER 1020
AMENDMENT DATE: February 8, 2005

- 1020.1** The Political Reform Act, Government Code §81000, *et seq.*, requires state and local government agencies to adopt and promulgate conflict of interest codes. The Fair Political Practices Commission has adopted a regulation, 2 Cal. Code of Regs. §18730, which contains the terms of a standard conflict of interest code. It can be incorporated by reference and may be amended by the Fair Political Practices Commission after public notice and hearings to conform to amendments in the Political Reform Act. Therefore, the terms of 2 Cal. Code of Regs. §18730 and any amendments to it duly adopted by the Fair Political Practices Commission are hereby incorporated by reference and, along with the attached Appendix A in which members of the Board of Directors and employees are designated, and in which disclosure categories are set forth, constitute the conflict of interest code of the Lake Oroville Area Public Utility District.
- 1020.2** Designated employees shall file statements of economic interests with the Clerk of the County of Butte.

APPENDIX A
PART I - DESIGNATED FILER

<u>Position</u>	<u>Disclosure</u>
Board Members	1
General Manager	1
Field Operations Supervisor	1
Board Treasurer	1
Consultants	2

PART II - DISCLOSURE CATEGORIES

1. Interests in real property.

Investments and business positions in any business entity or income from any source of the business entity or source of income manufactures or sells supplies, machinery or equipment of the type utilized by the District.

Investments and business positions in any business entity or income from any source if the business entity or source of income is a contractor or subcontractor engaged in the performance of work or services of the type utilized by the District.

2. Consultants shall disclose all sources of income, interests in real property and investments and business positions in business entities.

The General Manager of the District may determine in writing that a particular consultant, although a "designated position," is hired to perform a range of duties that is limited in scope and thus is not required to fully comply with the disclosure requirements described in this section. Such written determination shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. Such determination shall be a public record and shall be retained for public inspection in the same manner and location as this conflict of interest code.

APPENDIX "A"
 PUBLIC OFFICIAL'S TYPE OF BUSINESS ENTITY, INVESTMENT
 FUNCTION/TITLE SOURCE OF INCOME, OR REAL PROPERTY DISCLOSABLE

Field Operations Supervisor	<ol style="list-style-type: none"> 1. Motor vehicles and specialty vehicles and parts therefor. 2. Construction & building materials. 3. Office equipment & supplies. 4. Petroleum products. 5. Pipes, valves, fittings, pumps, meters, etc. 6. Safety equipment and facilities
Engineering Consultants	<ol style="list-style-type: none"> 1. Real property. 2. Pipe, valves, fittings, pumps, tanks, meters, etc. 3. Construction & building materials. 4. Soil tests, compaction and other agreements on grading requirements. 5. Construction contractors.
Financial Consultants Bond Counsel	<ol style="list-style-type: none"> 1. Real property. 2. Banks and savings and loans. 3. Retirement of bond proceeding.
Directors Candidates for Director Secretary Controller/Auditor/Treas. General Manager Attorneys	<ol style="list-style-type: none"> 1. All of the above. 2. Newspapers. 3. Computer hardware and software. 4. Sewer testing. 5. Printing or reproduction services. 6. Insurance companies. 7. Public utilities. 8. Audit agreements and contracts. 9. Office equipment and supplies. 10. Employment agencies. 11. Temporary help agencies. 12. Educational and medical services and materials.

Note : Appendix "A" sets forth those positions which entail the making or participation in the making of decisions which may foreseeably have a material effect on any financial interest, but does not include any unsalaried member of any board or commission which serves a solely advisory function.

APPENDIX "B"

DEFINITIONS:

1. "Official": Any natural person who is a member of the Board of Directors, or is an officer, employee or consultant of the District.
 - a. "Official" shall include, but not be limited to, salaried or unsalaried members of boards or commissions with decision-making authority. A board or commission possesses decision-making authority whenever:
 - (1) It may make a final governmental decision, or;
 - (2) It may compel a governmental decision by any agency, or;
 - (3) Its action, recommendation, or consideration is a legal prerequisite to a final governmental decision; or,
 - (4) It makes substantive recommendations which are, and over an extended period of time have been, regularly approved without significant amendment or modification by a designated employee or the District.
 - b. "Consultant" shall include any natural person who provides, under contract, information, advice, recommendation or counsel to the District. But "consultant" shall not include a person who:
 - (1) Conducts research and arrives at conclusions with respect to his/her rendition of information, advice, recommendation or counsel independent of the control and direction of the District or of any official other than normal contract monitoring; and,
 - (2) Possesses no authority with respect to any District decision beyond the rendition of information, advice recommendation or counsel.
2. "Designated Employee": Any official of the District or candidate for elective District office whose position is designated in Appendix "A" of this Policy. Appendix "A" sets forth those positions which entail the making or participation in making of decisions which may foreseeably have a material financial effect on any financial interest, but does not include any unsalaried member of any board or commission which serves a solely advisory function.
3. "Making Governmental Decisions": An official "makes governmental decisions, "except as provided in Definition "4.b.(1)" herein, when he/she, acting within the authority of his/her office:
 - a. Votes on a matter;
 - b. Appoints a person;
 - c. Obligates or commits the District to any course of action;
 - d. Enters into any contractual agreement on behalf of the District;
 - e. Determines not to act, within the meaning of subparagraphs "a," "b," "c," and "d" of this subsection, unless such determination is made because of his/her financial interest. When the determination not to act occurs because of his/her financial interest, the official's determination must be accompanied by disclosure of the financial interest, made part of the District's official record or made in writing to the official's supervisor, appointing power or any other person specified in this Policy.

4. "Participating in the Making of Governmental Decisions":
- a. An official "participates in the making of a governmental decision," except as provided in subsection "b.(1)" of this definition, when he/she, acting within the authority of his/her office:
 - (1) Negotiates in any manner with a governmental entity or private person regarding the decision;
 - (2) Conducts research or investigations regarding the decision, the results of which will be made available to others for the purpose of attempting to influence the decision;
 - (3) Prepares any report, analysis, or opinion regarding the decision which is made available to others for the purpose of attempting to influence the decision;
 - (4) Participates in any governmental discussions or debates regarding the decision; or,
 - (5) Advises or makes recommendations to the decision-maker.
 - b. Making or participating in the making of a governmental decision shall not include:
 - (1) Actions of officials which are solely ministerial, secretarial, manual or clerical;
 - (2) Appearances by an official as a member of the general public before an agency in the course of its prescribed governmental function to represent himself/herself on matters related solely to his/her personal interests; or,
 - (3) Actions by officials, employees, or employee representatives relating to their compensation or the terms or conditions of their employment or contract.
5. "Financial Interest": An official has a "financial interest" in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, including all property owners within the District or all those served by the District, or on any significant segment of the property owners within the District or those served by the District or of the public generally, or on the official as a member of a profession, industry or occupation all members of which will be affected to the same extent, on:
- a. Any business entity in which the official has a direct or indirect investment worth more than \$1,000;
 - b. Any real property in which the official has a direct or indirect interest worth more than \$1,000;
 - c. Any source of income, other than loans by a commercial lending institution in the regular course of business, aggregating \$250.00 or more in value received by or promised to the official within twelve months prior to the time when the decision is made; or,

- d. Any business entity in which the official is a director, officer, partner, trustee, employee, or holds any position of management.
 - e. "Indirect Investment or Interest": Any investment or interest owned by the spouse or dependent child of the official, held or owned by an agent on behalf of the official, held or owned by any business entity controlled by the official or by a trust in which the official has a substantial interest. A business entity is controlled by the official if the official, his/her agents, spouse and dependent children hold more than 50% of the ownership interest in the entity. An official has a substantial interest in a trust when the official, his/her spouse and dependent children have a present or future interest worth more than \$1,000.
6. "Investment": 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, 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 within the jurisdiction at any time during the two years prior to the time any statement or other action is required under this Policy. No asset shall be deemed an investment unless its fair market value exceeds \$1,000. "Investment" does not include a time or demand deposit in a financial institution, shares in a credit union, any insurance policy, or any bond or other debt instrument issued by any government or government agency. Investments of an individual include a pro rata share of investments of any business entity or trust in which the individual or spouse owns, directly, indirectly or beneficially, a 10% interest or greater.
7. "Interest in Real Property" includes any leasehold, beneficial or ownership interest or option to acquire such an interest in real property within the jurisdiction if the fair market value interest is greater than \$1,000. Interests in real property of an individual include a pro rata share of interests in real property of any business entity or trust in which the individuals or spouse owns, directly, indirectly or beneficially, a 10% interest or greater.
8. "Real Property Within the Jurisdiction": Real property or any part of a parcel of real property located within or not more than two miles outside the boundaries of the District, or within two miles of any land owned or used by the District.
9. "Income":
- a. "Income" means, except as provided in subsection (b), income of any nature from any source, including but not limited to any salary, wage, advance, payment, dividend, interest, rent, capital gain, return of capital, gift, including any gift of food or beverage, loan, forgiveness or payment of indebtedness, discount in the price of anything of value unless the discount is available to members of the public without regard to official status, rebate, reimbursement for expenses, per diem, or contribution to an insurance or pension program paid by any person other than an employer, and including any community property interest in income of a spouse. "Income" of an individual also includes a pro rata

share of any income of any business entity or trust in which the individual or spouse owns, directly, indirectly, or beneficially, a 10% interest or greater.

b. "Income" does not include:

- (1) Income from sources which the person filing the statement knows or has reason to know, have not done business or owned real property within the jurisdiction in the District within the past two years and do not plan to do such business or own such real property in the future;
- (2) Campaign contributions required to be reported under Chapter 4 of the Political Reform Act of 1974;
- (3) Salary and reimbursement for expenses or per diem received from a state or local government agency and reimbursement for travel expenses and per diem received from a bona fide educational, academic or I charitable organization;
- (4) Gifts of informational material, such as books, pamphlets, reports, calendars or periodicals;
- (5) Gifts which are not used and which, within thirty days after receipt, are returned to the donor or delivered to a charitable organization without being claimed as a charitable contribution for tax purposes;
- (6) Gifts from an individual's spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, aunt, uncle or first cousin or the spouse of any such person; provided that a gift from any such person shall be considered income if the donor is acting as an agent or intermediary for any person not covered by this paragraph;
- (7) Any devise or inheritance;
- (8) Interest, dividends or premiums on a time or demand deposit in a financial institution, shares in a credit union or any insurance policy, payments received under any insurance policy, or any bond or other debt instrument issued by any government or government agency;
- (9) Dividends, interest or any other return on a security which is registered with the Securities B Exchange Commission of the United States Government.

10. "Material Financial Effect":

- a. The financial effect of a governmental decision on a financial interest of an official is material if, at the time the official makes, or participates in making the decision, in light of all the circumstances and facts known at the time of the decision, the official knows or has reason to know that the existence of the financial interest might interfere with his/her performance of his/her duties in an impartial manner free from bias. Provided that, the making or participation in the making of a governmental decision by a contract consultant or by a person retained to provide information, advice, recommendation or counsel has no material financial effect on a business entity or source of income in which such consultant or person retained is an officer, employee, sole proprietor or partner, if the only financial

effects of the decision are the modification, perpetuation or renewal of the contractual or retainer agreement and/or the opportunity to bid competitively upon a project or contract.

In determining the existence of a material effect upon a financial interest, consideration should be given, but not be limited to, an analysis of the following factors:

- (1) In the case of a business entity in which the official has a direct or indirect investment worth more than \$1,000, or in the case of an official who is a director, officer, partner, trustee, employee, or holds any position of management in a business entity:
 - (a) Whether the effect of the decision will be to increase or decrease the annualized gross revenue of the business entity by 1.0% or more or the annual net income of the business entity by 0.5% or more;
 - (b) Whether the effect of the decision will be to increase or decrease the assets or liabilities of the business entity by \$50,000 or more, or by 0.5% of its current assets or liabilities, whichever is less.
 - (2) In the case of real property within the jurisdiction, in which the official has a direct or indirect interest worth more than \$1,000:
 - (a) Whether the effect of the decision will be to increase the income-producing potential of the real property by \$100 or 5% per month, whichever is less;
 - (b) Whether the effect of the decision will be to increase the fair market value of the real property by \$1,000 or more or by 0.5% whichever is greater.
 - (3) In the case of a source of income of an official:
 - (a) The decision will affect the source of income in the manner described in paragraph (1), above;
 - (b) Whether the governmental decision will directly affect the amount of income to be received by the official;
 - (c) Whether there is a nexus between the governmental decision and the purpose for which the official receives income.
- b. The specific dollar or percentage amounts set forth above do not constitute either absolute maximum or minimum levels, but are merely intended to provide guidance and should be considered along with other relevant factors in determining whether a financial interest may interfere with the official's exercise of his/her duties in rendering a decision.

11. "Business Entity": Any organization or enterprise operated for profit, including but not limited to a proprietorship, firm, business trust, joint venture, syndicate, corporation or association.