

RESOLUTION NO. 8004-16
RESOLUTION OF THE EXECUTIVE BOARD
OF THE BAY AREA CLEAN WATER AGENCIES
APPROVING CONFLICT OF INTEREST CODE

WHEREAS, the provisions of the Political Reform Act require California public agencies to adopt a conflict of interest code (Government Code Section 87300); and

WHEREAS, the governing body (the "Board") of the Bay Area Clean Water Agencies ("BACWA") wishes to adopt such a code (the "Code") so as to conform with the Political Reform Act and the associated regulations; and

WHEREAS, the Fair Political Practices Commission has determined the Political Reform Act requires the designation of positions in conflict of interest codes that may foreseeably have a material affect on financial interests within the BACWA boundaries; and,

WHEREAS, the Fair Political Practices Commission has determined that adopting a conflict of interest code is an action that requires a formal notice and comment period; and,

WHEREAS, BACWA has drafted a notice of intent to adopt a conflict of interest code; and,

WHEREAS, BACWA has scheduled a 45 day notice and comment period, beginning on March 9, 2001 and culminating on April 24, 2001, to accept written comments from the public and encourage public involvement in the decision-making process; and,

WHEREAS, no public hearing was requested in any comment received and BACWA has accepted and considered comments from interested persons throughout the comment period; and

WHEREAS, the Board has reviewed the Code attached hereto as Attachment A; and

WHEREAS, the Code requires the Board to designate a filing officer for BACWA.

NOW, THEREFORE, BE IT RESOLVED as follows:

1. The Board hereby adopts and approves the Code as BACWA's conflict of interest code, conditioned only upon the approval of the Code by the Fair Political Practices Commission.
2. The Board hereby authorizes and directs BACWA's Executive Director to submit the Code, together with a copy of this resolution, to the Fair Political Practices Commission for approval.

3. Upon approval of the Code by the Fair Political Practices Commission, BACWA's Executive Director is appointed as the designated filing officer for BACWA's conflict of interest code.
4. The Board hereby authorizes each of the officers of BACWA to execute all documents and take any other action necessary or advisable to carry out the purposes of this resolution.

CERTIFICATION

The foregoing Resolution was adopted by the Executive Board of Bay Area Clean Water Agencies at its regularly scheduled meeting held on April 26, 2001.



DONALD BIRRER,
Executive Director

ATTACHMENT A

BAY AREA CLEAN WATER AGENCIES
CONFLICT OF INTEREST CODE

The Political Reform Act (Government Code Section 81000 et seq.) requires state and local government agencies to adopt and promulgate conflict of interest codes. The Fair Political Practices Board has adopted a regulation, 2 California Code of Regulations 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 Fair Political Practices Board to conform to amendments in the Political Reform Act after public notice and hearings. Therefore, the terms of 2 California Code of Regulations Section 18730 and any amendments to it duly adopted by the Fair Political Practices Board, along with the attached Appendix in which officials and employees are designated and disclosure categories are set forth, are hereby incorporated by reference and constitute the conflict of interest code of the Bay Area Clean Water Agencies.

Designated employees shall file statements of economic interests with the Executive Director of the Bay Area Clean Water Agencies who shall make the statements available for public inspection and reproduction. (Gov.Code Section 81008.)

APPENDIX A
BAY AREA CLEAN WATER AGENCIES
CONFLICT OF INTEREST CODE

PART I
DESIGNATED POSITIONS

	<u>Disclosure Categories to Report</u>
1. General Counsel	All
2. Consultants*	All
3. Members and Alternates of the Executive Board	All
4. Executive Director	All

*Consultants shall be included in the list of designated employees. However, the Executive Director may determine in writing that a particular consultant, although in a "designated position," is hired to perform a range of duties that are 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. The Executive Director's determination is a public record and shall be retained for public inspection in the same manner and location as the conflict of interest code.

It has been determined that the positions listed below manage public investments and will file a Statement of Economic Interest pursuant to Government Code § 87200: Treasurer.

**APPENDIX B
BAY AREA CLEAN WATER AGENCIES
CONFLICT OF INTEREST CODE**

Investments and business positions in business entities, and income from sources which provide facilities, services, supplies, or equipment of the type utilized by or within BACWA, including, but not limited to:

1. Office equipment and supplies
2. Safety equipment and facilities
3. Engineering services
4. Printing or reproduction services
5. Soil tests, compaction and grading
6. Audit and other accounting services
7. Environmental analysis
8. Geology services
9. Chemical or biological laboratory or field survey or testing services

This is the last page of the conflict of interest code for the **Bay Area Clean Water Agencies**.



CERTIFICATION OF FPPC APPROVAL

Pursuant to Government Code Section 87303, the conflict of interest code for the Bay Area Clean Water Agencies was approved on March 19, 2002. The code will be effective on April 18, 2002.

A handwritten signature in black ink that reads "Mark Krausse".

Mark Krausse
Executive Director
Fair Political Practices Commission

(Regulations of the Fair Political Practices Commission, Title 2, Division 6 of the California Code of Regulations.)

18730. Provisions of Conflict of Interest Codes.

(a) Incorporation by reference of the terms of this regulation along with the designation of employees and the formulation of disclosure categories in the Appendix referred to below constitute the adoption and promulgation of a conflict of interest code within the meaning of Government Code section 87300 or the amendment of a conflict of interest code within the meaning of Government Code section 87306 if the terms of this regulation are substituted for terms of a conflict of interest code already in effect. A code so amended or adopted and promulgated requires the reporting of reportable items in a manner substantially equivalent to the requirements of article 2 of chapter 7 of the Political Reform Act, Government Code sections 81000, *et seq.* The requirements of a conflict of interest code are in addition to other requirements of the Political Reform Act, such as the general prohibition against conflicts of interest contained in Government Code section 87100, and to other state or local laws pertaining to conflicts of interest.

(b) The terms of a conflict of interest code amended or adopted and promulgated pursuant to this regulation are as follows:

(1) Section 1. Definitions.

The definitions contained in the Political Reform Act of 1974, regulations of the Fair Political Practices Commission (2 Cal. Code of Regs. sections 18100, *et seq.*), and any amendments to the Act or regulations, are incorporated by reference into this conflict of interest code.

(2) Section 2. Designated Employees.

The persons holding positions listed in the Appendix are designated employees. It has been determined that these persons make or participate in the making of decisions which may foreseeably have a material effect on financial interests.

(3) Section 3. 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 financial interests pursuant to article 2 of chapter 7 of the Political Reform Act, Government Code sections 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 Political Reform Act, Government Code section 87200; and

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.

(6) Section 6. 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.

(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.

(7) Section 7. 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) Investments and Real Property Disclosure.

When an investment or an interest in real property³ is required to be reported,⁴ the

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 Political Reform 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

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.

(8) Section 8. Prohibition on Receipt of Honoraria.

(A) No member of a state board or commission, and no designated employee of a state or local government 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.

(8.1) Section 8.1 Prohibition on Receipt of Gifts in Excess of \$320.

(A) No member of a state board or commission, and no designated employee of a state or local government agency, shall accept gifts with a total value of more than \$320 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.

(8.2) Section 8.2. Loans to Public Officials.

(A) No elected officer of a state or local government 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 state or local government agency in which the elected officer holds office or over which the elected officer's 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 state or local government agency in which the public official holds office or over which the public official's 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 a state or local government 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

of the Government Code.

(8.4) Section 8.4. 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:
 - a. The date the loan was made.
 - b. The date the last payment of one hundred dollars (\$100) or more was made on the loan.
 - c. 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.

(9) Section 9. 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

87300-87302, 89501, 89502 and 89503, Government Code.