

Max Overland

From: Carlos Orellana
Sent: Monday, January 13, 2025 2:43 PM
To: Jeffrey Hare
Cc: Shiloh Ballard; Tony Estremera; Clerk of the Board; Max Overland; Tina Yoke
Subject: RE: Item 5.2 - Request to Delay or Modify Amending Conflict of Interest Code

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Hello Chair Hare,

Thank you for your message. As counsel for Valley Water, I do not have authority to remove items from the agenda. As such, I am copying this message to incoming Board Chair Estremera. I'm also copying the Clerk's Office, Acting Clerk of the Board Max Overland, and Acting CEO Tina Yoke for their information and so that this message may be included as public comment on the item.

Thanks and best regards,

Carlos

From: Jeffrey Hare <jeff@jeffreyhare.com>
Sent: Monday, January 13, 2025 2:32 PM
To: Carlos Orellana <COrellana@valleywater.org>
Cc: Shiloh Ballard <shiloh@shilohballard.com>
Subject: Item 5.2 - Request to Delay or Modify Amending Conflict of Interest Code

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Mr. Orellana

(I am copying Director Ballard since she is my District 2 Representative)

Please consider delaying or modifying the proposed Amendment to the Valley Water Conflict of Interest Code (Item 5.2 on the Agenda). Specifically, the Resolution seeks to recharacterize members of the Independent Monitoring Committee (IMC) and the Environmental Water Resources Committee as "designated employees" and "public officials." These are citizen volunteers. With respect to the IMC, I can categorically state that the IMC Members are NOT employees, NOT public officials, and have NO authority to make any decisions that would entail a conflict of interest under FPPC Guidelines and Regulations.

There are three critical issues that suggest this item needs to be pulled, or at least eliminate the IMC component from the Resolution. (I don't want to speak to the EWRC member's situation, but I think it is similar.)

First, the Resolution designates the IMC members as "**employees**." This is simply incorrect. The Committee members are appointed and serve as independent volunteers, and are obviously not employees of Valley Water.

Second, the FPPC regulations and guidelines, which are incorporated into the Resolution and would apply to the Committee Members if adopted, only apply to "**public officials**," as defined, and employees. Generally, this incorporates upper level managers or directors, appointed decision makers, and elected officials. The whole point of having an "**Independent** Monitoring Committee" is to distinguish between the classification of a "public official" and "**citizen**." The IMC members do not have the authority to make decisions, and their only task is to review the Annual Report and provide comments and recommendations.

Third, there are possible **unintended consequences** which could adversely impact the function of the IMC, not the least of which would prevent the Committee from having a quorum. The Resolution declares that IMC Members would be required to meet the disclosure requirements under Category 1 of any real property interests, investments, positions, and sources of income, gifts, loans, etc. "within the boundaries of Valley Water, or within two miles of Valley water boundaries, or of any land owned or used by Valley Water."* Since the scope of the 32 projects included within the Safe Clean Water program reach across the entire geographic area of the jurisdictional area incorporated in this definition in Category 1, each individual Committee Member must consider whether or not their **individual** situation creates a **disqualifying conflict of interest** as to any one or more of these projects. Although there is a general exemption under FPPC Guidelines for impacts that apply to the public generally, the issue of whether there is a disqualifying conflict CAN ONLY BE RESOLVED BY GETTING AN OPINION FROM THE FPP on a case-by-case basis.

In other words, adoption of the Resolution as drafted would have the effect of putting the individual members of the IMC into an untenable position. Aside from the obvious mistake of designating them as "employees," the Resolution effectively re-characterizes the role from citizen oversight to "public official," which I believe is contrary to the letter and intent of Measure S. Further, it creates an situation wherein -- to avoid penalties or fines from the FPPC for getting it wrong -- each member would need to seek a formal opinion from the FPPC - a process that takes at least three weeks on a good day.

*EXAMPLES: Would an EWRC member have disqualifying interest if they owned a houseboat on Lake Oroville or a part ownership in a cabin in the Delta, if asked to review plans related to SWP allocations or fund a portion of the Delta Conveyance project? Would an IMC member have a disqualifying interest if asked to comment on a vegetation and sediment removal project upstream from a creek near their residence? Would a property owner in Sunnyvale have a disqualifying interest when evaluating the proposed modification of the timeline for the East and West channels?

RECOMMENDATION:

Remove the IMC and possibly the EWRC Committees from the Resolution until further analysis of the range of consequences can be fully evaluated.

Thank you,
Jeffrey Hare
Chair, IMC

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