

**MINUTES OF THE
SPECIAL MEETING OF THE BOARD OF DIRECTORS
OTAY WATER DISTRICT
March 14, 2012**

1. The meeting was called to order by President Lopez at 4:37 p.m.

2. ROLL CALL

Directors Present: Bonilla, Croucher, Gonzalez, Lopez and Robak (arrived at 4:41 p.m.)

Staff Present: General Manager Mark Watton, Assistant General Manager of Administration and Finance German Alvarez, Assistant General Manager of Engineering and Water Operations Manny Magana, General Counsel Daniel Shinoff, Attorney Christina Cameron, Chief of Information Technology Geoff Stevens, Chief Financial Officer Joe Beachem, Chief of Engineering Rod Posada, Chief of Operations Pedro Porrás, Chief of Administration Rom Sarno, District Secretary Susan Cruz and others per attached list.

3. PLEDGE OF ALLEGIANCE

4. APPROVAL OF AGENDA

A motion was made by Director Bonilla, seconded by Director Croucher and carried with the following vote:

Ayes:	Directors Bonilla, Croucher, Gonzalez and Lopez
Noes:	Director Robak
Abstain:	None
Absent:	None

to approve the agenda.

5. PUBLIC PARTICIPATION – OPPORTUNITY FOR MEMBERS OF THE PUBLIC TO SPEAK TO THE BOARD ON ANY SUBJECT MATTER WITHIN THE BOARD'S JURISDICTION BUT NOT AN ITEM ON TODAY'S AGENDA

No one wished to be heard.

WORKSHOP

6. REVIEW THE STATE OF CALIFORNIA STATEMENT OF ECONOMIC INTEREST/FORM 700 FILING

General Counsel Dan Shinoff indicated that the State of California requires that all board members and board-designated employees receive ethics training (AB1234) every other year. He stated that this training would fulfill the State mandated training requirement and his firm would provide attendees to today's meeting *Certificates of Participation* for participating in today's training. He introduced Ms. Christina Cameron of his office, Stutz Artiano Shinoff & Holtz, who would provide a review of Ethics Laws and the Form 700/Statement of Economics Interest form. He indicated that Ms. Cameron was employed by City of San Diego for twenty years where she worked on high profile issues. She also worked with a number of local political leaders in San Diego and is Ethics Counsel to the City of San Diego. He stated that she is recognized as the County-wide expert on Form 700 issues.

Ms. Cameron indicated that AB1234 Training covers many things:

- Conflict of Interest
- Brown Act
- Public Records Act
- California Sunshine Rule
- Public Contracting
- Ethics Laws

She discussed the open meeting laws or the Ralph M. Brown Act which requires that public agencies conduct their business at meetings that are open to the public. The Act requires that all meetings be publicized in advanced and that meeting agendas provide details of the items to be discussed at the meeting. It was noted that only items listed on the agenda may be discussed at the meeting. There are limited exceptions that allow for some items to be discussed in private, but these items must still be noted on the meeting agenda. Such items include real estate negotiations, certain personnel matters (not including salary matters), and litigation.

Ms. Cameron indicated that the *Act* defines a meeting of the body as whenever a majority of its members transacts or discusses the business of the public agency. A majority cannot talk privately about an issue that is before a body. This includes discussions by phone, email or at a local coffee shop. She stated that the Brown Act also prohibits "serial meetings," any series of communications that results in a majority of a governing body conferring on an issue. This can occur when e-mails are forwarded members of the board, through staff intermediaries, or signing onto joint memoranda.

She stated the Public Records Act allows the public access to a public agency's documents created to conduct the "people's business." Public records may be any

writing that was prepared, owned, used or retained by a public agency. There are exceptions which include documents prepared in support of litigation or those developed during the “deliberative process” (see attached copy of presentation). It was inquired if an email that had been deleted (“trashed”), if it would be subject to the Public Records Act. It was discussed that agencies should maintain a records retention policy/schedule which identifies when records are purged and the agency should maintain its records accordingly. If an email is in the possession of the agency, then it is considered a record. If it has been purged, as per the retention policy, then it is no longer a record.

Ms. Cameron reviewed the Form 700/Statement of Economic Interests form. She indicated that elected officials, department heads, some employees and candidates are required to file a Form 700. The District’s Conflict of Interest Code identifies those District positions that have been designated to file a Form 700 and what those positions are required to disclose. She noted that officials must file within 30 days of assuming office, annually, and within 30 days of leaving office. Candidates file when they declare their candidacy.

She stated that filers should disclose the following:

- Investments:
 - \$2000 or more in value (excluding mutual funds)
 - Reportable Sources: Generally, businesses that have or will contract with the District to provide services, supplies materials, machinery or equipment
 - Disclose investments in all publicly traded and local companies
- Real Property:
 - \$2,000 or more in value; ownership and leases (excluding personal residence)
 - Reportable Sources: Generally property located in or near the District (sometimes limited to property that may be developed as residential property or may be considered by the District for any school use)
- Income:
 - \$500 or more per year from any one source
 - Reportable Sources: Generally sources that have or will contract with the District to provide services, supplies, materials, machinery or equipment
 - Half of your spouse’s non-government salary
 - Excludes inheritance itself, but once the inheritance is invested, it may need to be disclosed
- Gifts:
 - \$50 or more

- Reportable Sources: If the District's code does not identify reportable sources, then disclose gifts from any source (see attached copy of presentation for exceptions)
 - Includes rebates/discounts not available to the public
 - \$420 per calendar year limit from a single reportable source
 - Disclose both the source and any intermediary
- Business Positions:
 - Own 10% or more of a business
 - Reportable Investments: Real property holdings and sources of income in excess of \$10,000 of a business
 - Your share of the income from the business
 - Note: Service on a non-profit board of directors is not a business position

It was noted that if a District Official is required to disclose interests under Category 5 of the District's Conflict of Interest Code, then the official must disclose all investments and business positions in any banking, savings and loan or other financial institution, whether they are doing or planning to do business within the District's service area or not. Ms. Cameron also noted that Category 6 is similar to Category 5, in that, officials must disclose all business positions in, and sources of income from business entities that provide services, supplies, materials, machinery or equipment of a type purchased or leased by the District, whether they are doing or planning to do business within the District's service area.

She also stated that if an official personally sold a car, he/she must disclose to whom they sold their car to as it is identified as a good or service that the District would purchase. The monies received from the sale would be disclosed as income. It was also discussed that gambling winnings is considered income and should be reported.

There was discussion if the cost associated with travel and meals on the water infrastructure tours hosted by Metropolitan Water District/San Diego County Water Authority (MET/CWA), must be disclosed. It was indicated that they should be disclosed, but such tours are not subject to the gift limitation of \$420 per calendar year. It was requested that Ms. Cameron confirm that such tours are reportable as Otay is a member of CWA and MET. It was also requested that she confirm, if an official is a Director of CWA and, thus, a member of MET, if the travel/meal costs would be reportable. There was further discussion, if a gift is received through a raffle process (chance), then it is not required that the gift be disclosed, however, if it is given, then it should be disclosed by the recipient. One time event tickets, if unused, or given to another, are not required to be reported. However, the recipient of the tickets would need to report the cost of the tickets.

Ms. Cameron provided an overview of the Conflict of Interest Laws. She stated that there are three ways in which an individual can have a conflict of interest; under the Political Reform Act, Contracts and Common Law:

- Political Reform Act: Public officials must not participate in decisions if it is reasonably foreseeable that the decision will affect an economic interest of that official.
 - Applies to any decision relating to permits, licenses, contracts
 - The official must recuse from participating in the decision
 - When recusing, the official must leave the room
 - If an official violates this act, there are penalties that can be incurred , including fines, criminal prosecution and removal from office

- A Public Official is:
 - Elective office holders
 - High level employees who have the ability to make discretionary decisions for the District
 - Decisions include preliminary negotiations, advising, and making recommendations leading up to a decision; wherein a decision can be voting, appointing, entering into contracts or otherwise obligating the District
 - Consultants

Ms. Cameron indicated that the individual, as public official, must be able to understand and recognize when they have an economic interest so that they will know when a conflict might arise. Economic interest, as defined by statute, may be any of the following:

- Owning a business
- Being on a company's board of directors
- Owning or leasing property (near or affected by a decision)
- Owning stock or having an investment interest
- Personal financial effect: saving or having to spend \$250 or more as a result of a decision
- Campaign contributions in excess of \$250 (limited circumstances)
- Income of more than \$5090 from an individual or private entity
- Your spouse, dependent child, or registered domestic partner having any of the interests above
- Gift(s) greater than \$420 during the 12 months prior to the decision

An exception is if an official has an economic interest in a decision that would otherwise require disqualification but that interest is no different than that of the public generally, then he or she may not be precluded from participating. An example of such an issue is the implementation of rate increases or rebates; all District customers will be affected by a rate increase/rebate, but the District cannot enact a water rate change without the vote of the board.

Ms. Cameron noted that if an official has a conflict and wishes to recuse himself/herself from participating in a decision, the official must identify the disqualifying interest. The official must then leave the room while the item is being

discussed and voted upon. There is a limited exception when an official, who has a disqualifying event, may still participate during the voting stage. If the District is making a decision that affects the official's own property, then the official has the right, under due process, to speak on behalf of his/her property. If this is the situation, the official would leave the dias and submit a speaker slip to participate as a member of the public. This does not apply to *business interests*, a situation where an individual has a business partner who owns the land along with the elected official, the partner can then speak on behalf of the business. If an official is truly the only owner, then the exemption applies. There are administrative and monetary penalties for failing to disclose economic interests or failure to disqualify where a conflict exists which includes:

- Administrative or civil monetary penalties
- Criminal prosecution which in turn may lead to removal from office

She stated that there are special rules with regard to contracts. Public officials cannot have an economic interest in any contract made by his/her agency. This is referred to as a "section 1090 problem." Government Code Section 1090 applies only to contracts and will be applied to identify, not only if the public official must recuse himself/herself from the decision, but if the District itself may be precluded from entering into a contract with a vendor. She noted that if an individual is a board member, it is presumed that they have participated in every contract when the board is the authority to issue the contract.

She indicated that Section 1090 voids contracts and thus, the local agency does not have to pay for the goods or services received under the contract and may even seek repayment of amounts already paid. The criminal penalties are severe and can lead to fines and up to three (3) years in prison, and a lifetime ban on holding office. She reviewed examples of *economic interests* in contracts which included the following relationships with contracting parties:

- Employee
- Attorney, agent or broker
- Supplier of services or goods
- Landlord-Tenant
- Creditor-Debtor
- Officer or employee of non-profit corporation
- Includes spouse community and separate property

These relationships are not defined by statute and can be complicated or involve intermediaries. They are also broadly applied by the courts. There are some exceptions, such as, when an official's economic interest is deemed as *remote*; some employment situations, stock ownership derived from employment, and landlord-tenant relationships. The official then may disclose his/her interest and recuse themselves from the decision. The agency is then allowed to enter into the contract.

Director Bonilla left at 6:15 p.m.

Another exception is *non-interests or minor interests*, such as, stock of less than 3% in a corporation, reimbursement of expenses and uncompensated service on non-profit boards. In these situations, there are no recusal requirements and the official may participate in the decision making process.

Ms. Cameron reviewed the Common Law Conflict of Interest which included:

- Personal interests: familial relationships, friendships, or general sympathy for a particular viewpoint
- Inquiring of yourself if there is a non-economic situation which makes you unable to make a decision in a fair manner primarily for the benefit of the public

She reviewed the competitive bidding process and indicated that it is designed to give all interested parties the opportunity to do business with the government on an equal basis, eliminates favoritism, and ensures the public gets the best deal by promoting competition. She indicated that the state competitive bidding requirement is necessary when a public works project is worth over \$5000. The project must be publicized for bid and is awarded to the lowest responsible/responsive bidder.

She discussed the laws regarding the misuse of public funds. This law is to ensure that the public's money is being used for a demonstrable public purpose. She stated that the law prohibits using public agency resources for personal or political purposes, sending mass mailings at public expense (an exception is if it is communicating information for a purpose and not promoting an official), or making a gift of public resources or funds.

Ms. Cameron also reviewed the laws regarding bribery, extortion and honoraria:

- Bribery: An official may not receive something of value in exchange for an action or vote. Even agreeing to a bribe is forbidden
- Extortion: An official may not demand something of value from someone else in exchange for an action or vote
- Penalties include:
 - Criminal prosecution with possible prison time
 - Fines, loss of one's office
 - Permanent disqualification from holding public office
- Honoraria: Officials generally may not receive payment for giving speeches, participating on panels or meetings, or attending events
 - Exceptions apply to officials who also work in professions which routinely include paid speaking

She lastly reviewed post employment restrictions and incompatible offices. She stated that elected officials and some high level administrative officers may not represent others before their former agency for one year after leaving office. This only applies to

compensated work and also applies to attorneys. Incompatible offices indicates that you cannot hold two public offices that are essentially in conflict with one another, that is, it is difficult to be clear as to which of the agencies you are operating on behalf of. If you hold two public offices, by operation of law, you will be discharged from the first office and deemed to have taken the second office.

7. ADJOURNMENT

With no further business to come before the Board, President Lopez adjourned the meeting at 6:25 p.m.

President

ATTEST:

District Secretary