

**STATE WATER RESOURCES CONTROL BOARD  
BOARD MEETING SESSION – OFFICE OF CHIEF COUNSEL  
JANUARY 18, 2023**

**ITEM 5**

**SUBJECT**

CONSIDERATION OF A PROPOSED RESOLUTION TO AMEND THE STATE WATER BOARD'S CONFLICT OF INTEREST CODE.

**DISCUSSION**

Section 87302 of the Government Code requires every state agency to adopt and promulgate a conflict of interest code, and in it identify the positions within the agency involved in making or participating in making decisions that may foreseeably have a material effect on any financial interest. For each position identified, the code also specifies the types of investments, business positions, interests in real property, and sources of income that must be reported. These employees are required to file Form 700s annually. The last time the State Water Board's Conflict of Interest Code was updated was in 2016.

**POLICY ISSUE**

The updates to the State Water Board's 2016 Conflict of Interest Code will designate all positions held by professional staff, including engineers, scientists, geologists, attorneys, or others with advanced degrees. Previously, only supervisors were designated; however, a 2018 decision by the Fair Political Practices Commission (FPPC) brought to our attention that our current conflict-of-interest code does not include all the positions where staff participate in making decisions. (FPPC Adv. A-18-224, Stephen Rooklidge, Nov. 6, 2018.) Participating in making a governmental decision includes providing "information, an opinion, or a recommendation for the purpose of affecting the decision without significant intervening substantive review." (Cal. Code Regs. tit. 2, § 18704, subd. (b).) "Significant intervening substantive review" has been interpreted by the Commission to require more than the mere review by superiors of the recommendations, but rather the independent checking of the results without solely relying on the data or analysis provided by the staff person. Staff is, therefore, considered to participate in a decision, even if it is reviewed by superiors, if: (1) those superiors rely on the data or analysis prepared by the staff person without checking it independently; (2) those superiors rely on the professional judgment of the staff person; or (3) if the staff person in some other way actually may influence the final decision.

**FISCAL IMPACT**

There is no fiscal impact.

## **REGIONAL BOARD IMPACT**

Yes, all regional boards will be impacted.

## **STAFF RECOMMENDATION**

Staff recommendation is to adopt the updates to the Conflict of Interest Code to be consistent with the requirements of Government Code 87302.

State Water Board action on this item will assist the Water Boards in reaching Goals 5 and 6 of the Strategic Plan Update: 2008-2012 to narrative of goal(s). In particular, approval of this item will assist in improving transparency and accountability and promoting fair and equitable application of the laws, regulations, policies and procedures.