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STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2023-

AMENDING THE STATE WATER BOARD'S CONFLICT OF INTEREST CODE

WHEREAS:

1. The Political Reform Act (Gov. Code § 81000 et seq.) requires state agencies to adopt a conflict of interest code, and to specify in their codes those positions that involve “the making or participation in the making of decisions which may foreseeably have a material effect on any financial interest.” For each position designated in the code, the agency must identify the types of economic interests that must be disclosed. Staff who are serving in positions that are designated in the conflict of interest code must file a Form 700 annually.
2. Government Code section 87306 requires every state agency to review its conflict of interest code every two years and revise it if necessary. The State Water Resources Control Board’s (State Water Board) Conflict of Interest Code was last revised in 2016.
3. The 2016 version of the State Water Board’s Conflict of Interest Code includes most of the positions that make decisions (i.e., those that make decisions, sign orders, issue permits), but it does not include all the positions where staff participate in making decisions.
4. The professional staff at the State Water Board, including environmental scientists, engineers, geologists, research scientists, and attorneys, participate in making governmental decisions, which is defined in regulations as 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).)
5. “Significant intervening substantive review” has been interpreted by the Fair Political Practices Commission to require more than the mere review by superiors of the recommendations, but rather the

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independent checking of the results without solely relying on the data or analysis provided by the staff person. Staff is 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.

6. In addition to adding these professional positions, there are a few Staff Service Analysts and Associate Governmental Program Analyst who are also being included in the Conflict of Interest Code because they are involved in making or participating in making governmental decisions that may have a material effect on a financial interest.
7. The Fair Political Practices Commission approved a substantially similar draft of the State Water Board's Conflict of Interest Code in August 2022, which was then provided to staff and the public for comment from October 14, 2022 to December 15, 2022. Seventeen comments were received, which could be divided into six areas of concern. In response to comments, minor changes were made to the draft Conflict of Interest Code.

THEREFORE BE IT RESOLVED THAT:

The State Water Board:

1. Adopts the proposed amendments to the Conflict of Interest Code to ensure compliance with the requirements of the Political Reform Act.
2. Authorizes and directs the Executive Officer to transmit the revised Conflict of Interest Code with the required declaration to the Fair Political Practices Commission for final approval.
3. Authorizes and directs the Executive Officer to submit the Conflict of Interest Code to the Office of Administrative Law for publishing, after it is approved by the Fair Political Practices Commission.

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4. Authorizes the Executive Officer to make any such non-substantive changes as necessary in order to obtain approval from the Fair Political Practices Commission and file with the Office of Administrative Law.

CERTIFICATION

The undersigned Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on January 18, 2023.

Jeanine Townsend
Clerk to the Board

for