



Agenda Item: 3

Date: January 14, 2010

Subject: Ethics Policy (PL - BOD 004) Review

Staff Contact: Ed Formosa, Assistant General Manager

Recommended Board Action:

Adopt the updated Ethics Policy (PL - BOD 004).

Discussion:

Staff completed the biennial review of the Ethics Policy (PL - BOD 004). Due to the nature of the policy and related activity in the State, staff referred it to legal counsel for review. Legal counsel, Josh Horowitz, provided changes prompted by legislation and appellate cases. In addition, several clarifying edits to the policy were made. The following summarizes the proposed changes:

- Page two; clarification edit.
- Page four; addition of reference to applicable code section and clarification edit.
- Page five; clarification edit; update to the dollar amount of gifts (Section 330A).
- Page seven; Update of applicable codes; format edits.
- Page ten; clarification edits.

Included with this report are redline and clean versions.

Fiscal Impact:

None.

Strategic Plan Alignment:

One of the District's values is "Practice the highest ethical standards and maintain integrity at all levels of the organization." A policy on Ethics is in direct response to that value.

Sacramento Suburban Water District

Ethics Policy

Adopted: January 27, 2003

Revised: February 23, 2004; January 23, 2006, January 28, 2008, January 25, 2010

100.00 Purpose of the Policy

The policy of the Sacramento Suburban Water District is to maintain the highest standards of ethics from its Board members. The proper operation of the District requires that decisions and policy be made in the proper channels of governmental structure, that public office not be used for personal gain, and that all individuals associated with the District remain impartial and responsible towards the public. Accordingly, it is the policy of the District that Board members and District employees will maintain the highest standard of personal honesty and fairness in carrying out their duties.

This policy contains two parts. The first part addresses mandated ethics training requirements for Directors and certain designated officers. The second part of this policy sets ethics standards for Directors and all District employees.

The primary purpose of the ethics training policy (articles 200.00 – 250.00) is to ensure that all District Directors and certain designated officers comply with the ethics training and reporting mandates imposed by A.B. 1234, which became effective January 1, 2006. (Government Code sections 53234 through 53235.2.)

The primary purpose of the ethics guidelines for Directors (articles 300.00 – 375.00) is to set forth the minimum ethical standards to be followed by the Board of Directors of the Sacramento Suburban Water District. The ethical standards to be followed by District employees will be set forth in the District's Personnel Manual. The objectives of this policy are to (1) provide guidance for dealing with ethical issues, (2) heighten awareness of ethics and values as critical elements in Board members' conduct, and (3) improve ethical decision-making and values-based management.

200.00 Mandatory Ethics Training

210.00 Positions Requiring Training

Ethics training is required for all members of the Sacramento Suburban Water District (District) Board of Directors (Government Code section 53235, subd. (a).) In

addition to Directors, the following District officials will be required to receive ethics training: (1) General Manager; (2) Treasurer; and (3) Secretary. (Government Code section 53234, subs. (a), (b) and (c)(1).) Collectively, these persons are the District's "Covered Officials" under this policy. The Board encourages all other District employees to receive ethics training, although such training is neither a legal requirement nor a condition of employment.

220.00 Training Curriculum

The required ethics training must cover general ethics principles and ethics laws relevant to the Covered Officials' public service. All Covered Officials must receive ethics training in the following topics relevant to the service to the District:

- (1) laws relating to personal financial gain by public servants, such as prohibitions on conflict of interest and bribery;
- (2) laws relating to the privileges of office, such as limitations on personal receipt of gifts and travel, use of public resources, mass-mailing restrictions and prohibitions on gifts of public funds;
- (3) government transparency laws, such as the Brown Act, the Public Records Act, and financial interest disclosure laws; and
- (4) laws relating to fair public process, such as due process and competitive bidding requirements, bias prohibitions, and incompatible office restrictions.

Covered Officials may fulfill their required ethics training obligations by participating in any approved form of training, including but not limited to seminars, group or individual training, or self-study at home, in-person or on-line. If self-study courses are used, a test component must be included. (Government Code section 53235, subd. (d).)

230.00 Frequency of Training

Every two years, all Covered Officials must receive at least two hours of ethics training that complies with the requirements of Article 220.00. (Government Code section 53235, subd. (b).) All Covered Officials may take more than two hours of training every two years and the Board encourages all Covered Officials and employees to obtain more than the required minimum training.

Newly elected or appointed Covered Officials who enter office or District employment after January 1, 2006 must complete their first two hours of ethics training within one year of ~~after~~ taking office. After completing the initial training requirement, each Covered Official must receive two hours of ethics training every two years for as long as he or she remains in office.

240.00 Training Documentation

Compliance with the A.B. 1234’s ethics training requirements must be documented. The person or entity providing the training must provide a proof of participation to the Covered Official. (Government Code section 53235, subd. (e).) The District will also keep records of its Covered Officials’ dates of participation in ethics training and the person or entity providing the training for five years. (Government Code section 53235.2, subd. (a).) The District Secretary will maintain the ethics training records. All Covered Officials must submit a copy of their proofs of participation in all ethics training completed to the District Secretary within 30 days of completing any training component. All ethics training policies and attendance records are public records subject to disclosure under the California Public Records Act. (Government Code section 53235.2, subd. (b).)

250.00 Miscellaneous Training Rules

The District will inform its Covered Officials of available ethics training opportunities at least once annually. (Government Code section 53235, subd. (f).)

It is the responsibility of each Covered Official to ensure his or her compliance with this policy, including choosing the ethics training courses and securing and submitting the ethics training documentation to the District Secretary as required in Article 240.00.

If a Covered Official holds more than one position covered by the ethics training mandate, he or she need only complete a combined two training hours every two years to comply. (Government Code section 53235.1, subd. (c).)

300.00 Ethics Guidelines for Directors

310.00 Responsibilities of Public Office

Board members are obligated to uphold the Constitution of the United States and the Constitution of the State of California. Board members will comply with applicable laws regulating their conduct, including conflict of interest, financial disclosure and open government laws. Board members will work in cooperation with other public officials unless prohibited from so doing by law or officially-recognized confidentiality of their work.

(Article 20, section 3 of the California Constitution; Government Code section 1360.)

315.00 Fair and Equal Treatment

Board members will not, in the performance of their official functions, discriminate against any person on the basis of race, religion, color, creed, age, marital status, national origin, ancestry, sex, sexual preference, medical condition or disability. A Board member will not grant any special consideration, treatment or advantage to any person or group beyond that which is available to every other person or group in similar circumstances.

(See, e.g., article 1, section 31 of the California Constitution; Age Discrimination in Employment Act of 1967 (29 U.S.C. sections 621-634); Americans with Disabilities Act of 1990 (42 U.S.C. sections 12101 and following); Fair Employment and Housing Act (Government Code sections 12900 and following); Rehabilitation Act of 1973 (29 U.S.C. sections 701 and following); Title VII of the Civil Rights Act of 1964 (42 U.S.C. section 2000e and following); Labor Code section 1102.1.)

320.00 Proper Use and Safeguarding of District Property and Resources

Except as specifically authorized, a Board member will not use or permit the use of District-owned vehicles, equipment, telephones, materials or property for personal convenience or profit. A Board member will not ask or require a District employee to perform services for the personal convenience or profit of a Board member or employee. Each Board member must protect and properly use any District asset within his or her control, including information recorded on paper or in electronic form. Board members will safeguard District property, equipment, moneys and assets against unauthorized use or removal, as well as from loss due to criminal act or breach of trust. Board members are responsible for maintaining written records, including expense accounts, in sufficient detail to reflect accurately and completely all transactions and expenditures made on the District's behalf, in accordance with the District's policy for reimbursement of expenses of Board members.

(Article 16, section 6 of the California Constitution; Government Code sections 8314 and 53232.3; Penal Code section 424; see *People v. Battin* (1978) 77 Cal.App.3d 635.)

325.00 Use of Confidential Information

A. A Director is not authorized, without prior approval of the Board of Directors, to disclose information that qualifies as confidential information under applicable provisions of law to a person not authorized to receive it, that (1) has been received for, or during, a closed session meeting of the Board, (2) is protected from disclosure

under the attorney/client or other evidentiary privilege, or (3) is not required to be disclosed under the California Public Records Act.

- B. This section does not prohibit any of the following: (1) making a confidential inquiry or complaint to a district attorney or grand jury concerning a perceived violation of law, including disclosing facts to a district attorney or grand jury that are necessary to establish the alleged illegality of an action taken by the District, or an elected official or employee, (2) expressing an opinion concerning the propriety or legality of actions taken by the ~~District Board~~ in closed session, including disclosure of the nature and extent of the allegedly illegal action, or (3) disclosing information acquired by being present in a closed session that is not confidential information. Prior to disclosing confidential information pursuant to (1) or (2), above, however, a Board member will first bring the matter to the attention of either the President of the Board or the full Board, to provide the Board an opportunity to cure an alleged violation.
- C. A Director who willfully and knowingly discloses for pecuniary gain confidential information received by him or her in the course of his or her official duties may be guilty of a misdemeanor under Government Code section 1098.

(Government Code section 54963.)

330.0 Conflict of Interest

- A. A Board member will not have a financial interest in a contract with the District, or be purchaser at a sale by the District or a vendor at a purchase made by the District, unless the Board member's participation was authorized under Government Code section 1090, 1091 or 1091.5, or other provisions of law. A Board member will not participate in the discussion, deliberation or vote on a matter before the Board of Directors, or in anyway attempt to use his or her official position to influence a decision of the Board, if he or she has a prohibited interest with respect to the matter, as defined in the Political Reform Act, Government Code sections 81000, and following, relating to conflicts of interest. Generally, a Director has a financial interest in a matter if it is reasonably foreseeable that the Board decision would have a material financial effect (as defined by the Fair Political Practices Commission ("FPPC") regulations) that is distinguishable from the effect on the public generally on (a) a business entity in which the Director has a direct or indirect investment of \$2,000 or more, (b) real property in which the Director has a direct or indirect investment interest worth \$2,000 or more, (c) a source of income of the Director amounting to \$500 or more within 12 months before the Board decision, (d) a source of gifts to the Director amounting to ~~\$420390~~ or more within 12 months before the Board decision, or (e) a business entity in which the Director holds a position as a director, trustee, officer, partner, manager or employee. An "indirect interest" means any investment or interest owned by the spouse or dependent child of the Director, by an agent on behalf of the Director, or by a business entity or trust in which the Director, or the Director's spouse, dependent child or agent, owns directly, indirectly

or beneficially a ten percent interest or greater. A Director will not accept gifts or honoraria that exceed the limitations specified in the Fair Political Practices Act or FPPC regulations. Board members will report all gifts, campaign contributions, income and financial information as required under the District's Conflict of Interest Code and the provisions of the Fair Political Practices Act and FPPC regulations. The dollar limitations referred to in this section are revised from time to time by the FPPC.

(Government Code sections 87100 and following.)

- B. If a member of the Board believes that he or she may be disqualified from participation in the discussion, deliberations or vote on a particular matter due to a conflict of interest, the following procedure will be followed: (a) if the Director becomes aware of the potential conflict of interest before the Board meeting at which the matter will be discussed or acted on, the Director will notify the District's General Manager and the District's legal counsel of the potential conflict of interest, so that a determination can be made whether it is a disqualifying conflict of interest; (b) if it is not possible for the Director to discuss the potential conflict with the General Manager and the District's legal counsel before the meeting, or if the Director does not become aware of the potential conflict until during the meeting, the Director will immediately disclose the potential conflict during the Board meeting, so that there can be a determination whether it is a disqualifying conflict of interest; and (c) upon a determination that there is a disqualifying conflict of interest, the Director (1) will not participate in the discussion, deliberation or vote on the matter for which a conflict of interests exist, which will be so noted in the Board minutes and (2) will leave the room until after the discussion, vote and any other disposition of the matter is concluded, unless the matter has been placed on the portion of the agenda reserved for uncontested matters. The Director may speak on an uncontested matter during the time the general public speaks on the issue.
- C. A Board member will not recommend the employment of a relative by the District. In addition, a Board member will not recommend the employment of a relative to any person known by the Board member to be bidding for or negotiating a contract with the District.
- D. A Board member who knowingly asks for, accepts or agrees to receive any gift, reward or promise thereof for doing an official act, except as may be authorized by law, may be guilty of a misdemeanor under Penal Code section 70.

(Government Code sections 1090, and following, 81000 and following, and 87105; Penal Code sections 68 and 70.)

335.00 Soliciting Political Contributions

Board members are prohibited from soliciting political funds or contributions at District facilities, or from District employees. A Board member will not accept, solicit or direct

a political contribution from (a) District employees, officers, consultants or contractors, or (b) any person or entity who has a financial interest in a contract or other matter while that contract or other matter is pending before the District. A Director will not use the District's seal, trademark, stationary or other indicia of the District's identity, or facsimile thereof, in any solicitation for political contributions contrary to state or federal law.

(Government Code section 3205.)

340.00 Incompatible Offices and "Revolving Door" Policy

A. Any Board member appointed or elected to a public office of another public entity, the duties of which may require action contradictory or inconsistent with the interest of the first entity (as determined under applicable law), will resign from the former office.

~~(Government Code sections 1099 and 53227; see also, 73 Ops.Cal.Atty.Gen. 357 (1990).)~~

B. For a period of one year after leaving office, Directors will not represent for compensation non-governmental entities before the District with regard to any issues over which that officer had decision-making authority during the three years prior to leaving office.

C. For purposes of this section, "represent" will mean for compensation to actively support or oppose a particular decision in a proceeding by lobbying in person the officers or employees of the District or otherwise acting to influence the officers of the District.

D. These restrictions will not apply to representation of not-for-profit charitable entities before the District.

~~E. These restrictions may be waived in specific cases by a two-thirds vote of the District's Board of Directors.~~

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~~F. E. Nothing in this section is intended or will be applied to prevent a former Director from participating in meetings of the Board in the same manner as other members of the public. (See, for example, Government Code section 54954.3.)~~

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~~(Government Code sections 1099, 53227 and 87406.3; see also, 73 Ops.Cal.Atty.Gen. 357 (1990).)~~

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345.00 Board-General Manager Relationship

- A. The Board sets the policy for the District. Under the County Water District Law, the District's General Manager (a) has full charge and control of the maintenance, operation and construction of the water system of the District, (b) has full power and authority to employ and discharge all employees and assistants at pleasure, consistent with other provisions of law, (c) prescribes the duties of employees and assistants, consistent with District policy, and (d) fixes and alters the compensation of employees and assistants, subject to approval by the Board. The Board will, after considering the recommendation of the General Manager, appoint the District's Chief Financial Officer/Treasurer (who will report to the General Manager). The Chief Financial Officer/Treasurer will install and maintain a system of auditing and accounting that will completely and at all times show the financial condition of the District in accordance with generally accepted accounting principles and legal requirements. The Board will retain an auditor as an independent contractor of the District (other than the Chief Financial Officer/Treasurer) to conduct an annual audit of the District's books, records and financial affairs. The auditor will report to the Board, who will periodically review the auditor's work.
- B. The District's General Manager serves at the pleasure of the Board. The Board will provide policy direction and instructions to the General Manager on matters within the authority of the Board by majority vote of the Board during duly-convened Board and Board committee meetings. Members of the Board will deal with matters within the authority of the General Manager through the General Manager, and not through other District employees, except as it pertains to the functions of the Chief Financial Officer/Treasurer and District consultants, including the District auditor. Members of the Board will refrain from making requests directly to District employees (rather than to the General Manager) to undertake analyses, perform other work assignments or change the priority of work assignments. Members of the Board may request non-confidential, factual information regarding District operations from District employees.

(Water Code sections 30540 and 30580 through 30582.)

350.00 Improper Activities and the Reporting of Such Activities; Protection of "Whistle Blowers"

- A. The General Manager has primary responsibility for (1) ensuring compliance with the District's Personnel Manual, and ensuring that District employees do not engage in improper activities, (2) investigating allegations of improper activities, and (3) taking appropriate corrective and disciplinary actions. The Board has a duty to ensure that the General Manager is operating the District according to law and the policies approved by the Board. Board members are encouraged to fulfill their obligation to the public and the District by disclosing to the General Manager to the extent not expressly prohibited by law, improper activities within their knowledge. Board members will not interfere with the General Manager's responsibilities in identifying, investigating and correcting improper activities, unless the Board

determines that the General Manager is not properly carrying out these responsibilities. Nothing in this section affects the responsibility of the Board to oversee the performance of the General Manager.

- B. A Board member will not directly or indirectly use or attempt to use the authority or influence of his or her position for the purpose of intimidating, threatening, coercing, commanding or influencing any other person for the purpose of preventing such person from acting in good faith to report or otherwise bring to the attention of the General Manager or the Board any information that, if true, would constitute a work-related violation by a Board member or District employee of any law or regulation, gross waste of District funds, gross abuse of authority, a specified and substantial danger to public health or safety due to an act or omission of a District official or employee, use of a District office or position or of District resources for personal gain, or a conflict of interest of a District Board member or District employee.
- C. A Board member will not use or threaten to use any official authority or influence to effect any action as a reprisal against a District Board member or District employee who reports or otherwise brings to the attention of the General Manager any information regarding the subjects described in this section.
- D. Any person who believes that he or she has been subjected to any action prohibited by this section may file a confidential complaint with (1) the General Manager, or (2) a member of the Board of Directors if the complaint involves the conduct of the General Manager, who will thereupon refer the matter to the full Board to investigate the complaint. Upon the conclusion of the investigation, the General Manager (or the Board in the case of a complaint against the General Manager) will take appropriate action consistent with the District's Personnel Manual and applicable law.

(Labor Code section 1102.5, and following, and Government Code sections 53298 and 53298.5.)

355.00 Compliance with the Brown Act

The members of the Board of Directors, and persons elected but who have not yet assumed office as members of the Board, will fully comply with the provisions of the State's open meeting law for public agencies (the Brown Act). The Board has adopted "Rules for Proceedings of the Board of Directors" to guide the Board in ensuring that Board decisions are made during meetings of the Board that are open to the public, in compliance with the Brown Act.

(Government Code sections 54950 and following, and 54952.1 and 54959.)

360.00 Directors' Compensation and Expense Reimbursement

The members of the Board of Directors will fully comply with the provisions of the Board's ~~"~~Directors' Compensation and Expense Reimbursement Policy."

(Water Code sections 20200, and following.)

365.00 Changes in Compensation

Changes in the compensation of the Board ~~or District employees~~ will require the approval of the Board during an open meeting of the Board held ~~within~~ at least sixty days prior to the effective date of the change.

(Water Code sections 20200 and following.)

370.00 Candidate's Statement

A Board member will not include false or misleading information in a candidate's statement for a general District election filed pursuant to section 13307 of the Elections Code.

(Elections Code section 13313.)

375.00 Violation of Ethics Guidelines

A perceived violation of the ethics guidelines (Ethics Policy articles 300.00 – 370.00) by a Board member should be referred to the President of the Board or the full Board of Directors for investigation, and consideration of any appropriate action warranted. A violation of this policy may be addressed by the use of such remedies as are available by law to the District, including but not limited to: (a) adoption of a resolution expressing disapproval of the conduct of the Board member who has violated this policy, (b) injunctive relief, (c) referral of the violation to the District Attorney and/or the grand jury; or (d) investigation and action under the District's Workplace Dishonesty Policy and Procedures.

400.00 Policy Review

This Policy shall be reviewed at least biennially.

Sacramento Suburban Water District

Ethics Policy

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