

SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

421A



FROM: County Counsel

SUBMITTAL DATE: November 13, 2008

SUBJECT: Approval of the Conflict of Interest Code for the Desert Water Agency

RECOMMENDED MOTION: That the Board of Supervisors approve the amended Conflict of Interest Code submitted by the Desert Water Agency.

BACKGROUND: Government Code section 87306.5 requires that all local agencies review their Conflict of Interest Code, and the listing of designated positions for employees who must disclose along with the types of disclosure required, and make appropriate amendments to each as required.

The Desert Water Agency recently revised Appendix Exhibit "A" of its Conflict of Interest Code and has submitted it for approval by the Board of Supervisors as the code reviewing body.

This office has reviewed the revised code and has found that it complies with statutory requirements. It is recommended that the Desert Water Agency's new revised code be approved and that the Clerk of the Board notify the Agency of the action taken.

B.T. Miller, Jr., Deputy County Counsel for
JOE S. RANK, County Counsel

C.E.O. RECOMMENDATION:

APPROVE

BY
Tina Grande

County Executive Office Signature

Policy

Poli

Consent

Consent

Department Recommendation:

Per Executive Office:

Prev. Agn. ref.

Dist.

AGENDA NO.

APPENDIX

CONFLICT OF INTEREST CODE

OF THE

DESERT WATER AGENCY

(Amended November 4, 2008)

EXHIBIT "A"

OFFICIALS WHO MANAGE PUBLIC INVESTMENTS

Agency Officials who manage public investments, as defined by 2 Cal. Code of Regs. § 18701(b), are NOT subject to the Agency's Code, but are subject to the disclosure requirements of the Act (Government Code Section 87200 et seq.). [Regs. § 18730(b)(3)] These positions are listed here for informational purposes only.

It has been determined that the positions listed below are officials who manage public investments⁴:

Board of Directors
Finance Director
General Manager
Financial Consultants

⁴ Individuals holding one of the above-listed positions may contact the FPPC for assistance or written advice regarding their filing obligations if they believe that their position has been categorized incorrectly. The FPPC makes the final determination whether a position is covered by § 87200.

DESIGNATED POSITIONS

GOVERNED BY THE CONFLICT OF INTEREST CODE

<u>DESIGNATED EMPLOYEES'</u> <u>TITLE OR FUNCTION</u>	<u>DISCLOSURE CATEGORIES</u> <u>ASSIGNED</u>
Accounting Supervisor	5
Administrative Services Officer	5
Assistant General Manager	1, 2
Assistant Secretary of the Board	5
Assistant Water Service Superintendent	6
Chief Engineer	1, 2
Consulting Engineer	1, 2
Controller	1, 2
Customer Service Supervisor	6
Electrical Services Supervisor	6
Engineer	6
Engineering Supervisor	3, 6
Facilities & Safety Officer	2, 3, 6
Fleet Maintenance Foreman	6
General Counsel	1, 2
Human Resources Manager	6
Laboratory Director	6
Office Manager	5

DESIGNATED EMPLOYEES'
TITLE OR FUNCTION

DISCLOSURE CATEGORIES
ASSIGNED

Operations Engineer	6
Programmer Analyst	6
Purchasing Agent	5
Systems & Services Administrator	6
Water Operations Supervisor	6
Water Service Superintendent	3, 6
Consultant ⁵	

⁵ Consultants shall be included in the list of Designated Employees and shall disclose pursuant to the broadest disclosure category in this Code subject to the following limitation:

The General Manager may determine in writing that a particular consultant, although a "designated position," is hired to perform a range of duties that are limited in scope and thus is not required to fully comply with the disclosure requirements described in this Section. Such written determination shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The General Manager's determination is a public record and shall be retained for public inspection in the same manner and location as this Conflict of Interest Code.

EXHIBIT "B"

DISCLOSURE CATEGORIES

The disclosure categories listed below identify the types of investments, business entities, sources of income, including gifts, loans and travel payments, or real property which the Designated Employee must disclose for each disclosure category to which he or she is assigned.

Category 1: All investments and business positions in business entities, and sources of income that are located in, do business in, or own real property within the jurisdiction of the Agency.

Category 2: All interests in real property which is located in whole or in part within, or not more than two (2) miles outside, the jurisdiction of the Agency.

Category 3: All investments and business positions in, and sources of income from, business entities that are engaged in land development, construction or the acquisition or sale of real property within the jurisdiction of the Agency.

Category 4: All investments and business positions in, and sources of income from, business entities that are banking, savings and loan, or other financial institutions.

Category 5: All investments and business positions in, and sources of income from, business entities that provide services, supplies, materials, machinery, vehicles or equipment of a type purchased or leased by the Agency.

Category 6: All investments and business positions in, and sources of income from, business entities that provide services, supplies, materials, machinery, vehicles or equipment of a type purchased or leased by the Designated Employee's Department.

LEGISLATIVE VERSION
(SHOWS CHANGES MADE)

APPENDIX

CONFLICT OF INTEREST CODE

OF THE

DESERT WATER AGENCY

(Amended ~~November 7, 2006~~ November 4, 2008)

EXHIBIT "A"

OFFICIALS WHO MANAGE PUBLIC INVESTMENTS

Agency Officials who manage public investments, as defined by 2 Cal. Code of Regs. § 18701(b), are NOT subject to the Agency's Code, but are subject to the disclosure requirements of the Act (Government Code Section 87200 et seq.). [Regs. § 18730(b)(3)] These positions are listed here for informational purposes only.

It has been determined that the positions listed below are officials who manage public investments⁴:

Accounting Supervisor
Board of Directors
Finance Director
General Manager
Financial Consultants

⁴ Individuals holding one of the above-listed positions may contact the FPPC for assistance or written advice regarding their filing obligations if they believe that their position has been categorized incorrectly. The FPPC makes the final determination whether a position is covered by § 87200.

DESIGNATED POSITIONS

GOVERNED BY THE CONFLICT OF INTEREST CODE

<u>DESIGNATED EMPLOYEES'</u> <u>TITLE OR FUNCTION</u>	<u>DISCLOSURE CATEGORIES</u> <u>ASSIGNED</u>
<u>Accounting Supervisor</u>	5
Administrative Services Officer	5
Assistant General Manager	1, 2
Assistant Secretary of the Board	5
<u>Assistant Water Service Superintendent</u>	6
Chief Engineer	1, 2
Construction Superintendent	3, 6
Consulting Engineer	1, 2
<u>Controller</u>	1, 2
Customer Service Supervisor	6
Electrical Services Supervisor	6
Engineer	6
Engineering Supervisor	3, 6
Facilities & Safety Coordinator <u>Officer</u>	2, 3, 6
Fleet Maintenance Foreman	6
General Counsel	1, 2
Human Resources Manager	6
Laboratory Director	6

Office Manager 5

<u>DESIGNATED EMPLOYEES'</u> <u>TITLE OR FUNCTION</u>	<u>DISCLOSURE CATEGORIES</u> <u>ASSIGNED</u>
Operations Engineer	6
Programmer Analyst	6
Purchasing Agent	5
Systems & Services Administrator	6
Water Operations Supervisor	6
Water Service Superintendent	<u>3,6</u>
Consultant ⁵	

⁵ Consultants shall be included in the list of Designated Employees and shall disclose pursuant to the broadest disclosure category in this Code subject to the following limitation:

The General Manager may determine in writing that a particular consultant, although a "designated position," is hired to perform a range of duties that are limited in scope and thus is not required to fully comply with the disclosure requirements described in this Section. Such written determination shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The General Manager's determination is a public record and shall be retained for public inspection in the same manner and location as this Conflict of Interest Code.

EXHIBIT "B"

DISCLOSURE CATEGORIES

The disclosure categories listed below identify the types of investments, business entities, sources of income, including gifts, loans and travel payments, or real property which the Designated Employee must disclose for each disclosure category to which he or she is assigned.

Category 1: All investments and business positions in business entities, and sources of income that are located in, do business in, or own real property within the jurisdiction of the Agency.

Category 2: All interests in real property which is located in whole or in part within, or not more than two (2) miles outside, the jurisdiction of the Agency.

Category 3: All investments and business positions in, and sources of income from, business entities that are engaged in land development, construction or the acquisition or sale of real property within the jurisdiction of the Agency.

Category 4: All investments and business positions in, and sources of income from, business entities that are banking, savings and loan, or other financial institutions.

Category 5: All investments and business positions in, and sources of income from, business entities that provide services, supplies, materials, machinery, vehicles or equipment of a type purchased or leased by the Agency.

Category 6: All investments and business positions in, and sources of income from, business entities that provide services, supplies, materials, machinery, vehicles or equipment of a type purchased or leased by the Designated Employee's Department.

**CONFLICT OF INTEREST CODE
OF THE
DESERT WATER AGENCY**

[All amendments or changes to the provisions of the Political Reform Act of 1974 and the FPPC Regulations effective through December 1, 2005, have been incorporated into this Code and its Addendum.]

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ADDENDUM	Ai-A41

CONFLICT OF INTEREST CODE
OF THE
DESERT WATER AGENCY

(Updated through December 1, 2005)

Section A. PURPOSE:

1. **Statement of Purpose.** It is the purpose of this Code to provide for the disclosure of Designated Employees' assets and income which may be materially affected by their official actions, and, in appropriate circumstances, to provide that Designated Employees should be disqualified from acting in order that conflicts of interest may be avoided. Nothing contained herein is intended to modify or abridge the provisions of the Political Reform Act of 1974 (Government Code Sections 81000 et seq.). The requirements of this Code are in addition to other requirements of the Political Reform Act and to other state or local laws pertaining to conflicts of interest. [Gov. Code § 81002(c); 2 Cal. Code of Regs. § 18730(a)]

Section B. DEFINITION OF TERMS:

1. **Definitions.** This Code contains a number of key terms, such as "Designated Employee," "interests in real property within the jurisdiction," "investments in business entities," "income," and decisions "made" or "participated in" by a Designated Employee, which are defined in the Political Reform Act of 1974 and the regulations of the Fair Political Practices Commission (2 Cal. Code of Regs. sections 18100 et seq.). These definitions and regulations, and any amendments to the Act or regulations, are incorporated by reference into this Conflict of Interest Code. [2 Cal. Code of Regs. § 18730(b)(1)]

Summaries of certain definitions are contained in the attached Addendum which is provided for convenience of reference only and is not a part of this Code. The definitions of key terms contained in the Act or the regulations are amended and changed from time to time. The summaries of definitions contained in the Addendum will be updated accordingly on a periodic basis.

Section C. DISCLOSURE STATEMENTS:

1. **Designated Employees.** The persons holding positions listed in Exhibit "A" of the Appendix of this Code are "Designated Employees." It has been determined that these officers and employees make or participate in the making of decisions which may foreseeably have a material effect on economic interests. [Gov. Code §§ 87302(a), 82019(a)(3); 2 Cal. Code of Regs. § 18730(b)(2)]

2. **Disclosure Requirements.** Each Designated Employee shall file statements, as described herein, disclosing interests in real property, investments in business entities, business positions held, and income or sources of income received which might foreseeably be affected materially by the operations of the Agency. The disclosure categories set forth in Exhibit "B" of the Appendix specify which kinds of financial interests are reportable. It has been determined that the types of investments, interests in real property, business positions, income, and sources of income assigned to each Designated Employee in Exhibit "A" of the Appendix are of the type that may be affected materially by decisions made or participated in by the Designated Employee by virtue of his or her position and are reportable.

This Code does not establish any disclosure obligation for those Designated Employees who are also specified in Government Code section 87200. [Gov. Code §§ 87302(a), 87302(b); 2 Cal. Code of Regs. § 18730(b)(3)]

3. **Statements of Economic Interests: Time of Filing; Contents Thereof.**

(a) **Initial Statements.** All Designated Employees employed on the effective date of this Code, as originally adopted, promulgated and approved by the code-reviewing body, shall file statements within **30 days** after the effective date of this Code. Thereafter, each person already in a position when it is designated by an amendment to this Code shall file an initial statement within **30 days** after the effective date of the amendment. Initial statements shall disclose any reportable investments, interests in real property, and business

positions held on the effective date of this Code, and income, including gifts and loans, received during the 12 months prior to the effective date of this Code.

(b) Assuming Office Statements. All persons who are elected, appointed, promoted or transferred to a designated position after the effective date of this Code shall file statements within **30 days** after assuming the designated position, disclosing any reportable investments, interests in real property, and business positions held on the date of assuming office, and income, including gifts and loans, received during the 12 months prior to the date of assuming office.

(c) Annual Statements. Annual statements shall be filed by all Designated Employees on or before **April 1** of each year, disclosing any reportable investments, interests in real property, business positions and income held or received during the previous calendar year provided, however, that the period covered by an employee's first annual statement shall begin on the effective date of the Code or the date of assuming office, whichever is later.

(d) Leaving Office Statements. Every Designated Employee who leaves office and does not assume another designated position for the Agency shall file a statement within **30 days** after leaving office, disclosing any reportable investments, interests in real property, business positions and income held or received during the period between the closing date of the last statement filed and the date of leaving office. [Gov. Code § 87302(b); 2 Cal. Code of Regs. §§ 18730 (b)(5), 18730(b)(6)]

4. **Statements for Persons Who Resign Prior to Assuming Office.**

Any person who resigns within 12 months of initial appointment, or within 30 days of the date of notice provided by the filing officer to file an assuming office statement, is not deemed to have assumed office or left office, provided he or she did not make or participate in the making of, or use his or her position to influence any decision and did not receive or become entitled to receive any form of payment as a result of his or her appointment. Such persons shall not file either an assuming or leaving office statement.

(a) Any person who resigns a position within 30 days of the date of a notice from the filing officer shall do both of the following:

(1) File a written resignation with the appointing power;

and

(2) File a written statement with the filing officer declaring under penalty of perjury that during the period between appointment and resignation he or she did not make, participate in the making or use the position to influence any decision of the Agency, or receive, or become entitled to receive, any form of payment by virtue of being appointed to the position. [Gov. Code § 87302(d); 2 Cal. Code of Regs. § 18730(b)(5.5)]

5. **Place of Filing Statements.** All Officials and Designated

Employees required to submit a statement of economic interests shall file the original with the Agency's filing officer. The filing officer shall make and retain a copy of all statements filed by officials who manage public investments, and forward the originals of such statements to the Clerk of the Board of Supervisors. The filing officer shall

retain the originals of the statements of all other Designated Employees. [Gov. Code § 87500(j); 2 Cal. Code of Regs. §§ 18730(b)(4), 18115, 18753]

6. **Forms for Statements.** Statements for disclosing economic interests shall be made on forms prescribed by the Fair Political Practices Commission and supplied by the Agency's filing officer. [Gov. Code § 81010(a); 2 Cal. Code of Regs. §§ 18730(b)(7), 18115 (b)(2)]

Section D. MANNER OF REPORTING:

1. **Contents of Reports of Investments and Interests in Real Property.** Investments and interests in real property which have a fair market value of less than two thousand dollars (\$2,000) are not investments and interests in real property within the meaning of the Political Reform Act.

Investments or interests in real property of an individual include those held by the individual's spouse, including registered domestic partner¹ ("spouse"), and dependent children, as well as the pro rata share of any investment or interest in real property of any business entity or trust in which the individual, spouse and dependent children own, in the aggregate, a direct, indirect or beneficial interest of 10% or greater.

When an investment or interest in real property² is required to be reported under this Code, the statement shall contain the following:

- (a) A statement of the nature of the investment or interest;

¹ The term "spouse" shall include domestic partners registered with the California Secretary of State's Office and recognized by California State Law. [2 Cal. Code of Regs. § 18229; Fam. Code § 297]

² For the purpose of disclosure only (not disqualification), an interest in real property does not include the principal residence of the filer. [Gov. Code §§ 87302(b), 87206(f); 2 Cal. Code of Regs. § 18730(b)(7)(A), fn 3]

(b) The name of the business entity in which each investment is held, and a general description of the business activity in which the business entity is engaged;

(c) The address or other precise location of the real property;

(d) A statement whether the fair market value of the investment or interest in real property equals or exceeds two thousand dollars (\$2,000), exceeds ten thousand dollars (\$10,000), exceeds one hundred thousand dollars (\$100,000), or exceeds one million dollars (\$1,000,000). [Gov. Code §§ 82033, 82034, 87206; 2 Cal. Code of Regs. § 18730(b)(7)(A)]

2. **Contents of Reports of Personal Income.** Personal income of a Designated Employee includes his or her own income as well as his or her community property interest in the income of his or her spouse but does not include salary or reimbursement for expenses received from a state, federal or local government agency.

When personal income is required to be reported under this Code, the statement shall contain:

(a) The name and address of each source of income aggregating five hundred dollars (\$500) or more in value per year, or fifty dollars (\$50) or more in value if the income was a gift, and a general description of the business activity, if any, of each source;

(b) A statement whether the aggregate value of the income from each source, or in the case of a loan, the highest amount owed to each source, was at least five hundred dollars (\$500), greater than one thousand dollars

(\$1,000), greater than ten thousand dollars (\$10,000), or greater than one hundred thousand dollars (\$100,000);

(c) A description of the consideration, if any, for which the income was received;

(d) In the case of a gift, the name, address and business activity of the donor and any intermediary through which the gift was made; a description of the gift; the amount or value of the gift; and the date on which the gift was received;

(e) In the case of a loan, the annual interest rate and the security, if any, given for the loan and the term of the loan. [Gov. Code §§ 82030, 87302(b), 87207; 2 Cal. Code of Regs. § 18730(b)(7)(B)]

3. Contents of Reports of Business Entity Income. Income of a business entity is reportable if the direct, indirect or beneficial interest of the filer and the filer's spouse in the business entity aggregates a 10% or greater interest. The disclosure of persons who are clients or customers of a business entity is required only if the clients or customers are within one of the disclosure categories of the filer.

When income of a business entity, including income of a sole proprietorship, is required to be reported under this Code, the statement shall contain:

(a) The name, address and a general description of the business activity of the business entity; and

(b) The name of every person from whom the business entity received payments if the filer's pro rata share of gross receipts from such person

was equal to or greater than ten thousand dollars (\$10,000) during a calendar year. [Gov. Code §§ 87302(b), 87207(b); 2 Cal. Code of Regs. § 18730(b)(7)(C)]

4. **Contents of Reports of Business Position Disclosure.** When business positions are required to be reported, a Designated Employee shall list the name and address of each business entity in which he or she is a director, officer, partner, trustee, employee, or in which he or she holds any position of management, a description of the business activity in which the business entity is engaged, and the Designated Employee's position with the business entity. [Gov. Code § 87302(b); 2 Cal. Code of Regs. § 18730(b)(7)(D)]

5. **Acquisition or Disposal During Reporting Period.** In the case of an annual statement or a leaving office statement, the statement shall include any investments or interests in real property that was partially or wholly acquired or disposed of at any time during the period covered by the statement, whether or not they are still held at the time of filing, and shall contain the date of acquisition or disposal. [Gov. Code §§ 87302(b), 87206; 2 Cal. Code of Regs. § 18730(b)(7)(E)]

Section E. HONORARIA AND GIFTS:

1. **Prohibition on Receipt of Honoraria.** No Designated Employee shall accept any honorarium from any source if he or she would be required to report the receipt of income or gifts from that source on his or her statement of economic interests.

This Section does not limit or prohibit payments, advances, or reimbursements for travel, including actual transportation and related lodging and

subsistence which is reasonably related to a governmental purpose as specified in Government Code section 89506. [Gov. Code § 89501, 89502; 2 Cal. Code of Regs. § 18730(b)(8)(A)]

2. **Prohibition on Receipt of Gifts.** No Designated Employee shall accept gifts with a total value of more than three hundred sixty dollars (\$360)³ in a calendar year from any single source, if he or she would be required to report the receipt of income or gifts from that source on his or her statement of economic interests.

This Section does not limit or prohibit payments, advances, or reimbursements for travel and related lodging and subsistence permitted by Government Code section 89506; or wedding gifts and gifts exchanged between individuals on birthdays, holidays, and other similar occasions, provided that the gifts exchanged are not substantially disproportionate in value. [Gov. Code § 89503; 2 Cal. Code of Regs. § 18730(b)(8.1)(A)]

Section F. LOANS:

1. **Loans to Public Officials.**

(a) Except as set forth in Subsection (c), below, no elected officer of the Agency shall, from the date of his or her election to office, while he or she holds office, receive a personal loan from any officer, employee, member or consultant of the Agency or any agency over which the Agency has direction and control.

³ Beginning January 1, 1993, the FPPC shall adjust the gift limitation in this section on January 1 of each odd-numbered year to reflect changes in the Consumer Price Index, rounded to the nearest ten dollars (\$10.) [Gov. Code § 89503(f)]

(b) No elected officer of the Agency shall, from the date of his or her election to office, while he or she holds office, receive a personal loan from any person who has a contract with the Agency or any agency over which the Agency has direction and control.

This Section shall not apply to loans made by banks or other financial institutions or to any indebtedness created as part of a retail installment or credit card transaction, if the loan is made or the indebtedness created in the lender's regular course of business on terms available to members of the public without regard to the public official's status.

(c) This Section shall not apply to the following:

(1) Loans made to the campaign committee of an elected officer or candidate for elective office.

(2) Loans made to the public official by his or her spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin, or the spouse of any such persons, provided that the person making the loan is not acting as an agent or intermediary for any person not otherwise exempted under this Section.

(3) Loans from a person which, in the aggregate, do not exceed five hundred dollars (\$500) at any given time.

(4) Loans made, or offered in writing, before January 1, 1998.

2. Loan Terms.

(a) Except as set forth in Subsection (b), below, no elected officer shall, from the date of his or her election to office, while he or she holds office, receive a personal loan of five hundred dollars (\$500) or more, except when the loan is in writing and clearly states the terms of the loan, including the parties to the loan agreement, date of the loan, amount of the loan, term of the loan, date or dates when payments shall be due on the loan and the amount of the payments, and the rate of interest paid on the loan.

(b) This Section shall not apply to the following types of loans:

(1) Loans made to the campaign committee of an elected officer.

(2) Loans made to the elected officer by his or her spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin, or the spouse of any such persons, provided that the person making the loan is not acting as an agent or intermediary for any person not otherwise exempted under this Section.

(3) Loans made, or offered in writing, before January 1, 1998.

(4) Nothing in this Section shall exempt any person from any other provision of this Code or the Act.

3. **Personal Loans.** Except as set forth in Subsection (c), below, a personal loan received by any Designated Employee shall become a gift to the Designated Employee for the purposes of this Code in the following circumstances:

(a) If the loan has a defined date or dates for repayment, when the statute of limitations for filing an action for default has expired.

(b) If the loan has no defined date or dates for repayment, when one year has elapsed from the later of the following:

(1) The date the loan was made.

(2) The date the last payment of one hundred dollars (\$100) or more was made on the loan.

(3) The date upon which the debtor has made payments on the loan aggregating to less than two hundred fifty dollars (\$250) during the previous 12 months.

(c) This Section shall not apply in the following types of loans:

(1) A loan made to the campaign committee of an elected officer or a candidate for elective office.

(2) A loan that would otherwise not be a gift under the Act.

(3) A loan that would otherwise be a gift as set forth in this Section, but on which the creditor has taken reasonable action to collect the balance due.

(4) A loan that would otherwise be a gift as set forth in this Section, but on which the creditor, based on reasonable business

considerations, has not undertaken collection action. Except in a criminal action, a creditor who claims that a loan is not a gift on the basis of this subsection has the burden of proving that the decision for not taking collection action was based on reasonable business considerations.

(5) A loan made to a debtor who has filed for bankruptcy and the loan is ultimately discharged in bankruptcy.

(6) Nothing in this Section shall exempt any person from any other provision of this Code or the Act. [Gov. Code § 83112 ; 2 Cal. Code of Regs. §§ 18730(b)(8.2-8.4)]

Section G. DISQUALIFICATION:

1. **Disqualification Requirements.** No Designated Employee shall make, participate in the making, or in any way attempt to use his or her official position to influence the making of any governmental decision which he or she knows or has reason to know will have a reasonably foreseeable material financial effect, distinguishable from its effect on the public generally, on the official or a member of his or her immediate family, or on:

(a) Any business entity in which the Designated Employee has a direct or indirect investment worth two thousand dollars (\$2,000) or more;

(b) Any real property in which the Designated Employee has a direct or indirect interest worth two thousand dollars (\$2,000) or more;

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms

available to the public without regard to official status, aggregating five hundred dollars (\$500) or more in value provided to, received by, or promised to the Designated Employee within 12 months prior to the time when the decision is made;

(d) Any business entity in which the Designated Employee is a director, officer, partner, trustee, employee, or holds any position of management; or

(e) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating three hundred sixty dollars (\$360) or more in value provided to, received by, or promised to the Designated Employee within 12 months prior to the time when the decision is made. [Gov. Code § 87103, 87302(c); 2 Cal. Code of Regs. § 18730(b)(9)]

2. Disclosure of Disqualifying Interest. When a Designated Employee determines that he or she has a disqualifying interest in a decision, the determination not to act may be accompanied by disclosure of the disqualifying interest. [Gov. Code §87302(c); 2 Cal. Code of Regs. § 18730(b)(10)]

Officials specified in Government Code section 87200, including officials who manage the investment of public funds, must identify conflicts of interests pursuant to 2 Cal. Code of Regs. section 18702.5.

3. **Rights as Citizen.** Nothing contained herein shall abridge the right of any Designated Employee to contact the Agency to submit information or express views in the same manner as any other member of the general public before the Agency in its prescribed governmental function solely to represent himself or herself on a matter relating to his or her personal interests. An Official's "personal interests" include, but are not limited to:

(a) An interest in real property which is wholly owned by the official or members of his or her immediate family;

(b) A business entity wholly owned by the official or members of his or her immediate family;

(c) A business over which the official exercises sole direction and control, or over which the official and his or her spouse jointly exercise sole direction and control.

Nothing contained herein shall be construed to abridge the right of any Designated Employee to communicate with the general public or with the press. [2 Cal. Code of Regs. § 18702.4(b)(1)&(2)]

4. **Legally Required Participation.** This Code does not prevent a Designated Employee from making or participating in the making of any governmental decision to the extent that his or her participation is legally required for the decision to be made. The fact that the vote of a Designated Employee who is on a voting body is needed to break a tie does not make his or her participation legally required for the purposes of this Section. The Attorney for the Agency shall advise any Designated Employee on a case-by-case basis whether or not the "Rule of Necessity" is applicable. [Gov. Code §§ 87101, 87302(c); 2 Cal. Code of Regs. § 18730(b)(9.3)]

Section H. OPINIONS OF THE COMMISSION AND COUNSEL:

1. **Request for Opinion and Reliance.** Any Designated Employee who is unsure of any duty, right, or privilege of participation in any matter under this Code or under the provisions of the Political Reform Act of 1974 may request assistance from the Fair Political Practices Commission or an opinion from the Attorney for the Agency. Nothing in this Section shall require the Attorney for the Agency to issue any formal or informal opinion. [Gov. Code § 83114; 2 Cal. Code of Regs. § 18730(b)(11)]

2. **Evidence of Good Faith.** If an opinion is rendered by the Attorney for the Agency or the Fair Political Practices Commission stating in full the facts and law upon which the opinion is based, compliance therewith by the Designated Employee is evidence of good faith in any criminal proceeding and is a presumption affecting the burden of proof of any civil proceeding brought under the Act or this Code. The Designated Employee's good faith compliance with such opinion shall also constitute a

complete defense to any disciplinary action brought by the Agency under Section 91003.5 of the Act or this Code. [Gov. Code § 83114; 2 Cal. Code of Regs. § 18320]

Section I. LEGISLATIVE OR JUDICIAL AMENDMENTS:

1. **Automatic Amendment of Code.** All amendments or changes to the provisions of the Political Reform Act of 1974, occurring as the result of legislative amendment or judicial decision only, shall automatically and immediately be incorporated into this Code and this Code shall, without further action, thereupon be deemed amended and changed to reflect such legislative or judicial amendment or decision.

Section J. FORCE AND EFFECT OF CODE:

1. **Violations.** This Code has the force and effect of law. Designated Employees violating any provision of this Code are subject to the administrative, criminal and civil sanctions provided by the Political Reform Act of 1974, Government Code sections 81000 et seq.

Additionally, a decision in relation to which a violation of the disqualification provisions of this Code or Government Code section 87100 has occurred may be set aside as void pursuant to Government Code section 91003. [Gov. Code § 87300; 2 Cal. Code of Regs. § 18730(b)(12)]

Section K. STATUTE OF LIMITATIONS:

1. **Civil Actions.** No civil action alleging a violation of any provision of this Code shall be filed more than four (4) years after the date the violation occurred.
2. **Criminal Actions.** Prosecution for violation of this Code must be commenced within four (4) years after the date on which the violation occurred.
3. **Administrative Proceedings.** No administrative action alleging a violation of any of the provisions of this Code shall be commenced more than five (5) years after the date on which the violation occurred. [Gov. Code §§ 91000, 91000.5, 91011]

RESOLUTION NO. 987

**RESOLUTION OF THE BOARD OF DIRECTORS
OF THE DESERT WATER AGENCY ADOPTING AN AMENDED
APPENDIX OF THE CONFLICT OF INTEREST CODE PURSUANT TO THE
POLITICAL REFORM ACT OF 1974**

WHEREAS, the Legislature of the State of California enacted the Political Reform Act of 1974, Government Code Section 81000 *et seq.* (the "Act"), which contains provisions relating to conflicts of interest which potentially affect all officers, employees and consultants of the Desert Water Agency (the "Agency") and requires all public agencies to adopt and promulgate a Conflict of Interest Code; and

WHEREAS, the Board of Directors adopted a Conflict of Interest Code (the "Code") which was amended on November 7, 2006, in compliance with the Act; and

WHEREAS, subsequent changed circumstances within the Agency have made it advisable and necessary pursuant to Sections 87306 and 87307 of the Act to amend and update the Appendix of the Agency's Code; and

WHEREAS, the potential penalties for violation of the provisions of the Act are substantial and may include criminal and civil liability, as well as equitable relief which could result in the Agency being restrained or prevented from acting in cases where the provisions of the Act may have been violated; and

WHEREAS, notice of the time and place of a public meeting on, and of consideration by the Board of Directors of, the proposed amended Appendix was provided each affected designated employee and publicly posted for review at the offices of the Agency; and

WHEREAS, a public meeting was held upon the proposed amended Appendix at a regular meeting of the Board of Directors on November 4, 2008, at which all present were given an opportunity to be heard on the proposed amended Appendix.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Desert Water Agency as follows:

Section 1. The Board of Directors does hereby adopt the proposed amended Appendix of the Conflict of Interest Code, a copy of which is attached hereto and shall be on file with the Executive Secretary and available to the public for inspection and copying;

