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United States Department of the Interior

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January 14, 1997

To: Roger Patterson, Regional Director
Mid-Pacific Region
U.S. Bureau of Reclamation
Sacramento, California

Dale Hall, Assistant Regional Director
Region 1
U.S. Fish and Wildlife Service
Portland, Oregon

From: J. William McDonald

Subject: Lobbying of Congress by Members of BDAC

Introduction

Rick Frank, California Office of the Attorney General, orally asked me whether members of the Bay-Delta Advisory Council (BDAC), acting in their capacity as BDAC members, could lobby Congress. The purpose of this memorandum is to briefly summarize for you my informal response to Mr. Frank, which I gave him today via a telephone call to him.

Conclusions

1. Members of BDAC, when acting as such (i.e., when on per diem and receiving travel expenses as committee members at Federal expense) cannot lobby Congress on any matter.

2. Members of BDAC, when acting in their own private capacity, on their own time, and at their own expense may lobby Congress on CALFED matters or any other matter. However, when doing so, they should take care to present themselves only as private citizens or representatives of their employers, not as members of BDAC. To "trade" on their status as BDAC members would be inappropriate.

Federal Advisory Committee Act (FACA)

Section 9(b) of FACA (5 U.S.C. Appendix) provides that "... advisory committees shall be utilized solely for advisory

functions." It appears to me that lobbying Congress on pending legislation would violate this requirement.

Furthermore, sections 10(e) and (f) of FACA and 41 C.F.R. §101-6.1019 of the implementing regulations provide that meetings of an advisory committee shall be held only upon the call of, or with the approval of, the designated federal officer for the committee (Roger Patterson in the case of BDAC) and shall be chaired by this officer or attended by him or her. When coupled with the cited language of section 9(b), these provisions in section 10 reinforce the view that "advisory committees shall be utilized solely for advisory functions" to the agency which chartered the committee, not for lobbying of Congress.

Anti-Lobbying Statute

18 U.S.C. §1913 provides, in relevant part, that:

No part of the money appropriated by any enactment of Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, ... telephone, letter, printed or written matter, or other device intended or designed to influence in any manner a Member of Congress, to favor or oppose, by vote or otherwise, any legislation or appropriation by Congress
.....

The section goes on to impose criminal sanctions on "any officer or employee of the United States" who violates or attempts to violate the quoted prohibition.

BDAC members, when acting in that capacity, use federal appropriations via being paid per diem and being reimbursed for their travel costs. To so expend appropriated funds to lobby Congress clearly would violate 18 U.S.C. §1913. While arguably a criminal sanction could not be imposed on a BDAC member for doing this because they probably are not an "officer or employee of the United States,"¹ the federal employee who authorized the travel and who approved of a BDAC member's travel reimbursement request would clearly violate the statute and be subject to the criminal sanctions which it imposes.

cc: Tom Hagler, EPA
Lester Snow, CALFED
Rick Frank, Calif. AG's Office

¹ I have not researched this specific question.