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Attorney General

State of California  
DEPARTMENT OF JUSTICE



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October 17, 1997

Lester Snow, Executive Director  
CALFED Bay-Delta Program

Mike Madigan, Chairman  
Bay-Delta Advisory Council

RE: Conflicts of Interest in Contracting:  
Opportunity to Declare Remote Interests and Noninterests  
During BDAC Meeting

Dear Chairman Madigan:

As I described in letters dated April 15 and July 9, 1997, Government Code section 1090 provides that an officer or employee may not make a contract in which he or she is financially interested. BDAC members should consult those letters as well as their own counsel to determine whether they have potential conflicts as defined by the statute.

Counsel members who have identified potential conflicts should review the statutory provisions for remote interests (§1091) and noninterests (§1091.5). Remote interests trigger abstention for officials but do not prevent a board from making a contract, while noninterests do not prevent the official from participating in the contract. If members of the Bay-Delta Advisory Council determine they have a remote interest or noninterest as described in the statute, the BDAC member must follow the reporting requirements in order to claim the exception.

A Counsel member whose interest falls into one of the remote interest categories described in the statute must (1) disclose his or her interest to the Counsel, (2) have it noted in the official records of that body, and (3) abstain from discussion of and action on the matter.

A Counsel member whose interest falls into one of the noninterests described in the statute is not required to abstain from discussion of or action on the matter, and generally is not required to disclose that interest. Members should note that some noninterests, unsalaried members of nonprofit corporations (§1091.5(a)(7)) for example, require the official to disclose his or her interest to the Counsel at the time the contract is first

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considered and to note that disclosure in the records of the Counsel.

There will be an opportunity at the November BDAC meeting for Counsel members to declare for the record any remote interests or noninterests associated with the ecosystem restoration project funding prior to BDAC discussion of and action on the Ecosystem Roundtable's recommendations for funding ecosystem restoration projects. Any Counsel member with a remote or noninterest requiring declaration on the record should be prepared to do so under the agenda item so marked.

If Counsel members have questions, they are encouraged to seek the advice of their legal counsel, or call me at the above number.

Sincerely,

DANIEL E. LUNGREN  
Attorney General



MARY J. SCOONOVER  
Deputy Attorney General

cc: BDAC members