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October 14, 1999

Mike Madigan, Chairman
Bay-Delta Advisory Council

RE: Conflict of Interest

Dear Chairman Madigan:

At its October meeting, the Bay Delta Advisory Council will be asked to consider a set of ecosystem restoration proposals that have been recommended by the Ecosystem Roundtable for funding by the CALFED agencies. CALFED staff will ask BDAC members to comment on this package of proposals. If BDAC supports these proposals and the CALFED agencies approve funding, contracts will be made with the individual project proponents. Several provisions of California law govern this process. The issue of relevance to BDAC members is the prohibition on self-dealing contained in California Government Code section 1090.

The Government Code prohibits a public official from making a contract in which he or she is financially interested. The California Supreme Court described the purpose of section 1090 to make certain that ". . . every public officer be guided solely by the public interest, rather than by personal interest, when dealing with contracts in an official capacity. Resulting in substantial forfeiture, this remedy provides public officials with strong incentive to avoid conflict-of-interest situations scrupulously." (Thomson v. Call (1985) 38 Cal.3d 633, 650.)

Section 1090 provides that an officer or employee may not make a contract in which he or she is financially interested. Any participation by an officer or an employee in the process by which such a contract is developed, negotiated and executed is a violation of this provision. This prohibition applies to virtually all state and local officers, employees and multi-member bodies, whether elected or appointed. The law provides a list of "remote interests" that trigger abstention and "non-interests" that, once disclosed, generally do not prevent participation in the decision. These exceptions are narrow and very limited. In order to fit into one of these categories, officials must follow the process outlined to declare on the record a remote or non-interest.

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The consequences of violating section 1090 are severe. A contract made in violation of this provision is void. In addition, any officer who is found guilty of willfully violating section 1090 is subject to civil and criminal fines and penalties. Additionally, such an individual is forever disqualified from holding any office in this state.

Therefore, prior to any discussion of the ecosystem projects, each BDAC member will have an opportunity to declare his or her remote on the record. Many of you have been through this exercise previously and consulted with your own attorneys. Others are relatively new to the BDAC process and this provision; I encourage you to consult with your own attorney.

I am happy to answer questions and help sort through this difficult, but important area of law with you. In general, if you or an organization with which you are associated or employed is applying for restoration funds, you should pay particular attention to this issue in advance of BDAC's October meeting.

Sincerely,



MARY J. SCOONOVER
Deputy Attorney General

For BILL LOCKYER
Attorney General