

ATTACHMENT B

**District Resolution No. 2170 adopted September 25, 2018 with
amended Conflict of Interest Code attached**

RESOLUTION NO. 2170
RESOLUTION OF THE GOVERNING BOARD
OF THE MONTECITO WATER DISTRICT AMENDING
APPENDIX A "DESIGNATED POSITIONS AND DISCLOSURE CATEGORIES"
OF THE DISTRICT'S CONFLICT OF INTEREST CODE

WHEREAS, by Resolution No. 1661, the Board of Directors of the Montecito Water District adopted the District's Conflict of Interest Code pursuant to the California Political Reform Act; and

WHEREAS, by that resolution, the Board of Directors adopted Appendices "A" and "B" in which members and employees are designated and disclosure categories are set forth; and

WHEREAS, by Resolution No. 2075, the Board of Directors amended Appendix "A" to add a designated position; and

WHEREAS, the Board of Directors desires to further amend Appendix "A" of the District's Conflict of Interest Code, in the form attached to this resolution;

NOW THEREFORE, it is hereby resolved by the Board of Directors of the Montecito Water District that Appendix A" of the District's Conflict of Interest Code, entitled "Designated Positions and Disclosure Categories" is hereby amended as set forth in Exhibit "A" attached to this resolution.


PASSED AND ADOPTED by the Board of Directors of the Montecito Water District this 25th day of September 25, 2018 by the following roll call vote:

AYES: Directors Frye, Morgan, Plough, Shaikewitz, and Wicks

NOES: None

ABSENT: None

APPROVED:



W. Douglas Morgan, President

ATTEST:



Nicholas Turner, Secretary

APPENDIX A

Persons occupying the following positions are designated employees and must disclose financial interests in those categories described in Appendix B which are listed opposite their respective designated positions:

<u>Designated Positions</u>	<u>Disclosure Categories</u>
1. Director	1, 2, 3, 4
2. General Manager	1, 2, 3, 4
3. General Counsel	1, 2, 3, 4
4. Consultant*	
5. Engineering Manager	1, 2, 3, 4
6. Business Manager	1, 2, 3, 4

*Consultants shall be included in the list of designated employees and shall disclose pursuant to the broadest disclosure category in the 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 is 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 the disclosure requirements. The General Manager determination is a public record and shall be retained for public inspection in the same manner and location as this conflict of interest code.

RESOLUTION NO. 1661

CONFLICT OF INTEREST CODE FOR THE
MONTECITO WATER DISTRICT

The Political Reform Act, Government Code Sections 81,000 et seq., requires state and local government agencies to adopt and promulgate Conflict of Interest Codes. The Fair Political Practices Commission has adopted a regulation, 2 California Code of Regulations Section 18730, which contains the terms of a standard Conflict of Interest Code, which can be incorporated by reference, and which may be amended by the Fair Political Practices Commission to conform to amendment to the Political Reform Act after public notice and hearings. The terms of 2 California Code of Regulations Section 18730, and any amendments to it duly adopted by the Fair Political Practices Commission are hereby incorporated by reference and along with the attached Appendixes "A" and "B" in which officials and employees are designated and disclosure categories are set forth, constitute the Conflict of Interest Code of the Montecito Water District.

Pursuant to Section 4 of the standard Code, designated employees shall file statements of economic interest with the agency. Upon receipt of the statement filed by directors and general manager, a copy shall be retained and the original shall be forwarded to the Election Division of the Santa Barbara County Clerk-Recorder. Statements for all other designated employees will be retained by the District.

The Resolution was thereupon declared carried and adopted this 18th day of July, 1991.

AYES: Campbell, Muller, Puddicombe, Valentine, Yawitz

NOES: None

ABSENT: None

APPROVED:

Carol L. Valentine
Carol L. Valentine, President

ATTEST:

C. Charles Evans
C. Charles Evans, Secretary

APPENDIX A

Designated Positions

Disclosure Categories

Persons occupying the following are designated employees and must disclose financial interests in those categories described in Appendix B which are listed opposite their respective designated positions:

1.	<u>Director</u>	.....	<u>1,2,3,4</u>
2.	<u>General Manager</u>	.....	<u>1,2,3,4</u>
3.	<u>Consultant*</u>	.....
4.	_____	.....
5.	_____	.....
6.	_____	.....
7.	_____	.....
8.	_____	.....
9.	_____	.....
10.	_____	.....
11.	_____	.....
12.	_____	.....

*Consultants shall be included in the list of designated employees and shall disclose pursuant to the broadest disclosure category in the 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 is 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 determination is a public record and shall be retained for public inspection in the same manner and location as this conflict of interest code.

APPENDIX B

CATEGORIES OF DISCLOSURE

CATEGORY 1

Interests in real property which is located in whole or in part within the jurisdiction of the Montecito Water District, including any leasehold, beneficial or ownership interest or option to acquire such interest in real property, if the fair market value of the interest is \$1,000 or more.

CATEGORY 2

Business positions or investments in or income from persons or business entities engaged in the appraisal, acquisition, or disposal of, real property within the jurisdiction of the Montecito Water District.

CATEGORY 3

Business positions or investments in and income from any source or sources of income, if:

- a) The business entities or the source or sources of income are of the type which, within the previous two years, have provided or contracted to provide, or in the future with reasonable foreseeability might provide or contract to provide services, supplies, materials, machinery or equipment to or for the use of the District; and
- b) Within the previous two years, the designated employee has made, participated in making, or in any way has attempted to use his or her official position to influence, the governmental decision to obtain or procure

services, supplies, materials, machinery or equipment of the same or similar type as those so provided or contracted to be provided the District or if the duties of the designated employee's position make it reasonably foreseeable that he or she might engage in such activity.

CATEGORY 4

Business positions or investments in business entities and income from any source or sources of income, if:

- a) The business entities or the source or sources of income are of the type which, within the previous two years, have furnished or contracted to furnish, or in the future with reasonable foreseeability might furnish or contract to furnish services, supplies, materials, machinery or equipment as a subcontractor in any contract with the District to provide services, supplies, materials, machinery or equipment to or for the use of the District; and
- b) Within the previous two years, the designated employee has made, participated in making, or in any way has attempted to use or her official position to influence, the governmental decision to obtain or procure services, supplies materials, machinery, or equipment of the same or a similar type as those so provided or contracted to be provided to the District or if the duties of the designated employee's position make it reasonably foreseeable that he or she might engage in such activity.

CONSULTANTS

The term "designated employee" includes any officer, employee, member or consultant of any agency involved in the making or participation in the making of decisions which may foreseeably have a material effect on any financial interest. (Government Code Section 82019 (emphasis added).)

A "consultant" is a natural person who provides, under contract, information, advice, recommendation or counsel to a local government agency. (2 Cal. Code of Regs. Section 18700(a)(2).) The term "consultant" does not include a person who:

(A) Conducts research and arrives at conclusions with respect to his or her rendition of information advice, recommendation or counsel independent of the control and direction of the agency or any agency official, other than normal contract monitoring, and

(B) Possesses no authority with respect to any agency decision beyond the rendition of information, advice, recommendation or counsel.

2 Cal. Code of Regs. Section
18700(a)(2)(A)(B)

The term "natural person" is used in Regulation 18700 to clarify that corporate entities do not need to file statements of economic interests. A consultant is not the corporate entity but rather the natural persons within the entity who provide the consulting services. It is these persons who must file statements of economic interests.

Generally, consultants who prepare a product or perform services for a single specific matter are not the type of consultants required to be covered by a code, whereas consultants who provide more general assistance and advice to a government agency on an on-going basis should be covered.

However, should a consultant provide recommendations or advice and there be significant intervening substantive review of the recommendations made by that consultant before submission to the final decision-maker, then that consultant is not the type necessary to be covered by a code.

To provide some guidance to you in distinguishing between consultants required and not required to be covered by a code, we have set out some excerpts from Commission advice letters regarding particular consultants under factual situations. Copies of Commission advice letters may be obtained by contacting the Legal Division at (916) 322-5901.

THE TYPES OF CONSULTANTS REQUIRED
TO BE COVERED BY A CODE

The attorneys within a law firm providing legal services to a redevelopment agency are consultants subject to the financial disclosure requirements. (Albuquerque Advice Letter A-85-244.)

Government attorneys participate in the highest level of decisionmaking through their advice and counsel. When a contract attorney provides advice and counsel to a government agency on an ongoing basis, the attorney is actually participating in the governmental decision process similar to government attorneys. (Gifford Advice Letter A-85-201.)

A contract county engineer-surveyor, when performing review of permit applications, is a consultant. (Maloney Opinion, 3 FFPC Opinions 69 (No. 76-082, August 18, 1977.)

An engineering and project management consultant retained to provide information, advice, recommendations or counsel on a long range electrical resource plan, essentially functions as additional agency staff, and is a consultant. (Kaplan advice letter A-82-108.)

A computer evaluation consulting firm retained to provide advice on a computer implementation plan, conduct research to determine the current state of the art in computers, determine who are potential vendors for hardware or software, assist in preparing the specifications for bids, evaluate bid responses, advise the county on the appropriate bid to select and to be available for consultation and training, are interacting directly with the decisionmakers on an on-going basis. Their participation involves a broad exercise of discretion. The firm's employees are public officials and should be covered by a code (Workman Advice Letter A-87-078).

THE TYPES OF CONSULTANTS NOT
REQUIRED TO BE COVERED BY A CODE

An attorney retained by the county as a "co-defender" to provide indigents with legal services in criminal cases and juvenile proceedings is responsible only to his or her clients. The agreement between the county and the attorney does not create an attorney-client relationship between defender and county. The contract co-defender is not a consultant. (Hill Advice Letter A-87-304).

An engineer is retained to construct a filtration system. He is to complete the project according to specifications of a contract and there are no deviations from the contract. The engineer uses his own expertise to render professional services according to the specifications of a contract and is being called upon to deliver a finished product. This engineer is not a consultant within the meanin of the Act. (Clifford Advice Letter A-83-103.)

An environmental consulting firm retained to prepare an environmental impact report is using his or her expertise to render professional services according to the specifications of a contract. The individuals within the firm are being called upon to deliver a finished product, not to participate in governmental decisions. (Crouch Advice Letter A-83-069).

In the Maloney Opinion, the Commission determined that a contract county engineer-surveyor was not a "consultant" when performing engineering or surveying tasks which were not subject to the control or discretion of the county. The Commission held that "the preparation of surveys and engineering studies.." did not involve "any official decision-making." (However, when performing reviews of permit applications, he was held to be a public official (Maloney, 3 FPPC Opinions 69, No. 76-082, August 18, 1977).)

A consulting engineer retained to evaluate and recommend to an agency which type of water treatment system would be best for the agency would normally be a public official. However, since all plans, specifications, recommendations and estimates are reviewed by an independent engineering-consulting firm prior to presentation to the agency, the engineer is not "participating" in a governmental decision due to the intervening substantive review by the independent firm. (Rose Advice Letter A-84-306 and A-84-299.)

An independent real estate appraiser retained to value the damage to a specific piece of property is not making or participating in the decision-making process and is not a consultant. (Trott Advice Letter A-76-543.)

Three firms which have contracted with a district to provide construction and engineering services to build an 18-mile subway are being called upon to deliver a finished product, not to participate or advise the district on general governmental decisions, and are not public officials. (Torres Advice Letter A-86-245.)