

Transition2017



TO: Finance & Governance Committee
FROM: Gregory Weber
DATE: March 1, 2017
SUBJECT: Partnership Director Conflicts of Interest Policy

Recommendation:

1. Building from the materials inherited from the Council, develop a more robust conflicts of interest policy that addresses self-dealing, organizational conflicts, and apparent conflicts involving Partnership directors.
2. Until the Board can adopt a new conflicts policy, Partnership staff believes that each committee needs to develop clear ground rules to avoid such actual or apparent conflicts.

Background:

Ordinarily, at the first Board meeting of each new calendar year, new directors receive a board-member orientation. Included in that orientation is the short document set out at the end of this memo. Paragraph 10 of that document contains the most specific language on conflicts of interest at the board level:

Conflict of Interest. The director shall not participate in any Council decision when that director has a material financial interest in the transaction in question without first informing the board of the interest and following proper procedures, as outlined in Article XII of the By-laws.¹

This provision, and the referenced bylaws, reiterate California nonprofit corporation law. They address “self-dealing.” Self-dealing simply involves a director’s personal financial gain from an organizational decision in which he or she participates.

Beyond that specific provision, several paragraphs refer to a director’s general duty to act in the organization’s best interest. These “best interests of the Council” provisions implement, in part, the director’s general duty, under California law, of “loyalty” to the Partnership.

Paragraph 2 states:

It is also expected that directors be able to consider and act on what is best for the organization as a whole, and the organization’s mission, and not just the interest of the constituency represented by the director.

For its part, paragraph 4 states: “A director is bound by law to ... make decisions that are in the best interests of the Council regardless of whether he or she is compensated by the Council. “

And paragraph 5 reiterates: “A director must ... be prepared to act in the best interests of the Council.”

The bylaws changes adopted by the members on December 30, 2016, create new possibilities for conflicts of interest that did not exist under the prior governance structure. The elimination of the three separate membership groups means that representatives of for-profit Partnership members are eligible to serve as Partnership directors. Conceivably, such directors might participate in

¹ Bylaws section 12.01(b). See also section 8.02(b).

decisions that do not benefit themselves directly; rather, they benefit the organization that they represent. The current Partnership “policy,” set out below, did not address this kind of organizational conflict. It does not tell the director with the potential conflict what to do. It also does not tell other directors what to do if the affected director does not act.

In anticipation of such potential organizational conflicts, Article 12 of the transition bylaws contains provisions that address some organizational conflicts. For example, Section 12.01(a) states:

No Representative of a Member of the Council shall make, participate in making, or in any way attempt to use his or her position as a Representative, Director, or officer of the Council to influence any decision or action of the Council at a Plenary Meeting or any decision or action of the Board with respect to contracts to provide services to the Council if the Representative is personally aware that the Member he or she represents on the Council, or any constituent organization that is a Member, or an affiliate of the Member, or the Member Representative him or herself, has a direct or indirect material financial interest in the subject matter of the decision or action to which the vote of the Council pertains. (Emphasis added.)

Thus, this provision is broad enough to address self-dealing type conflicts between the Partnership and:

- Any member (not just a Director)
- A member’s constituent organization (undefined)
- A member’s affiliated organization (undefined); and
- The member’s representative.

It also includes direct and “indirect” material financial interests. It goes on to define “material financial interest” as one involving \$2,000 or more whose value would be increased by at least 10% during the term of the agreement or grant with the Partnership.

While these provisions expand the range of the self-dealing limitations, they do not exhaust the types of organizational conflicts. Under Section 12.01(a)(i)-(iii), they are limited to specific grants or agreements. And, in any event, the bylaws provisions lack a narrative format, written in plain English, which includes illustrations of their application.

Similarly, there may be occasions where although a director’s role in a decision does not rise to the level of either self-dealing or a formal organizational conflict, an independent observer might reasonably conclude that a conflict appears to exist. Again, the Partnership’s policy does not address what should be done when an apparent conflict exists.

Partnership staff believes that the Partnership should develop a formal policy to address all three kinds of conflicts: self-dealing, organizational conflicts, and apparent conflicts. The policy should first define the conflicts, giving illustrations. It should then identify how the affected director should respond in different situations. Finally, it should set out what other directors should do when they suspect an actual or apparent conflict that has not otherwise been raised.

In developing such a policy, staff suggests that it should first survey similar nonprofit corporations to build off of possible examples. As appropriate, Partnership staff would work with its outside counsel. Staff would then develop and present suggested language for Governance committee review at the committee’s next meeting.

In the meantime, before the Partnership Board can adopt a new conflicts policy, Partnership staff believes that each Board committee needs to have clear and ground rules, specific to its composition, to avoid any organizational conflicts.

California Urban Water Conservation Council

Director's Roles and Responsibilities

This overview of Council Director Roles and Responsibilities is intended to provide clarity and direction to prospective and sitting board members for the purpose of creating positive and appropriate working relationships among each other, the Executive Director and staff members. While it does address legal responsibilities as board members, its primary purpose is to create a sense of the type of organization the Council strives to be – a learning organization with a spirit of mutual support and respect. The spirit of these guidelines is as important as the guidelines themselves, to create an effective organization, working in a positive and productive environment to address the crucial water resources issues facing the state of California.

1. **General Role.** A director is a member of the board, which is the governing body of the Council. The primary function of the board is to provide overall guidance on programs and policies to accomplish the mission of the Council, approve budgets, assist with fundraising and work closely with the Executive Director to accomplish organizational objectives. Board members are responsible for fiduciary oversight and the financial health and sustainability of the Council, consistent with fulfilling California laws for governing a nonprofit 501(c)3 organization. In addition to meeting these responsibilities, directors should serve as ambassadors for the Council, actively promoting the organization's vision and mission.
2. **Director Profile.** Directors should be committed to the vision, mission and primary objectives of the organization.
It is also expected that directors be able to consider and act on what is best for the organization as a whole, and the organization's mission, and not just the interest of the constituency represented by the director.
3. **Authority.** A director's authority is vested as a member of the board based on the description under General Role (above). A director has no authority in the management of the day-to-day affairs of the Council. The bylaws or the board may delegate specific additional authority to an individual director. For example, the bylaws grant additional authority to officers. The board may delegate additional authority to officers, to committees, task forces or individual directors following the rules of the bylaws.
4. **Duties.** A director is bound by law to perform the duties of the position and make decisions that are in the best interests of the Council regardless of whether he or she is compensated by the Council.
5. **Be Informed and Prepared.** A director must be informed about the affairs of the Council and be prepared to act in the best interests of the Council. The director should read all relevant Council literature, particularly all informational material provided with a meeting agenda.
6. **Decision Making.** The board deliberates and acts only by consensus of Groups 1 and 2 (with a minimum two-thirds majority for votes taken among Group 1) during a properly called and noticed meeting with a quorum. Once a decision is made by the board, directors shall support that decision in communications representing the organization. If asked, a director should fairly describe the decision making process, the basis for the decision and their personal position (if desired), but not attempt to undermine the decision.
7. **Resolving Concerns or Disputes.** Directors shall make every effort to work through differences and disagreements among themselves in a manner that maintains good working relationships and clearly resolves any outstanding issues or differences. Concerns conveyed to directors by members related to the day-to-day operations of the organization should be shared with the Executive Director before any other action is taken. In the case of a staff member contacting a director with a complaint against another staff member, the director should advise the complainant to follow the conflict

resolution process contained in the Personnel Handbook. In the case of a Director receiving a complaint against another Director or member, the issue should be referred to the Chair of the Board.

8. **Meeting Attendance and Participation.** It is expected that directors will attend the annual board member orientation held in February each year. Directors should generally be able to participate in quarterly meetings of the board and meet other responsibilities designated or assigned as a member of the Board. The By-laws indicate directors missing two consecutive meetings are subject to dismissal. If a director is no longer able to function as an effective member of the board, due to scheduling or other issues, the process for replacement is outlined in the By-laws. To keep board meetings efficient and effective, alternates are not allowed if a director must miss a meeting.
9. **Knowledge of Roles and Responsibilities.** All directors should be familiar with the director's roles and responsibilities outlined in this document. Directors should also be aware of board responsibilities and guidelines as contained in the By-laws to avoid personal liability to the Council for any action taken as a director.
10. **Conflict of Interest.** The director shall not participate in any Council decision when that director has a material financial interest in the transaction in question without first informing the board of the interest and following proper procedures, as outlined in Article XII of the By-laws.
11. **Relationship with the Executive Director.** Directors should support the Executive Director in her/his role as chief executive officer, responsible for the day-to-day operations of the Council. Directors should work closely with the Executive Director in providing guidance on policy and program issues essential to the Council's mission. Directors should also confer with the Executive Director on budget and fundraising issues, while supporting the Executive Director's responsibilities to manage the daily and long-term affairs of the Council. As the Council is a member-driven organization, it is essential for the Executive Director to be aware of and responsible for all major initiatives of the Council, including providing staff support for the board, Committees and other bodies acting on behalf of the board or membership as a whole. While Directors provide overall guidance, it is the Executive Director's role and responsibility to manage the organization (e.g., finances, personnel, contracts, etc.) and carry out the activities necessary to achieve the mission of the Council and meet the needs of members.
12. **Guidelines for Interaction.** To maintain the professionalism of the organization and encourage open, honest and constructive communications among the board, Executive Director, members of the Council and staff, the following guidelines serve as a template to guide board and plenary meetings:
 - Provide an opportunity for all participants to share their points of view in an atmosphere of openness and mutual respect
 - Check assumptions about statements, information or attributed motives before responding or engaging in discussions
 - Work through differing points of view in a manner that recognizes and incorporates the contributions from each point of view
 - Seek consensus whenever possible, seeking solutions that address the primary interests of all involved to the extent possible
 - Encourage differences between individuals to be reconciled privately, or with the assistance of a third-party, to ensure productive long-term working relationships are maintained.

(A signature and date line are included at the end of the actual document.)