



CONFLICTS OF INTEREST

POLICY | SWC_02.2023

NORTH
Dakota | Water Commission
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Effective Date 10/12/2023

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1 SUMMARY

State Water Commissioners represent the eight drainage basins in North Dakota and are appointed by the Governor to represent the various interests of water resource constituents across the state.

The North Dakota Ethics Commission was established in 2018 by an initiated measure to create Article XIV of the North Dakota Constitution. The Ethics Commission has oversight over the Commission, and these guidelines were developed in response to the Ethics Commission's Conflict of Interest (COI) training provided to the Commission in 2022.

In some cases, Commissioners may have relationships to entities that come before the Commission, including requesting funding for infrastructure related projects. SWC_02 outlines the general guidelines and processes that Commissioners must follow when there is a Potential Conflict of Interest (Potential COI).

1.1 AUTHORITY OR IMPLEMENTATION

These guidelines garner authority from North Dakota Century Code (N.D.C.C.) § 54-66-04.2 and North Dakota Administrative Code (N.D.A.C) Article 115-04.

1.2 ACCEPTANCE OR ENFORCEMENT

These guidelines will be updated as necessary to ensure the Commission fulfills its statutory duties.

2 DISCLOSURE PROCEDURES

2.1 DISCLOSURE AT REGULAR COMMISSION MEETINGS

The disclosure of Potential COIs will be an agenda item at each Commission meeting. During this agenda item the following will occur:

- a. Each Commissioner will disclose their Potential COIs and indicate if those Potential COIs are relevant to any of the upcoming agenda items.
- b. The Neutral Reviewer will determine if the Potential COIs are Disqualifying COIs for any items on the agenda and fill out the Conflict of Interest Disclosure Form (Appendix A) for each Potential COI. Common occurrences are listed in Section 4. The Neutral Reviewer will give appropriate weight and deference to the Commissioner to perform their duties provided that the Commissioner has properly disclosed the Potential COIs as required in code.
 - If a Potential COI is determined to be a Disqualifying COI, the Commissioner will be required to abstain from voting on specified agenda items.
 - If a Potential COI is determined not to be a Disqualifying COI, the Commissioner will be able to vote on all agenda items.
- c. After each meeting, a copy of the Conflict of Interest Disclosure Forms will be retained by the Department of Water Resources (DWR) and submitted to the Ethics Commission by the Secretary.

2.2 DISCLOSURE OF ONGOING POTENTIAL CONFLICTS OF INTEREST

By virtue of their appointment to the Commission, Commissioners may have an ongoing Potential COI that will need to be disclosed. Commissioners may disclose their ongoing Potential COI on an annual basis by filling out the Conflict of Interest Disclosure Form and submitting it to the Neutral Reviewer at the first meeting of the year. The Neutral Reviewer will review the submission and make a determination on the status of the COI. The DWR will retain a copy of the form, and a copy will be submitted to the Ethics Commission by the Secretary.

Commissioners with ongoing Potential COIs are not exempt from Section 2.1 and are still required to verbally disclose their COIs during the meeting and abstain from voting as determined by the Neutral Reviewer.

3 NEUTRAL REVIEWER

For the purpose of these guidelines, the Commission has designated their General Counsel to be their Neutral Reviewer.

N.D.A.C. § 115-04-01-03(7) reads as follows:

The following standards shall guide the review and decision of either a public official or the neutral reviewer with respect to any public official's potential conflict of interest:

- a. Appropriate weight and proper deference must be given to the requirement that a public official perform the duties of elected or appointed office, including the duty to vote or otherwise act upon a matter, provided the public official has properly disclosed the potential conflict of interest as required by this rule.
- b. A decision that requires a public official to recuse or abstain from further action or decision in a matter should only occur in cases where the independence of judgment of a reasonable person in the public official's situation would be materially affected by the disclosed potential conflict of interest.
- c. The review of a potential conflict of interest and any decision that would require a public official to recuse themselves or abstain from further involvement in a matter shall consider any applicable North Dakota law which precludes the public official from recusal or abstention in the matter.
- d. It is presumed that a public official does not have a disqualifying conflict of interest if the public official would not derive any personal benefit which is greater than that accruing to any other member of the general public or any general business, profession, occupation, or group affected by the matter.
- e. Any guidance issued by the ethics commission, including informal guidance, advisory opinions, rules, standards, and precedent.

4 COMMON OCCURANCES

The scenarios below indicate the Commission's current guidelines regarding specific Potential COIs. Other COIs may exist, and this list is not meant to be exhaustive. See Section 2.1 for procedures regarding COI's outside of this list.

4.1 COMMISSIONER AS A CUSTOMER

It is not a Potential COI when a Commissioner is a customer of an entity that directly provides water to the Commissioner at their business or residence.

Unless there are other circumstances, Commissioners are able to vote on the following:

- a. Project that would benefit the entire entity.
- b. Project that would directly benefit the Commissioner's business or residence such as a flood protection project or water line expansion.
- c. Project that would directly benefit the Commissioner that is funded through a special assessment that is assessed at the same level as the rest of the assessment district.

4.2 COMMISSIONER AS A REPRESENTATIVE OF A POLITICAL SUBDIVISION

It is a Potential COI when a Commissioner serves on a water board, water supply authority, or other similar political subdivision or oversight body.

In general, Commissioners will be required to abstain from voting on the following:

- a. Cost-share for a project from the board on which they sit.
- b. Policy or funding for a state-owned project from the Authority on which they sit.
- c. Project that would benefit the community for which they represent.

4.3 COMMISSIONER AS A CONSULTANT

It is a Potential COI when a Commissioner is an employee at a consulting firm that works on water resource projects.

In general, a Commissioner will be required to abstain from voting when the Commissioner's firm represents the entity requesting cost-share.

5 DEFINITIONS

Commission: State Water Commission as defined in N.D.A.C. §89-01-01-02

Commissioners: Members of the State Water Commission

Disqualifying Conflict of Interest (Disqualifying COI): Defined in N.D.A.C. § 115-04-01-01 as one of the following:

- a. “A potential conflict of interest disclosed pursuant to this rule which the public official has determined requires recusal and abstention from further action in the matter; or
- b. A potential conflict of Interest disclosed pursuant to this rule which the neutral reviewer has determined requires the public official to recuse and abstain from further action in the matter.”

Potential Conflict of Interest (Potential COI): Defined in N.D.A.C. § 115-04-01-01 as “a public official as part of the public official's duties must make a decision or take action in a matter in which the public official has:

- a. Received a gift from one of the parties;
- b. A significant financial interest in one of the parties or in the outcome of the proceeding; or
- c. A relationship in private capacity with one of the parties.”

Immediate Family: Defined in N.D.A.C. § 115-04-01-01 as “a public official's parent, sibling, spouse, grandparent, grandchild, stepchild, or child by blood or adoption.”

Neutral Reviewer: Defined in N.D.A.C. § 115-04-01-01 as “the individual or committee designated by an agency, legislative body, board, commission, or committee to receive disclosures of potential conflicts of interest and determine whether the potential conflict of interest is a disqualifying conflict of interest. In the absence of a rule or policy designating a neutral reviewer, the following shall apply:

- a. If a public official with a potential conflict of interest is a member of a legislative body, board, commission, or committee the remaining individuals who are members of the legislative body, board, commission, or committee shall be considered as the neutral reviewer;
- b. If a public official with a potential conflict of interest is an employee of the legislature, the public official's supervisor may be considered as the neutral reviewer;
- c. If a public official with a potential conflict of interest is a member of the governor's cabinet, the governor's designated ethics officer shall be considered as the neutral reviewer;
- d. If the public official with a potential conflict of interest is an appointed public official, the appointing official shall be considered as the neutral reviewer; or
- e. If none of the above apply, the public official shall make the determination but must report the disclosure and decision in the manner set forth in section 115-04-01-04 within seven calendar days.”

For the purpose of these guidelines, the Commission has designated their General Counsel to be their Neutral Reviewer.

Ongoing Potential Conflict of Interest: An Ongoing Potential Conflict of Interest is a Potential Conflict of Interest that lasts for longer than one year. For example, a water board or authority appointment or employment with an engineering, legal, environmental, or other private firm.

Public Official: Defined in N.D.A.C. § 115-04-01-01 as “any elected or appointed official of the North Dakota executive or legislative branches, including members of the ethics commission, members of the governor's cabinet, and employees of the legislative branch.”

Commissioners are public officials.

Relationship in a Private Capacity: Defined in N.D.A.C. § 115-04-01-01 as “a past or present commitment, interest or relationship of the public official in a matter involving the public official's immediate family, individual's residing in the public official's household, the public official's employer, or employer of the public official's immediate family, or individuals with whom the public official has a substantial and continuous business relationship.”

Secretary: As defined in N.D.C.C. § 61-02-05, “the director of the department of water resources is the secretary of the commission.”

Significant Financial Interest: Defined in N.D.A.C. § 115-04-01-01 as “a direct and substantial in-kind or monetary interest, or its equivalent, not shared by the general public; however, does not include investments in a widely held investment fund, such as mutual funds, exchange-traded funds, participation in a public employee benefits plan, or lawful campaign contributions.”

6 HISTORY

Policy Adopted: 8/10/2023

Policy Effective: 10/12/2023

Previous Revision(s): No Revisions Available

