



Trinity River Adaptive Management Working Group

FACA Committee Representative Ethics Responsibilities

2013



Background Overview of Ethics Requirements

FACA Representative vs. FWS Employee

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| <ul style="list-style-type: none"> • Voice of group with financial interest or other stake in the matter • Federal Ethics statutes and regulations don't apply <ul style="list-style-type: none"> – Charter language governs | <ul style="list-style-type: none"> • Represents government – no personal financial interest in the issues • Ethics statutes and regulations apply <ul style="list-style-type: none"> – Criminal Code provisions – Standards of Conduct |
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Working Group Objectives and Scope of Activities

The Trinity River Adaptive Management Working Group ("Working Group") provides an opportunity for stakeholders to give policy and management input, in an advisory capacity, about restoration efforts to the Trinity River Restoration Program (TRRP), through the Trinity Management Council (TMC).

Charter -Section 3, 1/14/12



Working Group Duties

The duties of the Working Group are solely advisory and include:

- a. Providing policy and management recommendations and advice to the TMC on:
 - (1) Effectiveness of management actions in achieving restoration goals and alternative hypotheses for study,
 - (2) The priority for restoration projects,
 - (3) Funding priorities, and
 - (4) Other components of the TRRP as requested by the Designated Federal Official (DFO)



Working Group Duties (cont'd)

- b. Developing and submitting alternative hypotheses for consideration by the TMC and potential analysis by the AEAM Technical Modeling and Analysis Group and the Rehabilitation Implementation Group.
- c. Recommending management actions and studies for Requests for Proposals development and implementation.

Charter – Section 4, 1/14/2011



Ethics Charter Language

“No Working Group or subcommittee member may participate in any specific party matter including a lease, license, permit, contract, claim, agreement, or related litigation with the Department in which the member has a direct financial interest.”

Charter – Section 13, 1/14/2011



What is a “specific party matter”?

It is a proceeding or transaction that affects the right of identifiable parties.

Examples include:

- Lease
- License
- Permit
- Contract
- Claim
- Agreement
- Litigation
- Grant
- Application
- Enforcement Action
- Request for ruling or other determination
- Controversy
- Charge
- Accusation
- Arrest
- Investigation
- Other matter involving a specific party or parties

What is not a “specific party matter”?

Matters of general applicability, such as:

- Rulemaking
- Legislation
- Formulation of general policy, standards, or objectives
- Other actions of general application

What is a “direct financial interest?”

A working group member has a “direct financial interest” in a matter if there is a “direct” and “predictable” effect between the action that the working group member will take and the expected effect on his/her financial interest.



What is a “financial interest”?

What is a “financial interest”?

- Involves your personal financial interest (does not include spouse's, employer's, child's interests, etc.)
- It includes:
 - The potential for gain or loss as a result of governmental action on the matter
 - Ownership of certain financial instruments or investments such as stock, bonds, mutual funds, or real estate
 - Salary, indebtedness, job offer, or any similar interest



What is a “direct” effect?

What is a “direct” effect?

- Close causal link between action on the matter and expected effect on financial interest
- Effect need not be immediate

What is not a “direct” effect?

- Chain of causation not clear or the effect on the financial interest is contingent upon events that are speculative, independent of, or unrelated to, the matter
- Effect on interest only a consequence of action’s effect on general economy.



What is a “predictable” effect?

What is a “predictable” effect?

- A real possibility that matter will affect the member’s financial interest. Not speculative.
- However:
 - Dollar amount of gain or loss is immaterial
 - Amount of gain or loss need not be known



What actions are restricted?

Only duties related to the Working Group are restricted:

- You may not act, as part of your Working Group duties, on that specific party matter before DOI where you have a direct financial interest
- You may act, outside of your Working Group duties, on behalf of yourself or others, in a specific party matter before DOI that affects your financial interests.



Analysis

If you answer "yes" to all of these questions then you may be required to recuse yourself from participation on the matter.

- Is the issue a "specific party matter"?
- Will your action on this matter, as a Working Group member, have an effect on your "financial interest"?
- Will that effect be "direct"?
- Will that effect be "predictable"?



Scenario 1- Bob

Scenario:

- Bob works for a state land management agency. He is on a FACA Committee representing his agency. In that role, he makes recommendations on grant applications for DOI funds to restore habitat in a river basin.
- The state land management agency has applied for a grant from DOI to fund work on the agency's land as part of the restoration project.

Question: Can Bob participate in reviewing these grant applications as a member of the committee?

- A. If his salary/program is funded by the grant?
- B. If his salary/program is not funded by the grant?



Scenario 1- Bob

Ethics analysis:

- Is the issue a "specific party matter"? Yes, it is a grant.
- Will the Working Group's action have an effect on the Bob's "financial interest"?
 - A. Yes, if the grant funds will be used for Bob's salary/program.
 - B. No, if the grant funds will not be used for Bob's salary/program.
- Will that effect be "direct"? A. Yes, B. No.
- Will that effect be "predictable"? A. Yes, B. No.



Scenario 1- Bob

Action:

A.If Bob's salary/program is funded by the grant: Bob must recuse himself from participating, as part of committee duties, in reviewing or making recommendations concerning this grant application, because he has a direct financial interest in the matter.

B.If Bob's salary/program is not funded by the grant: Bob may participate because he does not have a direct financial interest in the matter.



Scenario 2 - Sue

Scenario:

- Sue represents local businesses on an FWS Advisory Committee which provides advice to DOI regarding restoration funding projects.
- One of the proposed restoration projects up for Committee review is on Sue's property.

Question: Can Sue participate in providing advice about the funding of the restoration project on her property?



Scenario 2 - Sue

Ethics Analysis:

- Is the issue a "specific party matter"? Yes, it is a grant.
- Will Sue's action reviewing the proposal have a "direct" and "predictable" effect on her "financial interest"? Yes. If the proposal will help restore Sue's property, then the value of her property may be impacted.

Action: Sue must recuse herself from participating, as part of advisory committee duties, in reviewing or making recommendations concerning the proposal regarding her property.



Scenario 3- Larry

Scenario 3:

- Larry represents the Boating Association on a FWS Advisory Committee .
- The FWS Advisory Committee is assisting DOI in developing a broad regulation regarding the use of power boats on DOI property.

Question: Can Larry participate in developing this regulation as a member of the FACA committee?



Scenario 3 - Larry

Ethics analysis:

- Is the issue a "specific party matter"? No. General rulemaking, that does not involve specific parties, is considered a matter of general applicability.

Action:

- Larry may participate in the matter.
- In the unlikely event that the Committee should be required to consider a specific party matter, Larry should determine whether or not that matter would affect his direct financial interest. If it would, he may not participate and must recuse himself from that matter.



Scenario 4 - Joan

Scenario:

- Joan owns a company that studies the effects of overnutrification of various aquatic species.
- She is a member of an FWS Advisory Committee which reviews and makes recommendations on research grant applications .
- The Committee is reviewing a group of research grant applications for studying the effect of overnutrification of various aquatic species. Joan's company did not submit an application for this grant.

Question: Can Joan participate in the review and recommendations of these grant applications?



Scenario 4 - Joan

Ethics analysis:

- Is the issue a "specific party matter"? Yes.
- Will the Working Group member's action have a "direct" and "predictable" effect on Joan's "financial interest"?
No. Joan's company did not submit an application. Any effect on her financial interests as a result of the agency's decision to award the grant to other companies would be indirect and speculative.

Action:

- Joan may review applications and make recommendations.



Scenario 5 - Tom

Scenario:

- Tom owns vacation property that borders land that is being considered for annexation to a FWS National Wildlife Refuge.
- Tom is a member of the refuge FACA committee. One of the committee's duties is to provide recommendations on potential annexations to the refuge.

Question: Can Tom participate in the review and recommendations for annexations to the Refuge?



Scenario 5 - Tom

Ethics analysis:

- Is the issue a "specific party matter"? Yes. It involves contracts to purchase specific properties.
- Will Tom's action have a "direct" and "predictable" effect on his "financial interest"? Yes. The annexation would directly and predictably impact the value of Tom's vacation property.

Action: Tom must recuse himself from participating, as part of advisory committee duties, in reviewing or making recommendations regarding the annexation.



Steps to take

In your role as a Working Group member, if you encounter a specific party matter which may have a direct and predictable effect on your financial interest:

- Notify Designated Federal Officer (DFO), Joe Polos.
- Take no action on that matter.



If Unsure or Have Questions...

Contacts:

- Designated Federal Officer (DFO), Joe Polos at (707) 825-5149 or joe_polos@fws.gov
- FWS Ethics Program Director & Deputy Ethics Counselor, Anne Badgley, (503) 326-2008 or anne_badgley@fws.gov

