



CONFLICTS OF INTEREST REPORTING

SOP | SWC_02.2025

NORTH
Dakota | Water Commission
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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 Commissioners, who are considered Public officials by virtue of their appointment by the Governor. Additionally, Commissioners are subject to their own statutory ethics requirements by virtue of their position on the Commission.

In some cases, Commissioners may have relationships with entities that come before the Commission. SWC_02 outlines the general process that Commissioners will follow when there is a Potential Conflict of Interest (Potential COI).

The relevant statutes and rules are applicable to Commissioners in their individual capacities. Therefore, each individual Commissioner is responsible for reporting any Potential COIs. The State of North Dakota and the Commission as an entity are not responsible for reporting Potential COIs and are not liable for any ethics violations.

1.1 AUTHORITY OR IMPLEMENTATION

These guidelines garner guidance and authority from North Dakota Century Code (N.D.C.C.) §§ 54-66-04.2 and 61-02-04.1 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 CONFLICTS OF INTEREST DISCLOSURE

The Commission's Conflicts of Interest policy is guided by N.D.C.C. § 61-02-04.1, which reads:

“1. A member of the Commission who has a direct or indirect personal or pecuniary interest in a matter before the Commission must disclose that fact to the Commission and may not participate in or vote on that particular matter.

2. Sections 12.1-13-02, 12.1-13-03, and 48-01.2-08 do not apply to contracts in which a member of the commission is directly or indirectly interested if the requirements of subsection 1 have been met.”

2.1 DISCLOSURE AT COMMISSION MEETINGS

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

- a. Each Commissioner will disclose any Disqualifying COIs and Potential COIs if those COIs are relevant to any of the upcoming agenda items.
- b. If necessary, the Neutral Reviewer will determine if any Potential COIs are a Disqualifying COI for any items on the agenda. The Neutral Reviewer will give appropriate weight and deference to the Commissioner to perform their duties.
 - If the Commissioner has a Disqualifying COI, the Commissioner will be required to recuse themselves and abstain from participating and voting on specified agenda items.
 - If a Potential COI is determined not to be a Disqualifying COI, the Commissioner will be able to participate and vote on all agenda items. The Commissioner may still choose to not participate in discussion, or recuse themselves and abstain from voting on any agenda items.
- c. The Commission minutes will record all Disqualifying COIs and Potential COIs and the abstention decision for any relevant agenda item.

3 NEUTRAL REVIEWER

The Commission has designated their General Counsel to be their Neutral Reviewer. The Commission has adopted the Ethics Commission rule N.D.A.C. § 115-04-01-03(7) as guidance to determine whether a Potential COI is a Disqualifying COI.

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 DEFINITIONS

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

Commissioners: Members of the State Water Commission.

Direct: Defined in Black Gold OilField Servs., LLC v. City of Williston, 2016 ND 30, ¶21 (citations omitted):

- a. “Operating by an immediate connection or relation, instead of operating through a medium”; or
- b. “A direct interest...is an interest which is certain, and not contingent or doubtful.”

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.”

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.”

The Commission has designated their General Counsel to be their Neutral Reviewer.

Pecuniary Interest: Defined in Black Gold OilField Servs., LLC v. City of Williston, 2016 ND 30, ¶21 (citations omitted), as, “[a] direct interest related to money in an action or case.”

Personal: Defined in Black Gold OilField Servs., LLC v. City of Williston, 2016 ND 30, ¶21 (citations omitted), as, “[a]ppertaining to the person; belonging to an individual; limited to the person.”

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.”

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.”

5 HISTORY

Policy Adopted: 8/10/2023

Policy Version SWC_02.2025 Effective: 10/09/2025

Note: This SOP should be revisited if N.D.C.C. § 61-02-04.1 or N.D.A.C. ch. 115-04-01 are modified.

Previous Revision(s):

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