



STATE OF OREGON
LEGISLATIVE COUNSEL COMMITTEE

April 17, 2013

Senator Jackie Dingfelder
900 Court Street NE S407
Salem OR 97301

Re: Conflict of interest in relation to SB 838

Dear Senator Dingfelder:

You have asked whether your voting on Senate Bill 838 (2013) constitutes a conflict of interest under Senate Rules and state law. The answer is no.

Background

You serve as Chair of the Senate Committee on Environment and Natural Resources. SB 838, a bill pending before the committee, imposes a moratorium on the use of motorized equipment in placer mining operations occurring in streams and rivers or when streamside vegetation is removed or disturbed. Also of relevance to this issue is your work unrelated to your duties as a State Senator, namely in your position as the Executive Director of River Restoration Northwest, a section 501 (c)(3) nonprofit organization. You receive a salary from River Restoration Northwest (RRNW) for serving as Executive Director. The mission of RRNW is to:

[A]dvance the science and standards of practice of river restoration through educational programs that emphasize an interdisciplinary approach to promote responsible practices, discuss and exchange ideas, assess projects, reflect on lessons learned, and provide technology transfer.¹

In implementing this mission, RRNW states that its goals include:

- Enhancing discussion and exchange of ideas between river restoration professionals with different disciplinary backgrounds including: aquatic and fisheries biology, geomorphology, landscape architecture, hydrologic and hydraulic engineering, wetland science, and soil science.
- Providing a forum for project assessment and reflections on lessons learned.
- Creating opportunities for professional development and technical information exchange.
- Providing technology transfer from research to practice.²

¹ <http://www.rrnw.org/Mission>

² *Id.*

Consistent with RRNW's mission and goals, you have described RRNW's activities as educational, principally consisting of seminars in which scientists, engineers and other technical professionals receive education and training related to river and riparian environments. Significantly, RRNW does not itself undertake any river restoration activities or any advocacy on behalf of river or riparian area protection or restoration.

Conflict of Interest rules

The conflict of interest rules applicable to State Senators are a mixture of Senate Rules and state statutes. Senate Rule 3.33 (1) provides that:

When involved in an actual or potential conflict of interest as defined by ORS 244.020, a member shall announce, on the Senate floor or in the committee meeting, the nature of the actual or potential conflict prior to voting on the issue giving rise to the actual or potential conflict.³

Thus, as an initial matter, if SB 838 were to pose an actual or potential conflict of interest, your remedy to be in compliance with legal requirements would be simply to make a public statement stating the nature of the conflict prior to voting. Because there has not been a vote undertaken with respect to SB 838, you are currently in compliance with the conflict of interest rules even if a conflict existed.

We conclude, however, that SB 838 does not pose an actual or potential conflict of interest. A conflict of interest exists if an action, decision or recommendation – in this context, your vote in committee or on the floor – creates or has the potential to create a private pecuniary benefit or detriment to you, your relative, or a business with which you or your relative is associated.⁴ We have examined SB 838 and have also considered the mission and functions of RRNW and your relationship with RRNW. We do not find that any private pecuniary benefit or detriment would inure to you or to RRNW as a result of committee or floor action by the Legislative Assembly to pass or reject SB 838. The bill establishes a moratorium on certain placer mining activities. RRNW does not engage in placer mining or, more significantly, in restoration work following placer mining operations. The demand for RRNW's education and training activities will remain unchanged whether SB 838 is enacted or fails. Similarly, your salary as RRNW Executive Director will remain unchanged without regard to the fate of SB 838. Accordingly, there is no private pecuniary benefit or detriment that arises with respect to you or RRNW under SB 838 and therefore you are not faced with a conflict of interest when voting on the bill.

Please let us know if we can be of further assistance.

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³ See also ORS 244.120 (1)(a).

⁴ ORS 244.020 (1) and (12).

city attorney or other retained counsel. Constituents and other private persons and entities should seek and rely upon the advice and opinion of private counsel.

Very truly yours,

A handwritten signature in black ink, appearing to read "Dexter A. Johnson". The signature is fluid and cursive, with a long horizontal stroke at the end.

Dexter A. Johnson
Legislative Counsel