



EXECUTIVE OFFICE OF THE PRESIDENT  
COUNCIL ON ENVIRONMENTAL QUALITY  
WASHINGTON, D.C. 20503

October 16, 2017

Viktoria Seale  
Deputy General Counsel  
Council on Environmental Quality  
730 Jackson Pl NW  
Washington, D.C. 20506

Dear Ms. Seale:

This is an ethics waiver under the statutory standard 18 U.S.C. § 208(b)(1) to address your disqualifying financial interests. As you are the Designated Agency Ethics Official (DAEO) for the Council on Environmental Quality (CEQ), the authority to issue this waiver is delegated to me as the Alternate Designated Agency Ethics Official (ADAEO). This waiver is issued to allow participation in particular matters occurring in the future, and not for past conduct.

The criminal conflict-of-interest statute, 18 U.S.C. § 208(a), prohibits Executive Branch officers and employees from participating personally and substantially in any particular matter that will have a direct and predictable effect on their financial interests or the financial interests of any spouse; minor child; general partner of a partnership in which they are a general or limited partner; organization in which they serve as an employee, officer, director, partner or trustee; or person or organization with which they are negotiating or have an arrangement concerning prospective employment, unless he or she is granted a waiver pursuant to 18 U.S.C. § 208(b)(1) or qualifies for a regulatory exemption under 18 U.S.C. § 208(b)(2). The term "particular matter" includes only matters that involve deliberation, decision, or action that is focused on the interests of specific persons, or a discrete and identifiable class of persons. 5 C.F.R. § 2635.402(b)(3). The term may include matters that do not involve formal parties and may extend to legislation or policymaking that is narrowly focused on the interests of a discrete and identifiable class of persons, including a particular industry, but does not cover "consideration or adoption of broad policy options that are directed to the interests of a large and diverse group of persons." *Id.* Under 18 U.S.C. § 208(b)(1), an agency may permit an employee to participate in a matter in which he or she has an otherwise disqualifying financial interest, if it is determined that the disqualifying is not so substantial as to be deemed likely to affect the integrity of the employee's services to the Government.

You currently serve as Deputy General Counsel in the Office of General Counsel of the Council on Environmental Quality. You are the acting General Counsel in the absence of the General Counsel. In that position you are responsible for all legal work

and advice required to enable CEQ to fulfill its mission to advise and assist the President in protecting the environment and public health and meeting the conservation, social, economic, and health goals of the Nation. Specifically, your responsibilities include:

- Managing and overseeing the work of CEQ's Attorney Advisor, other governmental employees in the Office of General Counsel, and law personnel.
- Acting as a legal and policy advisor to officials in the CEQ and working with officials of other components within the EOP.
- Assisting in managing CEQ's initiatives and formulating policies related to both the National Environmental Policy Act (NEPA) and other environmental laws.
- Representing CEQ in interagency matters including, but not limited to, the interagency review of agencies' regulations during the rulemaking process.
- Assisting in preparing Congressional testimony, responding to Congressional requests, and analyzing proposed legislation related to both NEPA and other environmental laws.
- Providing advice and interpretations of NEPA and other environmental statutes and carrying out assigned legal functions under CEQ's regulations implementing NEPA.
- Serving as the Chief Freedom of Information Act (FOIA) Officer and the DAEO and providing advice on FOIA and the Federal Records Act.
- Working with senior officials at the Department of Justice (DOJ) to formulate positions on NEPA and other environmental issues in litigation that represents CEQ's positions in conjunction with the client agency's interests.
- Representing CEQ as counsel in litigation when CEQ is a defendant. Identifying and gathering pertinent information, prepares litigation reports for DOJ, responding to discovery requests, working with DOJ and other agency attorneys to coordinate responses in multi-party suits, and assisting the Chair or CEQ staff with related activities.
- Providing advice to the Chief of Staff, the Administrative Officer, and others on legal issues associated with in-house procedures (i.e., hiring, contract work, Federal Advisory Committee Act issues, etc.).

As Deputy General Counsel, your duties would require that you participate in the following types of particular matters:

- Particular matters of general applicability as they apply to organizations in the energy sector, including rulemaking, policy shaping, and providing legal advice such that the financial interests of one of these organizations is affected.

You have fully disclosed to me your disqualifying financial interests in your new entrant public financial disclosure filing for 2017, plus supplemental documents you provided me, and I am your certifying official for this report.

Your spouse has a vested beneficial interest in an irrevocable family trust, and his status as a beneficiary of the trust predates your marriage. Because the financial interests of your spouse are imputed to you under 18 U.S.C. § 208, you may not, in the absence of a waiver, participate personally and substantially in particular matters that would directly and predictably affect the trust's holdings. You are seeking a waiver in order to

participate in particular matters of general applicability that affect the trust's holdings in the energy sector.

Your spouse is one of six beneficiaries of this trust, and he receives mandatory net income distributions that are required to be distributed not less frequently than quarterly. Distributions to your spouse have averaged approximately \$4,700 per quarter in the past two years. Last year, distributions to your spouse represented 8.8% of the combined income of you and your spouse. Neither you nor your spouse has control over the distributions. That is, your spouse is only a beneficiary and not a trustee.

The trust's \$3 million portfolio currently includes eight publicly traded stocks in the energy sector<sup>1</sup>, which make up less than 18% of the trust's total value. The trust's energy holdings that necessitate this waiver constitute a minority of your total investment portfolio. Using a good-faith approximation based on present circumstances, your spouse's interest in the trust's energy-sector holdings represents 11% of the net investment portfolio of you and your spouse.

In determining whether a financial interest is not so substantial as to affect the integrity of an employee's Government services, the following factors may be taken into consideration: (1) the type of financial interest creating the disqualification; (2) the identity of the person whose financial interest is involved, and if the interest is not the employee's, the relationship of that person to the employee; (3) the dollar value of the potential gain or loss that may result from participation in the particular matter; (4) the value of the financial instrument or holding from which the disqualifying financial interest arises and its value in relation to the individual's assets; (5) the nature and importance of the employee's role in the matter, including the extent to which the employee is called upon to exercise discretion in the matter; and (6) other factors including the sensitivity of the matter, the need for the employee's service in the particular matter, and adjustments that could be made in the employee's duties that would eliminate or reduce the likelihood that the integrity of the employee's services would be questioned by a reasonable person. *See* 5 C.F.R. § 2640.301(b).

The nature of your role as a Deputy General Counsel of CEQ is to provide legal advice, suggestions, recommendations, comments, opinions, and warnings. You will not normally be a final authority for agency decisions and actions in particular matters of general applicability. Your services are necessary in the conflicting particular matters. Currently, you are one of two non-detailed attorneys in the Agency, and you are the most senior attorney in the Agency. Therefore, a recusal for these conflicting particular matters is not practicable in the long term.

Your conflicting particular matters are matters of sensitivity. Topics like energy and environmental regulation are particularly delicate. I have taken this into consideration.

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<sup>1</sup> These holdings are: General Electric (GE), Atmos Energy Corp. (ATO), Enterprise Products Partners L.P. (EPD), Exxon Mobil Corp. (XOM), Genesis Energy LP (GEL), Kinder Morgan, Inc. (KMI), Plains All American Pipeline LP (PAA), and 3M (MMM).

Divestiture of holdings in your spouse's partial interest in a family trust is not practicable. Neither you nor your spouse has control over the family trust held by your spouse and five other beneficiaries to the trust. Neither you nor your spouse are the grantors nor the trustees of this irrevocable trust. Neither you nor your spouse has control over the mandatory net income distributions.

For these reasons, I determine that your aforementioned disqualifying financial interests are not so substantial as to be deemed likely to affect the integrity of your services, and issue this waiver. This waiver is only applicable for you to participate in particular matters of general applicability affecting the trust's current and future holdings in the energy sector, subject to the limitations set forth below. You are still obligated to recuse yourself from working on particular matters involving specific parties where a conflicting entity is a party.

This waiver is contingent on your spouse's current status as one of six beneficiaries of the trust. Should this status change, you are required to obtain a written re-evaluation of this waiver. Further, you are required to obtain a written re-evaluation of this waiver if the percentage of energy sector holdings in the trust exceeds 15% of the net investment portfolio of you and your spouse. In the event that you are required to obtain a written reevaluation, this waiver will remain in effect until you are notified of the determination made by the ethics official. The U.S. Office of Government Ethics has been consulted regarding this waiver, and a signed copy of this waiver will be provided to that office.

Sincerely,



Howard Sun  
Attorney Advisor  
Alternate Designated Agency Ethics Official