

Ethical Responsibilities of Representative Members of the Advisory Committee on Climate Change and Natural Resource Science (ACCCNRS)

Nancy Baumgartner
USGS Deputy Ethics Counselor
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Representative vs Employee

- Representative
 - Voice of group with financial interest or other stake in the matter
 - Ethics statutes and regulations don't apply
 - **Charter language governs**
- Special Government Employee (SGE)
 - Independent judgment on behalf of the Government – no financial interest in the matter
 - Ethics statutes and regulations apply
 - **Criminal Code provisions**
 - **Standards of Conduct**

NGAC Charter Language

Section 13 - “No committee or subcommittee member shall 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.”

Specific Party Matter

- In addition to charter examples, this includes:
 - Grant
 - Application
 - Enforcement Action
 - Request for ruling or other determination
 - Controversy
 - Charge
 - Accusation
 - Arrest
 - Investigation
 - Other matter involving a specific party of parties

What isn't a Specific Party Matter?

- Matters of general applicability, such as:
 - Rulemaking
 - Legislation
 - Formulation of general policy, standards, or objectives
 - Other actions of general applicability

Personal Financial Interest

- Personal financial interests means your interests
- “Financial interest”
 - 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

Direct and Predictable Effect Required

- Direct Effect
 - Close causal link between action on the matter and expected effect on financial interest
 - Effect need not be immediate
- What isn't a Direct Effect?
 - Chain of causation attenuated or effect contingent upon events that are speculative or independent of, and unrelated to, the matter
 - Effect on interest only a consequence of action's effect on general economy

Direct and Predictable Effect Required (continued)

- Predictable
 - Real (as opposed to speculative) possibility that the matter will affect your financial interest
 - However,
 - Amount of gain or loss need not be known
 - Dollar amount of gain or loss is immaterial

Only Advisory Duties are Restricted

- May act, outside of advisory duties, on behalf of self or others, in a specific party matter before the DOI or USGS
- May not act, as part of advisory duties, on that specific party matter

Integrity considerations

- ACCCNRS charter states that “members will endeavor to avoid any actions that would cause the public to question the integrity of the Committee's operations, activities, or advice.”

Example 1

A wildlife biologist is appointed to represent environmentalists on an advisory committee that reviews and makes recommendations concerning applications to the Department of the Interior for grants to study endangered species. The representative has applied for a Department of the Interior grant to study the Morrow Bay Kangaroo Rat—an endangered species.

Example 1, continued

- The grant application is considered a specific party matter with the Department.
- Because approval or disapproval of the grant application would have a direct and predictable effect on the direct financial interests of the representative, the representative may not participate, as part of his advisory duties, in reviewing and making recommendations concerning his own grant application.
- Accordingly, he must recuse himself from taking any advisory committee actions concerning the grant application.

Example 2

The chairman of a homeowner association represents civic and homeowner associations on an advisory committee that provides advice to the Bureau of Land Management on applications for rights-of-way over Federal lands. The representative owns stock in a power company that has applied for a right-of-way so that its power lines may traverse a tract of Federal land.

Example 2, continued

- The right of way application is a specific party matter with the Department.
- Because the representative has an equity interest in the power company, the matter would have a direct and predictable effect on her personal financial interests.
- Accordingly, she may not participate in committee actions regarding the power company's application and must recuse herself from any such actions.

Example 3

A National Park Service advisory committee is assisting in the development of a special regulation regarding the use of off-road vehicles on a tract of National Park Service land. A member of the advisory committee has been appointed to represent the off-road vehicle users group.

Example 3, continued

- Rulemaking is considered a matter of general applicability – not a specific party matter.
- It is very unlikely that the committee would become involved in any specific party matter as part of its advisory duties.
- In the unlikely event that the committee should be required to consider a specific party matter, the representative 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.

Example 4

A U.S. Fish and Wildlife Service advisory committee is reviewing and making recommendations on applications for grants to fund research on the effects of overnutrition on various aquatic species. A large number of organizations have submitted applications. One of the representatives on the advisory committee owns an organization that conducts this type of research. However, her organization has not submitted an application in this case.

Example 4, continued

- The representative is not prohibited from reviewing and making recommendations on the applications, even though her organization often competes for research grants of this sort.
- Any effect on the representative's financial interests as a result of the agency's decision to award or not award a grant to the other organizations would be at most indirect and speculative.

Example 5

A representative on a National Park Service advisory committee owns recreational property that borders on land that is being considered for annexation to a national park. The duties of the advisory committee include providing recommendations on potential annexations.

Example 5, continued

- In this case, annexation would directly and predictably increase the value of the representative's vacation property and, thus, she is disqualified from participating in any way in the committee's deliberations or recommendations regarding the annexation.
- The committee member must recuse.

Committee functions

- Provide advice and recommendations related to:
 - key science priorities to advance the management of natural resources in the face of climate change;
 - the nature, extent, and quality of relations with and engagement of key partners at the regional/Climate Science Center level;
 - the nature and effectiveness of mechanisms to ensure the identification of key priorities from management partners and to effectively deliver scientific results in useful forms;

Committee Functions (continued)

- mechanisms that may be employed by the National Climate Change and Wildlife Science Center (NCCWSC) to ensure high standards of scientific quality and integrity in its products;
- review and evaluation the performance of individual Climate Science Centers in advance of opportunities to re-establish expiring agreements; and
- coordination as appropriate with any Federal Advisory Committee established for the DOI Landscape Conservation Cooperatives

Application to this Committee

- If you encounter a specific party matter with regard to your advisory committee duties that could affect your direct financial interest:
 - Notify the DFO
and
 - Take no action on that matter (recuse)

If Unsure or Have Questions...

- Contact the
 - Designated Federal Officer (Robin O'Malley) at nccwsc@usgs.gov or romalley@usgs.gov
(703) 648-4086
- or
 - USGS Deputy Ethics Counselor (Nancy Baumgartner) at nbaumgartner@usgs.gov
(703) 648-7474

Thank you for your time
and attention.
Any comments, questions or
concerns?