

## Fair Political Practices Commission Complaint

Government agency: Eastern Tule Groundwater Sustainability Agency (ETGSA)

My complaint is regarding the following FPPC violations by officials of the ETGSA

1. Failure to disclose significant financial interests on Form 700
2. Intentional failure to disclose financial interests
3. Financial Conflicts of interest
4. California Penal Code Section 118

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### Complaint 1: Failure to disclose significant financial interests on Form 700

**(a)** Mr. Eric Borba, Chairman of the Eastern Tule Groundwater Sustainability Agency (ETGSA) tasked with leading the development of a Groundwater Sustainability Plan (GSP) for the ETGSA failed to disclose very high dollar value financial assets that are explicitly and materially affected by his actions and votes in governing at the ETGSA. Mr. Borba failed to disclose a very large quantity, the entirety, of his privately owned irrigation water shares called Pre-1914 Water Shares, also called Ditch Shares **(Appendix A)**. It appears clear that he intentionally omitted disclosure of these extremely important and high value assets which have a key financial impact upon his vast agribusinesses within the jurisdiction of the ETGSA. He allegedly omitted this critical financial information in order to evade public knowledge of his extensive private water shares within the jurisdiction of the ETGSA that would disqualify him from public office at the ETGSA or cause multitudes of questionable votes.

As a background, these Pre-1914 private water rights owned by Mr. Borba were filed with the State of California before 1914 and are considered appropriative water rights of the Tule River. Appropriative water rights are diverted from the main source for use elsewhere. Mr. Borba's Pre-1914 water rights are administered by "Ditch Companies" for the benefit of "Shareholders" much like a business structure would be, and, can be bought and sold. Purchases rarely occur, though, due to the special characteristics and high value placed on this water. They are mostly held by those with the best insider connections like Mr. Borba. The shares of Ditch Companies that Mr. Borba owns

provide him with private ownership of water to the Tule River that is conveyed through the infrastructure of the local Porterville Irrigation District (PID) where he is President. PID is within the jurisdiction of the ETGSA. Mr. Borba's Pre-1914 water is effectively mixed with other surface water sources at PID that Mr. Borba purchases and is then distributed to his farmland. His Pre-1914 water, then, is ultimately used as a mixture of various forms of surface water throughout his farms and dairy operations. Each of his farmland real estate parcels that get water conveyed by PID, therefore, benefits financially from Pre-1914 Ditch Share water that he owns.

Under his influence at the ETGSA, and at PID, he will soon be able to market a new kind of highly profitable water trade called "Groundwater Pumping Credits" on a Water Market System that he has influenced to design and approve. His influence upon policy development and approval, both at the ETGSA and at PID, affect the marketability and financial value of his Pre-1914 Ditch Shares, thereby providing him with a material financial effect. Further development and votes on the new ETGSA Water Market policies are issues that have a financial effect upon the Ditch Shares and agribusinesses owned by Mr. Borba. Mr. Borba apparently failed to disclose his extensive ownership of these extremely valuable private water shares on his Form 700 so that he could avoid public scrutiny of his personal financial conflicts of interest in order to maintain public office so that he could control policy development with favorable financial benefits to his vast agribusinesses holdings in the ETGSA.

Not only does Mr. Borba plan to vote on the GSP next week, but he has also made several past decisions in his position as Chairman of the ETGSA that explicitly and materially affect 1) the value of his real estate holdings, 2) Leasehold interests in real property, 3) Sources of income, and 4) interests in personal finances. The vote next week on the GSP contains provisions that likewise affect Mr. Borba's financial holdings as listed above. A map showing the locations and Assessors Parcels Numbers of Mr. Borba's agribusiness real estate agribusiness landholdings within the ETGSA is found in [Appendix B](#), and an APN list of Mr. Borba's Form 700 land within the ETGSA is found in [Appendix C](#) (GIS data and APN information provided by Tulare County)

**(b)** Other members of the ETGSA may also own undisclosed Pre-1914 water shares. Although I am aware of Mr. Borba's Ditch Share holdings, it is impossible for me to obtain Pre-1914 water share documentation of other ETGSA officials. This private information is available at the Tule River Association or at the local Ditch Companies. I believe that Mr. David DeGroot of 4-Creeks Engineering in Visalia, CA holds this data. Some of those listed below appear likely to provide professional management of Ditch Shares and may also obtain indirect financial gain of the ETGSA area-wide distribution of them.

The following is a list of ETGSA officials that are required to report financial conflicts of interests on Form 700. Without inferring any wrong doing by most of these men, it is possible that undisclosed Pre-1914 water shares involving direct or indirect financial effects may be found among this list of individuals.

**ETGSA Board of Directors:**

Eric Borba: Chairman, Porterville Irrigation District

Steve Kisling: Vice Chair, Saucelito Irrigation District

Mathew Leider: Teapot Dome Water District

Kurt Holmes: Kern-Tulare Water District

Dyson Schneider: Vandalia Water District

John Corkins: White Area

**Alternates to ETGSA Board of Directors:**

Bill Bennett: White Area

Steven Dalke: Kern-Tulare Water District (General Manager)

Eric Limas; Teapot Dome Water District (General Manager), Vandalia Water District (General Manager)

Peter Vander Poel: County of Tulare, Supervisor

Edwin "Lorren" Weaton: Terra Bella Irrigation District

Sean Geivet: Porterville Irrigation District (General Manager), Saucelito Irrigation District (General Manager)

**ETGSA Attorney:** Aubrey Mauritsen

## Complaint 2: Intentional failure to disclose material financial interests

Mr. Borba is apparently very aware that these highly valuable water shares should have been disclosed on his Form 700. He chose to hide them from the public view in order to avoid public knowledge of his financial conflicts of interest due to his special and exclusive financial benefits of his Pre-1914 water share holdings. It is inconceivable that Mr. Borba simply forgot to declare such assets that are so personally important to him, financially critical to his agribusinesses, have such a high value, and are so clearly relevant to matters at the ETGSA. Mr. Borba chose to not disclose his important private water shares apparently to hide behind-the-scenes deals or possibly illicit activities associated with his secret, unreported Ditch Shares. A proper Form 700 disclosure would have allowed the public to know about how his Pre-1914 water shares conflict financially with his public position at the ETGSA. There can be no doubt that he is fully aware of the requirement to disclose these water shares for the following reasons:

1. He has held public offices for many years and has fulfilled financial conflict of interest education requirements of public officials.
2. He is a very well known expert in irrigation water matters and fully understands the high value implications of his personal water shares.
3. He currently holds the following public offices with knowledge and experience commensurate with each position:
  - a. Chairman, ETGSA;
  - b. Chairman, ETGSA Executive Committee;
  - c. President, Porterville Irrigation District;
  - d. Board Member, Porterville Irrigation District;
4. He has held past and present public positions in important public agencies
  - a. Chairman, Friant Water Authority;
  - b. Director, Friant Water Authority.
5. He has held past and present positions with the private Tule River Association which controls local Pre-1914 Water Shares of the Tule River
  - a. Chairman, Tule River Association;
  - b. Director, Tule River Association.

Mr. Borba acted to intentionally omit Form 700 disclosure of these extremely important high-value private water share holdings that have critical relevance to water issues at the ETGSA and financial benefit to himself. This apparent willful violation of FPPC law and Penal Code Section 118 is a sign that Mr. Borba was fully aware of his financial conflicts of interest and needed to cover it up by not disclosing his critically important private water shares.

### Complaint 3: Financial conflicts of interest

On Thursday, January 9, 2020, Mr. Borba intends to participate in a monumental vote to approve the Groundwater Sustainability Plan (GSP) of the ETGSA that includes Item 7.2.1 (Groundwater Accounting Action) which provides Mr. Borba with special financial benefits that are not available to approximately 94% of the population of the ETGSA. Earlier, on June 6, 2019, the ETGSA Board of Directors, including Mr. Borba, approved specific policy details that are wholly and directly linked to GSP Item 7.2.1.

Linkage: Due to the fact that details pertaining to GSP Item 7.2.1 are directly connected to the prior approved actions by the ETGSA on June 6, 2019, they are, in fact, an integral part of GSP item 7.2.1. Materials to support my claim are provided in the following appendices:

**Appendix D:** Minutes of June 6, 2019 Board of Directors meeting; shows the record of five specific policy item details that are directly linked to GSP Item 7.2.1; four of which, were approved by the Board on June 6, 2019, referred to as Agenda Packet Item #10.b Exhibit A.

**Appendix E:** “Agenda Item #10.b Exhibit A (two pages); includes the five bullet items that were approved on June 6, 2019 that pertain directly to GSP Item 7.2.1.

**Appendix F:** Complete GSP Sec. 7; Sec 7.2.1, fourth bullet item on page 7.2 pertains wholly and directly to the ETGSA Board approved official policies per approval of “Agenda Item #10.b on June 6, 2019.

The GSP item found in Appendix E (page two) bullet item 3 states: ***“The ETGSA should both facilitate the maintenance of a “market board” and provide for groundwater account holders to initiate transfers with pre-identified participants”*** (emphasis mine). This approved ETGSA water market policy item (directly linked to GSP 7.2.1) provides a unique, explicit and material financial advantage to Mr. Borba. Due to the pre-existing private and very secretive nature of Pre-1914 Ditch Share holdings, this GSP policy (7.2.1 inclusive of the 6/6/2019 water market policies) magnifies the ability of Mr. Borba to make exclusive and secret, behind-the-scenes water deals for his agribusinesses. Such additional water trade secrecy adds to an already secretive Ditch Share system and provides for higher value and greater rate of financial appreciation to his Pre-1914 water shares.

Additionally, there is a financial benefit to the value of Mr. Borba’s interconnected agribusinesses and agricultural real estate holdings as a result of the increased valuation of his Pre-1914 water shares; a type of distinctive financial benefit that is not shared with 94% of the rest of the population of the ETGSA.

**Public Generally Calculation:** My complaint involves the unique and direct price appreciation of Mr. Borba’s Pre-1914 Ditch Share water holdings and the associated financial benefit that this distinctive price appreciation quality has upon his agribusiness ownership of a) farmland real estate,

b) agribusiness income, c) personal finances, d) Income from the sale of Pre-1914 Ditch Share water, e) leaseholds.

This special water asset, and water asset appreciation, is available to Mr. Borba but is not available to over 94% of the population of the ETGSA. The following are mathematical calculations that identify the 6% ETGSA sub-group of Pre-1914 Ditch Shareholders. The data below is taken directly from the GSP of the ETGSA, section 4.4, Water Budget that is accurate historical averages from the years 1986 to 2017.

The major forms of irrigation water supply to ETGSA water users and their average annual agricultural use within the jurisdiction of the ETGSA are as follows:

- Tule River Pre-1914 Ditch Share water.....16,800 Acre feet
- Imported surface water (CVP)..... 79,000 Acre feet
- Recycled water.....2,600 Acre feet
- Extracted groundwater.....192,000 Acre feet

Approximately 6% of the total irrigation water used by the population of the ETGSA is composed of individuals that own Pre-1914 Ditch Share water like Mr. Borba. The remaining 94% of the irrigation water used by the population of the ETGSA does not own Pre-1914 Ditch Share water. Accordingly, Mr. Borba is in a very small percentage of the population that has access to a special and exclusive kind of irrigation water that provides unique financial benefits to him.

The mathematical calculation to derive this percentage is as follows:

$$16,800 (100) / (16,800+79,000+2,600+192,000) = 5.8\%, \text{ or roughly } 6\%$$

I am not able to determine the exact volume of this 6% Pre-1914 Ditch Share sub-group that is owned by Mr. Borba because that information is confidential. Anecdotally, though, it is assumed that Mr. Borba controls a large share of Tule River Pre-1914 Ditch Share water in the jurisdiction of the ETGSA. Mr. Borba has bragged publicly that *"I have so much Share Water that I don't even need Friant water!"* Based upon his statement and local knowledge, Mr. Borba may own approximately 4,000 acre feet of average annual Pre-1914 Ditch Share water.

Accordingly, Mr. Borba is in an elite population of the ETGSA defined by access to special and unique Pre-1914 Ditch Share water of 6%. The remaining roughly 94% of the water supply to the population of the ETGSA is not in this select and financially advantaged subgroup.

There are several unique characteristics of this particular form of Pre-1914 Ditch Share water that are fundamentally much different than any other local sources of irrigation water available to the greater 94% population of irrigation water users. As you will notice, all of the items listed below refer specifically to the unique qualities and characteristics of Ditch Share water and not to volumes of water, as follows:

- Due to the exclusive, rare, and unique qualities of Pre-1914 water it is a highly-cherished and sought-after water asset to own.
- The fundamental economic principle of low supply leading to high demand causes the intrinsic value of Pre-1914 water shares and the associated value of Ditch Share water to increase to a much higher price than other forms of irrigation water.
- Due to the rare and unique nature of this water source, this kind of water asset appreciates at a faster rate compared to other water asset types.
- In most years, Pre-1914 Tule River Ditch Shares provide a superior source of dependable irrigation water as compared to other surface water sources.
- USBOR drought allocations of irrigation water may be reduced but Pre-1914 Tule River water is not affected by government drought allocations.
- Ditch Share water is privately and locally controlled by friends and fellow shareholders.
- The government, United States Bureau of Reclamation (USBOR)/California Valley Project (CVP) and the Friant Water Authority bureaucracy are not involved in Ditch Share water allocations.
- It is allowable for privately owned Ditch Share water be used for personal financial benefit in taxpayer funded water projects.
- Pre-1914 water rights--if ever sold--demand the highest and most dynamic pricing.
- The private and undisclosed nature of Ditch Water shares allows for unparalleled opportunities to negotiate fully confidential deals that are important to local farmers.

This is not an exhaustive list of the unique characteristics of local Tule River Pre-1914 water. It does, though, note the special characteristics of Pre-1914 Ditch Water that contribute to its unique value and accelerated price appreciation in comparison to other common forms of local surface water. Mr. Borba's activities, influences, and votes as an official of the ETGSA have explicit material affect upon the valuation of his special private water shares. The disproportionate value of his Ditch Shares has a financial effect on all of his agribusiness that is not likewise available to approximately 94% of the population of the ETGSA. For example, a higher total business valuation as a result of disproportionate valuation increase of Ditch Shares allows Mr. Borba to obtain capital loans that can be used to fund water banking projects for financial gain. Approximately 94% of the population of the ETGSA does not have the ability to benefit in this way and cannot obtain similar loans.

Again, these financial effects are not the result of any potential additional water volume that he may own; clearly, though, the financial benefits to Mr. Borba are a result of the fundamentally different classification, unique characteristics, higher demand and higher value afforded by this kind of water: Pre-1914 water has different economic characteristics than the other common and widespread classes of water used by the larger ETGSA irrigation population.

Mr. Borba has been well aware of his special situation for a long time. This principle was openly discussed at early 2018 ETGSA meetings in regard to the influences that a potential free water market, “Capitalistic Model”, would have on the pricing of water. In fact, Mr. Borba led discussions at these ETGSA meetings and was under advisement by Mr. Sean Geivet, a studied economic expert in water matters with an MBA degree and Mr. Mike Young, PhD, an eminent world-wide water market economist. At that time, Mr. Borba made a comment about “how some commodities go up faster in value than others of lesser quality” in knowing reference to his Ditch Water.

Mr. Borba and other water experts at those early ETGSA meetings espoused that the rarer and more sought after the water class, the faster and higher the price appreciation would be. So, there is no doubt that Mr. Borba is fully aware of the unique price appreciation rates, unique value and special attributes of his Pre-1914 Ditch Water. Mr. Borba is an expert in irrigation water policy, an official of several agencies that govern irrigation water, and owns an elite class of water shares in an amount disproportionate to the public in general. Mr. Borba can surely reasonably foresee that the multitudes of policy decisions that he makes as an official of the ETGSA, and his upcoming vote on the GSP, will affect the special valuation and disproportionate rate of appreciation of his Pre-1914 Ditch Water shares. He is fully aware that his decisions explicitly and materially affect his ETGSA interests of a) the value of his vast agribusiness real estate holdings, b) Leasehold interests in agribusiness real property, c) Sources of his agribusiness income, and, d) other interests in personal finances. Appendix A-C shows the extensive nature of Mr. Borba’s agribusinesses and related water holdings.

It should be noted that Mr. Borba holds high-level influential public positions at three major public institutions where he powerfully influences the creation of multitudes of new policies and decisions that affect the utility and value of his Ditch Shares. He publicly bragged recently from his elevated position at an ETGSA Board of Directors meeting that he is a life-long good friend of powerful Tulare County Supervisor Peter Vander Poel. His influences upon policy development provide explicit financial benefit to the value of his Ditch Shares and thereby the financial profitability of his businesses by the use of his public positions at the following government agencies: Eastern Tule Groundwater Sustainability Agency (ETGSA), Chairman; Porterville Irrigation District (PID), President; Friant Water Authority (FWA), Director, and, Tule River Association (TRA), Director. The TRA is a privately held organization that controls Tule River Ditch Share allocations to Ditch Companies. Mr. Borba’s admitted very close friendships with powerful water and political leaders in California allow him to use his elite connections, public positions and power, in ways to intimidate others that get in his way.



Even before Mr. Borba intentionally failed to disclose his Ditch Share holdings on his Form 700, the special qualities, unique applications and ownership of these private Pre-1914 water shares have been closely-held secrets within the close-knit group of long-time friends and farmers of the Ditch Companies. It seems that is another reason that Mr. Borba chose not to reveal his Ditch Shares, as the insider Ditch Company fellowships that he belongs to frowns upon open discussions about their private shares. Close life-long friendships, reputation, behind the scenes deals, and closely held secrets mean a lot to the men and women of the Ditch Companies.

But, that form of secretive power and loyal relationships may have led Mr. Borba to use his position at the ETGSA to influence policies to provide financial benefit to him and to his fellow 6% ETGSA subgroup of Pre-1914 water shareholders. Sadly, the circumstances described--the heart of the 1974 Political Reform Act—are playing out locally; it has been extremely disturbing to observe this form of corruption in government, and impossible to change.

Mr. Borba has influenced policies to provide secrecy that will allow him to use the impending public ETGSA Water Market to facilitate his secret deals involving his private water shares. Mr. Borba's behind the scenes connections, influence, power, and experience have allowed him to proficiently navigate the rapid paced ETGSA policy development that has allowed him to also exploit and improve utilization of public infrastructure for his Pre-1914 water that also enhances the value of his private water shares.

It is easily foreseeable to Mr. Borba that his Pre-1914 water shares would skyrocket in value. He is fully aware that the value of his holdings of agricultural real estate is presently moving much higher than most others that do not own Pre-1914 Ditch Share water. This is a classic example of a corrupt public official knowingly putting himself in the path of financial gain, and setting himself up to make fortunes, by influencing regulations to his financial favor. Due to public policy provisions under his influence, his special water rights are being positively affected and are increasing the value of his associated landholdings and businesses while others unable to access such benefits are not doing well.

Mr. Borba has used his good fortune and years of hard work to consolidate critical Pre-1914 water resources but has now exploited his public position, power, and prestige, and combined with the rapid and dynamic changes of historical water policy in California history to opportunistically manipulate the ETGSA system to provide him with vastly disproportionate financial advantages. Under these circumstances it has been surprising to see that very few of the general public has attended ETGSA meetings over the past two years along with little to no news coverage.

Few, if any, other individuals within the jurisdiction of the ETGSA could have achieved the synergistic, positive financial effect by the use of a hidden and unknown exclusive Pre-1914 water right and manipulative power of public office as Mr. Borba has done for himself.