



November 2, 2016

### **Amador Water Agency fined in May for violating California Political Reform Act**

The Ratepayer Protection Alliance recently learned that last May, the Amador Water Agency was fined \$3,000 by the Fair Political Practices Commission for violating the California Political Reform Act. The fine was imposed because the AWA's directors and board spent agency funds to mail more than 7,000 letters urging ratepayers to not to sign a referendum that would have overturned a temporary water rate surcharge. The production and mailing of the letter cost AWA approximately \$9,487. The letter was also posted on the AWA website and submitted to a local newspaper.

As stated by the FPPC, "The Political Reform Act (the "Act") prohibits local government agencies from sending mass mailings and campaign related mass mailings at public expense. AWA violated the Act by sending a mass mailing paid for with public funds."

"This is outrageous," said Ken Berry. "First, the AWA Directors illegally attempted to influence a referendum campaign. The Fair Political Practices Act says that any person doing so is guilty of a misdemeanor. In doing so, the Directors spent more than \$9,000 in ratepayer money. Then when caught, the Directors paid nearly \$17,000 to attorneys to defend themselves to the FPPC. The FPPC did enforce the law, but fined the Agency, not the Directors, and that cost agency ratepayers another \$3,000 in fines. That's nearly \$30,000 of public money that should have been spent on agency operations, not to illegally influence an election and then evade responsibility. What a shame that this news was not made public in Amador County in time to challenge the incumbent AWA directors in the fall election."

While the AWA website includes a variety of press releases, there is no press release pertaining to this matter posted online nor any meeting minutes disclosing the agency's agreement to pay the fine.

In a stipulation approved by AWA and FPPC, the parties state, "AWA produced and mailed 7,269 copies of the August 12, 2015, AWA letter at public expense. The letter individually named each member of the AWA Board of Directors, and was sent in concert with the AWA Board of Directors. The AWA letter was sent during the qualification drive for the referendum, and referred to the subject matter of the referendum: to overturn the temporary surcharge on water use. And by urging the AWA ratepayers to not sign the referendum petition, the AWA letter contained express words of advocacy against the qualification of the referendum. So by producing and sending the August 12, 2015 letter, AWA violated Government Code Section 89001, and Regulations 18901 and 18901.1."

Attached is the stipulation agreed to by the AWA and FPPC in May.

For more information, contact:

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8 **BEFORE THE FAIR POLITICAL PRACTICES COMMISSION**  
9 **STATE OF CALIFORNIA**  
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11 In the Matter of ) FPPC No. 15/1355  
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AMADOR WATER AGENCY,  
Respondent.

**STIPULATION**

Complainant, the Enforcement Division of the Fair Political Practices Commission, and Respondent Amador Water Agency, hereby agree that this Stipulation will be submitted for consideration by the Fair Political Practices Commission at its next regularly scheduled meeting.

The parties agree to enter into this Stipulation to resolve all factual and legal issues raised by this matter and to reach a final disposition without the necessity of holding an additional administrative hearing to determine the liability of AWA.

AWA understands, and hereby knowingly and voluntarily waives, any and all procedural rights set forth in Government Code Sections 83115.5, 11503 and 11523, and in California Code of Regulations, title 2, Sections 18361.1 through 18361.9. This includes, but is not limited to the right to personally appear at any administrative hearing held in this matter, to be represented by an attorney at AWA's own expense, to confront and cross-examine all witnesses testifying at the hearing, to subpoena

1 witnesses to testify at the hearing, to have an impartial administrative law judge preside over the  
2 hearing as a hearing officer, and to have the matter judicially reviewed.

3         It is further stipulated and agreed that AWA violated the Political Reform Act as described in  
4 Exhibit 1: AWA produced and mailed 7,269 copies of the August 12, 2015 AWA letter at public  
5 expense. The letter individually named each member of the AWA Board of Directors, and was sent in  
6 concert with the AWA Board of Directors. The AWA letter was sent during the qualification drive for  
7 the referendum, and referred to the subject matter of the referendum: to overturn the temporary  
8 surcharge on water use. And by urging the AWA ratepayers to not sign the referendum petition, the  
9 AWA letter contained express words of advocacy against the qualification of the referendum. So by  
10 producing and sending the August 12, 2015 letter, AWA violated Government Code Section 89001,  
11 and Regulations 18901 and 18901.1 (1 count). Exhibit 1 is attached hereto and incorporated by  
12 reference as though fully set forth herein. Exhibit 1 is a true and accurate summary of the facts in this  
13 matter.

14         AWA agrees to the issuance of the Decision and Order, which is attached hereto. AWA also  
15 agrees to the Commission imposing an administrative penalty in the total amount of Three Thousand  
16 Dollars (\$3,000). A cashier's check from AWA in said amount, made payable to the "General Fund of  
17 the State of California," is submitted with this Stipulation as full payment of the administrative penalty,  
18 and shall be held by the State of California until the Commission issues its Decision and Order  
19 regarding this matter. The parties agree that in the event the Commission refuses to accept this  
20 Stipulation, it shall become null and void, and within fifteen (15) business days after the Commission  
21 meeting at which the Stipulation is rejected, all payments tendered by AWA in connection with this  
22 Stipulation shall be reimbursed to AWA. AWA further stipulates and agrees that in the event the  
23 Commission rejects the Stipulation, and a full evidentiary hearing before the Commission becomes  
24 necessary, neither any member of the Commission, nor the Executive Director, shall be disqualified  
25 because of prior consideration of this Stipulation.

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Dated: \_\_\_\_\_

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Galena West, Chief, on Behalf of the Enforcement Division  
Fair Political Practices Commission

Dated: \_\_\_\_\_

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Rich Farrington, President of Amador Water Agency Board of  
Directors, on behalf of Amador Water Agency, Respondent

**DECISION AND ORDER**

The foregoing Stipulation of the parties “In the Matter of Amador Water Agency,” FPPC Case No. 15/1355, including all attached exhibits, is hereby accepted as the final decision and order of the Fair Political Practices Commission, effective upon execution below by the Chair.

IT IS SO ORDERED.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Joann Remke, Chair  
Fair Political Practices Commission

## **EXHIBIT 1**

### **INTRODUCTION**

Respondent, the Amador Water Agency (AWA), is a public non-profit water district serving water users in Amador County, CA. AWA is governed by a publicly elected five-member Board of Directors.

The Enforcement Division received two formal complaints alleging that AWA sent a letter to its water users asking them not to sign a petition that would require AWA to pay for a special election to overturn a rate increase on water usage.

The Political Reform Act (the “Act”)<sup>1</sup> prohibits local government agencies from sending mass mailings and campaign related mass mailings at public expense. AWA violated the Act by sending a mass mailing paid for with public funds.

### **SUMMARY OF THE LAW**

All legal references and discussions of law pertain to the Act’s provisions as they existed in 2015.

#### **Need for Liberal Construction and Vigorous Enforcement of the Political Reform Act**

When enacting the Political Reform Act, the people of the state of California found and declared that previous laws regulating political practices suffered from inadequate enforcement by state and local authorities.<sup>2</sup> To that end, the Act must be liberally construed to achieve its purposes.<sup>3</sup>

There are many purposes of the Act. One purpose is to ensure that laws and practices unfairly favoring incumbents are abolished so elections may be conducted more fairly.<sup>4</sup> Another is to provide adequate enforcement mechanisms so the Act will be “vigorously enforced.”<sup>5</sup>

#### **Definition of Expenditure**

An expenditure is any monetary or nonmonetary payment made for political purposes.<sup>6</sup> A payment is made for political purposes if it is for the purpose of influencing or attempting to influence the action of the voters for or against the qualification of any measure.<sup>7</sup>

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<sup>1</sup> The Political Reform Act is contained in Government Code §§ 81000 through 91014, and all statutory references are to this code. The regulations of the Fair Political Practices Commission are contained in §§ 18110 through 18997 of Title 2 of the California Code of Regulations, and all regulatory references are to this source.

<sup>2</sup> § 81001, subd. (h).

<sup>3</sup> § 81003.

<sup>4</sup> § 81002, subd. (e).

<sup>5</sup> § 81002, subd. (f).

<sup>6</sup> § 82025; Reg. 18225, subd. (a).

<sup>7</sup> Reg. 18225, subd. (a).

An expenditure is also any monetary or non-monetary payment made by any person that is used for communications which expressly advocates the qualification, passage or defeat of a clearly identified ballot measure.<sup>8</sup> A measure that has not qualified to be placed on the ballot is clearly identified if the communication refers to the subject matter of the measure and to the qualification drive.<sup>9</sup> A communication “expressly advocates” the qualification, passage or defeat of a measure if it contains express words of advocacy.<sup>10</sup>

#### Definition of Mass Mailing

A “mass mailing” is defined as over two hundred substantially similar pieces of mail sent in a single calendar month, but not including a form letter or other mail which is sent in response to an unsolicited request, letter or other inquiry.<sup>11</sup>

#### Definition of Measure

A measure includes any proposition which is intended to be submitted to a popular vote at an election by referendum whether or not it qualifies for the ballot.<sup>12</sup> A referendum becomes a measure when the proponents begin to circulate signature petitions to qualify the measure for the ballot.<sup>13</sup>

#### Prohibited Mass Mailing and Campaign Related Mass Mailing Sent at Public Expense

No newsletter or other mass mailing may be sent at public expense.<sup>14</sup> A mass mailing is prohibited if all of the following criteria are met:

- (1) It is a tangible item delivered by any means to the recipient at his/her residence, place of employment, or post office box;
- (2) It includes the name or other reference to an elected officer affiliated with the agency and is sent in cooperation, consultation, coordination, or concert with the officer;
- (3) Its costs of distribution are paid for with public funds, or \$50 or more in public funds is used to design, produce or print the item; and
- (4) More than 200 substantially similar pieces are sent in a single calendar month.<sup>15</sup>

An exception applies when an elected officer’s name appears only in a roster listing all elected officers of the agency in the letterhead of the stationery used for the mass mailing.<sup>16</sup> Another exception applies when the elected officer’s name appears in a roster which includes the names of elected officers as well as other individuals in the agency sending the mailing.<sup>17</sup>

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<sup>8</sup> Reg. 18225, subd. (b).

<sup>9</sup> Reg. 18225, subd. (b)(1)(D).

<sup>10</sup> Reg. 18225, subd. (b)(2).

<sup>11</sup> § 82041.5, and Reg. 18435, subd. (a).

<sup>12</sup> § 82043.

<sup>13</sup> *In re Fontana* (1976) 2 FPPC Ops. 25.

<sup>14</sup> § 89001.

<sup>15</sup> Reg. 18901, subd. (a).

<sup>16</sup> Reg. 18901, subd. (b)(1).

<sup>17</sup> Reg. 18901, subd. (b)(8).

A campaign related mass mailing is prohibited if all of the following criteria are met:

- (1) It is a tangible item delivered by any means to the recipient at his/her residence, place of employment, or post office box;
- (2) The item expressly advocates the qualification, passage, or defeat of a clearly identified measure as defined in Regulation 18225(b)(1), or unambiguously urges a particular result in an election;
- (3) Its costs of distribution are paid for with public funds, or \$50 or more in public funds is used to design, produce or print the item; and
- (4) More than 200 substantially similar pieces are sent during the course of an election, including items sent during the qualification drive or in anticipation of an upcoming election.<sup>18</sup>

An item unambiguously urges a particular result in an election if, when considering the style, tenor, and timing of the communication, it can be reasonably characterized as campaign material and is not a fair presentation of facts serving only an informational purpose.<sup>19</sup>

### SUMMARY OF THE FACTS

On July 21, 2015, the AWA Board of Directors approved a water rate increase. A group of ratepayers opposed the increase, and began collecting signatures for a petition for a referendum to overturn the water rate increase. On July 24, 2015, the AWA Board President appointed himself and another board member to an ad hoc committee to address the referendum petition. The ad hoc committee drafted a letter to the water users that was later ratified by the full AWA Board of Directors.

The AWA Board of Directors' letter, dated August 12, 2015, was mailed to 7,269 AWA water users. The letter, entitled "AWA Directors Ask for Your Help with Drought-Related Financial Crisis," was printed on AWA letterhead, and identified each of the five board members by name as the collective authors. The AWA Board of Directors' names were not part of the AWA letterhead, and the AWA Board of Directors' names were not included as part of an AWA agency roster.

In the one page letter, the AWA Board of Directors justified the water rate increase and urged the ratepayers not to sign the petition for a referendum to overturn the water rate increase:

The current Board of Directors was elected with a clear charge from voters: Bring financial stability to the Water Agency. ...

We need your continued support. We ask that you not sign a petition being circulated that would require AWA to pay for an expensive special election to overturn the temporary surcharge on water use. ...

For more information ... or phone numbers for any of us, please visit [www.amadorwater.org](http://www.amadorwater.org).

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<sup>18</sup> Reg. 18901.1, subd.(a).

<sup>19</sup> Reg. 18901.1, subd. (c)(2); also see *Vargas v. City of Salinas* (2009) 46 Cal. 4th 1.

AWA paid approximately \$9,487 to design, print and mail the letter to its ratepayers. The letter was also posted on the AWA website, and was submitted to a local newspaper.

On September 30, 2015, the AWA Clerk of the Board concluded that the petition for a referendum was facially inadequate, and was therefore invalid and inadequate for placement on the ballot.

## **VIOLATION**

### Count 1: Prohibited Mass Mailing and Campaign Related Mass Mailing Sent at Public Expense

AWA produced and mailed 7,269 copies of the August 12, 2015 AWA letter at public expense. The letter individually named each member of the AWA Board of Directors, and was sent in concert with the AWA Board of Directors. The AWA letter was sent during the qualification drive for the referendum, and referred to the subject matter of the referendum: to overturn the temporary surcharge on water use. And by urging the AWA ratepayers to not sign the referendum petition, the AWA letter contained express words of advocacy against the qualification of the referendum. So by producing and sending the August 12, 2015 letter, AWA violated Government Code Section 89001, and Regulations 18901 and 18901.1.

## **CONCLUSION**

This matter consists of one count of violating the Act, which carries a maximum administrative penalty of \$5,000.

In determining the appropriate penalty for a particular violation of the Act, the Commission considers the typical treatment of a violation in the overall statutory scheme of the Act, with an emphasis on serving the purposes and intent of the Act. Additionally, the Commission considers the facts and circumstances of the violation in the context of the factors set forth in Regulation 18361.5, subdivision (d)(1)-(6): the seriousness of the violations; the presence or lack of intent to conceal, deceive or mislead; whether the violation was deliberate, negligent, or inadvertent; whether the respondents demonstrated good faith in consulting with Commission staff; whether there was a pattern of violations; and whether respondent voluntarily amended.

The Commission also considers penalties in prior cases involving similar violations. Recent penalties for sending a mass mailing and campaign related mass mailing at public expense include:

- *In the Matter of City of Rialto*; FPPC No. 12/869. The City of Rialto produced and sent two campaign related mass mailings at public expense, in violation of Government Code Section 89001 (2 counts). On January 15, 2015, the Commission approved a penalty of \$3,000 for each violation.

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A danger inherent in mass mailings sent at public expense is that incumbent elected officers use their official power improperly and use public funds to mount a campaign for or against a candidate or ballot measure.<sup>20</sup>

In the present case, the AWA specifically sent the August 12, 2015 letter in response to the referendum petition and sent the letter to AWA water users to influence them to not sign the referendum petition. The AWA letter was not merely informational. The letter named all five of the AWA Board of Directors as the authors of the letter, it was ratified by the AWA Board of Directors, it was sent during the qualification drive for the referendum, it referred to the subject matter of the referendum, and it contained express words of advocacy against the qualification of the referendum.

In mitigation, AWA cooperated with the investigation, and has no prior history with the Enforcement Division.

This case is similar to the *City of Rialto* case because public funds were used to influence a referendum, not just promote incumbents.

#### **PROPOSED PENALTY**

The factors listed in Regulation 18361.5, prior similar cases, and other relevant facts, justify a total penalty of \$3,000 for Count 1.

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<sup>20</sup> See *Vargas v. City of Salinas* (2009) 46 Cal. 4th 1, 35-36, quoting *Stanson v. Mott* (1976) 17 Cal.3d 206, 217; citing *Choice-in-Education League v. Los Angeles Unified School Dist.* (1993) 17 Cal.App.4th 415, 429; *League of Women Voters v. Countywide Crim. Justice Coordination Com.* (1988) 203 Cal.App.3d 529, 560.