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7

8 **BEFORE THE FAIR POLITICAL PRACTICES COMMISSION**
9 **STATE OF CALIFORNIA**
10

11 In the Matter of) FPPC No. 17/549
12)
13 WEST VALLEY WATER DISTRICT) **STIPULATION, DECISION, AND ORDER**
14)
15 Respondent.)
16)
17)

18 **INTRODUCTION**

19 Respondent West Valley Water District (the “District”) is a county water district that serves
20 approximately 80,000 customers in Southwestern San Bernardino County and Northwestern Riverside
21 County. The Political Reform Act (the “Act”)¹ prohibits the sending of a mass mailing featuring an
22 elected official at public expense. The District violated the Act by producing and distributing 22,000
23 copies of a newsletter, which featured one of the District’s board members, at public expense.
24

25 ¹ The Act is contained in Government Code sections 81000 through 91014. All statutory references are to the
26 Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in
27 Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2,
28 Division 6 of the California Code of Regulations, unless otherwise indicated.

1 **SUMMARY OF THE LAW**

2 The violation in this case occurred in 2017, so all legal references and discussions of the law
3 pertain to the Act’s provisions as they existed at that time.

4 Need for Liberal Construction and Vigorous Enforcement of the Act

5 When enacting the Political Reform Act, the people of California found and declared that previous
6 laws regulating political practices suffered from inadequate enforcement by state and local authorities.²
7 For this reason, the Act must be construed liberally to accomplish its purposes.³

8 There are many purposes of the Act. One stated purpose of the Act is to ensure that receipts and
9 expenditures in election campaigns are fully and truthfully disclosed so that voters are fully informed and
10 improper practices are inhibited.⁴ Another is to provide adequate enforcement mechanisms so the Act
11 will be “vigorously enforced.”⁵

12 Mass Mailing Sent at Public Expense

13 A “mass mailing” is defined in the Act as over two hundred substantially similar pieces of mail,
14 but does not include a form letter or other mail which is sent in response to an unsolicited request, letter,
15 or other inquiry.⁶

16 No mass mailing may be sent at public expense.⁷ Specifically, a mailing is prohibited if all of the
17 following criteria are met:⁸

- 18 (1) Any item sent is delivered, by any means, to the recipient at his or her residence, place of
19 business, or post office box. The item delivered to the recipient must be a tangible item, such
20 as a written document.
21 (2) The item sent features an elected officer affiliated with the agency which produces or sends
22 the mailing. An item features an elected officer when it includes, among other things, the
23 elected officer’s photograph or singles out the elected officer by the manner of display of her

23 ² Section 81001, subd. (h).

24 ³ Section 81003.

25 ⁴ Section 81002, subd. (a).

26 ⁵ Section 81002, subd. (f).

27 ⁶ Section 82041.5.

28 ⁷ Section 89001.

⁸ Regulation 18901, subd. (a).

1 name or office in the layout of the document, such as by captions.⁹ A mailing containing the
2 name, office, photograph, or any other reference to an elected officer who consults or acts in
3 concert with the agency to prepare or send the mailing also fulfills the second criteria.

4 (3) Any of the costs of distribution is paid for with public moneys or costs of design, production,
5 and printing exceeding \$50 are paid with public moneys and is done with the intent of sending
6 the item other than as permitted by Regulation 18901.

7 (4) More than 200 substantially similar items are sent in a calendar month.

8 **SUMMARY OF THE EVIDENCE**

9 In the Spring of 2017, the District prepared and distributed the Summer 2017 edition of
10 “AquaTalk,” a bilingual quarterly newsletter. The newsletter featured Linda Gonzalez, a Director of the
11 District’s Board of Directors by including her photograph with the following caption:
12

13 On March 4, 2017, in the company of more than 400 attendees, the City of Rialto League of
14 Women Voters - San Bernardino Area, Woman’s Club of Rialto, and National Council of Negro
15 Women - Inland Empire Section honored local trailblazing women in labor and business. We
16 congratulate Linda Gonzalez, Vice President of the WVWD Board of Director, on her
17 recognition. Ms. Gonzalez has been a local business owner since 1988.

18 One half of the newsletter communicated in English while the other half published the same content,
19 including the photograph and caption of Gonzalez, in Spanish. District staff prepared and distributed the
20 newsletter and were unaware of the prohibition against sending mass mailing at public expense. The
21 District paid more than \$50 for the design, production, and distribution of 22,000 copies of the newsletter.

22 **VIOLATION**

23 Count 1: Mass Mailing Sent at Public Expense

24 The District prepared and distributed 22,000 copies of the “AquaTalk” newsletter at public
25 expense in or about May 2017. That newsletter featured the photograph and name of a member of the
26 governing board, in violation of Government Code section 89001.

27 **PROPOSED PENALTY**

28 This matter consists of one count. The maximum penalty that may be imposed is \$5,000.¹⁰

⁹ Regulation 18901, subd. (c)(2).

¹⁰ Section 83116, subd. (c).

1 In determining the appropriate penalty for a particular violation of the Act, the Commission
2 considers the facts of the case, the public harm involved, and the purpose of the Act. Also, the
3 Commission considers factors such as: (a) the seriousness of the violation; (b) the presence or absence of
4 any intention to conceal, deceive, or mislead; (c) whether the violation was deliberate, negligent, or
5 inadvertent; (d) whether the violation was isolated or part of a pattern; (e) whether corrective amendments
6 voluntarily were filed to provide full disclosure; and (f) whether the violator has a prior record of
7 violations.¹¹

8 The District used public funds to pay for the design, production, and distribution of a mass mailing
9 featuring an elected officer. No evidence indicated an intent to deceive the public, and instead showed
10 inadvertent violation of the Act by District staff who were unaware of the prohibition against sending
11 mass mailing at public expense. The evidence also does not show a pattern of violations, and the District
12 does not have prior record of violating the Act.

13 The Commission also considers penalties in prior cases with comparable violations. Recent cases
14 with a similar violation include the following:

15 *In the Matter of Imperial Irrigation District*; FPPC No. 17/1176. (The Commission approved a
16 stipulated decision on April 19, 2018.) The District produced and sent copies of a monthly newsletter to
17 approximately 152,000 ratepayers at public expense, featuring the photograph and name of a member of
18 the governing board. The Commission approved a penalty of \$2,000 for this violation.

19 *In the Matter of El Monte City School District*; FPPC No. 15/2078. (The Commission approved
20 a stipulated decision on July 21, 2016.) The District prepared and sent 19,009 copies of a brochure at
21 public expense, featuring photographs and names of members of the governing board. The Commission
22 approved a penalty of \$2,000 for this violation.

23 For the foregoing reasons, a penalty of \$2,000 for the violation is recommended.
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26 ¹¹ Regulation 18361.5, subd. (d).
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1 **CONCLUSION**

2 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
3 Respondent West Valley Water District hereby agree as follows:

4 1. The District violated the Act as described in the foregoing pages, which are a true and
5 accurate summary of the facts in this matter.

6 2. This stipulation will be submitted for consideration by the Fair Political Practices
7 Commission at its next regularly scheduled meeting—or as soon thereafter as the matter may be heard.

8 3. This stipulation resolves all factual and legal issues raised in this matter—for the purpose
9 of reaching a final disposition without the necessity of holding an administrative hearing to determine
10 the liability of the District pursuant to Section 83116.

11 4. The District has consulted with Robert Tafoya of Tafoya & Garcia, LLP and understands,
12 and hereby knowingly and voluntarily waives, any and all procedural rights set forth in Sections 83115.5,
13 11503, 11523, and Regulations 18361.1 through 18361.9. This includes, but is not limited to the right to
14 appear personally at any administrative hearing held in this matter, to be represented by an attorney at
15 the District’s own expense, to confront and cross-examine all witnesses testifying at the hearing, to
16 subpoena witnesses to testify at the hearing, to have an impartial administrative law judge preside over
17 the hearing as a hearing officer, and to have the matter judicially reviewed.

18 5. The District agrees to the issuance of the decision and order set forth below. Also, the
19 District agrees to the Commission imposing against it an administrative penalty in the amount of \$2,000.
20 One or more cashier’s checks or money orders totaling said amount—to be paid to the General Fund of
21 the State of California—is/are submitted with this stipulation as full payment of the administrative
22 penalty described above, and same shall be held by the State of California until the Commission issues
23 its decision and order regarding the matter.

24 6. If the Commission declines to approve this stipulation—then this stipulation shall become
25 null and void, and within fifteen business days after the Commission meeting at which the stipulation is
26 rejected, all payments tendered by the District in connection with this stipulation shall be reimbursed to
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1 the District. If this stipulation is not approved by the Commission, and if a full evidentiary hearing before
2 the Commission becomes necessary, neither any member of the Commission, nor the Executive Director,
3 shall be disqualified because of prior consideration of this Stipulation.

4 7. The parties to this agreement may execute their respective signature pages separately. A
5 copy of any party's executed signature page including a hardcopy of a signature page transmitted via fax
6 or as a PDF email attachment is as effective and binding as the original.

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8 Dated: _____
9 Galena West, Chief of Enforcement
10 Fair Political Practices Commission

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12 Dated: _____
13 _____, on behalf of the West Valley
14 Water District

1 The foregoing stipulation of the parties “In the Matter of West Valley Water District,” FPPC No.
2 17/549, is hereby accepted as the final decision and order of the Fair Political Practices Commission,
3 effective upon execution below by the Chair.

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5 IT IS SO ORDERED.

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7 Dated: _____
8 Joann Remke, Chair
9 Fair Political Practices Commission
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