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9 **BEFORE THE FAIR POLITICAL PRACTICES COMMISSION**

10 **STATE OF CALIFORNIA**

11 In the Matter of

12 NORTH YUBA WATER DISTRICT,  
13 Respondent.  
14

FPPC Case No. 20/917

**STIPULATION, DECISION AND ORDER**

Date Submitted to Commission: August 2024

15 **INTRODUCTION**

16 Respondent North Yuba Water District (the “NYWD”) is located in Yuba County and services  
17 approximately 2,300 people with 839 service connections.

18 This case was opened in response to a sworn complaint.

19 The Political Reform Act (the “Act”)<sup>1</sup> prohibits the sending of a mass mailing featuring an  
20 elected official at public expense. The NYWD violated the Act by producing and distributing mass  
21 mailings, which featured an elected official, at public expense.

22 **SUMMARY OF THE LAW**

23 The Act and its regulations are amended from time to time. The violations in this case occurred  
24 in 2019 through 2021. For this reason, all legal references and discussions of law pertain to the Act’s  
25 provisions as they existed at that time.

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28 <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 Practice Commission are contained in §§ 18104 through 18998 of Title 2 of the California Code of Regulations, and all regulatory references are to this source.

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

2 When enacting the Act, the people of California found and declared that previous laws regulating  
3 political practices suffered from inadequate enforcement by state and local authorities.<sup>2</sup> For this reason,  
4 the Act is to be construed liberally to accomplish its purposes.<sup>3</sup>

5 One stated purpose of the Act is to abolish laws and practices that unfairly favor incumbents so  
6 that elections may be conducted more fairly.<sup>4</sup> Another purpose of the Act is to provide adequate  
7 enforcement mechanisms so that the Act will be “vigorously enforced.”<sup>5</sup>

8 **Mass Mailing at Public Expense**

9 No newsletter or other mass mailing shall be sent at public expense.<sup>6</sup> Specifically, a mailing is  
10 prohibited if all of the following criteria are met:<sup>7</sup>

- 11 (1) An item sent is delivered, by any means, to the recipient at their residence, place of employment  
12 or business, or post office box. The item delivered to the recipient must be a tangible item, such  
13 as a written document.
- 14 (2) The item sent features an elected officer<sup>8</sup> affiliated with the agency that produces or sends the  
15 mailing. An item “features an elected officer” when it includes the elected officer’s photograph  
16 or signature or singles out the elected officer by the manner of display of their name or office in  
17 the layout of the document, such as by headlines, captions, type size, typeface, or type color.<sup>9</sup> A  
18 mailing containing the name, office, photograph, or other reference to an elected officer who  
19 consults or acts in concert with the agency to prepare or send the mailing also fulfills the second  
20 criteria.
- 21 (3) Any of the costs of distribution are paid for with public moneys or the costs of design,  
22 production, and printing exceeding \$50 are paid with public moneys, and is done with the intent  
23 of sending the item other than as permitted by this section.
- 24 (4) More than 200 substantially similar items are sent in a single calendar month, excluding any item  
25 sent in response to an unsolicited request.

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25 <sup>2</sup> Section 81001, subd. (h).

26 <sup>3</sup> Section 81003.

27 <sup>4</sup> Section 81002, subd. (e).

28 <sup>5</sup> Section 81002, subd. (f).

<sup>6</sup> Section 89001.

<sup>7</sup> Section 89002, subd. (a).

<sup>8</sup> “Elected officer” means any person who holds an elective office or has been elected to an elective office but has not yet taken office. A person who is appointed to fill a vacant elective office is an elected officer. (Section 82020.)

<sup>9</sup> Section 89002, subd. (c)(2).

1 **SUMMARY OF THE FACTS**

2 Between 2019 and 2022, the NYWD produced at least 10 different Newsletters that provided a  
3 variety of information to residents including notices of Board meetings, contact information for each  
4 Board member, expenses to the agency, and project updates.

5 Four of the Newsletters (sent September 2019, October 2019, November 2019, and January  
6 2020) included a section titled “Chairman’s Update.” The Chairman’s Update included a statement from  
7 Eric Hansard, who at that time was President of the NYWD Board of Directors, along with Hansard’s  
8 picture and signature.

9 The Newsletter sent in April 2020 also included a section titled “Chairman’s Update.” The  
10 Chairman’s Update included a statement from Eric Hansard, along with Hansard’s signature.  
11 Additionally, the April 2020 Newsletter included a section titled “Election of Officers” which included a  
12 congratulatory statement to Eric Hansard and Doug Neilson for their success in getting elected to Board  
13 Chairman and Vice-Chair respectively.

14 The Newsletter sent during the Summer of 2020 included pictures and other references to four  
15 NYWD Board members including Gary Hawthorne, Doug Neilson, Eric Hansard, and Fred Mitchell.  
16 The Newsletter sent in October 2021 included a section titled “Director News Welcome Back Donald  
17 Forguson.” The article states, in part, that District 4 Director, Gretchen Flohr, resigned and Donald  
18 Forguson was appointed by the board. The article goes on to state how Forguson had previously served  
19 on the NYWD Board of Directors and is a local volunteer fire fighter with the rank of Captain.

20 As a result, seven of the Newsletters produced by the NYWD featured an elected officer. The  
21 NYWD contracted with Crystal Martin of Smart Marketing & Public Affairs to design, print, and mail  
22 the NYWD Newsletters. Prior to printing and mailing, each of the Newsletters were reviewed and  
23 approved by the NYWD General Manager at the time, Jeff Maupin, and the Newsletters would  
24 occasionally be reviewed and approved by the NYWD Directors.

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1 The NYWD confirmed that public moneys were used to design, print, and mail each of the  
2 Newsletters at issue here as follows:

3 <b>Newsletter</b>	<b>Costs</b>	<b>Amount Mailed</b>
4 September 2019	\$6,265.52	2000
5 October 2019	\$4,133.16	1000
6 November 2019	\$3,526.57	1000
7 January 2020	\$1,553.15	1000
8 April 2020	\$1,478.50	1000
9 Summer 2020	\$7,744.13	3500
October 2021	\$3,879.00	2000
<b>Totals:</b>	<b>\$28,580.03</b>	<b>11,500</b>

10 In summary, between 2019 and 2022, the NYWD produced at least 10 different Newsletters,  
11 seven of which were determined to be a prohibited mass mailing at public expense that featured an  
12 elected officer.

### 13 **VIOLATIONS**

#### 14 **Count 1: Mass Mailing at Public Expense**

15 In or around September of 2019, the NYWD produced the September 2019 Newsletter that  
16 featured an elected officer and spent approximately \$6,265 to design, print, and mail this Newsletter to  
17 2,000 residents, in violation of Government Code Sections 89001 and 89002.

#### 18 **Count 2: Mass Mailing at Public Expense**

19 In or around October of 2019, the NYWD produced the October 2019 Newsletter that featured  
20 an elected officer and spent approximately \$4,133 to design, print, and mail this Newsletter to 1,000  
21 residents, in violation of Government Code Sections 89001 and 89002.

#### 22 **Count 3: Mass Mailing at Public Expense**

23 In or around November of 2019, the NYWD produced the November 2019 Newsletter that  
24 featured an elected officer and spent approximately \$3,526 to design, print, and mail this Newsletter to  
25 1,000 residents, in violation of Government Code Sections 89001 and 89002.

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1 **Count 4: Mass Mailing at Public Expense**

2 In or around January of 2020, the NYWD produced the January 2020 Newsletter that featured an  
3 elected officer and spent approximately \$1,553 to design, print, and mail this Newsletter to 1,000  
4 residents, in violation of Government Code Sections 89001 and 89002.

5 **Count 5: Mass Mailing at Public Expense**

6 In or around April of 2020, the NYWD produced the April 2020 Newsletter that featured elected  
7 officers and spent approximately \$1,478 to design, print, and mail this Newsletter to 1,000 residents, in  
8 violation of Government Code Sections 89001 and 89002.

9 **Count 6: Mass Mailing at Public Expense**

10 In or around August of 2020 and October of 2020, the NYWD produced the Summer 2020  
11 Newsletter that featured elected officers and spent approximately \$7,744 to design, print, and mail this  
12 Newsletter to 3,500 residents, in violation of Government Code Sections 89001 and 89002.

13 **Count 7: Mass Mailing at Public Expense**

14 In or around October of 2021, the NYWD produced the October 2021 Newsletter that featured  
15 an elected officer and spent approximately \$3,879 to design, print, and mail this Newsletter to 2,000  
16 residents, in violation of Government Code Sections 89001 and 89002.

17 **PROPOSED PENALTY**

18 This matter consists of seven proposed counts. The maximum penalty that may be imposed is  
19 \$5,000 per count. Thus, the maximum penalty that may be imposed for the counts charged here is  
20 \$35,000.<sup>10</sup>

21 Violations of mass mailings at public expense are not eligible for the Streamline Program.<sup>11</sup>

22 In determining the appropriate penalty for a particular violation of the Act, the Enforcement  
23 Division considers the typical treatment of a violation in the overall statutory scheme of the Act, with an  
24 emphasis on serving the purposes and intent of the Act. Additionally, the Enforcement Division  
25 considers the facts and circumstances of the violation in the context of the following factors set forth in  
26 Regulation 18361.5 subdivision (e)(1) through (8): (1) The extent and gravity of the public harm caused  
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28 <sup>10</sup> Section 83116, subd. (c).

<sup>11</sup> Regulations 18360.1, subd. (b), and 18360.2, subd. (b).

1 by the specific violation; (2) The level of experience of the violator with the requirements of the  
2 Political Reform Act; (3) Penalties previously imposed by the Commission in comparable cases; (4) The  
3 presence or absence of any intention to conceal, deceive or mislead; (5) Whether the violation was  
4 deliberate, negligent or inadvertent; (6) Whether the violator demonstrated good faith by consulting the  
5 Commission staff or any other governmental agency in a manner not constituting complete defense  
6 under Government Code Section 83114(b); (7) Whether the violation was isolated or part of a pattern  
7 and whether the violator has a prior record of violations of the Political Reform Act or similar laws; and  
8 (8) Whether the violator, upon learning of a reporting violation, voluntarily filed amendments to provide  
9 full disclosure.<sup>12</sup>

10 The public harm inherent in mass mailing at public expense violations is that the mailings may  
11 unfairly favor the featured elected officer. These types of violations cause a high degree of public harm  
12 when the featured elected officer appears on the ballot for an upcoming election. The violation at issue  
13 in Count 6 carries a high degree of public harm because three of the featured elected officers appeared  
14 on the November 3, 2020 General Election ballot and were re-elected to their positions. The public harm  
15 for the remaining violations were mitigated as none of the featured elected officers were up for re-  
16 election.

17 There was no evidence to support an intent to conceal, deceive or mislead the public. The  
18 Enforcement Division found that the violations here were negligent. It was clear that the Newsletters  
19 were produced and mailed by the NYWD. The NYWD General Manager reviewed and approved each  
20 of the Newsletters before they were printed and distributed to the public. On occasion, the Newsletters  
21 were also reviewed and approved by the NYWD Directors. However, there is insufficient evidence to  
22 determine which Newsletters were approved by which NYWD Directors.

23 The NYWD cooperated with the Enforcement Division throughout its investigation and provided  
24 the relevant information and supporting records. The evidence shows a pattern of violations as the  
25 majority of the Newsletters produced by the NYWD featured an elected officer. However, the NYWD  
26 does not have a prior record of violating the Act. There was no evidence that the NYWD consulted with  
27 Commission staff or any other governmental agency prior to producing the Newsletters at issue here.

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<sup>12</sup> Regulation 18361.5, subd. (e).

1 The Commission considers penalties in prior cases with the same or similar violations and  
2 comparable facts. Recent similar cases involving prohibited mass mailings at public expense include:

3 *In the Matter of Tuolumne Utilities District*; FPPC Case No. 19/781 (approved March 21, 2024).

4 The Commission imposed a penalty in the amount of \$2,000 against the District for producing and  
5 sending a prohibited mass mailing at public expense. In January and February of 2019, the District  
6 produced a printed newsletter and included a copy in the water bills mailed to residents. The newsletter  
7 included a photograph of the District’s Board of Directors with a caption under the photograph listing  
8 the names of the five board members. The text “TUD Board of Directors 2019” was superimposed on  
9 the photograph. Approximately 14,250 copies of the newsletter were produced and mailed for a total  
10 cost of \$2,198. The District’s board members were not aware of the photograph being included in the  
11 newsletter and did not approve the newsletter. Additionally, none of the District’s board members were  
12 up for re-election in 2019.

13 *In the Matter of Compton Community College District*; FPPC Case No. 22/795 (approved  
14 September 21, 2023). The Commission imposed a penalty in the amount of \$4,000 against the District  
15 for producing and sending a prohibited mass mailing at public expense. In October of 2022, the District  
16 produced and mailed an informational newsletter to students and residents. The newsletter included a  
17 photograph of the District’s Board President along with their name and title. The newsletter included  
18 other references to the District’s Board President including a message from the President and the use of  
19 pronouns (“I”) in the message. Also, the newsletter included photographs with captions of all of the  
20 District’s five Board of Trustees. Approximately 33,276 copies of the newsletter was produced and  
21 mailed for a total cost of \$36,767. The District’s board members were not aware of the photograph being  
22 included in the newsletter and did not approve the newsletter. Three of the District’s Board of Trustees  
23 who appeared in the photographs also appeared on the November 8, 2022 General Election ballot for re-  
24 election to their District positions, each were successful.

25 Here, between September of 2019 and October of 2021, the NYWD produced and sent seven  
26 prohibited Newsletters that featured an elected officer. In total, the Newsletters were produced, printed,  
27 and mailed to residents at an approximate cost of \$28,580, a significantly higher amount than that at  
28 issue in *Tuolumne Utilities District* and a slightly lower amount than that at issue in *Compton*

1 *Community College District*. Unlike *Tuolumne Utilities District* and *Compton Community College*  
 2 *District* who produced 14,250 copies and 33,276 copies of the prohibited mailer respectively, the  
 3 NYWD only produced approximately 11,500 Newsletters. Similar to *Compton Community College*  
 4 *District*, the NYWD produced and mailed the Summer 2020 Newsletter the month prior to an election  
 5 where the featured elected officers also successfully appeared on the ballot for re-election to their  
 6 positions. Therefore, a total penalty of \$22,000 is recommended; \$3,000 per count for Counts 1-5 and 7,  
 7 and \$4,000 for Count 6.

8 Under these circumstances, it is respectfully submitted that imposition of an agreed upon penalty  
 9 in the amount of \$22,000 is justified, as reflected in the chart below:

Count	Violation	Penalty
1	Mass Mailing Sent at Public Expense	\$3,000
2	Mass Mailing Sent at Public Expense	\$3,000
3	Mass Mailing Sent at Public Expense	\$3,000
4	Mass Mailing Sent at Public Expense	\$3,000
5	Mass Mailing Sent at Public Expense	\$3,000
6	Mass Mailing Sent at Public Expense	\$4,000
7	Mass Mailing Sent at Public Expense	\$3,000
	<b>Total:</b>	<b>\$22,000</b>

17 **CONCLUSION**

18 Complainant, the Enforcement Division of the Fair Political Practices Commission, and  
 19 Respondent, North Yuba Water District, hereby agree as follows:

- 20 1. Respondent violated the Act as described in the foregoing pages, which are a true and accurate  
 21 summary of the facts in this matter.
- 22 2. This stipulation will be submitted for consideration by the Fair Political Practices Commission  
 23 at its next regularly scheduled meeting – or as soon thereafter as the matter may be heard.
- 24 3. This stipulation resolves all factual and legal issues raised in this matter – for the purpose of  
 25 reaching a final disposition without the necessity of holding an administrative hearing to determine the  
 26 liability of Respondent pursuant to Section 83116.

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1 4. Respondent understands and hereby knowingly and voluntarily waives any and all procedural  
2 rights set forth in Sections 83115.5, 11503, 11523, and Regulations 18361.1 through 18361.9. This  
3 includes, but is not limited to, the right to appear personally at any administrative hearing held in this  
4 matter, to be represented by an attorney at Respondent's own expense, to confront and cross-examine  
5 all witnesses testifying at the hearing, to subpoena witnesses to testify at the hearing, to have an  
6 impartial administrative law judge preside over the hearing as a hearing officer, and to have the matter  
7 judicially reviewed.

8 5. Respondent agrees to the issuance of the decision and order set forth below. Also, Respondent  
9 agrees to the Commission imposing against them an administrative penalty in the amount of \$22,000.  
10 One or more cashier's checks or money orders totaling said amount – to be paid to the General Fund of  
11 the State of California – is/are submitted with this stipulation as full payment of the administrative  
12 penalty described above, and same shall be held by the State of California until the Commission issues  
13 its decision and order regarding this matter.

14 6. If the Commission refuses to approve this stipulation – then this stipulation shall become null  
15 and void, and within fifteen business days after the Commission meeting at which the stipulation is  
16 rejected, all payments tendered by Respondent in connection with this stipulation shall be reimbursed  
17 to Respondent. If this stipulation is not approved by the Commission, and if a full evidentiary hearing  
18 before the Commission becomes necessary, neither any member of the Commission, nor the Executive  
19 Director, shall be disqualified because of prior consideration of this stipulation.

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1 7. The parties to this agreement may execute their respective signature pages separately. A copy of  
2 any party's executed signature page, including a hardcopy of a signature page transmitted via fax or as  
3 a PDF email attachment, is as effective and binding as the original.  
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6 Dated: \_\_\_\_\_  
7 James M. Lindsay, Chief of Enforcement  
Fair Political Practices Commission  
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10 Dated: \_\_\_\_\_  
11 \_\_\_\_\_, on behalf of North Yuba  
Water District, Respondent  
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13  
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16 The foregoing stipulation of the parties "In the Matter of North Yuba Water District," FPPC  
17 Case No. 20/917, is hereby accepted as the final decision and order of the Fair Political Practices  
18 Commission, effective upon execution by the Chair.  
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20 IT IS SO ORDERED.  
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22 Dated: \_\_\_\_\_  
23 Adam E. Silver, Chair  
Fair Political Practices Commission  
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