

1 **FEDERAL ELECTION COMMISSION**

2 **FIRST GENERAL COUNSEL’S REPORT**

3 **MUR: 7864**

4 DATE COMPLAINT FILED: December 16, 2020

5 DATE OF NOTIFICATION: December 23, 2020

6 LAST RESPONSE RECEIVED: February 26, 2021

7 DATE ACTIVATED: May 18, 2021

8 EARLIEST SOL: February 20, 2024

9 LATEST SOL: December 2025

10 ELECTION CYCLE: 2020

11 **COMPLAINANTS:**

12 Nevada Jack

13 **RESPONDENTS:**

14 Salt River Valley Water Users’ Association

15 Salt River Valley Water Users’ Association Political
16 Involvement Committee and Heidi Rowe Schaefer
17 in her official capacity as treasurer

18 Mike Jones

19 **RELEVANT STATUTE
20 AND REGULATIONS:**

21 52 U.S.C. § 30118(a), (b)

22 11 C.F.R. § 114.1(f)

23 11 C.F.R. § 114.2(f)

24 11 C.F.R. § 114.5

25 **INTERNAL REPORTS CHECKED:**

26 Disclosure Reports

27 **FEDERAL AGENCIES CHECKED:**

28 None

29 **I. INTRODUCTION**

30
31
32 The Complaint alleges that Salt River Valley Water Users’ Association (“Salt River Valley
33 WUA”), which operates the Salt River Project (“SRP”), a water and power utility, violated
34 provisions of the Federal Elections Campaign Act, as amended, (the “Act”) when a member of its
35 management team suggested that the Complainant become involved with its separate segregated
36 fund to advance her career at SRP, in violation of 52 U.S.C. § 30118(b)(3) and
37 11 C.F.R. §§ 114.2(f), 114.5(a).

1 Based on the available information, we recommend that the Commission dismiss the
2 allegations that Salt River Valley Water Users' Association, Salt River Valley Water Users'
3 Association Political Involvement Committee and Heidi Rowe Schaefer in her official capacity as
4 treasurer, and Mike Jones violated 52 U.S.C. § 30118(b)(3) and 11 C.F.R. §§ 114.2(f), 114.5(a).

5 **II. FACTUAL BACKGROUND**

6 Salt River Valley WUA and the Salt River Project Agricultural Improvement and Power
7 District jointly operate the Salt River Project, which provides water and power to more than
8 2 million customers in central Arizona. Salt River Valley Water Users' Association Political
9 Involvement Committee and Heidi Rowe Schaefer in her official capacity as treasurer ("SRP PIC"
10 or "PIC") is Salt River Valley WUA's separate segregated fund; it has been registered with the
11 Commission since 1976.¹

12 Complainant, Nevada Jack, has been employed at SRP since October 2002 and her current
13 position is Manager Operations Planning.² At the time of the Complaint, she reported to Mike
14 Jones, Senior Director Corporate Strategy, Planning & Innovation.³ In the complaint, Jack states
15 that on February 1, 2019, she applied for the position of Manager of Transmission System
16 Planning, a lateral position, to gain valuable experience in a strategic and technical department that
17 she hoped would further advance her career at SRP.⁴ Jack states that after being notified she had
18 not received the position, she requested a meeting with Jones to discuss feedback on her
19 application.⁵ Jack asserts that at the February 20, 2019, meeting, Jones suggested Jack become

¹ Salt River Valley Water Users' Association, Statement of Organization (Dec. 10, 2019), <https://docquery.fec.gov/pdf/373/201912109166172373/201912109166172373.pdf>.

² Resp. at 2 (Feb. 26, 2021).

³ *Id.*

⁴ Compl. at 1 (Dec. 16, 2020).

⁵ *Id.* At that time, Jones was the hiring director for the position, but was not Jack's immediate supervisor. *Id.*

1 engaged with in the SRP PIC to advance her career at SRP.⁶ Jack specifically alleges, “[Jones]
2 stated that becoming involved in the PIC events is a way to show that I am approachable and can
3 talk with one of SRP’s Associate General Managers, Kelly Barr, about her kids. He stated that
4 ‘young people are joining PIC, and they’re getting a leg up over me.’”⁷ Complainant contends that
5 involvement in SRP PIC includes donating time and financial contributions in amounts that are
6 suggested for employees, and the recommendation that she join PIC to advance her career violated
7 11 C.F.R. §§ 114.2(f) and 114.5(a).

8 The Complaint includes a web link to SRP PIC’s June 2020 Monthly Reports and other
9 monthly disclosures filed with the Commission, which purportedly lists SRP employees who have
10 contributed to PIC, and attaches printed pages of SRP PIC materials that are posted on its internal
11 employee website.⁸ In its materials, SRP PIC describes itself as a political action committee that
12 was organized in 1976, which “fosters employee engagement in public policy issues and gives
13 SRP employees a voice in electing federal, state and local officials.”⁹ SRP PIC is registered both
14 with the Commission and the Arizona Secretary of State and is administered as a separate
15 segregated fund.¹⁰

16 The Response denies the allegation that complainant received a solicitation to make
17 contributions or that joining PIC was a requirement for promotion at SRP.¹¹ The response submits
18 a sworn affidavit from Jones, the hiring director who allegedly made the comments that form the

6 *Id.*

7 *Id.*

8 Compl., Attach.

9 *Id.*

10 Resp. at 1.

11 Resp. at 3.

1 factual basis of her complaint.¹² In his affidavit, Jones states that during their February 20, 2019,
2 meeting, he explained to Jack that she did not receive the position due to performance issues and
3 asserts that he does not recall discussing SRP PIC at that meeting.¹³ Instead, Jones attests that he
4 recalls raising SRP PIC during a subsequent meeting with Jack on December 10, 2020, during
5 which she asked for advice on becoming a “stronger candidate for promotion opportunities” at
6 SRP.¹⁴ According to Jones, during that conversation, he advised complainant that “she needed to
7 perform at a high level, demonstrate value, and establish herself as a leader by networking both
8 within and outside of SRP.”¹⁵ Jones asserts he mentioned SRC PIC at the December 2020 meeting,
9 along with industry groups and non-profit boards, as examples of networking opportunities and
10 acknowledges that he provided Jack with names of other employees who had participated in the
11 types of organizations named.¹⁶

12 With respect to SRP PIC specifically, Jones denies soliciting a contribution from Jack, and
13 avers, “I only recall stating that joining was an opportunity if Ms. Jack were interested in
14 legislative issues, that doing so was entirely voluntary, and that involvement would give Ms. Jack
15 opportunities to interact with SRP leaders she would not otherwise see in her day-to-day work.”¹⁷
16 Respondents contend that Jones did not solicit a contribution from Complainant during his
17 meetings with Jack, nor did he suggest that involvement in SRP PIC was necessary or required for
18 her advancement at SRP.¹⁸

12 Resp., Attach., Affidavit of Mike Jones (“Jones Aff.”).

13 Jones Aff. ¶ 3.

14 *Id.* ¶ 4.

15 *Id.* ¶ 5.

16 *Id.* ¶ 6.

17 *Id.* ¶¶ 7, 8.

18 Resp. at 3.

1 **III. LEGAL ANALYSIS**

2 **A. The Information Does Not Show There Was an Impermissible SSF Solicitation**

3 Under the Act and the Commission's regulations, corporations are prohibited from making
 4 contributions in connection with a federal election, and a political committee is prohibited from
 5 knowingly accepting or receiving such contributions.¹⁹ Corporations are permitted to establish and
 6 solicit political contributions to an SSF.²⁰ All contributions to an SSF must be voluntary and
 7 without coercion.²¹ An SSF is prohibited from making contributions or expenditures "by utilizing
 8 money or anything of value secured by physical force, job discrimination, or financial reprisals, or
 9 the threat of force, job discrimination, or financial reprisals; or by dues, fees, or other moneys
 10 required as a condition of membership in a labor organization or as a condition of employment. . .
 11 ." ²²

12 Corporations may solicit employees for contributions to their SSFs, so long as these
 13 contributions are voluntary and not coerced.²³ In order to prevent coerced contributions to a
 14 corporation's SSF, the Act and its regulations require employers who solicit their employees to
 15 inform the employee at the time of each solicitation of (i) "the political purposes of the fund at the
 16 time of such solicitation"; (ii) "his or her right to refuse to so contribute without any reprisal";
 17 (iii) "[t]hat the [contribution amount] guidelines are merely suggestions"; (iv) "[t]hat the individual
 18 is free to contribute more or less"; and (v) that "the corporation . . . will not favor or disadvantage

¹⁹ 52 U.S.C § 30118(a); 11 C.F.R. § 114.2(b), (d).

²⁰ *Id.* § 30118(b)(2)(C); 11 C.F.R. § 114.1(a)(2)(iii).

²¹ *Id.* § 30118(b)(3); 11 C.F.R. § 114.5(a); *see also* Advisory Op. 2003-14 at 3 (Home Depot).

²² *Id.* § 30118(b)(3)(A); 11 C.F.R. 114.5(a)(1).

²³ 52 U.S.C. § 30118(b)(2)(C). A corporation's SSF may make a total of two written solicitations from its employees per calendar year. 11 C.F.R. § 114.6(a). A corporation or its SSF may solicit contributions from the corporation's stockholders, executive, or administrative personnel and their families without the same restrictions that are applied to solicitations of its employees. 52 U.S.C § 30118(b)(4)(A)(i); 11 C.F.R. § 114.5(g)(1).

1 anyone by reason of the amount of their contribution or their decision not to contribute.”²⁴ SSFs
2 are further prohibited from “mak[ing] a contribution or expenditure by utilizing money or anything
3 of value secured by physical force, job discrimination, financial reprisals, or the threat of force, job
4 discrimination, or financial reprisal.”²⁵ Additionally, if a solicitation suggests a contribution
5 amount, the solicitation must state that the amount is merely a suggestion, that the employee can
6 contribute more or less than the suggested amount, and that the corporation will not favor or
7 disfavor any employee for their contribution amount.²⁶ “[A] solicitation that clearly indicates that
8 contributions are voluntary satisfies the Act and these regulations.”²⁷

9 The Complaint includes the materials provided by SRP PIC to employees, which appear to
10 meet the requirements set forth in the Act and regulations to ensure that SSF solicitations are
11 voluntary. Specifically, the materials explain the purpose of PIC and that “contributions will be
12 used solely to support the election campaigns of candidates running for federal, state, county and
13 local offices and NOT used for administrative purposes.”²⁸ The materials further state, “requested
14 contributions are merely a suggestion,” and “those contributing are free to contribute more or less
15 than the requested amount.”²⁹ The materials advise, “SRP will not favor or disadvantage anyone

²⁴ 11 C.F.R. § 114.5(a)(2)-(4); 52 U.S.C. § 30118(b)(3)(B)-(C). These requirements apply to all solicitations directed to any employee for SSF contributions. Section 30118(b)(4) draws a distinction between solicitations directed to executive or administrative personnel and those sent to rank-and-file employees and limits to twice annually the number of SSF solicitations that may be directed to rank-and-file employees. *See* 52 U.S.C. § 30118(b)(7) (defining “executive or administrative personnel” to be “individuals employed on a salary, rather than hourly, basis and who have policymaking, managerial, professional, or supervisory responsibilities”). *See* Second Gen. Counsels Rpt. at 8, MUR 7028 (Plumbers and Pipefitters) (finding RTB that a Union’s SSF obtained contributions from its members via payroll deductions, without the appropriate disclaimers and written authorizations required by 52 U.S.C. § 30118(b)(3)(A)-(C) and 11 C.F.R. § 114.5(a)(2)-(5)).

²⁵ 52 U.S.C. § 30118(b)(3)(A)-(C); 11 C.F.R. § 114.5(a)(3)-(5).

²⁶ 11 C.F.R. § 114.5(a)(2), (5). *See e.g.*, MUR 6520 (Berkshire Cty. Bd. of Realtors) (2014).

²⁷ *See* MUR 5666 (MZM, Inc.) (2007).

²⁸ Compl., Attach.

²⁹ *Id.*

1 by reason of his/her contribution amount or decision not to contribute,” and that the employee has
2 “the right to refuse to contribute without fear of any reprisal.”³⁰ The complaint provides no other
3 documents or information that would indicate these policies are not followed at SRP.
4 Accordingly, PIC appears to have met the statutory and regulatory requirements for SSF
5 solicitations in its materials.

6 As to whether the conversation between Jones and Jack amounted to a solicitation, we note
7 that the Complaint does not allege that such an explicit solicitation occurred. Instead, Jack appears
8 to assert that Jones’s suggestion that she join PIC as a way to improve her prospects for future
9 promotions was a *de facto* solicitation (though there is a dispute as to whether it was weeks or
10 several months later). Respondents admit that Jones encouraged Complainant to consider joining
11 SRP PIC as one example among many of ways Jones might interact with company leaders that she
12 might not encounter during her day-to-day work. However, Jones directly denies that he solicited
13 a contribution from Jack.³¹ Under these circumstances, given that the suggestion to consider
14 joining PIC was placed on par with the suggestion that Jack consider joining a number of other
15 non-political organizations, Jones’s comments do not appear to amount to a solicitation. However,
16 even assuming Jones had solicited Jack, an employer’s SSF is not prohibited from soliciting
17 contributions from employees so long as it is done without coercion and informs the employee of
18 the political purpose of the contribution and that it is voluntary.³²

³⁰ *Id.*

³¹ Jones Aff. ¶ 8.

³² 11 C.F.R. § 114.5(a)(2)-(4).

1 **2. The Available Information Does Not Show There was Corporate Facilitation.**

2 The Act and Commission regulations also seek to prevent coercion in the form of corporate
3 “facilitation” of contributions to a candidate or political committee.³³ Prohibited corporate
4 facilitation activities involve “using corporate . . . resources or facilities to engage in fundraising
5 activities”³⁴ and include, for example, using means of “coercion, such as the threat of a detrimental
6 job action, the threat of any other financial reprisal, or the threat of force, to urge any individual to
7 make a contribution or engage in fundraising activities on behalf of a [federal] candidate or
8 political committee.”³⁵

9 The Complaint alleges that the suggestion to join PIC was coercive, but provides no
10 information to show a threat of detrimental job action, financial reprisal, or force, if she did not
11 make a contribution or engage in fundraising activities on behalf of a federal candidate or political
12 committee.³⁶ In fact, Jack does not allege that her lack of participation in PIC was the reason she
13 did not receive the promotion for which she had previously applied, but states that she filed the
14 Complaint to ensure that her career at SRP “is not stunted (*sic*) because I refuse to give time or
15 money to what I understand to be a purely volunteer endeavor. I also do not want the stigma
16 within SRP that joining PIC can lead to advancement in the company.”³⁷

17 Although the SRP PIC materials provided by Jack state that contributions are voluntary, the
18 Commission has recognized that the prohibition on threats of a detrimental job action or any other
19 financial reprisal is not limited to expressly stated threats against an employee, but a tacit threat is

³³ 52 U.S.C. § 30118(a).

³⁴ 11 C.F.R. § 114.2(f)(1).

³⁵ *Id.* § 114.2(f)(2)(iv).

³⁶ 11 C.F.R. § 114.2(f)(2)(iv); 11 C.F.R. § 114.5(a)(2)-(4); 52 U.S.C. § 30118(b)(3).

³⁷ Compl. at 1.

1 a threat all the same.³⁸ In MUR 5379 (CarePlus Medical Centers., Inc.), the Commission found
2 reason to believe that a senior executive's e-mail coercively solicited contributions from the
3 company's employees even though the email did not include an explicit threat of detrimental job
4 action or other financial reprisal. The Commission's finding in MUR 5379 took into account three
5 facts: (i) the recipients knew "that the person who is ultimately responsible for making decisions
6 regarding salaries, bonuses, and promotions is asking them to contribute"; (ii) the message stated
7 that the CEO had "asked for an accounting of the individuals who do and do not contribute"; and
8 (iii) the message made clear that executive level staff were "'expected' to contribute, thereby
9 signifying that this [was] a requirement and not merely a request."³⁹ Similarly, in MUR 5337
10 (First Consumers Nat'l Bank), the Commission found reason to believe that a bank's Chief
11 Executive Officer coerced his employees to make SSF contributions based on an internal
12 memorandum in which he solicited contributions, omitted anti-coercion information, singled out
13 those who had not made contributions, and terminated one employee based on her objection to the
14 solicitation and refusal to make contributions.⁴⁰

³⁸ See e.g., MUR 5666 (MZM, Inc.) (finding reason to believe the respondents coerced contributions because: (1) the allegations were "quite specific as to the degree of coercion and the amounts expected to be given by the MZM employees"; (2) the alleged coercion scheme was "substantially similar to the scheme Wade engaged in to direct straw contributions ... as admitted in his [prior criminal] plea agreement"; (3) and the respondents did not answer the allegations in the complaint.

³⁹ Factual & Legal Analysis at 4, MUR 5379 (CarePlus Med. Ctrs., Inc.) (Mar. 11, 2004).

⁴⁰ Factual & Legal Analysis at 3-4, MUR 5337 (First Consumers Nat'l Bank) (Mar. 17, 2003); Factual & Legal Analysis at 8-9, MUR 7137 (Laborers' International Local #538, *et al.*) (Dec. 12, 2017) (finding reason to believe that Precision Pipeline LLC violated 52 U.S.C. § 30118(b)(3)(C) and 11 C.F.R. § 114.5(a)(4) by soliciting contributions without informing an employee of his right to refuse to contribute without any reprisal). See also, MUR 5681 (High Point Reg'l Ass'n of Realtors) (2006) (finding reason to believe respondent coerced SSF contributions by omitting anti-coercion information and singling out those who declined to contribute); MUR 5437 (SEIU COPE) (2004) (finding reason to believe respondents coerced SSF contributions where employee complained employees were told contributions were needed to help them keep their jobs); MUR 5268 (Kentucky State District Council of Carpenters) (2004) (union employees coerced into making contributions to and worked for federal campaigns under threat of job loss).

1 There is no similar evidence of a tacit threat of detrimental action for Jack or other SRP
2 employees who did not participate in PIC. The available information suggests that Jack sought
3 feedback and career advice after not being selected for a position, and at most, Jones told her that
4 joining the SSF would provide networking opportunities that might help her advance. These
5 circumstances are materially distinguishable from those the Commission has found to be coercive.
6 There are no emails from SRP executives or decision-makers asking employees for contributions,
7 no list differentiating between employees who do and do not contribute to PIC, and no information
8 indicating that staff are expected to participate or face reprisal, as was the case in MURs 5379 and
9 5337.⁴¹

10 In addition, Jack does not allege, and there is no information to indicate, that SRP
11 employees are coerced into participating in or contributing to PIC, contrary to PIC's policy
12 statement that employees' participation and contributions are voluntary. Further, there is no
13 information to demonstrate that Complainant's promotion application was disadvantaged by her
14 not being a member or contributor to PIC. And, there is no suggestion that joining PIC in
15 particular would give Jack an advantage above any of the other networking opportunities
16 suggested by Jones.

17 Because there is insufficient information to support a finding of reason to believe that Salt
18 River Valley Water Users' Association, Salt River Valley Water Users' Association Political
19 Involvement Committee and Heidi Rowe Schaefer in her official capacity as treasurer, and Mike
20 Jones violated 52 U.S.C. § 30118(b)(3) and 11 C.F.R. §§ 114.2(f), 114.5(a), we recommend the
21 Commission dismiss the allegations in the Complaint.

⁴¹ See also, MUR 6215 (Tate Snyder Kimsey Arch.) (2010) (finding an employee was terminated because he disagreed with participating in company's conduit scheme); MUR 5337 (2003) (First Consumers Nat'l Bank) (finding an employee was terminated because she objected to CEO's solicitation and refused to make a contribution).

1 **IV. RECOMMENDATIONS**

- 2 1. Dismiss allegation that Salt River Valley Water Users' Association, Salt River Valley
- 3 Water Users' Association Political Involvement Committee and Heidi Rowe Schaefer
- 4 in her official capacity as treasurer, and Mike Jones violated 52 U.S.C. § 30118(b)(3)
- 5 and 11 C.F.R. §§ 114.2(f), 114.5(a);
- 6
- 7 2. Approve the Factual and Legal Analysis;
- 8
- 9 3. Approve the appropriate letters; and
- 10
- 11 4. Close the file.
- 12

13 Lisa J. Stevenson
14 Acting General Counsel

15 Charles Kitcher
16 Associate General Counsel for Enforcement

17
18
19
20 08.09.21

21 Date

22 *Stephen Gura*
23 _____
24 Stephen Gura
25 Deputy Associate General Counsel
26 for Enforcement

27 *Camilla Jackson Jones*
28 _____
29 Camilla Jackson Jones
30 Attorney

31 Attachment:
Factual and Legal Analysis

Cooksey Office Edits

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: Salt River Valley Water Users' Association MUR 7864
Salt River Valley Water Users' Association Political
Involvement Committee and Heidi Rowe Schaefer
in her official capacity as treasurer
Mike Jones

I. INTRODUCTION

The Complaint alleges that Salt River Valley Water Users' Association ("Salt River Valley WUA"), which operates the Salt River Project ("SRP"), a water and power utility, violated the Federal Election Campaign Act, as amended (the "Act"), when a member of its management team suggested that the Complainant become involved with its separate segregated fund ("SSF") to advance her career at SRP, in violation of 52 U.S.C. § 30118(b)(3) and 11 C.F.R. §§ 114.2(f) and 114.5(a).

Based on the available information, the Commission finds no reason to believe that Salt River Valley WUA, Salt River Valley Water Users' Association Political Involvement Committee and Heidi Rowe Schaefer in her official capacity as treasurer, and Mike Jones violated 52 U.S.C. § 30118(b)(3) and 11 C.F.R. §§ 114.2(f) and 114.5(a).

II. FACTUAL BACKGROUND

Salt River Valley WUA and the Salt River Project Agricultural Improvement and Power District jointly operate SRP, which provides water and power to more than 2 million customers in central Arizona. Salt River Valley Water Users' Association Political Involvement Committee and Heidi Rowe Schaefer in her official capacity as treasurer ("SRP PIC" or "PIC") is Salt River Valley WUA's separate segregated fund; it has been registered with the Commission since 1976.¹

¹ Salt River Valley Water Users' Association, Statement of Organization (Dec. 10, 2019), <https://docquery.fec.gov/pdf/373/201912109166172373/201912109166172373.pdf>.

1 Complainant, Nevada Jack, has been employed at SRP since October 2002, and her current
2 position is Manager Operations Planning.² At the time of the Complaint, she reported to Mike
3 Jones, Senior Director Corporate Strategy, Planning & Innovation.³ In the Complaint, Jack states
4 that on February 1, 2019, she applied for the position of Manager of Transmission System
5 Planning, a lateral position, to gain experience that she hoped would further advance her career at
6 SRP.⁴ Jack states that after being notified she had not received the position, she requested a
7 meeting with Jones to discuss feedback on her application.⁵ Jack asserts that at their meeting on
8 February 20, 2019, Jones suggested Jack become engaged with the SRP PIC to advance her career
9 at SRP.⁶ Jack specifically alleges, “[Jones] stated that becoming involved in the PIC events is a
10 way to show that I am approachable and can talk with one of SRP’s Associate General Managers,
11 Kelly Barr, about her kids. He stated that ‘young people are joining PIC, and they’re getting a leg
12 up over me.’”⁷ Jack contends that involvement in SRP PIC includes donating time and financial
13 contributions in amounts that are suggested for employees, and the recommendation that she join
14 PIC to advance her career violated 11 C.F.R. § 114.2.

15 The Complaint includes a web link to SRP PIC’s June 2020 Monthly Report and other
16 disclosures filed with the Commission, which purportedly list SRP employees who have
17 contributed to PIC, and attaches printed pages of SRP PIC materials that are posted on its internal
18 employee website.⁸ In its materials, SRP PIC describes itself as a political action committee that

² Resp. at 2 (Feb. 26, 2021).

³ *Id.*

⁴ Compl. at 1 (Dec. 16, 2020).

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⁸ Compl., Attach.

1 was organized in 1976, and which “fosters employee engagement in public policy issues and gives
2 SRP employees a voice in electing federal, state and local officials.”⁹ SRP PIC is registered both
3 with the Commission and the Arizona Secretary of State, and it is administered as a separate
4 segregated fund.¹⁰

5 The Response denies the allegation that Jack was solicited to make contributions or that
6 joining PIC was a requirement for promotion at SRP.¹¹ The Response includes a sworn affidavit
7 from Jones, the hiring director who allegedly made the comments that form the factual basis of the
8 Complaint.¹² In his affidavit, Jones states that during the February 20, 2019 meeting, he explained
9 to Jack that she did not receive the position due to performance issues and asserts that he does not
10 recall discussing SRP PIC at that meeting.¹³ Instead, Jones attests that he recalls raising SRP PIC
11 during a subsequent meeting with Jack on December 10, 2020, during which she asked for advice
12 on becoming a “stronger candidate for promotion opportunities” at SRP.¹⁴ Jones asserts he
13 mentioned SRC PIC at the December 2020 meeting, along with industry groups and non-profit
14 boards, as examples of networking opportunities, and acknowledges that he provided Jack with
15 names of other employees who had participated in those types of organizations.¹⁵

16 With respect to SRP PIC specifically, Jones denies soliciting a contribution from Jack, and
17 avers, “I only recall stating that joining was an opportunity if Ms. Jack were interested in
18 legislative issues, that doing so was entirely voluntary, and that involvement would give Ms. Jack

⁹ *Id.*

¹⁰ Resp. at 1.

¹¹ Resp. at 3.

¹² Resp., Attach., Affidavit of Mike Jones (“Jones Aff.”).

¹³ Jones Aff. ¶ 3.

¹⁴ *Id.* ¶ 4.

¹⁵ *Id.* ¶ 6.

1 opportunities to interact with SRP leaders she would not otherwise see in her day-to-day work.”¹⁶
 2 Respondents contend that Jones did not solicit a contribution from Jack during his meetings with
 3 her, nor did he suggest that involvement in SRP PIC was necessary or required for her
 4 advancement at SRP.¹⁷

5 **III. LEGAL ANALYSIS**

6 **A. The Information Does Not Show There Was an Impermissible SSF Solicitation**

7 Under the Act and the Commission’s regulations, corporations are permitted to establish
 8 and solicit political contributions to an SSF.¹⁸ All contributions to an SSF must be voluntary and
 9 without coercion.¹⁹ An SSF is prohibited from making contributions or expenditures “by utilizing
 10 money or anything of value secured by physical force, job discrimination, or financial reprisals, or
 11 the threat of force, job discrimination, or financial reprisals; or by dues, fees, or other moneys
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 15 contributions are voluntary and not coerced.²¹ In order to prevent coerced contributions to a
 16 corporation’s SSF, the Act and Commission regulations require employers who solicit their
 17 employees to inform the employee at the time of each solicitation of (i) “the political purposes of
 18 the fund at the time of such solicitation”; (ii) “his or her right to refuse to so contribute without any

¹⁶ *Id.* ¶¶ 7, 8.

¹⁷ Resp. at 3.

¹⁸ *Id.* § 30118(b)(2)(C); 11 C.F.R. § 114.1(a)(2)(iii).

¹⁹ *Id.* § 30118(b)(3); 11 C.F.R. § 114.5(a); *see also* Advisory Op. 2003-14 at 3 (Home Depot).

²⁰ *Id.* § 30118(b)(3)(A); 11 C.F.R. 114.5(a)(1).

²¹ 52 U.S.C. § 30118(b)(2)(C).

1 reprisal”; (iii) “[t]hat the [contribution amount] guidelines are merely suggestions”; (iv) “[t]hat the
 2 individual is free to contribute more or less”; and (v) that “the corporation . . . will not favor or
 3 disadvantage anyone by reason of the amount of their contribution or their decision not to
 4 contribute.”²² SSFs are further prohibited from “mak[ing] a contribution or expenditure by
 5 utilizing money or anything of value secured by physical force, job discrimination, financial
 6 reprisals, or the threat of force, job discrimination, or financial reprisal.”²³ Additionally, if a
 7 solicitation suggests a contribution amount, the solicitation must state that the amount is merely a
 8 suggestion, that the employee can contribute more or less than the suggested amount, and that the
 9 corporation will not favor or disfavor any employee for their contribution amount.²⁴ “[A]
 10 solicitation that clearly indicates that contributions are voluntary satisfies the Act and these
 11 regulations.”²⁵

12 The Complaint includes the materials provided by SRP PIC to employees, which meet the
 13 requirements set forth in the Act and regulations to ensure that SSF solicitations are voluntary.
 14 Specifically, the materials explain the purpose of PIC and that “contributions will be used solely to
 15 support the election campaigns of candidates running for federal, state, county and local offices
 16 and NOT used for administrative purposes.”²⁶ The materials further state, “requested
 17 contributions are merely a suggestion,” and “those contributing are free to contribute more or less
 18 than the requested amount.”²⁷ The materials advise, “SRP will not favor or disadvantage anyone

²² 11 C.F.R. § 114.5(a)(2)-(4); 52 U.S.C. § 30118(b)(3)(B)-(C). .

²³ 52 U.S.C. § 30118(b)(3)(A)-(C); 11 C.F.R. § 114.5(a)(3)-(5).

²⁴ 11 C.F.R. § 114.5(a)(2), (5). *See e.g.*, MUR 6520 (Berkshire Cty. Bd. of Realtors) (2014).

²⁵ *See* MUR 5666 (MZM Inc.) (2007).

²⁶ Compl., Attach.

²⁷ *Id.*

1 by reason of his/her contribution amount or decision not to contribute,” and that the employee has
2 “the right to refuse to contribute without fear of any reprisal.”²⁸ The Complaint provides no other
3 documents or information that would indicate these policies are not followed at SRP.
4 Accordingly, PIC appears to have met the statutory and regulatory requirements for SSF
5 solicitations in its materials.

6 As to whether the conversation between Jones and Jack amounted to a solicitation, the
7 Complaint does not allege that an explicit solicitation occurred. Respondents admit that Jones
8 encouraged Jack to consider joining SRP PIC as one example among many ways Jack might
9 interact with company leaders that she might not encounter during her day-to-day work. However,
10 Jones directly denies that he solicited a contribution from Jack.²⁹ Under these circumstances,
11 given that the suggestion to consider joining PIC was placed on par with the suggestion that Jack
12 consider joining a number of other non-political organizations, Jones’s comments do not amount to
13 a solicitation.

14 **2. The Available Information Does Not Show Corporate Facilitation.**

15 The Act and Commission regulations also seek to prevent coercion in the form of corporate
16 “facilitation” of contributions to a candidate or political committee.³⁰ Prohibited corporate
17 facilitation activities involve “using corporate . . . resources or facilities to engage in fundraising
18 activities”³¹ and include, for example, using means of “coercion, such as the threat of a detrimental
19 job action, the threat of any other financial reprisal, or the threat of force, to urge any individual to

28 *Id.*

29 Jones Aff. ¶ 8.

30 52 U.S.C. § 30118(a).

31 11 C.F.R. § 114.2(f)(1).

1 make a contribution or engage in fundraising activities on behalf of a [federal] candidate or
2 political committee.”³²

3 The Complaint alleges that the suggestion to join PIC was coercive, but provides no
4 information to show a threat of detrimental job action, financial reprisal, or force, if Jack did not
5 make a contribution or engage in fundraising activities on behalf of a federal candidate or political
6 committee.³³ Jack does not allege that her lack of participation in PIC was the reason she did not
7 receive the promotion for which she had previously applied, but states that she filed the Complaint
8 to ensure that her career at SRP “is not stunted (*sic*) because I refuse to give time or money to what
9 I understand to be a purely volunteer endeavor. I also do not want the stigma within SRP that
10 joining PIC can lead to advancement in the company.”³⁴

11 There is no evidence of a tacit threat of detrimental action for Jack or other SRP employees
12 who did not participate in PIC. The available information suggests that Jack sought feedback and
13 career advice after not being selected for a position, and at most, Jones told her that joining the
14 SSF would provide networking opportunities that might help her advance. These circumstances
15 are materially distinguishable from those the Commission has found to be coercive.³⁵

16 In addition, Jack does not allege, and there is no information to indicate, that SRP
17 employees are coerced into participating in or contributing to PIC, contrary to PIC’s policy
18 statement that employees’ participation and contributions are voluntary. Further, there is no
19 information to demonstrate that Jack’s promotion application was disadvantaged by her not being a

³² 11 C.F.R. § 114.2(f)(2)(iv).

³³ *Id.* at § 114.2(f)(2)(iv); 11 C.F.R. § 114.5(a)(2)-(4); 52 U.S.C. § 30118(b)(3).

³⁴ Compl. at 1.

³⁵ *See, e.g.*, MUR 5666 (MZM, Inc.); MUR 5379 (CarePlus Medical Centers., Inc.); MUR 5337 (First Consumers Nat’l Bank).

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1 member of or contributor to PIC. And there is no suggestion that joining PIC in particular would
2 give Jack an advantage above any of the other networking opportunities suggested by Jones.

3 In sum, based on the available information, the Commission finds no reason to believe that
4 Salt River Valley Water Users' Association, Salt River Valley Water Users' Association Political
5 Involvement Committee and Heidi Rowe Schaefer in her official capacity as treasurer, and Mike
6 Jones violated 52 U.S.C. § 30118(b)(3) and 11 C.F.R. §§ 114.2(f) and 114.5(a).

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Salt River Valley Water Users' Association MUR 7864
Salt River Valley Water Users' Association Political
Involvement Committee and Heidi Rowe Schaefer
in her official capacity as treasurer
Mike Jones

I. INTRODUCTION

The Complaint alleges that Salt River Valley Water Users' Association ("Salt River Valley WUA"), which operates the Salt River Project ("SRP"), a water and power utility, violated the Federal Election Campaign Act, as amended (the "Act"), when a member of its management team suggested that the Complainant become involved with its separate segregated fund ("SSF") to advance her career at SRP, in violation of 52 U.S.C. § 30118(b)(3) and 11 C.F.R. §§ 114.2(f) and 114.5(a).

Based on the available information, the Commission dismisses the allegations that Salt River Valley WUA, Salt River Valley Water Users' Association Political Involvement Committee and Heidi Rowe Schaefer in her official capacity as treasurer, and Mike Jones violated 52 U.S.C. § 30118(b)(3) and 11 C.F.R. §§ 114.2(f) and 114.5(a).

II. FACTUAL BACKGROUND

Salt River Valley WUA and the Salt River Project Agricultural Improvement and Power District jointly operate SRP, which provides water and power to more than 2 million customers in central Arizona. Salt River Valley Water Users' Association Political Involvement Committee and Heidi Rowe Schaefer in her official capacity as treasurer ("SRP PIC" or "PIC") is Salt River Valley WUA's separate segregated fund; it has been registered with the Commission since 1976.¹

¹ Salt River Valley Water Users' Association, Statement of Organization (Dec. 10, 2019), <https://docquery.fec.gov/pdf/373/201912109166172373/201912109166172373.pdf>.

1 Complainant, Nevada Jack, has been employed at SRP since October 2002, and her current
2 position is Manager Operations Planning.² At the time of the Complaint, she reported to Mike
3 Jones, Senior Director Corporate Strategy, Planning & Innovation.³ In the Complaint, Jack states
4 that on February 1, 2019, she applied for the position of Manager of Transmission System
5 Planning, a lateral position, to gain experience that she hoped would further advance her career at
6 SRP.⁴ Jack states that after being notified she had not received the position, she requested a
7 meeting with Jones to discuss feedback on her application.⁵ Jack asserts that at their meeting on
8 February 20, 2019, Jones suggested Jack become engaged with the SRP PIC to advance her career
9 at SRP.⁶ Jack specifically alleges, “[Jones] stated that becoming involved in the PIC events is a
10 way to show that I am approachable and can talk with one of SRP’s Associate General Managers,
11 Kelly Barr, about her kids. He stated that ‘young people are joining PIC, and they’re getting a leg
12 up over me.’”⁷ Jack contends that involvement in SRP PIC includes donating time and financial
13 contributions in amounts that are suggested for employees, and the recommendation that she join
14 PIC to advance her career violated 11 C.F.R. § 114.2.

15 The Complaint includes a web link to SRP PIC’s June 2020 Monthly Report and other
16 disclosures filed with the Commission, which purportedly list SRP employees who have
17 contributed to PIC, and attaches printed pages of SRP PIC materials that are posted on its internal
18 employee website.⁸ In its materials, SRP PIC describes itself as a political action committee that

2 Resp. at 2 (Feb. 26, 2021).

3 *Id.*

4 Compl. at 1 (Dec. 16, 2020).

5 *Id.*

6 *Id.*

7 *Id.*

8 Compl., Attach.

1 was organized in 1976, and which “fosters employee engagement in public policy issues and gives
2 SRP employees a voice in electing federal, state and local officials.”⁹ SRP PIC is registered both
3 with the Commission and the Arizona Secretary of State, and it is administered as a separate
4 segregated fund.¹⁰

5 The Response denies the allegation that Jack was solicited to make contributions or that
6 joining PIC was a requirement for promotion at SRP.¹¹ The Response includes a statement from
7 Jones, the hiring director who allegedly made the comments that form the factual basis of the
8 Complaint.¹² In his statement, Jones states that during the February 20, 2019 meeting, he
9 explained to Jack that she did not receive the position due to performance issues and asserts that he
10 does not recall discussing SRP PIC at that meeting.¹³ Instead, Jones attests that he recalls raising
11 SRP PIC during a subsequent meeting with Jack on December 10, 2020, during which she asked
12 for advice on becoming a “stronger candidate for promotion opportunities” at SRP.¹⁴ Jones asserts
13 he mentioned SRC PIC at the December 2020 meeting, along with industry groups and non-profit
14 boards, as examples of networking opportunities, and acknowledges that he provided Jack with
15 names of other employees who had participated in those types of organizations.¹⁵

16 With respect to SRP PIC specifically, Jones denies soliciting a contribution from Jack, and
17 avers, “I only recall stating that joining was an opportunity if Ms. Jack were interested in
18 legislative issues, that doing so was entirely voluntary, and that involvement would give Ms. Jack

⁹ *Id.*

¹⁰ Resp. at 1.

¹¹ Resp. at 3.

¹² Resp., Attach., Statement of Mike Jones (“Jones Statement.”).

¹³ Jones Statement ¶ 3.

¹⁴ *Id.* ¶ 4.

¹⁵ *Id.* ¶ 6.

1 opportunities to interact with SRP leaders she would not otherwise see in her day-to-day work.”¹⁶
 2 Respondents contend that Jones did not solicit a contribution from Jack during his meetings with
 3 her, nor did he suggest that involvement in SRP PIC was necessary or required for her
 4 advancement at SRP.¹⁷

5 III. LEGAL ANALYSIS

6 A. The Information Does Not Show There Was an Impermissible SSF Solicitation

7 Under the Act and the Commission’s regulations, corporations are permitted to establish
 8 and solicit political contributions to an SSF.¹⁸ All contributions to an SSF must be voluntary and
 9 without coercion.¹⁹ An SSF is prohibited from making contributions or expenditures “by utilizing
 10 money or anything of value secured by physical force, job discrimination, or financial reprisals, or
 11 the threat of force, job discrimination, or financial reprisals; or by dues, fees, or other moneys
 12 required as a condition of membership in a labor organization or as a condition of
 13 employment. . . .”²⁰

14 Corporations may solicit employees for contributions to their SSFs, so long as these
 15 contributions are voluntary and not coerced.²¹ Commission regulations define “to solicit” as:

16 [T]o ask, request, or recommend, explicitly or implicitly, that another person make a
 17 contribution, donation, transfer of funds, or otherwise provide anything of value. A
 18 solicitation is an oral or written communication that, construed as reasonably understood
 19 in the context in which it is made, contains a clear message asking, requesting, or
 20 recommending that another person make a contribution, donation, transfer of funds, or
 21 otherwise provide anything of value. A solicitation may be made directly or indirectly.
 22 The context includes the conduct of persons involved in the communication. A

16 *Id.* ¶¶ 7, 8.

17 *Resp.* at 3.

18 52 § 30118(b)(2)(C); 11 C.F.R. § 114.1(a)(2)(iii).

19 *Id.* § 30118(b)(3); 11 C.F.R. § 114.5(a); *see also* Advisory Op. 2003-14 at 3 (Home Depot).

20 *Id.* § 30118(b)(3)(A); 11 C.F.R. 114.5(a)(1).

21 52 U.S.C. § 30118(b)(2)(C).

1 solicitation does not include mere statements of political support or mere guidance as to
2 the applicability of a particular law or regulation.²²

3
4 Commission regulations further provide that communications which include a method of making a
5 contribution, instructions on how or where to send contributions, or a web address where one may
6 contribute all constitute solicitations.²³

7 In order to prevent coerced contributions to a corporation's SSF, the Act and Commission
8 regulations require employers who solicit their employees to inform the employee at the time of
9 each solicitation of (i) "the political purposes of the fund at the time of such solicitation"; (ii) "his
10 or her right to refuse to so contribute without any reprisal"; (iii) "[t]hat the [contribution amount]
11 guidelines are merely suggestions"; (iv) "[t]hat the individual is free to contribute more or less";
12 and (v) that "the corporation . . . will not favor or disadvantage anyone by reason of the amount of
13 their contribution or their decision not to contribute."²⁴ SSFs are further prohibited from
14 "mak[ing] a contribution or expenditure by utilizing money or anything of value secured by
15 physical force, job discrimination, financial reprisals, or the threat of force, job discrimination, or
16 financial reprisal."²⁵ Additionally, if a solicitation suggests a contribution amount, the solicitation
17 must state that the amount is merely a suggestion, that the employee can contribute more or less
18 than the suggested amount, and that the corporation will not favor or disfavor any employee for

²² 11 C.F.R. § 300.2(m). While the definitions in Part 300 of the Commission regulations apply to the Bipartisan Campaign Finance Reform Act of 2002 ("BCRA"), the Commission has used 11 C.F.R. § 300.2(m)'s definition of "solicit" and "solicitation" to inform its analysis of non-BCRA portions of the Act. See Factual & Legal Analysis at n.44, MUR 7073 (Meluskey for U.S. Senate, Inc. *et al.*); Factual & Legal Analysis at 5, MUR 6528 (Michael Grimm for Congress); see also Factual & Legal Analysis at n.15, MUR 6827 (Kent Roth for Kansas) (citing *Sorenson v. Secretary of Treasury*, 475 U.S. 851, 860 (1986), for the proposition that "[t]he normal rule of statutory construction assumes that identical words used in different parts of the same act are intended to have the same meaning" (internal quotation marks omitted)).

²³ 11 C.F.R. § 300.2(m)(1).

²⁴ *Id.* § 114.5(a)(2)-(4); 52 U.S.C. § 30118(b)(3)(B)-(C). .

²⁵ 52 U.S.C. § 30118(b)(3)(A)-(C); 11 C.F.R. § 114.5(a)(3)-(5).

1 their contribution amount.²⁶ “[A] solicitation that clearly indicates that contributions are voluntary
2 satisfies the Act and these regulations.”²⁷

3 The Complaint includes the materials provided by SRP PIC to employees, which meet the
4 requirements set forth in the Act and regulations to ensure that SSF solicitations are voluntary.
5 Specifically, the materials explain the purpose of PIC and that “contributions will be used solely to
6 support the election campaigns of candidates running for federal, state, county and local offices
7 and NOT used for administrative purposes.”²⁸ The materials further state, “requested
8 contributions are merely a suggestion,” and “those contributing are free to contribute more or less
9 than the requested amount.”²⁹ The materials advise, “SRP will not favor or disadvantage anyone
10 by reason of his/her contribution amount or decision not to contribute,” and that the employee has
11 “the right to refuse to contribute without fear of any reprisal.”³⁰ The Complaint provides no other
12 documents or information that would indicate these policies are not followed at SRP.
13 Accordingly, PIC appears to have met the statutory and regulatory requirements for SSF
14 solicitations in its materials.

15 As to whether the conversation between Jones and Jack amounted to a solicitation, the
16 Complaint does not allege that an explicit solicitation occurred. Respondents admit that Jones
17 encouraged Jack to consider joining SRP PIC. However, Jones directly denies that he solicited a
18 contribution from Jack.³¹ It is not clear whether Jones’s encouragement of Jack to join SRP PIC,

²⁶ 11 C.F.R. § 114.5(a)(2), (5). *See e.g.*, MUR 6520 (Berkshire Cty. Bd. of Realtors) (2014).

²⁷ *See* MUR 5666 (MZM Inc.) (2007).

²⁸ Compl., Attach.

²⁹ *Id.*

³⁰ *Id.*

³¹ Jones Statement ¶ 8.

1 which occurred during a single, seemingly ambiguous discussion, amounted to an implicit
2 solicitation. Under these circumstances, the Commission dismisses the allegations.

3 **2. The Available Information Does Not Show Corporate Facilitation.**

4 The Act and Commission regulations also seek to prevent coercion in the form of corporate
5 “facilitation” of contributions to a candidate or political committee.³² Prohibited corporate
6 facilitation activities involve “using corporate . . . resources or facilities to engage in fundraising
7 activities”³³ and include, for example, using means of “coercion, such as the threat of a detrimental
8 job action, the threat of any other financial reprisal, or the threat of force, to urge any individual to
9 make a contribution or engage in fundraising activities on behalf of a [federal] candidate or
10 political committee.”³⁴

11 The Complaint alleges that the suggestion to join PIC was coercive, but provides no
12 information to show a threat of detrimental job action, financial reprisal, or force, if Jack did not
13 make a contribution or engage in fundraising activities on behalf of a federal candidate or political
14 committee.³⁵ Jack does not allege that her lack of participation in PIC was the reason she did not
15 receive the promotion for which she had previously applied, but states that she filed the Complaint
16 to ensure that her career at SRP “is not stunted (*sic*) because I refuse to give time or money to what
17 I understand to be a purely volunteer endeavor. I also do not want the stigma within SRP that
18 joining PIC can lead to advancement in the company.”³⁶

³² 52 U.S.C. § 30118(a).

³³ 11 C.F.R. § 114.2(f)(1).

³⁴ 11 C.F.R. § 114.2(f)(2)(iv).

³⁵ *Id.* at § 114.2(f)(2)(iv); 11 C.F.R. § 114.5(a)(2)-(4); 52 U.S.C. § 30118(b)(3).

³⁶ Compl. at 1.

1 There is no evidence of a tacit threat of detrimental action for Jack or other SRP employees
2 who did not participate in PIC. The available information suggests that Jack sought feedback and
3 career advice after not being selected for a position, and at most, Jones told her that joining the
4 SSF would provide networking opportunities that might help her advance. These circumstances
5 are materially distinguishable from those the Commission has found to be coercive.³⁷

6 In addition, Jack does not allege, and there is no information to indicate, that SRP
7 employees are coerced into participating in or contributing to PIC, contrary to PIC's policy
8 statement that employees' participation and contributions are voluntary. Further, there is no
9 information to demonstrate that Jack's promotion application was disadvantaged by her not being a
10 member of or contributor to PIC. And there is no suggestion that joining PIC in particular would
11 give Jack an advantage above any of the other networking opportunities suggested by Jones.

12 In sum, based on the available information, the Commission dismisses the allegations that
13 Salt River Valley Water Users' Association, Salt River Valley Water Users' Association Political
14 Involvement Committee and Heidi Rowe Schaefer in her official capacity as treasurer, and Mike
15 Jones violated 52 U.S.C. § 30118(b)(3) and 11 C.F.R. §§ 114.2(f) and 114.5(a).

³⁷ See, e.g., MUR 5666 (MZM, Inc.); MUR 5379 (CarePlus Medical Centers., Inc.); MUR 5337 (First Consumers Nat'l Bank).