

THE DOYLE LAW FIRM

A PROFESSIONAL LAW CORPORATION

Bay Area
649 Main Street, Suite 102
Martinez, CA 94553
Tel. (925) 231-8140
Fax. (925) 237-9060

Gold Country
11310 Prospect Avenue, Suite 10
Jackson, CA 95642
Tel. (209) 290-0585
Fax: (925) 287-9060

Aaron E. Doyle
Attorney and Counselor
email: aaron@thedoylelawfirm.law

June 23, 2023

VIA ELECTRONIC MAIL

Jeanne Graham, Director
email: jgraham.eprfpd@gmail.com
Eastern Plumas Rural Fire Protection District
141 Delleker Road
Portola, CA 96122

Angelina Sutcliffe, Director
email: angelinasutcliffe@yahoo.com
Eastern Plumas Rural Fire Protection District
141 Delleker Road
Portola, CA 96122

Teresa Whitfield, Director
email: toughnup2@aol.com
Eastern Plumas Rural Fire Protection District
141 Delleker Road
Portola, CA 96122

Re: Demand for the Eastern Plumas Rural Fire Protection District's Compliance with the Ralph M. Brown Act [Govt. Code §§ 54960.1(b) & 54960.2] and Demand to Cure and Correct Action Taken at its June 21, 2023, Emergency Meeting

Dear Directors Graham, Sutcliffe, and Whitfield:

The Eastern Plumas Rural Fire Protection District ("District") and its Board of Director's ("Board") continuous violations of the Ralph M. Brown Act (the "Act"¹) undermines the democratic process, interferes with the public's right to attend its meetings, thwarts the public's right to participation in all phases of the Board's decision making, and has destroyed the public's trust in the Board's governance of the District. That is why I am writing again to demand that the Board cease and desist from violating the Act and that it cure and correct its actions taken in violation of the Act at its June 21, 2023, emergency meeting.²

¹ The Act is codified at Government Code sections 54950 through 54963.

² I previously wrote the Board on November 20, 2020, December 13, 2020, and January 2, 2022, demanding that the District and its Board cease and desist its violations of the Act.

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I. The Board's Violations Of The Act At Its June 21, 2023, Emergency Meeting

On June 21, 2023, at approximately 6:31 p.m., the District issued a notice of emergency meeting of its Board for 8:00 p.m. The emergency meeting agenda had one substantive item: *4.1. Current Status of Fire Department: The District is experiencing a staffing/volunteer crisis. The District's Board Directors to engage in conversation with Beckwourth Fire District's Board of Directors.*³ I have attached a copy of the Board's June 21, 2023, emergency meeting agenda for your reference.

Although the Board may take action at an emergency meeting on items of business not appearing on the posted agenda, prior to doing so there must be (1) a determination by a majority vote of the legislative body that an emergency situation exists, or (2) a determination by a two-thirds vote of the members of the legislative body present at the meeting, or, if less than two-thirds of the members are present, a unanimous vote of those members present, that there is a need to take immediate action and that the need for action came to the attention of the local agency subsequent to the agenda being posted, or (3) the item was posted at a prior meeting of the legislative body occurring not more than five calendar days prior to the date action is taken on the item, and at the prior meeting the item was continued to the meeting at which action is being taken. (Govt. Code § 54954.2, subs. (1) through (3).)

At the Board's June 21 emergency meeting, there were three motions put forth by its Directors after over an hour of substantive discussion on a broad variety of topics that were not on its agenda. The first motion was to suspend the District's operations for a period of six months. The second motion was for a special meeting to be held on July 10, 2023. The third motion was to create an ad hoc committee for negotiating contracts with different districts. All motions passed unanimously. None of these three motions, or even an implicit reference to them, were on the Board's emergency meeting agenda.

More importantly, none of the statutory conditions for discussing or voting on items at an emergency meeting were satisfied before the Board voted on – and unanimously passed – its three motions. When enacting Section 54956.5 to authorize emergency meetings, the Legislature stated that local agencies “would be required to meet to determine whether or not such an emergency situation actually exist[s].”⁴ Most significantly, at the inception of its emergency meeting a majority of the Board never voted that an emergency situation existed. There also was never a two-thirds vote of the members that there was a need to take immediate action and that the need for action came to the attention of the Board subsequent to agenda item 4.1 being posted. The Board's prior meeting agendas clearly indicate that the third condition proscribed in Section 54954.2 subdivision (3) was not applicable.

³ Notably, Beckwourth Fire District called into the Board's emergency meeting and was present on Zoom. However, the Board never engaged in a conversation with any representative of the Beckwourth Fire District as it indicated in its emergency meeting agenda it was going to do.

⁴ Senate Committee on Local Government analysis of Senate Bill No. 110 (1979–1980 Reg. Sess.) as amended March 7, 1979, pages 2 to 3; Senate Republican Caucus Analysis of Senate Bill No. 110 (1979–1980 Reg. Sess.) as amended March 7, 1979, page. 2.

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Notwithstanding the Board's failure to meet the conditions prescribed by Section 54954.2 subdivisions (1) through (3) before taking any action at its emergency meeting, the Board was also required to publicly identify each item not on its agenda prior to discussing or taking action on any item not on its emergency meeting agenda. (Govt. Code § 54954.2, subd. (b).)

In this regard, the Board engaged in substantial discussion on many topics at its emergency meeting that were not included in agenda item 4.1. These discussions ranged from contracting with other fire departments for services, a volunteer firefighter's operation of a fire apparatus without authorization and without a driver license, driver's training, ad hoc negotiations with other fire districts, creating timelines of projects and engaging "bean counters" at the hospital to help do regression planning, discussing future agenda items, whether future agenda items involving the District's finances should be discussed in closed or open sessions at a future special meeting, discussing a Board member's dislike how other agencies conducted their bidding processes, putting out RFPs to other departments, the location of fire department equipment and vehicles, mutual aid distress calls, suspension of its operations for six months, and writing letters to other fire district's regarding the District's suspension of its operations.

Indeed, none of these items were on the emergency meeting agenda, and the Board never publicly identified any of these items as agenda items prior to its discussion on these subjects as required by Section 54954. In that regard, many of these discussions nor its decision to cancel its July 3 meeting were remotely related to any prompt action required due to an "emergency situation." (See Govt. Code § 54956.5, subd. (b)(1).)

II. The Board's Prior Commitments To Cease & Desist And Its Brown Act Training

On behalf of my client, John Fatheree, I wrote to Director Graham on November 20, 2020, December 13, 2020, and January 2, 2022, demanding that the District and its Board cease and desist its violations of the Act. In my prior letters, I demanded that the District and its Board comply with all requirements of the Act at all future meetings.

Notwithstanding the Board's prior qualified unconditional commitments to cease and desist its violations of the Act in response to my prior demands, and notwithstanding the Board's participation in Brown Act training provided by its attorneys at its January 18, 2021, meeting, the Board continues to repeatedly violate the Act. The Board's discussion and apparent confusion expressed at its June 21, 2023, emergency meeting about whether financial matters had to be held in open or closed session at future meetings, and the Board's failure to comply with the requirements that it properly place items on its emergency meeting agenda, and its failure to comply with requirements of Section 54954.2, underscores that the Board's prior Brown Act training was inadequate at best, or that the Board does not take its obligations seriously to comply with the Act, at worst.

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CEASE AND DESIST DEMAND

Government Code section 54960, subdivision (a), provides that any interested person may “. . . commence an action by mandamus, injunction, or declaratory relief for the purpose of stopping or preventing violations or threatened violations . . . ” or “. . . to determine the applicability of this chapter to ongoing actions or threatened future actions of the legislative body, or to determine the applicability of this chapter to past actions of the legislative body.” Section 54960.1, subdivisions (b) and (c)(1) requires that prior to any action being commenced, any interested person shall make a demand of the legislative body to cure or correct the action alleged to have been taken in violation of Sections 54953, 54954.2, 54954.5, 54954.6, 54956, or 54956.5 within 90 days from the date the action was taken.

For these reasons, I demand on behalf of Mr. Fatheree pursuant to Government Code section 54960.1, subdivision (b), that the Board immediately cease and desist from further violations of the Act. I also demand that the Board cure and correct any action that was taken during its June 21, 2023, emergency meeting. If the Board chooses to cure and correct any action taken at its June 21 emergency meeting, Mr. Fatheree requests that the Board not merely put forth motions on the items it already voted on and passed without discussion, but that it fulfill its statutory requirement to conduct its deliberations and discussions on these items at its future meeting as if they had not yet been discussed at its June 21 emergency meeting. (See Govt. Code § 54950.)

Pursuant to Government Code section 54960, subdivision (b), the Board must respond to this letter within 30 days, providing Mr. Fatheree with its unconditional commitment to cease, desist from, and not repeat its violations of the Act.

Sincerely,

THE DOYLE LAW FIRM
A Professional Law Corporation



AARON E. DOYLE
Attorney-at-Law

ec: John Fatheree



Eastern Plumas Rural Fire Protection District
141 Delleker Rd. Portola, CA 96122 Phone: 530.832.5626 Fax: 530.832.5446
eprfpd@att.net

EMERGENCY MEETING AGENDA

Eastern Plumas Rural Fire Protection District's

Board of Directors

141 Delleker Rd., Portola, CA 96122

On June 21, 2023 at 8:00 PM

The public may attend this meeting either in person or via Zoom.

To attend the Board meeting login to

<https://us02web.zoom.us/j/81038854737?pwd=a2hseW0xKytMa3g4M1JnaTJLS0Erdz09>

By phone (669) 900-9128 Meeting ID: 810 3885 4737 Passcode: 441989

Members of the public who call in and wish to speak should so indicate by virtually raising “your hand” in Zoom, or by pressing *9 if you are calling in, and waiting to be recognized. When you are recognized to speak, you will be instructed to unmute in Zoom, or by pressing *6 if you are calling in. Please do not press *9 or the raise hand icon if your hand is already up as it will lower your virtual “hand”.

Call to Order

1 Roll Call

2 Pledge of Allegiance

3 Public Comment:

At an emergency meeting, members of the public are invited to address the District on any matter on the agenda, and may do so at the time the matter is discussed. Under the provisions of the California Government Code, the District is prohibited from discussing or taking action on any item not on the agenda. Public Comment will be limited to three (3) minutes apiece.

4 Calendar

4.1 Current Status of Fire Department: The District is experiencing a staffing/volunteer crisis. The District's Board Directors to engage in conversation with Beckwourth Fire District's Board of Directors.

Recommendations: Discussion, action.

5 Next scheduled Regular Board Meeting: July 17, 2023 at 6:00 pm

6 Adjournment