

COASTSIDE COUNTY WATER DISTRICT

766 MAIN STREET

HALF MOON BAY, CA 94019

SPECIAL MEETING OF THE BOARD OF DIRECTORS

Monday, November 25, 2019 – 9:00 a.m.

AGENDA

1) ROLL CALL

2) PLEDGE OF ALLEGIANCE

3) PUBLIC COMMENT

Members of the public may address the Board of Directors on the items on the agenda for this special meeting. The Chair requests that each person addressing the Board complete and submit a speaker slip and limit their comments to three (3) minutes.

4) CLOSED SESSION

- A. Pursuant to California Government Code Section 54956.9(d)(2)
Conference with Legal Counsel - Anticipated Litigation
Significant Exposure to Litigation
One Potential Case

5) RECONVENE TO OPEN SESSION

- A. Public report of Closed Session action.
- B. Consideration of Approval of Resolution 2019-06 – Approving the Intention to Change From At-Large to Zone-Based Elections of Members of the Board of Directors Commencing in November of 2020 ([attachment](#))

6) ADJOURNMENT

Accessible Public Meetings - The Coastside County Water District (CCWD) does not discriminate against persons with disabilities. Upon request, the agenda and agenda packet materials can be provided in a format to accommodate special needs. If you require a copy of the agenda or related materials in an alternative format to accommodate a disability, or if you wish to attend this public meeting and will require special assistance or other special equipment, please call the District at (650) 726-4405 in advance and we will make every reasonable attempt to provide such an accommodation.

STAFF REPORT

To: Coastside County Water District Board of Directors

From: Mary Rogren, General Manager

Agenda: November 25, 2019

Report

Date: November 21, 2019

Subject: Consideration of Approval of Resolution 2019-06 – Approving the Intention to Change from At-Large to Zone-Based Elections of Members of the Board of Directors Commencing in November of 2020.

Recommendation:

Adopt Resolution 2019-06 – Approving the Intention to Change from At-Large to Zone-Based Elections of Members of the Board of Directors Commencing in November of 2020.

Background:

Coastside County Water District (“the District”) currently utilizes an at-large election system, which means that the voters of the entire District choose each of the (5) members of the Board of Directors.

On October 15, 2019, the District received a letter from Kevin Shenkman, an attorney with the Malibu-based firm of Shenkman & Hughes (and representing the Southwest Voter Registration Education Project), alleging that the District’s at-large election system violates the California Voting Rights Act (“CVRA”). (See Attachment A.) The letter asserts that the District’s at-large system dilutes the ability of Latinos (a “protected class”) – to elect candidates of their choice or other wise influence the outcome of the District’s elections. Mr. Shenkman is threatening to initiate litigation against the District pursuant to the CVRA if the District does not transition to a “by-zone” election system. (A by-zone election system is one in which the District is physically divided into five separate zones, each with one board member who resides in the zone and who is elected by the voters in that particular zone.)

District Staff and Legal Counsel recommend that the Board move forward with adopting Resolution 2019-06 Approving the Intention to Change from At-Large to Zone-Based Elections commencing in November 2020. (See Attachment B.)

Under CVRA’s safe harbor provisions, the District has 90 days from the adoption of the resolution to conduct (5) public meetings and to enact an ordinance transitioning to by-

STAFF REPORT**Agenda: November 25, 2019****Subject: Resolution 2019-06 Approving the Intention to Change from At-Large to Zone-Based Elections****Page Two**

zone elections. Below is a tentative timeline for enacting an ordinance for zone-based elections:

Date	Event
Tuesday, December 10, 2019 - 6:00 PM	1 st Public Hearing (Information Gathering)
Tuesday, December 17, 2019 - 6:00 PM	2 nd Public Hearing (Information Gathering)
Tuesday, January 14, 2020 - 6:00 PM	3 rd Public Hearing (Draft Maps Reviewed)
Tuesday, January 28, 2020 - 6:00 PM	4 th Public Hearing (Draft Maps Reviewed)
Tuesday, February 11, 2020 - 6:00 PM	5 th Public Hearing (Draft Maps Reviewed)
Tuesday, February 11, 2020 - 7:00 PM	Special Meeting - Ordinance Adoption



28905 Wight Road
Malibu, California 90265
(310) 457-0970
kshenkman@shenkmanhughes.com

RECEIVED

OCT 15 2019

**COASTSIDE COUNTY
WATER DISTRICT**

VIA CERTIFIED MAIL

October 11, 2019

Ken Coverdell, President, Board of Directors
David Dickson, General Manager
Coastside County Water District
766 Main Street
Half Moon Bay, CA 94019

Re: Violation of California Voting Rights Act

I write on behalf of our client, Southwest Voter Registration Education Project. The Coastside County Water District (“CCWD” or “District”) relies upon an at-large election system for electing candidates to its Board of Directors. Moreover, voting within CCWD is racially polarized, resulting in minority vote dilution, and therefore CCWD’s at-large elections violate the California Voting Rights Act of 2001 (“CVRA”).

The CVRA disfavors the use of so-called “at-large” voting – an election method that permits voters of an entire jurisdiction to elect candidates to each open seat. *See generally Sanchez v. City of Modesto* (2006) 145 Cal.App.4th 660, 667 (“*Sanchez*”). For example, if the U.S. Congress were elected through a nationwide at-large election, rather than through typical single-member districts, each voter could cast up to 435 votes and vote for any candidate in the country, not just the candidates in the voter’s district, and the 435 candidates receiving the most nationwide votes would be elected. At-large elections thus allow a bare majority of voters to control *every* seat, not just the seats in a particular district or a proportional majority of seats.

Voting rights advocates have targeted “at-large” election schemes for decades, because they often result in “vote dilution,” or the impairment of minority groups’ ability to elect their preferred candidates or influence the outcome of elections, which occurs when the electorate votes in a racially polarized manner. *See Thornburg v. Gingles*, 478 U.S. 30, 46 (1986) (“*Gingles*”). The U.S. Supreme Court “has long recognized that multi-member districts and at-large voting schemes may operate to minimize or cancel out the voting strength” of minorities. *Id.* at 47; *see also id.* at 48, fn. 14 (at-large elections may also cause elected officials to “ignore

[minority] interests without fear of political consequences”), citing *Rogers v. Lodge*, 458 U.S. 613, 623 (1982); *White v. Register*, 412 U.S. 755, 769 (1973). “[T]he majority, by virtue of its numerical superiority, will regularly defeat the choices of minority voters.” *Gingles*, at 47. When racially polarized voting occurs, dividing the political unit into single-member districts, or some other appropriate remedy, may facilitate a minority group's ability to elect its preferred representatives. *Rogers*, at 616.

Section 2 of the federal Voting Rights Act (“FVRA”), 42 U.S.C. § 1973, which Congress enacted in 1965 and amended in 1982, targets, among other things, at-large election schemes. *Gingles* at 37; see also Boyd & Markman, *The 1982 Amendments to the Voting Rights Act: A Legislative History* (1983) 40 Wash. & Lee L. Rev. 1347, 1402. Although enforcement of the FVRA was successful in many states, California was an exception. By enacting the CVRA, “[t]he Legislature intended to expand protections against vote dilution over those provided by the federal Voting Rights Act of 1965.” *Jauregui v. City of Palmdale* (2014) 226 Cal. App. 4th 781, 808. Thus, while the CVRA is similar to the FVRA in several respects, it is also different in several key respects, as the Legislature sought to remedy what it considered “restrictive interpretations given to the federal act.” Assem. Com. on Judiciary, Analysis of Sen. Bill No. 976 (2001-2002 Reg. Sess.) as amended Apr. 9, 2002, p. 2.

The California Legislature dispensed with the requirement in *Gingles* that a minority group demonstrate that it is sufficiently large and geographically compact to constitute a “majority-minority district.” *Sanchez*, at 669. Rather, the CVRA requires only that a plaintiff show the existence of racially polarized voting to establish that an at-large method of election violates the CVRA, not the desirability of any particular remedy. See Cal. Elec. Code § 14028 (“A violation of Section 14027 **is established** if it is shown that racially polarized voting occurs ...”) (emphasis added); also see Assem. Com. on Judiciary, Analysis of Sen. Bill No. 976 (2001–2002 Reg. Sess.) as amended Apr. 9, 2002, p. 3 (“Thus, this bill puts the voting rights horse (the discrimination issue) back where it sensibly belongs in front of the cart (what type of remedy is appropriate once racially polarized voting has been shown).”)

To establish a violation of the CVRA, a plaintiff must generally show that “racially polarized voting occurs in elections for members of the governing body of the political subdivision or in elections incorporating other electoral choices by the voters of the political subdivision.” Elec. Code § 14028(a). The CVRA specifies the elections that are most probative: “elections in which at least one candidate is a member of a protected class or elections involving ballot measures, or other

electoral choices that affect the rights and privileges of members of a protected class.” Elec. Code § 14028(a). The CVRA also makes clear that “[e]lections conducted prior to the filing of an action ... are more probative to establish the existence of racially polarized voting than elections conducted after the filing of the action.” *Id.*

Factors other than “racially polarized voting” that are required to make out a claim under the FVRA – under the “totality of the circumstances” test – “are probative, but not necessary factors to establish a violation of” the CVRA. Elec. Code § 14028(e). These “other factors” include “the history of discrimination, the use of electoral devices or other voting practices or procedures that may enhance the dilutive effects of at-large elections, denial of access to those processes determining which groups of candidates will receive financial or other support in a given election, the extent to which members of a protected class bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process, and the use of overt or subtle racial appeals in political campaigns.” *Id.*

CCWD’s at-large system dilutes the ability of Latinos (a “protected class”) – to elect candidates of their choice or otherwise influence the outcome of CCWD’s board elections.

The District’s election history is illustrative. In the last twenty years, no Latino candidates have sought election to the CCWD Board of Directors. Opponents of fair, district-based elections will attempt to attribute the lack of Latino candidates to a lack of interest in CCWD from the Latino community. On the contrary, the decades-long complete absence of Latino candidates reveals vote dilution. *See Westwego Citizens for Better Government v. City of Westwego*, 872 F. 2d 1201, 1208-1209, n. 9 (5th Cir. 1989).

CCWD serves residents in the City of Half Moon Bay and in the unincorporated communities of Princeton, Miramar, and El Granada, a region that is approximately 27% Latino, according to the 2010 Census, and likely a higher proportion today based on statewide and local demographics trends. Pursuant to its website, CCWD’s stated mission is to be achieved with a “culture of openness, fairness and inclusiveness.” Yet, still, the CCWD has not elected one Latino board member. The contrast between the significant Latino proportion of the electorate and the absolute absence of Latinos on the Board of Directors is telling. Environmental justice and issues of water quality are of particular concern to communities of color, specifically including Latino communities. Without any representation on the CCWD Board of Directors, Latinos are left without a voice on quality of life, water related issues.

This lack of representation is directly attributable to the District's unlawful at-large election system.

As you may be aware, in 2012, we sued the City of Palmdale for violating the CVRA. After an eight-day trial, we prevailed. After spending millions of dollars, a district-based remedy was ultimately imposed upon the Palmdale City Council, with districts that combine all incumbents into one of the four districts.

More recently, after a 7-week trial, we also prevailed against the City of Santa Monica, after that city needlessly spent millions of dollars defending its illegal election system – far in excess of what was spent in the Palmdale litigation - taxpayer dollars which could have been more appropriately spent on indispensable municipal services and critical infrastructure improvements. Just prior to the trial in that case, counsel for the City of Santa Monica – Kahn Scolnick, a partner at Gibson Dunn & Crutcher LLP proclaimed that, “the reality is that if Santa Monica fails the CVRA test, then no city could pass, because Santa Monica is doing really well in terms of full representation and success of minority candidates.” (“In Rare California Voting Rights Trial, Gibson Dunn Steps Up for Santa Monica”, Law.com, August 1, 2018). Notwithstanding Mr. Scolnick's prediction, Plaintiffs succeeded in proving that Santa Monica's election system was in violation of the CVRA and the Equal Protection Clause of the California Constitution.

Given the historical lack of Latino representation on the Board of Directors in the context of racially polarized elections, we urge CCWD to voluntarily change its at-large system of electing directors. Otherwise, on behalf of residents within the jurisdiction, we will be forced to seek judicial relief. Please advise us no later than November 26, 2019 as to whether you would like to discuss a voluntary change to your current at-large system.

We look forward to your response.

Very truly yours,



Kevin I. Shenkman

RESOLUTION NO. 2019-06

**A RESOLUTION OF THE BOARD OF DIRECTORS
OF THE COASTSIDE COUNTY WATER DISTRICT
APPROVING THE INTENTION TO CHANGE FROM AT-LARGE TO ZONE-BASED
ELECTIONS FOR ELECTION OF MEMBERS OF THE BOARD OF DIRECTORS
COMMENCING IN NOVEMBER OF 2020**

WHEREAS, the Coastside County Water District is a Water District duly organized and operating pursuant to the County Water District Law, California Water Code sections 30000 to 33901 et seq.;

WHEREAS, the California Legislature in the County Water District Law provided for the formation, governance, and operation of County Water Districts, and Coastside County Water District was established in 1947 with boundaries including the City of Half Moon Bay and the unincorporated communities of Princeton, Miramar and El Granada.

WHEREAS, under the District's enabling legislation (Cal. Water Code sections 30000 to 33901), the Board of Directors ("Board") of the Coastside County Water District ("CCWD" or "District") provides for the development and provision to its customers of high quality water and service at the lowest possible price, in accordance with the following values: reliability and sustainability of system facilities; the timeliness of District policies, procedures, actions and decisions; a 50-year outlook when replacing infrastructure; the legality of all District actions and behaviors; and, a culture of openness, fairness and inclusiveness.

WHEREAS, the Board seeks to manage the CCWD in a manner to maximize efficiency and to ensure delivery of quality services to residents of the district it serves;

WHEREAS, the Board currently is comprised of 5 directors who serve 4-year staggered terms and are elected in even-numbered years pursuant to Cal. Water Code sections 30500 and 30501, and Cal. Elections Code section 10505;

WHEREAS, the District's enabling legislation (Cal. Water sections 30292 et seq.) mandated that the directors be elected at large;

WHEREAS, the Board desires to be as responsive a body as possible to the needs of the water district it serves;

WHEREAS, voter participation in the election process for Board members is of the utmost importance, and the Board desires to encourage the fullest voter participation in elections of Board members;

WHEREAS, the Board desires that its members represent the interests and wishes of all residents within the jurisdiction of the CCWD, and that the community have confidence that the Board continues to represent the interests and wishes of the District;

WHEREAS, the three Director positions are set to be on the ballot in November of 2020, and the remaining two in November of 2022;

WHEREAS, while the Board has no information as to whether polarized voting exists in the District, the Board has elected to forego the process of obtaining demographic data to make that determination, and instead desires to change the electoral system for election to the CCWD Board to a zone-based system from the current at-large system to ensure the fairest and most-inclusive electoral system;

WHEREAS, it is the District's intention to establish 5 zones which: are in compliance with one person, one vote requirements; are intended to ensure the opportunity of the District's minority groups with respect to their effective exercise of the electoral franchise; and, include consideration of topography, geography, cohesiveness, contiguity, integrity and compactness of territory, non-disturbance to existing precincts for purposes of implementation, as well as maintaining vital communities of interest;

WHEREAS, to hasten the change to zone-based elections, the District intends to have 3 directors elected from the new zones in November 2020 and 2 directors elected from new zones in November 2022;

WHEREAS, in moving to zone elections, the District's Board desires to engage the community in the dialogue as to how the zones should be drawn and in what order they should elect new directors;

WHEREAS, the District will hold several duly noticed hearings over the next several months throughout the District to hear from the community on questions of zone boundaries and the order of zone elections; and

WHEREAS, the Board has authorized legal counsel to retain a demographer to assist the District in drawing maps for zone-elections.

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

1. The Board hereby announces its intent to change the system of election of its Board of Directors from at-large to a zone-based system;
2. The District will hold at least two public hearings over a period of no more than 30 days to discuss and seek public input on the proposed boundaries of the zones or in the zone-based system;
3. The District will utilize the services of a demographer to assist it in the drawing of zones for the new proposed zone-based system;
4. It is the District's intention to establish 5 zones which: are in compliance with one person, one vote requirements; are intended to ensure the opportunity of the District's minority groups to exercise effectively the electoral franchise; and, include consideration of topography, geography, cohesiveness, contiguity, integrity and compactness of territory, non-disturbance to existing precincts for purposes of implementation, as well as maintaining vital communities of interest;

5. The District will draw one or more draft maps and publish at least the first draft map at least 7 days before consideration at a public hearing;
6. Any revised draft map to be considered at a subsequent public hearing will be published at least 7 days before the subsequent public hearing;
7. Given that Directors serve staggered terms and 3 seats are up for election in November 2020 and the remaining 2 seats are up for election in November 2022, it is now the District's intent to have 3 directors elected from the new zones in November 2020 and 2 directors elected from new zones in November 2022;
8. In determining the final sequence of zone or district elections, the District shall give special consideration to the purposes of the California Voting Rights Act – Cal. Elections Code section 14025 et seq.;
9. After all maps are drawn, the District will hold at least 3 additional hearings over a period of not more than 45 days to discuss and seek public input on the draft map(s) and proposed sequence of elections, if necessary;
10. The District intends to determine and set the new zones for election of members of its Board and set the final sequence of elections from those zones, as soon as practicable, and estimates that the process will take approximately 90 days, which is in well in advance of the November 2020 election, when, under this resolution three Directors from new zones will be elected; and,
11. The Board directs the General Manager to take all necessary steps to facilitate the implementation of zone boundaries for election of Directors to the CCWD.

PASSED AND ADOPTED this ____ day of November 2019 by the following votes of the Board of Directors of the Coastside County Water District:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

Ken Coverdell, President
Board of Directors
Coastside County Water District

Mary Rogren, General Manager
Secretary of the District