

AGENDA ITEM III-2

SAN JUAN WATER DISTRICT

Board of Director's Special Board Meeting Minutes
May 13, 2020 – 4:00 p.m.

Conducted via Teleconference

BOARD OF DIRECTORS

| | |
|----------------|----------------|
| Ted Costa | President |
| Pam Tobin | Vice President |
| Marty Hanneman | Director |
| Ken Miller | Director |
| Dan Rich | Director |

SAN JUAN WATER DISTRICT MANAGEMENT AND STAFF

| | |
|------------------|--|
| Paul Helliker | General Manager |
| Donna Silva | Director of Finance |
| Tony Barela | Operations Manager |
| Adam Larsen | Field Services Manager |
| Andrew Pierson | Senior Engineer |
| Greg Turner | Water Treatment Plant Manager |
| Greg Zlotnick | Water Resources Manager |
| Teri Grant | Board Secretary/Administrative Assistant |
| Jennifer Buckman | Legal Counsel |

OTHER ATTENDEES

| | |
|-----------------|-------------------------------|
| Ray Riehle | Citrus Heights Water District |
| Caryl Sheehan | Citrus Heights Water District |
| Mike McRae | Fair Oaks Water District |
| Nadine Reid | Fair Oaks Water District |
| Steve Anderson | |
| Shaunna Boyd | |
| Kendall Flint | |
| Evan McLaughlin | |
| Rob Watson | |
| Kevin | |
| Nick | |

AGENDA ITEMS

- I. Roll Call
- II. Transition to Division-Based Elections
- III. Closed Session
- IV. Open Session
- V. Adjourn

President Costa called the meeting to order at 4:00 p.m. He informed the Board that he would like to add a Closed Session item to Agenda Item III-1. Ms. Jennifer Buckman, SJWD Legal Counsel, informed him that an item cannot be added to this agenda but could be added to the next Board meeting agenda.

I. ROLL CALL

The Board Secretary took a roll call of the Board. The following directors were present via teleconference: Ted Costa, Marty Hanneman, Ken Miller, Dan Rich and Pam Tobin.

President Costa opened the floor for public comment. A few members of the public addressed the Board regarding the District transitioning to division-based elections.

II. TRANSITION TO DIVISION-BASED ELECTIONS

GM Helliker referred to his staff report, which will be attached to the meeting minutes, and explained that it referenced a letter from Shenkman & Hughes when actually it was the agreement. He explained that the agreement provides an additional 90 days to complete the process to adopt an ordinance that specifies the new divisions by November 9, 2020.

GM Helliker informed the Board that Resolution 20-03 and the schedule for adopting the process needs to be considered. He explained that the schedule contains 4 public hearings and a final meeting on November 9, 2020, to adopt the ordinance. He explained that he has revised the schedule so that the meetings do not fall on a regular Board meeting date and would like the Board to consider this revised schedule, which places the public hearing on the 2nd Wednesday of June, July/August, September and October.

The Board discussed the process to transition to a division-based election. In response to President Costa's comment, Ms. Buckman informed the Board that she agrees that this needs to be completed in the proper manner – to get a good demographic study and to look at how the divisions are drawn, while proceeding as quickly as possible. She commented that all due precaution and care should be taken to ensure that the rights to the voters are ultimately properly represented.

GM Helliker informed the Board that the "safe harbor" provisions of the Elections Code would allow the District a minimum of 90 days to adopt new divisions (e.g., by early August), which, even without the 90-day extension, would be after the deadline to submit the divisions for the 2020 elections. He explained that the extension would allow the District important time to conduct public outreach.

Director Miller moved to approve the agreement with the Southwest Voter Registration Education Project and Shenkman & Hughes for granting of the 90-day extension provided in Elections Code 10010 for completing the formation of voting divisions within the District. Director Hanneman seconded the motion and it carried with the following roll call vote:

Ayes: Directors Costa, Hanneman, Miller, Rich and Tobin
Noes: None
Absent: None

Vice President Tobin moved to adopt Resolution 20-03 declaring San Juan Water District's intent to transition from at-large elections to division-based elections and establishing a process for the transition. Director Miller seconded the motion.

In response to President Costa's question, GM Helliker explained that the Resolution calls for a regular meeting on November 9, 2020. Ms. Buckman commented that the Board should define a schedule for the public hearings as part of the resolution. GM Helliker suggested that the revised schedule, with the second Wednesdays for the public hearings, be used. The Board reviewed the dates and agreed that the revised schedule should be used with July, not August. Ms. Buckman confirmed that the dates fall within the statutory requirements.

The motion carried with the following roll call vote:

Ayes: Directors Costa, Hanneman, Miller, Rich and Tobin
Noes: None
Absent: None

President Costa called for Closed Session at 4:35 pm.

III. CLOSED SESSION

1. Conference with legal counsel—potential initiation of litigation (Government Code sections 54956.9(d)(4)) – one matter.
2. Conference with legal counsel – existing litigation (Government Code § 54956.9(d)(1), (d)(4)) - California Natural Resources Agency v. Ross, Eastern District of California case no. 1:20-cv-00426 and Pacific Coast Fed'n of Fishermen's Assn. v. Ross, Eastern District of California case no. 1:20-cv-00430.

IV. OPEN SESSION

There was no reportable action from the closed session.

V. ADJOURN

The meeting was adjourned at 4:59 p.m.

ATTEST:

EDWARD J. "TED" COSTA, President
Board of Directors
San Juan Water District

TERI GRANT, Board Secretary

STAFF REPORT

To: Board of Directors
From: Paul Helliker, General Manager
Date: May 13, 2020
Subject: Division-based Elections

RECOMMENDED ACTION

Adopt Resolution 20-03 declaring San Juan Water District's intent to transition from at-large elections to division-based elections and establishing a process for the transition.

BACKGROUND

On March 30, San Juan Water District received a letter from Shenkman and Hughes, concerning alleged violations of the California Voting Rights Act by the District, as a result of the at-large election process that the District employs. That letter is attached (and was provided to the Board at the April 7, 2020 meeting).

We do not agree that the at-large voting process is necessarily discriminatory. However, the prospect of that position prevailing in court is not good. Shenkman and Hughes has successfully challenged at-large voting procedures in a number of jurisdictions in California, and many of these decisions resulted in six- and seven-figure costs to these jurisdictions for attorney's fees paid to Shenkman and Hughes. We do not recommend pursuing such litigation. At its meeting on April 7, the Board directed Legal Counsel and me to develop the information and draft documents to implement division-based elections. At its meeting on April 22, the Board decided to pursue the additional 90-day window authorized by statute, pursuant to approval of the plaintiff, and directed Legal Counsel to secure such approval. The draft agreement with Shenkman and Hughes authorizing the additional 90 days is also attached.

Elections Code Section 10010 provides a "safe harbor" process to minimize the legal cost of a transition to district (division) -based elections. That section limits the payment to all plaintiffs such as Shenkman and Hughes to a maximum of \$30,000 (subject to documentation by the plaintiff and mutual agreement on the amount by the District and the plaintiff), if the District meets the following requirements:

1. Within 45 days of receipt of the letter from the first plaintiff, adopt a resolution laying out the steps the District will take to implement division-based elections and the schedule for doing so
2. Within 90 days of adoption of the resolution (within 180 days, with approval of the plaintiff), conduct at least four hearings
3. The first two of these hearings will be conducted over no more than 30 days, to receive input from the public prior to the release of electoral division maps

4. The third and fourth hearings would be held over a period of no more than 45 days, the first of which would be no earlier than 7 days after the release of at least one draft electoral map

Attachment A of Resolution 20-03 lays out this series of hearings, and requirements associated with them. The Board would need to adopt an ordinance defining the electoral map at a regular meeting. If the Board wants to select a date for that regular meeting which is different from the current set of regular meetings each year defined in Board Policy 2.1 (the 4th Wednesday of the month, except in November and December), it will need to specify by resolution the time and date of the additional regular meeting(s). Resolution 20-03 includes a resolved clause to designate a Board meeting on November 9, 2020 at 6 p.m. as a regular meeting.

Given the decision the Board made at its April 14, 2020, meeting concerning the timing of the effectiveness of the division-based map it will adopt, the new map will be implemented during the November 1, 2022, election. The map will need to be submitted to the elections offices in Sacramento and Placer Counties no later than June 29, 2022, to be effective in that election.



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

VIA CERTIFIED MAIL

March 26, 2020

Edward J. Costa, Board President
Paul Helliker – General Manager
Teri Grant – Board Secretary
San Juan Water District
9935 Auburn-Folsom Road
Granite Bay CA 95746

Re: Violation of California Voting Rights Act

I write on behalf of our client, Southwest Voter Registration Education Project and its members residing in the San Juan Water District. The San Juan Water District (“SJWD” or “District”) relies upon an at-large election system for electing candidates to its governing board. Moreover, voting within the District is racially polarized, resulting in minority vote dilution, and therefore SJWD’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.*

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

As of the 2010 Census, Latinos comprised approximately 13% of the District’s population, and likely a greater proportion today. However, in recent history (at least the past two decades) there appears to have been a complete absence of Latinos on the District’s Board, and that lack of representation continues today. The contrast between the significant Latino proportion of the electorate and the complete absence of Latinos to be elected to the SJWD Board is outwardly disturbing and fundamentally hostile towards participation from members of this protected class.

In light of the District’s underrepresentation of Latinos, it is no wonder why Latino residents do not emerge as candidates. During the past two decades, there seem to have been no Latinos to emerge as candidates for the SJWD Board. Opponents of fair, district-based elections may attempt to attribute the lack of candidates within protected classes to a lack of interest from their respective communities within the District. On the contrary, the virtual 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).

Where there are no “endogenous” elections involving candidates who are members of the protected class, the analysis under the CVRA necessarily turns to “elections involving ballot measures, or other electoral choices that affect the rights and privileges of members of a protected class.” *See Elec. Code § 14028.* Typically, Propositions 187, 209 and 227 are analyzed for this purpose in California voting

rights cases. Each of these propositions, though strongly opposed by the Latino community, were supported by the majority non-Hispanic white electorate in SJWD, resulting in their victory within SJWD.

Recently, this underrepresentation has manifested itself in decisions by the SJWD Board. For example, we understand that SJWD recently decided to use two different water sources for its customers – providing the better water to the more-affluent less-Latino portions of SJWD, while refusing to do the same for the less-affluent more-Latino portions of SJWD. This lack of responsiveness to the minority community is exactly what the U.S. Supreme Court cautioned is the inevitable result of at-large elections. (See *Thornburg v. Gingles* (1986) 478 U.S. 30, 48, n. 14 [at-large election system tends to cause elected officials to “ignore [minority] interests without fear of political consequences.”].)

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 representation of those from this protected class on the SJWD Board in the context of racially polarized elections, we urge the District to voluntarily change its at-large system of electing board members. Otherwise, on behalf of residents within the jurisdiction, we will be forced to seek judicial relief. Please advise us no later than May 15, 2020 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

**AGREEMENT FOR EXTENSION OF TIME PERIOD
FOR SPECIFIED STEPS PROVIDED BY THE
CALIFORNIA VOTING RIGHTS ACT**

This Extension Agreement ("Agreement") is dated as of May 3, 2020 (the "Effective Date"), and is made by and between the San Juan Water District, a California community services district ("District"), on the one hand, and the Southwest Voter Registration Education Project ("SVREP") on behalf of its members (collectively "Prospective Plaintiffs") and Shenkman & Hughes, PC ("S&H"), on the other hand. District, Prospective Plaintiffs, and S&H may be referred to collectively herein as "Parties" and individually as "Party."

RECITALS

A. On March 30, 2020, the District received a letter dated March 26, 2020 from S&H on behalf of Prospective Plaintiffs, claiming the District's at-large election system violates the California Voting Rights Act ("CVRA"). The letter and these claims are referred to herein as "CVRA Letter" and "Prospective Plaintiffs' Claims."

B. Pursuant to subdivision (e)(2) of California Elections Code Section 10010, upon the District's receipt of the CVRA Letter, Prospective Plaintiffs are precluded from commencing an action against the District based on Prospective Plaintiffs' Claims within 45 days of the District's receipt of the CVRA Letter.

C. Pursuant to subdivision (e)(3)(B) of Elections Code Section 10010, if the District, within 45 days of receipt of the CVRA Letter, adopts a resolution outlining its intention to transition from at-large to district-based elections, specific steps it will undertake to facilitate this transition, and an estimated time frame for doing so, then, Prospective Plaintiffs' are precluded from commencing an action against the District based on Prospective Plaintiffs' Claims within 90 days of the resolution's passage (the "First 90-day Period").

D. Subdivision (e)(3)(C)(i) of Elections Code Section 10010 permits the District and Prospective Plaintiffs to enter into a written agreement to provide for an additional 90-day extension beyond the First 90-day Period in order to provide additional time to conduct public outreach, encourage public participation, and receive public input ("90-day Extension"). The written agreement provided for in Subdivision (e)(3)(C)(i) also requires that the district boundaries be established no later than six months before the District's next regular election.

E. The District seeks to obtain Prospective Plaintiffs' and S&H's written agreement for the 90-day Extension in order to allow the District to undertake the processes and steps contemplated by subdivision (a) of Section 10010 of the Elections Code to ensure that the District has sufficient time, particularly in light of the COVID-19 emergency, to conduct public outreach, encourage public participation, and receive public input.

F. The Parties acknowledge that Prospective Plaintiffs' Claims are not presently the subject of any legal proceeding.

NOW, THEREFORE, in consideration of the foregoing recitals, the District, Prospective Plaintiffs, and S&H agree as follows:

1. Prospective Plaintiffs and S&H hereby agree to, and hereby grant to the District, the 90-day Extension as provided under subdivision (e)(3)(C)(i) of Elections Code Section 10010. The District's Board of Directors will adopt a resolution on May 13, 2020, outlining its intention to transition from at-large to district-based elections, specific steps it will undertake to facilitate this transition, and an estimated time frame for doing so, which shall preclude Prospective Plaintiffs and S&H from commencing an action against the District based on Prospective Plaintiffs' Claims, not only during the First 90-day Period, but also until after the expiration of the 90-day Extension.

2. Pursuant to the extension provided in Section 1 of this Agreement, the Prospective Plaintiffs and S&H shall not commence any action against the District based on Prospective Plaintiffs' Claims sooner than 180 days after the District passes the resolution of intention contemplated by subdivision (e)(3)(A) of Elections Code Section 10010 on May 13, 2020. Based on this adoption date, Prospective Plaintiffs may not commence any action based on Prospective Plaintiffs' Claims sooner than November 10, 2020. If, however, the District does not pass the resolution contemplated by subdivision (e)(3)(A) of Elections Code Section 10010 by November 10, 2020, Prospective Plaintiffs may commence an action based on Prospective Plaintiffs' Claims.

3. If the District passes the resolution contemplated by subdivision (e)(3)(A) of Elections Code Section 10010 on May 13, 2020, then any district boundaries will be established no later than six months before the District's 2022 election.

4. The Parties acknowledge that Prospective Plaintiffs' and S&H's forbearance from filing litigation regarding Prospective Plaintiffs' Claims and the District's undertaking of the process contemplated by subdivision (a) of Elections Code Section 10010, shall be deemed adequate consideration for this Agreement.

5. Any legal or equitable statute of limitations, statute of repose, or period of limitation applicable to the matters described in Sections 1 and 2 of this Agreement, and which has not expired, shall recommence upon the expiration of the 90-day Extension.

6. Upon execution by all Parties, this Agreement shall take effect on the Effective Date.

7. Any written notice related to this Agreement shall be addressed and mailed as follows:

8.

To Prospective Plaintiffs and S&H:

Kevin I. Shenkman
Shenkman & Hughes, PC
28905 Wight Road
Malibu, California 90265
Telephone: (310) 457-0970
E-mail: shenkman@sbcglobal.net

To District:

Joshua M. Horowitz
Bartkiewicz, Kronick & Shanahan, APC
1011 22nd Street
Sacramento, California 95816-4907
Telephone: (916) 446-4252
Facsimile: (916) 446-4018
E-mail: jmh@bkslawfirm.com

9. This Agreement may be extended by the Parties only through a further writing signed by authorized representatives of the Parties.

10. The Parties have had the opportunity to discuss this Agreement with their respective counsel and governing bodies and understand its terms and implications.

11. This Agreement will be interpreted and enforced pursuant to the laws of the State of California.

12. If any provision of this Agreement is found invalid or unenforceable, the balance of the Agreement will remain in full force and effect.

13. The only purpose of this Agreement is to memorialize the extension as agreed upon by the Parties. This Agreement cannot be used for any other purpose, including, but not limited to, by any of the Parties as evidence of an admission of any substantive aspect of the Prospective Plaintiffs' Claims. The Parties acknowledge that Prospective Plaintiffs' and S&H are entitled to obtain reimbursement for the cost of the work product generated to support the notice of violation according to proof and right of examination by the District in accordance with subdivision (f) of Elections Code section 10010, and nothing in this Agreement alters that entitlement.

14. This Agreement contains the entire understanding and agreement between the Parties with respect to the matters referred to herein. No other representations, covenants, undertakings or other prior or contemporaneous agreements, oral or written, respecting those matters, which are not specifically incorporated herein, may be deemed in any way to exist or to bind any of the parties. Each Party acknowledges that the Party has not executed this Agreement in reliance on any such promise, representation or warranty.

15. The Parties represent that the persons executing this Agreement on behalf of each of the Parties is duly authorized to enter into this Agreement. Each Party represents that it has the legal authority to enter into this Agreement and to perform all obligations under this Agreement.

16. This Agreement has been arrived at through negotiations and each Party has had a full and fair opportunity to revise the terms of this Agreement. As a result, the normal rule of construction that any ambiguities are to be resolved against the drafting Party do not apply in the construction or interpretation of this Agreement.

17. This Agreement may be executed in counterparts which, when taken together, shall constitute one original Agreement. Facsimile or electronic counterparts shall be effective as if the original signed counterpart were delivered.

In Witness Whereof, the Parties have caused this Agreement to be approved and effective on the Effective Date.

Dated: _____, 2020

DISTRICT:

San Juan Water District

Edward J. "Ted" Costa
President, Board of Directors

Attest:

Teri Grant, District Secretary

Dated: 5-10-20, 2020

SHENKMAN & HUGHES, PC, on
behalf of itself and as counsel for
Prospective Plaintiffs:

By: 

Print Name: Karen Sherkman

Title: Partner

RESOLUTION NO. 20-03

**A RESOLUTION OF THE BOARD OF DIRECTORS
OF THE SAN JUAN WATER DISTRICT
DECLARING ITS INTENT TO TRANSITION
FROM AT-LARGE ELECTIONS TO DIVISION-BASED ELECTIONS
AND ESTABLISHING A PROCESS FOR THE TRANSITION**

WHEREAS, the Directors of the San Juan Water District ("District") are currently elected in "at-large" elections, in which each Board member is elected by all registered voters residing within the District's wholesale service area;

WHEREAS, on March 30, 2020, the District received a certified letter from the law firm of Shenkman & Hughes(the "Letter") alleging on behalf of the Southwest Voter Education Project that the District's at-large electoral system for its Board of Directors ("Board") violates the California Voting Rights Act (Elections Code sections 14025- 14032; the "CVRA") and threatening litigation if the District did not transition to a by-division system for electing its Directors in accordance with the safe harbor provisions set forth in California Elections Code section 10010;

WHEREAS, the Letter alleges that the District's at-large electoral system results in "racially polarized voting" as defined in Sections 14026(e) and 14028 of the CVRA, but the Letter was not accompanied by any evidence to support the claim of a CVRA violation, and the Board denies that its existing at-large electoral system violates the CVRA or any other provision of law;

WHEREAS, the Letter also alleges that the District has decided to use two different water sources for its customers -- providing better-quality water to the more-affluent parts of its wholesale service area and lower-quality water to less-affluent portions of SJWD -- an allegation which is false because the District provides the same high-quality surface water supplies to all of its retail and wholesale customers, and the only other water supply provided to water users in the District's wholesale service area is groundwater pumped by the District's wholesale customers at their sole discretion;

WHEREAS, the Board has considered the significant resources incurred by multiple cities and other public entities in litigating similar CVRA claims, and the impact that the expenditure of such costs could have on the District's ability to provide essential services at a fair cost to the District's residents and businesses;

WHEREAS, Elections Code section 10010 provides a method whereby the District may transition to a by-division electoral system and thereby avoid the high cost and risk of litigation under the CVRA;

WHEREAS, prior to the Board's consideration of an ordinance to establish a

by- division electoral system, Elections Code Section 10010 requires all of the following:

1. Before drawing one or more draft maps of the boundaries of the proposed electoral divisions: (a) the Board may direct staff to conduct public outreach, including to non-English-speaking communities, to explain the process of divisioning the District and to encourage public participation in the process; and (b) after conducting initial public outreach, if any, the Board must hold at least two public hearings over a period of no more than 30 days to solicit public input regarding the proposed division boundaries.
2. After all maps are drawn, the District must select, publish and make available to the public at least one draft map and, if Directors will be elected by their divisions at different times to provide for staggered terms, publish the potential sequence of the elections.
3. The Board also must hold at least two additional hearings over a period of no more than 45 days to receive public input regarding the content of the draft map or maps and the proposed sequence of elections.
4. The first version of a draft map must be published at least seven days before it is considered at a hearing, and if a draft map is revised at or following a hearing, it must be republished and made available to the public for at least seven days before it is adopted;

WHEREAS, the District was formed and has continued to hold its elections for the office of Director using staggered terms under a rotation in which two Directors are elected at one election and the other three Directors are elected at the subsequent election;

WHEREAS, the Board will retain the Sacramento County's or Placer County's Registrars of Voters' offices or an experienced private demographer to assist the District in developing a proposal for a by-division electoral system that complies with the CVRA and other federal and state legal requirements; and

WHEREAS, the Board's adoption of a by-division electoral system will not affect the terms of any sitting Director, each of whom shall serve out his or her existing term; and

WHEREAS, the Board now desires to declare its intention to adopt a resolution consistent with Elections Code section 10010 to transition the District's electoral system from at-large to by-division beginning with the 2022 District Election, establish the process to complete this transition, and to establish an estimated schedule for the transition.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the San Juan Water District as follows:

1. The above recitals are true and are incorporated herein by reference.
2. This resolution states the Board's intention to consider enacting an ordinance to transition its electoral system from at-large to by-division for the purpose of electing its Directors beginning with the November 2022 election, pursuant to Elections Code section 10010.
3. Subject to Board approval and direction, staff shall retain and work with elections officials of Sacramento County or Placer County or an experienced private demographer, and with other appropriate consultants as needed, to provide a detailed analysis of the District's current demographics and any other information or data necessary to prepare one or more draft maps as directed by the Board which divides the District into five electoral divisions consistent with the intent and purpose of the California Voting Rights Act, the Federal Voting Rights Act, and appellate decisions interpreting those Acts. The General Manager is also directed to prepare a proposal for Board consideration for conducting public outreach on the proposed transition of the District electoral system.
4. The Board Secretary is directed to post information on the District's website regarding the proposed transition to a by-division electoral system, including maps, notices, agendas and other information, and to establish a means of communication to answer questions from the public.
5. The Board hereby approves the estimated timelines set forth in Exhibit A, attached to and made a part of this resolution, for conducting a process to solicit public input and testimony on proposed district-based electoral maps before the Board enacts an ordinance approving the final map.
6. The Board designates as a regular meeting of the Board a meeting to be held on November 9, 2020 at 6 p.m.
7. The actions set forth in this resolution are exempt from review under the Environmental Quality Act and the Guidelines interpreting it (collectively "CEQA"), specifically under CEQA Guidelines sections 15061(b)(3) and 15320. In addition, the adoption of this resolution and the actions provided in it are organizational and administrative activities of the District that will not have the potential to result in either a direct or reasonably foreseeable indirect physical change in the environment, and therefore is not a project as defined under CEQA Guidelines section 15378(b)(3).

PASSED AND ADOPTED by the Board of Directors of the San Juan Water District on the 13th day of May 2020, by the following vote:

AYES: DIRECTORS: **Costa, Hanneman, Miller, Rich, Tobin**
NOES: DIRECTORS:
ABSENT: DIRECTORS:



EDWARD J. "TED" COSTA
President, Board of Directors



TERI GRANT
Secretary, Board of Directors

Exhibit A
San Juan Water District
District-Based Elections Actions and Timeline

| Task | Date/Timeline | Notes |
|---|-------------------|--|
| Board meeting – Adopt resolution of intent. | May 13, 2020 | Must adopt resolution within 45 days of receiving letter (May 14). The date the resolution is adopted establishes the 180-day deadline to enact by-division elections. |
| Board meeting/Public Hearing #1 – Introduce Public Engagement Process | June 10, 2020 | Before draft map(s) are released, the date of the first hearing establishes the deadline to hold two public hearings within 30 days. |
| Board meeting/Public Hearing #2 – Public Engagement Process. | July 8, 2020 | Must be held within 30 days of Hearing #1. |
| Board meeting/Public Hearing #3 – Board and public input on draft maps of proposed divisions. | September 9, 2020 | First draft of map(s) shall be published 7 days before Hearing #3. |
| Board meeting/Public Hearing #4 – Map approval and introduction of ordinance. | October 14, 2020 | Must be held within 45 days of Hearing #3. |
| Board regular meeting – Second reading and enactment of ordinance and final division map. Final map must be filed with Registrars of Voters. | November 9, 2020 | Draft ordinance must be introduced 5 days before second reading and adoption. |