



Service Beyond Expectation

CUCAMONGA VALLEY WATER DISTRICT BOARD OF DIRECTORS SPECIAL MEETING AGENDA

April 12, 2018 – 6:00 p.m.

District Office, Board Room
10440 Ashford Street; Rancho Cucamonga, California

1. CALL TO ORDER / FLAG SALUTE

2. ADDITIONS/DELETIONS TO AGENDA

3. PUBLIC COMMENT

*Members of the public may comment on any item **listed or not listed** on the agenda. Comments related to noticed public hearing items will be heard at the time the public hearing is conducted. Speakers are requested to keep their comments to no more than five (5) minutes. The President may reduce the time to not less than three (3) minutes depending upon the number of speakers wishing to address the Board. Under the provisions of the Brown Act, the Board is prohibited from taking action on items not listed on the agenda.*

4. CONSIDERATION OF A RESOLUTION OF INTENT TO CONVERT FROM AT-LARGE TO BY-DIVISION ELECTION SYSTEM

ADOPT RESOLUTION NO. 2018-4-4 DECLARING INTENTION TO TRANSITION FROM AT-LARGE TO BY-DIVISION ELECTIONS AND SETTING FORTH THE PROCESS FOR TRANSITIONING

5. ADJOURN

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Board Secretary (909) 987-2591, 48 hours prior to the scheduled meeting so that the District can make reasonable arrangements.

Pursuant to Government Code Section 54957.5, any writing that: (1) is a public record; (2) relates to an agenda item for an open session of a regular meeting of the Board of Directors; and (3) is distributed less than 72 hours prior to that meeting, will be made available for public inspection at the time the writing is distributed to the Board of Directors. Any such writing will be available for public inspection at the District offices located at 10440 Ashford Street, Rancho Cucamonga, CA 91729. In addition, such writing may also be posted on the District's web site.

STAFF REPORT

Date: April 12, 2018

To: Board of Directors
From: Martin E. Zvirbulis, General Manager/CEO
Agenda Title: **Consideration and Approval of a Resolution of Intent to Convert From At-Large to By-Division Election System**

Purpose

Consider approval of a Resolution of Intent to change the District's election system from at-large, where the entire District votes for all Board members, to a by-division system where only registered voters within a particular division vote for a potential Board member from their division.

Background/Analysis

The Cucamonga Valley Water District currently elects its Board of Directors through an "at-large" electoral system in which each Board member may reside anywhere within the District's boundaries, and each Board member is elected by the voters of the entire electorate to provide Districtwide representation. All voters may elect two or three Board members during each District election, resulting in a five-member Board of Directors elected to serve the Districtwide purposes of the electorate.

The California Voting Rights Act ("CVRA") became law in 2003. It provides a way for plaintiffs to allege racially polarized voting and to seek a change from a jurisdiction's at-large election system to a different system, typically a by-district or by-division election system. It also allows for the recovery of a plaintiff's attorneys' fees. A violation of the CVRA may be established if it is shown that racially polarized voting has combined with an at-large voting system to impair the ability of a protected class of voters to elect candidates of its choice or to influence the outcome of an election. "Racially polarized voting" under the CVRA means voting in which there is a difference between the choice of candidates or other electoral choices that are preferred by voters in a protected class and in the choice of candidates and electoral choices preferred by voters in the rest of the electorate.

The CVRA does not require proof that racially polarized voting actually resulted in the defeat of a group's preferred candidate. Nor does the CVRA require a plaintiff to show racial discrimination by the District or other discriminatory intent.

On February 26, 2018, the District received a letter from Kevin Shenkman of the law firm of Shenkman & Hughes, containing allegations that the District's at-large electoral system violates the CVRA. Mr. Shenkman alleges evidence of Latino "polarized voting" in the District electorate and threatens litigation if the District does not adopt a district- or division-based electoral system.

A division-based election system is one in which a district is physically divided into separate divisions, each with one Board member who resides in the division and is chosen only by the voters residing in that particular division. In a division-based system, voters within each division may only vote for one candidate every four years. The District does not believe that the record establishes Latino racially-polarized voting in the District in violation of the CVRA. The District also has a history of inclusionary voting and has elected Latino Directors to the Board.

However, as a result of the low threshold established by the CVRA, numerous public agencies throughout California have been facing challenges to their at-large election systems. No public agencies have yet succeeded in court when challenged under the CVRA. Because of the low threshold, the low probability of litigation success, and the potential for being required to pay plaintiffs' attorneys fees, many agencies have voluntarily changed from at-large elections to district- or division-based elections rather than engage in potentially expensive litigation. Agencies that have litigated cases but settled prior to trial have also paid significant amounts in plaintiffs' attorney fees.

To provide a safe harbor from expensive lawsuits and settlements, the Legislature amended Elections Code section 10010 by AB 350. That legislation placed a cap of \$30,000 on attorney's fees that a prospective plaintiff would be entitled to recover provided that the agency voluntarily adopts a resolution of intent within 45 days of receipt of the potential plaintiff's letter threatening litigation and converts to district elections pursuant to a specific accelerated time schedule and after holding at least four public hearings.

Discussion

Defending against a lawsuit will be expensive, and it is not possible to predict the outcome of the litigation with any certainty. Litigation is also potentially distracting from the primary work of the District. Transitioning to a by-division system will be a significant change to the community and District. However, it could have a positive effect of encouraging more candidates to run and making it easier and less expensive to run for election or reelection. By-division elections should also cause the District's election costs to be reduced as fewer ballots will be printed and mailed to registered voters.

Because of the low threshold set forth in the CVRA and the likelihood of the District becoming embroiled in expensive litigation, staff recommends that the District adopt a resolution declaring its intention to transition from at-large to division-based elections following the procedures required by Elections Code section 10010 to establish voting districts.

If the Board adopts the resolution of intent and transitions to by-division elections, Mr. Shenkman would be entitled to recovery of attorney fees up to \$30,000 pursuant to AB 350. Additionally, adoption of the Resolution will begin a very intensive and public process to develop divisions and maps for the Board of Directors. The timeline to develop divisions

under the AB 350 safe harbor is a very short 90 days. The Board is also required to hold at least four public hearings. The first two hearings are for the purpose of developing the criteria that will be used for drawing the maps. These two public hearings must be held within 30 days of each other. The map drawing process begins after these initial two public hearings. After the District has had draft maps prepared, two additional public hearings of the Board are required. The maps must be available for at least seven days prior to each of these public hearings. These final two public hearings must be held within 45 days of each other. Then the Board of Directors may adopt a map establishing divisions at a different meeting.

During the third and fourth public hearings, the Board of Directors will also need to determine the “sequencing” of the elections. This means that the Board will need to decide which divisions will first have elections. There is not a legal requirement that where incumbents reside is how the elections should be sequenced. In fact, recent legislative amendments set forth in AB 350 (Elections Code section 10010(b)) state that special consideration should be given to the CVRA’s purposes in determining which districts are to have the first elections.

Fiscal Impact

The fiscal impact would be up to \$30,000 in reimbursement to the prospective plaintiffs and the cost of preparation of division maps to be prepared by a consultant, estimated not to exceed \$25,000.

Recommendation

It is recommended that the Board of Directors consider and approve the Resolution of Intent to Transition From At-Large to By-Division Elections and Setting Forth the Process for Transitioning to By-Division Elections.

Attachment:

Attachment 1: Resolution No. 2018-4-4

Submitted by: Jeff Ferre, General Counsel

RESOLUTION NO. 2018-4-4

RESOLUTION OF THE BOARD OF DIRECTORS OF THE CUCAMONGA VALLEY WATER DISTRICT DECLARING ITS INTENTION TO TRANSITION FROM AT-LARGE TO BY-DIVISION ELECTIONS AND SETTING FORTH THE PROCESS FOR TRANSITIONING TO BY-DIVISION ELECTIONS

WHEREAS, Board members of the Cucamonga Valley Water District (“District”) are currently elected by at-large elections, as each member is elected through a District-wide vote; and

WHEREAS, the California Voting Rights Act (“CVRA”) became law in 2003 and provides a means for prospective plaintiffs to allege racially polarized voting and to seek a change from a jurisdiction’s at large election system to a different system, typically a by-district or by-division election system where only registered voters within a specific division may vote for a candidate running from their specific division, and also allows for the recovery of a plaintiff’s attorneys’ fees; and

WHEREAS, a violation of the CVRA may be established if it is shown that racially polarized voting has combined with an at-large voting system to impair the ability of a protected class of voters to elect candidates of its choice or to influence the outcome of an election; and

WHEREAS, “racially polarized voting” under the CVRA means voting in which there is a difference between the choice of candidates or other electoral choices that are preferred by voters in a protected class and in the choice of candidates and electoral choices preferred by voters in the rest of the electorate; and

WHEREAS, on or around February 26, 2018, the District received a certified letter from Kevin Shenkman of Shenkman and Hughes PC, on behalf of his client, the Southwest Voter Registration Education Project, asserting that the District’s at-large election system may violate the CVRA and threatened litigation if the District does not voluntarily transition to a district-based election system for electing its Board of Directors; and

WHEREAS, the District denied that its election system violates the CVRA or any other similar law; and

WHEREAS, the Board of Directors has nevertheless determined due to the high cost of litigation, including the potential payment of plaintiff’s attorneys’ fees, that the public interest is better served by initiating a process for transition to a division-based election system in order to avoid the costs associated with defending a lawsuit under the CVRA; and

WHEREAS, the California Legislature has provided in Elections Code Section 10010 a method whereby a jurisdiction may expeditiously transition to a district- or division-based election system and avoid the high cost of litigation under the CVRA by its adoption of AB 350; and

RESOLUTION NO. 2018-4-4

WHEREAS, Section 10010 will delay CVRA litigation and limit attorneys' fees associated with a CVRA claim if, within forty-five (45) days of receipt of a claim under the CVRA, the District adopts a resolution stating its intent to transition to district-based elections and within ninety (90) days thereafter (or as otherwise stipulated by the parties), the District takes action to transition to a district-based election system consistent with the intent and purpose of the California Voting Rights Act; and

WHEREAS, prior to the District's consideration of a resolution to establish boundaries for a division-based electoral system, the District is first required under Elections Code section 10010 to hold public hearings where the public may provide input on the composition of the divisions, then to draw proposed maps that must be published and available for the public to comment on during at least two public hearings, and to thereafter adopt a resolution with the new maps showing the divisions; and

WHEREAS, the Board of Directors now desires to declare its intention to adopt a resolution transitioning from an at-large to district-based elections for its next election, establish specific steps it will undertake to facilitate this transition, and establish an estimated timeframe for doing so.

NOW, THEREFORE, THE BOARD OF DIRECTORS OF THE CUCAMONGA VALLEY WATER DISTRICT HEREBY RESOLVES:

Section 1. Recitals

That the recitals set forth above are true and correct.

Section 2. Intent to Transition to Division-Based Elections

That the Board of Directors intends to consider adoption of a resolution, consistent with and Elections Code Section 10010, to transition to a division-based or zone election system for use in the District's next general election for its Board of Directors and directs its legal counsel to inform Mr. Sherkman of the District's adoption of this resolution and its intent to transition from an at-large election system to a by-division system.

Section 3. Upcoming Actions

That the Board of Directors shall take, or shall cause District staff to take, the following actions, as close as possible to 90 days following the effective date of this Resolution, taking into consideration time required for public outreach and input, agenda requirements under the Brown Act, the Board of Directors' meeting schedule, and the timeframes established under Elections Code Section 10010:

(a) Conduct public outreach, including to non-English speaking communities, to explain the districting process and to encourage public participation;

RESOLUTION NO. 2018-4-4

(b) Before drawing a draft map or maps of the proposed division boundaries, hold at least two public hearings at which the public is invited to provide input regarding the composition of the divisions and to consider division boundaries as provided in Elections Code Section 10010;

(c) After drawing a draft map or maps, publish the draft map(s) and the potential sequence of the division elections and hold at least two public hearings at which the public is invited to provide input regarding the content of the draft map or maps and the proposed sequence of elections; and

(d) Hold a public hearing at which the Board of Directors will consider and adopt a resolution establishing division elections, including the adoption of a division boundary map and the sequence of the division elections.

Section 4. Severability

That the Board of Directors declares that, should any provision, section, paragraph, sentence, or word of this Resolution be rendered or declared invalid by any final court action in a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences, or words of this Resolution as hereby adopted shall remain in full force and effect.

Section 5. Repeal of Conflicting Provisions

That all of the provisions heretofore adopted by the District or the Board of Directors that are in conflict with the provisions of this Resolution are hereby repealed.

Section 6. Effective Date

That this Resolution shall take effect upon its adoption.

Section 7. CEQA

That a transition from at-large to division-based elections is exempt from environmental review under the California Environmental Quality Act ("CEQA") (Public Resources Code §§ 21000 *et seq.*) pursuant to State CEQA Guidelines (Cal. Code Regs., tit. 14 § 15000 *et seq.*) sections 15061(b)(3), 15320, and 15378(b)(3). Adoption of this Resolution is an organizational and administrative activity of the District, does not have the potential to result in either a direct or reasonably foreseeable indirect physical change in the environment, and is therefore not a project for purposes of CEQA. In the event adoption of this Resolution does constitute a project, it is categorically exempt under Class 20 (Changes in the Organization of Local Governments) categorical exemption.

RESOLUTION NO. 2018-4-4

Section 8. Certification

That the Clerk shall certify to the passage and adoption of this Resolution.

PASSED AND ADOPTED this 12th day of April, 2018.

James .v Curatalo, Jr.
President

ATTEST:

Martin E. Zvirbulis
Secretary