

**SAN JUAN WATER DISTRICT
SPECIAL BOARD MEETING AGENDA
May 13, 2020
4:00 p.m.
9935 Auburn Folsom Road
Granite Bay, CA 95746**

Revised
May 9, 2020

In accordance with the California Department of Public Health's and the Governor's Executive Orders N-29-20 and N-33-20, the District's boardroom is closed and this meeting will take place solely by videoconference and teleconference. The public is invited to listen, observe, and provide comments during the meeting by either method provided for below. The Board President will call for public comment on each agenda at the appropriate time and all votes will be taken by roll call.

For members of the public interested in viewing and having the ability to comment at the public meeting via GoToMeeting, an internet enabled computer equipped with a microphone and speaker or a mobile device with a data plan is required. Use of a webcam is optional. You also may call in to the meeting using teleconference without video. Please use the following login information for videoconferencing or teleconferencing:

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*****Important Notice: The public conference lines will be terminated when the Board adjourns into closed session. Members of the public who would like to receive the report out from closed session and time of adjournment from closed session into open session and adjournment of the meeting should provide their name and an email address to the District's Board Secretary, Teri Grant, at: tgrant@sjwd.org, before or during the meeting. No other business will be conducted after the Board adjourns from closed session into open session. The Secretary will email the written report to all persons timely requesting this information promptly after the meeting.**

The Board may take action on any item on the agenda, including items listed on the agenda as information items. The Board may add an item to the agenda (1) upon a determination by at least three Board members that an emergency situation exists, or (2) upon a determination by at least four Board members (or by three Board members if there are only three Board members present) that the need to take action became apparent after the agenda was posted.

The public may address the Board concerning an agenda item either before or during the Board's consideration of that agenda item. Public comment on items within the jurisdiction of the Board is welcome, subject to reasonable time limitations for each speaker. Upon request, agenda items may be moved up to accommodate those in attendance wishing to address that item. Please inform the General Manager.

Documents and materials that are related to an open session agenda item that are provided to the District Board less than 72 hours prior to a regular meeting will be made available for public inspection and copying at the District office during normal District business hours.

If you are an individual with a disability and need assistance or accommodation to participate in this Board meeting, please call Teri Grant, Board Secretary, at 916-791-0115, or email Ms. Grant at tgrant@sjwd.org.

Please silence cell phones and refrain from side conversations during the meeting.

I. ROLL CALL

II. TRANSITION TO DIVISION-BASED ELECTIONS

Action: *Consider approving 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*

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*

President Costa to call for Closed Session

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

1. Report from Closed Session

V. ADJOURN

UPCOMING MEETING DATES

May 27, 2020

June 24, 2020

I declare under penalty of perjury that the foregoing agenda for the May 13, 2020 special meeting of the Board of Directors of San Juan Water District was posted by May 9, 2020, on the outdoor bulletin boards at the District Office Building, 9935 Auburn Folsom Road, Granite Bay, California, and was freely accessible to the public.

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.

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 letter from 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.

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:
NOES: DIRECTORS:
ABSENT: DIRECTORS:

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

TERI GRANT
Secretary, Board of Directors

Attachment A

California Voting Rights Act District-Based Elections Actions and Timeline Alternative to Meet Statutory Deadline Plus 90-Day Extension¹

Task	Date/Timeline ²	Notes
District received letter alleging violation of CVRA.	March 30, 2020	
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 ³	June 24, 2020	Before draft map(s) are released, the date of the first hearing established the deadline to hold two public hearings within 30 days.
Board meeting/Public Hearing #2 – Public Engagement Process.	July 22/ August 26, 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 23, 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 28, 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 ⁴	Draft ordinance must be introduced 5 days before second reading and adoption.

Notes

- 1 - This option would require the approval of claimant Southwest Voter Registration Education Project, the attorney for which has stated would provide its approval.
- 2 - All dates after May 13 are dates of regular Board meetings, except for November 9, 2020; the schedule for Public Hearing 2 would depend on whether or not the Board decides to cancel its July or August regular meetings.
- 3 - Before the hearings begin, the Board may conduct a public outreach campaign, including to non-English-speaking communities, to explain the elections transition process and to encourage public participation.
- 4 - Board would need to adopt a resolution designating this date as a regular meeting.