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March 11, 2015

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Dennis Sanford, Board President
Rainbow Municipal Water District
3707 Old Highway 395
Fallbrook, CA 92028

Andrew Vanderlaan
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Councilmember
City of San Diego

SUBJECT: California Voting Rights Act and Proposed Reorganization of
Fallbrook Public Utility District and Rainbow Municipal Water
District (Ref. Nos.: RO/SA(a)(b)14-04; MSR/SR13-66)

Lorraine Wood
Councilmember
City of Carlsbad

Jo MacKenzie
Vista Irrigation District

Dear Mr. McDougal and Mr. Sanford:

Vacant
Special District

I write to follow-up on the enclosed correspondence the San Diego LAFCO received from Lloyd W. Pellman, the Special Counsel for the Rainbow Municipal Water District (MWD) regarding the proposed reorganization of Fallbrook and Rainbow (the "Reorganization"). Also enclosed is correspondence from Gregory Moser and Adriana R. Ochoa (formerly Sanchez), Rainbow MWD General Counsel(s).

Alternate Members

Greg Cox
County Board of
Supervisors

Chris Cate
Councilmember
City of San Diego

Racquel Vasquez
Councilmember
City of Lemon Grove

The correspondence from Rainbow MWD's Special Counsel debates the implications of the California Voting Rights Act (Elections Code, § 14025 et seq.) with respect to the proposed reorganization. To establish a violation of the CVRA, one must demonstrate "racially polarized voting occurs in elections for members of the governing body of the political subdivision" at issue (Elections Code, § 14028.). However, the correspondence we have obtained to date from Rainbow's Special and General Counsels neither provides evidence of the presence nor absence of racially polarized voting within the two districts subject to the proposed reorganization.

Ed Sprague
Olivenhain Municipal
Water District

Harry Mathis
Public Member

Executive Officer

Michael D. Ott

Legal Counsel

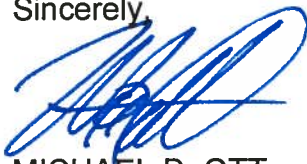
Michael G. Colantuono

Mr. McDougal
Mr. Sanford
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I therefore invite both districts to submit evidence to LAFCO regarding the presence or absence of racially polarized voting that might trigger application of the CVRA here. To assist LAFCO's timely review of the Reorganization, please submit any such evidence within 15 days from the date of this letter. If evidence is not submitted within 15 days from either of the districts, we will assume that the district(s) have concluded that the CVRA is inapplicable to the reorganization of the Fallbrook PUD and Rainbow MWD.

Thank you for your assistance.

Sincerely,



MICHAEL D. OTT
Executive Officer

MDO:trl

Enclosures

- (1) February 26, 2015 Email from Lloyd W. Pellman to Mike Ott
- (2) December 12, 2013 Government Options Memorandum from Gregory Moser and Adriana Sanchez to North County Joint Powers Authority
- (3) December 12, 2013 CVRA Lawsuit Summary from Gregory Moser and Adriana Sanchez to North County Joint Powers Authority

cc: Brian Brady, Fallbrook PUD General Manager
Robert H. James, Fallbrook PUD General Counsel
Paula C. P. de Sousa, Special Counsel to Fallbrook PUD
Thomas M. Kennedy, Rainbow MWD General Manager
Lloyd W. Pellman, Special Counsel to Rainbow MWD
Gregory Moser, Rainbow MWD General Counsel
Adriana R. Ochoa (formerly Sanchez), Rainbow MWD General Counsel
Michael G. Colantuono, LAFCO General Counsel

Ott, Mike

From: Pellman, Lloyd W. <lpellman@nossaman.com>
Sent: Thursday, February 26, 2015 1:26 PM
To: Ott, Mike
Subject: Fallbrook PUD/ Rainbow MWD

Mike
Thank you for your letter of February 20, 2014 addressing the questions I posed in my email to you on February 9, 2015.

While I have reviewed your letter, coupled with comments also made at the February 20, 2015 Special District Advisory Committee ("SDAC") meeting, I must say I disagree with the statements made regarding the effect of Rainbow Municipal Water District Ordinance 95-1.

First, despite your statements at the SDAC meeting that LAFCO is a quasi-legislative body only, your letter reflects the possible notion that LAFCO is capable of making legal or judicial decisions. Your letter states on page 4 in your response to what you designate as "Rainbow MWD Comment/ Question 9" that "A close examination of Ordinance 95-1 may even reveal that the Ordinance is currently unlawful and/or not effective, as an unlawful local amendment to the Municipal Water District Act (Water Code Section 71000 et seq.) preempted by the Act itself." At the public meeting I believe I heard you say that the ordinance is of questionable legality. As you know, the ordinance was adopted in accordance with the Elections Code in response to a dually qualified initiative petition in lieu of a special election in 1995, some 10 years after the Cortese-Knox Act was enacted. The ordinance expressly by its terms applies to any successor to the district, including through "reorganization". (Fallbrook Public Utility District's Resolution No. 4815 requests a "reorganization with Rainbow Municipal Water District.") Based on the chronology of these two historical acts, "reorganization" as stated in the ordinance must refer to the process now currently under way some twenty years after adoption of the ordinance. The ordinance also expressly provides in section seven that it may be amended or repealed only by way of an election approved by a majority vote; I am informed that such an election has not occurred in the past twenty years and the ordinance remains intact as originally enacted in lieu of election.

As you know, the initiative process is rooted in our state Constitution and the procedures are spelled out in statutes enacted by the State Legislature pursuant to our Constitution. The time for any attack on the ordinance has long run; and I am informed that no such legal attack was filed within the applicable statute of limitations.

All public agencies are governed by the Constitution and by various statutes. Municipal water districts act by ordinance, resolution, or motion (Water Code Section 71276). If it is your view that an ordinance adopted pursuant to the initiative process is of questionable validity because it "may amount to an lawful amendment" to the underlying statutory basis, then you must view the Constitutionally based right of the people to prepare, circulate and submit an initiative to its government as a legally unenforceable act and procedure as every initiative will have the result of having as a governing ordinance or law something not otherwise provided for by statutes.

The initiative process has long existed as a Constitutionally protected right of the people. The initiative process reflects the foundational concept of the "governed" bringing about change and not just having government impose upon them what government believes to be in their best interests.

The litigated concepts to which you refer are not applicable here. Ordinance 95-1 by its terms is not amending state law regarding taxes or rates. In addition, Section five of the ordinance explicitly states that it does not apply to "debt for which a vote is required by state law", and section eight states explicitly that it will not apply "to the extent that they violate state or federal laws." Absent a violation of state or federal laws in existence at the time the ordinance was adopted pursuant to the prescribed procedures, it continues to be valid.

You indicate that under the proposal submitted by Fallbrook Public Utility District, Rainbow Municipal Water District would be extinguished and, therefore, its ordinances are extinguished or repealed unless LAFCO were to require

Fallbrook Public Utility District to honor the debt provisions contained in Ordinance 95-1. As you know, the Cortese-Knox-Herzberg Act has many provisions addressing the successor to a public entity. As you note, Section 56886 provides for terms and conditions available to, or obligated to be imposed upon, the reorganized entity; among those is subsection (m) regarding the successor district which succeeds to “all of the rights, duties, and obligations of the extinguished local agency with respect to enforcement, performance, or payment of any outstanding bonds, including revenue bonds, or other contracts and obligations of the extinguished local agency.” (emphasis added). Since under the application, as submitted by it, Fallbrook Public Utility District would be the successor agency, and since the ordinance expressly would apply to any successor to Rainbow Municipal District, even as reorganized, it follows that Fallbrook Public Utility District would be subject to all the obligations of the ordinance adopted pursuant to the initiative process. While you state that the successor aspect only applies to “the sole and exclusive purpose of winding up the affairs of dissolved districts” on what basis do you summarily conclude that the term as used in the ordinance, adopted ten years after Cortese-Knox became law, does not have application to the dually enacted ordinance? Either Fallbrook Public Utility District would be the successor, or it would not. None of the 23 subsections of section 56886 provides a mechanism for providing the resulting agency to be the successor as to some obligations such as imposed by Ordinance 95-1 within its territory but not as to all; the only subsections that appear to provide such an arrangement are subsections (e) and (f); are you contemplating the possibility of conditioning the reorganization through the use of “improvement districts”? Of course, the whole issue of which territory would be subject to Ordinance 95-1 would be resolved if instead of having Fallbrook Public Utility District be the resulting agency, Rainbow Municipal Water District were to be the resulting agency or the two were to resume instead operating as a joint powers agency in order to achieve any savings which would result. At minimum, Ordinance 95-1 would apply to the Rainbow MWD as those constituents successfully conducted the initiative petition drive 20 years ago.

And while Cortese-Knox-Hertzberg provides that when cities are reorganized, immediately all ordinances of the processor cities are deemed repealed (Government Code section 57478), the statutes governing LAFCOs contain no such legislative statement regarding ordinances of districts which are reorganized. Had the state legislature intended for district ordinances to be deemed repealed automatically, in delegating legislative duties to LAFCOs the legislature would have so provided. Even as to cities, there is no case law reflecting that the courts would even uphold the automatic repeal as to a reorganized city if the ordinance in question was one adopted by a predecessor city pursuant to a dually qualified initiative.

On another subject discussed at the SDAC meeting, if I recall correctly, you stated that there was no evidence of voting rights violations at Fallbrook Public Utility District. The Board of Rainbow Municipal Water District timely filed a resolution of objection to the application of Fallbrook Public Utility District in which it noted various issues regarding the California Voting Rights Act. Should I take from your remarks, if I heard you correctly, that LAFCO staff has somehow undertaken an investigation of past actions of Fallbrook Public Utility District and demographics of the two districts to make that determination? And on what basis was such a determination made? Is that part of what you view as the LAFCO’s broad authority?

In addition, there were some comments made by others at the SDAC meeting which need correction. A statement was made that cities were the subjects of challenges under the California Voting Rights Act because cities have the ability to select how the council members are elected while some Fallbrook Public Utility District board members are elected at large because that is what the governing statutes require. The California Voting Rights Act applies to agencies where, as here, directors are elected in part by at-large elections. (Elections Code section 14026 (a) (3). In fact, a variety of chartered cities and counties and districts have been challenged under the California Voting Rights Act; although I have not independently verified the information in the following link, you will see that considerable sums have been paid to resolve such challenges:

<http://www.ndcresearch.com/voting-rights-act-demographic-analysis/cvra-lawsuits-are-expensive-2/>

Just as charter cities have been able to have at large elections pursuant to charters as authorized by the California Constitution and counties have also had charters with election provisions pursuant to the California Constitution, the California Voting Rights Act has resulted in expensive revisions to those entities election procedures despite the Constitution recognizing the supremacy of the charters. Like the provisions of charter cities and counties, the fact that for almost a century the Public Utility District law has provided for at least some members of such boards to be elected

at large, that does not insulate the Fallbrook Public Utility District from such a challenge. And it seems anomalous that LAFCO might on the one hand question Ordinance 95-1 adopted pursuant to a dually qualified initiative 20 years ago while feeling bound by the now legally questionable director election provisions of the Public Utilities Code.

As of last fall, the charter cities of Anaheim, Compton, Merced, Modesto, Palmdale, Santa Barbara, Tulare, Visalia, and Whittier had all been the subject of such challenges due to at-large elections. Attorney's fees to plaintiffs were reportedly \$1.2 million in Anaheim, \$3 million in Modesto, and \$3.5 million in Palmdale. For a small district, just the costs of defending a Voting Rights Act challenge and the resulting payment of attorney's fees could be disastrous and it might take years to financially recover from such an expense.

The board of Rainbow Municipal Water District is concerned about the financial, social and added risks that both of these issues pose with the potential for the ratepayers to become ultimately financially responsible when such costs will do nothing to advance the service of water and wastewater in their territory as a result of a proposal that they did not make, do not support, and oppose for the sake of their ratepayers.

While you are of the view that all applicants, as Fallbrook Public Utility District is here, may have exposure to lawsuits, the ratepayers of Rainbow Municipal Water District are innocent participants, unwillingly drawn into this process and these risks.

If Fallbrook Public Utility District's board is of the view that the area should have more municipal services, their pending application should be disapproved and those on its board having such a view should begin instead an incorporation drive. In all fairness to its ratepayers, Rainbow Municipal Water District should not be put at risk to further the current approach.

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MEMORANDUM

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BY HAND

TO: Board of Directors, North County Joint Powers Authority **FILE NO:** 120605/000001
FROM: Gregory v. Moser
Adriana R. Sanchez
DATE: December 12, 2013
RE: Governance Options for Successor Public Utility District

Below is a summary of options for the North County Joint Powers Authority ("NCJPA") Board of Directors to consider in recommending a governance structure for Rainbow Municipal Water District ("Rainbow") and Fallbrook Public Utility District's ("Fallbrook") consolidated successor public utility district, tentatively re-named the North County Public Utility District ("NCPUD").

THE INITIAL BOARD

The initial board of the NCPUD will be made up of directors selected from current boards of Rainbow and Fallbrook – no other members or directors may be appointed or elected (at-large or otherwise) to sit on the initial board. (Pub. Util. Code, § 15973.1(a).) In approving the consolidation, LAFCO can increase the successor district's initial board size to 7, 9 or 11 directors.

Seven-Director Option

The initial board of directors of the NCPUD may be composed of seven members— in this option, we recommend three from the Rainbow board (elected by the Rainbow board) and four from the Fallbrook board (elected by the Fallbrook board). Fallbrook would be allocated an additional director because it serves 35,000 residents compared to 18,000 in Rainbow, but the split is nearly-even because of the larger size of the Rainbow service area and the number of new projects slated for the Rainbow service area. We believe starting with a seven-member board will provide continuity from both sides, ease the combined governance of the two service areas, and work politically for both districts.

Additionally, we could probably modify who chooses the initial board members if LAFCO agreed in approving the consolidation, i.e. three directors from Fallbrook board chosen

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by Fallbrook board, three directors from Rainbow board chosen by Rainbow board, and one director from Fallbrook or Rainbow board chosen by board of NCJPA.

Nine-Director Option

Alternatively, the initial board of directors of the NCPUD may consist of nine members – five from the Fallbrook board, and four from the Rainbow board (elected by the Rainbow board). Again, our recommendation is that Fallbrook be allocated an additional director because of the difference in population. Similarly, the method for appointing the nine board members can be modified, so long as LAFCO agrees.

No Eleven-Director Option

Fallbrook and Rainbow currently both have five-member boards of directors, so an 11-member board is not feasible under the Public Utilities Code. The mandatory language of the code provides that the initial board will be comprised solely of current board members from Rainbow and Fallbrook.

THE SUCCESSOR DISTRICT'S BOARD

Upon the expiration of the terms of the members of the initial board, whose terms first expire following the effective date of the consolidation, the total number of members on the board of directors, "shall be reduced until the number equals the number of members permitted by the principal act of the consolidated or reorganized district, or any larger number as may be specified by the local agency formation commission in approving the consolidation or reorganization." (Pub. Util. Code, § 15973.1(b).)

If the initial board size is larger than the successor district's board size, the number of board directors will be reduced upon the expiration of each initial board member's term until the number of directors reaches the number of directors designated by the principal act or LAFCO in the consolidation. If the initial board and the successor district's board will be equal in number, then elections will be held upon the expiration of the initial board member's terms to elect/re-elect someone to the initial board member's seat.

Currently, Rainbow has two directors (Lucy, McManigle) whose terms will expire December 31, 2014, and three directors (Brazier, Sanford, Griffiths) whose terms expire December 31, 2016.

Fallbrook has two directors (McPhee, Davies) whose terms will expire December 4, 2014, and three directors (Hayden, McDougal, Gebhart) whose terms will expire December 8, 2016.

Options

The "principal act" of the NCPUD will be the Public Utility District Act, which is codified in Public Utilities Code §§ 15501 *et seq.* The Public Utilities Code provides for three options, outlined below. Any of the options permitted by the Public Utilities Code could be proposed directly to LAFCO and would likely be approved by LAFCO since they are consistent with the principal act. Alternatively, Option 4 presents options that are not consistent with the principal act, but may be approved by LAFCO.

Option 1: "By District" Elections – Odd Number of Districts

Rainbow/Fallbrook can decide to draw district lines to create an odd number of districts and, under the principal act, the NCPUD will have a board consisting of as many members as there are districts.¹ If five districts are drawn proportionally to reflect the total population of the NCPUD, then each district will consist of approximately 10,600 residents. If seven districts are drawn proportionally, then each district will consist of approximately 7,600 residents.

We recommend that an odd number of districts be created, simply because it is the cleanest, simplest option. Election by district ensures voter representation, and is more protective of the agency under the California Voting Rights Act than at-large elections.

Option 2: "At-Large" Elections

Under the principal act, if district lines are not drawn, then the NCPUD (lying entirely in San Diego County) will eventually have a three-member board, elected at large.² (Pub. Util. Code, § 15951.) Under Elections Code 15972, the board can increase the number of directors from three to five via a special or general election, or by initiative ordinance.

This option is not recommended. A three-member board will be a fairly drastic change from the five-member boards that Rainbow/Fallbrook's respective populations are used to. Furthermore, having solely at-large elections could expose the NCPUD to potential liabilities under the California Voting Rights Act, which could be costly and garner negative press for the newly-consolidated district.

¹ "At an election held in the district on the next established election date not less than 74 days after its formation a board of directors shall be elected, to consist of as many members as there are territorial units in the district and as many additional members, not less than three nor more than four, as are required to constitute a board composed of an odd number of directors. Where the district lies entirely in one county the number of directors shall be three, elected at large." (Pub. Util. Code, § 15951.)

² Pub. Util. Code, § 15951. Note that a director at large shall be "a resident and qualified elector of the district." (Pub. Util. Code, § 15952.)

Option 3: "Blended Elections" - Even Number of Districts, By-District/At-Large Combined Board

Rainbow/Fallbrook can choose to draw district lines to create an even number of districts. In this case, under the principal act, the NCPUD would have a board consisting of that even number of districts, with the board members elected by their respective districts, plus three additional board members elected "at large."³

For example, if the NCPUD has four districts, those four districts would elect members to the board by district, and an additional three board members would be elected by the entire district at-large, thereby creating a seven-member board.

This option is likely to be an administrative burden, more challenging logistically, and may be confusing to residents because they would sometimes be voting for board members by-district, and other times voting for board members at-large. Additionally, the three "at-large" seats present potential exposure to California Voting Rights Act lawsuits, although the risk is lower than an all at-large board (NCPUD can argue that the by-district elections allow for minority voter representation).

Option 4: Alternative Board Approved By LAFCO

Because LAFCO may essentially approve any board structure proposed in the consolidation, there are additional options on the table for the board to consider. However, *any "alternative" governance structure should be discussed with LAFCO in detail beforehand to determine whether LAFCO would be agreeable to the structure.* Otherwise, if LAFCO does not approve and instead defers to the principal act, the successor district will default to a three-member board with "at-large" elections if it has not been divided into territorial units upon consolidation.

For example, LAFCO can approve drawing two districts within the NCPUD (i.e., drawn according to current Rainbow/Fallbrook lines), with a board consisting of seven members, four elected from one district, and three elected from the other – the elections may be at large by district, or a different voting system can be used (i.e., cumulative voting⁴, or a single transferable vote⁵).

³ Pub. Util. Code, § 15951. "Candidates for the office of director to be elected by a unit shall be nominated from each such territorial unit, and the remaining number of directors shall be nominated from the district at large." (Pub. Util. Code, § 15954.)

⁴ Cumulative voting is a common way of holding elections in which the voters have unequal voting power, such as in corporate governance under the "one share, one vote" rule. Cumulative voting is also used as a multiple-winner method, such as in elections for a corporate board.

⁵ The single transferable vote (STV) is a voting system designed to achieve proportional representation through ranked voting in multi-seat voting districts. Under STV, an elector has a single vote that is initially allocated to his or her most preferred candidate and, as the count proceeds and candidates are either elected or eliminated, is transferred to other candidates according to the voter's stated preferences, in proportion to any surplus or discarded votes.

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Any option determined by the Board should be evaluated administratively and should consider the voting constituency, who may not be accustomed to a new or alternative voting system.

Survival of NCJPA Board Not An Option Post-Consolidation

There will be no separate Rainbow and Fallbrook after consolidation. Therefore, so long as the NCJPA is made up of Rainbow and Fallbrook, the NCJPA cannot live on once Rainbow has been consolidated into the successor public utility district (because Rainbow will no longer exist). See section 7 of the JPA agreement.

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BY HAND

TO: Board of Directors, North County Joint Powers Authority **FILE NO:** 120605/000001

FROM: Gregory v. Moser
Adriana R. Sanchez

DATE: December 12, 2013

RE: California Voter's Rights Lawsuit Summary

Pursuant to the Board's direction at the December 4, 2013 North County Joint Powers Authority board meeting, below is a summary of the California Voter's Rights Act ("CVRA") and the major lawsuits that have ensued since its passing.

Background and Recommendation

Essentially, the passage of the CVRA has made it easier for minority voters to sue local governments and eliminate at-large elections which, some argue, allow bloc voting that effectively renders minority votes meaningless and keeps minorities out of office. Proof of intent to discriminate is not a required showing under the CVRA,¹ and the CVRA grants a prevailing plaintiff the right to recover reasonable attorney's fees and expert witness fees.² Prevailing public agencies, however, are not granted the same rights.

There have been many highly-publicized cases filed under the CVRA; in each of the cases decided by the court, the public agency defending its at-large election system lost and had to pay substantial attorneys' fees to the plaintiffs. In other cases, the public agencies decided to settle the lawsuits before going to trial and took steps to move to elections by territorial unit (or "districts", "sub-districts", or "by-trustee area") elections.

Due to exposure to attorneys' fees, costs of litigation, and potential negative press from a lawsuit being filed, we recommend that the NCJPA board carefully consider potential liabilities

¹ When making a claim that a governing body is in violation of the CVRA, "Proof of intent on the part of voters or elected officials to discriminate against a protected class is not required. (Elec. Code, § 14028(d).)

² "[T]he court shall allow the prevailing plaintiff party, other than the state or political subdivision thereof, a reasonable attorney's fee [...] and litigation expenses including, but not limited to, expert witness fees and expenses as part of the costs. Prevailing defendant parties shall not recover any costs, unless the court finds the action to be frivolous, unreasonable, or without foundation." (Elec. Code, § 14030.)

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under the CVRA in forming the new North County Public Utilities District's governance and election system. The safest option is by choosing an all "by-district" election system, but the demographics of the district play a significant role in a risk analysis. We have not collected any information on the demographics of the consolidated agency.

The NCJPA may consider commissioning a racial demographics study to determine if minority voters have been fairly represented in RMWD/FPUD's past elections. If a study is commissioned, a racial polarized voting analysis should be included. The benefit to such a study would be that it would provide the NCJPA with additional information to carefully consider what sort of governance system to establish in forming the North County Public Utilities District. The potential downside is that it will cost money and take time.

The California Voting Rights Act

Governor Gray Davis approved the CVRA on July 9, 2002. The bill was codified as California Elections Code §§ 14025 *et seq.*

The CVRA was passed because the California Legislature wanted to provide a broader cause of action for vote dilution than was provided for by the federal Voting Rights Act ("FVRA"). (*Sanchez v. The City of Modesto* (2006) 145 Cal.App.4th 660, 668.) The CVRA expands on voting rights granted under the FVRA by, among other things, granting standing to groups who are too geographically dispersed to elect their candidate of choice from a single member district.

Elections Code § 14027 states that at-large elections may not be imposed in a manner that impairs the ability of a "protected class" (defined as a race, color, or language minority group) to elect candidates of its choice or influence the outcome of an election. A violation of the CVRA is established if it is shown that racially polarized voting has occurred in a district's governing board election. (Elec. Code, § 14028.) "Racially Polarized Voting" means voting where there is a difference in the choice of candidates, or other electoral issues, preferred by voters in a protected class, and in the choice of candidates, or other electoral issues, that are preferred by voters in the rest of the electorate. (Elec. Code, § 14026(e).) The areas evaluated to determine whether racially polarized voting exists include voting behavior, voting history of the district, the racial population of the district, the voting history of the district concerning contested elections for governing board seats, and an evaluation of whether minority "candidates of choice" have been elected or prevented from being elected due to an at-large election system.

Below is a summary of the major CVRA cases, as well as some more recent lawsuits faced by public agencies in the state.

***Sanchez v. The City of Modesto, supra*, 145 Cal.App.4th 660**

In 2004, the Lawyers Committee for Civil Rights filed a suit under the CVRA against the City of Modesto on behalf of three Latino residents. The committee claimed that racially polarized voting in the city was keeping Latinos out of office. (*Id.* at p. 666-667.) There,

although Latinos were 25.6 percent of the city's population of 200,000, only one Latino had been elected to the city council since 1911. (*Id.* at 667.) The trial court ruled in favor of the city and declared the CVRA unconstitutional. The case was appealed to the 5th District Court of Appeals who struck down the trial court's ruling. The Court of Appeal declared the CVRA to be valid, constitutional, and further ruled that "all persons" have standing under the CVRA to sue for race-based vote dilution. (*Id.* at p. 684.) The Court awarded the plaintiffs attorneys' fees and costs on appeal. (*Id.* at p. 690.)

The city appealed the case to the State Supreme Court, but the Court refused to hear the case and sent it case back to trial court.

At the trial court, the case ended in settlement after the city voted on a ballot measure to use district voting by 2009. Although the city settled, the city was still responsible for paying \$3 million in fees for the plaintiff's lawyers – this is in addition to the reported \$1.7 million the city had to pay for its own lawyers. (Ashton, A. (6 June 2008). The Modesto Bee, "Settlement in Latino Voting Case Will Set Modesto Back \$3 Million.")

***Rey v. Madera Unified School District* (2012) 203 Cal.App.4th 1223**

In August 2008, the Lawyers Committee for Civil Rights filed suit against the Madera Unified School District on behalf of three Latino residents. The plaintiffs alleged that the District's "at-large" voting method of electing members of the District's governing board caused dilution of the Latino vote. (*Id.*, at p. 1227.) There, while 82 percent of students in Madera were Latino, only one out of seven board members was Latino.

The plaintiffs applied for a preliminary injunction to enjoin the District's November 4, 2008 elections. The District did not oppose the preliminary injunction application, and, instead of going to trial, immediately initiated the process for changing its method of election and agreed to draw district lines. (*Id.* at p. 1228). The court issued the preliminary injunction and found that the plaintiffs were the prevailing parties. Plaintiffs, therefore, were entitled to attorneys' fees and costs under the CVRA. The main issue in this litigation was the amount of the fee award. The trial court granted plaintiffs \$162,500 to be paid by the District. The Court of Appeal upheld the award.

2013 Cases

In July 2013, a Los Angeles Superior Court judge ruled that the City of Palmdale's at-large elections had led to racial polarization. The Court ruled that the City of Palmdale violated the CVRA by continuing to hold at-large elections that disenfranchised African-American and Latino residents. More than half of Palmdale's community is Latino, yet of the city's five council members, only one is Latino. Furthermore, Palmdale has never had an African-American representative, even though African Americans make up 15 percent of Palmdale's population. (Walton, A. (25 July 2013) KPCC Wire Services, "Court finds Palmdale's at-large elections violate Voting Rights Act.) The City of Palmdale is apparently appealing the ruling.

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As of July 2013, three agencies in the Santa Clarita Valley (the city of Santa Clarita, the Santa Clarita Community College District, and the Sulphur Springs School District) are facing California Voting Rights Act lawsuits. Each of the three lawsuits alleges that at-large election methods prevent minority voters from electing candidates of their choice. (Money, L. (29 July 2013) The Santa Clarita Valley Signal, "League of California Cities reviews Voting Rights Act lawsuits.")

According to a September 14, 2013 Los Angeles Times article, Compton (with a majority Latino and a mostly African American power structure), and Escondido, switched to geographic representation after lawsuit settlements. Anaheim, facing a trial, tried in vain to appease CVRA plaintiffs by requiring that candidates live in designated districts, although they would still be elected at large. Whittier, sued in August by Latino activists who said they had tried for years to get representation on that city's council, is also facing a CVRA lawsuit. (Merl, J. (14 September 2013) Los Angeles Times, "Voting Rights Act leading California cities to dump at-large elections.")

We trust this provides you with guidance regarding the CVRA and the manner in which it has been interpreted by the courts.