



**Montara Water
and Sanitary District**
Serving the Community of Montara and Moss Beach

P.O. Box 370131
8888 Cabrillo Hwy
Montara, CA 94037-0131
t: 650.728.3545 • f: 650.728.8556

To sensitively manage the natural resources entrusted to our care, to provide the people of Montara - Moss Beach with reliable, high – quality water, wastewater, and trash disposal at an equitable price, and to ensure the fiscal and environmental vitality of the district for future generations. Be open to providing other services desired by our community.

NOTICE OF SPECIAL MEETING*

AGENDA

District Board of Directors

March 29, 2021 at 7:30 p.m.

DUE TO COVID-19, THIS MEETING WILL BE CONDUCTED REMOTELY PURSUANT TO THE PROVISIONS OF THE GOVERNOR'S EXECUTIVE ORDERS N-25-20 AND N-29-20 TEMPORARILY SUSPENDING AND MODIFYING CERTAIN TELECONFERENCE REQUIREMENTS UNDER THE RALPH M. BROWN ACT. MEMBERS OF THE PUBLIC MAY NOT ATTEND THIS MEETING IN PERSON.

**This Special Meeting was originally noticed to take place on March 25, 2021 at 5:00 p.m. but did not take place due to a clerical error indicating the incorrect time.*

Directors, staff and the public may participate remotely via the application ZOOM:

ZOOM MEETING INFORMATION:

WEBSITE: <https://us02web.zoom.us/j/86082398673?pwd=YmtGamFRMWEyMUt3dkQ5SHBaS0Exdz09>

MEETING ID: 860 8239 8673

Password: 502687

CALL IN PHONE NUMBER: +1 669 900 9128

INSTRUCTIONS for remote access are available at <https://support.zoom.us/hc/en-us/articles/201362193-Joining-a-Meeting>. You also may view video during the meeting via live stream or after the meeting at https://videoplayer.telvue.com/player/wuZKb9gwEY7sMACIIsr7VSJgIB35kNZA/stream/159?fullscreen=true&sho_wtabssearch=false&autostart=false . If you experience technical difficulties or have technical questions prior to or during the meeting, please contact MWSD's IT support at (650) 728-7843.

Note: Public participation is not permitted during closed session discussion items.

Public Comment

In accordance with the Government Code, members of the public may address the Board on specific agenda items when the matter is announced by the Board President. Any other item of interest that is within the subject matter jurisdiction of the District may be addressed during the Oral Comments portion of the meeting. A "raise hand" button available for every Zoom user can be used to alert the President of the intent to comment.

Public comment also may be submitted in writing (in accordance with the three-minute per speaker limit) via email to info@mwsd.net up to one-hour prior to the scheduled meeting time. Please indicate in your email the agenda item to which your comment applies. The District Clerk will read all comments into the record. Comments and materials related to an item on this Agenda submitted after distribution of the Agenda Packet are available in the District Clerk's office during normal business hours and may also be available on the District's web site (www.mwsd.montara.org) subject to staff's ability to post the documents before the meeting.

Upon request, this Agenda and written agenda materials will be made available in appropriate alternative formats to persons with a disability. Request for a disability-related modification or accommodation in order to participate in the public meeting should be emailed to info@mwsd.net or submitted by phone at 650-728-3545 at least two days before the meeting. Requests will be granted whenever possible and resolved in favor of accessibility.

Subject to Change: Given the current public health emergency and the rapidly evolving federal, state, and local orders, the format of this meeting may be altered, or the meeting may be canceled. You may check on the status of the meeting by visiting the District's website at: <http://mwsd.montara.org> .

CALL TO ORDER

ROLL CALL

PRESIDENT'S STATEMENT

ORAL COMMENTS (Items other than those on the agenda)

PUBLIC HEARING (none)

CONSENT AGENDA (none)

OLD BUSINESS (none)

NEW BUSINESS

1. [Review and Consideration of Response to Notice of Violation of the California Voting Rights Act and Possible Action Concerning Safe Harbor Timelines Under Elections Code Section 10010](#)

REPORTS (none)

FUTURE AGENDAS

2. CSDA Transparency Certificate
3. Conflict of Interest Code Update

CONVENE IN CLOSED SESSION

CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION

Government Code §54956.9(d)(1)

Case Name: *City of Half Moon Bay v. Granada Community Services District, et al.*

(Santa Clara County Super. Ct. No. 17CV316927)

CONFERENCE WITH LEGAL COUNSEL- ANTICIPATED LITIGATION

Significant exposure to litigation pursuant to paragraph (2) of subdivision (d) of Gov. Code § 54956.9

(1 potential case)

REPORT OF ACTION TAKEN IN CLOSED SESSION, IF ANY

ADJOURNMENT

The District has a curfew of 10:30 p.m. for all meetings. The meeting may be extended for one hour by vote of the Board.



MONTARA WATER AND SANITARY DISTRICT AGENDA

For Meeting Of: **March 25, 2021**

TO: BOARD OF DIRECTORS

FROM: Christine C. Fitzgerald, District General Counsel
Clemens Heldmaier, General Manager

SUBJECT: Review and Consideration of Response to Notice of Violation of the California Voting Rights Act and Possible Action Concerning Safe Harbor Timelines Under Elections Code Section 10010

On February 12, 2021, the District received a letter via certified mail from attorney John Sarsfield of Melo and Sarsfield LLP titled *Notice of Violation of the California Voting Rights Act (CVRA) and Intent to File Lawsuit* “ (Attachment 1; hereafter referred to as “demand letter”). The demand letter asserts that the Board’s illegal use of at large voting to elect its members violates the California Voting Rights Act, Elections Code Section 14025 et. seq.” and threatens to file a lawsuit without delay in San Mateo County Superior Court following the expiration of the “45 day litigation hold required by AB 350”. Mr. Sarsfield asserts that the 45-day time period is triggered by the date of the District’s receipt of letter, which means that the litigation hold would expire on March 29, 2021.

The letter states that Mr. Sarsfield represents a group of registered voters residing in the District who claim that at large systems are unfair to minority voters and suppress minority voter turnout. The letter concludes by asserting that “it is self-evident that minority representation on the Board has been historically lacking.” The letter makes these conclusionary allegations but is devoid of factual support or evidence.

Follow receipt of the demand letter, District General Counsel contacted Mr. Sarsfield in an attempt to confirm the identity of his clients and/or the identity of the protected class to which his clients belong but he declined to provide such information; consequently, the District has been unable to confirm the accuracy or merit of the alleged claims. Nonetheless, Mr. Sarsfield offered to work with the District towards a potential settlement agreement and entry of consent decree in lieu of litigation.

California Voting Rights Act

The California Voting Rights Act (“CVRA”; Elections Code Sections 14025 through 14032) prohibits at-large election systems from impairing the ability of a protected class (e.g. members of a race, color, or language minority group) to elect candidates of its choice or its ability to influence the outcome of an election. Modeled after the Federal



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Voting Rights Act of 1965 ("FVRA"), the CVRA was specifically enacted to make it easier for plaintiffs to challenge at-large voting systems employed by many public agencies. To prove a violation of the CVRA, plaintiffs need only show the existence of racially polarized voting—that there is a difference between the candidates or ballot measures preferred by the voters in the protected class compared to voters generally. (Elections Code §§ 14026(e), 14028(a).) Plaintiffs are not required to show that members of a protected class live in a geographically compact area or to prove an intent to discriminate on the part of voters or officials. Moreover, prevailing CVRA plaintiffs are guaranteed to recover their attorneys' fees and costs, which are quite substantial in most cases.

By comparison, the FVRA was originally designed to protect minority voters and candidates in states and localities with a history of racial discrimination and barriers to voting by addressing a variety of state actions that denied or abridged the right of citizens to vote and to have an opportunity to elect representatives of their choice. A FVRA plaintiff must prove the following three basic elements:

1. Sufficiently large/geographically compact minority group to form a majority of the eligible voters in a single- member district;
2. Minority group is politically cohesive; and
3. "White bloc voting" is sufficient to prevent minority voters from usually electing candidates of their choice.

If a plaintiff proves these elements, the court then considers the "totality of circumstances" to determine if minority voters have an equal opportunity to elect their chosen candidate in an at-large election system. Historically, California plaintiffs had a losing record under the FVRA. Consequently, the CVRA eliminates certain elements of proof that are essential under the FVRA which, again, makes claims easier to successfully litigate against public agencies.

CVRA Safe Harbor/Fee Cap Provisions

In order to significantly moderate exposure to plaintiff's attorneys fees, the legislature enacted amendments to Elections Code section 10010 that provide the process and timeline by which an agency must transition to a district-based system in order to avoid a lawsuit and not incur additional legal costs. A local jurisdiction can no longer be sued unless the potential plaintiff sends a notice of violation (i.e., demand letter). Upon receiving notice, an agency has 45 days to assess its options without being sued (the



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first safe harbor period). If the process is followed, the agency passes a Resolution of Intent to Transition to District Elections and, thereafter, has 90 days to hold a series of five public hearings, as described below:

- *Public Hearings 1 and 2:* Held over a period of no more than 30 days, the Board invites the public to provide input about how the district lines should be drawn, and what factors should be taken into account in doing so.
- *Draft map(s)* of proposed districts drawn and made available to the public. The District shall also make public the proposed sequence of elections (i.e., which districts will be elected in which general municipal election) if the board members will be elected at different times to provide for staggered terms of office.
- *Public Hearings 3 and 4:* Once the draft maps have been made available to the public for at least 7 days, the Board may hold the third and fourth public hearings over a period of no more than 45 days to invite public input on the draft maps and proposed sequence of elections. At the fourth hearing, the Board may introduce the ordinance to transition to district-based elections.
- *Public Hearing 5:* At the final public hearing, the Board votes to approve the ordinance to transition to district-based elections with a second reading of the ordinance that was introduced at the fourth hearing.

The 90-day period provides a *second* safe-harbor period from litigation during which a jurisdiction can complete the specified process for establishing electoral divisions. If an agency follows the process set forth in Elections Code section 10010 above, its exposure to pay a plaintiff's attorneys' fees and expenses is capped at \$30,000 plus an inflation adjustment.

Applying the above safe harbor timeframes here, Mr. Sarsfield's demand letter was received on February 12, 2021; therefore, the first 45-day safe harbor period expires on March 29, 2021. Thereafter, the second 90-day safe harbor period expires on June 27, 2021.

Governor's Executive Orders Suspending Safe Harbor Timelines

Due to the COVID-19 pandemic, Governor Newsom issued Executive Orders N-34-20 and N-48-20 ("Order" or "Orders") which *toll* the running of the safe-harbor periods. Specifically, Order N-48-20 (Attachment 2), which amends the Governor's initial Order N-34-20 suspending deadlines, clarifies that the suspension of deadlines applies to both of the "safe harbor" periods provided in Elections Code section 10010, subd. (e). It is



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clear the suspension applies to the *first* 45-day period local agencies have to consider adoption of a resolution expressing intention to convert to district elections, as well as the *second*, 90-day period for the public hearings to create districts. The suspension is effective “until further notice.” Here is the relevant excerpt from the Order:

“2) To clarify the scope of Paragraph 1 of Executive Order N-34-20, (March 20, 2020), without changing its effective date, that paragraph is modified to read as follows:

The timeframes set forth in Elections Code section 10010, subdivisions (a) and (e), are suspended as to any political subdivision of the State. The purpose of this suspension is to protect public health and safety during the period when the State Public Health Officer and other public health officials have determined that it is necessary to engage in physical distancing to minimize the spread of COVID-19. This suspension shall be in effect until further notice.

This paragraph pauses the timeframes set forth in Elections Code section 10010, subdivisions (a) and (e), but does not restart them: this paragraph should be construed to toll those timeframes, such that days elapsed during the suspension set forth in this paragraph are not counted, but any days that elapsed prior to that suspension are still counted.

This paragraph shall not preclude a prospective plaintiff obtaining reimbursement from a political subdivision under subdivision (f) of Elections Code section 10010, in the manner set forth in that subdivision.”

Other local jurisdictions receiving demand letters during the Governor’s suspension period have chosen to either continue with the safe harbor public hearing process¹ or suspend it in reliance on the Orders. Pertinent to this Board’s determination is the City of Folsom’s decision to apply the Order to the *first* 45-day period and to *not* proceed with adopting a resolution of intent to transition within the 45 day deadline following receipt of a demand letter. The plaintiffs then filed suit claiming, inter alia, that the Governor lacks authority to toll the running of the time frames set forth in Elections Code section 10010(a) and (e). Recently, the Hon. Shama H. Mesiwala, Judge of the Superior Court, County of Sacramento, issued a ruling in favor of the City, upholding the Orders on the following grounds:

¹ Central Contra Costa Sanitary District and Folsom Cordova Unified School District voted not to suspend the safe harbor timelines under the Orders.



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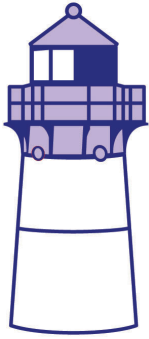
TO: BOARD OF DIRECTORS

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“Governor Newsom’s Executive Order N-48-20 suspended the running of the 45-day period during which Folsom was to have an opportunity to “pass 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 timeframe for doing so.” The 45 -day and 90-day periods in Election Code section 10010 are intended to provide Folsom with an opportunity to voluntarily remedy the Plaintiffs’ claims of a CVRA violation by transitioning to a different election method that has first been fully considered by Folsom and its electorate. That process includes public hearings of direct interest and consequence to every resident in Folsom who would be entitled to have their voices heard on the question and any transition plans. The Governor’s Executive Order N-48-20 suspending both timeframes was expressly issued to protect the public health and safety during the pandemic and to preserve the rights of Folsom’s entire constituency to meaningfully participate in the decision as to whether to transition from at-large elections, and if so, in what manner. The Governor determined that compelling such important public hearings during the pandemic could disenfranchise the public from these significant decisions that are so fundamental to their voting rights.

The Governor’s order acknowledges the importance of the public hearings to the overall process that Plaintiffs initiated, and the impacted public’s right to fully participate in those hearings. The fact that a political body may be able to hold a teleconference meeting does not mean or ensure that every member of the public can fully attend or participate. The Governor’s order suspended the comparatively short time frames in Section 10010 for the protection of the electorate and the community as a whole, not to simply provide political subdivisions like Folsom a respite from claims like those of Plaintiffs. **And, the suspension is not left to the discretion of the political subdivisions under the Governor’s order - the suspension is immediate and total, not conditional.** The preamble to the Governor’s order makes clear that the suspension of this overall process is intended to allow the public to fully participate “in their democratic process” while safeguarding their health and safety and that of the community.” (emphasis added)

The Sacramento Court noted that the purpose behind the Orders – to protect the community’s right to fully participate in the CVRA public hearing process while safeguarding their health and safety – is clearly set forth in the preamble and the suspension of the timelines is necessary to achieve such a purpose. The Court further concluded that the decision of whether to suspend the timelines is not discretionary but, indeed, mandatory. As the Order specifically states, “[t]his suspension *shall* be in effect until further notice.” Under the elections statute, the definition of “Shall” is mandatory. (Elec. Code § 354.)



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It should be noted that the Sacramento Superior Court ruling does not constitute stare decisis, i.e., it is not binding legal authority. Another county could apply same analysis and reach the same conclusion, or not. Nevertheless, the legal basis of the Court's ruling is sound, compelling and persuasive.

Mr. Sarsfield asserts that his demand letter triggers the running of the 45-day litigation hold, thereby ignoring the tolling of the safe harbor timeframes under the Orders. If, however, the District invokes the Orders based on the reasoning that suspension is mandatory until further notice, it is the lifting of the Order that triggers the running of the 45-day safe harbor timeline.

Lastly, even if the District decides to change to by-division elections in accordance with the timeframes required under the law, any new electoral divisions would need to be designed, in part, on the demographic data contained in the United States Census so that the divisions have relatively equal populations. If the District creates electoral divisions now, the most recent Census data available is from the 2010 Census. Although the 2020 Census is underway, because of COVID-19-related shifts in data collection and in the data processing schedule, the results will not be available until Sept. 30, 2021. Consequently, if the District were to transition before receiving the 2020 Census, it will be relying on 2010 Census data.

Public Outreach and Engagement

Should the District decide to suspend the safe harbor timelines, staff recommends that the District undertake a holistic strategic exercise into whether the current at-large voting system is consistent with its commitment to diversity and inclusiveness in its role as a provider of public services. By increasing public awareness and education about its elections in a series of outreach meetings and communications, the District can engage community members, with a committed focus towards any underrepresented population within District boundaries.



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Options

Based upon the foregoing, the District is presented with two options: 1) Disregard the Orders suspending the safe harbor timelines and adopt a resolution of intent to transition from at-large to by-division elections, and proceed to hold the requisite public hearings within 90 days; or, 2) Comply with the Orders and adopt a resolution declaring the District's intention to suspend the safe harbor timelines until the suspension is lifted, and direct staff to proceed with public outreach per Board instruction.

RECOMMENDATION

Approve Resolution Declaring Intention to Suspend Elections Code Section 10010 Safe Harbor Timelines for Transitioning from At-Large to By-Division Elections Pursuant to Executive Orders Nos. N-34-20, N-48-20

Attachments.



**LAW OFFICES OF MELO AND
SARSFIELD LLP**



ATTACHMENT 1

Mailing:

4216 South Mooney Boulevard
PMB 136
Visalia, California 93277

T (559) 732-3000

Email:

meloandsarsfield@icloud.com

Feb. 9, 2021

Montara Water and Sanitary District
8888 Cabrillo Hwy
Montara, CA 94037

By Certified US Mail

Re: Notice of Violation of the California Voting Rights Act (CVRA) and Intent to File Lawsuit.

Dear Board of Directors and Clerk to the Board:

The Law Offices of Melo and Sarsfield LLP is a law firm that practices in the area of voting rights law. We represent a group of registered voters who reside within the jurisdictional boundaries of the Montara Water and Sanitary District. We have been retained to initiate a lawsuit for the Board's violation of the California Voting Rights Act, Election Code Section 14025 et. seq. This lawsuit will be filed in San Mateo County Superior Court after the 45 day litigation hold required by AB 350.

The pending lawsuit is based upon the Board's illegal use of "at large" voting to elect members of the Board of Directors. The Board's use of "at large" voting is in violation of the California Voting Rights Act.

At large voting schemes are unfair to minority voters and suppress minority vote turnout in violation of both state and federal election law.

MWSD

2/9/2021 Page 2/2

It is self-evident that minority representation on the Board has been historically lacking.

We would be happy to enter into a consent decree to keep litigation costs down to an absolute minimum. Alternatively, the Board can voluntarily agree to go to "by district" elections.


Once the 45 day litigation hold expires, our clients will not delay filing the lawsuit unless the Board is clearly willing to work with them in good faith to develop a remedial plan.

Please be advised that this letter is the pre-litigation administrative "demand letter" that triggers the 45 day litigation hold pursuant to AB 350 (January 2017) (Election Code § 14025 et seq).

We look forward to hearing from the Board in all due haste.

Sincerely,

LAW OFFICES OF MELO AND SANSFIELD LLP

By: 

John Sarsfield, Esq.

cc: Clients

ATTACHMENT 2

EXECUTIVE ORDER N-48-20

WHEREAS on March 4, 2020, I proclaimed a State of Emergency to exist in California as a result of the threat of COVID-19; and

WHEREAS on March 19, 2020, I issued Executive Order N-33-20, directing all Californians to heed State Public Health Officer directives requiring them to stay home except for essential needs; and

WHEREAS local governments throughout the State have also proclaimed local emergencies, imposed stay-at-home orders and other forms of physical distancing, and taken other significant steps in response to COVID-19; and

WHEREAS on May 19, 2020, a Special Recall Election will be held in the City of Santa Ana, in the County of Orange; and

WHEREAS on June 2, 2020, a Special Municipal Election will be held in the City of Commerce, in the County of Los Angeles; and

WHEREAS on June 2, 2020, a Special Recall Election will be held in the El Rancho Unified School District, in the County of Los Angeles; and

WHEREAS state law would ordinarily require that these elections be conducted using in-person voting at polling locations throughout the jurisdiction; and

WHEREAS the generalized use of in-person voting presents risks to public health and safety in light of the COVID-19 pandemic, and risks undermining physical distancing measures imposed by the State Public Health Officer, as well as other aspects of the response to COVID-19; and

WHEREAS our elections must be accessible, secure, and safe; and

WHEREAS California's existing vote-by-mail procedures can be used to allow these elections to go forward in a manner that is accessible, secure, and safe; and

WHEREAS various political subdivisions of the State have been in the process of changing from an at-large method of election to district-based elections, requiring a series of public hearings, which are intended to be conducted before the expiration of a safe-harbor provision under Elections Code section 10010; and

WHEREAS on March 20, 2020, I issued Executive Order N-34-20, which suspended the timeframes for conducting these public hearings; and

WHEREAS uncertainty regarding Elections Code section 10010 could nevertheless induce political subdivisions to hold these public hearings in the near future—at a time when public health requires that Californians stay home except for essential needs, and otherwise engage in physical distancing, to minimize the spread of COVID-19; and

WHEREAS holding these hearings in the near future—at a time when public health requires that Californians stay home except for essential needs—would threaten public health and safety, and would force Californians to choose between fully participating in their democratic process and safeguarding their own health and safety, as well as the health and safety of their communities; and

WHEREAS under the provisions of Government Code section 8571, I find that strict compliance with various statutes specified in this order would prevent, hinder, or delay appropriate actions to prevent and mitigate the effects of the COVID-19 pandemic.

NOW, THEREFORE, I, GAVIN NEWSOM, Governor of the State of California, in accordance with the authority vested in me by the State Constitution and statutes of the State of California, and in particular, Government Code sections 8567, 8571, and 8627, do hereby issue the following Order to become effective immediately:

IT IS HEREBY ORDERED THAT:

- 1) Notwithstanding Elections Code sections 1500 and 4000–4007 (including, but not limited to, the conditions otherwise imposed on all-mail ballot elections in Elections Code sections 4000 and 4001.5), and any other applicable provision of state law, the following elections shall each be held as an all-mail ballot election:
 - The May 19, 2020, Special Recall Election to be held in the City of Santa Ana;
 - The June 2, 2020, Special Municipal Election to be held in the City of Commerce; and
 - The June 2, 2020, Special Recall Election to be held in the El Rancho Unified School District.

Each of these elections shall be conducted according to the provisions of the Elections Code that govern all-mail ballot elections, including but not limited to Elections Code sections 3000–3026 and 4100. The respective county elections officials responsible for conducting each respective election shall transmit vote-by-mail ballots to all voters eligible to vote in each respective election.

Notwithstanding any other provision of this Order, elections officials are also authorized to make in-person voting opportunities available for each of these elections, on or before Election Day, in a manner that is consistent with public health and safety. The purpose of this authorization is to maximize voter opportunities to participate in these elections without jeopardizing public health and safety.

Elections officials shall provide maximum possible notice to voters about how to participate in each of these elections, paying particular attention to the needs of voters at high risk from COVID-19, individuals with disabilities, and other voters with particularized needs.

- 2) To clarify the scope of Paragraph 1 of Executive Order N-34-20, (March 20, 2020), without changing its effective date, that paragraph is modified to read as follows:

The timeframes set forth in Elections Code section 10010, subdivisions (a) and (e), are suspended as to any political subdivision of the State. The purpose of this suspension is to protect public health and safety during the period when the State Public Health Officer and other public health officials have determined that it is necessary to engage in physical distancing to minimize the spread of COVID-19. This suspension shall be in effect until further notice.

This paragraph pauses the timeframes set forth in Elections Code section 10010, subdivisions (a) and (e), but does not restart them: this paragraph should be construed to toll those timeframes, such that days elapsed during the suspension set forth in this paragraph are not counted, but any days that elapsed prior to that suspension are still counted.

This paragraph shall not preclude a prospective plaintiff obtaining reimbursement from a political subdivision under subdivision (f) of Elections Code section 10010, in the manner set forth in that subdivision.

IT IS FURTHER ORDERED that as soon as hereafter possible, this Order be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this Order.

This Order is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable at law or in equity, against the State of California, its agencies, departments, entities, officers, employees, or any other person.

IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 9th day of April 2020.

GAVIN NEWSOM
Governor of California

ATTEST:

ALEX PADILLA
Secretary of State

RESOLUTION NO. _____

RESOLUTION DECLARING INTENTION TO SUSPEND ELECTIONS CODE SECTION 10010 SAFE HARBOR TIMELINES FOR TRANSITIONING FROM AT-LARGE TO BY-DIVISION ELECTIONS PURSUANT TO EXECUTIVE ORDER NOS. N-34-20, N-48-20

WHEREAS, Montara Water and Sanitary District (“District”) is a Sanitary District duly organized under the Sanitary District Act of 1923 (Health & Safety Code §§ 6400 – 6830) and a public agency formed as a special district and authorized under California law, by a special election of August 11, 1992 and MWSD Resolution 978, to exercise all powers of a county water district in the same manner as county water districts formed under the County Water District Law (Division 12 (commencing with Section 30000) of the Water Code); and

WHEREAS, pursuant to law and legislative acts which established the District, the five members of the Board of Directors of the District are currently elected through an at-large election where all voters within the District vote for each Director; and

WHEREAS, the District received a letter titled *Notice of Violation and Intent to File Lawsuit* (“Notice”) asserting that the District’s at-large election system violates the California Voting Rights Act of 2001 (“CVRA”) and threatening litigation if the District does not voluntarily change to a by-division election system for electing Directors; and

WHEREAS, the Notice fails to identify the potential plaintiffs or the protected class to which the Plaintiff’s belong; and

WHEREAS, the District denies that its at-large system for electing Directors violates the CVRA or any other provision of law and asserts the District’s election system is legal in all respects and further denies any wrongdoing in connection with the manner in which it has conducted its elections; and

WHEREAS, the California Legislature, in amendments to Elections Code section 10010 and enacting section 10650, has provided a safe harbor process whereby a jurisdiction can change to a by-division election system and be protected from litigation under the CVRA (Elec. Code § 10010(e));

WHEREAS, Governor Gavin Newsom, in Executive Orders N-34-20 and N-48-20 (“Orders”) tolled the safe harbor timeframes set forth in Elections Code sections 10010(a) & (e) to protect public health and safety during the COVID-19 pandemic and to protect the rights of Californians to fully participate in their democratic process, effective until further notice; and

WHEREAS, Executive Order No. N-48-20 (attached), issued on April 9, 2020, clarifies Order No. 34-20, declaring in pertinent part:

2) To clarify the scope of Paragraph 1 of Executive Order N-34-20, (March 20, 2020), without changing its effective date, that paragraph is modified to read as follows:

RESOLUTION NO. _____

RESOLUTION DECLARING INTENTION TO SUSPEND ELECTIONS CODE SECTION 10010 SAFE HARBOR TIMELINES FOR TRANSITIONING FROM AT-LARGE TO BY-DIVISION ELECTIONS PURSUANT TO EXECUTIVE ORDER NOS. N-34-20, N-48-20

The timeframes set forth in Elections Code section 10010, subdivisions (a) and (e), are suspended as to any political subdivision of the State. The purpose of this suspension is to protect public health and safety during the period when the State Public Health Officer and other public health officials have determined that it is necessary to engage in physical distancing to minimize the spread of COVID-19. This suspension shall be in effect until further notice.

This paragraph pauses the timeframes set forth in Elections Code section 10010, subdivisions (a) and (e), but does not restart them: this paragraph should be construed to toll those timeframes, such that days elapsed during the suspension set forth in this paragraph are not counted, but any days that elapsed prior to that suspension are still counted.

This paragraph shall not preclude a prospective plaintiff obtaining reimbursement from a political subdivision under subdivision (f) of Elections Code section 10010, in the manner set forth in that subdivision.

WHEREAS, the State of California, as well as the nation and much of the world, is currently in the midst of the COVID-19 (Coronavirus) emergency, and subject to social distancing measures as evidenced by, *inter alia*, Executive Order No. 33-20 issued by Governor Newsom on March 19, 2020, and such measures compromise the ability of persons to participate in the hearing process set forth in Section 10010 of the Elections Code.

WHEREAS, at least one other local jurisdiction receiving a CVRA violation notice during the period the Orders are in effect has chosen to suspend the timeframes set forth in Elections Code sections 10010(a) & (e) based on the Orders; and

WHEREAS, in connection with suspension of the timeframes set forth in Elections Code sections 10010(a) & (e), the Superior Court of the State of California, in and for the County of Sacramento, upheld the Governor's authority to toll the running of the time frames set forth in Elections Code section 10010(a) and (e) under the Orders.

NOW, THEREFORE, be it resolved by the Board of the Montara Water and Sanitary District, a public agency in the County of San Mateo, California, as follows:

1. The foregoing recitals are hereby adopted as true and correct and form the basis of this Resolution.
2. The Staff Report dated March 25, 2021 titled "Review and Consideration of Response to Notice of Violation of the California Voting Rights Act and Possible Action

RESOLUTION NO. _____

RESOLUTION DECLARING INTENTION TO SUSPEND ELECTIONS CODE SECTION 10010 SAFE HARBOR TIMELINES FOR TRANSITIONING FROM AT-LARGE TO BY-DIVISION ELECTIONS PURSUANT TO EXECUTIVE ORDER NOS. N-34-20, N-48-20

Concerning Safe Harbor Timelines Under Elections Code Section 10010” submitted in support of this Resolution is incorporated by this reference as though fully set forth herein, and further forms the basis of this Resolution.

3. Based on Executive Orders N-34-20 and N-48-20 (attached hereto and incorporated herein by this reference), the Board hereby suspends the 45-day timeframe to adopt a resolution of intent to transition from at large to by division elections of its Board of Directors within 45-days of receipt of the Notice and the 90-day timeframe thereafter to conduct the public hearings required to transition from an at-large method of election to a district-based election, as set forth in Elections Code section 10010, until such time as the Orders are lifted, at which time the 45-day timeline is triggered pursuant to Section 10010 of the Elections Code.
4. The District General Manager or District General Counsel shall inform the Board of Directors as soon as the tolling/suspension pursuant to Executive Orders N-34- 20 and N-48-20 is terminated.
5. The Board of Directors reserves the right to repeal this resolution in accordance with the law should the CVRA or the Orders be declared illegal, or as may be in the best interests of the District.
6. The Board of Directors delegates to the General Manager responsibility to coordinate the development and execution of a program to inform the residents of the District of this Resolution and the process set forth in the CVRA, and to facilitate and encourage public participation and input related to the District’s election process.
7. The District General Manager and the District General Counsel are hereby authorized and directed to take such action as necessary or appropriate, or as deemed necessary and appropriate to carry out the purposes this Resolution.
8. The District Manager is further authorized to make customary expenditures, not to exceed the District Manager’s general authority for approval of expenditures, and to take such other and further action as may be necessary or convenient to carry out the purpose and intent of this Resolution.

[con’t next page]

RESOLUTION NO. _____

RESOLUTION DECLARING INTENTION TO SUSPEND ELECTIONS CODE SECTION 10010 SAFE HARBOR TIMELINES FOR TRANSITIONING FROM AT-LARGE TO BY-DIVISION ELECTIONS PURSUANT TO EXECUTIVE ORDER NOS. N-34-20, N-48-20

President, Montara Water and Sanitary District

COUNTERSIGNED:

Secretary, Montara Water and Sanitary District

* * * *

I HEREBY CERTIFY that the foregoing Resolution No. _____ duly and regularly adopted and passed by the Board of the Montara Water and Sanitary District, County of San Mateo, California, at a Special Adjourned Meeting thereof held on the 25th day of March 2021, by the following vote:

AYES, Directors:

ABSTENTION:

NOES, Directors:

ABSENT, Directors:

Secretary, Montara Water and Sanitary District

EXECUTIVE DEPARTMENT
STATE OF CALIFORNIA

EXECUTIVE ORDER N-48-20

WHEREAS on March 4, 2020, I proclaimed a State of Emergency to exist in California as a result of the threat of COVID-19; and

WHEREAS on March 19, 2020, I issued Executive Order N-33-20, directing all Californians to heed State Public Health Officer directives requiring them to stay home except for essential needs; and

WHEREAS local governments throughout the State have also proclaimed local emergencies, imposed stay-at-home orders and other forms of physical distancing, and taken other significant steps in response to COVID-19; and

WHEREAS on May 19, 2020, a Special Recall Election will be held in the City of Santa Ana, in the County of Orange; and

WHEREAS on June 2, 2020, a Special Municipal Election will be held in the City of Commerce, in the County of Los Angeles; and

WHEREAS on June 2, 2020, a Special Recall Election will be held in the El Rancho Unified School District, in the County of Los Angeles; and

WHEREAS state law would ordinarily require that these elections be conducted using in-person voting at polling locations throughout the jurisdiction; and

WHEREAS the generalized use of in-person voting presents risks to public health and safety in light of the COVID-19 pandemic, and risks undermining physical distancing measures imposed by the State Public Health Officer, as well as other aspects of the response to COVID-19; and

WHEREAS our elections must be accessible, secure, and safe; and

WHEREAS California's existing vote-by-mail procedures can be used to allow these elections to go forward in a manner that is accessible, secure, and safe; and

WHEREAS various political subdivisions of the State have been in the process of changing from an at-large method of election to district-based elections, requiring a series of public hearings, which are intended to be conducted before the expiration of a safe-harbor provision under Elections Code section 10010; and

WHEREAS on March 20, 2020, I issued Executive Order N-34-20, which suspended the timeframes for conducting these public hearings; and

WHEREAS uncertainty regarding Elections Code section 10010 could nevertheless induce political subdivisions to hold these public hearings in the near future—at a time when public health requires that Californians stay home except for essential needs, and otherwise engage in physical distancing, to minimize the spread of COVID-19; and

WHEREAS holding these hearings in the near future—at a time when public health requires that Californians stay home except for essential needs—would threaten public health and safety, and would force Californians to choose between fully participating in their democratic process and safeguarding their own health and safety, as well as the health and safety of their communities; and

WHEREAS under the provisions of Government Code section 8571, I find that strict compliance with various statutes specified in this order would prevent, hinder, or delay appropriate actions to prevent and mitigate the effects of the COVID-19 pandemic.

NOW, THEREFORE, I, GAVIN NEWSOM, Governor of the State of California, in accordance with the authority vested in me by the State Constitution and statutes of the State of California, and in particular, Government Code sections 8567, 8571, and 8627, do hereby issue the following Order to become effective immediately:

IT IS HEREBY ORDERED THAT:

- 1) Notwithstanding Elections Code sections 1500 and 4000–4007 (including, but not limited to, the conditions otherwise imposed on all-mail ballot elections in Elections Code sections 4000 and 4001.5), and any other applicable provision of state law, the following elections shall each be held as an all-mail ballot election:
 - The May 19, 2020, Special Recall Election to be held in the City of Santa Ana;
 - The June 2, 2020, Special Municipal Election to be held in the City of Commerce; and
 - The June 2, 2020, Special Recall Election to be held in the El Rancho Unified School District.

Each of these elections shall be conducted according to the provisions of the Elections Code that govern all-mail ballot elections, including but not limited to Elections Code sections 3000–3026 and 4100. The respective county elections officials responsible for conducting each respective election shall transmit vote-by-mail ballots to all voters eligible to vote in each respective election.

Notwithstanding any other provision of this Order, elections officials are also authorized to make in-person voting opportunities available for each of these elections, on or before Election Day, in a manner that is consistent with public health and safety. The purpose of this authorization is to maximize voter opportunities to participate in these elections without jeopardizing public health and safety.

Elections officials shall provide maximum possible notice to voters about how to participate in each of these elections, paying particular attention to the needs of voters at high risk from COVID-19, individuals with disabilities, and other voters with particularized needs.

- 2) To clarify the scope of Paragraph 1 of Executive Order N-34-20, (March 20, 2020), without changing its effective date, that paragraph is modified to read as follows:

The timeframes set forth in Elections Code section 10010, subdivisions (a) and (e), are suspended as to any political subdivision of the State. The purpose of this suspension is to protect public health and safety during the period when the State Public Health Officer and other public health officials have determined that it is necessary to engage in physical distancing to minimize the spread of COVID-19. This suspension shall be in effect until further notice.

This paragraph pauses the timeframes set forth in Elections Code section 10010, subdivisions (a) and (e), but does not restart them: this paragraph should be construed to toll those timeframes, such that days elapsed during the suspension set forth in this paragraph are not counted, but any days that elapsed prior to that suspension are still counted.

This paragraph shall not preclude a prospective plaintiff obtaining reimbursement from a political subdivision under subdivision (f) of Elections Code section 10010, in the manner set forth in that subdivision.

IT IS FURTHER ORDERED that as soon as hereafter possible, this Order be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this Order.

This Order is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable at law or in equity, against the State of California, its agencies, departments, entities, officers, employees, or any other person.

IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 9th day of April 2020.



GAVIN NEWSOM
Governor of California

ATTEST:

ALEX PADILLA
Secretary of State

**EXECUTIVE DEPARTMENT
STATE OF CALIFORNIA**

EXECUTIVE ORDER N-34-20

WHEREAS on March 4, 2020, I proclaimed a State of Emergency to exist in California as a result of the threat of COVID-19; and

WHEREAS hundreds of local governments across the state have also declared states of emergency, imposed or recommended social distancing, and taken other significant steps in response to COVID-19; and

WHEREAS various political subdivisions within California are in the process of changing from an at-large method of election to district elections, existing law requires public hearings to be conducted within prescribed timeframes as part of this change, and conducting such hearings within these timeframes would be incongruent with public health officials' guidance regarding social distancing; and

WHEREAS California held a Presidential Primary Election on March 3, 2020, for which ballot counting, tabulation, and other responsibilities related to the official canvass, including certification of the canvass, audits and/or manual tallies of election results, and reporting of the official canvass results, remain outstanding or ongoing; and

WHEREAS COVID-19 and the response thereto may impair the ability of relevant state and local officials, including county elections officials and the Secretary of State, and the volunteers supporting them, to meet statutory deadlines associated with these responsibilities; and

WHEREAS on November 15, 2019, I proclaimed a Special General Election to be held on May 12, 2020, to fill a vacancy in the State Senate seat representing the 28th Senate District of the State, in Riverside County; and

WHEREAS on November 15, 2019, I proclaimed a Special General Election to be held on May 12, 2020, to fill a vacancy in the U.S. House of Representatives seat representing the 25th Congressional District of the State, which covers portions of the counties of Ventura and Los Angeles; and

WHEREAS on April 7, 2020, a Special Recall Election will be held in the City of Westminster, in the County of Orange; and

WHEREAS state law would ordinarily require that these elections be conducted using in-person voting at polling locations throughout the jurisdiction; and

WHEREAS the generalized use of in-person voting presents risks to public health and safety in light of the COVID-19 pandemic, and could risk undermining social distancing measures imposed by the State Public Health Officer, as well as other aspects of the response to COVID-19; and

WHEREAS our elections must be accessible, secure, and safe; and

WHEREAS California's existing vote-by-mail procedures can be used to allow these three elections to go forward in a manner that is accessible, secure, and safe.

NOW, THEREFORE, I, GAVIN NEWSOM, Governor of the State of California, in accordance with the authority vested in me by the State Constitution and statutes of the State of California, and in particular, Government Code sections 8567 and 8571, do hereby issue the following Order to become effective immediately:

IT IS HEREBY ORDERED THAT:

- 1) The timeframes for conducting the hearings required when a political subdivision changes from an at-large method of election to a district-based election, as set forth in Elections Code section 10010, are suspended for any subdivision, until such time as neither state nor local public health officials recommend or impose social distancing measures in the relevant subdivision. Following that time, the relevant subdivision shall hold the required hearings in a manner that ensures the public is provided advance notice and is afforded an opportunity to participate in the postponed hearings; subdivisions are urged to ensure that this process includes effective outreach to individuals with disabilities, individuals who primarily speak languages other than English, and other individuals who may have particularized needs.
- 2) Notwithstanding Elections Code sections 3019, 15100–15112, 15300–15376, 15400–15402, 15450–15490, and 15500–15505; California Code of Regulations, Title 2, sections 20027, 20108.75, 20108.8, and 20110–20126; and any other applicable provision of state law, all deadlines associated with completing, auditing, and reporting on the official canvass of the March 3, 2020, Presidential Primary Election are extended by 21 days. Counties are urged to complete activities related to the official canvass according to the deadlines ordinarily imposed by state law, to the extent possible. The Secretary of State is requested to issue guidance to county elections officials concerning compliance with this paragraph.
- 3) Notwithstanding Elections Code sections 1500 and 4000–4007 (including, but not limited to, the conditions otherwise imposed on all-mail ballot elections in Election Code section 4000 and 4001.5), and any other applicable provision of state law, the April 7, 2020, Special Recall Election to be held in the City of Westminster; the May 12, 2020, Special General Election to be held within the 25th Congressional District of the State; and the May 12, 2020, Special General Election to be held within the 28th Senate District of the State shall each be held as an all-mail ballot election and conducted according to those provisions of the Elections Code that govern all-mail ballot elections, including but not limited to Elections Code sections 3000–3026 and 4100. The respective county elections officials responsible for conducting each respective election shall transmit vote-by-mail ballots to all voters eligible to vote in each respective election. Notwithstanding the other provisions of this Order, elections officials are

also authorized, and encouraged, to make in-person voting opportunities available on or before Election Day for each of these elections in a manner consistent with public health and safety, to maximize voter accessibility. Elections officials shall provide maximum possible notice to voters about how to participate in each of these elections, paying particular attention to the needs of voters at high risk from COVID-19, individuals with disabilities, and other voters with particularized needs.

- 4) Notwithstanding Elections Code sections 3019, 15100–15112, 15300–15376, 15400–15402, 15450–15490, and 15500–15505; California Code of Regulations, Title 2, sections 20027, 20108.75, 20108.8, and 20110–20126; and any other applicable provision of state law including, but not limited to, any applicable state regulation, all deadlines associated with completing, auditing, and reporting on the official canvass of the May 12, 2020, Special General Elections to be held within the 25th Congressional District of the State and the 28th Senate District of the State are extended by 21 days. Counties are urged to complete activities related to the official canvass according to the deadlines ordinarily imposed by state law, to the extent possible. The Secretary of State is requested to issue guidance to county elections officials concerning compliance with this paragraph.

IT IS FURTHER ORDERED that as soon as hereafter possible, this Order be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this Order.

This Order is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable at law or in equity, against the State of California, its agencies, departments, entities, officers, employees, or any other person.

IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 20th day of March 2020.



GAVIN NEWSOM
Governor of California

ATTEST:

ALEX PADILLA
Secretary of State