

Election on the Formation of the Paso Robles Basin Water District¹
Policies and Procedures

I. Background

On September 16, 2014, the Governor signed Assembly Bill 2453 (codified in Water Code §§ 37900 – 37969) which adds Part 8.2 to Division 13 (California Water District Law, Water Code §§ 34000 – 38501) of the California Water Code and provides for the formation of the Paso Robles Basin Water District (Water District). Water Code Section 37905 states that the formation process shall comply with the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Government Code §§ 56000 et seq.) (Cortese-Knox-Hertzberg) with limited exception and grants to the San Luis Obispo County Local Agency Formation Commission (LAFCO) the power to establish the boundaries of the Water District (Water Code § 37900(a)(6)) and to review and approve the powers to be exercised by the Water District (Water Code § 37920).

On April 21, 2015, the Board of Supervisors of the San Luis Obispo County Flood Control and Water Conservation District (Flood Control District) approved a Resolution of Application to LAFCO pursuant to Water Code Section 37905, subdivision (a). On September 17, 2015, after two public hearings, LAFCO approved a Resolution Making Determinations and Approving the Formation of the Paso Robles Basin Water District (Resolution No. 2015-05) (LAFCO Resolution). The LAFCO Resolution includes the following pertinent conditions of approval and orders:

Condition of Approval No. 1: That the Board of Directors of the Paso Robles Water Basin District (District) be composed of nine members qualified and elected as provided for in Section 37911 of the California Water District Law (California Water Code Section 34000 et seq.)

Condition of Approval No. 3: That formation of the Paso Robles Water Basin District shall be contingent upon a successful vote on the formation pursuant to Water Code Section 37905, and approval of a Proposition 218 proposal capable of funding the activities of the District.

Condition of Approval No. 8: That the Board of Supervisors of the County or the Flood Control District, as applicable, call for the formation vote and Board of Director elections, conduct the Proposition 218 proceeding and set the appropriations limit as soon as feasibly possible and consistent with Government Code Section 57000.

¹ Although the special tax election is briefly discussed in this Guidance Document, it is separate from the formation election.

Order No. 3: The Executive Officer, on behalf of the Commission and in compliance with this resolution and State law, hereby requests that the San Luis Obispo County Board of Supervisors direct the County Elections Official to conduct the necessary election, setting the matter for consideration of the voters of the affected territory on a date consistent [with] election law and the Cortese-Knox-Hertzberg Act.

II. Formation Election (including election of first set of directors)²

A. Statutory Obligation of County Board of Supervisors to Call Formation Election

On October 2, 2015, the County Board of Supervisors and the County Elections Official received notification from LAFCO that a determination has been made that requires an election.

Government Code Section 57000, subdivision (e)(1), requires the County Board of Supervisors, within forty-five (45) days of receipt of this notification, to direct the County Elections Official to conduct the necessary election:

When a board of supervisors [...] is informed by the commission that a determination has been made that requires an election, it shall, within 45 days of receipt of the notification, direct the elections official to conduct the necessary election. The board [...] shall do all of the following:

- (A) Call, provide for, and give notice of a special election or elections upon that question*
- (B) Fix a date of election*
- (C) Direct the elections official to designate precincts and polling places and to take any other action necessary to provide for the conduct and the canvass of returns of the election, as determined by the commission.³*

If the Board of Supervisors fails to direct the County Elections Official to conduct the election within forty five (45) days, the Elections Official shall place the item on the ballot at the next established election date occurring at least eighty eight (88) days after the date of the notification to the Elections Official (Government Code § 57000(e)(2)).

B. Conduct of Formation Election

AB 2453 contains few provisions related specifically to the conduct of the formation election. Although Chapter 1.5 deals exclusively with formation, the vast majority of its provisions

² See e.g. Water Code Section 34400 which requires that the Board of Supervisors call and give notice of an election for the purpose of whether or not the Water District shall be formed and electing persons to fill the offices of the proposed Water District if it is formed.

³ “Elections official” means the County Elections Official (Government Code § 57000(d)).

address the manner in which votes shall be allocated (discussed in more detail below). Provisions related to the conduct of the formation election are limited to the provision referenced above (“formation process shall comply with the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000” with certain enumerated exceptions) and provisions related to voting by proxy and the canvass of returns (Water Code § 37905). Similarly, although Chapter 2 deals with elections, it deals primarily with the manner in which votes shall be allocated in board of director elections and the manner in which subsequent general Water District elections, i.e. elections occurring after the Water District is formed, shall be conducted (Water Code §§ 37910 – 37913).

In contrast to AB 2453, Part 2, Chapter 3 of the California Water District Law contains extensive provisions related to the conduct of the formation election. Chapter 3 is divided into two articles, an article on calling the formation election (Article 1, Water Code §§ 34400 – 34403) and an article on the conduct of the formation election (Article 2, Water Code §§ 34420 – 34425). In addition, Article 2 provides that the formation election shall be held and the result determined and declared “as nearly as may be” pursuant to Part 4, Chapters 1 and 2 (Water Code §§ 35003 – 35125) of the California Water District Law which govern California Water District elections generally (Water Code § 34424).⁴

Similarly, Chapter 6 of Cortese-Knox-Hertzberg contains a number of detailed provisions regarding change of organization elections, many of which substantively overlap the provisions contained within the California Water District Law (Government Code §§ 57125 – 57150).⁵

The California Water District Law predates Cortese-Knox-Hertzberg and has not been updated to incorporate its requirements. Rather, Government Code Section 56119 provides that it is not necessary for the principal act of any district to adopt or incorporate Cortese-Knox-Hertzberg by reference.⁶ Consequently, Cortese-Knox Hertzberg contains a number of provisions related to the interaction between provisions of a principal act and Cortese-Knox-Hertzberg:

Proceedings for the formation of a district shall be conducted as authorized in the principal act of the district proposed to be formed and Section 56100 (Government Code § 56859).

Except as otherwise provided in this division, in any change of organization or reorganization the principal act shall govern as to any provisions in the principal act pertaining to boundaries, to contiguity or noncontiguity of territory, to the incorporated

⁴ Water Code Section 34424 further provides that the formation election shall be held and the result determined and declared “as nearly as may be” to the Uniform District Election Law (Elections Code §§ 10500 et seq.).

⁵ A “change of organization” means any of the following: [...] (b) A district formation (Government Code § 56021).

⁶ The California Water District Law, including AB 2453, is the “principal act” (Government Code § 56065).

or unincorporated status of territory, and to the overlapping of territory of a district with territory of another district or city (Government Code § 56119).

Notwithstanding any other law, proceedings for the formation of a district shall be conducted as authorized by the principal act of the district proposed to be formed, except that the commission shall serve as the conducting authority and the procedural requirements of this division shall apply and shall prevail in the event of a conflict with the procedural requirements of the principal act of the district. In the event of such a conflict, the commission shall specify the procedural requirements that apply, consistent with the requirements of this section (Government Code § 56100(b)).

In conducting the formation election, the County Elections Official will follow the above principles. More specifically, the County Elections Official will identify all relevant provisions of the California Water District Law (including AB 2453) and Cortese-Knox-Hertzberg. In the event that a conflict is identified, the County Elections Official will consult with the LAFCO Executive Director consistent with the LAFCO Policies and Procedures.

C. Allocation of Votes

i. Vote on the Question of the Formation of the Water District

Water Code Section 37905 (AB 2453) describes the manner in which votes shall be allocated with regard to the question of whether the Water District should be formed.

- (b) Following a successful petition by the landowners or a resolution of application by an affected local agency, an election among landowners shall be conducted on the matter of whether to form the district.*
- (c) For purposes of a petition to form the district and a vote on the matter to form the district, the following applies:*
 - (1) Each voter, who shall be a landowner, as defined in this section, may cast one vote on the matter of a petition and one vote on the matter of an election to form the district.⁷ Ownership of multiple parcels of land, in full or in part, shall not entitle any voter to more than one vote.⁸*

⁷ The language related to a “petition” is irrelevant, because the Flood Control District applied for the formation of the Water District pursuant to Water Code Section 37905.

⁸ Section 37905, subdivision (a) defines “landowner” as follows: “(1) ‘Landowner’ means any person who holds title to land within the boundaries of the proposed district as shown on the last assessment role prepared by the county assessor, or a legal representative of a landowner who holds title to land within the boundaries of the proposed district as shown on the last assessment roll prepared by the county assessor. (2) ‘Landowner’ does not include individuals, partnerships, corporations, or public agencies holding easements or less than fee interests, including leaseholds of any nature. (3) ‘Legal representative’ means either of the following: (A) A duly appointed and acting guardian, executor, or administrator of the estate of a holder of title to land. (b) One of the following: (i)

- (2) *For land jointly held, owners collectively get one vote. Nothing in this section should be construed to indicate that multiple owners of a property get more than one vote.*

Based on the foregoing, in conducting the election on the question of whether to form the Water District, the County Elections Official will issue one (1) ballot to each unique “holder of title” as shown on the voters list prepared by the County Assessor.⁹

For example, suppose A, B and C hold title to property within the jurisdictional boundaries of the proposed Water District as follows:

Parcel 1 – “A and B as Joint Tenants”

Parcel 2 – “A and B as Joint Tenants”

Parcel 3 – “A, a married woman as her sole and separate property”

Parcel 4 – “A, B and C as Tenants in Common”

The voters list will identify each of the following as a voter and the County Elections Official will issue a ballot to:

- (1) “A and B” collectively
- (2) “A”
- (3) “A, B and C” collectively

In other words, in preparing the voters list, the County Assessor will identify each collection of individuals holding title to a particular parcel as a separate owner (or owner group). If the exact same owner or owner group owns additional parcels, additional ballots will not be issued (only one ballot will be issued to the group).

With respect to land owned by a trust, corporation, limited liability company or partnership, the voters list will identify and the County Elections Official will issue the ballot to the trust, corporation, limited liability company or partnership, because the trust, corporation, limited liability company or partnership is the “holder of title.”

If the holder of title is a trust, any trustee of the trust may vote on behalf of the trust. (ii) If the holder of title is a corporation, any president, vice president, secretary, or other duly designated officer may vote on behalf of the corporation. (iii) If the holder of title is a limited liability company, any managing member may vote on behalf of the limited liability company. (iv) An officer or partner with managerial responsibilities of a legal entity not listed in clauses (i) to (iii), inclusive, may vote on behalf of the entity.”

⁹ Pursuant to Water Code Section 37912, subdivision (e), the voters list will be based on the last assessment roll (“holder of title” is as shown on the property records) subject to amendment based on satisfactory evidence of a change in ownership (described below).

For example, suppose D Trust, E Trust, F Corporation, G Corporation and H Limited Liability Company own property within the jurisdictional boundaries of the proposed Water District as follows:

- Parcel 5 – “D Trust”
- Parcel 6 – “E Trust”
- Parcel 7 – “F Corporation”
- Parcel 8 – “G Corporation”
- Parcel 9 – “H Limited Liability Company”

With limited exception (discussed below), the voters list will identify each of the following as a voter and the County Elections Official will issue a ballot to (1) “D Trust,” (2) “E Trust,” (3) “F Corporation,” (4) “G Corporation” and (5) “H Limited Liability Company.”

Suppose further that:

- I is the Trustee of “D Trust”
- I is the Trustee of “E Trust”
- J is the President of “F Corporation”
- J is the President of “G Corporation”
- J is the Managing Member of “H Limited Liability Company”

With limited exception (discussed below), the voters list will still identify each of the following as a voter and the County Elections Official will issue a ballot to (1) “D Trust,” (2) “E Trust,” (3) “F Corporation,” (4) “G Corporation” and (5) “H Limited Liability Company,” because I and J are simply acting on behalf of or are representatives of the holder of title.

The referenced exception to the above arises out of Water Code Section 37905 which addresses the issuance of ballots to any landowner that is a member of the same commonly controlled group:

(c)(3) In the event that any landowner that is a member of the same commonly controlled group, as defined in Section 25105 of the Revenue and Taxation Code, or is a member of a combined reporting group, as defined in paragraph (3) of subdivision (b) of Section 25106.5 of Title 18 of the California Code of Regulations, or under common ownership with, another landowner in the district, all members of the commonly controlled group or combined reporting group will be deemed a single landowner for purposes of this subdivision.¹⁰

¹⁰ Revenue and Taxation Code Section 25105 (applicable to corporations) defines a “commonly controlled group” as any of the following: (1) A parent corporation and any one or more corporations or chains of corporations,

Based on the foregoing, if F Corporation and G Corporation are “members of the same commonly controlled group” or “members of a combined reporting group,” and the County Assessor is aware of such a relationship, the corporations will be jointly identified as a single voter on the voters list prepared by the County Assessor and only one (1) ballot will be issued between the two corporations. It should be noted that the County does not have independent access to the corporate documents or other information that would be required to determine and identify commonly controlled groups or combined reporting groups. Thus, the voters list will separately identify F Corporation and G Corporation as voters unless the County Assessor has been provided with credible evidence of membership in such a group at least forty five (45) days prior to the election.

ii. Vote on Board of Directors

Water Code Section 37911 (of AB 2453) describes the manner in which the votes for the six (6) directors who must be landowners shall be allocated among landowners:

The composition of the board of directors shall be as follows:[...]

(b) Six of the directors shall be qualified for office by being persons who hold title to land within the district or persons authorized to vote in elections by landowners, as provided in Section 37913. Each director shall be elected by landowners within the district as provided by Article 1 (commencing with Section 35003) of Chapter 1 of Part 4, except that each voter shall be entitled to cast one vote for each acre owned by the voter within the district. If the voter owns less than one acre, the voter shall be entitled to one vote and any fraction shall be rounded to the nearest full acre.

connected through stock ownership (or constructive ownership) with the parent, but only if (A) The parent owns stock possessing more than 50 percent of the voting power of at least one corporation, and, if applicable, (B) Stock cumulatively representing more than 50 percent of the voting power of each of the corporations, except the parent, is owned by the parent, one or more corporations described in subparagraph (A), or one or more other corporations that satisfy the conditions of this subparagraph. (2) Any two or more corporations, if stock representing more than 50 percent of the voting power of the corporations is owned or constructively owned, by the same person. (3) Any two or more corporations that constitute stapled entities [...] (4) Any two or more corporations, all of whose stock representing more than 50 percent of the voting power of the corporation is cumulatively owned (without regard to the constructive ownership rules of paragraph (1) of subdivision (e)) by, or for the benefit of, members of the same family. Members of the same family are limited to an individual, his or her spouse, parents, brothers or sisters, grandparents, children and grandchildren, and their respective spouses.” 18 CCR § 25106.5, subdivision (b)(3) (also applicable to corporations) defines “combined reporting group” as “those corporations with business income that is permitted or required to be included in a particular combined report under Sections 25101, 25101.15, 25102, or 25104 of the Revenue and Taxation Code, limited, if applicable, by application of Section 23801(c) of the Revenue and Taxation Code, or the effects of a water’s edge election under Section 25110 of the Revenue and Taxation Code, or any other provision of law which precludes income and apportionment data of an entity from being included in a combined report. A combined reporting group also refers to those S Corporations whose income is required to be included in a combined report under Section 23801(d) of the Revenue and Taxation Code.”

- (1) *For the purposes of election of the six directors described by this subdivision, landowners within the district shall be divided into three classes as follows:*
 - (A) *'Large landowners,' meaning holders of title owning a total of 400 acres or more.*
 - (B) *'Medium landowners,' meaning holders of title owning a total of 40 acres or more but less than 400 acres.*
 - (C) *'Small landowners,' meaning holders of title owning a total of less than 40 acres of land.*
- (2) *Of the six directors elected pursuant to this subdivision, large landowners shall elect two directors, medium landowners shall elect two directors, and small landowners shall elect two directors.*

Similar to the vote on the question of whether to form the Water District, for purposes of the landowner Board of Director vote (six directors), the County Assessor will identify on the voters list and the County Elections Official will issue one (1) ballot to each unique “holder of title” (both questions will appear on the same ballot).¹¹ The County Elections Official will assign a number of votes to each unique holder of title based on the aggregate acreage owned by the holder of title within the proposed Water District (acreage of individual parcels will be combined), as determined by the County Assessor. Pursuant to subdivision (b), after all the acreage is aggregated, the County Assessor will round any fractional acreage to the nearest full acre (if less than .5 acres, round down, if .5 acres or more round up) except that if the voter owns less than one (1) acre (regardless of the fraction), the voter shall receive one vote.¹²

Building on the above example, suppose A, B and C own property within the jurisdictional boundaries of the proposed Water District as follows:

- Parcel 1 (a 1 acre parcel) – “A and B as Joint Tenants”
- Parcel 2 (a 39 acre parcel) – “A and B as Joint Tenants”
- Parcel 3 (a .4 acre parcel) – “A, a married woman as her sole and separate property”
- Parcel 4 (a 405.2 acre parcel) – “A, B and C as Tenants in Common”

¹¹ See footnote 9 above regarding use of the assessment roll to create the voters list.

¹² Although Water Code Section 37911, subdivision (b) is not precisely worded, the cited Water Code Section 35003 (of the general California Water District Law) evidences an intent to address fractional acreage under all circumstances. It provides in pertinent part: “If an equalized assessment book of the district does not exist, then each voter shall be entitled to cast one vote for each acre owned by the voter within the district, provided that if the voter owns less than one acre then the voter shall be entitled to one vote and any fraction shall be rounded to the nearest full acre.” In other words, the general rule is that any fraction shall be rounded to the nearest full acre (up or down). However, if the voter owns less than one acre, then the voter shall receive one vote in all instances (i.e. the County Assessor should not round down even if the fractional acreage is less than .5 acres). *See also Bernard v. Foley* (2006) 39 Cal.4th 794, 810 (“A construction that renders some statutory language surplusage or redundant is to be avoided”).

The County Elections Official will assign votes and landowner categories as follows:

To “A and B” – 40 votes (within medium landowner category)

To “A” – 1 vote (within small landowner category)

To “A, B and C” – 405 votes (within large landowner category)

Water Code Section 37911 (of AB 2453) also provides that three (3) of the directors (who shall be registered voters residing within the Water District) shall be elected by registered voters within the proposed Water District at large.¹³

iii. Changes in Ownership

With respect to ownership and acreage determinations for purposes of the vote on formation and (landowner) directors, Water Code Section 37912, subdivision (e) (of AB 2453) provides that the last assessment roll prepared by the County Assessor “shall be conclusive evidence” of ownership and acreage unless satisfactory evidence of a change in ownership is presented to the Elections Official in the case of the formation election (and to the Water District secretary in the case of all other elections) at least forty five (45) days prior to the election. Satisfactory evidence may include, without limitation, recorded deeds, unrecorded contracts of sale, judgments, corporate documents, trust documents and dates of death. Based on the foregoing, the Elections Official will not amend the voters list for purposes of the vote on formation and (landowner) directors based on claims of incorrect ownership or incorrect acreage unless the submitted request is based on a claimed change of ownership supported by satisfactory evidence presented to the Elections Official, who will make a determination after consultation with the County Assessor.

III. Special Tax Election

As indicated in Section I above, LAFCO has conditioned the formation of the Water District on “approval of a Proposition 218 proposal capable of funding the activities of the District.” The LAFCO Resolution does not approve any particular funding mechanism and the special tax election sponsored by the Flood Control District to fund compliance with the Sustainable Groundwater Management Act (Water Code §§ 10720 et seq.) does not constitute a change of organization election subject to the procedures contained within Government Code Section 57125 et seq. Rather, the special tax election is subject to the requirements set forth in the Flood Control and Water Conservation District Act (California Water Code Appendix Chapter 49), Government Code Sections 53720 through 53730 and Sections 50075 through 50077.5 and

¹³ Pursuant to Water Code Section 37912, subdivision (a), separate ballots shall be prepared and separate elections shall be conducted for those director positions which will be elected by resident voters and for those which will be elected by landowner voters. Notwithstanding Elections Code Section 10555, the landowner voter elections and resident voter elections shall be conducted simultaneously.

Articles XIII A and XIII C of the California Constitution. In accordance with these requirements, the County Elections Official will issue ballots to all registered voters within a zone established within the Flood Control District on the question of whether to fund Sustainable Groundwater Management Act (Water Code §§ 10720 et seq.) compliance activities within the Paso Robles Groundwater Basin.