

FROM: Chris Skinnell
CC: Darryl Lucien
DATE: October 31, 2023
RE: Mid-Decade Redistricting

ISSUES

You have asked about the permissibility of redrawing the District's director division boundaries between Censuses.

ANALYSIS

A. Circumstances in Which Mid-Decade Redistricting Is Permitted for Special Districts Like CBMWD.

Water Code § 71540 makes the adjustment of director division boundaries subject to the rules of redistricting found in the Elections Code for special districts generally, providing, "The board of directors shall, by resolution, adjust the boundaries of any divisions pursuant to Chapter 8 (commencing with Section 22000) of Division 21 of the Elections Code."

Under Chapter 8 of Division 21 of the Elections Code, redistricting in the year following the release of the decennial Census is *mandatory*. See Elec. Code § 22000(a). Otherwise, it is permissible, but only if certain standards are met. Specifically, Elections Code § 2200(h) provides, "Nothing in this section shall be construed to prohibit or restrict a district from adjusting the boundaries of any divisions whenever the governing body of the district determines by a two-thirds vote of the governing body that a sufficient change in population has occurred that makes it desirable in the opinion of the governing body to adjust the boundaries of any divisions, or whenever any territory is added by or excluded from the district." (We assume for purposes

[CES8570.06]

SAN FRANCISCO BAY AREA

2350 KERNER BLVD, SUITE 250
SAN RAFAEL, CA 94901

T 415.389.6800 F 415.388.6874

SACRAMENTO

1415 L STREET, SUITE 1200
SACRAMENTO, CA 95814

T 916.446.6752 F 916.446.6106

October 31, 2023

Page 2 of 5

of this discussion that territory has not been added to or excluded from the district.)

As for what constitutes “a sufficient change in population” that would warrant redistricting, we have found no case, Attorney General opinion, or other authority discussing what would qualify. Generally speaking, redistricting is a legislative process and, as such, the courts extend considerable deference to legislative determinations related thereto. However, a determination by the Board of Directors that the change in population was sufficient to warrant redistricting would likely be subject to challenge on the ground that the Board’s determination was an abuse of discretion.

Along those lines, it is perhaps instructive that the Elections Code provisions governing mid-decade redistricting in general law cities only permit the redrawing of lines mid-decade if an annexation or de-annexation contains population equal to 25% of the population of the city. Elec. Code §§ 21603(b), 21605. Though obviously not directly applicable, a court might well look to those provisions as an indication of what the Legislature would consider sufficient population change to warrant the redrawing of lines. Thus, a determination that a minor change of population is “sufficient” to warrant redistricting may be deemed an abuse of discretion. Given the size of the director divisions in Central Basin (between 365,000 and 400,000 persons each), we believe that unless a substantial change of population is demonstrated, any mid-decade redrawing would potentially be subject to legal challenge.

Additionally, we would note that because the Census data are presumed to be accurate for a full decade, any attempt to demonstrate a shift in population would have to be based on reliable estimates, using a methodology that is applied uniformly throughout the District. *See Karcher v. Daggett*, 462 U.S. 725, 732-34 (1983); *Calderon v. Los Angeles*, 4 Cal. 3d 251, 264 (1971).

B. Impact of Assembly Bill 764 (2023-2024 Reg. Sess.).

One additional factor to consider: just a few weeks ago, Governor Newsom signed Assembly Bill 764 (2023-2024 Reg. Sess.), which comprehensively rewrites the rules governing redistricting by local governments, and which applies to any redistricting map adopted after

December 31, 2023. Assembly Bill 764 could further complicate the prospects of mid-decade redistricting.

For one thing, though the “sufficient change” by a two-thirds vote standard discussed above continues to determine if mid-decade redistricting may be undertaken, newly adopted Elections Code § 21130 provides that “Population equality shall be based on the total population of residents of the local jurisdiction as determined by the most recent federal decennial census for which the redistricting data described in Public Law 94-171 are available,” as adjusted by the California Statewide Database for relocating incarcerated prisoners back to their home census blocks. This language may be read to preclude the use of even reliable estimates, effectively limiting mid-decade redistricting to situations where there are annexations or de-annexations.

Moreover, even if such changes remain permissible Assembly Bill 764 significantly changes *how* such changes are to be undertaken. For example, unlike last time, the CBMWD Board would have significantly less discretion regarding the criteria that must be applied in drawing the districts. Previously, the Board had broad discretion, provided that it complied with the one-person, one-vote requirements and the federal Voting Rights Act. Now, the Board would have to apply the following criteria, in the following order of priority (while still complying with one-person, one-vote requirements and the federal Voting Rights Act):

- (1) To the maximum extent practicable, election districts shall be geographically contiguous. Areas that meet only at the points of adjoining corners are not contiguous. Areas that are separated by water and not connected by a bridge, tunnel, or regular ferry service are not contiguous.
- (2) To the maximum extent practicable, and where it does not conflict with the preceding criterion in this subdivision, the geographic integrity of any local neighborhood or local community of interest shall be respected in a manner that minimizes its division. A “community of interest” is a population that shares common social or economic interests that should be included within a single election district for purposes of its effective and fair representation. Characteristics of communities of interest may include, but are not limited to, shared public policy concerns such as education, public safety, public health, environment, housing,

transportation, and access to social services. Characteristics of communities of interest may also include, but are not limited to, cultural districts, shared socioeconomic characteristics, similar voter registration rates and participation rates, and shared histories. Communities of interest do not include relationships with political parties, incumbents, or political candidates.

- (3) To the maximum extent practicable, and where it does not conflict with the preceding criteria in this subdivision, the geographic integrity of a city or census designated place shall be respected in a manner that minimizes its division.
- (4) To the maximum extent practicable, and where it does not conflict with the preceding criteria in this subdivision, election districts shall be bounded by natural and artificial barriers, by streets, or by the boundaries of the local jurisdiction. Election district boundaries should be easily identifiable and understandable by residents.
- (5) To the maximum extent practicable, and where it does not conflict with the preceding criteria in this subdivision, election districts shall be drawn to encourage geographical compactness in a manner that nearby areas of population are not bypassed in favor of more distant populations.
- (6) The districting body shall not adopt election district boundaries for the purpose of favoring or discriminating against an incumbent, political candidate, or political party

Beyond the change in criteria, there are some additional procedural requirements. For example, instead of just two public hearings, the District's staff, consultants, or a subcommittee of the Board, would also be required to conduct a pre-mapping "workshop" at which the public would be provided with information on how to produce and submit maps of its own. Furthermore, the public hearings would now have to be conducted at a pre-determined time on the agenda, even if it requires moving it forward in the order of business. The jurisdiction has to conduct outreach to encourage participation by under-represented and non-English-speaking communities; and the requirements for the District's redistricting website would be more involved than previously was the case.