

Report of The Fallen Leaf Lake Community Services District Advisory Committee on Voting

Many Fallen Leaf summer residents want to vote in CSD elections. Historically this was accomplished by simply declaring Fallen Leaf as your residence and registering to vote there. All Fallen Leaf elections are accomplished by mail, so people who registered would get their ballot at their winter home, and mail it in. They would not vote in elections at their winter home.

However, given the seasonal nature of residency at Fallen Leaf, there is an issue regarding whether or not summer, or partial summer, residency at Fallen Leaf would make Fallen Leaf a voter's domicile, which is necessary for voter registration. The District Attorney of El Dorado County has issued a letter suggesting that our historical practice may be unlawful. Registration at Fallen Leaf could appear suspect if measured against the criteria to which investigators normally look to determine if someone resides at one place or another. For example, because there is no year around post office, you cannot give the DMV or other governmental agencies your Fallen Leaf address as your primary address. Another example is that many cabins are on Forest Service Permit lands. Those permits are recreational permits and provide that the holder may not use the cabin as their primary residence. For Forest Service Permit holders, to register at Fallen Leaf may jeopardize their permit.

The result of this uncertainty regarding the right to vote at Fallen Leaf is that many people who should be able to vote on CSD matters do not do so out of concern of running afoul of the law. This creates two problems. First, most of the people whose tax dollars and other fees support the CSD, and who are most directly impacted by its actions, cannot vote in its elections. Second, being able to vote in the district is a requirement of serving on the Board of Directors. Currently a small percentage of the members of the community feel they are eligible to serve. Serving as a CSD Board member has often proven to be difficult and time consuming. If there are only a small number of eligible candidates, we will have difficulty maintaining enough board members to make up the quorum necessary for the CSD to tend to its affairs.

The Advisory Committee was appointed to explore options to address this problem. If we can identify a good solution we will then try to get the California Legislature to pass a bill which enacts it. In addition to clearing up the issue of who may vote, the Committee has identified goals that we believe are important. Those goals are:

- 1) To increase the voter base at Fallen Leaf so that election results will be representative of the community as a whole;
- 2) To increase the number of people who qualify run for the CSD Board (a qualification for Board membership is the right to vote in CSD Elections);
- 3) To encourage the younger generation to participate in CSD elections and Board membership; and
- 4) To allow a voter to continue to vote at their winter residence in general elections, but also vote in Fallen Leaf CSD special elections.

According to California's Uniform District Election Law (Election Code Sections 10500, et seq.) voters may qualify to vote in service district elections in one of two ways. The first method is the normal method. In a "resident voting district" voters qualify by declaring their residency in the district and registering to vote there. (Elections Code section 10500(b)(11).) The second method is a "landowner voting district." In this type of district anyone who has a property interest in the district is an "elector," whether a resident or not. (Elections Code section 10500(b)(8).) When service districts are formed, they can select which voting system will apply. If no selection is made, voting defaults to the registered voter system.

In the case of the Fallen Leaf CSD, no selection regarding the method of voting was made. At the time the Fallen Leaf CSD was formed, it was assumed that it was lawful to register to vote at Fallen Leaf as long as you were not registered to vote anywhere else. Accordingly, anyone who wished to vote could do so. As noted earlier, that is the manner that voting for the Fallen Leaf CSD has been accomplished, but is now under question.

Our problem is that neither of the statutory voting alternatives addresses the unique needs of Fallen Leaf. Voting as a "resident voter district" leaves us in the same situation we currently find ourselves. A small percentage of the people with a real interest in Fallen Leaf now vote as registered voters. However, switching over to voting as a "landowner voting district" would disenfranchise those residents who live at Fallen Leaf all year, but do not own property or have a Forest Service Permit there. Although this is a small number of voters, the Committee believes that if we adopt a system that disenfranchises these voters, we will be unable to get our bill through the legislature. A bill that was based only on property ownership was sent to the legislature last year, and it was immediately killed.

Our situation is not unique. Other districts confront the same problem. One of those is the Sierra Lakes Water District, and that district came up with a solution that the committee believes may address our problem. That solution is to pass a special statute through the legislature that allows both registered voters as well as people who have an interest in real property qualify as voters for the CSD. The Committee is recommending this solution. To explain how we got to this position, the Advisory Committee considered, but is not being recommending the following alternatives:

1. **Registered Voter System:** This system would continue the current system of voting as a registered voter in El Dorado County. This alternative is not recommended as it does not address the uncertainty regarding whether or not cabin owners may lawfully declare their Fallen Leaf cabin as their primary domicile. (In the case of Forest Service Permit holders, there appears to be little uncertainty. The terms of the Forest Service permit prohibits permittees from using their cabin as their primary residence.) In addition to concerns about residency, this alternative is not recommended because a person may not register to vote in two places at the same time. Registering at Fallen Leaf would prevent those who register at Fallen Leaf from voting at their winter home when they really only wanted to vote in CSD elections in El Dorado County.
2. **One Vote Per Cabin System:** This system would essentially convert the CSD to a property based voting system and give each real property interest one vote in CSD matters. That vote would go to the person who appears on the El Dorado County Assessor's Roll for the

property. If the property is held in multiple names, or in the name of an LLC, corporation, trust, or some other legal entity, that cabin would have to provide the name of the person who would cast the vote for that cabin. This system is not recommended for several reasons.

- First, tying the right to vote exclusively to property ownership has an undemocratic feel, and the committee believes it would be a non-starter for the California Legislature. As noted above, a plan that excluded registered voters was submitted to the Legislature last year, and was immediately killed.
- Second, allowing only one vote per cabin may have the effect of disenfranchising co-owners of a cabin who may disagree on the issues with the person who appears on the assessor's role.
- Third, the cabin is likely to be in the name of the oldest person in the family. Accordingly, the younger generations would be shut out of voting.

One point in favor of this system is its cost effectiveness. The CSD pays El Dorado County Elections to run its elections on a time and materials basis. El Dorado Elections can get the Assessors Roll for all property in the CSD District very easily. Therefore they can relatively inexpensively determine who should receive a ballot.

3. **Multiple Votes Per Cabin:** This proposal would apportion to each cabin a certain number of votes. E.g. two, three, four, etc. The voter for all votes allotted to the cabin would be the person whose name appears on the El Dorado County Assessor's Roll unless that person designates another person or persons with an interest in the cabin to be a voter for some or all of that cabin's votes. This system has several things to recommend it.

- First, the problem of allowing co-owners of a cabin to vote would be solved by splitting the votes allotted to that cabin.
- Second, it would dramatically increase the number of eligible voters, and accordingly dramatically increase the number of people qualified to run for the Board of Directors.
- Third, it would also allow members of the younger generation to be designated as voters. This would allow the next generation to vote and also to run for the CSD Board.

However, this system would exclude people who are registered voters at Fallen Leaf, but do not own property. The Committee believes this would be a deal killer with Legislature. In addition, this system may be difficult to administer because keeping track of who is to cast a particular cabin's votes may be time consuming.

The Recommended System: The alternative which the Committee is recommending is a combination of real property interest voting and registered voters. Anyone who is registered to vote in the Fallen Leaf District would vote. In addition, anyone who owns a real property interest would also vote. Real property interest ownership would also include Forest Service Permit holders. However, instead of one vote per cabin, three votes would be apportioned to each cabin. We are recommending this because:

- This system of a combination of property owners and registered voters is modeled on a similar voting system that was successfully passed through the legislature for the Sierra

Lakes Water District. As a result the Legislature has seen something like it before, and getting approval may be that much easier.

- This would dramatically increase the number of voters who could vote in CSD elections. That means it would also increase the number of possible candidates for CSD Board, as the right to vote in the district is a requirement of Board membership.
- People who vote as property owners would not be registered voters in El Dorado County, hence they may also vote in their winter community.
- Allowing a cabin to have more than one vote will allow the younger generation to be given a voice, and allow co-owned cabins to apportion votes to each owner.
- Allowing more than one vote per cabin would also make voting more representative as most cabins contain more than one person of voting age. The committee believes it would be too expensive and too complicated to keep track of every voting age person in each cabin, so apportioning the same number of votes to each cabin is seen as a fair compromise that can be administered effectively.

The negative side of this alternative is that it would be more expensive to administer than the other proposals due to the necessity of mailing out and tabulating additional ballots. It would also be more expensive because of the necessity of maintaining a larger, and current, list of voters who vote by way of property ownership. However, it may be possible to mitigate the expense of maintaining this list by having the CSD determine who would cast votes as property owners. That is the way it works in the Sierra Lakes district and that solution is supported by statutory authority. (California Elections Code §10502.) It will be very time consuming to make up the first list of property owner voters. However, very few cabins change hands at Fallen Leaf each year. Hence that list should not require a great deal of updating.