

**PROGRESS REPORT OF THE COMMUNITY ADVISORY COMMITTEE
TO THE FALLEN LEAF LAKE COMMUNITY SERVICE DISTRICT BOARD**

December 3, 2013

Since the last Board meeting the CAC has attempted to move our community's voting legislation through the California Legislature by working with Assemblyman Frank Bigelow's office. It is apparent that the legislative process is slower and more cumbersome than anticipated. It appears that Assemblyman Bigelow's office is working its way through its own processes. However, we are still hopeful of getting a bill to the legislature this January. The main exchanges between his office and the committee are set forth below.

1. September 6, 2013: We submitted a request for consideration of legislation to Assemblyman Frank Bigelow through his Chief of staff, Kirk Kimmelshue. A copy is attached.
2. October 3, 2013: We received acknowledgment from Kimmelshue of the September 6 letter, apologizing for the delay and indicating that they were looking into our request.
3. October 22, 2013: We received Assembly persons "Legislative Proposal/ Background Information Form. A copy of the completed form is attached.
4. October 25, 2013: Committee members David Andersen, Mike Casey and Ray Alden participated in a conference call with Kirk Kimmelshue and Katie Masingale, Bigelow's Chief of Staff and Legislative director respectively. We discussed legislative alternatives to our concept. They indicated that the Assemblyperson has a strong preference for local solutions to local problems and requested that we supply a copy of our bylaws. (We did so.) They indicated that they would talk to El Dorado County Council about his opinion limiting a CSDs ability to define eligible voters.
5. November 20, 2013: We were contacted by email by Katie Masingale after her meeting with the California Community Services District Association. She asked what we thought was wrong with our bylaws. David and I spoke to Masingale on November 21, explaining that we had no problem with our bylaws. We stated that the impetus for the requested legislation was the September 19, 2011, letter from the El Dorado County District Attorney's Office advising that our past registration practices were suspect, and could lead to criminal charges for those improperly registering to vote. Following that call we provided Ms. Masingale with a copy of the El Dorado County District Attorney's opinion letter as well as further explanation of our concerns regarding it.

When we spoke with Ms. Masingale on the 21st, she indicated that their protocol required that they contact organizations who might have an interest in the legislation. She is required to get their take, and to hopefully address any concerns they may have. In doing so they hope to address opposition before it develops. That was the reason that Ms. Massingale contacted the District Association. There are apparently other organizations that she feels bound to contact, although she did not specify them.

In light of the passage of time, the Committee offered to write a draft of legislation to provide a working document. Ms. Masingale believes that would be premature, and asked that we hold off. At this point we are doing so due to concern that any draft of legislation may be inadvertently circulated to legislative staff not familiar with the Fallen Leaf situation. Unless the legislation comes with a good explanation of why it is needed, it is likely to generate concern, and possibly opposition.

Ben Andersen

Benjamin Andersen
385 Grand Avenue, Suite 300
Oakland, CA 94610

September 6, 2013

Kirk Kimmelshue
Office of Assembly Member Frank Bigelow
State Capitol, Room No. 4116
Sacramento, CA 94249-0005

Re: Fallen Leaf Lake Voting

Dear Mr. Kimmelshue:

I am writing to follow up on our phone call and emails of August 7, 2013. We were introduced by El Dorado County Supervisor Norma Santiago. I am the Chairman of an Advisory Committee appointed by the Board of Directors of the Fallen Leaf Lake Community Services District (CSD). The Committee was formed to look into possible solutions for a problem that has arisen at Fallen Leaf. That problem centers around who may vote in elections at Fallen Leaf on CSD matters, and on who may stand for election to the CSD board of directors. The Committee's task is to find a way to lawfully increase the voter base at Fallen Leaf to ensure that these elections will be democratic and representative of the community served by-the CSD.

The Committee has come to the conclusion that any solution will require legislative action. Accordingly, we write to ask for your help and for your guidance.

Fallen Leaf Lake is a community composed almost exclusively of summer homes. There are over two hundred and eighty (280) of them. Some of these homes are on private property and some are on Forest Service lands. There is also an alumni camp at the lake which is called Stanford Sierra Camp. The roads into Fallen Leaf Lake are not plowed during the winter and most of the homes are not winterized. The result is that there is a large summer population, but very few people remain there in the winter. The El Dorado County Elections Department estimates that there are about eight full time residents. Most of the year around residents are employees of Stanford Sierra Camp, and stay during the winter to do maintenance.

Despite the fact that most Fallen Leafers cannot live at Fallen Leaf year around, the emotional bond of the community to the Lake is very strong. Some families, such as mine, have returned to Fallen Leaf every year for over a century.

The Fallen Leaf CSD was formed in 1982 to provide fire protection through a Volunteer Fire Department. In addition to fire protection, the department provides a valuable public service as it also provides emergency and rescue services for the large number of day visitors who come to the lake for sightseeing, hiking, and water sports. The vast majority of the department's emergency calls are for rescue and other aid for these day visitors. That fire department is

supported by an assessment levied against every home and undeveloped lot in the Fallen Leaf CSD District. That assessment is the same for Forest Service permit holders and private land owners.

In 1990 the CSD also assumed the obligation of administering the Community Area at Fallen Leaf. The Community Area provides the only public access to the south end of Fallen Leaf Lake. It contains a store, post office, café, public marina, and public restrooms.

Given its important role, the affairs of the CSD are of great concern to all members of the community, and Fallen Leaf cabin owners 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 ballots at their winter homes and mail them in. They would not vote in elections at their winter homes. However, this practice has come into question, and the District Attorney of El Dorado County has issued a letter stating that our historical practice may not be lawful. Given the seasonal nature of residency at Fallen Leaf, there is a legitimate argument that Fallen Leaf would not qualify as a voter's domicile. If measured against the criteria which investigators normally use to determine if someone resides at one place or another, registration at Fallen Leaf could appear suspect. 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 residence. 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 a primary residence. For permittees, registration at Fallen Leaf could jeopardize their permits.

The result of this uncertainty regarding the right to vote at Fallen Leaf is that a very large number of people who should be able to vote on CSD matters do not do so out of concern that they might run afoul of the law, or even lose their right to lease Forest Service land. If you accept the El Dorado District Attorney's position, it would mean that about eight voters would control this community of just under three hundred homes, just about all of which have more than one adult of voting age. This creates two problems. First, CSD elections cannot be representative of the whole community, and the people who are most directly impacted by the CSD's actions generally have no voice. Second, being a voter in the district is required of anyone who wants to serve on the Board of Directors. Serving as an unpaid CSD Board member has often proven to be difficult and time consuming. Due to the small number of eligible and willing candidates, we are having a difficult time maintaining the quorum that will allow the CSD to tend to its affairs. Currently, there are not enough candidates to fill the vacant seats on the board.

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 registering to vote in the district. (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 elect 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 election 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 did not register 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 was accomplished until the letter from the County DA cast doubt on the legality of this practice.

Neither of the existing statutory voting alternatives address the unique needs of Fallen Leaf. The rules of a “resident voter district” are what place us in the situation we currently find ourselves - a very small percentage of the people who have a legitimate interest in CSD elections can vote. 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 there. It would also exclude most seasonal residents who occupy cabins that are registered in the name of another family member, or in the name of a co-owner of the cabin.

Our situation is not unique. Other districts have confronted the same problem. One of those is the Sierra Lakes Water District, and that district came up with a solution that we believe provides the beginning of framework applicable to us. Sierra Lakes allows both registered voters as well as property owners to qualify as voters for the CSD. The Sierra Lakes district voting came into being as a result of special legislation.¹

We hope to be able to get a special bill passed to address the Fallen Leaf situation and hope to use the Sierra Lakes legislation as a model, but with an important difference. We are proposing that each parcel be allowed four votes instead of one.² By default, the four votes

¹ See Water Code Section 30700.6 which provides:

(a) Notwithstanding Section 30021 or any other provision of the law, qualified voters at elections for directors or otherwise in the Sierra Lakes County Water District shall be (1) voters who are residents of the district, and (2) every owner of real property within the district, who is not a resident of the district.

(b) The last equalized county assessment roll shall be conclusive evidence of ownership of the real property so owned. Where land is owned in joint tenancy, tenancy in common, or any other multiple ownership, the owners of the land shall designate in writing which one of the owners shall be deemed the owner of the land for purposes of qualifying as a voter.

(c) The legal representative of a corporation or estate owning real property may vote on behalf of the corporation or estate. As used in this section, legal representative means an official of a corporation owning real property or a guardian, executor, or administrator of the estate of the holder of title to real property who:

(1) Is appointed under the laws of this state.

(2) Is entitled to the possession of the estate's real property.

(3) Is authorized by the appointing court to exercise the particular right, privilege, or immunity which he or she seeks to exercise.

Before a legal representative votes at a district election, he or she shall present to the precinct board a certified copy of his or her authority which shall be kept and filed with the returns of the election.

(d) Every voter, or his or her legal representative, may vote at any district election either in person or by a person duly appointed as his or her proxy, but shall be entitled to cast only one vote. The appointment of a proxy shall be as provided in Section 3505 shall be conducted pursuant to Article 1 (commencing with Section 35016) of Chapter 2 of Part 4 of Division 13.

(e) This section shall not affect incumbent directors of the district, but in the event of a vacancy or upon the expiration of each present term, each director, upon taking office or commencing a new term, shall be a voter as defined in this section.

² In land owner voting districts, there is statutory authority for more than one vote to be assigned to each parcel. See e.g. Elections Code §10533(b).

would be assigned to the person who is on the El Dorado County Assessor's Roll. However, the four votes would not have to be voted by that person. The person on the Assessor's role could allocate some or all of the votes to another person or persons. We have recently conducted a survey of the Fallen Leaf community to see if this solution has community support. Ninety seven percent (97%) of the respondents to the survey approve of this solution. On August 31, 2013, the Fallen Leaf CSD passed a resolution asking this committee to pursue legislation based on this solution. (A copy of that resolution is attached.)

It may seem unusual that we are requesting four votes per parcel, however, there are several reasons for this.

First, if there were only one vote per parcel, and that vote was given to the person to whom El Dorado mails its tax bill, we would have a voting population was too heavily weighted to the older generation. Our survey included questions about the age of the person on the Assessor's role. It turns out that ninety four percent (94%) were age fifty (50) years or older, and sixty three percent (63%) were age sixty six (66) or over. If the younger generations are to be given a vote in community affairs, and the opportunity to run for the CSD Board, it is necessary to allow votes to be assigned to these generations.

Second, on average, each cabin is occupied more than one potential voter. Our survey included a question regarding how many people of voting age were members of the cabin. The survey disclosed that eighty three percent (83%) of the cabins have three or more persons of voting age. Over sixty five percent (65%) of the cabins have five or more persons of voting age. On balance, the assignment of four votes to each developed parcel brings our proposal as close as is practicable to the traditional standard of "one person, one vote."

Finally, many of the cabins at Fallen Leaf have multiple family ownership. The survey revealed that just over seventy nine percent (79%) of the respondents indicated that their cabin is shared by two or more family units. Forty one percent (43%) of the cabins are shared by four or more family units. Not all families who own a cabin share the same view of the issues at Fallen Leaf. If there were only one vote per cabin, these different viewpoints could not be expressed. Permitting a cabin to have four votes will allow votes to be assigned to these different family units.

There are just under three hundred cabins in the Fallen Leaf CSD area. Adopting the hybrid voting system will dramatically increase the number of people who can vote who are directly impacted by the CSD. This will result in a system that is much more representative of the community and hence much more democratic than the current system. Increasing the number of qualified voters will also address our second problem, which is providing a large enough pool of voters from which we can find willing volunteers to serve as CSD board members.

This solution has the overwhelming support of the community. The Fallen Leaf Community Services Board of Directors is unanimous in its support. We also enjoy the support of Norma Santiago, who also believes this is a good solution to an issue that requires and deserves the attention of the state legislature.

Members of the committee want to meet with the Assemblyperson to discuss how to go about getting this proposal enacted into law, and what language a bill should contain. We are willing to come to Sacramento or to any other location where this meeting can be held. I ask that you suggest some possible dates.

Thank you for your support in this matter.

Sincerely,

Benjamin Andersen
Chairman of the Advisory
Committee on Voting.

Enclosure
cc: Supervisor Norma Santiago, file.

RESOLUTION 2013-7

RESOLUTION AUTHORIZING A CITIZENS ADVISORY COMMITTEE ON VOTING TO STUDY AND RECOMMEND ALTERNATIVES TO THE TRADITIONAL SYSTEM OF VOTING ON FALLEN LEAF LAKE CSD MATTERS

WHEREAS, the Fallen Leaf Lake CSD (FLLCSD) authorized a Citizens Advisory Committee on Voting to study and recommend alternatives to the traditional system of voting on FLLCSD matters and,

WHEREAS, the Advisory Committee has met numerous times, published preliminary recommendation and extensively surveyed FLL Community opinion on said recommendations and,

WHEREAS, the Advisory Committee has provided the FLLCSD Board of Directors with a second report and survey results indicating 97% community support of its recommendations,

NOW, THEREFORE, BE IT RESOLVED that the FLLCSD Board of Directors receives, with appreciation, the reports and survey resulting from the Advisory Committee's work, and

Commends the Advisory Committee on the breadth and substance of its work, and

Authorizes the Advisory Committee to pursue a legislative based solution to enfranchise FLLCSD voters, based, as far as feasible, on the framework and time schedule set forth in the Advisory Committee's August 15, 2013 Report to the FLLCSD Board of Directors.

PASSED AND ADOPTED ON August 31, 2013 at a regular meeting, by the following vote:

AYES: 5

NOES: 0

ABSENT: 0



President



Attest

Date: 8/31/13



California Legislature



FRANK BIGELOW
Assembly Member, 5th District

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MADERA, CA 936737
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33 BROADWAY, SUITE C
JACKSON, CA 95642
PHONE: (209) 673-0501
FAX: (209) 762-8262

LEGISLATIVE PROPOSAL / BACKGROUND INFORMATION FORM

DATE: October 22, 2013

SPONSOR:

Name: Benjamin Andersen, Chairman, CSD Ad Hoc Committee on Voting

Organization: Fallen Leaf Lake Community Services District

Address: CSD Advisory Committee
C/O Benjamin Andersen
385 Grand Avenue, Suite 200, Oakland, CA 94610

Telephone: (510)465-1679 Fax(510)832-0470

Email: boandersen@aol.com

PLEASE FILL OUT THIS FORM AS COMPLETELY AS POSSIBLE.

PURPOSE OF BILL: (Problem or deficiency in existing law -- attach proposed language, if available)

The purpose of the bill is to increase the number of those eligible to vote in Fallen Leaf Lake Community Services District elections. Under our proposal those eligible to vote would include voters registered to in the district, and also those who own private property or lease Forest Service property in the district. Because Fallen Leaf is snowbound during the winter there are few people who can call Fallen Leaf their domicile and vote there as registered voters. The result is that CSD elections are not representative of the

community that the CSD serves. This bill is designed to remedy this problem by allowing more of those who are impacted by CSD decisions to have a voice in its elections.

For a more in depth statement of the need for this legislation, please see the attached memorandum.

STUDIES, REPORTS, STATISTICS AND OTHER PERTINENT FACTS:

(List any documented sources supporting your conclusion that there is a problem. Please be specific and attach major sources.)

The ad hoc committee completed a survey of the Fallen Leaf Community in the summer of 2013. The purpose of the survey was to determine if the Fallen Leaf Community supported the committee's recommendation for legislation, and to determine if more than one vote per property parcel is needed to ensure representative elections which respect the concept of "one person, one vote" as much as possible.

The results of the survey were:

1. The Committee's recommendation is supported by 97.3% of the Fallen Leaf Community members who responded to the survey.
2. Based on the survey responses, eighty three percent (83%) of the cabins at Fallen Leaf have three or more persons of voting age. Over sixty five percent (65%) of the cabins have five or more persons of voting age. Accordingly, limiting each parcel to one vote would significantly under represent the number of voters in each cabin.

FISCAL IMPACT: (How much will this proposal cost? Please explain.)

The financial impact would be minimal. It will be limited to the cost to the Fallen Leaf CSD of running its elections with a larger number of voters than can presently vote. All Fallen Leaf CSD Elections are by mail. Accordingly, the additional costs will consist of increased costs of maintaining the eligible voters list, printing additional ballots, mailing those ballots, and tabulating the increased number of ballots returned.

URGENCY: (Is there a need for speed? How fast must measure move? Please explain.)

There is urgency. The people who are currently serving on the CSD Board are doing so out of a commitment to public service and because the CSD Board needs a quorum to function. However, the El Dorado County District Attorney has issued a letter which calls into question the qualification these members who have stepped up to fill the Board vacancies. The sooner this issue is settled the better.

LIKELY POSITIONS: (Please list any organizations or individuals who may support or oppose this legislation.)

The proposed legislation has the support of the Fallen Leaf Lake Community Services District, and the committee believes it will have the support of the El Dorado County Board of Supervisors once the proposed legislation is available for their examination. The Committee has met with El Dorado County Supervisor Norma Santiago and she is a strong supporter.

PRIOR OR SIMILAR LEGISLATION:

Session Year	Bill number	Author	Description
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

THANK YOU FOR YOUR INTEREST IN SUBMITTING IDEAS FOR LEGISLATION.

ADDENDUM TO
LEGISLATIVE PROPOSAL / BACKGROUND INFORMATION FORM

Fallen Leaf Lake is a community composed almost exclusively of summer homes. There are over two hundred and eighty (280) of them. Some of these homes are on private property and some are on Forest Service lands. There is also an alumni camp at the lake which is called Stanford Sierra Camp. The roads into Fallen Leaf Lake are not plowed during the winter and most of the homes are not winterized. The result is that there is a large summer population, but very few people remain there in the winter. The El Dorado County Elections Department estimates that there are about eight full time residents. Most of the year around residents are employees of Stanford Sierra Camp, and stay during the winter to do maintenance.

Despite the fact that most Fallen Leafers cannot live at Fallen Leaf year around, the emotional bond of the community to the Lake is very strong. Some families have returned to Fallen Leaf every year for over a century.

The Fallen Leaf CSD was formed in 1982 to provide fire protection through a Volunteer Fire Department. In addition to fire protection, the department provides a valuable public service as it also provides emergency and rescue services for the large number of day visitors who come to the lake for sightseeing, hiking, and water sports. The vast majority of the department's emergency calls are for rescue and other aid for these day visitors. That CSD and fire department are supported in part by an assessment levied against every home and undeveloped lot in the Fallen Leaf CSD District. That assessment is the same for Forest Service permit holders and private land owners.

In 1990 the CSD also assumed the obligation of administering the Community Area at Fallen Leaf. The Community Area provides the only public access to the south end of Fallen Leaf Lake. It contains a store, post office, café, public marina, and public restrooms.

Given its important role, the affairs of the CSD are of great concern to all members of the community, and Fallen Leaf cabin owners 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 ballots at their winter homes and mail them in. They would not vote in elections at their winter homes. However, this practice has come into question, and the District Attorney of El Dorado County has issued a letter stating that our historical practice may not be lawful. Given the seasonal nature of residency at Fallen Leaf, there is a legitimate argument that Fallen Leaf would not qualify as a voter's domicile. If measured against the criteria which investigators normally use to determine if someone resides at one place or another, registration at Fallen Leaf could appear suspect. 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 residence. 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 a primary residence. For permittees, registration at Fallen Leaf could jeopardize their permits.

The result of this uncertainty regarding the right to vote at Fallen Leaf is that a very large number of people who should be able to vote on CSD matters do not do so out of concern that they might run afoul of the law, or even lose their right to lease Forest Service land. If you accept the El Dorado District Attorney's position, it would mean that about eight voters would control this community of just under three hundred homes. The unrepresentative result of the District Attorney's position is only fully appreciated when you recognize that just about all cabins have more than one adult of voting age.

Limiting eligible voters to those few who actually live at Fallen Leaf all year creates two problems. First, CSD elections cannot be representative of the whole community, and the people who are most directly impacted by the CSD's actions would have no voice. Second, being a voter in the district is required of anyone who wants to serve on the Board of Directors. Serving as an unpaid CSD Board member has often proven to be difficult and time consuming. Due to the currently small number of eligible candidates, we are having a difficult time maintaining the quorum that will allow the CSD to tend to its affairs.

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In the case of the Fallen Leaf CSD, no election 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 did not register 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 was accomplished until the letter from the County DA cast doubt on the legality of this practice.

Neither of the existing statutory voting alternatives address the unique needs of Fallen Leaf. The rules of a "resident voter district" are what place us in the situation we currently find ourselves - a very small percentage of the people who have a legitimate interest in CSD elections can vote. 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 there. It would also exclude most seasonal residents who occupy cabins that are registered in the name of another family member, or in the name of a co-owner of the cabin.

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¹ See Water Code Section 30700.6 which provides:

We hope to use the Sierra Lakes legislation as a model, but with an important difference. We are proposing that each parcel be allowed four votes instead of one. (In land owner voting districts, there is statutory authority for more than one vote to be assigned to each parcel. See e.g. Elections Code §10533(b).) By default, the four votes would be assigned to the person who is on the El Dorado County Assessor's Roll. However, the four votes would not have to be voted by that person. The person on the Assessor's role could allocate some or all of the votes to another person or persons. We have recently conducted a survey of the Fallen Leaf community to see if this solution has community support. Of the two hundred and thirty seven (237) survey responses, ninety seven percent (97%) approve of this solution. On August 31, 2013, the Fallen Leaf CSD passed a resolution asking this committee to pursue legislation based on this solution.

It may seem unusual that we are requesting four votes per parcel, however, there are several reasons for this.

First, if there were only one vote per parcel, and that vote was given to the person to whom El Dorado mails its tax bill, we would have a voting population too heavily weighted to the older generation. Our survey included questions about the age of the person on the Assessor's roll. It turns out that ninety four percent (94%) were age fifty (50) years or older, and sixty three percent (63%) were age sixty six (66) or over. If the younger generations are to be given a vote in community affairs, and the opportunity to run for the CSD Board, it is necessary to allow votes to be assigned to persons of these generations.

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- (1) Is appointed under the laws of this state.
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