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March 7, 2013

Lee Lundrigan
Stanislaus County Clerk-Recorder
PO Box 1008
1021 "I" Street, Suite 101
Modesto, CA 95353

Barbara J. Levey
Merced County Registrar of Voters
County Elections Department
2222 M Street, Room 14
Merced, CA 95340

Tom Changnon
Stanislaus County Superintendent of Schools
1100 H Street
Modesto, CA 95354

Dr. Steven E. Gomes
Merced County Superintendent of Schools
632 West 13th Street
Merced, CA 95341-5908

Re: Turlock Unified School District
Notice of Election Changes

Dear Ms. Lundrigan, Ms. Levey, Mr. Changnon & Dr. Gomes:

I write to inform you of election changes recently made by the Board of Trustees of the Turlock Unified School District and to request your advice about board member residency requirements if an election is ordered or a provisional appointment is made to fill a vacancy.

Change from At-Large to By-Trustee Area Voting

The District currently has seven trustees elected at large. The District's next election is scheduled for November 5, 2013. The majority of the District lies in Stanislaus County, although a portion of the District is situated in Merced County. The current board member trustee area status is as follows.

Limited Liability Partnership

7404 N. Spalding Avenue Fresno, California 93720-3370 Tel 559-431-5600 Fax 559-261-9366

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Board Members:

Dr. Harinder Greywal	(2015)	Trustee Area 1
Tami Muniz	(2013)	Trustee Area 2
Bob Weaver	(2013)	Trustee Area 4
Grady Welch	(2015)	Trustee Area 4
Eileen Hamilton	(2015)	Trustee Area 4
Frank Lima	(2015)	Trustee Area 5
Josh Bernard	(2013)	Trustee Area 6

Trustee areas 3 and 7 are open.

In order to comply with state and federal voting rights laws, the Board of Trustees elected to change from at-large to by-trustee area voting. A copy of the Board's final implementing resolution is attached as Exhibit A. A copy of the final adopted map showing each of the seven trustee areas is attached as Exhibit B.

As indicated in the attached resolution, all required approvals to change from at-large to by-trustee area voting have been completed. For the November 2013 election, trustee areas 2, 4 and 6 will be elected in by-trustee area voting. By-trustee area voting will commence in trustee areas 1, 3, 5 and 7 for the November 2015 election.

The demographer that assisted the District with its redistricting process was Douglas Johnson of National Demographic Corporation. Mr. Johnson's contact information is as follows:

P.O. Box 5271
Glendale, CA 91221
Telephone: (909) 624-1442

By copy of this letter to Douglas Johnson of National Demographic Corporation, I am requesting that he send all shape files showing the new trustee areas and any other information which either of your offices may require. Please coordinate the final implementation of the new maps for use in the 2013 election directly with Mr. Johnson.

Board Member Residency Requirements for Election/Appointment

We also wanted to make you aware that three of the current trustees all reside in the newly designated trustee area 4. If one of the trustees whose terms expires in 2015 (Trustees Eileen Hamilton or Grady Welch) elects to run and subsequently wins in area 4 in 2013, trustee Bob Weaver would be off the board since his term expires in 2013. The winning trustee would then have a new four year term vacating their current office with a term expiring in 2015, leaving a vacancy on the school board since it would now consist of six, not seven members.

As a result, it is foreseeable that, following the November 2013 election, a vacancy could be created. The District would like to confirm with your offices when the new map becomes effective for purposes of making a provisional appointment or ordering a special election.

The Board's adopted resolution states that for vacancies occurring prior to the 2013 or 2014 elections, the Board may fill such vacancies on an at-large basis (e.g. under the "old" map) or in accordance with the new map, as the Board elects. In other words, the resolution allows the Board to fill vacancies using either the new or the old map. (See section 4 of the attached resolution).

In reviewing the applicable law, we are seeking your guidance regarding whether the "*Sloan Rule*," controls in these circumstances and requires the use of the "old map" for purposes of making a provisional appointment or ordering a special election.

The *Sloan Rule* states that, for any vacancy occurring in the middle of a term of office, the vacancy must be filled using the geographical boundaries that existed at the outset of the term (e.g. the "old map" boundaries). This rule—that the boundaries in effect at a term's outset must be used to fill a mid-term vacancy—was first formally recognized by the California Supreme Court in *Sloan v. Donoghue* (1942) 20 Cal.2d 607, a case involving the replacement of a congressman who died mid-term after congressional reapportionment.

Thirty years later, the California Supreme Court noted that the *Sloan* holding also applied to the mid-term replacement of state senators after decennial redistricting, thus signaling the existence of a general rule for filling prematurely vacant elected positions. (*Legislature v. Reinecke* (1973) 10 Cal.3d 396, 404.)

Twenty years after *Reinecke*, the Ninth Circuit Court of Appeals applied the rule to a mid-term state senate vacancy, rejecting an argument that newly drawn district lines should be used instead of old ones. (*Gaona v. Anderson* (1993) 989 F.2d 299, 301-03.)

There are no reported cases involving a vacancy on a school district or other local elected body; the *Sloan Rule* has only been applied to *state* bodies.

There are also no reported cases involving mid-term vacancies in at-large school district election systems. The *Sloan Rule* has typically been applied to elected state bodies with by-trustee area voting that have adjusted their boundaries following a federal census to ensure compliance with the one-person, one-vote rule. We know of no cases where the *Sloan Rule* has been applied when the elected body changes from at-large to by-trustee area voting or when the agency uses a "hybrid" voting system and updates its trustee areas following a federal census.

In addition to the fact that the *Sloan Rule* has never been applied in these settings, it is important to note that school district vacancies may be filled by provisional appointments or the calling of special elections, whereas, the *Sloan Rule* cases involve *state* offices in which the Governor is required to order a special election. (See Education Code sections 5090 et. seq). In the *Sloan Rule* cases, provisional appointments are prohibited. As a result, the law governing whether the *Sloan Rule* applies to school districts in this situation is uncertain.

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As a result of these uncertainties, we are seeking opinions from the agencies with jurisdiction over the District's election issues to help determine what will happen if vacancies are created or trustees relocate prior to the complete phase-in of by-trustee area voting.

If the Board elects to fill a vacancy by election instead of appointment or fails to timely address the issue and the County Superintendent is compelled to call an election (See Education Code section 5091), Education Code section 5019(d) states that if the County Committee approves the rearrangement of the boundaries of trustee areas, then the "rearrangement of the trustee areas shall be effectuated *for the next district election* occurring at least 120 days after its [County Committee] approval."

Here, the Stanislaus County Committee approved the District's map on May 1, 2012. Consequently, we believe that the new map is effective for use in all elections, whether it is a special election to fill a mid-term vacancy or the regularly scheduled elections in 2013/2015. It is our tentative conclusion that the *Sloan Rule*, requiring use of the "old" map would not govern the election situation.

In these circumstances, the school board or County Superintendent could select, in some manner determined appropriate by the School Board/County Superintendent (e.g. by lot), to have an election in either Trustee Area 3 or 7 and anyone running for election to the designated trustee area would have to reside within the boundaries of that trustee area. Once again, however, the law is uncertain and we are therefore seeking your input on this tentative conclusion as well.


We are writing to solicit input from the relevant election offices and from the respective County Superintendents to ensure that, if a vacancy occurs, agreement exists on the process for making a provisional appointment or ordering an election. In addition, if a trustee relocates prior to the next general election for their trustee area, we believe that agreement on which map governs the trustee's relocation pending an election is needed.

Thank you in advance for your assistance. Should any of you need any additional information from my office, please feel free to call. If you would like to arrange for an in-person meeting, please contact Superintendent Sonny H. Da Marto at (209) 667-0632. In addition, if you have any questions or need anything further for the 2013 election, please let us know.

We look forward to hearing from you.

Sincerely,

LOZANO SMITH

A handwritten signature in black ink, appearing to read "M. Smith", written over the printed name.

Michael E. Smith

MES/dsi

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Enclosures

cc: Douglas Johnson, National Demographic Corporation
Dr. Sonny H. Da Marto, Superintendent, Turlock Unified School District
Mike Trainor, Assistant Superintendent, Turlock Unified School District
Roberta Cheney, Administrative Assistant, Turlock Unified School District

Re: Turlock Unified School District
Notice of Election Changes

EXHIBIT A

**TURLOCK UNIFIED SCHOOL DISTRICT
BOARD OF TRUSTEES**

A RESOLUTION OF THE BOARD)	
OF TRUSTEES OF THE)	
TURLOCK UNIFIED SCHOOL)	
DISTRICT FINALIZING THE)	Resolution No. 12/2012-2013
CHANGE TO BY-TRUSTEE)	
AREA ELECTIONS FOR)	
DISTRICT BOARD MEMBERS)	
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WHEREAS, the Board of Trustees of the Turlock Unified School District ("District") adopted resolution No. 12/2009-2010 on January 19, 2010, changing from at-large trustee area elections to by-trustee area elections commencing with the November 2013 election;

WHEREAS, the County Committee on School District Organization of Stanislaus County approved the change in election method by County Committee Resolution No. 10/11:01 dated December 15, 2010;

WHEREAS, the Board approved as its trustee area map, Plan C, and simultaneously designated Trustee areas 2, 4, and 6 to stand for election by-trustee area elections in 2013 and Trustee areas 1, 3, 5, and 7 to stand for election by-trustee area elections in 2015, by Resolution No. 29/2010-2011 dated June 27, 2011;

WHEREAS, on March 26, 2012, the California State Board of Education approved the District's waiver request to change from at-large to by-trustee area elections;

WHEREAS, the County Committee on School District Organization of Stanislaus County approved the trustee area map by County Committee Resolution No. 11/12:01 dated May 1, 2012;

WHEREAS, a portion of the District lies with Merced County, a Section 5 "Pre-Clearance" county under the Federal Voting Rights Act and school districts subject to Section 5 Pre-Clearance requirements must obtain approval for election system changes from the United States Department of Justice;

WHEREAS, on August 31, 2012, Merced County received "bail out" approval from the United States Department of Justice, eliminating the District's need for Section 5 "Pre-Clearance";

WHEREAS, the Board desires the trustee area map, Plan C, attached as Exhibit A (the "Map"), to be phased in over time so that the Map is effective for Trustee Areas 2, 4 and 6 for use in the 2013 election and the Map is effective for Trustee Areas 1, 3, 5 and 7 for use in the 2015 election;

Whereas, provisional appointments may be made either on an at-large basis or in accordance with trustee area residency requirements established by the Map.

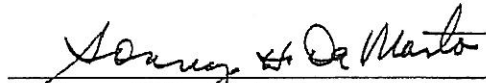
NOW, THEREFORE, THE TURLOCK UNIFIED SCHOOL DISTRICT BOARD OF TRUSTEES DOES HEREBY FIND AND RESOLVE AS FOLLOWS:

1. In recognition that all required approvals have now been obtained, the Board declares that the change from at-large to by-trustee elections is hereby finalized and that trustee area boundaries shall be in accordance with the Map attached as Exhibit A;
2. Trustee areas 2, 4, and 6 shall be elected in by-trustee area elections in 2013 and trustee areas 1, 3, 5 and 7 shall be elected in by-trustee area elections in 2015;
3. Commencing with the 2013 election and thereafter, all trustees elected in by-trustee area elections shall be residents of the trustee area they represent;
4. For vacancies in trustee areas 2, 4, and 6 occurring prior to November 2013 and for vacancies in trustee areas 1, 3, 5 and 7 occurring prior to the November 2015 election, the Board may fill any vacancies either on an at-large basis (e.g. the provisional appointee need not reside in a defined trustee area) or in accordance with the Board approved trustee area Map, as the Board may, in its sole discretion, determine;
5. The Board hereby authorizes and directs the Superintendent or his designee to forward this Resolution and all other relevant documents to the election offices of Stanislaus and Merced counties for implementation and to the County Superintendent of Schools for Stanislaus and Merced counties.
6. The Board hereby authorizes the Superintendent or his designee to take any other actions necessary to implement the intent and purpose of this Resolution.

This Resolution was adopted at a Board meeting of the Turlock Unified School District on February 5, 2013 by the following vote:


AYES:	<u>5</u>
NOES:	<u>0</u>
ABSENT:	<u>2</u> (Welch, Muniz)
ABSTAIN:	<u>0</u>

Dated: February 5, 2013


Dr. Sonny H. DaMarto, Superintendent
Turlock Unified School District

CERTIFIED AS A TRUE CORRECT COPY:

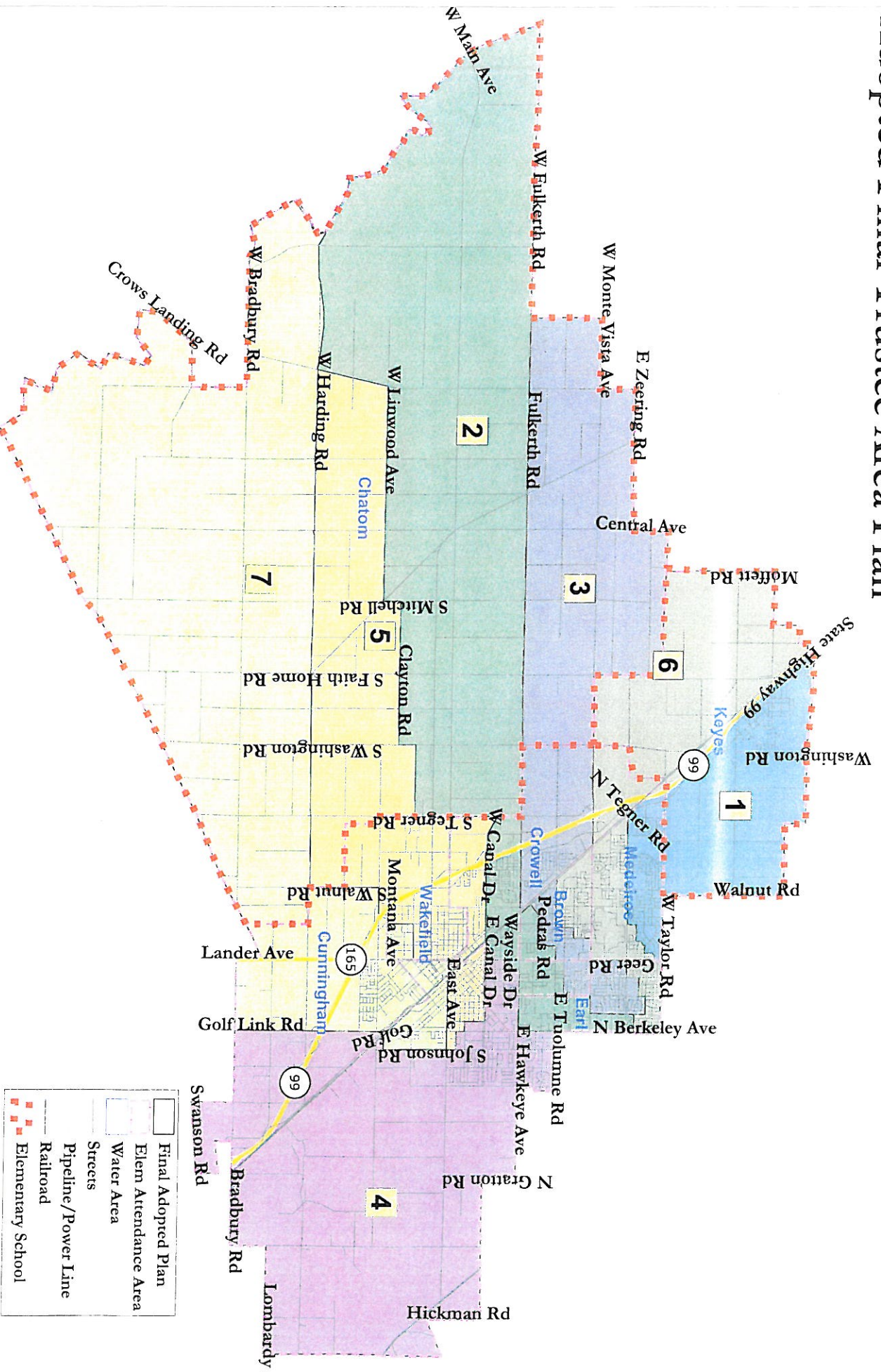
Dated: February 5, 2013


Josh Bernard, Board Clerk
Turlock Unified School District

Re: Turlock Unified School District
Notice of Election Changes

EXHIBIT B

Turlock Unified School District Adopted Final Trustee Area Plan



☐ Final Adopted Plan
Elm Attendance Area
Water Area
Streets
Pipeline/Power Line
Railroad
River
Elementary School



Turlock Unified School District Adopted Final Trustee Area Plan

