



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

March 19, 1991

Don Graf, Esq.
McCleskey, Harriger, Brazill & Graf
P. O. Drawer 6170
Lubbock, Texas 79493-6170

Dear Mr. Graf:

This refers to the following changes submitted under Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c, by the Lubbock County Water Control and Improvement District No. 1 in Lubbock County, Texas:

1. the adoption of a precinct system of voting which includes the establishment of four voting precincts;
2. the selection of polling places for each precinct, including the assignment of four current polling places (at Idalou, Buffalo Springs Lake, Slaton, and Haynes Elementary School) to the precincts, the elimination of three polling places (at the county courthouse, Wolfforth, and Shallowater), and the establishment of a new polling place (at Rush Elementary School); and
3. the implementation schedule for the change in method of election (to four single-member districts and one at large) which provided for Districts 2 and 3 and the at-large director to be elected at the January 1991 regular election, and the Districts 1 and 2 directors to be elected at the January 1993 election.

We received the information to complete your submission on January 18, 1991.

We have carefully reviewed the information you have provided, as well as Census and other available statistical data and comments from other interested parties. We note that the

instant changes stem from a suit filed under Section 2 of the Voting Rights Act, 42 U.S.C. 1973, in which minority residents of the Water District challenged the at-large method of election for the members of the District board of directors. Aguero v. Lubbock County Water Control and Improvement District No. 1, No. CA5-89-0077C (N.D. Tex.). Pursuant to a settlement of that action, a new method of election was adopted and precleared under Section 5 which allows minority residents an equal opportunity to elect candidates of their choice to the board. In particular, minority residents constitute a majority of the population in District 3 and a substantial minority of the population in District 2. The other two districts have relatively insignificant levels of minority population.

In implementing the new plan, the Water District determined that it would abandon the practice whereby a voter could cast a ballot on election day at any District polling place and, instead, decided to designate voting precincts which are coterminous with the single-member districts. Each precinct has been assigned its own discrete polling place or places.

In this regard, we note, at the outset, that the vast majority of the Water District's population resides in the City of Lubbock, located in the center of the county, and that the districting and precinct scheme divides the city into four nearly equal parts, so that at least three-quarters of the registered voters of each district or precinct are located in the city. For overwhelmingly white Precincts 1 and 4 the Water District, logically, has selected locations inside the city and has eliminated rural locations which historically have served few voters. However, for Precincts 2 and 3, where the minority population is concentrated, the District has chosen the opposite course. It proposes to eliminate the county courthouse site in the city, which in recent District elections has been the location with the second highest number of voters, and proposes to require city voters, who include the bulk of the Water District's minority voters, to travel to the more remote and inaccessible rural communities to vote on election day. Past voting experience in the county shows that the now eliminated county courthouse voting site has been the most convenient polling location for most minority voters.

The District has not offered any persuasive nonracial explanation for applying such a divergent standard in the selection of polling places. While we note, with respect to

District 3, the Water District's claim that it placed the poll in a town where the Hispanic county commissioner has an office, we have been presented with nothing which shows the relationship between that fact and the determination of what would constitute a convenient polling location for the precinct's electorate. The Water District also notes that minority voters in District 3 may choose to vote absentee at the courthouse. However, since this would appear to be equally true for voters in Districts 1 and 4, this observation serves but to suggest further the application of a different standard for Districts 2 and 3. With more specific reference to District 2, the Water District offers no explanation for its polling site selections. Thus, from all that is apparent, the polling site selections for Districts 2 and 3 would seem calculated to discourage turnout among minority voters and, accordingly, to undermine the electoral opportunities created by the new election system.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the selection of polling places for Precincts 2 and 3.

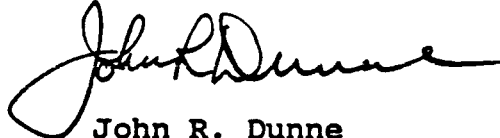
With respect to the establishment the precinct system of voting, the polling places selected for Precincts 1 and 4, and the implementation schedule insofar as it does not affect the changes to which an objection has been interposed, the Attorney General does not interpose any objection under Section 5. However, we feel a responsibility to point out that Section 5 expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes. See 28 C.F.R. 51.41.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the changes to which an objection has been interposed have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, Section 51.45 of the guidelines permits you to request that the Attorney

General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the selection of polling places for Precincts 2 and 3, including the elimination of the courthouse polling location, continue to be legally unenforceable. See 28 C.F.R. 51.10.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action Lubbock County Water Control and Improvement District No. 1 plans to take with regard to these matters. If you have any questions, feel free to call Mark A. Posner (202-307-1388), an attorney in the Voting Section.

Sincerely,

A handwritten signature in cursive script, appearing to read "John R. Dunne".

John R. Dunne
Assistant Attorney General
Civil Rights Division