

This is a proposal by the OTEMWC board to end the "practice" of electing members of the Board by cumulative voting. We say "practice" because we find no requirement in the laws of the state of California nor the governing documents of OTEMWC that require cumulative voting. In effect it does not even seem that OTEMWC has the authority to conduct cumulative voting elections.

California Law Section 708 of the Corporations Code provides that shareholders under some unrelated conditions may cumulate their votes for directors. That means if there are five directors a shareholder will have five votes to cast for directors and may cast all of them for one director. Excepted from this provision by §708 (d) are "shareholders of mutual water companies unless their articles or bylaws so provide."

Neither our Articles of Incorporation nor Bylaws provide for cumulative voting. In fact, the only reference to cumulative voting is in something called a general description of the OTEMWC which describes without source the system as follows:

Each shareholder has five votes, which may be divided in any way among the candidates.

Example: one vote for each candidate or all five votes for one candidate.

This system is designed to make it easier for a minority group of shareholders to elect a board member to represent their interests.

The Section D provision makes sense. Cumulative voting is intended for use by stock corporations to soften the power of large shareholders to provide small shareholders with a voice.

And even in these cases California Law allows directors to amend articles or bylaws to eliminate cumulative voting presumptively is unnecessary in voting for directors of a mutual water board. Section 301.5 Cal Corp. Code.

When it comes to mutual water companies the presumption is reversed. To use cumulative voting to elect directors, the company must take affirmative action. They must provide for cumulative voting in their articles or bylaws. This is most likely because there are no large shareholders or small shareholders in mutual water companies. Each member has the same number of votes depending on the number of directors, in the case of OTEMWC 5. Additionally, members in the OTEMWC each have equal access to all water and pay the same amounts for its use. This does not mean it is impossible to envision a situation in which minority interests may exist in individual mutual water companies, e.g., a limited water supply with big and small users; But in such a case a mutual water company can adopt cumulative voting through changing their articles or bylaws.

Additionally, cumulative voting is confusing, encourages gamesmanship and can lead to the continuing reelection of disruptive board members and to district polarization by allowing candidate to appeal to only a few members of the company.

The question then is what to do about a system that we use but that has not been adopted in the manner described by law. The OTEMWC Board therefor recommends a change in Section VIII (C) The Voting Procedure of the Rules Regulations and Policies for Directors, by adding Section 6.

*The results of the election shall be determined by the number of votes for each nominee. No members shall be able to cast more than one vote for any nominees. No member shall be able to cast more votes than the number of eligible nominees.*

