

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

FELIX M. LOPEZ and ELIZABETH
RUIZ, individually and on behalf
of those similarly situated,

Plaintiffs,

v.

MERCED COUNTY, CALIFORNIA; LOCAL
AREA FORMATION COMMISSION OF
MERCED COUNTY ("LAFCO"),
CALIFORNIA; CITY OF ATWATER,
CALIFORNIA; CITY OF DOS PALOS,
CALIFORNIA; CITY OF GUSTINE,
CALIFORNIA; CITY OF LIVINGSTON,
CALIFORNIA; CITY OF LOS BANOS,
CALIFORNIA; BALLICO COMMUNITY
SERVICES DISTRICT, CALIFORNIA;
CENTRAL CALIFORNIA IRRIGATION
DISTRICT, CALIFORNIA; DELHI
COUNTY WATER DISTRICT,
CALIFORNIA; EAST MERCED RESOURCE
CONSERVATION DISTRICT,
CALIFORNIA; FRANKLIN COUNTY
WATER DISTRICT, CALIFORNIA;
HILMAR COUNTY WATER DISTRICT,
CALIFORNIA; LE GRAND COMMUNITY
SERVICE DISTRICT, CALIFORNIA;
LOS BANOS RESOURCE CONSERVATION
DISTRICT, CALIFORNIA; MERQUIN
COUNTY WATER DISTRICT,
CALIFORNIA; MIDWAY COMMUNITY
SERVICES DISTRICT, CALIFORNIA;
PLANADA COMMUNITY SERVICES
DISTRICT, CALIFORNIA; SANTA
NELLA COUNTY WATER DISTRICT,
CALIFORNIA; SNELLING COMMUNITY
SERVICES DISTRICT, CALIFORNIA;
SOUTH DOS PALOS COUNTY WATER
DISTRICT, CALIFORNIA; TURLOCK
IRRIGATION DISTRICT, CALIFORNIA;
VOLTA COMMUNITY SERVICES
DISTRICT, CALIFORNIA; WINTON
WATER AND SANITARY DISTRICT,
CALIFORNIA,

Defendants.

1:06-cv-1526 OWW DLB

THREE JUDGE COURT

ORDER FOLLOWING HEARING ON
PLAINTIFFS' MOTION FOR
TEMPORARY RESTRAINING ORDER

1 Plaintiffs, Felix M. Lopez's and Elizabeth Ruiz's Motion for
2 Temporary Restraining Order came on for hearing on November 3,
3 2006, in Courtroom 3 of the above-captioned Court, Oliver W.
4 Wanger, United States District Judge, presiding. Plaintiffs were
5 represented by their counsel Joaquin G. Avila, Esq. and Brian
6 Sutherland, Esq. Merced County was represented by its attorneys
7 James N. Fincher, Esq., County Counsel Designee and Nielsen,
8 Merksamer, Parrinello, Mueller & Naylor LLP by Christopher E.
9 Skinnell, Esq. and Marguerite Mary Leoni, Esq. The Local Area
10 Formation Commission of Merced County ("LAFCO") was represented
11 by its counsel Best, Best & Krieger by Gene Tanaka, Esq.
12 Defendant City of Atwater was represented by its attorneys Allen,
13 Proietti & Fagalde LLP by Salvador V. Navarrete, Esq. The City
14 of Dos Palos did not appear. Winton Water and Sanitary District
15 appeared by its attorney Craig Mortensen, Esq. The City of
16 Gustine appeared by its attorneys Berliner Cohen by Thomas E.
17 Ebersole, Esq. The City of Livingston appeared by Burke,
18 Williamson & Sorensen LLP by Sarah Peters Gorman, Esq. The City
19 of Los Banos appeared by its attorney Abbott & Kindermann LLP, by
20 Joel Ellinwood, Esq. There was no appearance for the following
21 Defendant Districts: Ballico Community Services District,
22 California; Central California Irrigation District, California;
23 Delhi County Water District, California; City of Dos Palos,
24 California; East Merced Resource Conservation District,
25 California; Franklin County Water District, California; Hilmar
26 County Water District, California; Le Grand Community Service
27 District, California; Los Banos Resource Conservation District,
28 California; Merquin County Water District, California; Midway

1 Community Services District, California; Planada Community
2 Services District, California; Santa Nella County Water District,
3 California; Snelling Community Services District, California;
4 South Dos Palos County Water District, California; Turlock
5 Irrigation District, California; and Volta Community Services
6 District, California.

7 After considering the Motion for Temporary Restraining
8 Order, supporting declarations and legal authorities and the
9 opposition legal authorities, declarations and oral arguments of
10 all counsel, the following order is entered with the agreement of
11 the parties.

12 IT IS ORDERED:

13 Certification Of Election Results

14 The County of Merced, City of Atwater, City of Gustine, City
15 of Livingston, and City of Los Banos agree not to certify the
16 results of County or City elections before the hearing of and
17 decision on Plaintiffs' Motion for Preliminary Injunction. If
18 the City of Dos Palos is holding elections it shall not certify
19 the result of its City elections before said hearing.

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21 Exception

22 1. All City Defendants may certify the results of the
23 November 7, 2006, state-wide and federal elections, but not local
24 elections. The County agrees not to certify any election results
25 before hearing of and decision on the Preliminary Injunction.

26 2. Plaintiffs agree that if any Defendant receives
27 allegedly required DOJ pre-clearance or approval of all boundary
28 change actions or other voting changes that are the subject of

1 Plaintiffs' Complaint prior to date of the hearing of the
2 Preliminary Injunction, as to that Defendant, the Motion for
3 Injunctive Relief is withdrawn and that Defendant shall be free
4 to certify all its election results.

5 3. As to the non-County and non-City District Defendants
6 and LAFCO, no present injunctive relief is required as none of
7 those Defendant Districts are holding elections November 7, 2006.

8
9 Order To Show Cause Re Preliminary Injunction

10 All Defendants, and those acting for, under or in concert
11 with them, shall show cause, if any they have, why they should
12 not be enjoined from finalizing or certifying the November 7,
13 2006, election results until there is full compliance with
14 Section 5 of the Voting Rights Act of 1965. 42 U.S.C. § 1973c.
15 The following schedule shall govern further briefing and hearing
16 on the Order to Show Cause Re Preliminary Injunction:

17 a. Plaintiffs' supplemental authorities and/or other
18 submissions shall be filed by midnight, November 8, 2006;

19 b. All Defendants' oppositions to Plaintiffs' motion for
20 Preliminary Injunction shall be filed by midnight, November 17,
21 2006;

22 c. The hearing on Plaintiffs' Motion for Preliminary
23 Injunction shall be held November 21, 2006, at 1:00 p.m. in
24 Courtroom 3, Seventh Floor of the above-captioned Court at 2500
25 Tulare Street, Fresno, California, before United States Circuit
26 Judge Jay S. Bybee, United States District Judge Oliver W.
27 Wanger, and United States District Judge Anthony W. Ishii,
28 sitting as a three-judge district court pursuant to 28 U.S.C.

1 § 2284.

2

3 No Testimony To Be Presented

4 After inquiry of each appearing party, no party intends to
5 present testimony at the OSC hearing.

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7 DATED: November 3, 2006, at Fresno, California.

8 SO ORDERED

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/s/ Oliver W. Wanger
OLIVER W. WANGER
UNITED STATES DISTRICT JUDGE

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