ORIGINAL

S198387

IN THE SUPREME COURT OF CALIFORNIA

JULIE VANDERMOST

Petitioner,

vs.

**DEBRA BOWEN, SECRETARY OF STATE
OF CALIFORNIA**

Respondent.

DECLARATION OF DR. T. ANTHONY QUINN IN SUPPORT OF PETITIONER'S REPLY TO PRELIMINARY OPPOSITIONS AND OPPOSITION TO CITIZENS REDISTRICTING COMMISSION'S MOTION TO INTERVENE

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Voting Rights Act Issues

1.   The Commission erroneously asserts that the Simple Nesting Plan and the Model Constitutional Plan violate the Voting Rights Act. This demonstrates an apparent misunderstanding on the Commission's part as to how State Senators are elected in California.

2.   California has 40 State Senate districts. Each member is elected for a four year term. That means that every election cycle 20 State Senators face election. The 20 odd-numbered Senate districts had an election in the year 2008. The constitutional four year terms of those 20 State Senators expire in 2012, so there must be an election for those 20 seats. It will either be in the 20 odd-numbered Senate districts certified by the Commission (referendum does not qualify) or in the 20 odd-numbered Senate districts established by this Court (referendum qualifies).

3.   The situation is entirely different for the 20 even-numbered Senate districts. They were elected in 2010 for terms that extend to 2014. Were a vacancy to occur in any of these even-numbered districts in the year 2012, 2013 or even 2014, it would be filled in the old 2001 district, not in the new Commission districts. If the referendum does not qualify or the Commission districts are approved by the voters at the November 2012 election, the Commission's even-numbered districts will come into effect for the 2014 election. If the referendum qualifies and the voters reject the Commission districts, this Court will be required to establish new districts for the 2014 and subsequent elections.

4.   Nothing in this case or my suggested remedies in any way affects the even-numbered districts.

5.   The Commission demonstrates confusion about this reality in its petition. In discussing the Simple Nesting Plan, the Commission contends that "Her (Vandermost's) nesting plan would violate Section 5 of the Voting Rights Act. At least two of her proposed Senate districts, (12

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and 14) would impermissible regress Latino-minority voting power and fall below the Section 5 bench marks for Merced and Kings County."

6.   This is simply not true. Senate Districts 12 and 14 do not elect until 2014. Nowhere in Vandermost's petition does she assert that this Court should establish the districts for the 2014 election (the even-numbered districts). The Simple Nesting Plan and Model Constitutional Plan only include the 20 even-numbered districts to show how this state may be districted, not because she wishes this Court to impose the 20 even-numbered districts. They are completely irrelevant to the issues at hand.

7.   The four counties that fall under Section 5 of the Voting Rights act are Yuba (Senate District 4), Merced (Senate District 12), Kings (Senate District 14), and Monterey (Senate Districts 12 and 15). As is apparent, three of the four Section 5 counties held elections in 2010 and will not elect until 2014. This is true under both the 2001 map and under the Commission's map.

8.   Monterey County includes parts of two Senate districts, (SD 12 and SD 15) under both the 2001 map and Commission map (Senate District 15 becomes Senate District 17). The Simple Nesting Plan and the Model Constitutional Plan combine the heavily Latino portions of Monterey County (Salinas and Salinas Valley) with the San Jose Latino Assembly district to form a Latino district in Monterey County, something the Commission was encouraged to do but refused. And it is given an odd number, meaning a 2012 election. So Latino opportunities are enhanced in this Voting Rights Act county, not regressed, because Latinos have an opportunity to elect a Latino, something which is unlikely to happen under the Commission's plan even in 2014.

9.   Were the Court to impose the 2001 districts in these counties there would be no Voting Rights Act issues as the only county affected would be Monterey, which under the 2001 option is left unchanged.

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10.   The Commission also addresses Section 2 of the Voting Rights Act, making much ado over the fact that nesting Assembly district 31 and 32 to form Senate district 14 fails to create a Section 2 district. That may be true but we are not encouraging the Court to do any such thing. Senate district 14 is an even-numbered district and does not elect until 2014. The Simple Nesting Plan is not intended to cover the 2014 election. The other Section 2 districts, all in Los Angeles, are the same in number under the Simple Nesting Plan, the Model Constitutional Plan, and the Commission's plan, a fact the Commission is forced to admit. Three Section 2 Latino districts are created in Los Angeles County under the Commission map, the Model Constitutional Plan and the Simple Nesting plan. There is no Section 2 dilution in Los Angeles under any of these plans.

Population Deferrals

11.   The Commission says on page 22: "Vandermost does not address the prospect that switching between old and new Senate districts could cause some residents to vote in both odd and even numbered districts (in 2012 and 2014) while others could be left out of a district altogether. There is no reasonable basis for inviting this type of mischief."

12.   This "type of mischief" is going to occur anyway and it is not the fault of Vandermost. This is the phenomenon known as deferral, and the Commission was briefed by its staff (see memoranda to the Commission, Deferral and Numbering System for Senate Districts, dated July 21, 2011 and July 28, 2011, attached hereto as Exhibit A). Because only 20 districts are up for election in 2012, some Californians will have the opportunity to vote for two Senators and will be represented by two Senators until 2014, and some will have no Senator.

13.   The number of Californians affected by this deferral is in the millions. As an example, if your home is currently in an odd-numbered

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district but is moved to an even-numbered district, your Senate representation will end with the conclusion of the term of the Senator elected in 2008 and will not recommence until you elect a new Senator in 2014. If your home is in an even-numbered district but is moved to an odd-numbered district, you will elect a new Senator in 2012 but your old even-numbered Senator remains in office until 2014, so you have two Senators for this period of time.

14.   As the Commission's deferral memorandum points out, 51 percent of the population of Senate District 11, located in San Francisco, originates in an even-numbered district, so more than half the population of this Senate district will have two Senators through 2014.

15.   Leaving the old Senate districts in place for one more cycle does not affect deferrals; it merely puts them off for two years. Deferral automatically occurs because of the odd and even cycles. It could only be avoided if all 40 Senators were elected in a single cycle, but no one is suggesting that.

Population Deviations

16.   The Commission quotes from *Assembly v. Deukmejian* to the effect that "deviation in a district of more than 10 percent from ideal population is suspect and that deviation greater than 16.4 percent is intolerable under the equal protection clause." The Commission notes that three of the 20 odd-numbered districts have population deviations over 10 percent and two are over 16.4 percent "deviating by 17.9% and 30.5% respectively".

17.   So the Commission admits that 17 of the 20 odd-numbered districts deviate by less than 10 percent, and thus are within the acceptable range for a temporary plan. One district is within the allowable "suspect" range (10 to 16.4 percent) and only two are clearly over the allowable population deviation and "intolerable under the equal protection clause."

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18.   This situation is easily resolved. The Court could simply order that these three districts be reduced in size so that the districts electing in 2012 are within the 10 percent deviation range. Petitioner would be very happy to suggest to the Court areas to be removed from the existing districts and the Secretary of State could instruct the counties to conduct the 2012 election only in the remaining portions.

Points of Personal Privilege

19.   In the Commission's filings, I have been regularly denigrated so I feel a need to set the record straight.

On page 3 of the Commission's response I am called "a single paid expert with a results oriented agenda." In fact, I have volunteered and have not been paid for any of the work I have done on this case. I am not compensated for my hours or my expenses. I should happily submit my "results oriented agenda" to the purview of any expert this Court wishes to engage.

In the introduction, I am called "known partisan blogger T. Anthony Quinn." I am not a partisan, and I am not a blogger. I hold no position with any political party, nor gain income from any party. I have made no partisan campaign contributions in more than 20 years; my last "partisan" campaign was George H. W. Bush for president in 1988. If fact, I met the partisan qualifications to be a member of the Commission. I did not apply because former Secretary of State Bruce McPherson appointed me to a bipartisan commission to examine the Political Reform Act and I read this executive branch appointment as disqualifying me.

Regularly throughout the Commission's response I am called a "supposed expert" or "proffered expert." My first involvement with California redistricting was as a legislative staffer in the 1971 cycle, a longer period of expertise with this subject than any member of the Commission or its staff or its consultants.

The foregoing statements of fact are true and correct and the foregoing opinions are mine offered as expert testimony in this matter. If called as a witness I could testify truthfully to the foregoing.

Executed under penalty of perjury under the laws of the State of California this ___7th___ day of December 2011 at Sacramento, California.
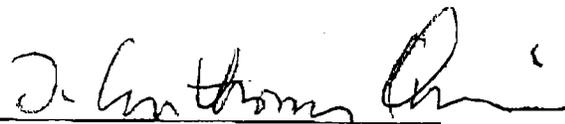
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California that the foregoing is true and correct, and that this declaration

was executed on December 7, 2011 at Sacramento, California.

SHANNON DIAZ

EXHIBIT A

TO: Citizens Redistricting Commission

FROM: Karin Mac Donald

DATE: July 28, 2011

RE: Deferral and Numbering System for Senate Districts – Implementation of Methodology and
        Results

Below is a brief description of the steps used to assess deferral, followed by the results and the analysis
of the outcome of numbering for the process the CRC decided to follow.

I. Assigning Districts to Odd/Even Pool

Step 1- The percentage of the total population for each Senate district visualization that is currently in
an even or odd district was calculated.

Step 2- The 20 districts with the highest percentage of deferred total population from an odd district
were assigned to the 'odd pool.' The remaining districts were assigned to the 'even pool.'

Table 1:

2011.07.27 Senate final draft district #	2011.07.27 Senate final draft district	% origin odd 2001 Senate #	% origin even 2001 Senate #	2011.07.27 Senate final draft district #	2011.07.27 Senate final draft district	% origin odd 2001 Senate #	% origin even 2001 Senate #
37	IRVTST	100.00%	0.00%	26	LAPVB	44.37%	55.63%
31	RIVMV	100.00%	0.00%	34	WSTSA	43.99%	56.01%
19	SBWVE	100.00%	0.00%	28	CCHTM	41.23%	58.77%
15	SJOSE	100.00%	0.00%	36	SANOC	39.17%	60.83%
17	WMONT	99.12%	0.88%	32	LAPRW	36.98%	63.02%
21	LAAVV	96.57%	3.43%	02	NORCO	32.83%	67.17%
07	RAMON	92.17%	7.83%	06	SAC	28.55%	71.45%
09	RCHMD	91.77%	8.23%	18	LASFE	24.49%	75.51%
25	LASGF	91.61%	8.39%	22	LACVN	19.86%	80.14%
23	SBBAN	84.62%	15.48%	04	YUBA	19.52%	80.48%
27	EVENT	80.74%	19.26%	10	FREOAK	19.45%	80.55%
39	CSAND	75.25%	24.75%	40	ISAND	16.57%	83.43%
29	CHFUL	67.03%	32.97%	30	LAVSQ	14.91%	85.09%
03	WINE	65.90%	34.10%	08	FTHLL	14.38%	85.62%
33	LALBS	60.23%	39.77%	20	POMSB	11.68%	88.32%
13	SNMAT	58.60%	41.40%	24	LAELA	11.41%	88.59%
35	LAWBC	58.40%	41.60%	38	NESAN	4.14%	95.86%
05	SNJOA	57.29%	42.71%	16	TULKE	3.06%	96.94%
01	MTCAP	54.01%	45.99%	12	MRCED	0.16%	99.84%
11	SF	48.51%	51.49%	14	KINGS	0.00%	100.00%

II. Assigning Individual numbers (Geographic Method)

Step 1- The odd districts were numbered from north to south starting at the Oregon border and continuing with the most northern point of each district until all odd numbers (1, 3, 5...) had been assigned.

Step 2- The even districts were numbered from north to south starting at the Oregon border and continuing with the most northern point of each district until all even numbers (2, 4, 6...) had been assigned.

Table II

MTCAP	01	SF	11	LAAVV	21	RIVMV	31
NORCO	02	MRCED	12	LACVN	22	LAPRW	32
WINE	03	SNMAT	13	SBBAN	23	LALBS	33
YUBA	04	KINGS	14	LAELA	24	WSTSA	34
SNJOA	05	SJOSE	15	LASGF	25	LAWBC	35
SAC	06	TULKE	16	LAPVB	26	SANOC	36
RAMON	07	WMONT	17	EVENT	27	IRVTST	37
FTHLL	08	LASFE	18	CCHTM	28	NESAN	38
RCHMD	09	SBWVE	19	CHFUL	29	CSAND	39
FREOAK	10	POMSB	20	LAVSQ	30	ISAND	40

Numbering of Assembly, Congressional and Board of Equalization Districts

The numbering of the districts was started at the Oregon border, moving north to south, finding the northernmost point of each district. Along the Oregon border, in an effort to provide some consistency, numbering started in the east in all four plans because that is how the senate had to be numbered due to the deferral of population in odd districts.

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Table III

AD	Number						
MTCAP	01	MRCED	21	LASGF	41	MTRMV	61
DMNDO	02	NSNMT	22	BBCOH	42	LAIHG	62
YUBA	03	FRSNO	23	LAGBP	43	LASGL	63
NAPA	04	SSNMT	24	EVENT	44	LAWBC	64
FTHLL	05	MLPTS	25	LAVSF	45	ANAFL	65
NSAC	06	TLRE	26	LASFW	46	LAPVB	66
WSAC	07	SANJO	27	RLTFO	47	MGOBN	67
ESAC	08	SILIV	28	LACVN	48	TUSTO	68
SACEG	09	WMONT	29	LAWSG	49	SNANA	69
MARIN	10	MONT	30	LAMWS	50	LALBS	70
ECC	11	FSEC2	31	LAELA	51	ISAND	71
STNSJ	12	KINGS	32	POMVL	52	WESTC	72
STKTN	13	MISBK	33	LADNT	53	STHOC	73
PTANT	14	BKRFD	34	LAWSC	54	CSTOC	74
WCC	15	SLOSB	35	DBRYL	55	MURTM	75
EALAM	16	LAAVV	36	COACH	56	NCSAN	76
ESF	17	SBWVE	37	LAPRW	57	RCHMM	77
OKLND	18	LASCV	38	LADNN	58	CNSAN	78
WSFDC	19	LASFE	39	LAVSQ	59	LMSAND	79
HYWRD	20	SBCUC	40	RIVJU	60	SSAND	80

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Table IV

CD	Number		
MTCAP	01	SGMFH	28
NOCST	02	SFVET	29
YUBA	03	SFVWC	30
FTHLL	04	SB	31
NEBAY	05	COVNA	32
SAC	06	WLADT	33
SACCO	07	ELABH	34
INMSB	08	ONTPM	35
SNJOA	09	COACH	36
STANI	10	IGWSGF	37
COCO	11	DWWTR	38
SF	12	LHBYL	39
OKLND	13	DOWNTOWN	40
SNMAT	14	RVMVN	41
FRENE	15	PRS	42
MRCED	16	IGWSG	43
SANJO	17	COMP	44
SNMSC	18	STHOC	45
SNACL	19	SNORN	46
MONT	20	LBPRT	47
KINGS	21	WSTCST	48
FRSNO	22	CSTSN	49
KR	23	NESAN	50
SLOSB	24	IMSAN	51
AVSCV	25	MMRHB	52
EVENT	26	CHNCS	53
SGVP	27		

Table V

BOE	Number
EAST	01
WEST	02
LA	03
ORSD	04

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TO: Citizens Redistricting Commission

FROM: Karin Mac Donald

DATE: July 21, 2011

RE: Deferral and Numbering System for Senate Districts – Implementation of Methodology and
          Results

Below is a brief description of the steps used to assess deferral, followed by the results and the analysis
of the outcome of numbering for each of the three processes described in my memo from July12, 2011,
in which I explained the various options theoretically.

1. Assigning Districts to Odd/Even Pool

Step 1- The percentage of the total population for each Senate district visualization that is currently in
an even or odd district was calculated.

Step 2- Current visualizations that had a majority (>50%) of the total population in an even district were
assigned to the 'even pool'. Visualizations that had a majority of the total population in an odd district
were assigned to the 'odd pool'.

Result: Because the population was more evenly distributed within the 'even pool,' this process created
21 even districts and 19 odd districts. To be able to designate the same number of odd and even
districts, one district had to be shifted from the even to the odd pool. This adjustment was made by
moving the even district with the next highest percentage of total population from an odd district (SF-
48.5%) to the odd pool.

Table I

ODD		#	EVEN	
2011.07.19 Senate	% origin odd 2001 Senate #		2011.07.19 Senate	% origin odd 2001 Senate #
IRVTST	100.0%	1	LAPVB	44.3%
RIVMV	100.0%	2	CCHTM	41.2%
SBWVE	100.0%	3	SANOC	39.2%
SJOSE	100.0%	4	LAPRW	38.2%
WMONT	99.1%	5	WSTSA	37.9%
LAAVV	96.6%	6	NORCO	32.8%
RAMON	92.2%	7	SAC	28.5%
RCHMD	91.8%	8	LASFE	25.4%
LASGF	90.3%	9	LACVN	19.8%
SBBAN	84.5%	10	YUBA	19.5%
EVENT	79.8%	11	FREOAK	19.5%
CHFUL	73.4%	12	ISAND	16.1%
CSAND	70.9%	13	FTHLL	14.3%
WINE	65.9%	14	LAVSQ	13.8%
LAWBC	61.0%	15	POMSB	11.7%
LALBS	59.0%	16	LAELA	11.4%
SNMAT	58.6%	17	NESAN	9.7%
SNJOA	57.5%	18	TULKE	3.1%
MTCAP	54.0%	19	MRCED	0.2%
SF	48.5%	20	KINGS	0.0%

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II. Assigning individual numbers (Geographic Method)

Step 1- The odd districts were numbered from north to south starting at the Oregon border and continuing with the most northern point of each district until all odd numbers (1, 3, 5...) had been assigned.

Step 2- The even districts were numbered from north to south starting at the Oregon border and continuing with the most northern point of each district until all even numbers (2, 4, 6...) had been assigned.

Table II

MTCAP	1	SF	11	LAAVV	21	RIVMV	31
NORCO	2	MRCED	12	LACVN	22	LAPRW	32
WINE	3	SNMAT	13	SBBAN	23	LALBS	33
YUBA	4	KINGS	14	LAELA	24	WSTSA	34
SNJOA	5	SJOSE	15	LASGF	25	LAWBC	35
SAC	6	TULKE	16	LAPVB	26	SANOC	36
RAMON	7	WMONT	17	EVENT	27	IRVTST	37
FTHLL	8	LASFE	18	CCHTM	28	NESAN	38
RCHMD	9	SBWVE	19	CHFUL	29	CSAND	39
FREOAK	10	POMSB	20	LAVSQ	30	ISAND	40

III. Assigning Individual numbers (Consistency/Overlap with current districts Method)

Step 1- The odd districts were assigned the number of the odd district with the biggest overlap.

Step 2 – the even districts were assigned the number of the even district with the biggest overlap.

Step 3- A check was performed to ensure no districts or numbers had been double counted.
- 19 has the biggest overlap with EVENT. However SBWVE has an even bigger overlap with 19 (523,727 vs. 360,647). Thus EVENT was assigned the number of its next biggest overlap (23)

19	SBWVE	523727	EVENT	360647

- CCHTM is an anomaly in that every number that CCHTM overlaps with is already assigned to another district, because the other district as a bigger overlap with it than CCHTM does.
- Thus CCHTM was assigned the only available, unassigned, even number (08) from the even pool.

31	SBBAN	458444	CCHTM	9074
36	NESAN	458448	CCHTM	302327
37	RIVMV	537741	CCHTM	374441
40	ISAND	744964	CCHTM	244230

- WINE is another anomaly in that every number that WINE overlaps with is already assigned to another district with a bigger overlap.
- Thus WINE was assigned the only available, unassigned, odd number (33) from the odd pool.

01	MTCAP	504829	WINE	2566
02	NORCO	581031	WINE	316402
03	NORCO	304650	WINE	124196
05	SNJOA	511705	WINE	405292
06	SAC	668996	WINE	70
07	RAMON	722671	WINE	79605

Table III

MTCAP	1		SNMAT	11		LASGF	21		SBBAN	31
NORCO	2		MRCED	12		LAELA	22		POMSB	32
SF	3		SJOSE	13		EVENT	23		WINE	33
YUBA	4		FTHLL	14		LACVN	24		WSTSA	34
SNJOA	5		WMONT	15		LAWBC	25		IRVTST	35
SAC	6		KINGS	16		LAVSQ	26		NESAN	36
RAMON	7		LAAVV	17		LALBS	27		RIVMV	37
CCHTM	8		TULKE	18		LAPVB	28		SANOC	38
RCHMD	9		SBWVE	19		CHFUL	29		CSAND	39
FREOAK	10		LASFE	20		LAPRW	30		ISAND	40

IV. Assigning individual numbers (Hybrid Method)

Step 1- The odd districts were assigned the number of an existing odd district only if there was at least a 50% overlap. (note that in the Consistency method, a district only needed to have the largest share of overlap to be assigned the respective number). Using the Consistency method, in the example below, EVENT would be assigned the number 19 even though the overlap is less than 50%.

EVENT	17	75,701	6.89%
EVENT	19	360,647	39.56%
EVENT	20	188,335	21.24%
EVENT	21	19,909	2.33%
EVENT	23	288,423	32.08%

Step 2- The remaining odd districts that did not have at least a 50% overlap were numbered from north to south, using the district numbers that had not been assigned from the odd pool, starting at the Oregon border and continuing with the most northern point of each district until all remaining odd numbers had been assigned.

Step 3- The even districts were assigned the number of an existing even district only if there was at least a 50% overlap.

Step 4- The remaining even districts that did not have at least a 50% overlap were numbered from north to south, using the district numbers that had not been assigned from the even pool, starting at the Oregon border and continuing with the most northern point of each district until all remaining even numbers had been assigned.

Table IV

MTCAP	1
NORCO	2
WINE	3
YUBA	4
SNJOA	5
SAC	6
RAMON	7
LAELA	8
RCHMD	9
FREOAK	10

SF	11
MRCED	12
SNMAT	13
FTHLL	14
WMONT	15
KINGS	16
LAAVV	17
TULKE	18
SBWVE	19
LASFE	20

LASGF	21
LAPVB	22
SJOSE	23
LACVN	24
LAWBC	25
LAVSQ	26
SBBAN	27
CCHTM	28
EVENT	29
LAPRW	30

CHFUL	31
POMSB	32
LALBS	33
WSTSA	34
IRVTST	35
NESAN	36
RIVMV	37
SANOC	38
CSAND	38
ISAND	40

V. Comparison

All three methods defer the same number of people. The continuity and hybrid methods result in district numbers that more closely relate to the current district numbers. However these methods also create anomalies such as a district in Napa being assigned 33 and a district in Riverside being assigned 8.

Table V

2011.07.19 Senate	Odd/ Even	Continuity	Geographic	Hybrid
CCHTM	Even	8	28	28
CHFUL	Odd	29	29	31
CSAND	Odd	39	39	39
EVENT	Odd	23	27	29
FREOAK	Even	10	10	10
FTHLL	Even	14	8	14
IRVTST	Odd	35	37	35
ISAND	Even	40	40	40
KINGS	Even	16	14	16
LAAVV	Odd	17	21	17
LACVN	Even	24	22	24
LAELA	Even	22	24	8
LALBS	Odd	27	33	33
LAPRW	Even	30	32	30
LAPVB	Even	28	26	22
LASFE	Even	20	18	20
LASGF	Odd	21	25	21
LAVSQ	Even	26	30	26
LAWBC	Odd	25	35	25
MRCED	Even	12	12	12

2011.07.19 Senate	Odd/ Even	Continuity	Geographic	Hybrid
MTCAP	Odd	1	1	1
NESAN	Even	36	38	36
NORCO	Even	2	2	2
POMSB	Even	32	20	32
RAMON	Odd	7	7	7
RCHMD	Odd	9	9	9
RIVMV	Odd	37	31	37
SAC	Even	6	6	6
SANOC	Even	38	36	38
SBBAN	Odd	31	23	27
SBWVE	Odd	19	19	19
SF	Odd	3	11	11
SJOSE	Odd	13	15	23
SNJOA	Odd	5	5	5
SNMAT	Odd	11	13	13
TULKE	Even	18	16	18
WINE	Odd	33	3	3
WMONT	Odd	15	17	15
WSTSA	Even	34	34	34
YUBA	Even	4	4	4