

ITEM #4.A

Procedure For Filling Vacancy on Board of Directors

DEL PASO MANOR WATER DISTRICT

BOARD MEETING

DATE: February 22, 2024

AGENDA ITEM NO. 4.A

SUBJECT: PROCEDURE FOR FILLING VACANCY ON BOARD OF DIRECTORS

STAFF CONTACT:

General Manager & General Counsel

BACKGROUND:

The President of the Board of Directors (“Board”) of Del Paso Manor Water District (“District”) resigned on February 7, 2024. This staff report reviews the process for filling the vacant seat and the process for filling the seat of President on the Board.

I. Process for Filling the Vacant Seat on the Board

A seat on the Board becomes vacant when a director resigns. (Gov. Code § 1770(c)(1).) Vacancies on the Board of a County Water District must be filled pursuant to Government Code section 1780. (Wat. Code § 30504.) The following reviews the process of how to fill a vacated seat on the Board pursuant to the Government Code.

Step 1: Notify Sacramento County Elections Office

The District must notify the county elections official of the vacancy within 15 days after either (1) the date the Board is notified of the vacancy or (2) the effective date of the vacancy, whichever is later. (Gov. Code § 1780(b).) At the November 7, 2023 Board meeting, the Board President announced his intent to resign after the January 9, 2024 Board meeting, which was later changed to resigning after the February 6, 2024 Board meeting. The Board was notified of the vacancy on November 7, 2023, and the effective date of the vacancy was February 7, 2024. The effective date of the vacancy, February 7, 2024, was later. Thus, pursuant to Government Code section 1780(b), the District must notify the county elections official of the vacancy by the end of the day on Thursday, February 22, 2024. The District should contact the County Elections Office as soon as possible to notify them of the vacancy on the Board.

Step 2: Fill the Vacancy

After the Sacramento County Elections Office is notified of the vacancy, the remaining four members of the Board may fill the vacancy by appointment or election. (Gov. Code § 1780(c).) While both options are explained below, filling the seat by appointment may be appealing in order to return to a full five-member Board as soon as possible.

Step 2a: Filling the Vacancy by Appointment

To fill the vacancy by appointment, the Board must make the appointment within 60 days of February 7, 2024, which is Sunday, April 7, 2024. (Gov. Code § 1780(d)(1).)

First, the District must post a notice of the vacancy in at least three clearly visible places in the District at least 15 days before the Board makes the appointment. (Gov. Code § 1780(d)(1).) If the District does not already have a notice of vacancy template, we can help draft the notice. Because this notice requirement can also be easily forgotten or delay District business, this is another requirement we suggest completing as soon as possible after the Board has confirmed that it wants to fill the vacancy by appointment. The notice must be posted at least 15 days before the appointment, and it is fine to have the notice posted for a longer period of time, thus the benefit of completing this requirement early.

The Board, after advertising for the position, can see who is interested in serving. The process involves an application, interviews, and a Board vote. The District would prepare, and the Board would approve, an application for the vacant Board seat. The District would notify District customers through mailing and/or social media that applications can be found on the website or at the District office and are due on a certain day. After applications are due, the Board would review the applications and then conduct open-session interviews with the candidates and take public comment. The Board would then proceed to vote on who to appoint. This process can help the District with transparency and provide the opportunity to talk to the people who might be interested in serving on the Board. The District just needs to make sure it can conduct its desired notification, interviewing, and voting process before the statutory 60 days expire. Note that the process for finding someone to appoint is not controlled by statute. Thus, the Board has leeway in deciding how to proceed but should consult with counsel to ensure other applicable laws are followed.

The rules for filling a vacancy provide that “[i]f the vacancy occurs in the first half of a term of office and at least 130 days prior to the next general district election, the person appointed to fill the vacancy shall hold office until the next general district election[.]” (Gov. Code § 1780(d)(2).) The appointed person holds office until after the election, when the person who is elected to fill the vacancy has been qualified to sit on the Board. (Gov. Code § 1780(d)(2).) The elected person holds office only for the unexpired balance of the term of office. (Gov. Code § 1780(d)(2).) The President’s term expires in 2026. The next general election is on November 5, 2024. Thus, the President’s vacancy will occur in the first half of a term of office and at least 130 days prior to the next general district election. Whoever is appointed would serve until the 2024 election, and until the elected person has been qualified. Whoever is elected in the 2024 election will hold office until 2026.

After the Board has voted to appoint someone, the District must notify the Sacramento County Elections Office of the appointment within 15 days of making the appointment. (Gov. Code § 1780(d)(1).)

Step 2b: Filling the Vacancy by Election

Instead of making an appointment, the Board may call a special election to fill the vacancy.

(Gov. Code § 1780(e)(1).) The decision to call an election would also have to be made within 60 days of February 7, 2024, which is Sunday, April 7, 2024. (Gov. Code § 1780(e)(1).) If the Board elects to fill the vacancy by election, the District’s election would occur as part of the next election falling at least 130 days after the date the Board calls the election. (Gov. Code § 1780(e)(2).) For example, there is a Presidential Primary Election on March 5, 2024, but even if the Board called for an election by special meeting before March 5th, that would still be too late to qualify for the March 5 election. Thus, if the Board proceeds by election, the election would be part of the Presidential election that will be held on November 5, 2024.

Holding an election includes timing and cost considerations. Calling an election would mean that the Board is operating with four directors for almost all of 2024. That is a long time to be operating a director short when an appointment can ensure that the Board has five members more quickly. While the cost to hold an election for a single Board member could factor considerably into the decision on whether to appoint or elect a Board member, the District has two Board members whose terms end in 2024 (Director Dolk and Director Matteoli), so the District will already be paying to participate in the November 5, 2024 election.

Step 3: Board of Supervisor Intervention

If the Board fills the vacancy by appointment or election within 60 days of February 7, 2024, this step may be disregarded. If the Board fails to fill the vacancy by appointment or election within 60 days of February 7th, then the Sacramento County Board of Supervisors may appoint someone to fill the vacancy within 90 days of February 7th, which is May 7, 2024. (Gov. Code § 1780(f)(1).) Within the same 90-day timeframe, the Board of Supervisors may also order the District to call an election to fill the vacancy. (Gov. Code § 1780(f)(1).) If the Board of Supervisors fails to appoint someone or order an election within its 90-day timeframe, then the District is required by statute to call an election to fill the vacancy. (Gov. Code § 1780(g)(1).)

II. Process for Filling the Seat of President on the Board

This section reviews the statutes and policies applicable to filling the role of President after the President resigns from the Board.

If the vacancy on the Board is filled by election, then the procedure for filling the role of President is controlled by the Water Code and the Elections Code. The Water Code requires Board directors to elect a president within 30 days of taking office pursuant to Elections Code section 10554. (Wat. Code § 30520.) Elections Code section 10554 applies only to elective officers who are elected or appointed pursuant to the Uniform District Election Law. (Election Code § 10554.) The Uniform District Election Law affirmatively applies to County Water Districts and provides a procedure for electing elective officers. (Wat. Code § 30068; Election Code § 10501.) Thus, if the Board fills the seat by election, then the Board will need to follow the Uniform District Election Law, which includes electing a president within 30 days of the directors taking office.

Statutes are silent as to how to fill the role of President in the event of an appointment.

District policies provide “[i]n the absence . . . of the President, the Vice President of the Board

of Directors shall serve as the presiding officer over all meetings of the Board. (Policy Number 3110.1.) The policies also require the Board to “hold an annual organizational meeting at its regular meeting in January. (Policy Number 3235.5.) “At this meeting the Board will elect a President, Vice President and Clerk from among its members to serve during the coming calendar year, and will appoint the General Manager as the Board's Secretary.” (Policy Number 3235.5.)

After the President resigns, the Vice President will serve as the presiding officer until the Board holds a Board election to vote for a new President. We advise the Board to request a future agenda item to allow the Board to elect new officers. At that meeting, the Board should elect a President, Vice President, and Clerk and appoint the General Manager as the Board’s Secretary pursuant to District Policy Number 3235.5. The officers elected at the organizational meeting would serve until the 2025 organizational meeting or until a new Board member is elected at the November 2024 election. After the November 2024 election, any new Board member(s) would take office on the first Friday in December following the election, which is Friday, December 6, 2024. (Elections Code § 10554.) The meeting required to elect a president within 30 days of taking office would have to occur on or prior to Sunday, January 5, 2025. (Wat. Code § 30520.) Because the District’s regular meeting would occur on January 7, 2025, which falls after January 5, 2025, the District would have to call a special meeting in order to comply with the Water Code’s requirement to elect a president within 30 days of the elective officers taking office.

RECOMMENDATION:

Discuss and direct staff to proceed with the required procedure to fill the Board vacancy by election or by appointment. Direct staff to add a future agenda item for the Board to elect new officers.