

MEMORANDUM

TO: Board of Directors

FROM: Legal Counsel

RE: Decision To Fill The Division 3 Director Seat On The Board Of Directors By Appointment And Authorize The Posting Of A Notice Of Vacancy

DATE: January 24, 2022

Summary:

Director Stephen Lehtonen submitted a letter of resignation to President Smith and General Manager Eckhart on or about December 8, 2021. The letter states that Director Lehtonen's resignation will be effective January 24, 2022. The Division 3 seat is up for election in November 2022. Under Government Code Section 1780, the Board has the option to fill the vacancy by appointment or by calling an election.

Recommendation:

That the Board of Directors consider the requirements and options for filling the Board vacancy and take the following actions:

1. Decide to fill the Board vacancy by appointment and not call a special election; and
2. Authorize the posting of a Notice Of Vacancy.

Detailed Report:

1. Date Of Vacancy

Under Government Code Section 1780, the "Date of Vacancy" is deemed to be either the date on which the Board is notified of the vacancy or the effective date of the vacancy, whichever is later. In regard to President Lehtonen's resignation, the Date of Vacancy is Monday, January 24, 2022.

2. Filling Vacancy By Appointment

The Board may make an appointment within 60 days after the Date of Vacancy. Therefore, the Board has until Friday, March 25, 2022 to fill the Board seat by appointment.

A Notice Of Vacancy must be posted in three or more conspicuous places in the Agency's boundaries at least 15 days before the Board makes the appointment. In addition to posting the Notice, agencies often take extra steps such as posting the Notice on its website, social media etc. The format for the Notice is enclosed.

If the Board takes action today to elect to fill the position by appointment and authorize the posting of the Notice of Vacancy, and assuming Staff posts the Notice today, then the soonest the Board could fill the Board seat would be Tuesday, February 8, 2022. Therefore, it would be possible to conduct the interviews and make the appointment at the Board meeting on February 14, 2022.

3. Calling An Election

In lieu of making an appointment, the Board may, within 60 days of the Date of Vacancy, call an election to fill the vacancy. Details regarding this option are set forth below and are based on a review of the law and communications with the office of the Registrar of Voters. The Board may find that this option is not be feasible due to the cost and short timeframe between the effective date of the resignation, available special election dates, and the fact that the term is up for election in November of 2022. If the Board does wish to call an election, Staff and Legal Counsel will return at a subsequent Board meeting with the required resolution, as explained below.

(a) Standard Election Dates To Fill Vacancy

The Board could call for an election for June 7, 2022, the date of the 2022 statewide primary. The date of the called election must be held on the next established election date outlined by Elections Code Section 1000 that is 130 or more days after the date the Board calls the election. Under Elections Code Section 1000, the established election dates are as follows:

(i) The first Tuesday after the first Monday in March of each even-numbered year that is evenly divisible by four.

(ii) The first Tuesday after the first Monday in March of each odd-numbered year.

(iii) The second Tuesday of April in each even-numbered year. (April 12, 2022)

(iv) The first Tuesday after the first Monday in June in each even-numbered year that is not evenly divisible by four. (June 7, 2022)

(e) The first Tuesday after the first Monday in November of each year. (November 8, 2022)

The deadline for calling an election on April 12, 2021 has already passed. Given that the seat is up for election on November 8, 2022, that day (for calling a special election) is not feasible/necessary. An election could be called for June 7, 2022. However, the timing would be tight. The latest day the Board would be able to call an election for June 7, 2022 would be Friday January 28, 2022.

(b) Mailed Ballot Election to Fill Vacancy

Elections Code Section 4002 provides that a special district may conduct its elections by mail in accordance with the Elections Code and the governing board must call such an election by resolution. (Elections Code Section 4108(a).)

Pursuant to Elections Code Section 4108(c), a mailed ballot election can be held on the dates provided for in Elections Code Section 1500. Under Section 1500, the next available mailed ballot election date would be August 30, 2022. The Board would have to call this mailed ballot election within the 60-day time period as provided by Government Code section 1780.

(c) Costs Of An Election

(i) Polling Place Election - \$44,000 to \$54,000.

(ii) Mailed Ballot Election - \$37,000 to \$47,000.

4. Filling The Balance Of The Term

The current Division 3 term is in the second half of the current term which runs from 2018 to 2022. Therefore, for the purposes of Government Code Section 1780, this Board vacancy is deemed to have occurred in the second half of the term of office (2020-2022). As a result, the person appointed to fill the vacancy (or elected in a special election) holds office until the next general election on November 8, 2022.

5. Involvement By The Board Of Supervisors

If the vacancy is not filled by the Board by appointment, or if the Board has not called for an election, within 60 days of the Date of Vacancy, then the Board of Supervisors may appoint a person to fill the vacancy within 90 days of the Date of Vacancy, or the Board of Supervisors may order the Agency to call an election to fill the vacancy.

If within 90 days of the Date of Vacancy neither the Agency Board nor the Board of Supervisors have filled the vacancy and no election has been called, then the Agency Board is required to call an election to fill the vacancy. In theory, the Agency Board could fail or refuse to make an appointment, nor call an election. In that case, the Board of Supervisors would have until Monday April 25, 2022 (carried over from Sunday April 24) to fill the vacancy or call an election.

NOTICE OF VACANCY
BOARD OF DIRECTORS

SAN GORGONIO PASS WATER AGENCY

Please take notice that there is a vacancy in the Division 3 Seat on the Board of Directors of the San Gorgonio Pass Water Agency. Pursuant to Government Code Section 1780, the Board of Directors may, within 60 days of January 24, 2022, appoint a successor for the vacant seat.

A person appointed to the office of the Division 3 Seat must be a resident of Division 3. The boundaries of Division 3 are described in the map set forth below. Please contact the Agency representative set forth below if there are any questions.

Anyone interested in being appointed is required to submit a letter of interest and/or a resume setting forth a brief summary of the person's interest, qualifications, and background. The letter of interest/resume must include the residency address. Letters of interest and/or resumes should be delivered or mailed to the Agency offices so that they are received at the Agency offices no later than 5:00 p.m. on _____, 2022. Letters of interest and/or resumes should be delivered or mailed to the following address:

San Gorgonio Pass Water Agency
1210 Beaumont Ave.
Beaumont, CA 92223
Attn: _____
Phone (951) 845-2577

The Agency will contact the applicants regarding the time, date and location of the open and public Board meeting(s) during which interviews will be conducted and during which the Board will potentially make a decision regarding an appointment. The Board may elect to schedule additional meetings if necessary.

[INSERT MAP OF DIVISION 3]