

January ??, 2025

Sent via electronic mail only to Marc.Nolan@doj.ca.gov

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Office of the Attorney General
Opinion Unit
California Department of Justice

**Re: Joint Request for Opinion – Central Basin Municipal Water District
and Central Basin Water Association**

Senior Assistant Attorney General Nolan:

Please accept this letter as a joint request, pursuant to Government Code section 12519, from the Central Basin Municipal Water District (“District”) and Central Basin Water Association (“Association”) for an opinion on the following questions:

How long is the term of appointment for Central Basin Municipal Water District Director Nem Ochoa, in light of the fact that he was appointed to fill a vacancy in an existing term of appointment?

How long is the term of appointment for Central Basin Municipal Water District Director Joanna Moreno, in light of the fact that she was appointed prior to the expiration of her predecessor’s term of appointment, but *not* to fill a vacancy in an existing term of appointment?

THE REQUESTORS

The District is a municipal water district organized pursuant to the Municipal Water District Law of 1911, Water Code section 71000 *et seq.* The District operates as a water wholesaler that provides imported water to forty (40) retail water providers which constitute the District’s “purveyors.” These purveyors include cities, mutual water companies, investor-owned utilities and private companies located and operating within

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the County of Los Angeles. The District purchases imported water from the Metropolitan Water District of Southern California. The District serves approximately 2 million state residents from 24 cities and unincorporated areas in southeast Los Angeles.

The District is governed by a Board of Directors (“Board”) comprised of seven directors. Four of those directors are *elected* by popular vote within an identified district, and three are *appointed* by purveyors at-large to represent either “top five large purveyors,” “all cities,” or “all purveyors.” (Water Code §§ 71266, 71267.)

The Association is a non-profit public benefit corporation comprised of members with water rights or related interests within the Central Groundwater Basin in southeast Los Angeles County. Its members include approximately 15 cities and more than 20 other water purveyors including public utilities, public districts and mutual water companies. Most of the Association’s members are “water purveyors” of the District as referenced in Water Code sections 71266 and 71267.

RELEVANT GOVERNING LAW

The District’s three purveyor-appointed directors were added to the Board by AB 1794 of 2016.¹ The addition was prompted by a recommendation by the State Auditor that the Legislature “pass special legislation to preserve the district as an independent entity but modify” its governing structure, so as to “ensure[] the District remains accountable to those it serves,” by, for example, “changing the District’s board from one elected by the public at large to one appointed by the District’s customers.”² (Assm. Comm. On Local Government Analysis of AB 1794, as amended March 17, 2016.)

In furtherance of this recommendation, the Legislature adopted a hybrid approach – retaining directors that are elected by the residents within its service area, but adding directors appointed by the purveyors. The Legislature’s stated purpose in adding the three appointed directors was to “encourag[e] the participation of the water retailers that are responsible for water delivery directly to the customers,” while “balanc[ing] input from the purveyors” with the electorate’s voting preferences. (Assm. Comm. On Local Government Analysis of AB 1794, as amended March 17, 2016.) Doing so also “ensures” that the

¹ The Board was previously comprised of five elected directors.

² California State Auditor Report No. 2015-102 “Central Basin Municipal Water District: Its Board of Directors Has Failed to Provide the Leadership Necessary for It to Effectively Fulfill Its Responsibilities.”

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District’s purveyors “bring some independent perspectives and technical expertise” to the District’s Board. (Sen. Gov. and Finance Comm. Third Reading Analysis of AB 1794, as amended August 15, 2016.)

Pursuant to the District’s Administrative Code (“Code”), elections for publicly-elected directors are conducted in November of even-numbered years.³ (Code Part 2, Ch. 1, Art. 1.1.) The selection process for purveyor-appointed directors is conducted every four years. (Water Code § 71627(c)(1) [“The three directors appointed by the water purveyors shall be selected by the water purveyors of the district every four years”]); Code Part 2, Ch. 1, Art. 1.3.) Both publicly-elected and appointed directors serve a term of four (4) years. (Water Code § 71252 (elected).)⁴

The District has specific provisions for filling “vacant” *purveyor-appointed* seats on the Board. Such vacancies are filled pursuant to the purveyor selection process set forth in Water Code section 71267(a)-(c). (Water Code § 71267(h) [“A vacancy in an office of *[an] appointed director* shall be filled in accordance with the selection process described in subdivisions (a) to (c), inclusive”] Emphasis added.) This is notable, in that the Board is *not* afforded the authority to make appointments to vacant seats as set forth in applicable law for other water districts and special districts. (See, Water Code § 71254 [“Whenever a vacancy occurs in the office of director it shall be filled pursuant to Section 1780 of the Government Code”]; Government Code § 1780(c) [“The remaining members of the district board may fill the vacancy either by appointment pursuant to subdivision (d) or by calling an election”].)

The requesting parties presume this is so for two reasons in light of the legislative history. First, allowing a Board comprised of elected directors to fill a vacant purveyor-appointed seat would disrupt the “balance” sought to be achieved by the Legislature between purveyor input and the electorate’s preferences. (Assm. Comm. On Local Government Analysis of AB 1794, as amended March 17, 2016). Second, Government

³ Elections are staggered, such that not every division is set for election simultaneously. (Code Art 2, Ch. 1, Art. 1.1.)

⁴ Although Water Code section 71252 refers to elected directors (“[e]ach director elected...”), it is clear the Legislature also intended purveyor-appointed directors to serve a four year term. (Sen. Gov. and Finance Comm. Third Reading Analysis of AB 1794, as amended August 15, 2016 [AB 1794 “[e]stablishes the process by which water purveyors must appoint and select three directors to serve four-year terms”].)

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Code section 1780 applies to “a vacancy in any *elective office*” – not an appointed office. (Emphasis added.)

RELEVANT FACTS

On May 6, 2024, former Director Michael Gualtieri resigned his appointed “all purveyors” seat, for a term set to expire February of 2027.⁵ Gualtieri’s resignation left a “vacancy” in that seat. (See Gov. Code § 1770(c) [“An office becomes vacant on the happening of any of the following events before the expiration of the term: ... (1) His or her resignation”].) In May of 2024, the District commenced a purveyor selection process to appoint a successor to fill the vacancy pursuant to Water Code section 71267(h) and applicable provisions of the Administrative Code. (Code Art 2, Ch. 1, Art. 1.4.)

Director Thomas Bekele previously served as the appointed director representing “all cities” purveyors for a four-year term, set to expire on the fourth Friday in February of 2025. In emails dated April 23 and June 5, 2024, Director Bekele stated his *intent* to resign from his seat prior to the expiration of his four-year term, effective upon “the start date of [his] replacement.” (April 23 email [“I am writing to inform you of my decision to step down from my role as a Director ... please initiate any applicable proceedings that will expedite my replacement. I will try my best to assist as much as I can during this transition”]; June 5 email to LA County election official [“I submitted a notice to leave the office. The actual date is not confirmed; the date of my departure is tied to the start date of my replacement”].)

So as to fill the vacant “all purveyors” seat, and address Director Bekele’s stated *intent* to vacate his “all cities” purveyor seat, the District notified its purveyors that it would also commence a purveyor selection for Director Bekele’s “all cities” seat. The selection process commenced on May 22, 2022 and the District certified the results on October 7, 2024: (a) Director Ochoa was selected to represent “all purveyors” by reason of having no opposition, and (b) Director Moreno was selected to represent “all cities” purveyors with a final tally of twelve (12) certified ballots against her opponent’s three (3) certified ballots.

ANALYSIS

The governing legal authority is ambiguous as to the terms of appointment for Directors Ochoa and Moreno. Pursuant to state law (and as replicated by the Code) appointed directors are selected every four years to serve four year terms. (Water Code

⁵ He was appointed in February of 2023.

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§ 71627(c)(1); 71252; Sen. Gov. and Finance Comm. Third Reading Analysis of AB 1794, as amended August 15, 2016; Code Part 2, Ch. 1, Art. 1.3.)

Vacancies in appointed seats are to be filled by the purveyor selection process set forth in Water Code section 71267(a)-(c) – *not* through appointment by the remaining members of the governing body as set forth in Water Code section 71254. (Water Code § 71267(h).) Because the District’s purveyor appointment process has been carved out of Water Code section 71254’s vacancy appointment process, it appears the Legislature intended to, by implication, also carve out the terms of vacancy appointments set forth in Government Code section 1780(d), by virtue of Water Code section 71254’s express reference to the process set forth in Government Code section 1780. This is supported by the fact that the purveyor appointment process does not occur on a regular election schedule (see, e.g., Government Code § 1780(d)(2)-(3), (e)-(h)), and the purveyor-appointed directors are, by design, intended to be insulated from the electorate’s political influence as represented by the elected directors.

Accordingly, it is not clear as to whether the term of Director Ochoa’s appointment runs through the expiration of former Director Gualtieri’s term (February of 2027), or whether his appointment on October 7, 2024 commences a new four-year term. (Water Code § 71252; Sen. Gov. and Finance Comm. Third Reading Analysis of AB 1794, as amended August 15, 2016; Code Part 2, Ch. 1, Art. 1.3.)

Moreover, it does not appear that Director Moreno was appointed to fill a “vacant” seat as defined by state law expiring in February of 2025. State law provides that a vacancy occurs upon the happening of one of the several events enumerated by Government Code section 1770. None are applicable. Former Director Bekele’s seat does not appear to have been “vacant” as defined by law because its effective date was commensurate with the commencement date of Director Moreno’s term. (Gov. Code § 1770(c) [“An office becomes vacant on the happening of any of the following events before the expiration of the term: ... (1) His or her resignation”]; but see *Meeker v. Reed* (1924) 70 Cal.App. 119, 123 [A “resignation takes effect immediately *upon the date mentioned* in the written resignation”] emphasis added; Bekele June 5 email to LA County election official [“The actual date is not confirmed; the date of my departure is tied to the start date of my replacement”].)

Accordingly, it is not clear as to whether the term of Director Moreno’s appointment runs through the expiration of former Director’s Bekele’s term (February of 2025), or whether her appointment on October 7, 2024 commences a new four-year term. (Water Code § 71252; Sen. Gov. and Finance Comm. Third Reading Analysis of AB 1794, as amended August 15, 2016; Code Part 2, Ch. 1, Art. 1.3.)

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In light of the above, the requestors seek this office's guidance on the terms of appointment of Directors Ochoa and Moreno. Please feel free to contact us should your office need any further information. Thank you.

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