

**EXHIBIT 15-A**



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TO: Dave Stoldt, General Manager

FROM: David C. Laredo, General Counsel

RE: Elections Code Criteria to Fill Board Vacancy

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This memorandum provides analysis of MPWMD’s enabling law and the Elections Code as it pertains to MPWMD’s ability and timing to call for an election to fill its Board vacancy. For the reasons stated below as to any election called on January 25, 2021, the District Board could either set an election to fill the board vacancy on either August 31, 2021 or on November 2, 2021.

The MPWMD enabling law (found in West’s Water Code Appendix) provides at sections 118-135 and 118-223 that the Uniform District Election Law (UDEL) is applicable to MPWMD. Section 118-205 provides a Board vacancy “shall be filled pursuant to section 1780 of the Government Code.”

Gov Code Section 1780 (e) provides:

- (1) In lieu of making an appointment the remaining members of the board may within 60 days of the date the district board is notified of the vacancy or the effective date of the vacancy, whichever is later, call an election to fill the vacancy.
- (2) The election called pursuant to this subdivision shall be held on the next established election date provided in Chapter 1 (commencing with Section 1000) of Division 1 of the Elections Code that is 130 or more days after the date the district board calls the election.

Monterey County Registrar of Voters reports there are no scheduled elections during 2021. California Election Code Section 1000 establishes the following non-scheduled election dates for elections that include polls<sup>1</sup>:

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<sup>1</sup> Alternatively, California Election Code section 1500 establishes non-scheduled election dates for all mail ballot elections as follows:

- (a) The first Tuesday after the first Monday in May of each year.
- (b) The last Tuesday in August of each year.

Importantly, section 1500 does not currently apply to a MPWMD election to fill a Board vacancy.

- (a) The first Tuesday after the first Monday in November of each year. The first Tuesday after the first Monday in March of each even-numbered year even-numbered year that is evenly divisible by four.
- (b) The first Tuesday after the first Monday in March of each odd-numbered year.
- (c) The second Tuesday of April in each even-numbered year.
- (d) The first Tuesday after the first Monday in June in each even-numbered year that is not evenly divisible by four
- (e) The first Tuesday after the first Monday in November of each year.

If the MPWMD Board calls an election to fill a Board vacancy at its meeting of January 25, 2021, neither the March 2021 election date for a poll election (Elections Code section 1000(b)) nor the May 2021 election date for an all-mail ballot election (Elections Code section 1500(a)<sup>2</sup>) are available as neither can satisfy the 130 day-or-more criteria.

For these reasons, the election date that currently applies to fill a Board vacancy called on January 25, 2021 would be held on November 2, 2021 in accord with Election Code Section 1000(e). This election would occur only within voter Division 3 in which the vacancy occurs.

Of note is Elections Code Section 4002 that further provides the District an option to enable use of all-mailed (no polls) elections under Elections Code Section 1500. To use this option, the District Board would must first adopt the Resolution referenced in Elections Code Sections 4105 and submit to all voters of the District the following ballot question asking: “Shall the Mailed Ballot be Used to Conduct All Future General District Elections.” This measure must be submitted at the time the first all-mailed ballot election occurs. Simultaneously the election to fill the Division 3 vacancy would be held but only within voter Division 3 as that is the Division in which the vacancy occurs.

In sum, without a resolution and ballot measure to seek voter-approval to modify all future District elections, an election to fill a MPWMD Board vacancy called on January 25, 2021 can only be held on November 2, 2021 within voter Division 3 in accord with Elections Code Section 1000.

As an alternative, the District Board could on or before January 25, 2021 adopt a resolution to seek modification of future District election processes by including the ballot proposition for all District voters as required by Elections Code Sections 4105 and simultaneously call an all-mail ballot election in voter Division 3 to be held on August 31, 2021 to fill a MPWMD board vacancy.

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<sup>2</sup> Water Code Appendix, section 118-477 provides all-mail ballots apply to any election “pursuant to this chapter” but the referenced chapter is limited to “project and works” elections; alternate authorization is needed to enable a director election by mail ballot.