

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC INVESTIGATION INTO POSSIBLE	)	
VACANCIES ON THE BOARD OF	)	CASE NO.
COMMISSIONERS OF CUMBERLAND COUNTY	)	2023-00234
WATER DISTRICT	)	

ORDER

On August 8, 2023, the Commission established this case to determine whether a vacancy exists on Cumberland County Water District’s (Cumberland District) Board of Commissioners (Board) following evidence reviewed by the Commission in Case No. 2022-00244 and in Case No. 2022-00291 that the Cumberland District Board may not be in compliance with KRS 74.020. On September 29, 2023, and November 22, 2023, Cumberland District responded to requests for information from Commission Staff with information and documents regarding the appointments to the Board.

LEGAL STANDARD

Water districts formed pursuant to KRS Chapter 74, like Cumberland District, “shall be administered by a board of commissioners which shall control and manage the affairs of the district.”<sup>1</sup> The term of each water district commissioner shall be four years, “except as provided in this section.”<sup>2</sup> Pursuant to KRS 74.020(1)(a), “[i]nitial appointments shall be for terms of two (2), three (3), and four (4) years, as designated by the [appropriate

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<sup>1</sup> KRS 74.020(1).

<sup>2</sup> KRS 74.020(1).

fiscal] court.”<sup>3</sup> Further, KRS 74.020(4) states that vacancies “resulting from cause other than expiration of the term [of the water commissioner] shall be filled for the unexpired term only.”<sup>4</sup> Generally, the county judge executive has authority to appoint the members of the board of commissioners of a water district subject to the approval of the fiscal court.<sup>5</sup> However, if the county judge executive, with approval of the fiscal court, fails to fill “a vacancy resulting from the expiration of a term or the death, resignation, or removal of the incumbent ...within ninety (90) days following the vacancy,” then the vacancy “shall be filled by the Public Service Commission.”<sup>6</sup>

### BACKGROUND

Cumberland District provided information that the following individuals were members of the Board:

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<sup>3</sup> KRS 74.020(1)(a).

<sup>4</sup> KRS 74.020(4).

<sup>5</sup> See KRS 74.020(1)(a) (“Members of the board . . . shall be appointed by the county judge/executive with the approval of the fiscal court.”); see also KRS 74.020(4)(“Vacancies [on a board of commissioners] shall be filled by the same appointing authority [the county judge executive/fiscal court in appropriate county] which is empowered to make the original appointment.”).

<sup>6</sup> KRS 74.020(4).

<u>Name</u>	<u>Date of Appointment</u> <sup>7</sup>	<u>Date Term Began</u> <sup>8</sup>	<u>Date Term Expires</u> <sup>9</sup>
Troy Norris	07/09/2012 <sup>10</sup>	01/10/2022	12/31/2024
Jay Cary	02/24/2014	04/13/2020	04/30/2025
Mark Vibbert	04/2012	04/13/2020	04/30/2025
Eric Carver	01/07/2019	01/10/2022	12/31/2024

Some of the dates provided by Cumberland District conflict with the dates provided in Cumberland District's Annual Report on file with the Commission from 2022.<sup>11</sup>

### DISCUSSION AND FINDINGS

The Commission finds that there are two vacancies on the Cumberland District Board. Based on the evidence in the record, the Commission finds that Troy Norris,<sup>12</sup> Jay Cary,<sup>13</sup> and Eric Carver<sup>14</sup> were duly appointed, and the positions should not be considered vacant. The Commission will discuss the other seats individually.

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<sup>7</sup> Cumberland District's Response to Commission Staff's First Request for Information (Staff's First Request) (filed Sept 29, 2023), Exhibit 1; Cumberland District's Response to Commission Staff's Second Request for Information (Staff's Second Request) (filed Nov. 22, 2023), Items 3 and 5; and Attachment at 13.

<sup>8</sup> Cumberland District's Response to Staff's Second Request, Attachment at 13-16.

<sup>9</sup> These are the term expirations noted in the May 9, 2022 Fiscal Court minutes provided in Cumberland District's Response to Staff's First Request, Exhibit 5.

<sup>10</sup> Cumberland District's Response to Staff's Second Request, Item 3.

<sup>11</sup> See *Annual Report of Cumberland District to the Public Service Commission for the Year Ending December 31, 2022* (2022 Annual Report) at 15 (Jay Cary and Mark Vibbert's term expired on April 1, 2023, according to the report).

<sup>12</sup> Cumberland District's Response to Staff's Second Request, Item 3 and 4; and Attachment at 1, 7-8, 9-10, 13-14, 17-20 and 29.

<sup>13</sup> Cumberland District's Response to Staff's Second Request, Item 5 and 8; and Attachment at 3-5, 11-12, 15-16, 19-20, and 22.

<sup>14</sup> Cumberland District's Response to Staff's Second Request, Attachment at 13-14, 17-21, and 28.

Cumberland District provided information in response to Staff's First Request that on July 10, 2023, Sandy Hieneman resigned from the Board at a regularly scheduled Board meeting.<sup>15</sup> According to information provided by Cumberland District, the Cumberland County Fiscal Court has not filled the position<sup>16</sup>. With respect to Ms. Hieneman's position, the Commission finds that a vacancy has existed for more than 90 days, and that the Commission has authority to fill the position for a four-year term.

Mark Vibbert has served on the Board since April 2012.<sup>17</sup> Cumberland District was unable to provide minutes reflecting the initial appointment of Mr. Vibbert to Cumberland District by the Cumberland County Fiscal Court or the Cumberland County Judge Executive.<sup>18</sup> Cumberland District, likewise, was unable to provide minutes reflecting Mr. Vibbert's reappointment in 2014.<sup>19</sup> Furthermore, Mr. Vibbert attended water commissioner training on April 9 and 10, 2013.<sup>20</sup> Based on the lack of evidence that Mr. Vibbert was duly appointed to the Board or that Mr. Vibbert attended water commissioner training within 12 months of appointment, the Commission finds that a vacancy has existed for more than 90 days, and that the Commission has authority to fill that position for a four-year term.

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<sup>15</sup> Cumberland District's Response to Staff's First Request, Item 3.

<sup>16</sup> Cumberland District's Response to Staff's First Request, Items 3 and 4.

<sup>17</sup> Cumberland District's Response to Staff's First Request, Exhibit 1.

<sup>18</sup> Cumberland District's Response to Staff's Second Request, Item 9.

<sup>19</sup> Cumberland District's Response to Staff's Second Request, Item 10.

<sup>20</sup> Board minutes from April 1, 2013, provided in Case No. 2022-00244, Cumberland District's Response to Commission Staff's Post-Hearing Request for Information (filed Apr. 28, 2023), Item 3b, Exhibit C.

To ensure that a wide range of candidates are considered, the Commission will require Cumberland District to publish the notice of vacancy attached as an Appendix to this Order in a newspaper of general circulation in Cumberland County. The Commission will consider any applications submitted within 20 days after the publication of notice, and each such application should be made in writing and should include the applicant's name, address, telephone number, and qualifications and should reference this case number. The Commission will also consider recommendations and letters from references submitted in writing and received within a reasonable time, though such letters should reference this case number to ensure they are placed in the proper file. After receiving the applications, the Commission will determine whether each candidate meets the constitutional and statutory requirements for the office of water district commissioner and, of those candidates that meet these requirements, which is best suited to sit on Cumberland District's Board.

IT IS THEREFORE ORDERED that:

1. Within 20 days of the date of entry of this Order, Cumberland District shall publish, in a newspaper of general circulation in Cumberland, the notice of the vacancy on Cumberland District attached as an Appendix.
2. Within five days of the publication, Cumberland District shall supply proof of publication to the Commission.
3. Within 20 days of the date of publication, any person who wishes to apply as a candidate to fill the vacancies on Cumberland District's Board of Commissioners shall submit to the Commission, in writing, their name, address, telephone number, qualifications, and shall reference Case No. 2023-00234.

4. The term of the commissioner appointed shall be four years pursuant to KRS 74.020.

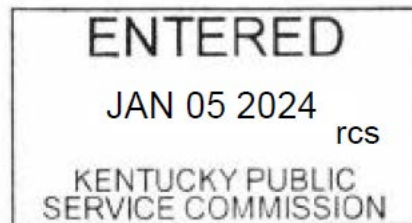
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PUBLIC SERVICE COMMISSION

  
\_\_\_\_\_  
Chairman

  
\_\_\_\_\_  
Vice Chairman

  
\_\_\_\_\_  
Commissioner



ATTEST:

  
\_\_\_\_\_  
Executive Director

## APPENDIX

### APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 2023-00234 DATED JAN 05 2023

Let it be known to the residents served by Cumberland County Water District that there are two vacancies on the Cumberland County Water District Board of Commissioners. Two vacancies to be filled within the Cumberland County service area. The requirements to serve as a commissioner can be found at KRS 74.020. Any person interested in applying for the position shall submit notification, in writing, referencing Case No. 2023-00234 with contact information and any qualifications to the Public Service Commission located at 211 Sower Boulevard, Frankfort, Kentucky 40601, within 20 days of the date of this publication.



\*Cumberland County Water District  
133 Lower River Street  
Burkesville, KY 42717-9622

\*Luke King  
Cumberland County Judge Executive  
PO Box 826  
600 Courthouse Square  
Burkesville, KENTUCKY 42717

\*Jay Cary  
Cumberland County Water District  
133 Lower River Street  
Burkesville, KY 42717-9622

\*Matthew Dyer  
Cumberland County Water District  
133 Lower River Street  
Burkesville, KY 42717-9622

\*Mark Vibbert  
Cumberland County Water District  
133 Lower River Street  
Burkesville, KY 42717-9622

\*Eric Carver  
Cumberland County Water District  
133 Lower River Street  
Burkesville, KY 42717-9622

\*Matthew Dyer  
Manager  
Cumberland County Water District  
133 Lower River Street  
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\*Sandy Heineman  
Cumberland County Water District  
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\*Troy Norris  
Cumberland County Water District  
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