

BORREGO WATER DISTRICT

STEVEN SMILEY MEMORIAL **WATER CREDIT AND MITIGATION POLICY**

1. PURPOSE

It is the desire of the Borrego Water District (“BWD”) to implement a program to encourage the voluntary and immediate cessation and/or reduction of measurable water uses, including, but not limited to, permanent removal of turf and/or permanent fallowing of irrigated farmland (“Water Activity”). The goal of this Policy is to reduce the demand on the groundwater aquifer that underlies the Borrego Valley, provide a mechanism by which new water demands are mitigated in compliance with the California Environmental Quality Act (“CEQA”), and create incentives for property owners engaged in high water demand activities to be economically motivated to cease or reduce their demand on the Borrego Valley aquifer, consistent with the objectives of the Groundwater Management Plan as adopted by the District in 2001 and as subsequently amended and updated.

Additionally, it is the intent of this Policy to be construed in a fashion which will allow for its use not only by the BWD but, through its implementation and application, for it to provide for new water demands to conform with the water mitigation policy of the San Diego County Department of Planning and Land Use as revised on January 17, 2007 to the maximum extent possible.

Finally, this Policy will create the administrative and technical procedures through which durable mitigation entitlements (water credits) will be established by the District, and provide for the ongoing administrative functions of controlling, monitoring and enforcing the entitlement element of this Policy.

2. DEFINITIONS

A. Applicant: the owner of real property who applies for one or more Water Credits pursuant to this Policy.

B. Application: the document by which an Applicant applies for one or more Water Credits pursuant to this Policy.

C. BWD or District: the Borrego Water District.

D. CEQA: California Environmental Quality Act.

E. Conditional Water Credit Certificate: the document issued by the BWD identifying the number of Water Credits an Applicant will receive upon compliance with any and all conditions set forth therein and/or in this Policy, which certificate shall remain valid so long as this Policy remains in effect.

F. Consumptive Use: the amount of water lost from the groundwater resource due to evapotranspiration (plant use).

G. County: County of San Diego.

H. Desertscape: Landscape requiring no irrigation of any kind after an initial period not to exceed two (2) years of watering to establish any planting(s).

I. Developers: Persons or entities seeking to commence an activity within the boundaries of the BWD that will create a new or increased water demand, including, but not limited to, new residential or commercial development and/or expansion of existing uses/developments.

J. DPLU: San Diego County Department of Planning and Land Use.

K. EDU or Equivalent Dwelling Unit: The quantity of water calculated by adding (i) the total residential annual water usage (calculated based on a five year average) plus (ii) non profit community benefit annual water usage (which uses comply with Desertscape landscaping standards and are calculated based on a five year average) and dividing the resulting sum by the number of residences served by the District, which quotient is rounded up to the nearest tenth of an acre foot. As of the adoption of this Policy, one EDU equals 1.0 acre foot per year and may be recalculated by the District Engineer upon direction of the Board of Directors.

L. Irrigated Agricultural Land: Land that is currently irrigated for active agricultural use. For purposes of this Policy, “currently irrigated” shall mean irrigated for agricultural use during the preceding twelve (12) month period.

M. Property: the real property owned by the Applicant and to be restricted pursuant to this Policy.

N. Mitigation Policy: The BWD policy regarding mitigation of impacts of new developments on the Borrego aquifer adopted June 22, 2005 and thereafter amended and further amended and restated in Section 3 hereof.

O. Water Activity: one or more measurable water uses, including, but not limited to, irrigated turf and irrigated farm land.

P. Water Credit: a durable mitigation entitlement equal to one acre-foot of water per year (af/yr); all Water Credit calculations shall be rounded up to the next highest one-half acre foot. As further defined in Section 4B below, several classes of credits shall be available pursuant to this Policy.

Q. Water Credit Certificate: the document issued by the BWD certifying the issuance of one or more Water Credits to an Applicant in conformance with this Policy.

3. MITIGATION POLICY

It is the policy of the BWD that persons or entities seeking to commence an activity within the District that will create a new or increased water demand (“Developers”) must provide two (2) Water Credits for every one (1) EDU demand of the proposed use as calculated by the District Engineer, consistent with the provisions hereof. If the Developer can demonstrate previous compliance with DPLU water mitigation policy requirements, then said Developer may apply those offsetting measures as credit towards the BWD Mitigation Policy. Conformance with the District’s Mitigation Policy must be demonstrated prior to the District providing water service and/or a water meter to the new water demand proposed by the Developer, or its successor in interest.

4. WATER CREDITS

Upon compliance with the procedural requirements set forth in Section 5. hereof, the District will issue Water Credits to an Applicant in accordance with the following:

A. Eligible Land. Contiguous irrigated land with an associated consumptive water use of ten (10) acre feet per year and meeting the criteria set forth below is eligible to participate in the program established by this Policy. Based upon the type of Water Credit sought (as defined in Section 4.B., below), either (i) all irrigation of the Property shall be eliminated or (ii) the Applicant shall cause permanent, quantifiable and verifiable reductions of water use on the Property as a condition precedent to issuance of Water Credit(s) pursuant to this Policy.

1. Agricultural Land. To be eligible under this Policy, the Applicant must establish that agricultural land was utilized for legal agricultural

operation at the Property prior to April 9, 2003. Property on which agricultural production commenced after April 9, 2003 may be considered eligible under this Policy if the Applicant establishes that the agricultural use was approved by the DPLU or is otherwise demonstrated to have been legally conducted.

2. Turf. To be eligible under this Policy, the Applicant must establish that the Property was irrigated with live turf as of January 1, 2008 and as of the date of Application.

3. Tamarisk. To be eligible under this Policy, the Applicant must establish that tamarisk or other high water use windbreak trees were planted on the Property as of January 1, 2008 and such trees remain alive as of the date of Application.

4. Special. To be eligible under this Policy, the Applicant must establish that the high water use water activity existed on the Property as of January 1, 2008.

B. Water Credit Types. The following types of Water Credits shall be available in accordance with the criteria defined below:

1. Agricultural Credits. Four types of Agricultural Credits will be available under this Policy. Any and all tamarisk trees or other high water use windbreak trees located on Property for which an Applicant seeks Agricultural Credits shall be removed by the Applicant at the time the agricultural use is followed. For all agricultural credit types, seasonal crops, or those on rotation, shall receive credits for the average amount of water used by the crop based on its frequency of planting and water use as determined by the University of California. [For example, if a certain annual crop had a Consumptive Use rate of 3 af/yr, and was planted once every three years in rotation, then the Property owner would be eligible to receive one (1) Water Credit per acre certification.]

(a) Agricultural-1 (“AG-1 Credits”). Upon compliance with the requirements of this Policy, AG-1 Credits will be issued for Irrigated Agricultural Land. AG-1 Credits will be issued at a rate of 1.0 x the applicable number of credits designated in Section 4.C.

(b) Agricultural-2 (“AG-2 Credits”). Upon compliance with the requirements of this Policy, AG-2 Credits will be issued for Property that is legally entitled to initiate farming within the constraints of existing permits and policies of the DPLU, and/or other regulatory entities with jurisdiction over

agricultural activity on the subject Property. To qualify for AG-2 Credits, the Applicant must:

- (i) Establish that as of July 1, 2009, the Property held all necessary approvals to operate an agricultural operation thereon; AND
- (ii) Submit an executed Water Credits Agreement to the District within ninety (90) days following adoption of this Policy; AND
- (iii) Execute and record with the County Recorder an Exclusive Groundwater Easement (“Easement”) in favor of the District and further complete all actions required pursuant to the Water Credits Agreement within one hundred eighty (180) days of adoption of this Policy.

AG-2 Credits will be issued at a rate of 1.0 x the applicable number of credits designated in Section 4.C.

(c) Agricultural-3 (“AG-3 Credits”). Upon compliance with the requirements of this Policy, AG-3 Credits will be issued for Irrigated Agricultural Land that, pursuant to this Policy, is permanently restricted to Desertscape. AG-3 Credits will be issued at a rate of 1.0 x the applicable number of credits designated in Section 4.C. Water Credit Certificates for AG-3 Credits will be issued in two phases. A portion of the Water Credit Certificates will issue at the time the Property is converted to Desertscape. The balance of the Water Credit Certificates will issue at the time the Applicant ceases all irrigation on the Property. The District Engineer shall determine the apportionment of credits allocated to each such phase.

(d) Agricultural-4 (“AG-4 Credits”). Upon compliance with the requirements of this Policy, AG-4 Credits will be issued for Irrigated Agricultural Land that, pursuant to this Policy, is permanently restricted to lower water use crop type(s). AG-4 Credits will be issued at a rate to be determined by the District Engineer based on the Consumptive Use differential between the use existing at the time of the Application and the use to which the Property will be restricted pursuant to this Policy.

2. Turf.

(a) Turf-1 (“T-1 Credits”). Upon compliance with the requirements of this Policy, T-1 Credits will be issued for Property that is currently irrigated with live turf and, pursuant to this Policy, has all turf removed and is

permanently restricted from all forms of irrigation. T-1 Credits will be issued at a rate of 1.0 x the applicable number of credits designated in Section 4.c.

(b) Turf-2 (“T-2 Credits”). Upon compliance with the requirements of this Policy, T-2 Credits will be issued for Property that is currently irrigated with live turf and, pursuant to this Policy, is permanently restricted to Desertscape. Water Credit Certificates for T-2 Credits will be issued in two phases. A portion of the Water Credit Certificates will issue at the time the Property is converted to Desertscape. The balance of the Water Credit Certificates will issue at the time the Applicant ceases all irrigation on the Property. The District Engineer shall determine the apportionment of credits allocated to each such phase.

(c) Turf-3 (“T-3 Credits”). Upon compliance with the requirements of this Policy, T-3 Credits will be issued for Property that is currently irrigated with live turf and, pursuant to this Policy, is permanently restricted to quantifiable and verifiable lower water use landscape than the existing use at the time of the Application for Water Credits. T-3 Credits will be issued at a rate to be determined by the District Engineer based on the Consumptive Use differential between the use existing at the time of the Application and the use to which the Property will be restricted pursuant to this Policy.

3. Tamarisk.

(a) Tamarisk (“TK Credits”). Upon compliance with the requirements of this Policy, TK Credits will be issued for Property (i) on which live Tamarisk or other high water use windbreaks greater than one (1) foot in diameter are removed and (ii) that is permanently restricted from all forms of irrigation.

4. Special. Special Credits will be assigned to any quantifiable, verifiable and permanent reduction in water use that is confirmed by historic records and determined by the District Engineer to meet the standards of this Policy. The District Engineer shall determine the Water Credits per acre based on the Consumptive Use rates for the applicable vegetation recognized by the State of California and the University of California data, and/or other factors as may be utilized by the District Engineer including assumed return flow rates, effects of cessation of irrigation at the Property on groundwater quality in the Borrego Aquifer, and consideration of the equitable application of this Policy.

C. Number of Credits. The number of water credits for all vegetation types shall be granted based on the annual Consumptive Use for each type of vegetation. The District has determined and will apply the following Consumptive Use rates for the listed vegetation types:

1. Citrus (all types): 5 credits/acre
2. Palm Trees (all types): 6 credits/acre
3. Turf (all types): 8 credits/acre
4. Tamarisk: 1 credit per 100 lineal feet of live tamarisk trees or other high water use windbreaks.
5. Special: as determined by the District Engineer pursuant to Section 4.B.4. hereof.

5. PROCEDURE

A. The Applicant shall make a written application (“Application”) to the District Engineer for issuance of Water Credit Certificates. The Application shall be as set forth in BWD Form 100 and shall be accompanied by:

1. A title report and/or other documentation reasonably acceptable to the BWD evidencing that the Application has been signed by all record owners of the Property, that the water rights in the Property have not been transferred, conveyed or otherwise encumbered and that the condition of title to the Property is not detrimental to the achievement of the purposes of this Policy.

2. A legal description of the Property in a form reasonably acceptable to the BWD.

3. A Right of Entry Agreement (BWD Form 103) permitting the BWD access to the Property to confirm the ongoing, legal, measurable Water Activity and:

(a) Where any Well(s) serving the Property also serve other property held by the Applicant, which other property the Applicant does not intend to restrict,

(i) Access any and all Well(s) on the Property and/or serving the Property for monitoring, metering, testing and/or investigating groundwater levels, quality and related matters;

(ii) Access to the Property to confirm the destruction or removal of any crops, turf or other Water Activity on the Property pursuant to this Policy;

(iii) Access to the Property to confirm compliance with the terms and requirements of this Policy; and/or

(iv) Such other provisions as the BWD may reasonably require.

(b) Where the Well(s) serving the Property do not serve any property the Applicant does not intend to restrict,

(i) Access to the Property to install, operate, access and maintain a monitoring well in place of any existing well(s) on the Property;

(ii) Access to the Property to cap, seal or otherwise render inoperable existing well(s) on the Property;

(iii) Access to the Property to confirm the destruction of any crops, turf or other Water Activity on the Property pursuant to this Policy;

(iv) Access to the Property to confirm compliance with the terms and requirements of this Policy; and/or

(v) Such other provisions as the BWD may reasonably require.

4. A signed Water Credit Agreement. (BWD Form 101).

5. A certification and administration fee of \$1,000.

B. The BWD shall review the Application and confirm the existence of active, ongoing, legal, measurable Water Activity on the Property. Upon such confirmation, the BWD will issue Conditional Water Credit Certificate(s) setting forth the number of Water Credits to which the Applicant will be entitled upon compliance with this Policy as well as any additional conditions or requirements reasonably imposed by the BWD and identified in the Conditional Water Credit Certificate(s).

C. To convert the Conditional Water Credit Certificates to Water Credit Certificates, the Applicant shall:

(i) Sign and submit to the BWD a Grant of Exclusive Groundwater Easement (BWD Form 102), disengage the pump(s) or otherwise render inoperable any and all well(s) located on the Property, if applicable;

(ii) Complete all crop destruction, turf removal or other action to permanently cease and/or reduce the Water Activity on the Property, as applicable, and notify the BWD in writing of the same;

(iii) Provide a certificate by a licensed land surveyor certifying the net acreage under irrigation on the Property (net acreage shall, for Agricultural land, include roads and exclude buildings);

(iv) Submit a notarized written request by the Applicant stating the name(s) in which the Water Credit Certificate(s) should be issued and the amounts allocated to each identified person (not to exceed the aggregate total amount awardable pursuant to Section 4.c. hereof for the Property); and

(v) Submit payment of \$100.00 per Water Credit to the BWD

Upon the BWD's verification of the completion of permanent cessation of the Water Activity and the pump disengagement or otherwise rendering inoperable any and all well(s) located on the Property (where applicable), the BWD shall issue raised-sealed and numbered Water Credit Certificates to the Applicant in amounts pursuant to Section 4.c. hereof.

2. Transfer of Certificates. Upon (i) notarized written request by the recipient of Water Credit Certificates previously issued by the BWD ("Certificate Holder"), (ii) submission of the original Water Credit Certificates to the BWD, and (iii) payment of an administrative fee of \$500 per transaction, the BWD will re-issue Water Credit Certificates to such persons or entities and in such amounts (not to exceed the aggregate total amount of the Water Credit Certificates submitted to the BWD by the Certificate Holder) as may be designated by the Certificate Holder.

6. MISCELLANEOUS

A. The BWD recognizes all Water Credit types set forth in Section 4.B. in satisfaction of the BWD's Mitigation Policy. The County of San Diego may recognize some or none of the Water Credit types.

B. The BWD may purchase Water Credits for its own account from time to time as it deems necessary to create a bank of Water Credits for small developments and individual lots which must comply with the provisions of this Policy. The BWD may sell these Water Credits to persons seeking to process a development comprising five (5) or fewer developable lots. The price of the Water Credits shall be set by the Board of Directors at the time that the Water Credits are sold, but at no time shall such Water Credits be sold for less than the BWD's total cost to acquire such Water Credits.

C. The BWD shall be responsible to monitor and enforce this Policy, including, in addition to the work elements associated with establishing the Water Credits, regularly monitoring meters on wells located on Property subject to a Water Credit Agreement, regularly inspecting Property enrolled in the program established by this Policy to ensure compliance with the terms of all requirements to maintain the Water Credits, and providing updates as to the status of Water Credits to the County of San Diego.

President of the Board of Directors of
Borrego Water District

Secretary of the Board of Directors of
Borrego Water District

WATER CREDIT TIMELINE

A. ISSUANCE OF CERTIFICATES

<u>Timeframe</u>	<u>Activity</u>
(1) At Applicant's discretion	Applicant submits Application Package, including: <ul style="list-style-type: none">• Application (BWD Form 100)• Water Credit Agreement (BWD Form 101)• Right of Entry Agreement (BWD Form 103)• Title report• Administrative fee
(2) 30 days (or more as needed) after (1)	BWD reviews Application Package and confirms active, legal, ongoing, measurable Water Activity and determines whether/what removal or destruction of Water Activity will be required.
(3) Upon Completion of (2)	BWD signs Water Credit Agreement, issues Conditional Water Credit Certificates and notifies Applicant of any special requirements reasonably imposed by BWD and to be met prior to issuance of Water Credit Certificates.

<u>Timeframe</u>	<u>Activity</u>
(4) At Applicant's discretion	<p>Applicant signs and submits Grant of Exclusive Groundwater Easement (BWD Form 102) to the BWD.</p> <p>Applicant disengages well(s), as applicable.</p> <p>Applicant removes/destroys Water Activity.</p> <p>Applicant complies with other requirements identified by BWD.</p>
(5)	Applicant pays administrator fee.
(7) Upon confirmation of actions under (4)	BWD issues Water Credit Certificates to Applicant or Applicant's designee identified in a notarized writing ("Certificate Holder").

B. TRANSFER OF CERTIFICATES

<u>Timeframe</u>	<u>Activity</u>
(8) At Certificate Holder's discretion	<p>Certificate Holder submits original Water Credit Certificates along with administrative fee and notarized written request to the BWD to reissue the Water Credit Certificates to such persons and in such amounts (not to exceed the aggregate total amount of the Water Credit Certificates submitted to the BWD by Certificate Holder) as designated by Certificate Holder.</p>
(9) 10 days (or more as needed)	<p>BWD verifies prior issuance of Water Credit Certificates to Certificate Holder, voids the same and prepares new Water Credit Certificates per the Certificate Holder's written request.</p>

C. REDEMPTION OF CERTIFICATES

<u>Timeframe</u>	<u>Activity</u>
(10) At Certificate Holder's discretion and not less than 30 days prior to County issuance of building permits.	Certificate Holder submits original Water Credit Certificates along with written request to the BWD to redeem the Water Credit Certificates as mitigation for the development specified in the Certificate Holder's written request.
(11) 10 days (or more as needed)	BWD verifies prior issuance of Water Credit Certificates to Certificate Holder, marks the Water Credit Certificates "REDEEMED," notes the same on the Water Credit Certificate Log and issues a letter to the County identifying the quantity of acre feet per year redeemed by the Certificate Holder.

APPLICATION FOR WATER CREDIT CERTIFICATE
(BWD Form 100)

Borrego Water District
Board of Directors
PO Box 1870
Borrego Springs, CA 92004

ATTENTION: General Manager

Name: _____

Mailing Address: _____

Phone Number: _____

Assessor's Parcel Number: _____ Acreage: _____

Address of Property: _____
(if applicable)

Crop cultivation:

Date Cultivation Commenced (must be prior to 4/9/03)	Water Activity (crop, turf, etc.)	Area	For BWD Use Only Water Entitlement Quantity

Current Water Provider: _____

I declare under penalty of perjury under the laws of the State of California that the foregoing statements are true and correct of my own personal knowledge.

Name of Applicant*/Agent*

Date

Name of Applicant/Agent

Date

* All legal owners of the property must sign