

AGENDA
Borrego Water District Board of Directors
Special Meeting
September 20, 2016 9:00 a.m.
806 Palm Canyon Drive
Borrego Springs, CA 92004

I. OPENING PROCEDURES

- A. Call to Order
- B. Pledge of Allegiance
- C. Roll Call
- D. Approval of Agenda
- E. Comments from Directors and Requests for Future Agenda Items
- F. Comments from the Public and Requests for Future Agenda Items (comments will be limited to 3 minutes)

II. ITEMS FOR BOARD CONSIDERATION AND POSSIBLE ACTION

- A. Adopting Memorandum of Understanding (MOU) between BWD and County of San Diego for Development of a Groundwater Sustainability Plan (GSP) and Appointment of BWD Core Team Representatives and Agency Primary Contact for Borrego Valley Groundwater Basin GSP Resolution No. 2016-07-08 (2-16)
- B. Process for Selecting BWD GSP Advisory Committee Member (17)
- C. Consulting Services for 2016 SD County New Development Impacts upon BWD: Raftelis Financial Consultants Inc. (18-24)
- D. Revised Resolution Approving Tertiary Sewage Treatment Conversion Project Feasibility Study: Grant Funding Request, SWRCB (25-27)
- E. Confirming of Investment Practices for BWD cash reserves (28-29)
- F. Considering Issuing Water Credits for 40-acre Land Fallowing – Charmar & Considine (30-40)

III. INFORMATIONAL ITEMS (41)

- A. Update on Construction of 800 Tank Replacement -Verbal, G. Holloway
- B. BWD Website Update – Verbal, G. Poole
- C. Operations & Maintenance Committee Report – Verbal, Directors Tatusko/Delahay
- D. Recent BWD Election Results: Director Ray Delahay and Harry Ehrlich appointed to BWD Board effective November, 2016
- E. Correspondence from The Borrego Valley Stewardship Council (42-45)

IV. CLOSING PROCEDURE

The next Regular Meeting of the Board of Directors is scheduled for September 28, 2016 at the Borrego Water District at 9:00 am

BORREGO WATER DISTRICT

BOARD OF DIRECTORS MEETING –SEPTEMBER 20, 2016

AGENDA BILL II.A

September 13, 2016

TO: Board of Directors, Borrego Water District

FROM: Geoff Poole, General Manager

SUBJECT: Adopting Memorandum of Understanding (MOU) between BWD and County of San Diego for Development of a Groundwater Sustainability Plan (GSP) and Appointment of BWD Core Team (CT) Representatives Beth Hart, Lyle Brecht and Geoff Poole and Agency Primary Contact Geoff Poole for Borrego Valley Groundwater Basin GSP Resolution No. 2016-07-08

RECOMMENDED ACTION: Approve Resolution No. 2016-07-08, adopting GSP MOU and appointing BWD Representatives

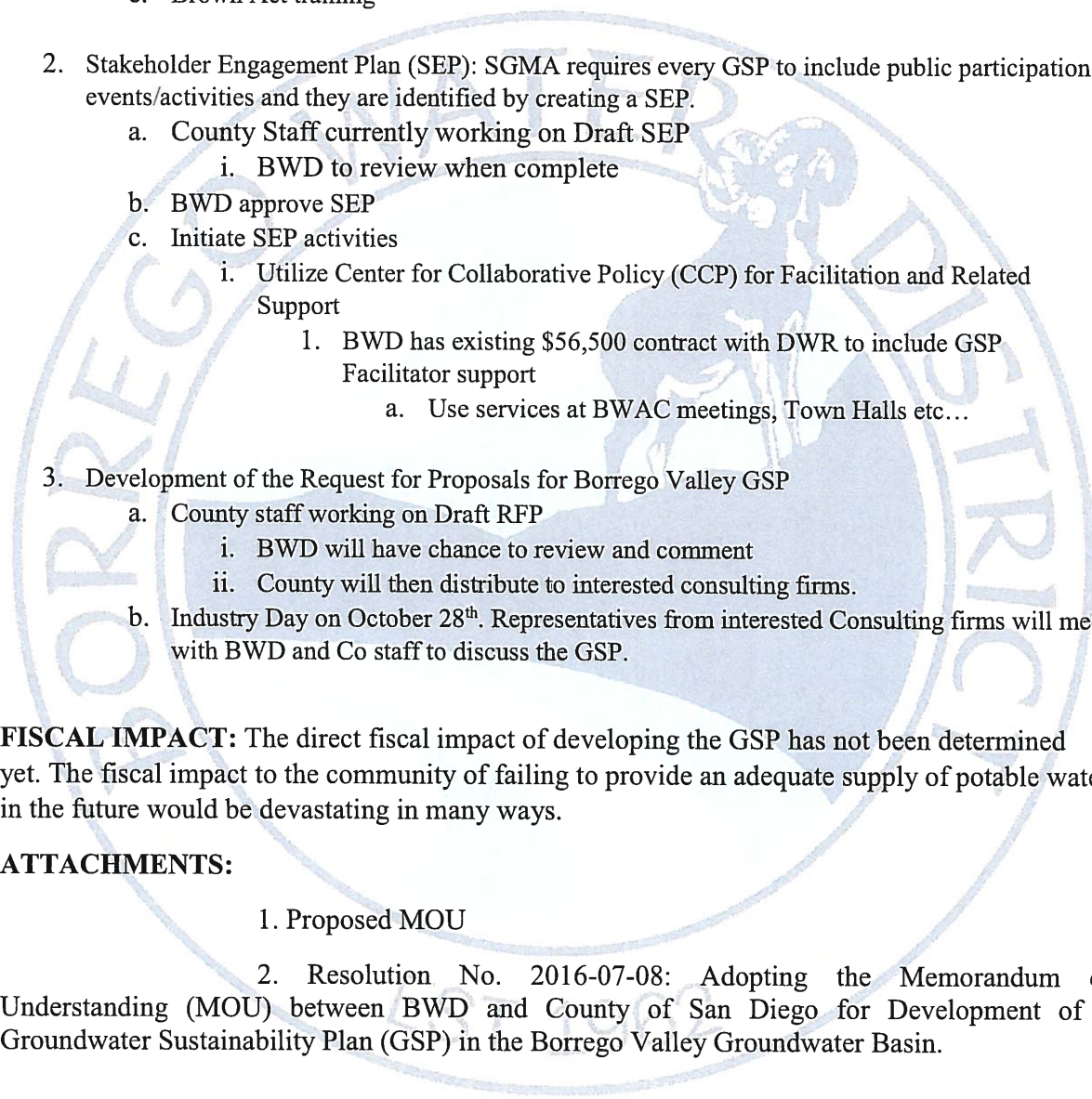
ITEM DESCRIPTION: This item is a carryover from the August Board Meeting where the photocopying process on the Agenda packet left out the even numbered pages. No changes have been made to the proposed MOU.

During the past 18 months, representatives from BWD and the County of San Diego (County) have negotiated the attached MOU. The document begins to outline the process to be followed by the two Agencies for creation of the Borrego Valley GSP (GSP) as required by California's Sustainable Groundwater Management Act (SGMA). The County Board of Supervisors will take action on the MOU at its October 16th meeting.

The proposed MOU calls for the creation of 2 Core Teams (CT) comprised of 3 representatives from each Agency to be directly involved in the development of the GSP. For the BWD CT, it is proposed that Beth Hart, Lyle Brecht and Geoff Poole be appointed. For the County, staff will be recommending Jim Bennett, Alexis Elias and Leanne Crow on its CT. The MOU also calls for one Primary Contact from each agency and for BWD it is recommended to be Geoff Poole and the County staff will be recommending Jim Bennett. The attached Resolution enacts these appointments for BWD.

After the County approves the BVGB GSP MOU on October 16th, many activities will begin including:

1. Formation of the Borrego Water Advisory Committee (BWAC). As an Advisory Committee of the BWD Board and County Board of Supervisors working through the Core Teams, the BWAC will provide advice to the CT on key issues throughout the GSP development process
 - a. The Committee will consist of 9 nominees from:
 - i. 4 - Borrego Water Coalition (1-AG, 1- Recreation, 1- Private Pumper, 1 – At Large)
 - ii. 1 - Borrego Springs Sponsor Group

- 
- iii. 1 - BV Stewardship Council
 - iv. 1 - Farm Bureau from Borrego Stakeholders
 - v. 1 - Anza Borrego State Park or related interests
 - vi. 1 - BWD as a municipal ratepayer representative
 - b. Development and approval of the BWAC By-Laws
 - c. Brown Act training
2. Stakeholder Engagement Plan (SEP): SGMA requires every GSP to include public participation events/activities and they are identified by creating a SEP.
- a. County Staff currently working on Draft SEP
 - i. BWD to review when complete
 - b. BWD approve SEP
 - c. Initiate SEP activities
 - i. Utilize Center for Collaborative Policy (CCP) for Facilitation and Related Support
 - 1. BWD has existing \$56,500 contract with DWR to include GSP Facilitator support
 - a. Use services at BWAC meetings, Town Halls etc...
3. Development of the Request for Proposals for Borrego Valley GSP
- a. County staff working on Draft RFP
 - i. BWD will have chance to review and comment
 - ii. County will then distribute to interested consulting firms.
 - b. Industry Day on October 28th. Representatives from interested Consulting firms will meet with BWD and Co staff to discuss the GSP.

FISCAL IMPACT: The direct fiscal impact of developing the GSP has not been determined yet. The fiscal impact to the community of failing to provide an adequate supply of potable water in the future would be devastating in many ways.

ATTACHMENTS:

- 1. Proposed MOU
- 2. Resolution No. 2016-07-08: Adopting the Memorandum of Understanding (MOU) between BWD and County of San Diego for Development of a Groundwater Sustainability Plan (GSP) in the Borrego Valley Groundwater Basin.

**MEMORANDUM OF UNDERSTANDING
DEVELOPMENT OF A GROUNDWATER SUSTAINABILITY PLAN
FOR THE BORREGO VALLEY GROUNDWATER BASIN**

This Memorandum of Understanding for the Development of a Groundwater Sustainability Plan (“Plan”) for the Borrego Valley Groundwater Basin (“MOU”) is entered into and effective this ___ day of _____, 2016 by and between the Borrego Water District (“District”) and the County of San Diego (“County”). The District and the County are each sometimes referred to herein as a “Party” and are collectively sometimes referred to herein as the “Parties.”

RECITALS

WHEREAS, on September 16, 2014, Governor Jerry Brown signed into law Senate Bills 1168 and 1319 and Assembly Bill 1739, known collectively as the Sustainable Groundwater Management Act (Act);

WHEREAS, Act went into effect on January 1, 2015;

WHEREAS, Act seeks to provide sustainable management of groundwater basins, enhance local management of groundwater; establish minimum standards for sustainable groundwater management; and provide local groundwater agencies the authority and the technical and financial assistance necessary to sustainably manage groundwater;

WHEREAS, the Parties have each declared to be a Groundwater Sustainability Agency (GSA) overlying portions of Borrego Valley Groundwater Basin (Borrego Basin), identified as Basin Number 7.24, a Bulletin 118 designated (medium-priority) basin;

WHEREAS, each Party has statutory authorities that are essential to groundwater management and Act compliance;

WHEREAS, Section 10720.7 of Act requires all basins designated as high- or medium-priority basins designated in Bulletin 118 be managed under a Plan or coordinated Plans pursuant to Act;

WHEREAS, Section 10720.7 of Act requires all critically over drafted basins be managed under a Plan by January 31, 2020;

WHEREAS, the California Department of Water Resources (DWR) has identified the Borrego Basin as critically over drafted;

WHEREAS, the Parties intend to eliminate overlap of the Parties by collectively developing and implementing a single Plan to sustainably manage Borrego Basin pursuant to section 10727 et seq. of Act;

WHEREAS, the Parties wish to use the authorities granted to them pursuant to the Act and utilize this MOU to memorialize the roles and responsibilities for developing the Plan;

WHEREAS, it is the intent of the Parties to complete the Plan as expeditiously as possible in a manner consistent with Act and its implementing regulations;

WHEREAS, it is the intent of the Parties to cooperate in the successful implementation of the Plan not later than the date as required by the Act for the Borrego Basin;

WHEREAS, the Parties wish to memorialize their mutual understandings by means of this MOU; and

NOW, THEREFORE, in consideration of the promises, terms, conditions, and covenants contained herein, the Borrego Water District and the County of San Diego hereby agree as follows:

I. Purposes and Authorities.

This MOU is entered into by the Parties for the purpose of establishing a cooperative effort to develop and implement a single Plan to sustainably manage the Borrego Basin that complies with the requirements set forth in the Act and its associated implementing regulations. The Parties recognize that the authorities afforded to a GSA pursuant to Section 10725 of the Act are in addition to and separate from the statutory authorities afforded to each Party individually. The Parties intend to memorialize roles and responsibilities for Plan implementation during preparation of the Plan.

II. Definitions.

As used in this Agreement, unless context requires otherwise, the meanings of the terms set forth below shall be as follows:

1. “Act” refers to the Sustainable Groundwater Management Act.
2. “Advisory Committee” refers to the stakeholder group created in Section III of the MOU.
3. “Core Team” refers to the working group created in Section III of the MOU.
4. “County” refers to the County of San Diego, a Party to this MOU.
5. “District” refers to the Borrego Water District, a Party to this MOU.
6. “DWR” refers to the California Department of Water Resources.
7. “Effective Date” means the date on which the last Party executes this Agreement.
8. “Governing Body” means the legislative body of each Party: the District Board of Directors and the County Board of Supervisors, respectively.
9. “Groundwater Sustainability Plan (Plan)” is the basin plan for the Borrego Basin that the parties to this MOU are seeking to develop and implement pursuant to the Act.
10. “Memorandum of Understanding (MOU)” refers to this agreement.
11. “Party” or “Parties” refer to the County of San Diego and Borrego Water District.
12. “Plan Funding” is the funding necessary for the preparation and implementation of the Plan.
13. “Plan Schedule” includes all the tasks necessary to complete the Plan and the date

scheduled for completion.

14. “State” means the State of California.
15. “SWRCB” refers to the State Water Resources Control Board.
16. “Undesirable Result” shall be defined as in the Act Section 10721(x) 1-6

III. Agreement.

This section establishes the process for the Borrego Basin Plan Core Team and the Advisory Committee.

1. Establishment and Responsibilities of the Plan Core Team (Core Team).
 - a. The Core Team shall jointly develop a coordinated Plan. The Plan shall include, but not be limited to, enforcement measures, a detailed breakdown of each Parties responsibilities for Plan implementation, anticipated costs of implementing the Plan, and cost recovery mechanisms (if necessary).
 - b. The Core Team will consist of representatives from each Party to this MOU working cooperatively together to achieve the objectives of the Act. Core Team members serve at the pleasure of their appointing Party and may be removed/changed by their appointing Party at any time. A Party must notify all other Parties to this MOU in writing if that Party has removes or replaces Core Team members.
 - c. Each member of the Core Team shall be responsible for keeping his/her respective management and governing board informed of the progress towards the development of the Plan and for obtaining any necessary approvals from management/governing board. Each member of the Core Team shall keep the other member reasonably informed as to all material developments so as to allow for the efficient and timely completion of the Plan.
 - d. Each Core Team member’s compensation for their service on the Core Team is the responsibility of the appointing Party.
 - e. The Core Team shall develop and implement a stakeholder participation plan that involves the public and area stakeholders in an Advisory Committee role to aid in developing and implementing the Plan.
 - f. The Core Team will cooperatively work with the Advisory Committee to develop bylaws for the governance of the Advisory Committee. These bylaws are subject to approval by the Core team prior to adoption by the Advisory Committee. The Core Team may establish an appointment process and other administrative procedures for the Advisory Committee, in accordance with District and County policies intended to promote active participation in local government, and requirements to include stakeholders in the development of the Plan as established in the Act.
 - g. The Core Team will be the primary liaison with the Advisory Committee; and

will guide Advisory Committee activities.

2. Core Team Meetings.
 - a. The Core Team will establish a meeting schedule and choice of locations for regular meetings to discuss Plan development and implementation activities, assignments, milestones and ongoing work progress.
 - b. The Core Team may establish and schedule meetings of the Advisory Committee to coordinate development and implementation of the Plan.
 - c. Attendance at all Core Team meetings may be augmented to include staff or consultants to ensure that the appropriate expertise is available.
3. Establishment and Role of the Advisory Committee
 - a. The Parties shall establish an Advisory Committee. The Advisory Committee will provide input to the Core Team on Plan development, including providing recommendations on basin sustainability measures, and the planning, financing, and implementation of the Plan. The Parties will agree on the composition of the Advisory Committee and acknowledge that the Advisory Committee must meet the requirements established in the Act.
 - b. Advisory Committee members will not be compensated for activities associated with the Advisory Committee, Plan development or any activity conducted under this agreement.
 - c. The Advisory Committee that is formed through this process shall be subject to and abide by the California open meeting laws under Government Code sections 54950 et seq., otherwise known as the “Brown Act,” in order for the Parties to accept an Advisory Committee’s recommendations.
 - d. Meetings of the Advisory Committee shall be held in Borrego Springs, CA.

IV. Interagency Communication.

1. To provide for consistent and effective communication between parties, each Party agrees that a single member from each Party’s Core Team will be their central point of contact on matters relating to this MOU. Additional representatives may be appointed to serve as points of contact on specific actions or issues.
2. The Core Team shall appoint a single representative to communicate actions conducted under this agreement to DWR. The appointee shall not communicate formal actions or decisions without prior written approval from the Core Team. This is not intended to discourage informal communications between the Parties and DWR.

V. Roles and Responsibilities of the Parties.

1. The Parties are responsible for developing a coordinated Plan that meets the

requirements of the Act.

2. The Parties will jointly establish their roles and responsibilities for implementing a coordinated Plan for the Borrego Basin in accordance with the Act.
3. The Parties will jointly work in good faith and coordinate all activities to meet the objectives of this MOU. The Parties shall cooperate with one another and work as efficiently as possible in the pursuit of all activities and decisions described in the MOU.
4. Each of the Parties will provide expertise, guidance, and data on those matters for which it has specific expertise or statutory authority, as needed to carry out the objectives of this MOU. Further development of roles and responsibilities of each Party will occur during Plan development.
5. After execution of this MOU as soon as reasonably possible, the Core Team shall mutually develop a timeline that describes the anticipated tasks to be performed under this MOU and dates to complete each task (Plan Schedule); and scope(s) of work and estimated costs for Plan development. The Plan Schedule will allow for the preparation of a legally defensible Plan acceptable to the Parties and include allowances for public review and comment, and approval by governing boards prior to deadlines required in the Act. Due to the critical nature of the Borrego Basin overdraft, both Parties shall make every effort to complete the draft Plan as soon as possible but no later than July 1, 2019. The Plan Schedule shall become part of this MOU through reference. The Plan Schedule will be referred and amended as necessary to conform to developing information, permitting, and other requirements. Therefore, this Plan Schedule may be revised from time to time upon mutual agreement of the Core Team. Costs shall be funded and shared as outlined in Section VI.
6. The Parties recognize that they may disagree as to the composition of the Plan and/or the timelines/methods for implementing the Plan. In the event that the Parties have attempted, in good faith, to resolve the matter on their own and are unsuccessful, the Parties agree to jointly seek to use the non-binding mediation services provided by the DWR to address disputes arising under the Act, to the extent that such services are available. If non-binding mediation from the DWR is not available or if either Party believes it would be more useful to consult with the State Water Resources Control Board (“SWRCB”), the Parties agree to request non-binding mediation from the Chair of the SWRCB or another Member designated by the Chair who is acceptable to both Parties. The Parties recognize that the failure to timely complete a Plan or to achieve any of the other milestones in the Act may result in intervention by the SWRCB.

VI. Contracting and Funding for Plan Development.

1. The Parties shall mutually develop a scope of work, budget, cost sharing agreement and cost recovery plan (“Plan Funding”) for the work to be undertaken pursuant to this MOU. The Plan Funding shall be included and adopted in the final Borrego

Basin Plan. Both the budget and cost sharing agreement shall be determined prior to any substantial financial expenditures or incurrence of any financial obligations related to consultant costs.

2. Specifically, to fulfill the requirements of the Act, the Core Team will jointly prepare and agree upon a scope of work for the consultants needed to prepare the Plan. The Parties agree that any work contracted for the purpose of developing the Plan shall be a cooperative effort.
3. The County shall hire consultant(s) to complete required components of the Plan. The contracting shall be subject to the County's competitive bid process and be subject to auditing by the County's Auditor and Controller.
4. Within the parameters of the County's contracting regulations, policies and procedures, the Core Team will be cooperatively involved in the evaluation, selection and oversight of the consultant(s).
5. Each Party is free to retain other consultants for its own purposes and at its own cost, *provided that* each Party consults with the other Party before conducting such work. The scope of any such work may not conflict with or duplicate work performed under this MOU. Nothing in this agreement prohibits either Party from exercising its statutory authorities afforded to each Party individually.
6. The Parties agree that each Party will bear its own staff costs to develop the Plan.

VII. Approval.

1. The Parties agree to make best efforts to adhere to the required Plan Schedule and will forward a final Borrego Basin Plan to their respective governing boards for approval and subsequent submission to DWR for evaluation as provided for in Act.
2. Approval and amendments will be obtained from the District Board of Directors prior to submission to the County Board of Supervisors.
3. Each Governing Board retains full authority to approve, amend, or reject the proposed Plan, provided the other Governing Board subsequently confirms any amendments, but both Parties also recognize that the failure to adopt and submit a Plan for the Basin to DWR by January 31, 2020 risks allowing for state intervention in managing the Basin.
4. The Parties agree that they will use good-faith efforts to resolve any issues that one or both Governing Boards may have with the final proposed Plan for the Basin in a timely manner so as to avoid the possibility of state intervention. An amendment to this MOU is anticipated upon acceptance of the Borrego Basin Plan by both Governing Boards.

VIII. Staffing.

Each Party agrees that it will devote sufficient staff time and other resources to actively participate in the development of the Plan for the Basin, as set forth in this MOU.

IX. Indemnification.

1. Claims Arising From Sole Acts or Omissions of County.

The County of San Diego (County) hereby agrees to defend and indemnify the District, its agents, officers and employees (hereinafter collectively referred to in this paragraph as “District”), from any claim, action or proceeding against District, arising solely out of the acts or omissions of County in the performance of this MOU. At its sole discretion, District may participate at its own expense in the defense of any claim, action or proceeding, but such participation shall not relieve County of any obligation imposed by this MOU. The District shall notify County promptly of any claim, action or proceeding and cooperate fully in the defense.

2. Claims Arising From Sole Acts or Omissions of the District.

The District hereby agrees to defend and indemnify the County of San Diego, its agents, officers and employees (hereafter collectively referred to in this paragraph as 'County') from any claim, action or proceeding against County, arising solely out of the acts or omissions of District in the performance of this MOU. At its sole discretion, County may participate at its own expense in the defense of any such claim, action or proceeding, but such participation shall not relieve the District of any obligation imposed by this MOA. County shall notify District promptly of any claim, action or proceeding and cooperate fully in the defense.

3. Claims Arising From Concurrent Acts or Omissions.

The County of San Diego (“County”) hereby agrees to defend itself, and the District hereby agrees to defend itself, from any claim, action or proceeding arising out of the concurrent acts or omissions of County and District. In such cases, County and District agree to retain their own legal counsel, bear their own defense costs, and waive their right to seek reimbursement of such costs, except as provided in paragraph 5 below.

4. Joint Defense.

Notwithstanding paragraph 3 above, in cases where County and District agree in writing to a joint defense, County and District may appoint joint defense counsel to defend the claim, action or proceeding arising out of the concurrent acts or omissions of District and County. Joint defense counsel shall be selected by mutual agreement of County and District. County and District agree to share the costs of such joint defense and any agreed settlement in equal amounts, except as provided in paragraph 5 below. County and District further agree that neither party may bind the other to a settlement agreement without the written consent of both County and District.

5. Reimbursement and/or Reallocation.

Where a trial verdict or arbitration award allocates or determines the comparative fault of the parties, County and District may seek reimbursement and/or reallocation of defense costs, settlement payments, judgments and awards, consistent with such comparative fault.

X. Litigation.

In the event that any lawsuit is brought against either Party based upon or arising out of the terms of this MOU by a third party, the Parties shall cooperate in the defense of the action. Each Party shall bear its own legal costs associated with such litigation.

XI. Books and Records.

Each Party shall have access to and the right to examine any of the other Party's pertinent books, documents, papers or other records (including, without limitation, records contained on electronic media) relating to the performance of that Party's obligations pursuant to this Agreement, *providing that* nothing in this paragraph shall be construed to operate as a waiver of any applicable privilege.

XII. Notice.

All notices required by this Agreement will be deemed to have been given when made in writing and delivered or mailed to the respective representatives of County and the District at their respective addresses as follows:

For the District:

General Manager
Borrego Water District
PO Box 1870
806 Palm Canyon Drive
Borrego Springs, CA 92004

For the County:

San Diego County
Administrative Officer
San Diego County
1600 Pacific Highway
San Diego, CA 92101

With a copy to:

David Aladjem
Downey Brand LLP
621 Capitol Mall, 18th Floor
Sacramento, CA 95814

With a copy to:

Justin Crumley, Senior Deputy
Office of County Counsel
1600 Pacific Highway, Rm 355
San Diego, CA 92101

Any party may change the address or facsimile number to which such communications are to be given by providing the other parties with written notice of such change at least fifteen (15) calendar days prior to the effective date of the change.

All notices will be effective upon receipt and will be deemed received through delivery if personally served or served using facsimile machines, or on the fifth (5th) day following deposit in the mail if sent by first class mail.

XIII. Miscellaneous.

1. Term of Agreement. This MOU shall remain in full force and effect until the date upon which the Parties have both executed a document terminating the provisions of this MOU.
2. No Third Party Beneficiaries. This Agreement is not intended to, and will not be construed to, confer a benefit or create any right on a third party, or the power or right to bring an action to enforce any of its terms.
3. Amendments. This Agreement may be amended only by written instrument duly signed and executed by the County and the District.
4. Compliance with Law. In performing their respective obligations under this MOU, the Parties shall comply with and conform to all applicable laws, rules, regulations and ordinances.
5. Jurisdiction and Venue. This MOU shall be governed by and construed in accordance with the laws of the State of California, except for its conflicts of law rules. Any suit, action, or proceeding brought under the scope of this MOU shall be brought and maintained to the extent allowed by law in the County of San Diego, California.

6. Waiver. The waiver by either party or any of its officers, agents or employees, or the failure of either party or its officers, agents or employees to take action with respect to any right conferred by, or any breach of any obligation or responsibility of this Agreement, will not be deemed to be a waiver of such obligation or responsibility, or subsequent breach of same, or of any terms, covenants or conditions of this Agreement, unless such waiver is expressly set forth in writing in a document signed and executed by the appropriate authority of the County and the District.
7. Authorized Representatives. The persons executing this Agreement on behalf of the parties hereto affirmatively represent that each has the requisite legal authority to enter into this Agreement on behalf of their respective party and to bind their respective party to the terms and conditions of this Agreement. The persons executing this Agreement on behalf of their respective party understand that both parties are relying on these representations in entering into this Agreement.
8. Successors in Interest. The terms of this Agreement will be binding on all successors in interest of each party.
9. Severability. The provisions of this Agreement are severable, and the adjudicated invalidity of any provision or portion of this Agreement shall not in and of itself affect the validity of any other provision or portion of this Agreement, and the remaining provisions of the Agreement shall remain in full force and effect, except to the extent that the invalidity of the severed provisions would result in a failure of consideration or would materially adversely affect either party's benefit of its bargain. If a court of competent jurisdiction were to determine that a provision of this Agreement is invalid or unenforceable and results in a failure of consideration or materially adversely affects either party's benefit of its bargain, the parties agree to promptly use good faith efforts to amend this Agreement to reflect the original intent of the parties in the changed circumstances.
10. Construction of Agreement. This Agreement shall be construed and enforced in accordance with the laws of the United States and the State of California.
11. Entire Agreement.
 - a. This Agreement constitutes the entire agreement between the County and the District and supersedes all prior negotiations, representations, or other agreements, whether written or oral.
 - b. In the event of a dispute between the parties as to the language of this Agreement or the construction or meaning of any term hereof, this Agreement will be deemed to have been drafted by the parties in equal parts so that no presumptions or inferences concerning its terms or interpretation may be construed against any party to this Agreement.

IN WITNESS WHEREOF, the parties hereto have set their hand on the date first above written.

BORREGO WATER DISTRICT

COUNTY OF SAN DIEGO,
a political subdivision of
the State of California

By: _____
Beth A. Hart
President, Board of Directors

By: _____
Clerk of the Board of Supervisors

APPROVED AS TO FORM AND LEGALITY
BY COUNTY COUNSEL

By: _____
Senior Deputy

RESOLUTION NO. 2016-07-08

RESOLUTION OF THE BOARD OF DIRECTORS OF THE BORREGO WATER DISTRICT ADOPTING THE MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN THE BORREGO WATER DISTRICT (BWD) AND COUNTY OF SAN DIEGO FOR DEVELOPMENT OF A GROUNDWATER SUSTAINABILITY PLAN (GSP) IN THE BORREGO VALLEY GROUNDWATER BASIN AND RELATED BWD APPOINTMENTS

WHEREAS, the on September 16, 2014, Governor Jerry Brown signed into law Senate Bills 1168 and 1319 and Assembly Bill 1739, known collectively as the Sustainable Groundwater Management Act (SGMA) empowering local agencies to sustainability manage groundwater resources within its jurisdiction; and

WHEREAS, SGMA defines sustainable groundwater management as the management of groundwater supplies in a manner that can be maintained during the planning and implementation horizon without causing undesirable results; and

WHEREAS, the USGS has identified an overdraft in the Borrego Groundwater Basin of approximately 14,000 acre feet per year, and the State of California has classified the Basin as Medium Priority and Critically over drafted; and

WHEREAS, the jurisdiction in the Borrego Basin is shared between that parties and each sought status as Groundwater Sustainability Agencies (GSA). In this situation, SGMA allows for the parties to eliminate the overlap and collectively develop and implement a single plan, and

WHEREAS, the Borrego Water District and County of San Diego desire to enact their legal authority under SGMA and work together to develop one Groundwater Sustainability Plan for the Borrego Valley Basin in compliance with SGMA, and

WHEREAS, the parties collectively negotiated a Memorandum of Understanding for a Groundwater Sustainability Plan in the Borrego Valley Groundwater Basin, dated May 16, 2016.

NOW, THEREFORE, the Board of Directors of the Borrego Water District does hereby resolve, determine and order as follows:

1. Approval of the MOU between the Borrego Water District and the County of San Diego for Development of a Groundwater Sustainability Plan (GSP) in the Borrego Valley Groundwater Basin, dated May 16, 2016.
2. Appoint Beth Hart, Lyle Brecht and Geoff Poole to the BWD GSP Core Team and Geoff Poole as BWD Primary Agency Contact.

ADOPTED, SIGNED AND APPROVED this 20th day of September, 2016

President of the Board of Directors
of Borrego Water District

ATTEST:

Secretary of the Board of Directors
of Borrego Water District

President of the Board of Directors
of Borrego Water District

ATTEST:

Secretary of the Board of Directors
of Borrego Water District

{Seal}

STATE OF CALIFORNIA)

) ss.

COUNTY OF SAN DIEGO)

I, Joe Tatusko, Secretary of the Board of Directors of the Borrego Water District, do hereby certify that the foregoing resolution was duly adopted by the Board of Directors of said District at a regular meeting held on September 20, 2016 and that it was so adopted by the following vote:

AYES: DIRECTORS:

NOES: DIRECTORS:

ABSENT: DIRECTORS:

BOARD OF DIRECTORS MEETING –SEPTEMBER 20, 2016

AGENDA BILL II.B

September 13, 2016

TO: Board of Directors, Borrego Water District

FROM: Geoff Poole, General Manager

SUBJECT: AGENDA ITEM II.B: Consideration of Process for nominating BWD Ratepayer Representative to the Borrego Water Advisory Committee (BWAC)

RECOMMENDED ACTION: Discuss and Determine the Process for Selecting BWAC Ratepayer Representative nominated by BWD and direct staff to take necessary steps.

ITEM DESCRIPTION: As a follow up to Agenda Item II.A, the Borrego Valley Basin Groundwater Sustainability Plan includes the creation of the 9-member BWAC that will provide input to the Core Teams on key issues throughout the GSP process. One of the 9 members is to be nominated from BWD, and the purpose of this item is for the Board to discuss and determine the process for nominating the BWD Ratepayer Representative.

The process for selecting the BWD BWAC Representative should be completed by the December 2016 meeting.

FISCAL IMPACT: No direct fiscal impact from selecting the BWD Ratepayer Representative to the BWAC

ATTACHMENTS: None

AGENDA BILL II.C

September 13, 2016

TO: Board of Directors, Borrego Water District

FROM: Geoff Poole, General Manager

SUBJECT: AGENDA ITEM II.C: Proposal to Provide Consulting Services for 2016 SD County New Development Impacts upon BWD: Raftelis Financial Consultants (RFC) Inc

RECOMMENDED ACTION: Approve Attached Proposal and Proceed with Raftelis Inc. for Evaluation of New Development Impact on BWD from the SD County Zoning Ordinance.

ITEM DESCRIPTION: Director Brecht/Staff and Raftelis have been discussing an analysis of the County of San Diego's zoning/build out and its impact upon BWD. In summary, the normal way of calculating and applying developer's charges no longer works under SGMA supply constraints

- Current developer's charges include an infrastructure buy-in fee and the provision of water credits (1 water credit represents the reduction of 1 AFY of use in perpetuity) per EDU at the ratio of 4 water credits representing 1 AFY of permanent use going forward. Thus, the number of water credits required for a specific hook up would be the percentage of AFY use times 4 water credits;
- There is very little development presently in the District, so this requirement for water credits has been moot to date. The issue of how to charge for water supply for development going forward is foremost, as under SGMA this will apply;
- The County water division is also aware that the current County land use zoning and projected growth for Borrego does not and will not work under the supply constraints imposed by SGMA. However, the land use to date, County zoning and land use decisions have not taken physical limits into account. SGMA changes this calculation for groundwater supply. Land use assumptions whereby economic development in Borrego will proceed by increasing residential and commercial density within the Borrego donut hole (Borrego is surrounded by the ABDSP) and through land development is unlikely to work as an economic strategy under SGMA if
- There are physical supply constraints. The first question that needs to be answered is IF the District actually has supply constraints at 2040 under SGMA limits division of the County has not yet adequately understood the land use ramifications for Borrego under SGMA;

- The presenting economic problem is that under SGMA, the District will be required for the first time to purchase water in bulk to serve its existing customers and to have supply available for potential customers under the County's land use assumptions;
- In other words, as described in detail below, the District will need to be able to assess the revenue requirements associated with what looks like to the District, developers charges.

Premise 1 Example:

- County wants to up zone parcels to create another ~500 EDUs (build-able lots);¹
- Under SGMA, the District does not have enough allocated water to serve its existing customers at an average of ~226 GPCD (0.55 AFY + ~0.12 AFY overhead = 0.67 AFY/EDU average) presently and no less than 181 GPCD in 2040 (0.45 AFY/EDU best estimate of EDU use by 2040);²

Based on the available data for the District's service area, there are 4,439 vacant and undeveloped parcels that potentially could be converted to residential and 526 vacant and undeveloped parcels that potentially could be converted to commercial, industrial, office space, rural commercial, open space, public agency or public/semi-public facilities. Many of these parcels do not have legal lot status and likely could never be developed due to other constraints (e.g., floodplain, biological, traffic, sewer, etc).

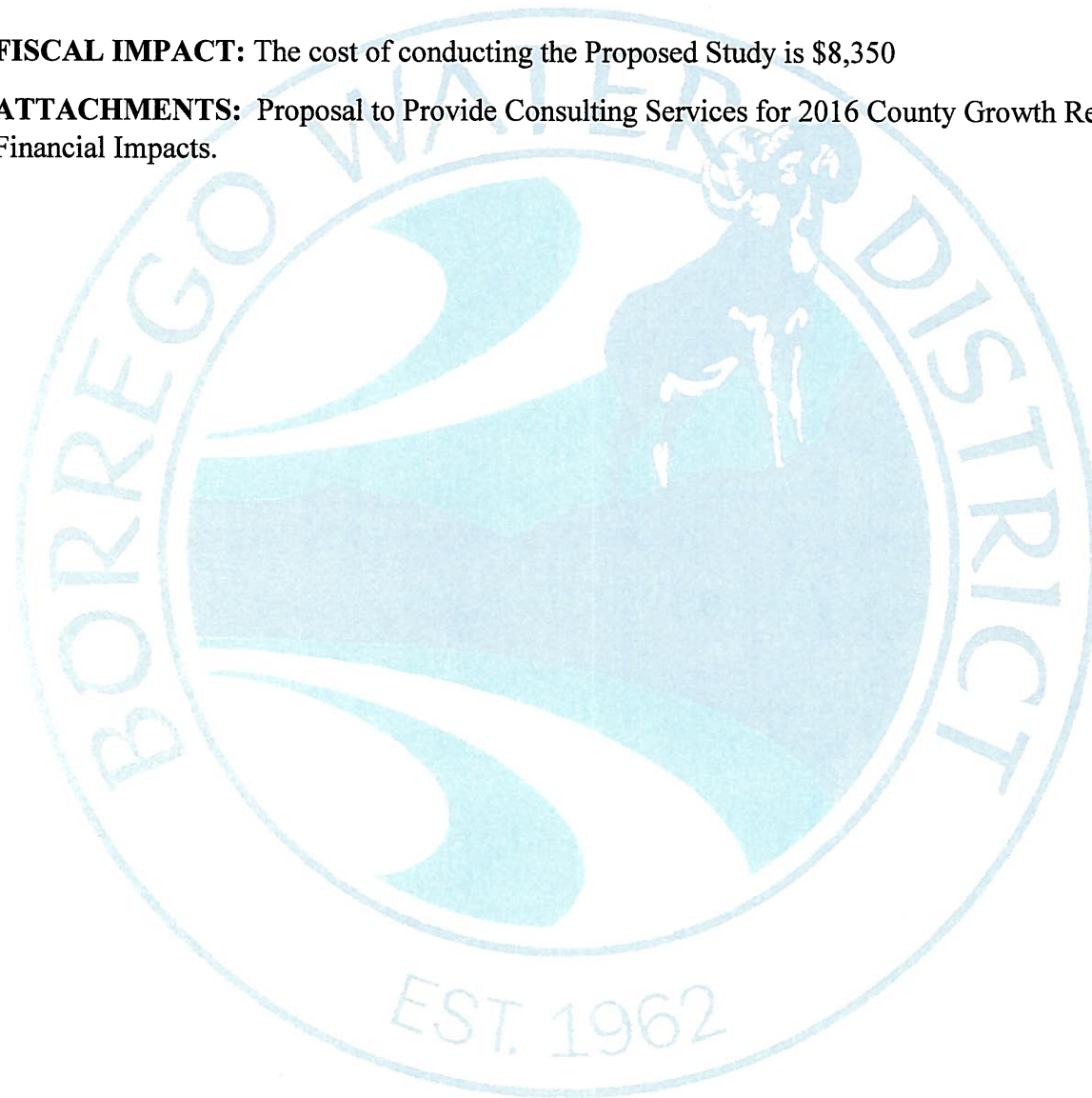
In reviewing potential additional density due to DS4 (Rudyville) and DS8 (Village) that could add 153 lots and 389 lots, respectively under a proposed General Plan amendment; this 'up zoning' will effectively result in 'down zoning' elsewhere in the Borrego Valley due to future water quantity constraints. However, the significant inventory of existing unbuilt lots could possibly provide up to an additional 3,000+ future residential units without any additional subdivision" (County of San Diego 2009).

55 gallons per day per capita daily (GPCD) is considered the minimum required water demand for health and safety (Subdivision (b) (2), Section 10608.20 of SBx7-7). For comparison, the fiscal year 2015/2016 residential water use is 14,935 gallons per connection /2.2 persons = 6,789 gallons per person / 30 days = **226 GPCD**. SBx7-7 typically uses a 10 year average to develop per capita water use. A quick approach is to develop a future water use target is to use 80% of the existing per capita or $226 \text{ GPCD} \times 0.80 = \mathbf{181 \text{ GPCD}}$ (Note: SBx7-7 includes various

approaches to develop future water use targets and these should be explored further). This is closer to 1,400 acre-feet per year (rounded) for existing customers.

FISCAL IMPACT: The cost of conducting the Proposed Study is \$8,350

ATTACHMENTS: Proposal to Provide Consulting Services for 2016 County Growth Related Financial Impacts.



Scope of Services for 2016 Development Impact Analysis
Borrego Water District

September 14, 2016

Mr. Geoff Poole
General Manager
Borrego Water District
805 Palm Canyon Drive
Borrego Springs CA 92004

Subject: Proposal to Provide Consulting Services for 2016 County Growth Related Financial Impacts

Dear Mr. Poole:

Raftelis Financial Consultants, Inc. (RFC) is pleased to submit this scope of services to provide financial impact analyses (Studies) for Borrego Water District (District) related to the County of San Diego's proposed development estimates, and in conjunction with long term compliance under the State of California's Sustainable Groundwater Management Act of 2014 known as SGMA. The following sections outline the tasks RFC believes will be involved in completing a study that accomplishes the District's goals. Specifically RFC will perform the following tasks:

- Review the County's long term growth estimates for the District's service area
- Review the District's estimates on the costs of providing water to additional development projected by the County
- Determine a range of financial impacts to the District utilizing the existing Financial Plan
- Determine a range of financial impacts to current and future District customers
- Create a memorandum report that explains the study analyses and findings to assist the District in discussions with the County

Scope of Services for 2016 Development Impact Analysis

Borrego Water District

Scope of Services

Task 1 – Review of County and District Assumptions

Task 1.1 – Initiation and Data Collection

The Project Initiation sub-task will begin the Study so that it progresses in an efficient and deliberate manner. Task 1 includes the collection and review of all relevant data and documents and our quality assurance/quality control process.

A data request list will be submitted to the District so all appropriate data in the required format can be forwarded to RFC. The data request will at least include information related to following cost to purchase / lease additional water, service area demand, Borrego Valley Aquifer (basin) withdrawals, County of San Diego (County) land use planning documents for the service area, basin demand forecasting, and the 2015 United States Geological Survey (USGS) Study.

Task 1.2 – Data Review

RFC will review the provided data for completeness and provide any comments or supplemental requests. As part of this task RFC will examine the assumptions and calculations of County estimates, as well as the District's estimates of supply and demand in terms of meeting requirements of SGMA and SBx7-7¹. Additionally RFC will review the 2015 United States Geological Survey (USGS) basin Study and relevant findings. Review and analysis of the planning and supply data will allow RFC to establish assumptions and variables to be used in estimating financial impacts in Task 2.

Meetings/Workshops: Two (2) conference calls

Deliverables: Initial Data Request List

Task 2 – Estimate Financial Impacts

Under preliminary withdrawal reduction estimates the District will be required to supplement their existing allocation to meet current customer demands, by either conservation or purchasing water from the agricultural sector. If new development occurs, the District will be required to either purchase or engage in significant conservation efforts.

RFC will use the existing financial plan to estimate a range of costs associated with meeting future water demands from development. This demand can be met by either fallowing land and purchasing water allocation or using conservation methods. Either approach will have financial impacts to the District. RFC will estimate these costs. Moreover, with the assumption that any developer fees be paid at the time of buildout, there is a significant time lag between the District acquiring additional water for development and the payment of developer impact fees. This creates a cash flow risk scenario, which RFC will evaluate.

¹ SBx7-7 calls for a 20 percent reduction in residential per capita water use by year 2020.

Scope of Services for 2016 Development Impact Analysis

Borrego Water District

Financial impacts will be identified as a range of costs of providing water to new development independent from SGMA compliance for the existing customer base, as one should be borne by new customers and the other is a cost of providing service to current customers.

Meetings/Workshops: Two (2) webinars with District Staff to review preliminary results

Deliverables: Financial Plan and Rate Model in Microsoft Office Excel® 2013

Task 3 – Memorandum

The process for calculating the financial impacts and methodology involved will be described in a memo report. This report will include major issues and decisions, key findings, and estimated financial impacts. Comments from District Staff will be incorporated into a final report as appropriate. The amended models will be provided to the District in conjunction with the memo report. The final report will be submitted to the District and will include appropriate supporting data from the model.

Meetings/Workshops: One (1) web-meeting with District Staff to review the memo report

Deliverables: Final Memo Report

Fees and Hours

RFC proposes to complete the scope of work outlined above on a time-and-materials basis with a not-to-exceed cost of \$8,350. The following work plan provides a breakdown of the estimated level of effort required for completing each task described and the hourly billing rates for the personnel scheduled to complete the project.

Scope of Services for 2016 Development Impact Analysis
Borrego Water District

Development Impact Analysis
 Proposed Hours & Fees

Task	Task Descriptions	No of Meetings	Hours Requirements				Total Fees & Expenses
			SG	SC	Admin	Total	
HOURLY RATES			\$275	\$195	\$70		
1	Project Initiation and Data Review		2	8		10	\$2,110
2	Financial Impacts Estimates		2	20		22	\$4,450
3	Memo Report Development		2	6	1	9	\$1,790
TOTAL ESTIMATED MEETINGS / HOURS		0	6	34	1	41	
PROFESSIONAL FEES			\$1,650	\$6,630	\$70	\$8,350	
SG - Sanjay Gaur			Total Fees				\$8,350
SC - Senior Consultant			Total Expenses				\$0
Admin - Administration			TOTAL FEES & EXPENSES				\$8,350

BOARD OF DIRECTORS MEETING –SEPTEMBER 20, 2016

AGENDA BILL II.D

September 13, 2016

TO: Board of Directors, Borrego Water District

FROM: Geoff Poole, General Manager

SUBJECT: AGENDA ITEM II.D: Revised Resolution Approving Tertiary Sewage Treatment Conversion Project Feasibility Study: Grant Funding Request

RECOMMENDED ACTION: Approve Revised Resolution

ITEM DESCRIPTION: Previously, BWD submitted a Resolution to the California State Water Resources Control Board (SWRCB) requesting grant funding to study conversion of the existing sewage treatment plant to Tertiary levels, which allows reuse for irrigation purposes. Approximately one week ago, BWD received an email from SWRCB as follows:

While at the tail end of routing your planning application for an agreement, our attorney is unable to accept the District's Authorizing Resolution for the following reasons:

- 1) **It pertains to Proposition 1**
- 2) **Refers to the "Clean, Safe and Reliable Drinking Water Program" and "SRF" Funding**
- 3) **Includes a pledge of water revenues with reference to CDPH.**

Please provide an adopted Authorizing Resolution that reflects the template attached. It is highly recommended that your new resolution follows this template verbatim.

The attached Resolution follows the template referenced above and was approved by SWRCB Staff on 9-12-16.

FISCAL IMPACT: The fiscal impact to BWD is yet to be determined. A detailed cost estimate and overall project economics will be a component of the proposed Feasibility Study. BWD will also pursue grant funding if the project is determined to be feasible.

ATTACHMENT: Resolution Revised Requesting SWRCB Funding for Tertiary Treatment Conversion Project Feasibility Study. Resolution No 2016-09-09

RESOLUTION NO. 2016-09-09

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE
BORREGO WATER DISTRICT
REQUESTING SWRCB FUNDING FOR TERTIARY SEWAGE
TREATMENT PLANT CONVERSION PROJECT**

WHEREAS, The Borrego Water District currently owns and maintains a Sewage Treatment Plant and desires to evaluate the feasibility of converting the Plant to Tertiary-level treatment, and

WHEREAS, a Resolution previously submitted by BWD to the State Water Resources Control Board did not meet the technical and legal requirements;

NOW THEREFORE, The Board of Directors authorizes and directs its General Manager to sign and file, for and on behalf of the BWD, a Financial Assistance Application for a grant agreement from the State Water Resources Control Board for the planning, design, and construction of the BWD Tertiary Treatment Conversion Project Feasibility Study ("Project"). This Authorized Representative, or his/her designee, is designated to provide the assurances, certifications, and commitments required for the financial assistance application, including executing a financial assistance agreement from the State Water Resources Control Board and any amendments or changes thereto.

The Authorized Representative, or his/her designee, is designated to represent BWD in carrying out its responsibilities under the grant agreement, including certifying disbursement requests on behalf of BWD and compliance with applicable state and federal laws.

CERTIFICATION

I do hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the BWD Board of Directors held on September 20, 2016.

ADOPTED, SIGNED AND APPROVED this 20th day of September 2016.

President of the Board of Directors
of Borrego Water District

ATTEST:

Secretary of the Board of Directors
of Borrego Water District

{Seal}

STATE OF CALIFORNIA)

) ss.

COUNTY OF SAN DIEGO)

I, Joe Tatusko, Secretary of the Board of Directors of the Borrego Water District, do hereby certify that the foregoing resolution was duly adopted by the Board of Directors of said District at a regular meeting held on the September 20, 2016 and that it was so adopted by the following vote:

AYES: DIRECTORS:

NOES: DIRECTORS:

ABSENT: DIRECTORS:

ABSTAIN: DIRECTORS:

BOARD OF DIRECTORS MEETING –SEPTEMBER 20, 2016

AGENDA BILL II.E

September 13, 2016

TO: Board of Directors, Borrego Water District
FROM: Geoff Poole, General Manager
SUBJECT: AGENDA ITEM II.E: Evaluation of Investment Practices on BWD Cash Reserves

RECOMMENDED ACTION: Receive Update on Reserve Fund Investment Portfolio

ITEM DESCRIPTION: Director Tatusko and BWD Staff have been working on an evaluation of the current BWD investment practices. Specifically, work has begun to confirm the safety/security, match cash flow needs with investment maturities and research rates of return that are available on BWD Reserve Funds. Following is the results of the analysis:

Safety: The most important factor for us to consider is the safety and security of our investment. Any institution holding Public Funds must provide specific collateral at 110% of any balance over FDIC insurance limits in fully liquid securities/treasuries. Monthly reports are sent to Banking Regulators by UMPQUA to document the presence of the required collateral. UMPQUA has over \$1 billion in public investments currently including BWD funds. BWD investment of approximately \$3.2 million at UMPQUA is as safe as possible under current FDIC and Banking Laws.

Liquidity: Another major factor to consider is knowing the money will be available if needed without a significant loss of interest income or principle for early withdrawal. Two major factors were taken into consideration on this topic, Capital Project spending and Reserve Fund policies.

CIP: As the District constructs improvements to the water system, the funds need to be available without significant penalties for early withdrawal. Currently the planned CIP expenses for 2-16-17 is \$1,030,000 for the 800 tank replacement, well rehabilitation, small pipeline repairs and photo imagery, which will be funded through the Working Capital component of the budget.

In an effort to project future capital expenses beyond 2016-17, Trey at Dudek and David Dale will be provided lists of their recommended projects for BWD water and sewer projects. An updated list of CIP projects over the next 5 years is being prepared for presentation to the BWD Board at the September 28th meeting. New Capital Projects such as a Water Treatment Plant, SGMA Compliance/Implementation and other projects will be evaluated and added to the CIP in the future.

Reserve Funds: The other issue to consider when setting up BWD investment portfolio is the Reserve Funds set up by the Board. Current BWD reserves are not funded at the levels recommended by Board Policy. The use for most of BWD Reserve Funds are for emergencies or unforeseen events, so liquidity is important. Based on the fact that over \$1 M is projected for 2016-17 CIP and BWD Reserve policies are not fully funded, any investment longer than one year is not prudent.

Return: Options for short term public investments at UPQUA are .006% on 12 month CDs with a \$1 million minimum, and a \$25 plus a 3% of principle penalty for early withdrawal. Alternatively, a Public Agency Investment Fund (PAIF) is available thru UMPQUA at a rate of .0042% with no penalty for withdrawal. The interest rates on public funds are lower than similar investments for others because of the collateral and reporting requirements for public agencies outlined above in the Safety section.

Based on the analysis above, BWD has Capital Needs of \$1,030,000 for 2017-17 and Reserve Fund policies that recommend maintaining funds on hand for emergencies and unforeseen events, which means the funds need to be available (liquid) in case they are needed. BWD could generate an additional \$5,000 per year of interest income if it invested in the PAIF with no risk of penalties, and staff recommends using this fund for a portion of BWD reserves. The exact amount in BWDs PAIF will adjust over time and be dependent upon future revenue and expenses.

BWD currently has an arrangement with UMPQUA for fee-free banking on its current balance, and to continue to do so, must maintain a \$2,000,000 balance. The annual banking fees are approximately \$6,000/year. As interest rates and BWD Reserve Fund balances change, staff will adjust the bank balances accordingly between interest bearing and non-interest bearing accounts to maximize interest after banking fees are taken into consideration.

FISCAL IMPACT: Approximately \$5,500 per year of new revenue will be generated which is calculated by adding in the new interest income of approximately \$11,000 less \$6,000/year in bank fees if the primary account balance goes below \$2,000,000. If the primary account balance remains at \$2,000,000 with no bank fees, the remaining \$1,200,000 could be invested in the Fund and approximately \$5,500 of new interest income. As shown in the examples below, the two options have virtually the same fiscal impact. Staff will monitor the situation and determine the most advantageous scenario between the two Options below at the time we are ready to invest.

Example One:

Operations = \$2,000,000 @ 0% = \$0

PAIF = \$1,200,000 @ .0046 = \$5,520 Interest Income

Example Two:

Operations = \$700,000 @ 0% = \$0

PAIF = \$2,500,000 @ .0046 = \$11,500 - \$6,000 (Bank Fees) = \$5,500 Interest Income including Fees

ATTACHMENT: None

BOARD OF DIRECTORS MEETING –SEPTEMBER 20, 2016

AGENDA BILL II.F

September 13, 2016

TO: Board of Directors, Borrego Water District
FROM: Geoff Poole, General Manager
SUBJECT: AGENDA ITEM II.F: Considering Issuing Water Credits for 40-acre Land Following – Charmar & Considine

RECOMMENDED ACTION: Approve BWD Forms 102 and 104 for Charmar & Considine Following

ITEM DESCRIPTION: BWD and Considine Inc. have been working on the Charmar Following project since well before Jerry’s departure. Considine Inc has purchased 40 acres in exchange for 196 T-2 Water Credits. The Credits will be used by Considine for meeting future, new demand and/or water conservation mandates as part of SGMA.

Attached is Form 102 that provides the details on the Exclusive Groundwater Easement granted to BWD from Considine as part of the Water Credit transaction. The Attached BWD Form 102 includes the standard language that allows for up to 1 AFY to be used for a possible future residence, and a few steps need to be taken at the existing well site to accommodate the possible change in use. Form 104 is also attached and that provides the details on the actual Water Credit transaction.

FISCAL IMPACT: There is no direct fiscal impact from this transaction. A \$500 BWD Administrative Fee is being paid by Considine.

ATTACHMENTS: Form 102 Grant of Exclusive Groundwater Easement to Borrego Water District and Form 104 Request for Issuance of Water Credit Certificate

RECORDING REQUESTED BY)
 AND WHEN RECORDED MAIL TO:)
)
 Borrego Water District)
 806 Palm Canyon Drive)
 Borrego Springs, CA 92004)
 P.O. Box 1870)
 Attention: General Manager)
)

This document is exempt from payment of a recording fee pursuant to Government Code Section 27383.

Documentary Transfer Tax: \$0.00
 Exempt from payment of Documentary Transfer Tax
 pursuant to Revenue and Taxation Code Section 11922

BWD FORM 102
GRANT OF EXCLUSIVE GROUNDWATER EASEMENT
TO
BORREGO WATER DISTRICT

This Grant of Groundwater Easement (this "Agreement") is made as of _____, 2016, by **T2 BORREGO LLC**, a Colorado limited liability company (the "Grantor"), for the benefit of **BORREGO WATER DISTRICT**, a public corporation ("District" or "Grantee").

RECITALS

A. Grantor is the owner of certain real property located in an unincorporated portion of the County of San Diego, State of California, as more particularly set forth in Exhibit "A" attached hereto and incorporated herein by reference (the "Property"). Grantor or its predecessor-in-interest has maintained approximately 40.1 acres of citrus trees, and an existing well ex("Charmer Well") used for both domestic and irrigation purposes ("Water Activity"), all on the Property. The Property is from time to time referred to herein as the "Servient Tenement."

B. The Servient Tenement may overlay the Borrego Valley Aquifer as described in the Borrego Water District Groundwater Management Study on file in the office of the District and thus have certain water rights to the groundwater or percolating water underlying said Servient Tenement (the "Groundwater").

C. The District is a public corporation organized and existing under Division 13 of the Water Code of the State of California and has the power and authority to extract, divert, store and distribute water to the lands and inhabitants within the boundaries of the Grantee.

D. The Grantee has approved Grantor's following plan dated March 10, 2015, and has issued its Conditional Water Credit Certificate dated as of March 17, 2015 (the "Water Rights Approval"), whereby the Grantor, in consideration of certain Mitigation Entitlement Certificates (as defined in the Water Rights Approval), agreed to grant to the Grantee an exclusive easement to cease and prevent any and all extraction of the Groundwater to which Grantor is or may be entitled as a result

of Grantor's ownership of the Property, excepting therefrom the reservation of one (1) acre foot of water each year for domestic use and landscaping in and around a residential unit, now existing or to be constructed in the future, on the Property (the "Reserved Water Right"), in any event whether or not the Property overlies the Borrego Valley Aquifer. The Reserved Water Right shall be drawn from the Charmer Well, and before use of the Reserved Water Right, Grantee will install a flow meter for Grantee's use on such well.

E. Pursuant to the Water Rights Approval, Grantee will issue to Grantor water credits for Parcels 140-070-05 and 140-070-11, also previously known as Parcels A and B, respectively, upon recording of this Agreement.

NOW, THEREFORE, Grantor grants the Groundwater Easement (as hereinafter defined) to Grantee under the following terms and conditions:

1. **Grant of Exclusive Groundwater Easement.** Grantor, except as allowed by the Reserved Water Right, hereby grants to Grantee an exclusive easement (i) to cease and prevent any and all extraction, use, storage, distribution and/or diversion of the Groundwater to which Grantor is entitled as a result of Grantor's ownership of the Property, (ii) cease and prevent the Water Activity as well as any other use of Groundwater on the Property by Grantor, whether such Groundwater is extracted from the Property or from other real property overlying the Borrego Valley Aquifer except upon full compliance with the District Mitigation Policy and (iii) for the Grantee to monitor, measure, and/or evaluate water levels, water quality and/or water usage on the Servient Tenement, including but not limited to, taking periodic static water level readings (the "Groundwater Easement"), subject to all matters and encumbrances of record affecting the Servient Tenement, on the terms and conditions set forth in this Agreement.

1.1. **Grant of Incidental Nonexclusive Easement.** In addition to the Groundwater Easement granted in Section 1 of this Agreement, Grantor also hereby grants to Grantee a nonexclusive easement over, under, within and through the Property for: (i) reasonable vehicular and pedestrian ingress and egress by Grantee, its agents, employees, successors, and assigns for necessary purposes including, but not limited to, inspection to ensure compliance with the terms of this Agreement, the District's Mitigation Entitlement Policy and the Water Rights Approval; and (ii) routing, installation, use, maintenance, service and operation of certain utilities, including without limitation the installation and use of monitoring wells, and/or the capping of wells on the Property.

1.2 **Reserved Water Right.** Grantor is reserving the Reserved Water Right, and Grantee acknowledges and accepts that Grantor and any of its successors has the right to use up to one (1) acre foot of water each year for domestic and landscape use in and around any now-existing or future residential unit on the Property. Additionally, Grantor is also reserving a water right, and Grantee acknowledges and accepts such right, that Grantor and any of its successors has the right to use water for a project on the Property, so long as the County and BWD provides its discretionary approval for such project and groundwater use reduction measures are implemented by Grantor or its successors that fully offset the amount of groundwater that the project would use.

2. **Character of Easement.** The Groundwater Easement granted in this Agreement is in gross.

3. **Term.** The Groundwater Easement granted in this Agreement shall be an easement in perpetuity for the benefit of Grantee.

4. **Maintenance and Liability.** Grantor is and shall remain solely and exclusively responsible for all maintenance of the Property, including, but not limited to, weed and/or dust control and abatement. Grantor hereby agrees to indemnify, defend, and hold Grantee harmless from and against any claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense (including, without limitation, reasonable attorneys' fees and/or expert witness fees), resulting from, arising out of, or based upon the Property, with the exception that Grantor is not liable for Grantee's actions while on the Property.

5. **Consideration.** In consideration of the grant of the Groundwater Easement granted in this Agreement, the Grantee will provide the Grantor with the Mitigation Entitlement Certificate (as defined in the Water Rights Approval).

6. **Exclusive Easement.** Grantee's use of the Groundwater Easement granted in this Agreement shall be exclusive. Grantor shall not extract, divert, store and/or distribute the Groundwater, nor shall the Grantor transfer or assign to others any interest in the Groundwater. Notwithstanding the terms of this provision, Grantor reserves the right to use the Servient Tenement in a manner consistent with the Grantee's free use and enjoyment of the Groundwater Easement.

7. **Assignment.** This Agreement, including any interest in this Agreement, shall not be assigned without the prior written consent of the other party.

8. **Attorney's Fees.** In the event any declaratory or other legal or equitable action is instituted between the Grantor and the Grantee in connection with this Agreement, the prevailing party shall be entitled to recover from the losing party all of its costs and expenses, including court costs, expert witness fees and reasonable attorneys' fees, and all fees, costs and expenses incurred on any appeal or in collection of any judgment.

9. **Entire Agreement.** This Agreement and its exhibits, together with the Water Rights Approval, constitute the entire agreement between the parties hereto pertaining to the subject matter hereof, and the final, complete and exclusive expression of the terms and conditions thereof. All prior agreements, representations, negotiations and understanding of the parties hereto, oral or written, express or implied, are hereby superseded and merged herein.

10. LIQUIDATED DAMAGES. GRANTOR ACKNOWLEDGES THAT GRANTEE IS ENTERING INTO THIS AGREEMENT FOR THE EXPRESS AND EXCLUSIVE PURPOSE OF GROUNDWATER PRESERVATION. IF GRANTOR COMMENCES OR RE-COMMENCES ANY ACTIVITY ON THE PROPERTY IN VIOLATION OF THIS AGREEMENT, THE GRANTOR SHALL PAY TO GRANTEE AS LIQUIDATED DAMAGES, AND NOT AS A PENALTY, THE AMOUNT OF \$200 PER OCCURRENCE. FOR PURPOSES OF THIS SECTION 11, EACH DAY THAT GRANTOR COMMENCES OR RE-COMMENCES ANY ACTIVITY ON THE PROPERTY IN VIOLATION OF THIS AGREEMENT SHALL CONSTITUTE A SEPARATE OCCURRENCE. EACH DAY THAT SELLER PLACES IN SERVICE, OPERATES AND/OR UTILIZES ANY WELL ON THE PROPERTY SHALL

CONSTITUTE A VIOLATION OF THIS AGREEMENT AND SHALL FURTHER CONSTITUTE A SEPARATE OCCURRENCE FOR PURPOSES OF THIS SECTION 11.

THE PARTIES HERETO ACKNOWLEDGE THAT THEY HAVE READ AND UNDERSTAND THE LIQUIDATED DAMAGES PROVISION CONTAINED IN THIS SECTION 11 AND AGREE TO BE BOUND BY ITS TERMS. FURTHER, THE PARTIES HERETO ACKNOWLEDGE THAT THE GRANTEE IS ENTERING INTO THIS AGREEMENT FOR THE SPECIFIC PURPOSE OF PRESERVING GROUNDWATER AND THAT THE LIQUIDATED DAMAGES AMOUNT SPECIFIED IN THIS SECTION 11 IS A REASONABLE ESTIMATE, UNDER THE CIRCUMSTANCES EXISTING ON THE DATE OF EXECUTION OF THIS AGREEMENT, OF WHAT GRANTEE'S DAMAGES WOULD BE IN THE EVENT OF A DEFAULT BY GRANTOR.

GRANTOR'S INITIALS: _____

DISTRICT'S INITIALS: _____

11. **Notices.** Any notice, request, demand, consent, approval or other communication required or permitted hereunder or by law shall be validly given or made only if in writing and delivered in person to an officer or duly authorized representative of the other party, or deposited in the United States mail, duly certified or registered (return receipt requested), postage prepaid, or delivered through another reasonably acceptable method, and addressed to the party for whom intended, as follows:

If to Grantor: T2 Borrego LLC
4582 South Ulser Parkway, Suite 410
Denver, CO 80237
Attention: Legal Department

If to Grantee: Borrego Water District
806 Palm Canyon Drive
PO Box 1870
Borrego Springs, CA 92004
Attention: General Manager

Any party may from time to time, by written notice to the other, designate a different address which shall be substituted for that specified above. If any notice or other document is sent by mail as aforesaid, the same shall be deemed fully delivered and received forty-eight (48) hours after mailing as provided above.

12. **Counterparts.** This Agreement may be executed in counterparts, each of which when executed shall, regardless of the date of its execution and delivery, be deemed an original, and all counterparts together shall constitute one and the same instrument.

13. **Binding Upon Successors.** The terms and conditions, covenants, and agreements set forth herein shall apply to and bind the heirs, executors, administrators, assigns and successors of the parties hereof.

[THE BALANCE OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth hereinabove.

GRANTOR:
T2 BORREGO, LLC, a Colorado limited liability company

By: _____

GRANTEE:
BORREGO WATER DISTRICT, a public corporation

By: _____

ATTEST:

District Secretary

APPROVED AS TO FORM:

District General Counsel
Morgan L. Foley
MCDOUGAL LOVE ECKIS BOEHMER & FOLEY

ATTACHMENT A

PROPERTY DESCRIPTION

That real property located in the unincorporated portion of the County of San Diego, State of California, and described as follows:

APN 140-070-05-00

THE NORTHWEST ONE QUARTER OF THE SOUTHEAST ONE QUARTER OF SECTION 8, TOWNSHIP 10 SOUTH, RANGE 6 EAST, SAN BERNARDINO MERIDIAN BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF THE SAID NORTHWEST ONE QUARTER OF THE SOUTHEAST ONE QUARTER OF SECTION 8; THENCE AROUND THE BOUNDARY OF THE SAID NORTHWEST ONE QUARTER OF THE SOUTHEAST ONE QUARTER OF SECTION 8 AS FOLLOWS:

SOUTH 00°09'33" EAST 1252.90 FEET TO THE SOUTHEAST CORNER; THENCE NORTH 87°22'56" WEST 1314.38 FEET TO THE SOUTHWEST CORNER; THENCE NORTH 00°12'59" WEST 1256.91 FEET TO THE NORTHWEST CORNER; THENCE SOUTH 87°12'39" EAST 1315.84 FEET TO THE POINT BE BEGINNING.

APN 140-070-11-00

THE SOUTH ONE HALF OF THE SOUTH ONE HALF OF THE NORTHEAST ONE QUARTER OF THE SOUTHEAST ONE QUARTER OF SECTION 8, TOWNSHIP 10 SOUTH, RANGE 6 EAST, SAN BERNARDINO MERIDIAN BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF THE SAID NORTHEAST ONE QUARTER OF THE SOUTHEAST ONE QUARTER OF SECTION 8; THENCE AROUND THE BOUNDARY OF THE SAID SOUTH ONE HALF OF THE SOUTH ONE HALF OF THE NORTHEAST ONE QUARTER OF THE SOUTHEAST ONE QUARTER OF SECTION 8 AS FOLLOWS:

NORTH 87°22'56" WEST 1314.39 FEET TO THE SOUTHWEST CORNER; THENCE NORTH 00°09'33" WEST 313.23 FEET TO THE NORTHWEST CORNER; THENCE SOUTH 87°20'22" EAST 1314.75 FEET TO THE NORTHEAST CORNER; THENCE SOUTH 00°06'05" EAST 312.23 FEET TO THE POINT BE BEGINNING.

ALL PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF COLORADO)
) SS:
COUNTY OF DENVER)

On _____, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of Colorado that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

(SEAL)

ALL PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
) SS:
COUNTY OF SAN DIEGO)

On _____, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

(SEAL)

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by written groundwater easement dated _____, 2016, from **T2 BORREGO, LLC**, a Colorado limited liability company to **BORREGO WATER DISTRICT**, a public corporation, is hereby accepted by the undersigned officer on behalf of the Borrego Water District pursuant to authority conferred by Resolution No. _____ of the Borrego Water District adopted on _____ and the Borrego Water District consents to recordation thereof by its duly authorized officer.

Dated this _____ day of _____, 2016.

By: _____
Its:

By: _____
Its: Secretary

(SEAL)

REQUEST FOR ISSUANCE OF WATER CREDIT CERTIFICATE

(Form 104)

Please issue a Water Credit Certificate(s) to the name(s) listed below. **A notary acknowledgment must accompany this form.**

Property location: 808 Di Giorgio Road, Borrego Springs, CA 92004

APN: 140-070-05 and 140-070-11

of credits See below

Name of person(s) in which the Water Credit Certificate should be issued and amount(s) (not to exceed the aggregate total amount awardable pursuant to Section 4.c. of the Water Credit and Mitigation Policy for the property)

T2 Borrego LLC 196 AG-2
Name # of credits

4582 S. Ulster Street Parkway, Suite 410, Denver, CO 80237
Address

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* 08/18/2016 _____
Date

Name of applicant*/agent* _____
Date

Name of applicant*/agent* _____
Date

Name of applicant*/agent* _____
Date

*All legal owners of the property must sign

For Borrego Water District Use Only

Administrative charges of District:	Paid
\$500.00 per transfer	Total Due: \$ 500.00

BOARD OF DIRECTORS MEETING –SEPTEMBER 20, 2016

AGENDA BILL ITEM - III

September 13, 2016

TO: Board of Directors, Borrego Water District

FROM: Geoff Poole, General Manager

SUBJECT: AGENDA ITEM III – Informational Items

Following is a brief summary of the Informational Items listed on the Agenda:

1. **Update on Construction of 800 Tank Replacement -Verbal, G. Holloway.** Greg and David Dale have been working on the 800 tank replacement and Greg will provide a verbal update.
2. **BWD Website Update – Verbal, G. Poole –** Due to changes in the BWD Billing and Accounting software, the District website can now be developed using this system. An updated BWD website is scheduled to be completed using the new software in late October.
3. **Operations & Maintenance Committee Report – Verbal, Directors Tatusko/Delahay** – 2 O and M Committee meetings have been held since the last Board Meeting to primarily focus on CIP needs and related issues. Directors Tatusko and Delahay will provide their comments.
4. **Recent BWD Election Results:** Director Ray Delahay and Harry Ehrlich were the only two who filed for the 2 open BWD Board positions, so they will be appointed to BWD Board effective November, 2016 for a 4-year term.
5. **Stewardship Council Correspondence Regarding BVGB GSP –** Director Brecht received the attached correspondence for the BWD Board

TO: Borrego Water District Board of Directors

County of San Diego SGMA Project Team c/o Jim Bennett

Date: September 15, 2016

DELIVERY VIA EMAIL

THE BORREGO VALLEY STEWARDSHIP COUNCIL CALLS FOR EMBRACING SUSTAINABLE GROUNDWATER MANAGEMENT ACT (SGMA) REQUIREMENTS BY CONSIDERING THE FOLLOWING:

Subsequent to the submittal of the Borrego Water District's (District's) and San Diego County's (County's) notice to become Groundwater Sustainability Agencies (GSA's), the Borrego Valley Stewardship Council (Stewardship Council), has engaged with representatives of San Diego County's Department of Planning and Development Services (P&DS), and expressed the following concerns and recommendations:

1. Anza-Borrego Desert State Park (ABDSP) and the town of Borrego Springs together serve as a regional economic engine for world-class tourism that has not yet been fully recognized.
2. There is an historic divide between ABDSP and the town of Borrego Springs that dates back to the vision of Borrego Valley founders such as James Copley and Alfonse A. Burnand who saw the Valley as a "donut hole" in the middle of the Park—a donut hole distinct from the Park and ripe for developing a San Diego version of Palm Springs. At the core of the 1950's-style donut hole vision is a water intensive economy dependent on agriculture, real estate development, speculation, and land sales.
3. The creation of the Stewardship Council and its adoption of a Geotourism Charter were spurred by the current water crisis in the Borrego Valley. The Council's intention is to bridge the divide between the State Park and Community by taking a fresh look at a sustainable economy in the context of the realities of water availability, clean air, habitat preservation and human health.
4. From a series of community workshops sponsored by the Stewardship Council it has become clear that tourism and its related development, not land speculation and residential subdivisions, must become the central economic driver for Borrego Springs, not simply to comply with SGMA, but to survive as a community.

5. There is a growing desire to embrace and foster Borrego Spring as “The Heart of the Park” as opposed to a “donut hole for development.”
6. Working with representatives from the National Geographic’s Geotourism program the Stewardship Council has begun to facilitate a community dialogue to define how best to develop a “Heart of the Park” campaign. Central to the campaign are developing Geotourism as the primary source of economic growth and strategically positioning Borrego Springs as a village of hamlets with a commercial core that serves as the hospitality hub for a world-class natural science destination.
7. Strengthening partnership affiliations with the National Geographic Society, the California State Parks, the UNESCO World Heritage program, and the San Diego Tourism Authority are central to cultivating a new Geotourism economy.
8. The Groundwater Sustainability Plan (GSP) that will be created by the GSA’s must address and move beyond the 1950’s-inspired land use assumptions that are enshrined in the current Borrego Valley Community Plan.
9. The GSP must also clearly reflect the need to evolve the current business promotional practices from a traditional Chamber-of-Commerce-style marketing plan to a Geotourism inspired Destination Management Organization (DMO) – joining the Anza-Borrego region to a network of world-class, UNESCO-recognized, sustainable destinations.

The District has pointed out that the implementation of SGMA in the Borrego Valley will impact more than hydrology and land use; and that in fact, the implementation of SGMA will have broad economic, cultural, and social implications for the Anza-Borrego region. Simply stated, there are many possible pathways to arrive at a SGMA-mandated, “*no undesirable results*” reduction in water usage in the Borrego Valley, some of which would be economically deleterious, some of which could result in a vibrant economic engine for the entire region.

Understanding that both the County and the District have limited resources to address all the complex and interdependent issues involved in creating a GSP for Borrego Springs in a holistic fashion, the Stewardship Council has not only volunteered to be one of the members of the GSP Advisory Group, but also has offered to serve as a neutral convener to help ingrate a fresh look at land use for a sustainable economy for the Borrego Valley.

Sincerely,

Suzanne Lawrence, David Garmon, Dick Troy, and Travis Huxman
Co-Conveners, Borrego Valley Stewardship Council

BACKGROUND ON THE FORMATION OF THE BORREGO VALLEY STEWARDSHIP COUNCIL

The Borrego Valley Stewardship Council is a convening entity, guided by the Borrego Valley Geotourism Charter, that regularly brings together a collection of civic and community organizations, government officials, agency staff, academic institutions, and interested citizens to address major issues of concern impacting the Park, the Valley, and residents. The Council was formed in 2014 in cooperation with the National Geographic Society's Geotourism Program and the University of California, Irvine Steele/Burnand Anza-Borrego Desert Research Center.

In 2013 a group of volunteers began working with University of California, Irvine to spearhead a series of community workshops focused on looking holistically at economic health of the Borrego region. While it was acknowledged that the number one economic driver was water availability both in terms of quality and quantity, it was agreed that not only the health of the economy, but the future of both the community of Borrego Springs and the Anza-Borrego Desert State Park were dependent on cultivating the capacity to address the interrelated stewardship of the following factors: water, air quality, biodiversity, sustainable economy, land-use governance and human health.

In April, 2014 Jonathan Tourtellot, consultant to the National Geographic Society and founder of the National Geographic's Geotourism initiative, came to Borrego Springs to introduce the National Geographic's Geotourism Initiative to Borrego Springs. The Geotourism program uses a stakeholder-driven process to create communication tools for destinations, to build a local constituency of destination ambassadors and storytellers, and to work with these individuals to support stewardship and promotion of the destination.

The results of the April 2014 workshop were:

- Adoption of a Geotourism Charter
- Establishment of a forward-thinking Stewardship Council
- Commitment to a Destination Borrego Springs Geotourism-inspired Promotional Campaign
- Dedication to seeking recognition for the Anza Borrego Desert State Park as a World Class Tourist Destination

The Borrego Valley Stewardship Council's mission statement is as follows: "Borrego Springs seeks to be a model desert community in terms of sound economic planning, beneficial year-round tourism, world-class life-long learning, and exemplary stewardship of our cultural, social, and environmental heritage."

The Borrego Valley Stewardship charter has been endorsed by the following institutions: the Anza-Borrego Desert State Park, the Borrego Springs Chamber of

Commerce, the University of California, Irvine, the Borrego Water District, the Borrego Springs Unified School District, the Anza-Borrego Foundation, the Anza-Borrego Desert Natural History Association, the Tubb Canyon Desert Conservancy, the de Anza Country Club, the Borrego Art Institute,

In November 2015 we continued this important work with a progressive look at Governance. With two recognized leaders in progressive governance research we explored the lessons learned from the Crown of the Continent's Geotourism effort and how those lessons might be applied in Borrego Springs.

The next Borrego Valley Stewardship Council workshop will focus on the realities of complying with SGMA and the potential for a Geotourism based solution.