

**Borrego Water District Board of Directors  
Special Meeting  
January 14, 2025 @ 9:00 A.M.  
806 Palm Canyon Drive  
Borrego Springs, CA 92004**

The Borrego Water District Board of Directors meeting as scheduled will be conducted in person and in an electronic format please note BWD is providing remote attendance options solely as a matter of convenience to the public. BWD will not stop or suspend its in-person public meeting should a technological interruption occur with respect to the GoTo meeting or call-in line listed on the agenda. We encourage members of the public to attend BWD meetings in-person at the address printed on page 1 of this agenda. Anyone who wants to listen to or participate in the meeting remotely is encouraged to observe the GO TO MEETING at: <https://meet.goto.com/766199181>

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**I. OPENING PROCEDURES -**

- A. Call to Order
- B. Pledge of Allegiance
- C. Directors' Roll Call: President Dice, Vice President Baker, Directors Duncan & Moran.
  - 1. Dice Address: 2022 Quintain Dr Borrego Springs CA 92004
- D. Approval of Agenda
- E. Comments from the Public & Requests for Future Agenda Items (may be limited to 3 min)
- F. Comments from Directors
- G. Correspondence Received from the Public - None

**II. ITEMS FOR BOARD CONSIDERATION AND POSSIBLE ACTION -**

- A. Select Candidate for Open BWD Board Position – S Anderson
- B. Swear in Selected Candidate – K Dice
- C. Fiscal Year 2023-2024 Audit – J Clabaugh & Auditor
- D. CSR Task Outsourcing – J Clabaugh
- E. Borrego Springs Subbasin Watermaster Board – VERBAL D Duncan/K Dice/T Driscoll
  - 1. Approve Agreements
  - 2. Update on Board Activities
  - 3. Update on Technical Advisory Committee Activities

**III. BOARD COMMITTEE REPORTS, IF NEEDED**

**STANDING:**

- A. Operations and Infrastructure: Duncan/Baker
- B. Budget and Audit: Dice/Moran
- C. ACWA/JPIA Insurance: Dice/Johnson

**AD HOC:**

- A. Prop 68 Implementation: Baker/Johnson
  - i. Bri Fordem: w/ Prop 68 Project Update (formerly Civicwell, now BWDs)
- B. Public Outreach: Dice/Johnson:
- C. Grants: Dice/Johnson
- D. Cyber Security/Risk Management: Baker
- E. T2 Developers Agreement: Baker/Duncan
- F. Finance/Prop 218: Baker/Moran
- G. Borrego Springs Basin Water Quality: Moran/Johnson
- H. Automated Metering Implementation: Baker/Moran

#### **IV. STAFF REPORTS**

- A. Waste Water: December 2024 Monthly Report – R Martinez
  - a. Discharge Permit Requirements Update – G Guillen, N2W
- B. Water: December 2024 Monthly Report – A Asche
- C. Finance:
  - a. November 2024 Monthly Report – J Clabaugh
  - b. Sales Report thru Dec 2024 – J Clabaugh
  - c. Prop 68 Grant Update: Amendment II, Completion Reports – J Clabaugh
- D. Administration – D Del Bono, Verbal
- E. Legal Counsel – S Anderson, Verbal
- F. General Manager – G Poole, Verbal
  - 1. Notification of Award – EPA #1

#### **V. CLOSED SESSION:**

- A. Conference with Legal Counsel - Potential initiation of litigation pursuant to paragraph (4) of subdivision (d) of Section 54956.9: (Two (2) potential cases)
- B. Conference with Legal Counsel – Existing Litigation (Borrego Water District v. All Persons (Groundwater), Orange County Superior Court Case No. 37-2020-0000577
- C. Conference with Legal Counsel – Existing Litigation (John Thomas Doljanin v. Reuben Ellis, et al., S.D. Cal. Case No. 24 CV1689 BEN SBC).

#### **VI. CLOSING PROCEDURE:**

- A. The next Board Meeting is scheduled for 9:00 AM on February 18, 2025, to be available online and in person at 806 Palm Canyon Drive. See Board Agenda at [BorregoWD.org](http://BorregoWD.org) for details, Agenda information available at least 72 hours before the meeting.

AGENDA: January 14, 2025: The Borrego Springs Water District complies with the Americans with Disabilities Act. Persons with special needs should call Geoff Poole, General Manager – at (760) 767 – 5806 at least 48 hours in advance of the start of this meeting, in order to enable the District to make reasonable arrangements to ensure accessibility. If you challenge any action of the Board of Directors in court, you may be limited to raising only those issues you or someone else raised at the public hearing, or in written correspondence delivered to the Board of Directors (c/o the Board Secretary) at, or prior to, the public hearing.

All Documents for public review on file with the District's secretary located at 806 Palm Canyon Drive, Borrego Springs CA 92004. Any public record provided to a majority of the Board of Directors less than 72 hours prior to the meeting, regarding any item on the open session portion of this agenda, is available for public inspection during normal business hours at the Office of the Board Secretary, located at 806 Palm Canyon Drive, Borrego Springs CA 92004.

BORREGO WATER DISTRICT  
BOARD OF DIRECTORS MEETING  
JANUARY 14, 2025  
AGENDA ITEM II.A

January 2, 2025

TO: Board of Directors

FROM: Geoffrey Poole, General Manager

SUBJECT: Consideration of Selecting Candidate for Open BWD Board Position – S Anderson

**RECOMMENDED ACTION:**

Discuss candidate and appoint new Director for 2-year term

**ITEM EXPLANATION:**

Martha Deichler was the top vote getter in the November 24 BWD Board and BSUSD School Board elections. County election rules prohibit one person from holding multiple offices in a jurisdiction, including school and water Boards, therefore Martha resigned from BWD and will pursue the position on the school board. The BWD Board discussed these events at the December 2024 meeting and Staff informed the Board the required notice announcing the open seat was posted in 3 places two days after receiving Martha's resignation.

One response was received from interested individuals on or before 1-7-25: Diane Johnson. The information received from Diane is attached.

**NEXT STEPS**

1. Swear in selected candidates, next Agenda item.

**FISCAL IMPACT**

1. N/A

**ATTACHMENTS**

1. Resume – Diane Johnson

Diane E. P. Johnson  
PO Box 2457  
Borrego Springs CA 92004  
[depjohnson@aol.com](mailto:depjohnson@aol.com)

## EXPERIENCE

### Active civic volunteer

2004 to present

Provide guidance as Officer or Board Member of the following organizations:

- Anza-Borrego Foundation (past)
- Borrego Art Institute
- Borrego Community Resource Center
- Borrego Ministers Association
- Borrego Valley Stewardship Council
- Borrego Village Association
- Borrego Water District
- Rotary Club and Foundation of Borrego Springs
- St. Barnabas Episcopal Church, Vestry

### Editor, Craighead Publications

Researched and wrote country-specific reports for those living or working in Japan, Poland, Switzerland, and Turkey.

### Education Manager, Information Resources Group, Inc.

For the nursing-oriented database *RNdex*, created user documentation, courses, and workshops for nurses and nursing educators.

### Information Specialist, Norris Medical Library, University of Southern California

Led design, development, and testing of large in-house medical literature search system. Developed and taught hands-on classes on database searching; staffed busy reference desk.

### Systems Analyst, Mathtech Inc.

Under contract to the U.S. Nuclear Regulatory Commission, supported design and development of several user-friendly mainframe database systems in support of the NRC's Office of Congressional Affairs.

### Training Specialist, Infodata Systems, Inc.

Developed and taught courses on use of INQUIRE, a mainframe full-text and relational database management system.

### Head, User Liaison Group, Logicon Inc. MEDLARS III Project

Under contract to the National Library of Medicine, served as art of team developing an integrated online system to support all operations of the Library.

Head of Reference Services, Engineering and Math Sciences Library; Information Specialist, Pacific Southwest Regional Medical Library Service. University of California at Los Angeles Libraries

Planned, designed and taught workshops on online database searching for students and faculty. Staffed busy reference desks.

Manager, Information Resources, Biospherics Inc.

Provided research information support under contracts with the National Cancer Institute and the U.S. Environmental Protection Agency.

Director, Public Services, Frederick Cancer Research Center, National Cancer Institute

Provided online searching on several platforms in support of staff of 500 research scientists.

Information Specialist, Sociological Abstracts, Inc.

Created user manuals for firm's databases, *Sociological Abstracts* and *Language and Language Behavior Abstracts*. Designed and taught workshops.

Energy Information Specialist, Raytheon Service Corporation

Under contract to the Transportation Systems Center of the U.S. Dept. of Transportation, created and maintained special collection and database covering transportation-related energy and environmental topics.

## EDUCATION

M.S. Information Science, Simmons College

B.A. Linguistics and French, Brown University

BORREGO WATER DISTRICT  
BOARD OF DIRECTORS MEETING  
JANUARY 14, 2025  
AGENDA ITEM II.B

January 2, 2025

TO: Board of Directors

FROM: Geoffrey Poole, General Manager

SUBJECT: Swear in Selected Candidate – K Dice

**RECOMMENDED ACTION:**

Swear in selected candidate from previous agenda item

**ITEM EXPLANATION:**

President Dice will swear in the selected candidate.

**NEXT STEPS**

1. Notify the County of the selection

**FISCAL IMPACT**

1. N/A

**ATTACHMENTS**

1. None



BORREGO WATER DISTRICT  
BOARD OF DIRECTORS MEETING  
JANUARY 14, 2025  
AGENDA ITEM II.C

January 2, 2025

TO: Board of Directors  
FROM: Geoffrey Poole, General Manager  
SUBJECT: Fiscal Year 2023-2024 Audit – J Clabaugh & Auditor

**RECOMMENDED ACTION:**

Review and receive Annual Audit for FY 23-24

**ITEM EXPLANATION:**

BWDs new Auditor will be available to review the Attachments as well as answer any question from the Board/public.

**NEXT STEPS**

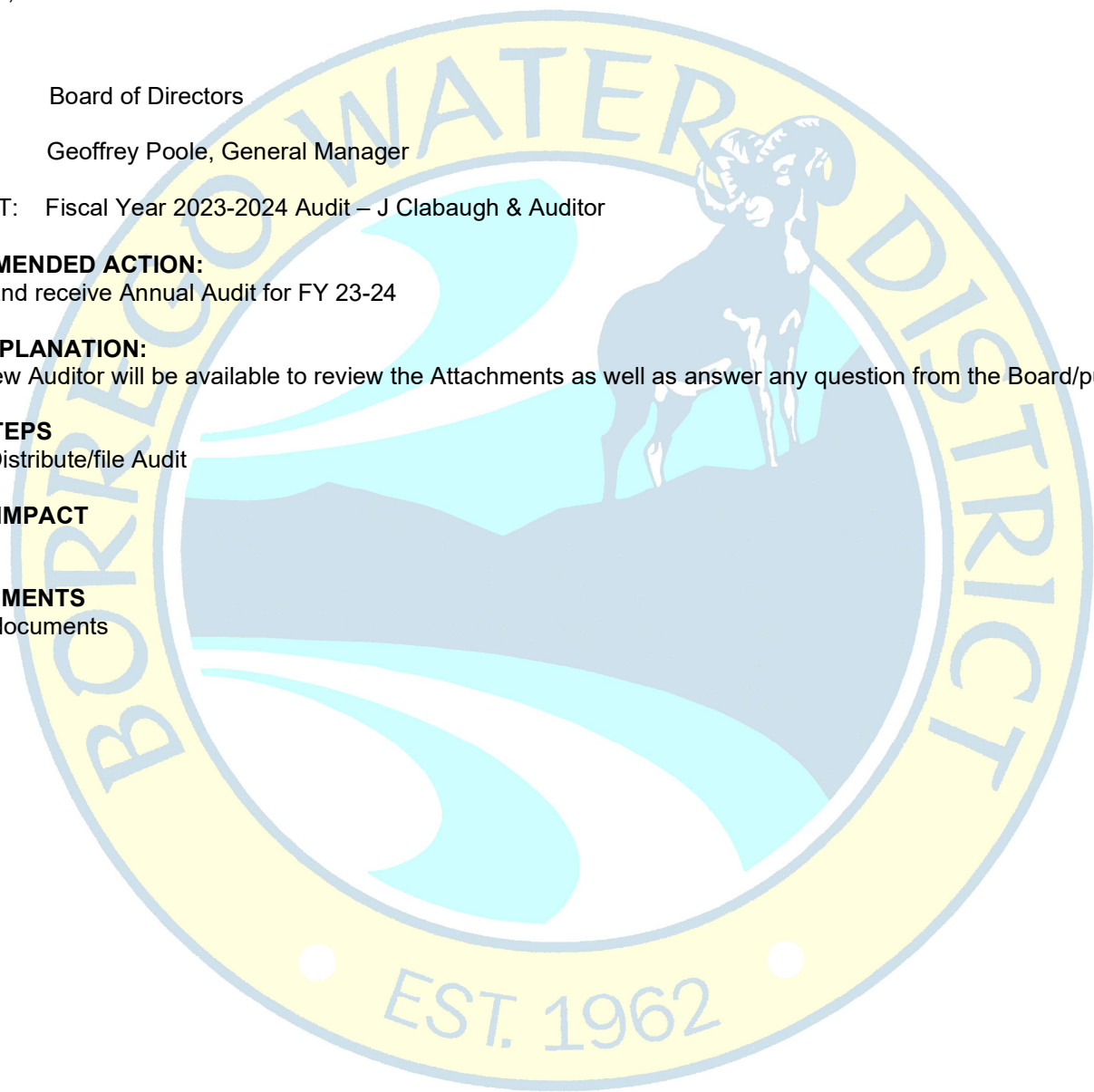
1. Distribute/file Audit

**FISCAL IMPACT**

1. N/A

**ATTACHMENTS**

1. Audit documents



**BORREGO WATER DISTRICT  
FINANCIAL STATEMENTS  
YEAR ENDED JUNE 30, 2024**



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**BORREGO WATER DISTRICT**  
**FINANCIAL STATEMENTS**  
**YEAR ENDED JUNE 30, 2024**  
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December 10, 2024

To the Honorable President and Members of the Board of Directors and Customers of the Borrego Water District:

State law requires that all general-purpose local governments and special districts publish each fiscal year a complete set of financial statements presented in conformity with Generally Accepted Accounting Principles (GAAP) and audited in accordance with generally accepted auditing standards by a firm of licensed certified public accountants. The Annual Financial Report of the Borrego Water District (BWD; District) for fiscal year ended June 30, 2024 is hereby submitted, as required, by David Farr, LLP., a firm of licensed certified public accountants, who has audited the District's financial statements.

GAAP requires that management provide a narrative introduction, overview, and analysis to accompany the financial statements in the form of the Management's Discussion and Analysis (MD&A) section. This Letter of Transmittal is designed to complement the MD&A and should be read in conjunction with it. The District's MD&A can be found immediately after the Independent Auditors' Report.

Management assumes full responsibility for the completeness and reliability of the information contained in this Transmittal Letter, the MD&A, the accompanying financial statements, and the Supplemental Schedules, based upon a comprehensive framework of internal controls that it has established for this purpose. Because the cost of internal controls should not exceed anticipated benefits, the objective is to provide reasonable, rather than absolute, assurance that the financial statements are free of any material misstatements.

The stated objective of the independent audit is to provide reasonable assurance that the financial statements of the District for the fiscal year ended June 30, 2024 are free of material misstatements. The independent audit involved examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements; assessing the accounting principles used and significant estimates made by management; and evaluating the overall financial statement presentation. The independent auditor concluded based upon the audit, that there was a reasonable basis for rendering an unqualified opinion that the District's financial statements for the fiscal year ended June 30, 2024 are fairly presented in conformity with GAAP. The Independent Auditors' Report is presented as the first component of the financial section of this year's audit report.

## **PROFILE OF THE DISTRICT**

The District was established in 1962 as a State of California special district (Water Code § 35565) to provide water and sewer services, flood risk management and gnat abatement for areas in the Borrego Springs community. The District acquired neighboring Borrego Springs Water Company in 1997 and in 2009 acquired Borrego Springs Park Community Services District. The present size of the District's service area is approximately 50 square miles. Borrego Springs is an unincorporated destination community of approximately 3,500 full-time and approximately 8,000 winter residents, located in a remote northeast corner of San Diego County, approximately 90 miles drive from San Diego and 87 miles drive from Palm Springs.

Borrego Springs is surrounded on all sides by the Anza-Borrego Desert State Park (the Park). The Park, which encompasses over 248,880 hectares (615,000 acres) in and around the Borrego Valley, was established in 1933 to protect this unique desert environment. The military presence of both the Army and Navy during World War II brought

the first paved roads and electricity to Borrego Springs. After the war, developers subdivided the area, attempting to create a resort community by capitalizing on the tourism generated by the Park. The Park is the largest state park in California. It was designated as a National Natural Landmark in 1974 and a Biosphere Reserve in the 1980's by the United Nations.

The Park contains approximately 85% of State designated wilderness area within California and is approximately the size of Rhode Island. The Park attracts more than 500,000 visitors to the region on an average year. Borrego Springs can welcome more than a million visitors to its community on a super bloom year, as in the springs of 2017 and 2019. An economic study developed for the Anza-Borrego Foundation (ABF) estimates the revenue to the region generated by visitation to the Park during an average year is approximately \$40 million annually (BBC Consulting, 2012).

### ***Infrastructure***

The District has 9 production wells with a replacement cost of approximately \$2,000,000 each. These production wells are located primarily in the Central Management Area of the groundwater basin and are connected to approximately 100 miles of distribution lines. The District's water system serves approximately 2,059 residential, commercial, institutional, and irrigation customers. The District currently delivers approximately 1,500 acre-feet (489 million gallons) annually to its customers. The District also provides sewer and wastewater treatment services to approximately 830 customers located primarily in the Town Center, Club Circle and Rams Hill developments. The District's flood control authority is presently exercised only at Rams Hill. The estimated present replacement cost value of the District's water, sewer and wastewater treatment facilities infrastructure is approximately \$100,000,000 in 2024 dollars.

### ***Governance***

A five-member Board of Directors work as a team to govern the affairs of the District. The board is elected at large by the registered voters residing within the District's boundaries, with vacant positions that occur between elections appointed by the existing board and during election years by the San Diego County Board of Supervisors if there is no competition for a seat on the board. The directors, who are elected or appointed, are residents and take the job of representing their constituents seriously.

The Board Members, who serve four-year staggered terms, are responsible for establishing the direction of the District through adopting policies and ordinances for the smooth running of the District; ensuring that sound fiscal policy exists; that management practices and controls are in place for accountability; adopting the annual budget; approving personnel policies and organizational structure; hiring the District's General Manager; and hiring other advisors to the board, such as the District's legal counsel, financial and other advisors, as may be required. The General Manager is responsible for carrying out the policies and ordinances approved by the District's board, for overseeing the day-to-day operations of the District, and for meeting the customer service and financial objectives set forth in the annual operating and capital improvements projects (CIP) budget approved by the board.

### ***Groundwater Supply, Usage & Availability***

The Borrego Springs Subbasin (Subbasin) of the Borrego Valley Groundwater Basin is located at the western-most extent of the Sonoran Desert. The Borrego Springs community overlying the Subbasin relies on local groundwater resources from the Subbasin as the sole source of municipal drinking water, domestic supply, and agricultural irrigation.

The California Department of Water Resources (DWR) has designated the 98-square-mile Subbasin as critically overdrafted. Chronic lowering of groundwater levels in the Subbasin's three aquifers has historically occurred and is ongoing. The critical overdraft annually exceeds the long-term sustainable yield of the Subbasin. Presently, there are no economically viable alternative sources of imported water supply.

The primary source of water to the Subbasin is surface water (storm water and ephemeral stream flow) that flows into the valley from adjacent mountain watersheds and infiltrates within the valley. The contributory watersheds are

approximately 400 square miles (sq. mi) and much larger in area than the approximately 98 sq. mi (62,776 acres) Subbasin. Direct recharge by rainfall within the valley is very low compared to surface water inflows as the annual rainfall averages 5.8 inches per year (in/yr). Stream and flood flows from the adjacent watersheds provide the bulk of the water that enters the Subbasin.

The current hydrologic conceptual model for the aquifer system is that it consists of three unconfined aquifers; the upper, middle and lower aquifers. The upper and middle aquifers are the primary sources of groundwater currently and are typically comprised of unconsolidated sediments. However, with time, the upper aquifer has already become or is expected to become dewatered and the lower aquifer will become a more important source of water as overdraft continues. These three aquifers, Pleistocene (2.5 million years ago) to Holocene (11,700 years ago) era fossil water deposits, are the community's sole source of water. In modern times, the upper and middle aquifers have been the principle sources for groundwater pumping in Borrego Valley.

Since 1945, when large scale pumping began in the Borrego Springs area following World War II, the cumulative volume loss within the Subbasin (which accounts for both annual inflows and outflows) has been approximately 520,000 acre-feet (AF), equivalent to about one-third of the groundwater volume originally present.

At this time there are no plans to import water from outside the Borrego Valley due to the economic cost of a pipeline and the uncertainty of available and affordable imported supply from the Colorado River. Readers may consult the *Southeast California Regional Basin Study Evaluates Water Supply and Demand in Borrego, Coachella and Imperial Valleys* by the U.S. Bureau of Reclamation for more information. Importation of new supply from nearby groundwater basins has also been ruled out due to availability of potential adequate supply and cost. Readers may consult the *Borrego Spring Pipeline Feasibility Study: Final Report* by the U.S. Environmental Protection Agency – Region 9 (2012).

The net replenishment (natural recharge less outflows) of the basin of approximately 7,900 acre-feet per year (AFY) annually is based on historical data (1945-2015). During this period the actual annual natural net recharge was highly variable, fluctuating from less than 1,000 AFY during long dry periods to more than 25,000 AFY in exceptionally wet years.

The current rate of groundwater pumping produces an average annual basin storage change (overdraft) of approximately 12,200 AF of water per year based on estimated current withdrawal rates using evapotranspiration rates by crop type for agricultural and recreational withdrawals and municipal metered usage and the US Geological Survey's (USGS) calculated average annual net replenishment rate. Based on the historical data from 66 years, groundwater levels have declined as much as 126 feet (average of nearly 2 feet per year) in the northern part of the Subbasin and about 87 feet (average of 1.3 feet per year) in the west-central part. In the southeastern part of the Subbasin where less groundwater has been pumped, groundwater levels have remained relatively stable during the same time period. At the current rate of use, the groundwater supply from the Subbasin is not sustainable.

Presently, the Subbasin is usefully divided into three Basin Management Areas (South, Central, North) based on differences in transmissivity (how fast groundwater flows from one area to the next) and water quality. Depending on the Management Area location, wells are often screened primarily in the three different aquifers of the basin and exhibit different water quality characteristics. Readers should review the USGS, *Hydrogeology, Hydrologic Effects of Development, and Simulation of Groundwater Flow in the Borrego Valley, San Diego County* (2015) for more complete information.

Sustaining groundwater use requires considering both water quantity and quality. As water levels continue to drop in the basin, water quality may also decline, which may require additional advanced treatment for municipal uses. Thus, the cost of municipal water supply for municipal uses will likely continue to increase over time.

### ***Sustainable Groundwater Management Act of 2014 (SGMA)***

The overarching aim of SGMA is to establish and achieve a *sustainability goal* for the Subbasin through the development and implementation of a Groundwater Sustainability Plan (GSP) by the Groundwater Sustainability Agency (GSA) for the

Subbasin or alternatively by a Watermaster implementing a *Physical Solution* under a court Stipulated Judgment. Both are valid options under SGMA. In enacting SGMA, the Legislature also set forth more specific purposes underlying the legislation, which include providing for sustainable management of groundwater, avoiding six designated *undesirable results* to groundwater resources that could occur without proper management, enhancing the ability of local agencies to take action to protect groundwater resources, and preserving the security of water rights to the greatest extent possible consistent with sustainable management of groundwater.

As defined by SGMA: “A basin is subject to critical overdraft when continuation of present water management practices would probably result in significant adverse overdraft-related environmental, social, or economic impacts.” Thus, the intent of the GSP is to achieve long-term groundwater sustainability by restoring balance to (i.e., reaching *sustainability*) in the Subbasin no later than January 2040, as mandated by SGMA.

The County of San Diego and BWD entered into a Memorandum of Understanding (MOU) for forming a multi-agency Borrego Valley Groundwater Sustainability Agency (GSA) to develop a GSP for the Subbasin. The intent of this GSP was to meet the requirements of SGMA. To this end, the GSP includes the scientific and other background information about the Subbasin required by SGMA and its implementing regulations. The GSP was also intended to provide a roadmap for how sustainability is to be reached in the Subbasin by January 2040. Information regarding the GSP including stakeholder process is available from the County’s website: <https://www.sandiegocounty.gov/content/sdc/pds/SGMA/borrego-valley.html>.

In October 2019, the County informed DWR of its decision to decline further participation as a GSA for the implementation phase of SGMA effective December 31, 2019. On January 30, 2020, pursuant to California Water Code (CWC) Sections 10733.6 and 10737.4, BWD submitted to DWR a proposed Stipulated Judgment including a groundwater management plan (GMP), constituting a *Physical Solution* for DWR’s review and approval to serve as an alternative to a GSP for the Subbasin in compliance with SGMA. The pumpers of the Subbasin representing approximately 92% of annual extractions agreed to a Settlement of water rights also applied to the California Superior Court (Court) for a Stipulated Judgement (Judgement). This Stipulated Judgement was approved by the Court on April 8, 2021 under which the Subbasin pumpers have agreed to implement the *Physical Solution* under management of the Borrego Springs Watermaster. The Watermaster has been fully functional since 2021 and under its guidance, all non de minimus pumpers have been metered, groundwater elevation and quality monitoring program expanded, re evaluation of the Basin sustainable yield (increased from 5,700 to 7,952 afy) and annual reports submitted.

Under the Stipulated Judgement, Annual Reports for the Borrego Springs Groundwater Subbasin have been prepared for submittal to the California State Department of Water Resources (DWR) as of April 1, 2020 per Article 7, Section 356.2—Annual Reports, of the California Code of Regulations.<sup>1</sup> These reports has been prepared on behalf of the stipulating parties to the groundwater rights adjudication for the Borrego Springs Groundwater Subbasin (Subbasin) (DWR Basin No. 7.024.01) of the Borrego Valley Groundwater Basin. GSA reports are available on the Watermaster website at [www.borregospringswatermaster.com](http://www.borregospringswatermaster.com).

### **California's Ongoing Drought**

Because the Borrego Valley relies solely on the Subbasin for its municipal, recreational, and farming irrigation uses, the California drought has produced no physical impairment of water supply for BWD and is not expected to do so in the near future. Although the California drought is declared over at this time, Borrego water users continue to make investments to use water more efficiently and to engage in water conservation programs. The desert environment provides an ongoing impetus to use water wisely.

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<sup>1</sup> Title 23, Division 2, Chapter 1.5, Subchapter 2 of the California Code of Regulations, which is commonly referred to as the Groundwater Sustainability Plan Regulations (GSP Regulations).

### ***Capital Improvements Program (CIP)***

BWD updates its 10-year CIP project costs annually in consultation with its Operations Manager, WWTP Operator and District Engineer. Detail of the projects and costs incurred are included in BWD's annual budget.

### ***Cyber Security Risk Management***

BWD has a robust cybersecurity policy and engages in ongoing and periodic intrusion detection services performed by a the US Department of Homeland Security's Cyber Security and Infrastructure Agency(CISA). In addition, the District conducts regular staff trainings on various hacking schemes and has secured a robust Cyber Security Insurance Policy thru ACWA-JPIA.

### ***Flood Risk Management***

BWD has a flood risk reduction assessment policy and engages a professional engineering firm to periodically assess that BWD's flood risk reduction facilities at Rams Hill are maintained to meet the specific flood risk objectives for such facilities.

### ***Groundwater Water Levels and Water Quality Changes Risk Management***

The groundwater level monitoring network includes 23 dedicated monitoring wells and 27 extraction wells. Of the 50 wells in the network, 46 are monitored for groundwater levels, 30 are monitored for water quality, and 19 are monitored for production. Manual groundwater level measurements are collected in the spring and fall of each year to track seasonal groundwater trends. Groundwater quality monitoring includes sampling, on average, 30 wells on a semi-annual basis to determine and track groundwater quality trends. Wells are monitored for potential Contaminants of Concern (COCs). The COCs include arsenic, fluoride, nitrate, sulfate and total dissolved solids (TDS). During recent years, BWD's well ID4-18 in the North Management area has shown an increasing trend in nitrate levels. Although still below drinking water standards, BWD continues to closely monitor water quality and is currently exploring avenues for future mitigation.

## **FACTORS AFFECTING FINANCIAL CONDITION**

The information presented in the financial statements is perhaps best understood when it is considered from the broader perspective of the specific environment within which the District operates.

### ***Local Economy***

Located in an arid desert climate, Borrego's present economy has been made possible by the overuse of groundwater supplies that have been depleted far faster than those supplies can be replenished. This is true of the agricultural, recreational and municipal water use sectors that bring on average 500,000 visitors to the Borrego Valley annually. Thus, uncertainty over the costs of long-term water supply, potential future costs for treating groundwater to meet safe drinking water quality standards due to the critical overdraft resulting in degraded water quality, and the economic impacts of meeting SGMA objectives for the Subbasin may be slowing investments for new development in the Valley.

Under the Stipulated Judgement, a court order effective April 8, 2021, the Borrego Springs Watermaster was formed and is required to collect fees from all major pumpers of the basin according to their BPA(Baseline Pumping Allocation). For Water Year 2023 this amount was \$45.73/Acre Foot and \$26.59/Acre Foot for Water Year 2024. In Fiscal Year 2023 the District closed on the purchase of a portion of 420 acres of citrus groves at the north end of DiGiorgio Road and committed to purchase another 300 acres over the following 8 years. \$5.5 M is budgeted for water right purchase and land fallowing activities. Once the citrus is fallowed, BWD will add 670 AF to its existing 2040 water rights of approximately 900 afy. The District has revised its revenue requirements and is planning to build reserves for BPA acquisition and payback of cash reserves used for the purchase.

Borrego Springs is considered a Disadvantaged Community (SDAC) and an Economically Distressed Area (EDA). An EDA is defined as a geographic area with a population of 20,000 or less with an annual MHI that is less than 85% of the California statewide MHI, and with at least one of the following conditions, as determined by the Department of Water Resources (DWR): a) financial hardship; b) unemployment rate at least 2% higher than the statewide average; or c) low population density.



### ***Previous Fiscal Years Spending by the District***

The District has largely addressed the financial situation that was inherited from the 2007 -2010 Board and general manager's decisions that between FY 2008 – FY 2011 spent more than \$6.3 million of the District's \$6.5 million cash reserves and potentially obligated the District to spend another \$7.0 million for unfunded projects. These spending and future obligations resulted in the District no longer having the financial stability to obtain new debt to pay for necessary long-term capital improvement projects (CIP). With the cancellation of many of the future obligations incurred by the 2007 board, reduction of annual operating and maintenance (O&M) expenses by more than \$1.2 million, careful cash flow management, and Proposition 218 approved rate increases during the period FY 2012-2021, the District then had sufficient annual cash flow and cash reserves by FY 2018 for necessary borrowing to issue \$5.5 million in bonds to fund needed CIP for FY 2019-2021.

Due to historically low interest rates, in October of 2022, BWD was able to refinance the remaining principal of the \$5.5 million Pacific Western Bond and issued an additional \$3 million with Capitol One Public Financing. About \$1.5 million is allocated to complete construction of new production well ID5-15 and to perform necessary rehab and repairs on various existing production wells. The remaining \$1.5 million was utilized to purchase additional BPA in FY23.

The District's Board believes timely investments in CIP are necessary to produce the lowest economic cost provision of municipal water, sewer and wastewater treatment services over the long term for the District's customers.

**Grant and Other Funding Opportunities:** BWD has aggressively pursued Grant and other funding sources to fund deferred infrastructure replacement. CA Proposition One and 68 plus Direct Federal Congressional Appropriations received in the past few years is approaching \$10 M, which provides significant relief compared to generating this quantity of funds thru water rates and charges

### ***Environmental and Climate Changes***

With the emergence of Anthropogenic Climate Disruption (climate change), the current scientifically accepted prognosis is for potentially greater future climate variability. Such variability may result in higher frequency of floods and longer periods of lower precipitation in the Park's watersheds that provide recharge to the Subbasin, and increased risk for wildfires due to longer, drier conditions. Thus, climate changes may introduce additional costs for the District to provide potable municipal water to its customers. These factors will be considered in future Basin sustainability modeling.

### ***Long-Term Financial Planning***

Through a coordinated strategic process, the Board has established a series of policies and plans to effectively meet the District's anticipated future revenue needs. The principles the District has adopted for maintaining revenue sufficiency and good credit include: (a) the active management and projection of monthly cash flow during the year; (b) holding operating and maintenance (O&M) expenditures to the annual budget; (c) fairly compensating employees to promote retention; (d) refinancing of existing debt obligations where such refinancing would produce reductions in future long term cash obligations; (e) minimizing its reliance of operating cash flow to fund CIP; (f) the active development of state and federal grant opportunities for funding CIP and SGMA-related costs; (g) implementing annual water and sewer rate increases to increase cash flow and to accumulate cash reserves; (h) the maintenance of sufficient cash reserves to address emergency and environmental and climate change risk factors; and (i) initiating the Proposition 218 rate process one year early to address future declining Reserve Fund levels.

The primary driver for the long-term financial viability of the District, as well as the economy of the Valley is the critical overdraft's potential impact on water quality (see section on Groundwater Supply, Usage & Availability above) and the need to relocate existing wells and add new wells as well production is impacted by water table declines due to the overdraft. Thus, to minimize its financial risk, the District plans to maintain financial stability and a good credit standing with the debt markets in order to accommodate raising future new debt for its municipal operations.

## **RELEVANT FINANCIAL POLICIES**

### ***Reserve Policy***

The District has established a Reserve Funds Policy to anticipate and to prepare for future funding requirements as well as for unforeseen events. The Reserve Funds Policy establishes restricted and unrestricted reserves and describes the flow of funds to and from the various reserves. A copy of the District's updated and approved Reserve Funds Policy, along with the projected reserve funds targets, is available on the District's website as a component of the most recent fiscal year budget document. Due to the purchase of water rights and falling expenses, BWD cash reserves dip to a projected low of \$1.8M in 2030. Increases in water fixed and commodity rates, one time cash contributions from a Developer and expenditure deferral are all techniques planned to be used to rectify the situation. Once debt service on water right purchase is complete in FY2030, reserve funds begin to recover.

### ***Risk Management***

The District is a member of the California Joint Powers Insurance Authority (JPIA). The JPIA pools for the first \$500,000 of general, auto & public officials liability coverage and has purchased excess coverage up to \$60 million. The JPIA provides coverage on repair or replacement against loss of District property caused by earthquake or flood of \$20 million. The District also has a risk management policy that describes the policies, practices, and procedures for some of the District's more salient financial risks identified by staff and the Board.

### ***Pension and Other Post-Employment Benefits***

The District contributes to the California Public Employees Retirement System (CalPERS), an agent multiple-employer public employees defined benefit pension plan for its personnel. CalPERS provides retirement and disability benefits, annual cost-of-living adjustments, and death benefits to plan members and beneficiaries. Additional information about the District's pension arrangements and post-employment benefits can be found in the notes to the financial statements.

### ***Investment Policy***

The Investment Policy establishes guidelines for the investment of available funds. The Investment Policy incorporates the Prudent Investor Standards. The primary objectives, in priority order, of the District's investment activities are the following: 1) safety, 2) liquidity, and 3) yield. The District's funds are invested in a variety of investments, in accordance with California government code, as described in the notes to the financial statements. The District minimizes interest rate risk by investing a greater portion of its funds in short term investments and minimizes credit risk by investing a majority of its funds diversified investment pools.

### ***Internal Controls***

The District is responsible for establishing and maintaining an internal controls structure designed to ensure that the District's assets are protected from loss, theft, or misuse, and to ensure that adequate accounting data are compiled for the preparation of financial statements in conformity with GAAP. The internal structure is designed to provide reasonable assurance that these objectives are met. The concept of reasonable assurance recognizes that; 1) the cost of control should not exceed the benefits likely to be derived; and 2) the valuation of costs and benefits requires estimates and judgments by management.

Respectfully submitted,



Geoffrey Poole, General Manager

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## **Independent Auditor's Report**

Board of Directors  
Borrego Water District  
Borrego Spring, California

### **Report on the Audit of the Financial Statements**

#### ***Opinions***

We have audited the financial statements of the business-type activities, and the aggregate remaining fund information of Borrego Water District (District) as of and for the year ended June 30, 2024, and the related notes to the financial statements, which collectively comprise District's basic financial statements as listed in the table of contents.

In our opinion, the accompanying financial statements present fairly, in all material respects, the respective financial position of the business-type activities and the aggregate remaining fund information of the District as of June 30, 2024, and the respective changes in financial position and, cash flows thereof for the year then ended in accordance with accounting principles generally accepted in the United States of America.

#### ***Basis for Opinions***

We conducted our audit in accordance with auditing standards generally accepted in the United States of America (GAAS) and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Our responsibilities under those standards are further described in the Auditor's Responsibilities for the Audit of the Financial Statements section of our report. We are required to be independent of Borrego Water District and to meet our other ethical responsibilities, in accordance with the relevant ethical requirements relating to our audit. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinions.

#### ***Responsibilities of Management for the Financial Statements***

The District's management is responsible for the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America, and for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, management is required to evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about the District's ability to continue as a going concern for one year after the date that the financial statements are issued.

## ***Auditor's Responsibilities for the Audit of the Financial Statements***

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinions. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with GAAS will always detect a material misstatement when it exists. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Misstatements are considered material if there is a substantial likelihood that, individually or in aggregate, they would influence the judgment made by a reasonable user based on the financial statements.

In performing an audit in accordance with GAAS, we:

- Exercise professional judgment and maintain professional skepticism throughout the audit.
- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the District's internal control. Accordingly, no such opinion is expressed.
- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the financial statements.
- Conclude whether, in our judgment, there are conditions or events, considered in the aggregate, that raise substantial doubt about the District's ability to continue as a going concern for a reasonable period of time.

We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit, significant audit findings, and certain internal control-related matters that we identified during the audit.

### ***Required Supplementary Information***

Accounting principles generally accepted in the United States of America require that the *Management's Discussion and Analysis, Schedule of Plan's Proportionate Share of Net Pension Liability and Related Ratios, and Schedule of Contributions to the Pension Plan* be presented to supplement the basic financial statements. Such information is the responsibility of management and, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

### **Report on Summarized Comparative Information**

The financial statements of the District for the year ended June 30, 2023 were audited by other auditors whose report dated May 28, 2024 expressed an unmodified opinion on those financial statements. In our opinion, the summarized comparative information presented herein as of and for the year ended June 30, 2023 is consistent, in all material respects, with the audited financial statements from which it has been derived.

### **Other Information**

Management is responsible for the other information included in the Financial Statements. The other information comprises the *introductory section* but does not include the financial statements and our auditor's report thereon. Our opinions on the financial statements do not cover the other information, and we do not express an opinion or any form of assurance thereon. In connection with our audit of the financial statements, our responsibility is to read the other information and consider whether a material inconsistency exists between the other information and the financial statements, or the other information otherwise appears to be materially misstated. If, based on the work performed, we conclude that an uncorrected material misstatement of the other information exists, we are required to describe it in our report.

### **Other Reporting Required by Government Auditing Standards**

In accordance with *Government Auditing Standards*, we have also issued our report dated December 10, 2024 on our consideration of the District internal control over financial reporting and on our tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements and other matters. The purpose of that report is solely to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on the effectiveness of internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the District's internal control over financial reporting and compliance.

DavisFarrLLP

Irvine, California  
December 10, 2024

**BORREGO WATER DISTRICT**  
**MANAGEMENT’S DISCUSSION AND ANALYSIS**  
**YEAR ENDED JUNE 30, 2024**

Our discussion and analysis of the financial performance of Borrego Water District (District) provides an overview of the District’s financial activities for the year ended June 30, 2024. Please read it in conjunction with the District’s financial statements which begin on page 10.

**Financial Statements**

This discussion and analysis provides an introduction and a brief description of the District’s financial statements, including the relationship of the statements to each other and the significant differences in the information they provide. The District operates as a public utility and maintains its accounting records in accordance with generally accepted accounting principles for a proprietary fund as prescribed by the Government Accounting Standards Board (GASB). The financial statements of the District report information about the District using accounting methods similar to those used by companies in the private sector. These statements offer short and long-term financial information about its activities. The District’s required financial statements are as follows:

- Statement of Net Position
- Statement of Revenues, Expenses and Changes in Net Position
- Statement of Cash Flows
- Notes to the Financial Statements
- Required Supplementary Information

The Statement of Net Position includes information on District assets, deferred outflows of resources, liabilities, and deferred inflows of resources, which provide information about the nature and amounts of investments in resources (assets), the obligation to District creditors (liabilities), and is one way to measure financial health or financial position. Over time, increases or decreases in District net position may serve as a useful indicator of whether its financial health is improving or deteriorating. However, other nonfinancial factors such as changes in economic conditions, population growth, and new or changed government legislation must also be considered—see the Introductory and Statistical Sections of this report for further information:

The Statement of Revenues, Expenses, and Changes in Net Position identifies District revenues and expenses for the fiscal year ended June 30, 2024. This statement provides information on the District’s operations over the past fiscal year and can be used to determine whether the District has recovered all its actual and projected costs through user fees and other charges.

The Statement of Cash Flows provides information on District cash receipts, cash payments, and changes in cash resulting from operations, investments, and financing activities. From the Statement of Cash Flows, the reader can obtain comparative information on the source and use of cash, and the change in the cash balance from the last fiscal year.

The Notes to the Financial Statements provide a description of the accounting policies used to prepare the financial statements and present material disclosures required by generally accepted accounting principles that are not otherwise present in the financial statements

In addition, the District reports Required Supplementary Information on the District’s Pension Plan (Pension) and Fiduciary Fund types. This consists of two additional statements: Statement of Fiduciary Net Position and Statement of Changes in Fiduciary Net Position. The Fiduciary Funds Statements provide information about the financial relationships in which the District acts solely as a trustee or agent for the benefit of others to whom the resources belong.

**BORREGO WATER DISTRICT**  
**MANAGEMENT'S DISCUSSION AND ANALYSIS**  
**YEAR ENDED JUNE 30, 2024**

**Financial Highlights**

During the fiscal year ended June 30, 2024, the following events impacted, or have the potential to impact, the finances of the District.

- Capital assets increased \$1,886,593 due to rebuilding Rams Hill Tank #2, Indian Head Tank and Twin Tanks, installation of an Air Pollution Control Board approved back-up diesel motor at the Wilcox Well (ID4-20) and completion of the WWTP monitoring wells.
- The District earned grant revenue of \$3,181,303. \$3,062,794 was received through funding provided in full or in part under the Safe and Affordable Drinking Water Fund through an agreement with the State Water Resource Control Board to replace three water reservoir tanks and the diesel motor. In addition, the District earned \$94,509 funded thru a Sustainable Groundwater Management Act Implementation Grant for installation of AMI infrastructure and Monitoring Well installation at the WWTP as well as reimbursement of administrative costs to administer the grant which includes five other projects in cooperation with the Borrego Springs Unified School District, the Borrego Valley Stewardship Council, the Borrego Springs Watermaster and UC Irvine.
- Total operating revenues decreased \$114,298 primarily due to previously written off sewer charges being collected in FY23.
- Total operating expenses increased \$449,616 as a result of increased pension, salaries, pumping and watermaster expenses as well expenses for sewer line cleaning for Town Center Sewer and engineering fees for a Groundwater Quality Risk Assessment Study.
- Nonoperating expenses exceeded non-operating revenue as property taxes and investment income were less than interest expense.
- Capital contributions increased \$2,286,085 as a result of the previously mentioned grant revenue from the State Water Resource Control Board.
- Cash and cash equivalents decreased to \$4,736,762 at June 30, 2024 from \$6,219,575 at June 30, 2023 primarily due to the water right acquisition payments and outstanding grant reimbursements for the Twin Tank project.

More information about the overall analysis of the District's financial position and results of operations is provided in the following sections.



**BORREGO WATER DISTRICT**  
**MANAGEMENT'S DISCUSSION AND ANALYSIS**  
**YEAR ENDED JUNE 30, 2024**

**Net Position**

The following is a summary of the District's statements of net position at June 30:

	<u>2024</u>	<u>2023</u>	<u>Dollar Change</u>
Assets:			
Current assets	\$ 7,174,897	\$ 7,598,646	\$ (423,749)
Capital assets	26,721,319	24,834,726	1,886,593
Noncurrent assets	<u>106,200</u>	<u>5,575</u>	<u>100,625</u>
Total Assets	<u>34,002,416</u>	<u>32,438,947</u>	<u>1,563,469</u>
Deferred Outflows of Resources	<u>596,471</u>	<u>673,725</u>	<u>(77,254)</u>
Liabilities:			
Current liabilities	1,282,719	2,304,314	(1,021,595)
Noncurrent liabilities	<u>8,539,251</u>	<u>9,097,948</u>	<u>(558,697)</u>
Total Liabilities	<u>9,821,970</u>	<u>11,402,262</u>	<u>(1,580,292)</u>
Deferred Inflows of Resources	<u>70,052</u>	<u>75,095</u>	<u>(5,043)</u>
Net Position:			
Net investment in capital assets	18,923,788	16,178,429	2,745,359
Unrestricted	<u>5,783,077</u>	<u>5,456,886</u>	<u>326,191</u>
Total Net Position	<u>\$ 24,706,865</u>	<u>\$ 21,635,315</u>	<u>\$ 3,071,550</u>

Capital assets increased by \$1,886,593 as a number of ongoing CIP projects were capitalized including rebuilding Rams Hill Tank #2, Indian Head Tank and Twin Tanks, installation of an Air Pollution Control Board approved back-up diesel motor at the Wilcox Well (ID4-20) and completion of the WWTP monitoring wells.

Current liabilities decreased due to debt service payments.

**BORREGO WATER DISTRICT**  
**MANAGEMENT’S DISCUSSION AND ANALYSIS**  
**YEAR ENDED JUNE 30, 2024**

**Changes in Net Position**

The following is a summary of the District’s change in net position for the years ended June 30:

	<u>2024</u>	<u>2023</u>	<u>Dollar Change</u>
Operating revenues	\$ 4,923,750	\$ 5,038,048	\$ (114,298)
Operating expenses	4,969,246	4,519,630	449,616
Net nonoperating (expenses)	<u>(66,257)</u>	<u>(89,998)</u>	<u>23,741</u>
Change in net position before capital contributions	(111,753)	428,420	(540,173)
Capital contributions	<u>3,183,303</u>	<u>897,218</u>	<u>2,286,085</u>
Change in net position	3,071,550	1,325,638	1,745,912
Net position, beginning	<u>21,635,315</u>	<u>20,309,677</u>	<u>1,325,638</u>
Net position, ending	<u>\$ 24,706,865</u>	<u>\$ 21,635,315</u>	<u>\$ 3,071,550</u>

Net-nonoperating expenses decreased due to a decrease in interest expense and an increase in property tax revenue.

Capital contributions increased \$2,286,085 as a result of the previously mentioned grant revenue from the State Water Resource Control Board.

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**BORREGO WATER DISTRICT**  
**MANAGEMENT'S DISCUSSION AND ANALYSIS**  
**YEAR ENDED JUNE 30, 2024**

**Capital Assets**

Capital assets consist of the following at June 30:

	2024	2023	Dollar Change	Percentage Change
Land	\$ 1,519,292	\$ 693,702	\$ 825,590	119.01%
Construction in progress	2,885,832	5,317,881	(2,432,049)	-45.73%
Fallowed water credits	932,050	932,050	-	0.00%
Water rights- ID No. 4	185,000	185,000	-	0.00%
Water rights -William Bauer	1,395,279	1,364,961	30,318	2.22%
Flood control facilities	2,751,153	2,794,020	(42,867)	-1.53%
Sewer facilities	2,980,578	2,804,338	176,240	6.28%
Water facilities	12,858,299	9,598,822	3,259,477	33.96%
General facilities	498,817	489,928	8,889	1.81%
Equipment and furniture	488,278	476,478	11,800	2.48%
Vehicles	226,741	177,546	49,195	27.71%
<b>Total</b>	<b>\$ 26,721,319</b>	<b>\$ 24,834,726</b>	<b>\$ 1,886,593</b>	<b>7.60%</b>

The increase in capital assets, net is due to rehab completed on several water tanks previously mentioned. See note 4 for additional details.

**Long-Term Debt**

	2024	2023	Dollar Change	Percentage Change
Notes payable	\$ 7,908,760	\$ 8,687,019	\$ (778,259)	-8.96%
Compensated absences	236,935	188,995	47,940	25.37%
<b>Total</b>	<b>\$ 8,145,695</b>	<b>\$ 8,876,014</b>	<b>\$ (730,319)</b>	<b>-8.23%</b>

The decrease in overall debt is due to principal payments, offset by an increase in compensated absences. See note 5 for additional details

**Economic Factors and Future Year's Budget and Rates**

The District's Board of Directors and management considered many factors when setting the fiscal year 2024-2025 budget, user fees and charges. The District attempts to balance revenues with operating expenses that have increased due to inflationary factors, such as cost of living, cost to provide water, and insurance coverage.

These indicators were taken into consideration when adopting the District's budget for the fiscal year 2024-2025. The budget has been structured to contain costs, but at the same time, continue the District's philosophy of providing the highest levels of service and continue efforts towards securing a sustainable water supply for the community. Although water commodity rates increased by 5% in Fiscal Year 2024, there was an approximately 7% decrease in the number of units sold.

To remain conservative, the Fiscal Year 2024-2025 budget maintained the lower number of units sold estimate. Although this still results in a year-over-year revenue increase, it is still below the revenue projections resulting from the 2021 Prop 218 compliant rate increase for FY2022-2026

**BORREGO WATER DISTRICT**  
**MANAGEMENT’S DISCUSSION AND ANALYSIS**  
**YEAR ENDED JUNE 30, 2024**

which resulted in a change in rate structure resulting in a 5% increase in water revenues and no increase for sewer revenues for fiscal year 2023, followed by a 5% increase in water revenues and a 4% increase in sewer revenues annually on July 1, through fiscal year 2026. The changes in water rate structure shifted a greater financial burden to high water users while resulting in lower rates for single family homes using a conservative amount of water. While the District previously charged commodity rates for two tiers, the recent changes have created three tiers where tier one is intended to include enough water for domestic use of a single family (0 to 7 units), tier two reflects single family usage plus average desert irrigation (8 to 22 units) and tier three reflects usage outside of what is considered necessary and conservative to a residential dwelling (more than 22 units). Tier three rates are intended to fund the future purchase of supplemental water supply to meet municipal needs.

As a result of unexpected inflation rates for Fiscal Year 2020 thru 2023 and in light of decreased commodity sales, the Board of Directors of the Borrego Water District voted to begin the next Prop 218 compliant rate study a year early, in the Fall of 2024. The Board’s goal is to have a new rate structure in place for Fiscal Year 2025-2026 instead of 2026-2027 as previously planned.

On April 8, 2021, the Superior Court approved the Stipulated Judgment which defines Basin water rights for each pumper producing two-acre feet or more in the Basin and imposes a “physical solution” regarding Basin management including use of Basin storage space, overseen by the Superior Court. Under the Sustainable Groundwater Management Act (SGMA), a Stipulated Judgment can serve as an “alternative” to a Groundwater Sustainability Plan (GSP) mandated by SGMA. The judgment allowed the District to recover approximately \$300,000 in GSP development costs during fiscal years 2020 thru 2022, and includes an obligation to pay along with other pumpers approximately \$30/acre-foot annually for extractions from the Basin, and the District will likely be required to obtain some amount of supplemental water supply to meet municipal needs beginning in five years or sooner, if available.

On June 25, 2024, the District’s Board of Directors approved the FY 2025 budget that anticipates Capital Improvement Program (CIP) project’s spending of approximately \$25,000,000 through FY 2034-35. The Board has engaged the District’s financial advisors to develop a financing plan and the District’s municipal advisors to conduct a Cost-of-Service study to determine the feasibility and funding plan for these necessary CIP projects. Borrego Water District does not budget for depreciation but prefers to budget for actual capital assets using the internally generated 10-year Capital Improvement Budget.

**Contacting the District’s Financial Manager**

This financial report is designed to give ratepayers, customers, investors, and creditors a general overview of the District’s finances and to demonstrate the District’s accountability for the money it receives and the stewardship of the facilities it maintains. If you have questions about this report or need additional information, contact Geoff Poole, General Manager, or Jessica Clabaugh, Fiscal Officer at the Borrego Water District, 806 Palm Canyon Drive, Borrego Springs, California, 92004 or by telephone at (760) 767-5806.

**BORREGO WATER DISTRICT**  
**STATEMENT OF NET POSITION**

**JUNE 30, 2024**  
**(with comparative information for 2023)**

	2024	2023
Current assets		
Cash and investments (Note 2)	\$ 4,630,562	\$ 6,214,000
Accounts receivable, net	703,934	1,037,887
Watermaster receivable	11,592	11,592
Grant receivable	1,021,739	-
Accrued interest receivable	13,227	16,527
Property tax receivable	2,896	3,967
Inventories	213,023	198,155
Prepaid items	577,924	116,518
Total current assets	7,174,897	7,598,646
Non-current assets		
Restricted assets:		
Cash and investments (Note 3)	106,200	5,575
Total non-current assets	106,200	5,575
Capital Assets (Note 4)		
Capital assets, not being depreciated	6,917,453	8,493,594
Capital assets being depreciated, net	19,803,866	16,341,132
Total capital assets	26,721,319	24,834,726
Total assets	34,002,416	32,438,947
Deferred outflows of resources		
Deferred outflows related to refunding	5,029	25,147
Deferred outflows related to pension (Note 6)	591,442	648,578
Total deferred outflows of resources	596,471	673,725
Current liabilities		
Accounts payable	248,932	1,354,290
Accrued interest payable	47,262	52,793
Customer deposit	106,200	5,575
Current portion of noncurrent liabilities (Note 5)	880,325	891,656
Total current liabilities	1,282,719	2,304,314
Non-current liabilities		
Note payable, net of current portion (Note 5)	7,111,800	7,908,760
Compensated absences (Note 5)	153,570	75,598
Net pension liability (Note 6)	1,273,881	1,113,590
Total non-current liabilities	8,539,251	9,097,948
Total liabilities	9,821,970	11,402,262
Deferred inflows of resources		
Deferred inflows related to pensions (Note 6)	70,052	75,095
Total deferred inflows of resources	70,052	75,095
Net position		
Net investment in capital assets	18,923,788	16,178,429
Unrestricted	5,783,077	5,456,886
Total net position	\$ 24,706,865	\$ 21,635,315

See accompanying notes to financial statements

**BORREGO WATER DISTRICT****STATEMENT OF REVENUES, EXPENSES AND CHANGES IN NET POSITION****YEAR ENDED JUNE 30, 2024  
(with comparative information for 2023)**

	<u>2024</u>	<u>2023</u>
Operating revenues		
Water revenues	\$ 3,964,183	\$ 3,950,320
Sewer service charges	664,525	802,274
Water, sewer and other assessments	239,820	246,751
Other income	<u>55,222</u>	<u>38,703</u>
Total operating revenues	<u>4,923,750</u>	<u>5,038,048</u>
Operating expenses		
Water operations	2,194,411	2,053,070
Pumping	502,651	478,973
Water treatment	39,882	41,214
Sewer operations	640,978	510,810
General and administrative	540,790	461,636
Depreciation	<u>1,050,534</u>	<u>973,927</u>
Total operating expenses	<u>4,969,246</u>	<u>4,519,630</u>
Operating income (loss)	<u>(45,496)</u>	<u>518,418</u>
Non-operating revenues (expenses)		
Property taxes	79,490	76,820
Investment income	68,983	69,885
Interest expense	<u>(214,730)</u>	<u>(236,703)</u>
Total non-operating revenues (expenses)	<u>(66,257)</u>	<u>(89,998)</u>
Income (loss) before capital contributions	<u>(111,753)</u>	<u>428,420</u>
Capital contributions		
Grant revenue	3,183,303	567,186
Capital contributions	<u>-</u>	<u>330,032</u>
Total capital contributions	<u>3,183,303</u>	<u>897,218</u>
Change in net position	3,071,550	1,325,638
Net position - beginning	<u>21,635,315</u>	<u>20,309,677</u>
Net position - ending	<u>\$ 24,706,865</u>	<u>\$ 21,635,315</u>

See accompanying notes to financial statements

**BORREGO WATER DISTRICT**  
**STATEMENT OF CASH FLOWS**  
**YEAR ENDED JUNE 30, 2024**  
**(with comparative information for 2023)**

	2024	2023
Cash flows from operating activities		
Cash receipts from customers	\$ 5,031,616	\$ 4,500,594
Cash receipts from watermaster reimbursements	-	38,703
Cash payments to suppliers for good and services	(2,319,716)	(1,078,725)
Cash payments to employees for services and benefits	(1,744,812)	(1,221,545)
Other operating cash receipts	-	(64,332)
Net cash provided (used) by operating activities	967,088	2,174,695
 Cash flow from non-capital financing activities		
Receipts from property taxes	80,561	75,605
Net cash provided (used) by non-capital financing activities	80,561	75,605
 Cash flows from capital and related financing activities		
Acquisition and construction of capital assets	(4,112,619)	(5,059,049)
Principal paid on long term debt	(778,259)	(750,711)
Interest paid on long term debt	(200,143)	(221,899)
Capital grants	2,488,276	972,932
Capital contributions	-	330,032
Net cash provided (used) by capital and related financing activities	(2,602,745)	(4,728,695)
 Cash flows from investing activities		
Interest income	72,283	57,231
Net cash provided (used) by investing activities	72,283	57,231
 Net change in cash and investments	(1,482,813)	(2,421,164)
 Cash and equivalents - beginning	6,219,575	8,640,739
 Cash and equivalents - ending	\$ 4,736,762	\$ 6,219,575

(continued)

See accompanying notes to financial statements

**BORREGO WATER DISTRICT**  
**STATEMENT OF CASH FLOWS (CONTINUED)**

**YEAR ENDED JUNE 30, 2024**  
**(with comparative information for 2023)**

	2024	2023
Reconciliation from operating income (loss) to net cash provided (used) by operating activities		
Operating income	\$ (45,496)	518,418
Depreciation	1,050,534	973,927
(Increase) Decrease in:		
Accounts receivable, net	7,241	(324,443)
Watermaster receivable	-	110,255
Inventories	(14,868)	(38,630)
Prepays	(461,406)	(81,956)
Deferred outflows of resources - pension	57,136	(447,288)
Increase (Decrease) in:		
Accounts payable	70,134	1,201,693
Deferred revenue	-	(64,332)
Customer deposits	100,625	(284,563)
Compensated absences	47,940	8,391
Net pension liability	160,291	810,059
Deferred inflows of resources - pension	(5,043)	(206,836)
Net cash used by operating activities	\$ 967,088	2,174,695
Cash and Cash Equivalents:		
Financial Statement Classification		
Cash and cash equivalents	4,630,562	6,214,000
Restricted cash and cash equivalents	106,200	5,575
Total cash and cash equivalents	\$ 4,736,762	6,219,575
Supplemental disclosure of cash flow information		
Amortization of deferred outflows related to refunding	\$ 20,118	20,118

See accompanying notes to financial statements



**BORREGO WATER DISTRICT**  
**STATEMENT OF FIDUCIARY NET POSITION**  
**JUNE 30, 2024**  
**(with comparative information for 2023)**

	2024	2023
Assets		
Cash (Note 2)	\$ 803,608	\$ 743,273
Total assets	803,608	743,273
Net position		
Restricted for the benefit of residents of Community Facilities District 2017-01	803,608	743,273
Total net position	\$ 803,608	\$ 743,273

See accompanying notes to financial statements

**BORREGO WATER DISTRICT**

**STATEMENT OF CHANGES IN FIDUCIARY NET POSITION**

**YEAR ENDED JUNE 30, 2024**  
**(with comparative information for 2023)**

	<u>2024</u>	<u>2023</u>
Additions		
Property taxes and assessments	\$ 858,623	\$ 844,575
Interest	19,992	12,025
Total additions	<u>878,615</u>	<u>856,600</u>
Deductions		
Outside professional services	14,292	18,064
Trust fees	4,875	4,875
Bond principal	390,000	365,000
Bond interest	409,113	439,317
Total deductions	<u>818,280</u>	<u>827,256</u>
Change in net position	<u>60,335</u>	<u>29,344</u>
Net position - beginning	<u>743,273</u>	<u>713,929</u>
Net position - ending	<u>\$ 803,608</u>	<u>\$ 743,273</u>

See accompanying notes to financial statements

**BORREGO WATER DISTRICT**  
**NOTES TO FINANCIAL STATEMENTS**  
**JUNE 30, 2024**

**Note 1 – Summary of Significant Accounting Policies**

**Reporting Entity**

Borrego Water District (the "District") was established in 1962 pursuant to section 35565 of the California Water Code to provide water, sewer, flood control and gnat abatement services to properties in the District. The District is governed by a five-member board of directors that are elected at-large by the registered voters residing in the boundaries of the District. The District has nine active wells and approximately 90 miles of distribution lines. In addition, the District provides sewer and wastewater services primarily in the Town Center, Club Circle, and Rams Hill Development.

The financial statements present the District and its component units. The District is the primary government unit. Component units are those entities, which are financially accountable to the primary government, either because the District appoints a voting majority of the component unit's board, or because the component unit will provide a financial benefit or impose a financial burden on the District.

The Borrego Water District Public Facilities Corporation (the Corporation) was organized in May 1996 under the nonprofit Public Benefit Corporation Law of the State of California to render assistance to the Borrego Water District and any Special Districts which are governed by the Board of Directors of the Borrego Water District with respect to providing various public facilities or services to or for the benefit of the District. The District has accounted for the Corporation as a blended component unit. Despite being legally separate, the Corporation is so intertwined with the District that the Corporation is in substance part of the District's operations. Accordingly, the Corporation is included within the financial statements of the District.

**Basis of Presentation**

The District's financial activities are accounted for as an enterprise fund. An enterprise fund is a Proprietary-type fund used to account for operations (a) that are financed and operated in a manner similar to private business enterprises where the intent of the governing body is that the costs (expenses, including depreciation) of providing goods or services to the general public on a continuing basis be financed or recovered primarily through user charges; or (b) where the governing body has decided that periodic determination of revenues earned, expenses incurred, and/or net income is appropriate for capital maintenance, public policy, management control, accountability or other purposes.

The District also reports the following fiduciary fund type: Custodial Fund used to account for amounts that it collects and distributes on behalf of Community Facility District 2017-01.

**BORREGO WATER DISTRICT**  
**NOTES TO FINANCIAL STATEMENTS**  
**JUNE 30, 2024**

**Note 1 – Summary of Significant Accounting Policies (Continued)**

**Measurement Focus and Basis of Accounting**

“Measurement focus” is a term used to describe which transactions are recorded within the various financial statements. “Basis of accounting” refers to when transactions are recorded regardless of the measurement focus applied. The accompanying financial statements are reported using the “economic resources measurement focus,” and the “accrual basis of accounting.” Under the economic measurement focus, all assets, deferred outflows of resources, liabilities and deferred inflows of resources (whether current or noncurrent) associated with these activities are included on the Statement of Net Position.

The Statement of Revenues, Expenses and Changes in Net Position present increases (revenues) and decreases (expenses) in total net position. Under the accrual basis of accounting, revenues are recorded when earned and expenses are recorded when a liability is incurred, regardless of the timing of related cash flows.

Capital assets may be constructed by private developers and then dedicated to the District, which is then responsible for their future maintenance. These facilities are recorded as capital contributions when they pass inspection by the District and the estimated costs are capitalized.

**Cash and Cash Equivalents**

For purposes of the statement of cash flows, the District considers all investment instruments purchased with a maturity of three months or less to be cash.

**Fair Value Measurements**

Fair value accounting standards define fair value, establish a framework for measuring fair value, outline a fair value hierarchy based on inputs used to measure fair value and enhance disclosure requirements for fair value measurements. The fair value hierarchy distinguishes between market participant assumptions based on market data obtained from sources independent of the reporting entity (observable inputs that are classified within Level 1 or 2 of the hierarchy) and the reporting entity’s own assumptions about market participant assumptions (unobservable inputs classified within Level 3 of the hierarchy).

- Level 1 inputs are quoted prices in active markets for identical investments that the investment manager has the ability to access at the measurement date.
- Level 2 inputs are inputs other than quoted prices included within Level 1 that are observable for the investment, either directly or indirectly. Inputs to the valuation methodology include:
  - Quoted prices for similar assets or liabilities in active markets;
  - Quoted prices for identical or similar assets or liabilities in inactive markets;
  - Inputs other than quoted prices that are observable for the asset or liability; and
  - Inputs that are derived principally from or corroborated by observable market data by correlation or other means.

**BORREGO WATER DISTRICT**  
**NOTES TO FINANCIAL STATEMENTS**  
**JUNE 30, 2024**

**Note 1 – Summary of Significant Accounting Policies (Continued)**

- Level 3 inputs are unobservable inputs for the investment. Inputs to the valuation methodology are unobservable and significant to the fair value measurement. Unobservable inputs reflect the District’s own assumptions about the inputs market participants would use in pricing the asset or liability (including assumptions about risk). Unobservable inputs are developed based on the best information available in the circumstances and may include the District’s own data.

The assets or liability’s level within the hierarchy is based on the lowest level of input that is significant to the fair value measurement. Valuation techniques used need to maximize the use of observable inputs and minimize the use of unobservable inputs. The determination of what constitutes as observable requires judgment by the District’s management. District management considers observable data to be that market data, which is readily available, regularly distributed or updated, reliable, and verifiable, not proprietary, and provided by multiple independent sources that are actively involved in the relevant market. The categorization of an investment or liability within the hierarchy is based upon the relative observability of the inputs to its fair value measurement and does not necessarily correspond to District management’s perceived risk of that investment or liability. The District does not have any investments required to be reported under the hierarchy.

**Accounts Receivable**

The District extends credit to customers in the normal course of operations. Management has evaluated the accounts and has established an allowance for doubtful accounts for the accounts that they believe are not collectible.

**Watermaster Receivable**

Pursuant to the State of California adopting the Sustainable Groundwater Management Act (SGMA) in 2014, all parties who pump groundwater from the Borrego Springs Groundwater Subbasin, entered into an agreement (Settlement Agreement) that establishes a physical solution to bring sustainability to the Critically Over-drafted Subbasin. In accordance with the Settlement Agreement, the signing parties agreed to share costs associated with preparation of a Groundwater Sustainability Plan (GSP). The majority of the costs associated with the Settlement Agreement are reimbursed thru the signing parties. Accounts receivable - watermaster reimbursement totaled \$11,592 at June 30, 2024.

**Inventory**

Inventory consists primarily of materials used in the construction and maintenance of capital assets and is valued using the first in, first out (FIFO) costing method.

**BORREGO WATER DISTRICT**  
**NOTES TO FINANCIAL STATEMENTS**  
**JUNE 30, 2024**

**Note 1 – Summary of Significant Accounting Policies (Continued)**

**Capital Assets**

Capital assets purchased or acquired with a cost exceeding \$5,000 and an estimated useful life of more than one year are reported at historical cost. Donated capital assets, donated works of art, and similar items, and capital assets received in service concession agreements are reported at acquisition value on the date of donation. Additions, improvements, and other capital outlays that significantly extend the useful life of an asset are capitalized. Other costs incurred for repairs and maintenance are expensed as incurred. Depreciation is calculated on the straight-line method over the following estimated useful lives:

Flood control facilities	100 years
Sewer facilities	5 - 75 years
Water facilities	10 - 50 years
General facilities	20 - 50 years
Telemetry system	6 years
Equipment and furniture	5 - 20 years
Vehicles	5 - 40 years

**Deferred Outflows/Inflows of Resources**

In addition to assets, the statement of net position will sometimes report a separate section of deferred outflows of resources. This separate financial statement element, deferred outflows of resources represent a consumption of net position that applies to future periods and so will not be recognized as an outflow of resources (expense) until that time. The District has the following items that qualify for reporting in this category:

- Deferred outflows related to pensions equal to employer contributions made after the measurement date of the net pension liability, differences between actual and expected experience, changes of assumptions, adjustment due to differences in proportions and the net difference between projected and actual earnings.
- Deferred losses on refunding which resulted from the difference in the carrying value of refunded debts and their reacquisition prices. These amounts are shown as deferred outflow of resources and amortized over the shorter of the life of the refunded or refunding debts.

In addition to liabilities, the statement of net position will sometimes report a separate section of deferred inflows of resources. This separate financial statement element deferred inflows of resources, represents an acquisition of net position that applies to future periods and will not be recognized as an inflow of resources (revenue) until that time. The District has the following that qualify for reporting in this category:

- Deferred inflows related to pensions resulting from the net difference between expected and actual experience and differences in proportions.

**BORREGO WATER DISTRICT**  
**NOTES TO FINANCIAL STATEMENTS**  
**JUNE 30, 2024**

**Note 1 – Summary of Significant Accounting Policies (Continued)**

**Compensated Absences**

Accumulated and unpaid vacation and sick leave totaling \$236,935 is accrued when incurred and included in current and noncurrent liabilities at June 30, 2024.

**Pensions**

For purposes of measuring the net pension liability, deferred outflows of resources and deferred inflows of resources related to pensions, and pension expense, information about the fiduciary net position and additions to/deductions from the Plan’s fiduciary net position have been determined on the same basis as they are reported by CalPERS. For this purpose, benefit payments (including refunds of employee contributions) are recognized when due and payable in accordance with the benefit terms. Investments are reported at fair value. CalPERS audited financial statements are publicly available reports that can be obtained at CalPERS website under Forms and Publications.

Generally Accepted Accounting Principles require that the reported results must pertain to liability and asset information within certain defined timeframes. For this report the following timeframes are used:

Valuation Date	June 30, 2022
Measurement Date	June 30, 2023
Measurement Period	June 30, 2022 to June 30, 2023

**Operating Revenues and Expenses**

The District recognizes operating revenues from water sales, sewer service charges, availability charges, and other income when they are earned. Operating activities generally result from providing services and producing and delivering goods. As such, the District considers fees received from water sales, sewer services and availability charges to be operating revenues.

Nonoperating revenues, such as property taxes and assessments, result from nonexchange transactions or ancillary activities in which the District received value without directly giving equal value in exchange and are recognized as revenues based upon amounts reported to the District by the County of San Diego.

Operating expenses include the cost of sales and services, administrative expenses and depreciation on capital assets. All expenses not meeting this definition are reported as nonoperating expenses.

**BORREGO WATER DISTRICT**  
**NOTES TO FINANCIAL STATEMENTS**  
**JUNE 30, 2024**

**Note 1 – Summary of Significant Accounting Policies (Continued)**

**Property Taxes and Assessments**

Property taxes and assessments are billed by the County of San Diego to property owners. The District's property tax calendar for the fiscal year ended June 30, 2024 was as follows:

Lien Date:	January 1
Levy Date:	July 1
Due Date:	First Installment - November 1 Second Installment - February 1
Delinquent Date:	First Installment - December 10 Second Installment - April 10

The County collects the taxes from the property owners and remits the funds to the District periodically during the year. The District has an arrangement with the County whereby the County remits taxes which are delinquent as of each June 30 to the District in exchange for the right to retain the delinquent taxes, penalties, and interest when these amounts are subsequently collected.

**Net Position Flow Assumption**

Sometimes the District will fund outlays for a purpose from both restricted (e.g., restricted bond or grant proceeds) and unrestricted resources. To calculate the amounts to report as restricted - net position and unrestricted - net position, a flow assumption must be made about the order in which the resources are applied. It is the District's practice to consider restricted - net position to have been depleted before unrestricted - net position is applied, however at the Board's discretion.

**Economic Dependency**

The District pumps 100% of its water from the Borrego Springs Sub-Basin of the Borrego Valley groundwater basin. Interruption of this source would impact the District negatively.

**Use of Estimates**

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets, deferred outflows of resources, liabilities and deferred inflows of resources, and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.



**BORREGO WATER DISTRICT**  
**NOTES TO FINANCIAL STATEMENTS**  
**JUNE 30, 2024**

**Note 1 – Summary of Significant Accounting Policies (Continued)**

**Prior Year Data**

Selected information regarding the prior year has been included in the accompanying financial statements. This information has been included for comparison purposes only and does not represent a complete presentation in accordance with generally accepted accounting principles. Accordingly, such information should be read in conjunction with the government’s prior year financial statements, from which this selected financial data was derived. In addition, certain minor reclassifications of the prior year data have been made to enhance their comparability to the current year.

**Note 2 - Cash and Investments**

Cash and investments held by the District were comprised of the following at June 30, 2024:

Financial Statement Classification:	
Current	
Cash and investments	\$ 4,630,562
Restricted	
Cash and investments	<u>106,200</u>
Total	<u>4,736,762</u>
Fiduciary fund:	
Cash and investments	<u>803,608</u>
Total cash and investments	<u>\$ 5,540,370</u>

Cash and investments held by the District consisted of the following at June 30, 2024:

Cash on hand	\$ 313
Deposits with financial institutions	3,568,471
Investments	<u>1,971,586</u>
Total cash and investments	<u>\$ 5,540,370</u>

**Investment Authorized by the California Government Code and the District’s Investment Policy**

The table below identifies the investment types that are authorized for the District by the California Government Code. The table also identifies certain provisions of the California Government Code that address interest rate risk, and the concentration of credit risk. This table does not address investments of debt proceeds held by bond trustees that are governed by the provisions of debt agreements of the District rather than the general provision of the California Government Code or the District’s investment policy:

**BORREGO WATER DISTRICT**  
**NOTES TO FINANCIAL STATEMENTS**  
**JUNE 30, 2024**

**Note 2 - Cash and Investments (Continued)**

<u>Authorized Investment Type</u>	<u>Maximum Maturity</u>	<u>Maximum Percentage of Portfolio</u>	<u>Quality Requirements</u>
Local Agency Bonds	5 years	None	None
U.S. Treasury Obligations	5 years	None	None
State Obligations	5 years	None	None
California Local Agency Obligations	5 years	None	None
U.S. Agency Securities	5 years	None	None
Bankers Acceptances	180 days	40%	None
Commercial Paper	270 days	25%	A1
Negotiable Certificates of Deposit	5 years	30%	None
Repurchase Agreements	1 year	None	None
Reverse Repurchase Agreements	92 days	20%	None
Medium-Term Notes	5 years	30%	A Rating
Mutual Funds	N/A	20%	Multiple
Money Market Mutual Funds	N/A	20%	Multiple
Collateralized Bank Deposits	5 years	None	None
Mortgage Pass-Through Securities	5 years	20%	AA Rating
Time Deposits	5 years	None	None
California Local Agency Investment Fund (LAIF)	N/A	None	None
County Pooled Investment Funds	N/A	None	None

The District's investment policy is more restrictive than the California Government Code. The District limits the percentage of its portfolio that can be invested in LAIF, certificates of deposit and savings accounts and U.S. Government bills, notes, bonds and overnight money market funds.

**Disclosures Relating to Interest Rate Risk**

Interest rate risk is the risk that changes in market interest rates will adversely affect the fair value of an investment. Generally, the longer the maturity of an investment, the greater the sensitivity of its fair value to changes in market interest rates. The district manages its exposure to interest rate risk by purchasing shorter term investments and by timing cash flows from maturities so that a portion of the portfolio is maturing over time as necessary to provide the cash flow and liquidity needed for operations. The District's investments in LAIF and Money Market Funds have a duration of 1-day to maturity.

**BORREGO WATER DISTRICT**  
**NOTES TO FINANCIAL STATEMENTS**  
**JUNE 30, 2024**

**Note 2 - Cash and Investments (Continued)**

Information about the sensitivity of the fair values of the District's investments to market interest rate fluctuations are provided by the following table that shows the distribution of the District's investments by maturity as of June 30, 2024.

Investment Type	Total	Remaining Maturity (in Months)		
		12 Months Or Less	13 to 36 Months	More than 36 Months
Local Agency Investment Fund (LAIF)	\$ 1,167,978	\$ 1,167,978	\$ -	\$ -
Money Market Funds	803,608	803,608	-	-
Total	<u>\$ 1,971,586</u>	<u>\$ 1,971,586</u>	<u>\$ -</u>	<u>\$ -</u>

**Disclosures Relating to Credit Risk**

Generally, credit risk is the risk that an issuer of an investment will not fulfill its obligation to the holder of the investment. This is measured by the assignment of a rating by a nationally recognized statistical rating organization. LAIF is not rated and the Money Market Fund the District is invested in have a AAA rating. Presented below is the minimum rating required by (where applicable) the California Government Code or the District's Investment Policy, or debt agreements, and the Moody's ratings as of June 30, 2024.

Investment Type	Total	Legal Minimum Rating	Rating as of Year End	
			AAA	Not Rated
Local Agency Investment Fund (LAIF)	\$ 1,167,978	N/A	\$ -	\$ 1,167,978
Money Market Funds	803,608	AAA	803,608	-
Total	<u>\$ 1,971,586</u>		<u>\$ 803,608</u>	<u>\$ 1,167,978</u>

**Concentration of Credit Risk**

Concentration of credit risk is the risk of loss attributed to the magnitude of the District's investment in a single issue.

The investment policy of the District contains limits on the amount that can be invested in any one issuer beyond that stipulated by the California Government Code as described below. The District holds no investments in any one issuer (other than U.S. Treasury obligations, mutual funds, and external investment pools) that represent 5% or more of total District investments at June 30, 2024.

**BORREGO WATER DISTRICT**  
**NOTES TO FINANCIAL STATEMENTS**  
**JUNE 30, 2024**

**Note 2 - Cash and Investments (Continued)**

**Custodial Credit Risk**

Custodial credit risk for deposits is the risk that, in the event of the failure of a depository financial institution, the District will not be able to recover its deposits or will not be able to recover collateral securities that are in the possession of an outside party. The custodial credit risk for investments is the risk that, in the event of the failure of the counterparty (e.g., broker-dealer) the District will not be able to recover the value of its investment or collateral securities that are in the possession of another party. The California Government Code and the District's investment policy do not contain legal or policy requirements that would limit the exposure to custodial credit risk for deposits or investments other than the following provision for deposits: The California Government Code requires that a financial institution secure deposits made by state or local governmental units by pledging securities in an undivided collateral pool held by a depository regulated under state law (unless so waived by the governmental unit). The market value of the pledged securities in the collateral pool must equal at least 110% of the total amount deposited by the public agencies. California law also allows financial institutions to secure District deposits by pledging first trust deed mortgage notes having a value of 150% of the secured public deposits.

At June 30, 2024, none of the District's deposits with financial institutions in excess of federal depository insurance limits were held in uncollateralized accounts.

**Investment in State Investment Pool**

The District is a voluntary participant in the California Local Agency Investment Fund (LAIF) that is regulated by the California Government Code under the oversight of the Treasurer of the State of California. The fair value of the District's investment in this pool is reported in the accompanying financial statements at amounts based upon the District's pro-rata share of the fair value provided by LAIF for the entire LAIF portfolio (in relation to the amortized cost of that portfolio). The balance available for withdrawal is based on the accounting records maintained by LAIF, which are recorded on an amortized cost basis.

**Note 3 - Restricted Assets**

Restricted assets of \$106,200 were provided by Developers and are to be used for capital projects. When both restricted and unrestricted resources are available for use, it is the District's policy to use restricted resources first, and then unrestricted resources as necessary.

**BORREGO WATER DISTRICT**  
**NOTES TO FINANCIAL STATEMENTS**  
**JUNE 30, 2024**

**Note 4 - Capital Assets**

Capital assets consist of the following at June 30, 2024:

	Balance at June 30, 2023	Additions	Deletions	Balance at June 30, 2024
Capital Assets, Not Depreciated				
Land	\$ 693,702	\$ 825,590	\$ -	\$ 1,519,292
Construction in progress	5,317,881	1,810,305	(4,242,354)	2,885,832
Fallowed water credits	932,050	-	-	932,050
Water rights- ID No. 4	185,000	-	-	185,000
Water rights -William Bauer	<u>1,364,961</u>	<u>30,318</u>	<u>-</u>	<u>1,395,279</u>
Total capital assets, not depreciated	<u>8,493,594</u>	<u>2,666,213</u>	<u>(4,242,354)</u>	<u>6,917,453</u>
Capital Assets, Being Depreciated				
Flood control facilities	4,287,340	-	-	4,287,340
Sewer facilities	7,254,327	385,154	-	7,639,481
Water facilities	17,775,417	3,926,023	-	21,701,440
General facilities	1,006,881	31,568	-	1,038,449
Telemetry system	46,459	-	-	46,459
Equipment and furniture	1,018,919	86,412	-	1,105,331
Vehicles	<u>757,791</u>	<u>84,111</u>	<u>(1,776)</u>	<u>840,126</u>
Total capital assets being depreciated	<u>32,147,134</u>	<u>4,513,268</u>	<u>(1,776)</u>	<u>36,658,626</u>
Less: accumulated depreciation				
Flood control facilities	(1,493,320)	(42,867)	-	(1,536,187)
Sewer facilities	(4,449,989)	(208,914)	-	(4,658,903)
Water facilities	(8,176,595)	(666,546)	-	(8,843,141)
General facilities	(516,953)	(22,679)	-	(539,632)
Telemetry system	(46,459)	-	-	(46,459)
Equipment and furniture	(542,441)	(74,612)	-	(617,053)
Vehicles	<u>(580,245)</u>	<u>(34,916)</u>	<u>1,776</u>	<u>(613,385)</u>
Total accumulated depreciation	<u>(15,806,002)</u>	<u>(1,050,534)</u>	<u>1,776</u>	<u>(16,854,760)</u>
Capital Assets, Being Depreciated, Net	<u>16,341,132</u>	<u>3,462,734</u>	<u>-</u>	<u>19,803,866</u>
Capital Assets, Net	<u>\$ 24,834,726</u>	<u>\$ 6,128,947</u>	<u>\$ (4,242,354)</u>	<u>\$ 26,721,319</u>

**Note 5 - Noncurrent Liabilities**

Noncurrent liabilities consist of the following at June 30, 2024:

	Balance at June 30, 2023	Additions	Deletions	Balance at June 30, 2024	Due in One Year
<u>Notes Payable:</u>					
2021 Installment Purchase Agreement	\$ 7,080,970	\$ -	\$ (437,070)	\$ 6,643,900	\$ 447,100
Promissory Note 2018 A	1,336,000	-	(209,000)	1,127,000	212,000
Promissory Note 2018 B	<u>270,049</u>	<u>-</u>	<u>(132,189)</u>	<u>137,860</u>	<u>137,860</u>
Totals Note Payable	8,687,019	-	(778,259)	7,908,760	796,960
<u>Other Noncurrent Liabilities:</u>					
Compensated Absences	188,995	112,285	(64,345)	236,935	83,365
Totals Other Noncurrent Liabilities	<u>\$ 8,876,014</u>	<u>\$ 112,285</u>	<u>\$ (842,604)</u>	<u>\$ 8,145,695</u>	<u>\$ 880,325</u>

**BORREGO WATER DISTRICT**  
**NOTES TO FINANCIAL STATEMENTS**  
**JUNE 30, 2024**

**Note 5 - Noncurrent Liabilities (Continued)**

**Installment Purchase Agreement**

In October 2021, the District entered into the 2021 Installment Purchase Agreement with the Borrego Water District Public Facilities Corporation ("Corporation"). The Corporation provided \$7,508,930 for the purpose of financing costs of the District for certain improvements in the water and sewer enterprises and to prepay the installment payments due under the 2018 Installment Purchase Agreement. The 2021 Installment Purchase Agreement is payable in semi-annual installments of principal plus interest of 2.190% on or before April 1 and October 1 each year commencing April 1, 2022 through and including October 1, 2036. Payments under the 2021 Installment Purchase Agreement are secured by a lien on and pledge of net revenues.

The District has covenanted to fix, prescribe, revise, and collect rates, fees, and charges for services and facilities sufficient to yield estimated net revenues equal to 125% of the aggregate amount of debt service on all parity obligations payable from net revenues coming due and payable during such fiscal year. The District had net revenues of 146% of debt service for the year ended June 30, 2024. The 2021 Installment Purchase Agreement had an outstanding principal balance of \$6,643,900 and accrued interest payable of \$36,375 at June 30, 2024.

**Promissory Note 2018A**

In July 2018, the District entered into a promissory note with Compass Bank in the amount of \$2,294,000 for the purpose of defeasing and prepaying the Borrego Water District Refunding Installment Purchase Agreement. The promissory note is payable in semi-annual payments of principal and interest at 3.35% commencing October 1, 2018 through and including October 1, 2028. Payments under the promissory note are secured by a lien on and pledge of net revenues. The District has covenanted to fix, prescribe, revise, and collect rates, fees, and charges for services and facilities sufficient to yield estimated net revenues equal to 105% of the aggregate amount of debt service on all parity obligations payable from net revenues coming due and payable during such fiscal year. The District had net revenues of 263% of debt service for the year ended June 30, 2024. The Promissory Note 2018A had an outstanding principal balance of \$1,127,000 and accrued interest payable of \$9,439 at June 30, 2024.

**Promissory Note 2018B**

In July 2018, the District entered into a promissory note with Compass Bank in the amount of \$863,535 for the purpose of defeasing and prepaying the 2015 Compass Bank Note. The promissory note is payable in semi-annual payments of principal and interest at 4.20% commencing October 1, 2018 through and including October 1, 2024. Payments under the promissory note are secured by a lien on and pledge of net revenues. The District has covenanted to fix, prescribe, revise, and collect rates, fees, and charges for services and facilities sufficient to yield estimated net revenues equal to 105% of the aggregate amount of debt service on all parity obligations payable from net revenues coming due and payable during such fiscal year. The District had net revenues of 263% of debt service for the year ended June 30, 2024. The Promissory Note 2018B had an outstanding principal balance of \$137,860 and accrued interest payable of \$1,448 at June 30, 2024.

**BORREGO WATER DISTRICT**  
**NOTES TO FINANCIAL STATEMENTS**  
**JUNE 30, 2024**

**Note 5 - Noncurrent Liabilities (Continued)**

Debt service requirements on notes payable are as follows:

Year Ending June 30,	Principal	Interest	Total
2025	\$ 796,960	\$ 177,704	\$ 974,664
2026	677,050	157,673	834,723
2027	689,900	140,135	830,035
2028	706,660	122,215	828,875
2029	729,330	103,754	833,084
2030-2034	2,604,210	331,697	2,935,907
2035-2038	1,704,650	56,549	1,761,199
	<u>\$ 7,908,760</u>	<u>\$ 1,089,727</u>	<u>\$ 8,998,487</u>

**Note 6 - Defined Benefit Pension Plan**

**General Information About the Pension Plan**

**Plan Description** - All qualified permanent and probationary employees are eligible to participate in the Miscellaneous Plan of the Borrego Water District, (All Plans) a cost-sharing multiple employer defined benefit pension plan administered by the California Public Employees' Retirement System (CalPERS). Benefit provisions under the Plans are established by State statute and Local Government resolution. CalPERS issues publicly available reports that include a full description of the pension plan regarding benefit provisions, assumptions and membership information that can be found on the CalPERS website. The Plan consists of the miscellaneous plan and the PEPRA Miscellaneous Plan.

**Benefits Provided** - The Plan provides service retirement and disability benefits, annual cost of living adjustments and death benefits to plan members, who must be public employees and beneficiaries. Benefits are based on years of credited service, equal to one year of full-time employment. Miscellaneous plan members with five years of service are eligible to retire at age 50 with statutory reduced benefits. PEPRA Miscellaneous members with five years of service are eligible to retire at age 52 with statutory reduced benefits. All members are eligible for non-duty disability benefits after five years of service. The death benefit is the Basic Death Benefit. The cost-of-living adjustments for each plan are applied as specified by the Public Employees Retirement Law per contract. The Plan's provisions and benefits in effect at June 30, 2024, are summarized as follows:

**BORREGO WATER DISTRICT**  
**NOTES TO FINANCIAL STATEMENTS**  
**JUNE 30, 2024**

**Note 6 - Defined Benefit Pension Plan (Continued)**

	Prior to January 1, 2013 Miscellaneous	On or After January 1, 2013 With Prior Service 2nd Tier	Without Prior Service PEPRA
Benefit formula	3.0% @ 60	2.0% @ 60	2.0% @ 62
Benefit vesting schedule	5 years of service	5 years of service	5 years of service
Benefit payments	Monthly for life	Monthly for life	Monthly for life
Retirement age	50	50 - 63	52 - 67
Monthly benefits as a % of eligible compensation	2.0% to 2.5%	1.092% to 2.418%	1.0% to 2.5%
Required employee contribution rates	7.81%	6.93%	7.75%
Required employer contribution rates	16.44%	10.10%	7.68%

In addition to the contribution rates on the previous page, the District was also required to make a payment of \$73,340 toward its unfunded actuarial liability during the year ended June 30, 2024.

The miscellaneous plan is closed to new members that are not already CalPERS eligible participants.

**Contribution Description** – Section 20814(c) of the California Public Employees’ Retirement Law (PERL) requires that the employer contribution rates for all public employers be determined on an annual basis by the actuary and shall be effective on the July 1 following notice of a change in the rate. The total plan contributions are determined through the CalPERS annual actuarial valuation process. The Plan’s actuarially determined rate is based on the estimated amount necessary to pay the Plan’s allocated share of the risk pool’s costs of benefits earned by employees during the year and any unfunded accrued liability. The employer is required to contribute the difference between the actuarially determined rate and the contribution rate of employees.



**BORREGO WATER DISTRICT**  
**NOTES TO FINANCIAL STATEMENTS**  
**JUNE 30, 2024**

**Note 6 - Defined Benefit Pension Plan (Continued)**

**Actuarial Assumptions**

The total pension liability in the June 30, 2023 actuarial valuation was determined using the following actuarial assumptions:

Actuarial Cost Method	Entry Age Actuarial Cost Method
Actuarial Assumptions:	
Discount Rate	6.90%
Inflation	2.30%
Salary Increase	Varies by entry age and service
Mortality Rate Table <sup>1</sup>	Derived using CalPERS' membership data for all funds
Post Retirement Benefit Increase	The lesser of contract COLA up to 2.30% until purchasing power protection allowance floor on purchasing power applies, 2.30% thereafter.

<sup>1</sup> The mortality table was developed based on CalPERS-specific data. The probabilities of mortality are based on the 2021 CalPERS Experience Study and Review of Actuarial Assumptions. Mortality rates incorporate full generational mortality improvement using 80% of Scale MP-2020 published by the Society of Actuaries. For more details on this table, please refer to the 2021 experience study report from November 2021 that can be found on the CalPERS website.

**Discount Rate**

The discount rate used to measure the total pension liability was 6.90%. The projection of cash flows used to determine the discount rate assumed that contributions from plan members will be made at the current member contribution rates and that contributions from employers will be made at statutorily required rates, actuarially determined. Based on those assumptions, the Plan's fiduciary net position was projected to be available to make all projected future benefit payments of current plan members. Therefore, the long-term expected rate of return on plan investments was applied to all periods of projected benefit payments to determine the total pension liability.

**BORREGO WATER DISTRICT**  
**NOTES TO FINANCIAL STATEMENTS**  
**JUNE 30, 2024**

**Note 6 - Defined Benefit Pension Plan (Continued)**

**Long-Term Expected Rate of Return**

The long-term expected rate of return on pension plan investments was determined using a building-block method in which expected future real rates of return (expected returns, net of pension plan investment expense and inflation) are developed for each major asset class.

In determining the long-term expected rate of return, CalPERS took into account both short-term and long-term market return expectations. Using historical returns of all of the funds' asset classes, expected component (geometric) returns were calculated over the next 20 years using a building-block approach. The expected rate of return was then adjusted to account for assumed administrative expenses of 10 Basis points. The expected real rates of return by asset class are as follows:

<u>Asset Class</u>	<u>Assumed Asset Allocation</u>	<u>Real Return</u> <sup>1, 2</sup>
Global Equity - Cap-weighted	30.00%	4.54%
Global Equity - Non-Cap-weighted	12.00%	3.84%
Private Equity	13.00%	7.28%
Treasury	5.00%	0.27%
Mortgage-backed Securities	5.00%	0.50%
Investment Grade Corporates	10.00%	1.56%
High Yield	5.00%	2.27%
Emerging Market Debt	5.00%	2.48%
Private Debt	5.00%	3.57%
Real Assets	15.00%	3.21%
Leverage	(5.00%)	(0.59%)

<sup>1</sup> An expected price inflation of 2.3% used for this period.

<sup>2</sup> Figures are based on the 2021-22 Asset Liability Management study.

**Sensitivity of the Net Pension Liability to Changes in the Discount Rate**

The following presents the District's proportionate share of the net pension liability of the risk pool as of the measurement date, calculated using the discount rate, as well as what the District's proportionate share of the net pension liability would be if it were calculated using a discount rate that is one percentage-point lower or one percentage-point higher than the current rate:

	<u>Discount Rate -1% 5.90%</u>	<u>Current Discount Rate 6.90%</u>	<u>Discount Rate +1% 7.90%</u>
Net Pension Liability/(Asset)	<u>\$ 2,125,270</u>	<u>\$ 1,273,881</u>	<u>\$ 573,115</u>

**BORREGO WATER DISTRICT**  
**NOTES TO FINANCIAL STATEMENTS**  
**JUNE 30, 2024**

**Note 6 - Defined Benefit Pension Plan (Continued)**

**Pension Liabilities, Pension Expenses and Deferred Outflows/Inflows of Resources Related to Pensions**

The District reported the following net pension liability for its proportionate share of net position liability of the risk pool at June 30:

	Total Pension Liability (a)	Increase (Decrease) Plan Fiduciary Net Position (b)	Net Pension Liability (c) = (a) - (b)
Balance at: 6/30/2023	\$ 5,712,108	\$ 4,598,518	\$ 1,113,590
Balance at: 6/30/2024	6,295,125	5,021,244	1,273,881
Net Changes during 2023-24	<u>\$ 583,017</u>	<u>\$ 422,726</u>	<u>\$ 160,291</u>

The net pension liability of the plan is measured as of June 30, 2023, and the total pension liability for the plan used to calculate the net pension liability was determined by an actuarial valuation of June 30, 2022 rolled forward to June 30, 2023 using standard update procedures. The proportion of the net pension liability was based on a projection of the District's long-term share of contributions to the pension plans relative to the projected contributions of all participating employers, actuarially determined.

The District's proportionate share percentage of the net pension liability as of June 30, 2022 and June 30, 2023 was as follows:

Proportion at measurement date - June 30, 2022	0.02380%
Proportion at measurement date - June 30, 2023	<u>0.02548%</u>
Change - increase (decrease)	<u>0.00168%</u>

Actuarial gains and losses related to changes in total pension liability and fiduciary net position are recognized in pension expense systematically over time. The first amortized amounts are recognized in pension expense for the year the gain or loss occurs. The remaining amounts are categorized as deferred inflows and deferred outflows to be recognized in future pension expenses.

The amortization period differs depending on the source of the gain or loss:

Net difference between projected and actual earnings on pension plan investments      5-year straight-line amortization

All other amounts      Straight-line amortization over the expected average remaining service lifetime (EARSL) of all members that are provided with pensions (active, inactive, and retired) as of the beginning of the measurement period

**BORREGO WATER DISTRICT**  
**NOTES TO FINANCIAL STATEMENTS**  
**JUNE 30, 2024**

**Note 6 - Defined Benefit Pension Plan (Continued)**

The Net Difference Between Projected and Actual Investment Earnings on Pension Plan Investments is amortized over a five-year period on a straight-line basis.

For the year ended June 30, 2024, the District recognized a pension expense of \$331,174 for the Plan.

As of June 30, 2024, the District reports deferred outflows of resources and deferred inflows of resources related to pensions as follows:

	Deferred Outflows of Resources	Deferred Inflows of Resources
Pension contributions subsequent to measurement date	\$ 120,668	\$ -
Change of assumptions	76,910	-
Differences between expected and actual experience	65,199	10,096
Changes in employer's proportions	122,412	59,956
Net differences between projected and actual earnings	206,253	-
	\$ 591,442	\$ 70,052

The \$120,668 reported as deferred outflows of resources related to contributions subsequent to the measurement date will be recognized as a reduction of the net pension liability in the fiscal year ended June 30, 2025. Other amounts reported as deferred outflows and deferred inflows of resources in the previous chart will be recognized in future pension expense as follows:

Fiscal Year Ending June 30:	Deferred Outflows/(Inflows) of Resources
2025	\$ 134,260
2026	97,251
2027	163,171
2028	6,040
	\$ 400,722

**Note 7 – Risk Management**

The District is a member of the Association of California Water Agencies Joint Powers Insurance Authority (JPIA). The Authority is a risk-pooling self-insurance authority, created under provisions of California Government Code Sections 6500 et. seq. The purpose of the Authority is to arrange and administer programs of insurance for the pooling of self-insured losses and to purchase excess insurance coverage.

**BORREGO WATER DISTRICT**  
**NOTES TO FINANCIAL STATEMENTS**  
**JUNE 30, 2024**

**Note 7 – Risk Management (Continued)**

At June 30, 2024, the District participated in the self-insurance programs of the Authority as follows:

Property Loss - Provides for full value replacement of real and personal property owned by the District in the event of a loss. Actual cash value on licensed vehicles, mobile equipment and watercraft. The JPIA pools for the first \$10,000,000 and has purchased excess coverage up to \$500 million.

General and Auto Liability - Insured up to \$55 million per occurrence; the Authority is self-insured up to \$5,000,000 and excess insurance coverage has been purchased up to \$55 million. The general and auto liability program has no deductible.

Public Officials' Liability - Insured up to \$55 million per occurrence; the Authority is self-insured up to \$5,000,000 and excess insurance coverage has been purchased up to \$55 million.

Fidelity Bond - Insured up to \$1,000,000 per occurrence with a \$100,000 deductible.

Cyber Liability - Provides coverage from financial losses resulting from data breaches and other cyber events. Insured up to \$3 million per member and \$5 million policy aggregate.

Workers' Compensation - Insured up to the statutory limits; the Authority is self-insured up to \$2 million and excess insurance coverage has been purchased. Employer's liability is insured up to \$4 million.

Difference in Conditions - Provides coverage on a repair or replacement basis against loss of District property caused by earthquake or flood, up to \$25 million with a \$25,000 deductible.

The District pays annual premiums for this coverage. They are subject to retrospective adjustments based on claims experienced. The nature and amounts of the adjustments cannot be estimated and are charged to expense as invoiced. The District's insurance expense totaled \$103,588 for the year ended June 30, 2024. There were no instances in the past three years where a settlement exceeded the District's coverage.

**Note 8 - Commitments and Contingencies**

**Contracts**

The District has entered into various contracts for the purchase of material and construction of capital assets. The amounts contracted are based on the contractor's estimated cost of construction. At June 30, 2024, the total unpaid amount on these contracts is approximately \$1,603,841.

In May of 2023, the District entered into a \$4,261,515 multi-year agreement with David and Juli Bauer of Borrego Farms to incrementally fallow and convey to the District approximately 400 acres of farmland and 1,820 AF of BPA by October of 2030. At June 30, 2024, approximately \$3,016,000 remains to be paid.

**BORREGO WATER DISTRICT**

**NOTES TO FINANCIAL STATEMENTS**

**JUNE 30, 2024**

**Note 8 - Commitments and Contingencies (Continued)**

The District has agreed to take over for a sub-grantee under the Prop 68 grant that was unable to fulfill their contract. The District has agreed to cover project expenses under Component 5 until reimbursement is received by the Department of Water Resources. The District has incurred \$24,610 to date and the remaining project budget is over \$125,000.

**Litigation**

Legal claims and lawsuits arise from time to time in the normal course of business which, in the opinion of management, will have no material effect on the District's financial position.

**Community Facilities District No. 2017-01 2017 Special Tax Bonds**

The Borrego Water District is the lead Agency of the Borrego Water District Community Facilities District No. 2007-1 (CFD 2007-1) and the Borrego Water District Community Facilities District CFD No. 2017-1 (CDF 2017-1). In April 2017, CFD 2017-1 was formed and an election held to authorize bonded indebtedness up to \$11,600,000 to refinance the outstanding balances of CFD 2007-1 special tax bonds. In May 2017, CFD 2017-1 issued Borrego Spring Water District Special Tax Refunding Bonds, Series 2017A (Series 2017A Bonds) and Borrego Water District Special Tax Refunding Bonds, Series 2017B (Series 2017B Bonds). The CFD 2007-1 special tax bonds are considered defeased.

These financings were accomplished through the authorization of special tax bonds issued pursuant to the Mello-Roos Community Facilities Act of 1982 adopted by the Board of Directors of the Borrego Water District acting as the legislative body of the Community Facilities Districts. The bonds are only payable from certain proceeds of an annual special tax to be levied and collected from property located within the Community Facilities Districts and from certain bond proceeds pledged in the issuances. If the special taxes are not paid when due, the only source of funds to repay the bonds are cash deposits or letters of credit provided by property owners, amounts held in the bond reserve funds, or proceeds, if any, from foreclosure sales of land within the Community Facilities Districts following a delinquency in a special tax payment. Neither the faith nor credit nor the taxing power of the Borrego Water District, the State of California, or any other political subdivision thereof is pledged to the payment of these bonds. Therefore, the Community Facilities Districts are considered separate reporting entities. The District reports as a fiduciary fund the cash it holds on behalf of Community Facilities District No. 2017-01. The outstanding balance of the 2017A and 2017B bonds are \$730,000 and \$9,360,000, respectively.

**BORREGO WATER DISTRICT**  
**REQUIRED SUPPLEMENTARY INFORMATION**  
**YEAR ENDED JUNE 30, 2024**

**SCHEDULE OF PLAN'S PROPORTIONATE SHARE OF THE NET PENSION LIABILITY  
AND RELATED RATIOS  
LAST TEN YEARS**

Measurement date	<u>June 30, 2023</u>	<u>June 30, 2022</u>	<u>June 30, 2021</u>	<u>June 30, 2020</u>	<u>June 30, 2019</u>
Proportion of the Net Pension Liability	0.02774%	0.02380%	1.59850%	0.02271%	0.02225%
Proportionate Share of the Net Pension Liability	\$ 1,273,881	\$ 1,113,590	\$ 303,531	\$ 935,284	\$ 891,132
Covered Payroll - Measurement Period	\$ 1,079,991	\$ 955,752	\$ 858,482	\$ 850,749	\$ 740,131
Proportionate Share of the Net Pension Liability as a Percentage of Covered Payroll	117.95%	116.51%	35.36%	109.94%	120.40%
Plan Fiduciary Net Position as a Percentage of the Total Pension Liability	79.76%	80.50%	94.08%	79.54%	78.92%

Measurement date	<u>June 30, 2018</u>	<u>June 30, 2017</u>	<u>June 30, 2016</u>	<u>June 30, 2015</u>	<u>June 30, 2014</u>
Proportion of the Net Pension Liability	0.02256%	0.02313%	0.00947%	0.01010%	0.01123%
Proportionate Share of the Net Pension Liability	\$ 850,153	\$ 911,898	\$ 819,059	\$ 693,352	\$ 699,055
Covered Payroll - Measurement Period	\$ 698,023	\$ 675,819	\$ 658,514	\$ 671,180	\$ 595,422
Proportionate Share of the Net Pension Liability as a Percentage of Covered Payroll	121.79%	134.93%	124.38%	103.30%	117.40%
Plan Fiduciary Net Position as a Percentage of the Total Pension Liability	77.34%	74.72%	73.72%	77.21%	73.72%

**Notes to Schedule**

**Change in Benefit Terms** - There were no changes to the benefit terms that applied to all members of the Public Agency Pool. However, individual employers in the Plan may have provided a benefit improvement to their employees such as Golden Handshakes, service purchases, and other prior service costs. Employers that have done so may need to report this information as a separate liability in their financial statement as CalPERS considers such an amount to be separately financed employer-specific liabilities. These employers should consult with their auditors. Additionally, the figures above do not include any liability impact that occurred after the June 30, 2022 valuation date, unless the liability impact is deemed to be material to the Public Agency Pool.

In 2022, SB 1168 increased the standard retiree lump sum death benefit from \$500 to \$2,000 for any death occurring on or after July 1, 2023. For pooled plans this is a Class 3 benefit and there is no normal cost surcharge. The impact on the unfunded liability is included in the pool's differences between expected and actual experience.

**Changes in Assumptions** - There were no assumption changes in 2023. Effective with the June 30, 2021 valuation date (June 30, 2022 measurement date), the accounting discount rate was reduced from 7.15% to 6.90%. In addition, demographic assumptions and the price inflation assumption were changed in accordance with the 2021 CalPERS Experience Study and Review of Actuarial Assumptions. The accounting discount rate was 7.15% for measurement dates June 30, 2017 through June 30, 2021, 7.65% for measurement dates June 30, 2015 through June 30, 2016, and 7.50% for measurement date June 30, 2014.

**BORREGO WATER DISTRICT**  
**REQUIRED SUPPLEMENTARY INFORMATION**  
**YEAR ENDED JUNE 30, 2024**

**SCHEDULE OF CONTRIBUTIONS TO THE PENSION PLAN  
LAST TEN YEARS**

Fiscal year	<u>June 30, 2024</u>	<u>June 30, 2023</u>	<u>June 30, 2022</u>	<u>June 30, 2021</u>	<u>June 30, 2020</u>
Actuarially determined contribution	\$ 120,668	\$ 189,898	\$ 157,894	\$ 142,096	\$ 189,335
Contributions in relation to the actuarially determined contributions	<u>(120,668)</u>	<u>(189,898)</u>	<u>(157,894)</u>	<u>(142,096)</u>	<u>(189,335)</u>
Contribution deficiency (excess)	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>
 Covered payroll	 \$ 1,177,539	 \$ 1,079,991	 \$ 955,752	 \$ 858,442	 \$ 850,749
 Contributions as a percentage of covered payroll	 10.25%	 17.58%	 16.52%	 16.55%	 22.26%
 Fiscal year	 <u>June 30, 2019</u>	 <u>June 30, 2018</u>	 <u>June 30, 2017</u>	 <u>June 30, 2016</u>	 <u>June 30, 2015</u>
Actuarially determined contribution	\$ 162,515	\$ 142,789	\$ 137,737	\$ 138,613	\$ 129,138
Contributions in relation to the actuarially determined contributions	<u>(162,515)</u>	<u>(142,789)</u>	<u>(137,737)</u>	<u>(138,613)</u>	<u>(129,138)</u>
Contribution deficiency (excess)	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>
 Covered payroll	 \$ 740,131	 \$ 698,023	 \$ 723,125	 \$ 671,180	 \$ 595,422
 Contributions as a percentage of covered payroll	 21.96%	 20.46%	 19.05%	 20.65%	 21.69%

**Notes to Schedule:**

Fiscal Year End: June 30, 2024

Valuation Date: June 30, 2021

Methods and assumptions used to determine contribution rates:

Actuarial Cost Method	Entry age actuarial cost method
Amortization Method	Varies by date established and source. May be level dollar or level Percent of pay and may include direct rate smoothing.
Asset Valuation Method	Market value of assets
Inflation	2.30%
Salary Increases	Varies by category, entry age, and duration of service.
Payroll Growth	2.80%
Investment Rate of Return	6.80% net of pension plan investment and administrative expenses; Includes inflation



BORREGO WATER DISTRICT  
BOARD OF DIRECTORS MEETING  
JANUARY 14, 2025  
AGENDA ITEM II.D

January 10, 2025

TO: Board of Directors  
FROM: Jessica Clabaugh, Finance Officer; Geoffrey Poole, General Manager  
SUBJECT: CSR Task Outsourcing – J Clabaugh

**RECOMMENDED ACTION:**

Approve General Manager to enter into Contracts with Bank-Up and Mailing.com.

**ITEM EXPLANATION:**

Staff has been researching the possibility of eliminating repetitive Customer Service tasks that take up significant time but do not require much skill. Outsourcing of Statement Printing and Mailing as well as Paper Check Depositing would have a great impact on the ability of Customer Service Staff to add more value to our new AMI system as well as customer service as a whole.

For Statement Printing and Mailing, three quotes were received with the most competitive, Mailing.com costing approximately \$0.97/piece which would run around \$1,500-\$1,600 per month. BWD's current expenses (Labor, Materials & Equipment) to do so are approximately \$2,400/month.

For Paper Check Depositing, only two companies were found that were willing to offer this service to BWD and the most competitive estimate is \$750/month which is the minimum monthly charge from Bank-Up Corp. BWD's current expense to do this is only labor which is estimated to cost about \$562 in monthly wages (net of benefits and overhead).

**NEXT STEPS**

1. Approve General Manger to execute the attached Contracts allowing for minimal edits.

**FISCAL IMPACT**

1. Mailing.com: approx. \$1,500-1,600/month
2. Bank-Up Corp: \$750/month

**ATTACHMENTS**

1. Draft Contract with Mailing.com
2. Draft Contract with Bank-Up Corp.

**BORREGO WATER DISTRICT  
PROFESSIONAL SERVICES AGREEMENT**

**1. PARTIES AND DATE.**

This Agreement is made and entered into this 19th day of January, 2025 by and between the Borrego Water District, a California municipal water district, with its principal place of business at 806 Palm Canyon Drive, Borrego Springs, CA 92004 ("District") and mailing.com with its principal place of business at 1827 So Fremont Dr, Salt Lake City, UT ("Consultant"). District and Consultant are sometimes individually referred to as "Party" and collectively as "Parties" in this Agreement.

**2. RECITALS.**

**2.1 Consultant.**

Consultant desires to perform and assume responsibility for the provision of certain professional services required by District on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in providing preparation See Exhibit A.

**2.2 Project.**

District desires to engage Consultant to render such services for BWD Customer Paper Statement Mailing ("Project") as set forth in this Agreement.

**3. TERMS.**

**3.1 Scope and Schedule of Services.**

3.1.1 General Scope of Services. Consultant promises and agrees to furnish to District all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional consulting services necessary for the Project ("Services"). The Services are more particularly described in Exhibit "A" attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules, and regulations.

3.1.2 Term. The term of this Agreement shall terminate on January 1<sup>st</sup> 2028, unless earlier terminated as provided herein. Consultant shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines. The Parties may, by mutual, written consent, extend the term of this Agreement if necessary to complete the Services.

3.1.3 Schedule of Services. Consultant shall perform the Services expeditiously, within the term of this Agreement, and in accordance with a mutually agreeable Schedule of Services to be developed by both Parties. Consultant represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Consultant's conformance with the Schedule, District shall respond to Consultant's submittals in a timely manner. Upon request of District, Consultant

shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

### **3.2 Fees and Payments.**

3.2.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "A" attached hereto and incorporated herein by reference. The total compensation shall not exceed the amount shown in costs without written approval by District. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

3.2.2 Payment. Consultant shall submit to District a monthly itemized statement which indicates work completed and hours of Services rendered by Consultant. The statement shall describe the Services and supplies provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. District shall, within 45 days of receiving such statement, review the statement and pay all approved charges thereon.

3.2.3 Reimbursement for Expenses. Consultant shall not be reimbursed for any expenses unless authorized in writing by District.

3.2.4 Extra Work. At any time during the term of this Agreement, District may request that Consultant perform Extra Work. As used herein, "Extra Work" means any work which is determined by District to be necessary for the proper completion of the Project, but which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without written authorization by District.

### **3.3 Responsibilities of Consultant.**

3.3.1 Control and Payment of Subordinates; Independent Contractor. The Services shall be performed by Consultant or under its supervision. Consultant will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. District retains Consultant on an independent contractor basis and not as an employee. Consultant retains the right to perform similar or different services for others during the term of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Consultant shall also not be employees of District and shall at all times be under Consultant's exclusive direction and control. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Consultant shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

3.3.2 Standard of Care; Performance of Employees. Consultant shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants that all employees and subconsultants shall have sufficient skill and experience to perform the Services assigned to them. Finally, Consultant represents that it, its employees and subconsultants have all licenses,

permits, qualifications and approvals of whatever nature that are legally required to perform the Services, and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Consultant shall perform, at its own cost and expense and without reimbursement from District, any services necessary to correct errors or omissions which are caused by Consultant's failure to comply with the standard of care provided for herein. Any employee of Consultant or its sub-consultants who is determined by District to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to District, shall be promptly removed from the Project by Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

3.3.3 Conformance to Applicable Requirements. All work prepared by Consultant shall be subject to the approval of District.

3.3.4 Substitution of Key Personnel. Consultant has represented to District that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval of District. In the event that District and Consultant cannot agree as to the substitution of key personnel, District shall be entitled to terminate this Agreement for cause. As discussed below, any personnel who fail or refuse to perform the Services in a manner acceptable to District, or who are determined by District to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project or a threat to the safety of persons or property, shall be promptly removed from the Project by Consultant at the request of District. The key personnel for performance of this Agreement is \_\_\_\_\_.

3.3.5 Coordination of Services. Consultant agrees to work closely with District staff in the performance of Services and shall be available to District's staff, consultants and other staff at all reasonable times.

3.3.6 Laws and Regulations. Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Consultant shall be liable for all violations of such laws and regulations in connection with Services. If Consultant performs any work knowing it to be contrary to such laws, rules and regulations, Consultant shall be solely responsible for all costs arising therefrom. Consultant shall defend, indemnify and hold District, its officials, directors, officers, employees, and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.3.7 Labor Code Provisions.

(a) Prevailing Wages. Consultant is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. If the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage

Laws. District shall provide Consultant with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Consultant shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request and shall post copies at Consultant's principal place of business and at the project site. Consultant shall defend, indemnify and hold District, its elected officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

(b) Registration and Labor Compliance. If the services are being performed as part of an applicable "public works" or "maintenance" project, then, in addition to the foregoing, pursuant to Labor Code sections 1725.5 and 1771.1, Consultant and all subconsultants must be registered with the Department of Industrial Relations ("DIR"). Consultant shall maintain registration for the duration of the project and require the same of any subconsultants. This project may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Consultant's sole responsibility to comply with all applicable registration and labor compliance requirements, including the submission of payroll records directly to the DIR.

(c) Labor Certification. By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

3.3.8 Safety. Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions as applicable shall include, but shall not be limited to: (A) adequate life protection and life-saving equipment and procedures; (B) instructions in accident prevention for all employees and subconsultants, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

3.3.9 Accounting Records. Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of District during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of four (4) years from the date of final payment under this Agreement.

3.3.10 Air Quality. To the extent applicable, Consultant must fully comply with all applicable laws, rules and regulations in furnishing or using equipment and/or providing services, including, but not limited to, emissions limits and permitting requirements imposed by the South Coast Air Quality Management District (SCAQMD) and/or California Air Resources Board (CARB). Although the SCAQMD and CARB limits and requirements are more broad, Consultant shall specifically be aware of their application to "portable equipment", which

definition is considered by SCAQMD and CARB to include any item of equipment with a fuel-powered engine. Consultant shall indemnify District against any fines or penalties imposed by SCAQMD, CARB, or any other governmental or regulatory agency for violations of applicable laws, rules and/or regulations by Consultant, its subconsultants, or others for whom Consultant is responsible under its indemnity obligations provided for in this Agreement.

### **3.4 Representatives of the Parties.**

3.4.1 District's Representative. District hereby designates its General Manager, or his or her designee, to act as its representative for the performance of this Agreement ("District's Representative"). Consultant shall not accept direction or orders from any person other than the District's Representative or his or her designee.

3.4.2 Consultant's Representative. Consultant hereby designates Stacy Conologue, or his or her designee, to act as its representative for the performance of this Agreement ("Consultant's Representative"). Consultant's Representative shall have full authority to represent and act on behalf of Consultant for all purposes under this Agreement. The Consultant's Representative shall supervise and direct the Services, using his best skill and attention, and shall be responsible for all means, methods, techniques, sequences, and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

### **3.5 Indemnification.**

To the fullest extent permitted by law, Consultant shall immediately indemnify and hold District, its directors, officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any alleged acts, errors or omissions of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of Consultant's Services, the Project or this Agreement, including without limitation the payment of all consequential damages, expert witness fees and attorneys' fees and other related costs and expenses. Notwithstanding the foregoing, to the extent Consultant's Services are subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant.

Consultant shall immediately defend, with Counsel of District's choosing and at Consultant's own cost, expense and risk, any and all claims, suits, actions or other proceedings of every kind that may be brought or instituted against District or its directors, officials, officers, employees, volunteers and agents. Consultant shall pay and satisfy any judgment, award or decree that may be rendered against District or its directors, officials, officers, employees, volunteers and agents as part of any such claim, suit, action or other proceeding. Consultant shall also reimburse District for the cost of any settlement paid by District or its directors, officials, officers, employees, agents or volunteers as part of any such claim, suit, action or other proceeding. Such reimbursement shall include payment for District's attorneys' fees and costs, including expert witness fees. Consultant shall reimburse District and its directors, officials, officers, employees, agents, and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Consultant's obligation to indemnify shall survive expiration or termination of this Agreement, and shall not be restricted to insurance proceeds, if any, received by District, its directors,

officials, officers, employees, agents, or volunteers.

### **3.6 Insurance.**

3.6.1 Time for Compliance. Consultant shall not commence work under this Agreement until it has provided evidence satisfactory to District that it has secured all insurance required under this section, in a form and with insurance companies acceptable to District. In addition, Consultant shall not allow any subcontractor to commence work on any subcontract until it has secured all insurance required under this section.

3.6.2 Minimum Requirements. Consultant shall, at its expense, procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by Consultant, its agents, representatives, employees or subcontractors. Consultant shall also require all of its subcontractors to procure and maintain the same insurance for the duration of the Agreement. Such insurance shall meet at least the following minimum levels of coverage:

(A) Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (1) *General Liability*: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001 or exact equivalent); (2) *Automobile Liability*: Insurance Services Office Business Auto Coverage (form CA 0001, code 1 (any auto) or exact equivalent); and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

(B) Minimum Limits of Insurance. Consultant shall maintain limits no less than: (1) *General Liability*: \$2,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with general aggregate limit is used, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit; (2) *Automobile Liability*: \$1,000,000 per accident for bodily injury and property damage; and (3) *if Consultant has an employees, Workers' Compensation and Employer's Liability*: Workers' Compensation limits as required by the Labor Code of the State of California. Employer's Practices Liability limits of \$1,000,000 per accident.

3.6.3 Professional Liability. Consultant shall procure and maintain, and require its sub-consultants to procure and maintain, for a period of five (5) years following completion of the Project, errors and omissions liability insurance appropriate to their profession. Such insurance shall be in an amount not less than \$1,000,000 per claim. This insurance shall be endorsed to include contractual liability applicable to this Agreement and shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of Consultant. "Covered Professional Services" as designated in the policy must specifically include work performed under this Agreement. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend.

3.6.4 Insurance Endorsements. The insurance policies shall contain the following provisions, or Consultant shall provide endorsements on forms approved by District to add the following provisions to the insurance policies:

(A) General Liability.

(i) Commercial General Liability Insurance must include coverage for (1) bodily Injury and property damage; (2) personal Injury/advertising Injury; (3) premises/operations liability; (4) products/completed operations liability; (5) aggregate limits that apply per Project; (6) explosion, collapse and underground (UCX) exclusion deleted; (7) contractual liability with respect to this Agreement; (8) broad form property damage; and (9) independent consultants coverage.

(ii) The policy shall contain no endorsements or provisions limiting coverage for (1) contractual liability; (2) cross liability exclusion for claims or suits by one insured against another; or (3) contain any other exclusion contrary to this Agreement.

(iii) The policy shall give District, its directors, officials, officers, employees, and agents insured status using ISO endorsement forms 20 10 10 01 and 20 37 10 01, or endorsements providing the exact same coverage.

(iv) The additional insured coverage under the policy shall be "primary and non-contributory" and will not seek contribution from District's insurance or self-insurance and shall be at least as broad as CG 20 01 04 13, or endorsements providing the exact same coverage.

(B) Automobile Liability. The automobile liability policy shall be endorsed to state that: (1) District, its directors, officials, officers, employees and agents shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by Consultant or for which Consultant is responsible; and (2) the insurance coverage shall be primary insurance as respects District, its directors, officials, officers, employees and agents, or if excess, shall stand in an unbroken chain of coverage excess of Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by District, its directors, officials, officers, employees and agents shall be excess of Consultant's insurance and shall not be called upon to contribute with it in any way.

(C) Workers' Compensation and Employers Liability Coverage.

(i) Consultant certifies that he/she is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and he/she will comply with such provisions before commencing work under this Agreement.

(ii) The insurer shall agree to waive all rights of subrogation against District, its directors, officials, officers, employees and agents for losses paid under the terms of the insurance policy which arise from work performed by Consultant.

(D) All Coverages.

(i) Defense costs shall be payable in addition to the limits set forth hereunder.

(ii) Requirements of specific coverage or limits contained in this section are not intended as a limitation on coverage, limits, or other



requirement, or a waiver of any coverage normally provided by any insurance. It shall be a requirement under this Agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits set forth herein shall be available to District, its directors, officials, officers, employees and agents as additional insureds under said policies. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured; whichever is greater.

(iii) The limits of insurance required in this Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of District (if agreed to in a written contract or agreement) before District's own insurance or self-insurance shall be called upon to protect it as a named insured. The umbrella/excess policy shall be provided on a "following form" basis with coverage at least as broad as provided on the underlying policy(ies).

(iv) Consultant shall provide District at least thirty (30) days prior written notice of cancellation of any policy required by this Agreement, except that Consultant shall provide at least ten (10) days prior written notice of cancellation of any such policy due to non-payment of premium. If any of the required coverage is cancelled or expires during the term of this Agreement, Consultant shall deliver renewal certificate(s) including the General Liability Additional Insured Endorsement to District at least ten (10) days prior to the effective date of cancellation or expiration.

(v) The retroactive date (if any) of each policy is to be no later than the effective date of this Agreement. Consultant shall maintain such coverage continuously for a period of at least three years after the completion of the work under this Agreement. Consultant shall purchase a one (1) year extended reporting period A) if the retroactive date is advanced past the effective date of this Agreement; B) if the policy is cancelled or not renewed; or C) if the policy is replaced by another claims-made policy with a retroactive date subsequent to the effective date of this Agreement.

(vi) The foregoing requirements as to the types and limits of insurance coverage to be maintained by Consultant, and any approval of said insurance by District, is not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Consultant pursuant to this Agreement, including but not limited to, the provisions concerning indemnification.

(vii) If at any time during the life of the Agreement, any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, District has the right but not the duty to obtain the insurance it deems necessary and any premium paid by District will be promptly reimbursed by Consultant or District will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, District may cancel this Agreement. District may require Consultant to provide complete copies of all insurance policies in effect for the duration of the Project.

(viii) Neither District nor any of its directors, officials, officers, employees or agents shall be personally responsible for any liability arising under or by virtue of this Agreement.

3.6.5 Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by District. If District does not approve the deductibles or self-insured retentions as presented, Consultant shall guarantee that, at the option of District, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects District, its directors, officials, officers, employees and agents; or, (2) Consultant shall procure a bond guaranteeing payment of losses and related investigation costs, claims and administrative and defense expenses.

3.6.6 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating no less than A:VIII, licensed to do business in California, and satisfactory to District.

3.6.7 Verification of Coverage. Consultant shall furnish District with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to District. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements must be received and approved by District before work commences. District reserves the right to require complete, certified copies of all required insurance policies, at any time.

3.6.8 Subconsultant Insurance Requirements. Consultant shall not allow any subcontractors or subconsultants to commence work on any subcontract until they have provided evidence satisfactory to District that they have secured all insurance required under this section. Policies of commercial general liability insurance provided by such subcontractors or subconsultants shall be endorsed to name District as an additional insured using ISO form CG 20 38 04 13 or an endorsement providing the exact same coverage. If requested by Consultant, District may approve different scopes or minimum limits of insurance for particular subcontractors or subconsultants.

### **3.7 Termination of Agreement.**

3.7.1 Grounds for Termination. District may, by written notice to Consultant, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Consultant of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Consultant shall be compensated only for those services which have been adequately rendered to District, and Consultant shall be entitled to no further compensation. Consultant may not terminate this Agreement except for cause.

3.7.2 Effect of Termination. If this Agreement is terminated as provided herein, District may require Consultant to provide all finished or unfinished Documents and Data and other information of any kind prepared by Consultant in connection with the performance of Services under this Agreement. Consultant shall be required to provide such document and other information within fifteen (15) days of the request.

3.7.3 Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, District may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

### **3.8 Ownership of Materials and Confidentiality.**

3.8.1 Documents & Data; Licensing of Intellectual Property. This Agreement creates a non-exclusive and perpetual license for District to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Consultant under this Agreement ("Documents & Data"). All Documents & Data shall be and remain the property of District, and shall not be used in whole or in substantial part by Consultant on other projects without District's express written permission. Within thirty (30) days following the completion, suspension, abandonment or termination of this Agreement, Consultant shall provide to District reproducible copies of all Documents & Data, in a form and amount required by District. District reserves the right to select the method of document reproduction and to establish where the reproduction will be accomplished. The reproduction expense shall be borne by District at the actual cost of duplication. In the event of a dispute regarding the amount of compensation to which Consultant is entitled under the termination provisions of this Agreement, Consultant shall provide all Documents & Data to District upon payment of the undisputed amount. Consultant shall have no right to retain or fail to provide to District any such documents pending resolution of the dispute. In addition, Consultant shall retain copies of all Documents & Data on file for a minimum of fifteen (15) years following completion of the Project, and shall make copies available to District upon the payment of actual reasonable duplication costs. Before destroying the Documents & Data following this retention period, Consultant shall make a reasonable effort to notify District and provide District with the opportunity to obtain the documents.

3.8.2 Subconsultants. Consultant shall require all subconsultants to agree in writing that District is granted a non-exclusive and perpetual license for any Documents & Data the subconsultant prepares under this Agreement. Consultant represents and warrants that Consultant has the legal right to license any and all Documents & Data. Consultant makes no such representation and warranty in regard to Documents & Data which were prepared by design professionals other than Consultant or its subconsultants, or those provided to Consultant by District.

3.8.3 Right to Use. District shall not be limited in any way in its use or reuse of the Documents and Data or any part of them at any time for purposes of this Project or another project, provided that any such use not within the purposes intended by this Agreement or on a project other than this Project without employing the services of Consultant shall be at District's sole risk. If District uses or reuses the Documents & Data on any project other than this Project, it shall remove Consultant's seal from the Documents & Data and indemnify and hold harmless Consultant and its officers, directors, agents and employees from claims arising out of the negligent use or re-use of the Documents & Data on such other project. Consultant shall be responsible and liable for its Documents & Data, pursuant to the terms of this Agreement, only with respect to the condition of the Documents & Data at the time they are provided to District upon completion, suspension, abandonment or termination. Consultant shall not be responsible or liable for any revisions to the Documents & Data made by any party other than Consultant, a party for whom Consultant is legally responsible or liable, or anyone approved by Consultant.

3.8.4 Indemnification. Consultant shall defend, indemnify and hold District, its directors, officials, officers, employees, volunteers and agents free and harmless, pursuant to the indemnification provisions of this Agreement, for any alleged infringement of any patent,

copyright, trade secret, trade name, trademark, or any other proprietary right of any person or entity in consequence of the use on the Project by District of the Documents & Data, including any method, process, product, or concept specified or depicted.

3.8.5 Confidentiality. All Documents & Data, either created by or provided to Consultant in connection with the performance of this Agreement, shall be held confidential by Consultant. All Documents & Data shall not, without the prior written consent of District, be used or reproduced by Consultant for any purposes other than the performance of the Services. Consultant shall not disclose, cause or facilitate the disclosure of the Documents & Data to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Consultant that is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use District's name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of District.

### 3.9 Subcontracting/Subconsulting

3.9.1 Prior Approval Required. Consultant shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without prior written approval of District. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

### 3.10 General Provisions

3.10.1 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

**DISTRICT:**

Borrego Water District  
  
806 Palm Canyon Drive  
Borrego Springs, CA 92004  
  
Attn: Geoff Poole

**CONSULTANT:**

Mailing.com  
  
1827 S Fremont Dr.  
Salt Lake City, UT 84101  
  
Attn: Craig Hauer

Such notice shall be deemed made when personally deed or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.10.2 Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subconsultant, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Consultant shall also comply with all relevant provisions of District's Minority Business Enterprise program, Affirmative Action Plan or other related programs or guidelines currently in effect or hereinafter enacted.

3.10.3 Time of Essence. Time is of the essence for each and every provision of this Agreement.

3.10.4 District's Right to Employ Other Consultants. District reserves right to employ other consultants in connection with this Project.

3.10.5 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the parties.

3.10.6 Assignment or Transfer. Consultant shall not assign, hypothecate or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of District. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

3.10.7 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Consultant include all personnel, employees, agents, and subconsultants of Consultant, except as otherwise specified in this Agreement. All references to District include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content or intent of this Agreement.

3.10.8 Amendment; Modification. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

3.10.9 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel or otherwise.

3.10.10 No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

3.10.11 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.10.12 Prohibited Interests. Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, District, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. Consultant further agrees to file, or shall cause its employees or subconsultants to file, a Statement of Economic Interest with the District's Filing Officer as required under state law in the performance of the Services. For breach or violation of this warranty, District shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of

District, during the term of his or her service with District, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

3.10.13 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

3.10.14 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in San Diego County.

3.10.15 Government Code Claim Compliance. In addition to any and all contract requirements pertaining to notices of and requests for compensation or payment for extra work, disputed work, claims and/or changed conditions, Consultant must comply with the claim procedures set forth in Government Code sections 900 et seq. prior to filing any lawsuit against District. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, claims, and/or changed conditions have been followed by Consultant. If no such Government Code claim is submitted, or if any prerequisite contractual requirements are not otherwise satisfied as specified herein, Consultant shall be barred from bringing and maintaining a valid lawsuit against District.

3.10.16 Attorneys' Fees. If either party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorneys' fees and all other costs of such action.

3.10.17 Authority to Enter Agreement. Consultant has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

3.10.18 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

3.10.19 Entire Agreement. This Agreement contains the entire Agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both parties.

**SIGNATURE PAGE  
TO  
BORREGO WATER DISTRICT  
PROFESSIONAL SERVICES AGREEMENT**

**BORREGO WATER DISTRICT**

By: \_\_\_\_\_

Printed Name: Geoff Poole

Title: General Manager

Dated: \_\_\_\_\_

The Data Center a mailing.com company  
Consultant

By: Craig Hauer  
(Authorized Representative of Vendor)

Printed Name: Craig Hauer

Title: Owner

Dated: 1-9-2025

**ATTACHMENT A  
SCOPE OF SERVICES & LIST OF PROJECTS**

January 2025

The Data Center a mailing.com company

Printing and Mailing Service

Monthly Statement

Statement \$0.174

8.5X11 20# paper with perf, variable data printed in full color

#10 double window tinted envelope

#9 single window tinted envelope

Mailing services: fold, insert, meter, sort, tray and deliver to the post office

Newsletter \$0.25 each

8.5X11 20# paper, double sided, inserted into statement

Printing and mailing services turn time 24 to 48 hours





# Secretary of State Certificate of Status

I, SHIRLEY N. WEBER, PH.D., California Secretary of State, hereby certify:

**Entity Name:** THE DATA CENTER, LLC  
**Entity No.:** 201305610097  
**Registration Date:** 02/22/2013  
**Entity Type:** Limited Liability Company - Out of State  
**Formed In:** UTAH  
**Status:** Active

The above referenced entity is active on the Secretary of State's records and is qualified to transact intrastate business in California.

This certificate relates to the status of the entity on the Secretary of State's records as of the date of this certificate and does not reflect documents that are pending review or other events that may impact status.

No information is available from this office regarding the financial condition, status of licenses, if any, business activities or practices of the entity.



**IN WITNESS WHEREOF**, I execute this certificate and affix the Great Seal of the State of California this day of January 07, 2025.

**SHIRLEY N. WEBER, PH.D.**  
Secretary of State

**Certificate No.:** 282275528

To verify the issuance of this Certificate, use the Certificate No. above with the Secretary of State Certification Verification Search available at [bizfileOnline.sos.ca.gov](http://bizfileOnline.sos.ca.gov).

**BORREGO WATER DISTRICT  
PROFESSIONAL SERVICES AGREEMENT**

**1. PARTIES AND DATE.**

This Agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2025 by and between the Borrego Water District, a California municipal water district, with its principal place of business at 806 Palm Canyon Drive, Borrego Springs, CA 92004 ("District") and Business Recovery Services, Inc. DBA Bank Up Corporation with its principal place of business at 1320 Harbor Bay Parkway Suite 180 Alameda, CA 94502 ("Consultant"). District and Consultant are sometimes individually referred to as "Party" and collectively as "Parties" in this Agreement.

**2. RECITALS.**

**2.1 Consultant.**

Consultant desires to perform and assume responsibility for the provision of certain professional services required by District on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in providing acceptance and processing of remittance items, is licensed in the State of California, and is familiar with the plans of District.

**2.2 Project.**

District desires to engage Consultant to render such services for Lockbox Payment Processing ("Project") as set forth in this Agreement.

**3. TERMS.**

**3.1 Scope and Schedule of Services.**

3.1.1 General Scope of Services. Consultant promises and agrees to furnish to District all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional consulting services necessary for the Project ("Services"). The Services are more particularly described in Exhibit "A" attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules, and regulations.

3.1.2 Term. The term of this Agreement shall be from March 1, 2025 through February 28, 2028. Consultant shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines. The Parties may, by mutual, written consent, extend the term of this Agreement if necessary to complete the Services.

3.1.3 Schedule of Services. Consultant shall perform the Services expeditiously, within the term of this Agreement, and in accordance with a mutually agreeable Schedule of Services to be developed by both Parties. Consultant represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Consultant's conformance with the Schedule, District shall

respond to Consultant's submittals in a timely manner. Upon request of District, Consultant shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

### **3.2 Fees and Payments.**

3.2.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "B" attached hereto and incorporated herein by reference. The total compensation shall not exceed the amount shown in costs without written approval by District. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

3.2.2 Payment. Consultant shall submit to District a monthly itemized statement which indicates work completed. The statement shall describe the Services provided since the start of the subsequent billing periods, as appropriate, through the date of the statement. District shall, within 30 days of receiving such statement, review the statement and pay all approved charges thereon.

3.2.3 Reimbursement for Expenses. Consultant shall not be reimbursed for any expenses unless authorized in writing by District.

3.2.4 Extra Work. At any time during the term of this Agreement, District may request that Consultant perform Extra Work. As used herein, "Extra Work" means any work which is determined by District to be necessary for the proper completion of the Project, but which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without written authorization by District.

### **3.3 Responsibilities of Consultant.**

3.3.1 Control and Payment of Subordinates; Independent Contractor. The Services shall be performed by Consultant or under its supervision. Consultant will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. District retains Consultant on an independent contractor basis and not as an employee. Consultant retains the right to perform similar or different services for others during the term of this Agreement.

3.3.2 Standard of Care; Performance of Employees. Consultant shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants that all employees and subconsultants shall have sufficient skill and experience to perform the Services assigned to them. Finally, Consultant represents that it, its employees and subconsultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Consultant shall perform, at its own cost and expense and without reimbursement from District, any services necessary to correct errors or omissions which are caused by Consultant's failure to comply with the standard of care provided for herein.

3.3.3 Conformance to Applicable Requirements. All work prepared by Consultant shall be subject to the approval of District.

3.3.4 Substitution of Key Personnel. Consultant has represented to District that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval of District. The key personnel for performance of this Agreement are Rod Gamboa, Alameda Processing Site Manager; Denise Pray, Director of Client Services; Keith Stevenson, Director of Technical Services.

3.3.5 Coordination of Services. Consultant agrees to work closely with District staff in the performance of Services and shall be available to District's staff, consultants and other staff at all reasonable times.

3.3.6 Laws and Regulations. Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Consultant shall be liable for all violations of such laws and regulations in connection with Services. If Consultant performs any work knowing it to be contrary to such laws, rules and regulations, Consultant shall be solely responsible for all costs arising therefrom. Consultant shall defend, indemnify and hold District, its officials, directors, officers, employees, and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.3.7 Labor Code Provisions.

(a) Prevailing Wages. Consultant is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. If the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. District shall provide Consultant with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Consultant shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request and shall post copies at Consultant's principal place of business and at the project site. Consultant shall defend, indemnify and hold District, its elected officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

(b) Labor Certification. By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

3.3.8 Safety. Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions as applicable shall include, but shall not be limited to: (A) adequate life protection and life-saving equipment and procedures; (B) instructions in accident prevention for all employees and subconsultants, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

3.3.9 Accounting Records. Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of District during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of four (4) years from the date of final payment under this Agreement.

#### **3.4 Representatives of the Parties.**

3.4.1 District's Representative. District hereby designates its General Manager, or his or her designee, to act as its representative for the performance of this Agreement ("District's Representative"). Consultant shall not accept direction or orders from any person other than the District's Representative or his or her designee.

3.4.2 Consultant's Representative. Consultant hereby designates Michael V Santimauro, Bank Up Corporation CEO, or his or her designee, to act as its representative for the performance of this Agreement ("Consultant's Representative"). Consultant's Representative shall have full authority to represent and act on behalf of Consultant for all purposes under this Agreement. The Consultant's Representative shall supervise and direct the Services, using his best skill and attention, and shall be responsible for all means, methods, techniques, sequences, and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

#### **3.5 Indemnification.**

To the fullest extent permitted by law, Consultant shall immediately indemnify and hold District, its directors, officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any alleged acts, errors or omissions of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of Consultant's Services, the Project or this Agreement, including without limitation the payment of all consequential damages, expert witness fees and attorneys' fees and other related costs and expenses. Notwithstanding the foregoing, to the extent Consultant's Services are subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant.

Consultant shall immediately defend, with Counsel of District's choosing and at Consultant's own cost, expense and risk, any and all claims, suits, actions or other proceedings of every kind that may be brought or instituted against District or its directors, officials, officers, employees, volunteers and agents. Consultant shall pay and satisfy any judgment, award or decree that may be rendered against District or its directors, officials, officers, employees, volunteers and agents as part of any such claim, suit, action or other proceeding. Consultant shall also reimburse District for the cost of any settlement paid by District or its directors, officials, officers, employees, agents or volunteers as part of any such claim, suit, action or other proceeding. Such reimbursement shall include payment for District's attorneys' fees and costs, including expert witness fees. Consultant shall reimburse District and its directors, officials, officers, employees, agents, and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Consultant's obligation to indemnify shall survive expiration or termination of this Agreement, and shall not be restricted to insurance proceeds, if any, received by District, its directors, officials, officers, employees, agents, or volunteers.

### 3.6 Insurance.

3.6.1 Time for Compliance. Consultant shall not commence work under this Agreement until it has provided evidence satisfactory to District that it has secured all insurance required under this section, in a form and with insurance companies acceptable to District. In addition, Consultant shall not allow any subcontractor to commence work on any subcontract until it has secured all insurance required under this section.

3.6.2 Minimum Requirements. Consultant shall, at its expense, procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by Consultant, its agents, representatives, employees or subcontractors. Consultant shall also require all of its subcontractors to procure and maintain the same insurance for the duration of the Agreement. Such insurance shall meet at least the following minimum levels of coverage:

(A) Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (1) *General Liability*: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001 or exact equivalent); (2); and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

(B) Minimum Limits of Insurance. Consultant shall maintain limits no less than: (1) *General Liability*: \$2,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with general aggregate limit is used, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit; ~~(2) *Automobile Liability*: \$1,000,000 per accident for bodily injury and property damage; and (3) if Consultant has an employees, *Workers' Compensation and Employer's Liability*: Workers' Compensation limits as required by the Labor Code of the State of California. Employer's Practices Liability limits of \$1,000,000 per accident.~~

Commented [JC1]: BBK working on language re: indemnification from auto liability.

3.6.3 Professional Liability. Consultant shall procure and maintain, and require its sub-consultants to procure and maintain, for a period of five (5) years following completion of the Project, errors and omissions liability insurance appropriate to their

profession. Such insurance shall be in an amount not less than \$1,000,000 per claim. This insurance shall be endorsed to include contractual liability applicable to this Agreement and shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of Consultant. "Covered Professional Services" as designated in the policy must specifically include work performed under this Agreement. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend.

3.6.4 Insurance Endorsements. The insurance policies shall contain the following provisions, or Consultant shall provide endorsements on forms approved by District to add the following provisions to the insurance policies:

(A) General Liability.

(i) Commercial General Liability Insurance must include coverage for (1) bodily Injury and property damage; (2) personal Injury/advertising Injury; (3) premises/operations liability; (4) products/completed operations liability; (5) aggregate limits that apply per Project; (6) explosion, collapse and underground (UCX) exclusion deleted; (7) contractual liability with respect to this Agreement; (8) broad form property damage; and (9) independent consultants coverage.

(ii) The policy shall contain no endorsements or provisions limiting coverage for (1) contractual liability; (2) cross liability exclusion for claims or suits by one insured against another; or (3) contain any other exclusion contrary to this Agreement.

(iii) The policy shall give District, its directors, officials, officers, employees, and agents insured status using ISO endorsement forms 20 10 10 01 and 20 37 10 01, or endorsements providing the exact same coverage.

(iv) The additional insured coverage under the policy shall be "primary and non-contributory" and will not seek contribution from District's insurance or self-insurance and shall be at least as broad as CG 20 01 04 13, or endorsements providing the exact same coverage.

(B) Workers' Compensation and Employers Liability Coverage.

(i) Consultant certifies that he/she is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and he/she will comply with such provisions before commencing work under this Agreement.

(ii) The insurer shall agree to waive all rights of subrogation against District, its directors, officials, officers, employees and agents for losses paid under the terms of the insurance policy which arise from work performed by Consultant.

(C) All Coverages.

(i) Defense costs shall be payable in addition to the limits set forth hereunder.

(ii) Requirements of specific coverage or limits contained in this section are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance. It shall be a requirement under this Agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits set forth herein shall be available to District, its directors, officials, officers, employees and agents as additional insureds under said policies. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured; whichever is greater.

(iii) The limits of insurance required in this Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of District (if agreed to in a written contract or agreement) before District's own insurance or self-insurance shall be called upon to protect it as a named insured. The umbrella/excess policy shall be provided on a "following form" basis with coverage at least as broad as provided on the underlying policy(ies).

(iv) Consultant shall provide District at least thirty (30) days prior written notice of cancellation of any policy required by this Agreement, except that Consultant shall provide at least ten (10) days prior written notice of cancellation of any such policy due to non-payment of premium. If any of the required coverage is cancelled or expires during the term of this Agreement, Consultant shall deliver renewal certificate(s) including the General Liability Additional Insured Endorsement to District at least ten (10) days prior to the effective date of cancellation or expiration.

(v) The retroactive date (if any) of each policy is to be no later than the effective date of this Agreement. Consultant shall maintain such coverage continuously for a period of at least three years after the completion of the work under this Agreement. Consultant shall purchase a one (1) year extended reporting period A) if the retroactive date is advanced past the effective date of this Agreement; B) if the policy is cancelled or not renewed; or C) if the policy is replaced by another claims-made policy with a retroactive date subsequent to the effective date of this Agreement.

(vi) The foregoing requirements as to the types and limits of insurance coverage to be maintained by Consultant, and any approval of said insurance by District, is not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Consultant pursuant to this Agreement, including but not limited to, the provisions concerning indemnification.

(vii) If at any time during the life of the Agreement, any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, District has the right but not the duty to obtain the insurance it deems necessary and any premium paid by District will be promptly reimbursed by Consultant or District will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, District may cancel this Agreement. District may require Consultant to provide complete copies of all insurance policies in effect for the duration of the Project.



(viii) Neither District nor any of its directors, officials, officers, employees or agents shall be personally responsible for any liability arising under or by virtue of this Agreement.

3.6.5 Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by District. If District does not approve the deductibles or self-insured retentions as presented, Consultant shall guarantee that, at the option of District, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects District, its directors, officials, officers, employees and agents; or, (2) Consultant shall procure a bond guaranteeing payment of losses and related investigation costs, claims and administrative and defense expenses.

3.6.6 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating no less than A:VIII, licensed to do business in California, and satisfactory to District.

3.6.7 Verification of Coverage. Consultant shall furnish District with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to District. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements must be received and approved by District before work commences. District reserves the right to require complete, certified copies of all required insurance policies, at any time.

3.6.8 Subconsultant Insurance Requirements. Consultant shall not allow any subcontractors or subconsultants to commence work on any subcontract until they have provided evidence satisfactory to District that they have secured all insurance required under this section. Policies of commercial general liability insurance provided by such subcontractors or subconsultants shall be endorsed to name District as an additional insured using ISO form CG 20 38 04 13 or an endorsement providing the exact same coverage. If requested by Consultant, District may approve different scopes or minimum limits of insurance for particular subcontractors or subconsultants.

### **3.7 Termination of Agreement.**

3.7.1 Grounds for Termination. District may, by written notice to Consultant, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Consultant of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Consultant shall be compensated only for those services which have been adequately rendered to District, and Consultant shall be entitled to no further compensation. Consultant may not terminate this Agreement except for cause.

3.7.2 Effect of Termination. If this Agreement is terminated as provided herein, District may require Consultant to provide all finished or unfinished Documents and Data and other information of any kind prepared by Consultant in connection with the performance of Services under this Agreement. Consultant shall be required to provide such document and other information within fifteen (15) days of the request.

3.7.3 Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, District may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

**3.8 Ownership of Materials and Confidentiality.**

3.8.1 Right to Use. District shall not be limited in any way in its use or reuse of the Documents and Data or any part of them at any time for purposes of this Project or another project, provided that any such use not within the purposes intended by this Agreement or on a project other than this Project without employing the services of Consultant shall be at District's sole risk. If District uses or reuses the Documents & Data on any project other than this Project, it shall remove Consultant's seal from the Documents & Data and indemnify and hold harmless Consultant and its officers, directors, agents and employees from claims arising out of the negligent use or re-use of the Documents & Data on such other project. Consultant shall be responsible and liable for its Documents & Data, pursuant to the terms of this Agreement, only with respect to the condition of the Documents & Data at the time they are provided to District upon completion, suspension, abandonment or termination. Consultant shall not be responsible or liable for any revisions to the Documents & Data made by any party other than Consultant, a party for whom Consultant is legally responsible or liable, or anyone approved by Consultant.

3.8.2 Indemnification. Consultant shall defend, indemnify and hold District, its directors, officials, officers, employees, volunteers and agents free and harmless, pursuant to the indemnification provisions of this Agreement, for any alleged infringement of any patent, copyright, trade secret, trade name, trademark, or any other proprietary right of any person or entity in consequence of the use on the Project by District of the Documents & Data, including any method, process, product, or concept specified or depicted.

3.8.3 Confidentiality. All Documents & Data, either created by or provided to Consultant in connection with the performance of this Agreement, shall be held confidential by Consultant. All Documents & Data shall not, without the prior written consent of District, be used or reproduced by Consultant for any purposes other than the performance of the Services. Consultant shall not disclose, cause or facilitate the disclosure of the Documents & Data to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Consultant that is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use District's name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of District.

**3.9 Subcontracting/Subconsulting.**

3.9.1 Prior Approval Required. Consultant shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without prior written approval of District. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

**3.10 General Provisions.**

3.10.1 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

**DISTRICT:**

Borrego Water District  
806 Palm Canyon Drive  
Borrego Springs, CA 92004

Attn: Geoff Poole

**CONSULTANT:**

Business Recovery Services, Inc.  
DBA Bank Up Corporation  
1320 Harbor Bay Parkway Suite 180  
Alameda, CA 94502

Michael V Santimauro

Such notice shall be deemed made when personally deed or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.10.2 Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subconsultant, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Consultant shall also comply with all relevant provisions of District's Minority Business Enterprise program, Affirmative Action Plan or other related programs or guidelines currently in effect or hereinafter enacted.

3.10.3 Time of Essence. Time is of the essence for each and every provision of this Agreement.

3.10.4 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the parties.

3.10.5 Assignment or Transfer. Consultant shall not assign, hypothecate or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of District. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

3.10.6 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Consultant include all personnel, employees, agents, and subconsultants of Consultant, except as otherwise specified in this Agreement. All references to District include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content or intent of this Agreement.

3.10.7 Amendment; Modification. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

**Commented [2]:** BBK: This is boilerplate language. It cannot be removed.

3.10.8 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel or otherwise.

3.10.9 No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

3.10.10 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.10.11 Prohibited Interests. Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, District, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. Consultant further agrees to file, or shall cause its employees or subconsultants to file, a Statement of Economic Interest with the District's Filing Officer as required under state law in the performance of the Services. For breach or violation of this warranty, District shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of District, during the term of his or her service with District, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

3.10.12 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

3.10.13 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in San Diego County.

3.10.14 Government Code Claim Compliance. In addition to any and all contract requirements pertaining to notices of and requests for compensation or payment for extra work, disputed work, claims and/or changed conditions, Consultant must comply with the claim procedures set forth in Government Code sections 900 et seq. prior to filing any lawsuit against District. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, claims, and/or changed conditions have been followed by Consultant. If no such Government Code claim is submitted, or if any prerequisite contractual requirements are not otherwise satisfied as specified herein, Consultant shall be barred from bringing and maintaining a valid lawsuit against District.

3.10.15 Attorneys' Fees. If either party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorneys' fees and all other costs of such action.

3.10.16 Authority to Enter Agreement. Consultant has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each

Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

3.10.17 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

3.10.18 Entire Agreement. This Agreement contains the entire Agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both parties.

**SIGNATURE PAGE  
TO  
BORREGO WATER DISTRICT  
PROFESSIONAL SERVICES AGREEMENT**

**BORREGO WATER DISTRICT**

**Business Recovery Services, Inc. DBA  
Bank Up Corporation**

By: \_\_\_\_\_

Consultant  
By: \_\_\_\_\_  
(Authorized Representative of Vendor)

Printed Name: Geoff Poole

Printed Name: Michael V Santimauro  
Chief Executive Officer

Title: General Manager

Title: \_\_\_\_\_

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

**ATTACHMENT A  
SCOPE OF SERVICES & LIST OF PROJECTS**

Bank Up Corporation will act as a non-depository agent for CLIENT for the purpose of acceptance and processing of remittance items. Bank Up will receive daily deliveries by courier of various payments to be processed. Payments will be processed according to commercially acceptable standards which include, but are not limited to record keeping, security and safety.

This solution incorporates the following services:

1. Bank Up will provide a lockbox processing solution wherein CLIENT customers will direct payments to a pre-assigned lockbox at the USPS Regional Post Office as mutually determined by CLIENT and Bank Up Corporation, contracted to CLIENT or its customers). All mail will be picked up by bonded courier each morning at 8AM and delivered to the Bank Up Regional Processing Center before 9AM.
2. Bank Up will extract, scan and process all coupons/checks and electronically process each payment according to the parameters assigned by CLIENT. Bank Up will utilize its proprietary payment processing solution, FLEXRPS, a proven, comprehensive remittance processing platform. Bank Up utilizes this platform to process transactions in both the Company's lockbox operations and for the Company's extensive in-house system customers. At the conclusion of each processing day, Bank Up will prepare and deliver to the CLIENT a daily X9.37 Check 21 (ECL/ICL) deposit to the Corporation's financial depository bank in time to make the daily deposit cut-off established by the bank. Deposits are guaranteed to be made on the same day that the work is processed by Bank Up.
3. Bank Up will prepare a daily output file to update the CLIENT'S Accounts Receivable system by posting data and remittance document images and transmit to CLIENT each day by 4PM PST. Bank Up will deliver files to CLIENT using the transmission protocol and software provided by Bank Up Corporation.
4. Bank Up will provide a daily Deposit Detail Report to CLIENT upon completion of each day's processing. Other reports available from the Bank Up system will also be made available to CLIENT.
5. Bank Up will resolve exception items in accordance with instructions by CLIENT utilizing the Bank Up Exception Decisioning module. Exception items will be processed and payments deposited on the same day that they are presented to the CLIENT so long as the CLIENT is able to respond with decisioning instructions within the mutually established deadline for same-day processing established between the CLIENT and Bank Up. All unprocessable payments will be returned to the CLIENT, as directed by the CLIENT, or handled through an alternative method established by the CLIENT for such rejected payments.
6. Bank Up will provide, on the same day that the work is processed by Bank Up, online access to all images of both remittance documents and checks for all payments processed within the Customer Service Interface module and retain those images throughout the life of the contract between Bank Up and CLIENT. Bank Up may store image data for longer periods of time if requested.

7. Bank Up Corporation will provide Tier 1 toll-free support for CLIENT. Level 1 support includes assisting CLIENT with all reasonable problem determination and troubleshooting over the phone, as well as engineering support for changes to the processing services or resolution of technical problems. Bank Up will provide a dedicated support individual and customer support to CLIENT weekdays from 8AM until 6PM EST, excluding Federal holidays. Customer support at another time will be based on the severity of the problem. Bank Up maintains support after regular business hours as needed via its 24x7 toll free support number in the event CLIENT needs to invoke incident management resources.

8. The Bank Up eLockbox solution will ultimately eliminate the paper bill pay checks received from your customers' various online bill pay services. Those checks will be replaced with a single ACH credit deposited directly each day by 6PM EST into CLIENT's depository bank account.

9. CLIENT will be established as an electronic biller on the RPPS network so that payments can be paid electronically.

10. On the same day that CLIENT receives the ACH credit from your bank account, Bank Up Production Management will download the corresponding payment information from the RPPS network, post the payment data and incorporate that payment information into the daily lockbox payment file. This information will appear as a separate batch in the daily payment file generated to the Corporation's ERP to update Accounts Receivable.

11. Bank Up's Customer Service Interface/Online Image Archive will provide web-based and indexed access to all information associated with all payments that were processed by FLEXRPS, including eLockbox payments. eLockbox payment file data will replace the images of the physical bills and checks currently received. The Bank Up payment search and reports will enable CLIENT to perform searches on payments that have been processed as well as manage any payments discrepancies.

12. Once it has been established that the RPPS network is sufficiently intercepting the paper check payments, Bank Up will provide a more detailed discussion of how to utilize our Customer Service Interface functions that will assist CLIENT in researching payments, handling and resolving payment discrepancies and retrieving reports for this solution.

13. Bank Up Corporation will assign a Senior Technical Support Manager and Client Services Manager to CLIENT. These individuals will provide CLIENT with an Initial Implementation Plan as well as providing ongoing technical and client services support as required. The Initial Implementation Plan will include all aspects of the installation of the Bank Up Remittance Lockbox and eLockbox processing solutions. Included in this plan will be the operations and technical coordination between Bank Up Corporation, CLIENT, its depository bank, accounting/billing software company and its bill presentment company.

14. Bank Up Corporation will invoice CLIENT monthly in arrears for all monthly processing fees. Payment will be due on receipt of invoice.



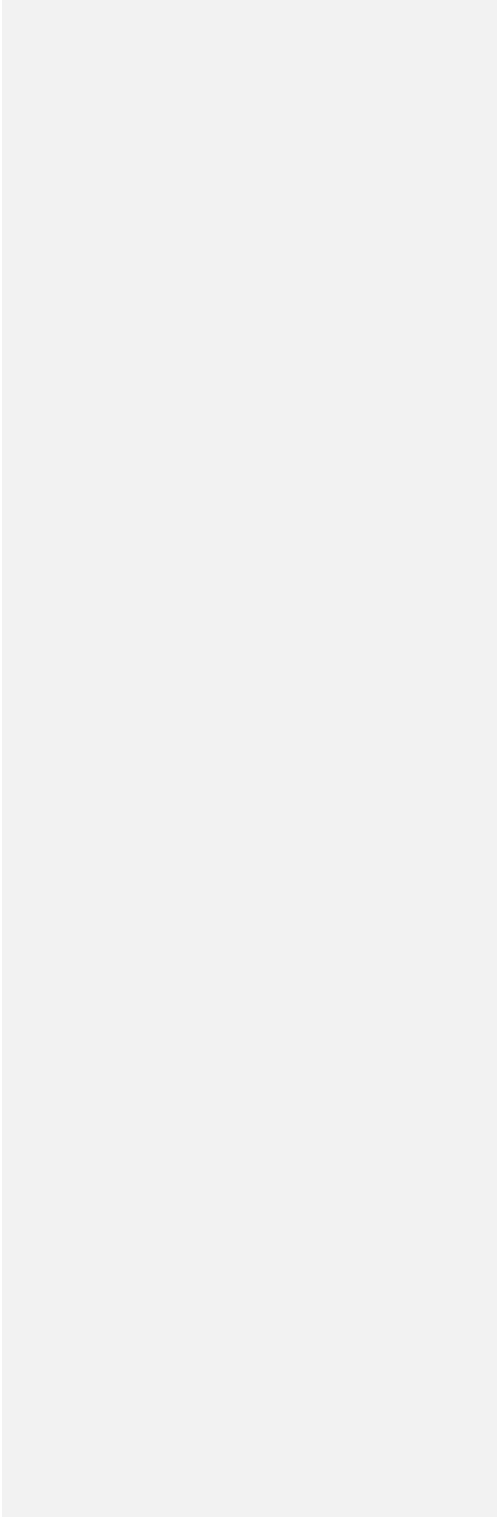
**ATTACHMENT B**  
**SCHEDULE OF FEES**

LOCKBOX SOLUTION	BASIS	FEE AT CURRENT VOLUME
Lockbox Implementation Fee	One Time	\$2,500.00
Lockbox Maintenance Fee	Monthly	\$55.00
Transaction Fee – Automated with OCR Scan Line	Per Transaction	
	Tier 1 < 10,000 Payments	\$0.30
	Tier 2 10,001 – 25,000	\$0.28
	Tier 3 25,001 +	\$0.23
Check Only	Per Check	\$0.30
Multiple Transactions	Greater of Per Check/Stub	\$0.35
File Transmission	Fixed Monthly Fee Per File Containing Payment Data or Images	\$150.00
Exception items – Includes Access to Bank Up Exception Decisioning Module	Per Exception	\$0.35
Electronic Check Deposit	Per Check	\$0.02
Check and List Transactions	Per Account Credited	\$0.35
Fax/Copy	Per Page	\$1.00
Customer Service Interface/Online Image Archive Access (up to 5 users) Available Through Contract Term	Per Month	\$150.00
USPS PO Box Rental at San Jose, CA	Per Month	At Cost
Courier/Mail from San Jose, CA to Bank Up Processing Site	Per Day	At Cost
Technical Services/Programming Changes Post Implementation	Per Hour	\$200.00
Minimum Fee	Per Month	\$750.00
<b>eLOCKBOX SOLUTION (Optional)</b>	<b>BASIS</b>	<b>FEE</b>
Implementation Fee	One time	Waived for Lockbox or \$1,500.00 for eLockbox Only
Electronic Check Intercept Fee	Per Check	\$0.25

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C-4

PROFESSIONAL SERVICES AGREEMENT



BORREGO WATER DISTRICT  
BOARD OF DIRECTORS MEETING  
JANUARY 14, 2025  
AGENDA ITEM II.E

January 2, 2025

TO: Board of Directors

FROM: Geoffrey Poole, General Manager

SUBJECT: Borrego Springs Subbasin Watermaster Board – VERBAL D Duncan/K Dice/T Driscoll

1. The Watermaster has requested approval and signatures on entry agreements for the BWD and BWD/Bauer wells we plan to retrofit of the with Well Tec as well as future monitoring of D Bauer wells that will ultimately be owned by BWD. In addition, adding BWDs production wells into the Monitoring Program is attached. Staff recommends Approval.

- The Entry Agreement for all BWD wells in the Watermaster’s Manual Meter Read and Groundwater Monitoring Program.
- The three-party agreement between Bauer and BWD for pumping wells that BWD will acquire over the next five years.
- The three-party agreement between Bauer and BWD for monitoring wells that BWD will acquire over the next five years.

2. Update on Board Activities

3. Update on Technical Advisory Committee Activities

**RECOMMENDED ACTION:**

Approve Attached Documents and Discuss upcoming Watermaster related activities

**ITEM EXPLANATION:**

BWD Representatives from the Watermaster and TAC will provide a review of recent and upcoming events.

**NEXT STEPS**

1. TBD

**FISCAL IMPACT**

BWD will not need to fund well cap @ cost of 3,000 est.

**ATTACHMENTS**

1. Proposed Agreements and Entry Permits

**ENTRY PERMIT  
(Groundwater Monitoring Program)**

This Entry Permit is dated as of December 17, 2024, and is made by Borrego Water District (“**Property Owner**”) and the Borrego Valley Groundwater Basin Watermaster (“**Watermaster**”) appointed under that certain Borrego Springs Subbasin Stipulated Judgment entered in *Borrego Water District v. All Persons Who Claim a Right to Extract Groundwater in the Borrego Valley Groundwater Subbasin, etc.*, Orange County Superior Court Case No. 37-2020-00005776 (“**Stipulated Judgment**”). Where appropriate, Property Owner and Watermaster are referred to collectively as “Parties” and individually as “Party.” References to a Party include, bind, and inure to the benefit of that Party’s Boardmembers, officers, agents, employees, successors in interest and assigns.

**RECITALS**

A. Property Owner is the owner of that certain real property commonly known as Assessor’s Parcel Number(s) within the County of San Diego, depicted and listed on Exhibit “A” attached hereto and incorporated herein by reference (“**Property**”).

B. Property Owner is a party to the Stipulated Judgment. The Stipulated Judgment contemplates regular groundwater level and quality monitoring of certain wells under the approved Groundwater Monitoring Program (GWMP) attached hereto as Exhibit “B” and incorporated herein by reference, as this GWMP may be amended by the Watermaster from time to time. Watermaster has requested that Property Owner provide access to the well(s) (“**Well(s)**”) located on the portion(s) of the Property referenced as the “**Well Site(s)**” on Exhibit “A” so that Watermaster may take groundwater level measurements and/or groundwater quality samples from the Well(s) in accordance with the GWMP and pursuant to the terms of this Permit (the “**Activities**”).

C. The Property is used by Property Owner for residential, commercial, or other business purposes, including but not limited to extensive agricultural business uses. Unrestricted entry by Watermaster could interfere with those uses and expose Property Owner, and Property Owner’s agents, employees and invitees, Watermaster’s employees and contractors, and others on the Property to risk of injury.

D. Property Owner desires to allow Watermaster to enter onto the Property to access the Well Site(s) as necessary for Watermaster to carry out the Activities pursuant to the terms of this Permit.

**TERMS**

This Entry Permit is issued subject to the following terms and conditions:

1. Purpose and Scope.

(a) For the Term of this Permit, as defined in Section 2 below, Property Owner hereby provides Watermaster a limited, non-exclusive license to enter onto the property to access

the Well Site(s), under the terms and conditions set forth in this Entry Permit, solely in order to carry out the Activities.

(b) Only Watermaster's employees and contractors covered by Watermaster's or such contractors' comprehensive liability insurance, automobile insurance and workers compensation insurance consistent with the requirements of Section 7 below are permitted to enter the Well Site and conduct the Activities.

(c) Watermaster shall not enter onto the Well Site(s) other than as necessary to conduct the Activities and shall not enter onto any other portion of the Property. Watermaster's request to enter onto any other portions of the Property in connection with Activities shall be considered by the Property Owner on a case by case basis and shall be subject to a new written entry permit agreement with Property Owner at Property Owner's request.

(d) Each entry shall be limited to the hours between 7:00 a.m. and 5:00 p.m., Monday through Friday, excluding holidays, unless otherwise agreed to in advance and in writing by Property Owner.

(e) At the sole election of Property Owner, Property Owner or its representative may accompany Watermaster in any or all of the Activities. Upon Property Owner's request, Watermaster shall provide a split sample to Property Owner or its representative without cost to the Property Owner. Property Owner shall have no responsibility or obligation whatsoever in connection with the Activities, except as provided in Section 6 below.

(f) If the Activities include any survey, test or other investigation, Watermaster shall provide Property Owner a copy of the results of the Activities within ten (10) calendar days after the draft results are first made available to Watermaster and prior to their publication, without cost to the Property Owner.

(g) Failure to comply with the terms and conditions contained herein shall be cause for immediate termination of this Entry Permit.

2. Term of this Entry Permit.

(a) The term of this Entry Permit shall commence upon its full execution by the Parties (the "**Effective Date**") and shall remain in effect until the Property Owner notifies the Watermaster that they no longer wish to participate in the GWMP. The Entry Permit shall expire on the notification date, or other date specified in the notification by the Property Owner (the "**Termination Date**").

(b) Watermaster's entry and the Activities must cease on the Termination Date.

(c) The Parties' rights and obligations under Sections 4, 6, 7, 8, 9, 10, 11, 18 and 19 below shall survive the termination of this Entry Permit and continue in effect until all claims against the Property Owner, Watermaster and the Property related to this Entry Permit are absolutely barred by the applicable statutes of limitation.

3. Notice of Entry.

(a) Watermaster shall notify Property Owner by telephone 760-767-5806 and email geoff@borregowd.org, at least seventy-two (72) hours prior to each entry onto the Well Site(s). The notice shall contain all of the following information:

- 1) The date, approximate time and approximate duration of the entry;
- 2) The Watermaster personnel who will be conducting the Activities during the entry; and
- 3) Watermaster's certification that the Watermaster personnel who will be conducting the Activities have been provided with a copy of this Entry Permit and are covered by Watermaster's comprehensive liability insurance, automobile insurance and workers compensation insurance.

4. Government Permits and Authorizations.

Watermaster shall comply with all Applicable Legal Requirements (defined in Section 10 below) and shall be solely responsible for and obtain at its expense all governmental permits and authorizations required by all Applicable Authorities (defined in Section 10 below) for Watermaster to perform the Activities and the restoration of the Property pursuant to this Entry Permit.

5. Non-Interference with Property Owner's Use of Property.

(a) Watermaster shall not modify the Property or the Well(s) without the Property Owner's prior written consent. No ground disturbances are permitted without the Property Owner's prior written consent.

(b) Watermaster's entry upon and use of the Well Site(s) shall at all times be subject to the rights of Property Owner to use the Property and the Well(s) located thereon. Watermaster shall not interfere with or disrupt the residential, agricultural, commercial or other business activities on the Property, and shall not endanger the health, safety or welfare of the Property Owner or Property Owner's agents, employees, invitees, or Watermaster's employees or contractors, or others on the Property.

6. Assumption of Risk, Release and Indemnity.

(a) Watermaster assumes all risk of loss, damage and injury to itself, its employees and contractors which in any manner may arise out of entry upon or use of the Property under this Entry Permit. Property Owner shall not have any liability to Watermaster, its employees or contractors or to any insurer, by way of subrogation or otherwise, on account of any loss, damage or injury to Watermaster's property, or to Watermaster's employees or contractors, regardless of whether such loss or damage is caused by any negligence of Property Owner or Watermaster, unless Watermaster affirmatively demonstrates that Property Owner acted with willful misconduct, and that such willful misconduct is the proximate cause of such loss, damage or injury. Any award of damages following such a showing of willful misconduct shall be limited

to the actual amount of the monetary injury. If any dispute is not resolved following compliance with the dispute resolution procedures specified in Section VII.A of the Judgment, either Party may seek declaratory relief, specific performance and/or monetary damages for willful misconduct in accordance with the procedures set forth in Section VII.A of the Judgment, but no other remedies in law or equity.

(b) Watermaster shall keep the Property free of mechanic's liens and claims resulting from or in any way related to Watermaster's entry onto the Property or the Activities. Watermaster shall defend Property Owner and the Property against, and indemnify and hold Property Owner and the Property harmless from all liens, claims, losses, liabilities and expenses asserted against or incurred by the Property Owner or the Property and caused by Watermaster's entry or the Activities or in any way related to such entry or Activities, including the actual expense of legal representation whether by special counsel or by Property Owner's attorneys, and expert witness fees, arising out of or resulting from injury to or death of any person, or damage to any property or damage to any other interest of Property Owner, including, but not limited to, suit alleging noncompliance with any applicable Legal Requirements by Watermaster. Watermaster's duty to defend as described above shall arise immediately upon the making of any claim, the assertion of any cause of action, the initiation of any regulatory proceeding or other action against Property Owner, and shall not be dependent upon a finding of any wrongdoing or fault on the part of Watermaster. The Parties' rights and obligations under this Section 6 shall survive termination of this Entry Permit and shall continue until all claims against Property Owner, Watermaster, and the Property are absolutely barred by the applicable statutes of limitation.

## 7. Insurance.

(a) Scope of Insurance. Watermaster shall, prior to any entry onto the Property, acquire and keep in full force and effect comprehensive liability insurance with a combined single limit coverage limit of not less than Two Million Dollars (\$2,000,000.00) covering bodily injury, personal injury, death and property damage liability per occurrence and in the aggregate, insuring the Property Owner against any and all liability with respect to or arising out of the entry or Activities. No policies issued on a "claims made" basis will be acceptable and no policies will have any deductible provision in excess of five percent (5%) of the total coverage maintained by the Watermaster. Watermaster shall also obtain and maintain all automobile and workers compensation insurance required by law with respect to the Activities. Watermaster shall provide the Property Owner with a certificate evidencing such coverage prior to Watermaster's entry onto the Property.

(b) Policy Form. All such liability insurance policies shall name the Property Owner as an additional insured. All public liability, property damage, and other casualty policies shall be written as primary policies and any insurance carried by the additional insureds on such policies shall not be contributing with such policies. All policies of insurance under this Entry Permit shall be issued by reputable insurance companies with general policy holder's ratings of not less than A-, and which are qualified to do business in California.

(c) Blanket Policies. Notwithstanding anything to the contrary contained in this Section 7, Watermaster's obligation to carry insurance may be satisfied by coverage under a

so-called blanket policy of insurance, provided, that the requirements set forth in this Section 7 are otherwise satisfied.

(d) Failure by Watermaster to Maintain Insurance. If Watermaster fails to secure and maintain insurance policies complying with the provisions of this Section 7, then the Property Owner may secure the appropriate insurance policy or policies, and Watermaster shall pay, upon demand, the cost of same to the Property Owner, plus a service fee equal to fifteen percent (15%) of the total annual premium cost of the policy or policies.

8. Remedies.

(a) If the Property suffers any damage by reason of the acts or omissions of Watermaster, Watermaster shall be solely responsible for restoring the Property to its condition existing immediately prior to the occurrence of such damage to the satisfaction of the Property Owner, and shall compensate the Property Owner for any damages caused by reason of the acts or omissions of Watermaster, including but not limited to the market value of any crops damaged or destroyed by Watermaster.

(b) Watermaster shall be liable to Property Owner for all damage to any person or property which in any manner may be caused by Watermaster. Property Owner's remedies for any such damage shall include, without limitation:

1) requiring that Watermaster immediately pay for the cost of repair and other losses to Property Owner (including without limitation, consequential damages) caused by Watermaster; and

2) requiring that Watermaster restore any damaged property, including without limitation the Property Owner's Well(s), to a condition as near as reasonably possible to that which existed immediately prior to Watermaster's entry. If Property Owner elects to require that Watermaster make such repairs and restoration and Watermaster does not timely perform such repairs and restoration, then Watermaster shall be liable to Property Owner for the cost of restoring the damaged property to such condition, and shall further be liable to Property Owner for all damages (including, without limitation, consequential damage) resulting from Watermaster's activities on the Property, and any and all associated costs Property Owner incurs in its related restoration/repair activities.

9. Removal of Materials.

(a) Watermaster hereby warrants and represents that it will not cause the presence, use, storage or disposal of any Hazardous Substances (defined in Section 10 below) on or about the Property without the prior written consent of Property Owner. Excluded from this provision are substances necessary to carry out the Activities, provided that said substances are labeled, packaged, stored, contained, handled, managed, transported, documented and disposed of by Watermaster in full compliance with all Applicable Legal Requirements.

(b) Any substance, product, waste or other material of any nature whatsoever which may give rise to liability under any of the Applicable Legal Requirements that Watermaster releases to the Property must be removed and properly disposed of by Watermaster in compliance



with the Applicable Legal Requirements and all negative impacts remediated at the sole expense of Watermaster. Said remediation shall restore the Property to the condition existing immediately prior to the Effective Date of this Entry Permit.

(c) Watermaster agrees to immediately notify Property Owner when Hazardous Substances have been released on the Property. Watermaster further agrees to properly notify all Applicable Authorities in the event of a release of Hazardous Substances on the Property. If Watermaster discovers any materials suspected to be hazardous in nature in or around the Watermaster's work area during the course of its Activities, it shall halt all Activities until Property Owner, or its agent, can determine the nature of the material and the proper remediation, if any, that is required.

(d) All conditions and stipulations of this Section 9 shall be carried out to the satisfaction of both Property Owner and the California Regional Water Quality Control Board — Colorado River Region.

(e) Failure by Watermaster to comply with any of the above provisions within ninety (90) days of written notification of default shall give Property Owner authority to have said default cured and remediated, and Watermaster agrees to pay Property Owner all direct and indirect costs of said default.

(f) The Parties' rights and obligations under this Section 9 shall survive the termination of this Entry Permit and continue in effect until all claims against the Property Owner, Watermaster and Property related to this Entry Permit are absolutely barred by the applicable statutes of limitation.

#### 10. Defined Terms.

For purposes of this Entry Permit, the following capitalized terms shall be defined as follows:

(a) Applicable Authorities: The Court administering the Stipulated Judgment, County of San Diego and any other applicable federal, state, regional or local governmental or quasi-governmental agency, body or authority having jurisdiction over the Property or the Water Quality Monitoring Plan.

(b) Applicable Legal Requirements: Environmental Laws (as defined below), Stipulated Judgment, and any other statutes, ordinances, rules, codes, requirements, permits, regulations, standards (including any standards or requirements now or hereafter applicable to residential use or development of the Property), judgments, orders, writs, injunctions or decrees or the like, of Applicable Authorities.

(c) Environmental Laws: Any federal, state, regional or local statute, regulation, ordinance, rules, codes, requirements, permits, standards or requirements (including any standards or requirements now or hereafter applicable to residential use or development of the Property), judgments, regulations, orders, writs, injunctions or decrees or the like, relating to environmental conditions on, under or about the Property that could affect use or development of the Property for residential purposes, including, without limitation, soil and groundwater conditions underlying the Property, and environmental conditions pertaining to wetlands, waters

of the United States, waters of the State of California, and listed state- or federally-, threatened or endangered species.

(d) Hazardous Materials: Any materials or substances (a) defined as a “hazardous waste,” “extremely hazardous waste” or “restricted hazardous waste” under Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code; (b) defined as a “hazardous substance” under Section 26316 of the California Health and Safety Code; (c) defined as a “hazardous material,” “hazardous substance” or “hazardous waste” under Section 25501 of the California Health and Safety Code, or under Section 25281 of the California Health and Safety Code; (d) petroleum or any other hydrocarbonic substance or by-product; (e) asbestos, PCBs, and other substances regulated under the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; (f) polychlorinated biphenyls; (g) listed under Article 9 or defined as “hazardous” or “extremely hazardous” pursuant to Article 11 of Title 22 of the California Administrative Code; (h) designated as a “hazardous substance” pursuant to the Clean Water Act (33 U.S.C. § 1251 et seq.); (i) defined as a hazardous substance” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. § 6901 et seq.); (j) listed by the State of California as a chemical known by the State to cause cancer or reproductive toxicity pursuant to Section 25249.8(a) of the California Health and Safety Code; or (k) found to be a pollutant, contaminant, toxic or hazardous waste or toxic or hazardous substance by any Applicable Authorities or in any reported decision of a federal or state court, or which may give rise to liability under any federal or state common law theory based on negligence, trespass, intentional tort, nuisance or strict liability or under any reported decisions of a state or federal court.

11. Successors and Assigns.

Watermaster shall not assign any of its rights under this Entry Permit without the prior written consent of Property Owner, which consent may be withheld for any reason or for no reason. Any assignment by Watermaster of this Entry Permit shall not release Watermaster from its obligations under this Entry Permit without an express release executed by Property Owner.

12. Authorized Signatories.

The individuals executing this Entry Permit represent and warrant that they are authorized to execute this permit entry on behalf of the Party for whom each individual purports to sign and that when executed and delivered to the Parties, this Permit shall be a valid and binding obligation of the Parties.

13. No Business or Agency Relationship.

Property Owner and Watermaster acknowledge and agree that (i) nothing contained in this Entry Permit shall be construed to constitute the Parties as participants in a joint or common undertaking, (ii) nothing contained in this Entry Permit shall create any agency relationship between Property Owner and Watermaster, and (iii) no Party shall have any right or authority to act on behalf of the other Party.

14. No Third Party Beneficiary.

This Entry Permit is not intended for the benefit of any third party and shall not be enforceable by any party who is not a Party.

15. Counterparts.

This Permit may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Entry Permit.

16. Waiver of Covenants and Conditions; No Waiver of Claims.

No covenant, condition, right or remedy under this Entry Permit shall be waived unless the waiver is in writing and signed by the Party claimed to have made the waiver. One waiver shall not be interpreted as a continuing waiver. The waiver by one Party of the performance of any covenant or condition under this Entry Permit shall not invalidate this Entry Permit nor shall it be considered a waiver by it of any other covenant or condition under this Entry Permit. By entering into this Entry Permit, Property Owner does not waive any legal rights with respect to potential claims or causes of action Watermaster has (or may have in the future) against Watermaster or against any other person or entity not a Party to this Entry Permit and all such claims are expressly reserved.

17. Governing Law.

The interpretation and enforcement of this Entry Permit shall be governed by the laws of the State of California. This Entry Permit shall be interpreted to give effect to its fair meaning and shall be construed as though it was prepared by both Parties. This Entry Permit contains the entire agreement of the Parties with respect to Watermaster's entry on and investigation of the Property, and all prior negotiations, documents, and discussions regarding the Watermaster's entry and Activities herein are superseded by this Entry Permit. Section headings in this Entry Permit are for convenience only and shall not be used in interpreting its provisions.

18. Venue.

Any controversy or claim arising out of or relating to this Entry Permit, or the breach thereof, shall be brought in the Court administering the Stipulated Judgment in the manner specified in Section VII.A of the Stipulated Judgment for a party to appeal a decision by the Watermaster Board.

19. Attorney's Fees.

In the event any Party to this Entry Permit initiates proceedings to enforce the terms of this Permit, the Party not substantially prevailing in such proceedings shall pay to the substantially prevailing Party all attorneys' fees incurred by the substantially prevailing Party, together with all costs of such proceeding.

20. Severability.

In the event that any provision of this Entry Permit is deemed unenforceable, the remaining provisions shall remain in full force and effect. In the event any provision of this Entry Permit is so held invalid, the Parties shall promptly renegotiate in good faith new provisions to restore this Entry Permit as nearly as possible to its original intent and effect.

21. Notice.

Unless otherwise specified herein, all notices or other communications between the Parties required or permitted hereunder shall be in writing and personally delivered, or sent by certified United States mail, postage prepaid, return receipt requested, or sent via overnight air courier (example, Federal Express) to the following addresses:

If to Property Owner, to:

Borrego Water District  
806 Palm Canyon Drive  
Borrego Springs, CA 92004  
Phone: 760-767-5806  
Fax: 760-767-5994  
E-mail: geoff@borregowd.org

With a copy to:

Board of Directors  
Borrego Water District  
806 Palm Canyon Drive  
Borrego Springs, CA 92004  
Phone: 760-767-5806  
Fax: 760-767-5994  
E-mail: kathy@borregowd.org

If to Watermaster, to:

Samantha Adams, Executive Director  
c/o West Yost Associates  
23692 Birtcher Drive  
Lake Forest, CA 9263  
Phone: 949-600-7527  
Fax: 949-420-4040  
E-mail: sadams@westyost.com

With a copy to:

James Markman, Legal Counsel  
Richards Watson & Gershon  
1 Civic Center Drive  
PO Box 1059  
La Brea, CA 92822-1059  
Phone: 714-990-0901  
Fax: 714-990-6230  
E-mail: jmarkman@rwglaw.com

A notice shall be effective on the date of personal delivery if personally delivered, the next business day after deposit with the overnight air courier, or two (2) business days following the date the notice is postmarked, if mailed via certified mail as set forth above. Either Party may change the address to which notice is to be given to it by giving notice of such change of address in the manner set forth above for giving notice.

22. Watermaster Acceptance.

Watermaster shall indicate its acceptance of the terms and conditions of the permission granted under this Entry Permit by signing in the space provided below and returning the original executed copy of this Entry Permit to Property Owner.

*[Signatures on the following page]*

IN WITNESS WHEREOF, the Parties have caused this Entry Permit to be executed as of the latest day and year written below.

Dated: \_\_\_\_\_

WATERMASTER

\_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Dated: \_\_\_\_\_

Borrego Water District

\_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

**EXHIBIT A**  
**MAP AND TABLE DEPICTING AND DESCRIBING PROPERTY**



**BWD WELLS IN THE GROUNDWATER MONITORING PROGRAM**

<b>APN</b>	<b>State Well ID</b>	<b>Well Name</b>	<b>Owner</b>	<b>Latitude</b>	<b>Longitude</b>
20003024	011S006E22E001S	Anzio/ Yaqui Pass	Borrego Water District	33.20604	-116.34715
20003032	011S006E22D001S	ID1-10	Borrego Water District	33.21179029	-116.3468134
19913023	011S006E16A002S	ID1-12	Borrego Water District	33.22602964	-116.3483166
19914028	011S006E16N001S	ID1-16	Borrego Water District	33.21655744	-116.3624405
20012049	011S006E23J001S	ID1-8	Borrego Water District	33.20315951	-116.314343
19805104	010S006E32R001S	ID4-1	Borrego Water District	33.25748585	-116.3710346
19832031	011S006E18L001S	ID4-10	Borrego Water District	33.218319	-116.392226
1551672	010S006E32D001S	ID4-11	Borrego Water District	33.26749919	-116.3833567
14011017	010S006E18J001S	ID4-18	Borrego Water District	33.30675128	-116.3847145
19812104	011S006E07K003S	ID4-2	Borrego Water District	33.231602	-116.388737
14028001	010S006E18R001S	ID4-3	Borrego Water District	33.29803996	-116.3843392
14103041	010S006E29K002S	ID4-4	Borrego Water District	33.27713561	-116.374327
14139060	010S006E33Q001S	ID4-5	Borrego Water District	33.25742805	-116.355899
14103062	10S006E29K003S	ID4-9	Borrego Water District	33.27638889	-116.3733328
19908020	011S006E09E001S	ID5-5	Borrego Water District	33.23706707	-116.3643036
19827013		ID5-15	Borrego Water District	33.233125	-116.367203
14029003	010S006E21A002S	MW-1	Borrego Water District	33.30063385	-116.3494714
20012049	011S006E23J002S	MW-3	Borrego Water District	33.20348138	-116.314252
14123038	010S006E35Q001S	MW-4	Borrego Water District	33.25756109	-116.3131083
20105013	011S007E07R001S	MW-5A (East-Lower)	Borrego Water District	33.22655699	-116.2793522
20105013	011S007E07R002S	MW-5B (West-Upper)	Borrego Water District	33.22655699	-116.2793522
20005112	011S006E22B001S	Paddock	Borrego Water District	33.21159283	-116.3340358
20002024	011S006E20A001S	ID4-20 (Wilcox)	Borrego Water District	33.21090991	-116.3648265
20012041	011S006E23H001S	WWTP-1	Borrego Water District	33.2074	-116.315199
14001008		Bauer Monitoring Well	Borrego Water District	33.332853	-116.375497



**EXHIBIT B**

Groundwater Monitoring Plan for the Borrego Springs Subbasin

Link below:

[2020 Report \(borregospringswatermaster.com\)](http://borregospringswatermaster.com)

**ENTRY PERMIT  
(Manual Meter Read and Groundwater Monitoring Program)**

This Entry Permit is dated as of December 17, 2024, and is made by David Bauer (“**Present Property Owner**”), and Borrego Water District (“**District**”) sometimes collectively referred to herein as (“**Property Owners**”), and the Borrego Springs Watermaster (“**Watermaster**”) appointed under that certain Borrego Springs Subbasin Stipulated Judgment entered in *Borrego Water District v. All Persons Who Claim a Right to Extract Groundwater in the Borrego Valley Groundwater Subbasin, etc.*, Orange County Superior Court Case No. 37-2020-00005776 (“**Stipulated Judgment**”). Where appropriate, Property Owners and Watermaster are referred to collectively as “Parties” and individually as “Party.” References to a Party include, bind, and inure to the benefit of that Party’s Boardmembers, officers, agents, employees, successors in interest and assigns.

**RECITALS**

A. Present Property Owner is the owner of that certain real property commonly known as Assessor’s Parcel Numbers 140-110-14, 140-070-27 and 140-010-11 within the County of San Diego, depicted on Exhibit “A” attached hereto and incorporated herein by reference (“**Property**”).

B. Present Property Owner is a party to the Stipulated Judgment. Present Property Owner installed Watermaster approved, manual read meters on its wells referred to as 904,808 and 282-300hp that cannot electronically transmit a recording of the amount of groundwater pumped from a well and other data to the Watermaster in real time. The Stipulated Judgment contemplates the Watermaster will physically read such meters on the schedule determined by the Watermaster under the approved Meter Program.

C. The Stipulated Judgment contemplates regular groundwater level and quality monitoring of certain wells under the approved Groundwater Monitoring Program (GWMP).

D. The approved Meter Program and GWMP are attached hereto as Exhibit “B” and incorporated herein by reference, as they may be amended by the Watermaster from time to time.

E. Watermaster has requested that Property Owners provide access to the well(s) (“**Well(s)**”) located on the portion(s) of the Property referenced as the “**Well Site(s)**” on Exhibit “A” so that Watermaster may read each Well meter under the Meter Program and collect groundwater level measurements and/or groundwater quality samples from the Well(s) in accordance with the Meter Program and GWMP and pursuant to the terms of this Permit (the “**Activities**”).

F. The Parties anticipate and expect fee title to the properties will be conveyed by the Present Property Owner to District on the following dates:

- (i) Parcel 140-070-27 on December 15, 2025,
- (ii) Parcel 140-010-11 on December 15, 2027,
- (iii) Parcel 140-110-14 on October 9, 2030.

G. The Property is used by Property Owners for residential, commercial, or other business purposes, including but not limited to extensive agricultural business uses. Unrestricted entry by Watermaster could interfere with those uses and expose Property Owners, and Property Owners' agents, employees and invitees, Watermaster's employees and contractors, and others on the Property to risk of injury.

H. Property Owners desire to allow Watermaster to enter onto the Property to access the Well Site(s) as necessary for Watermaster to carry out the Activities pursuant to the terms of this Permit.

## TERMS

This Entry Permit is issued subject to the following terms and conditions:

1. Purpose and Scope.

(a) For the Term of this Permit, as defined in Section 2 below, Property Owners hereby provide Watermaster a limited, non-exclusive license to enter onto the property to access the Well Site(s), under the terms and conditions set forth in this Entry Permit, solely in order to carry out the Activities.

(b) Only Watermaster's employees and contractors covered by Watermaster's or such contractors' comprehensive liability insurance, automobile insurance and workers compensation insurance consistent with the requirements of Section 7 below are permitted to enter the Well Site and conduct the Activities.

(c) Watermaster shall not enter onto the Well Site(s) other than as necessary to conduct the Activities and shall not enter onto any other portion of the Property. Watermaster's request to enter onto any other portions of the Property in connection with Activities shall be considered by a Property Owner on a case by case basis and shall be subject to a new written entry permit agreement with that Property Owner at that Property Owner's request.

(d) Each entry shall be limited to the hours between 7:00 a.m. and 5:00 p.m., Monday through Friday, excluding holidays, unless otherwise agreed to in advance and in writing by the then current Property Owner.

(e) At the sole election of the then current Property Owner, that Property Owner or its representative may accompany Watermaster in any or all of the Activities. Upon a Property Owner's request, Watermaster shall provide the meter reading(s) from each Well to that Property Owner or its representative without cost to the Property Owner. Additionally, upon a Property Owner's request, Watermaster shall provide a split water quality sample to that Property Owner or its representative without cost to that Property Owner. Neither Property Owner shall have any responsibility or obligation whatsoever in connection with the Activities, except as provided in Section 6 below.

(f) If the Activities include any survey, test or other investigation, Watermaster shall provide the then current Property Owner a copy of the results of the Activities within ten (10)

calendar days after the draft results are first made available to Watermaster and prior to their publication, without cost to that Property Owner.

(g) Failure to comply with the terms and conditions contained herein shall be cause for immediate termination of this Entry Permit.

2. Term of this Entry Permit.

(a) The term of this Entry Permit shall commence upon its full execution by the Parties (the “**Effective Date**”) and shall remain in effect through the period that the manual-read meters installed on the Well(s) are required to be read under the Meter Program (the “**Termination Date**”).

(b) In the case of groundwater level and quality monitoring, if the then current Property Owner notifies the Watermaster that they no longer wish to participate in the GWMP, the Entry Permit shall expire on the notification date, or other date specified in the notification by the Property Owner to be the Termination Date. A new Entry Permit exclusive to the Meter Program activities will need to be executed at that time if the Meter Program is still in effect.

(c) Watermaster’s entry and the Activities must cease on the Termination Date.

(d) The Parties’ rights and obligations under Sections 4, 6, 7, 8, 9, 10, 11, 18 and 19 below shall survive the termination of this Entry Permit and continue in effect until all claims against the Property Owners, Watermaster and the Property related to this Entry Permit are absolutely barred by the applicable statutes of limitation.

3. Notice of Entry.

(a) Watermaster shall notify the then current Property Owner by telephone 760-767-5806 and email [geoff@borregowd.org](mailto:geoff@borregowd.org) and [borregofarms@gmail.com](mailto:borregofarms@gmail.com), at least seventy-two (72) hours prior to each entry onto the Well Site(s). The notice shall contain all of the following information:

- 1) The date, approximate time and approximate duration of the entry;
- 2) The Watermaster personnel who will be conducting the Activities during the entry; and
- 3) Watermaster’s certification that the Watermaster personnel who will be conducting the Activities have been provided with a copy of this Entry Permit and are covered by Watermaster’s comprehensive liability insurance, automobile insurance and workers compensation insurance.

4. Government Permits and Authorizations.

Watermaster shall comply with all Applicable Legal Requirements (defined in Section 10 below) and shall be solely responsible for and obtain at its expense all governmental permits and authorizations required by all Applicable Authorities (defined in Section 10 below) for

Watermaster to perform the Activities and the restoration of the Property pursuant to this Entry Permit.

5. Non-Interference with Property Owner's Use of Property.

(a) Watermaster shall not modify the Property or the Well(s) without the then current Property Owner's prior written consent. No ground disturbances are permitted without that Property Owner's prior written consent.

(b) Watermaster's entry upon and use of the Well Site(s) shall at all times be subject to the rights of the then current Property Owner to use the Property and the Well(s) located thereon. Watermaster shall not interfere with or disrupt the residential, agricultural, commercial or other business activities on the Property, and shall not endanger the health, safety or welfare of the then current Property Owner or that Property Owner's agents, employees, invitees, or Watermaster's employees or contractors, or others on the Property.

6. Assumption of Risk, Release and Indemnity.

(a) Watermaster assumes all risk of loss, damage and injury to itself, its employees and contractors which in any manner may arise out of entry upon or use of the Property under this Entry Permit. No Property Owner shall not have any liability to Watermaster, its employees or contractors or to any insurer, by way of subrogation or otherwise, on account of any loss, damage or injury to Watermaster's property, or to Watermaster's employees or contractors, regardless of whether such loss or damage is caused by any negligence of that Property Owner or Watermaster, unless Watermaster affirmatively demonstrates that that Property Owner acted with willful misconduct, and that such willful misconduct is the proximate cause of such loss, damage or injury. Any award of damages following such a showing of willful misconduct shall be limited to the actual amount of the monetary injury. If any dispute is not resolved following compliance with the dispute resolution procedures specified in Section VII.A of the Judgment, either Party may seek declaratory relief, specific performance and/or monetary damages for willful misconduct in accordance with the procedures set forth in Section VII.A of the Judgment, but no other remedies in law or equity.

(b) Watermaster shall keep the Properties free of mechanic's liens and claims resulting from or in any way related to Watermaster's entry onto the Property or the Activities. Watermaster shall defend Property Owners and the Property against, and indemnify and hold Property Owners and the Property harmless from all liens, claims, losses, liabilities and expenses asserted against or incurred by the Property Owners or the Property and caused by Watermaster's entry or the Activities or in any way related to such entry or Activities, including the actual expense of legal representation whether by special counsel or by Property Owners' attorneys, and expert witness fees, arising out of or resulting from injury to or death of any person, or damage to any property or damage to any other interest of Property Owners, including, but not limited to, suit alleging noncompliance with any applicable Legal Requirements by Watermaster. Watermaster's duty to defend as described above shall arise immediately upon the making of any claim, the assertion of any cause of action, the initiation of any regulatory proceeding or other action against Property Owners, and shall not be dependent upon a finding of any wrongdoing or fault on the part of Watermaster. The Parties' rights and obligations under this Section 6 shall survive termination

of this Entry Permit and shall continue until all claims against Property Owners, Watermaster, and the Property are absolutely barred by the applicable statutes of limitation.

7. Insurance.

(a) Scope of Insurance. Watermaster shall, prior to any entry onto the Property, acquire and keep in full force and effect comprehensive liability insurance with a combined single limit coverage limit of not less than Two Million Dollars (\$2,000,000.00) covering bodily injury, personal injury, death and property damage liability per occurrence and in the aggregate, insuring the Property Owners against any and all liability with respect to or arising out of the entry or Activities. No policies issued on a "claims made" basis will be acceptable and no policies will have any deductible provision in excess of five percent (5%) of the total coverage maintained by the Watermaster. Watermaster shall also obtain and maintain all automobile and workers compensation insurance required by law with respect to the Activities. Watermaster shall provide the Property Owners with a certificate evidencing such coverage prior to Watermaster's entry onto the Property.

(b) Policy Form. All such liability insurance policies shall name the Property Owners as additional insureds. All public liability, property damage, and other casualty policies shall be written as primary policies and any insurance carried by the additional insureds on such policies shall not be contributing with such policies. All policies of insurance under this Entry Permit shall be issued by reputable insurance companies with general policy holder's ratings of not less than A-, and which are qualified to do business in California.

(c) Blanket Policies. Notwithstanding anything to the contrary contained in this Section 7, Watermaster's obligation to carry insurance may be satisfied by coverage under a so-called blanket policy of insurance, provided, that the requirements set forth in this Section 7 are otherwise satisfied.

(d) Failure by Watermaster to Maintain Insurance. If Watermaster fails to secure and maintain insurance policies complying with the provisions of this Section 7, then the then current Property Owner may secure the appropriate insurance policy or policies, and Watermaster shall pay, upon demand, the cost of same to that Property Owner, plus a service fee equal to fifteen percent (15%) of the total annual premium cost of the policy or policies.

8. Remedies.

(a) If the Property suffers any damage by reason of the acts or omissions of Watermaster, Watermaster shall be solely responsible for restoring the Property to its condition existing immediately prior to the occurrence of such damage to the satisfaction of the Property Owner, and shall compensate the then current Property Owner for any damages caused by reason of the acts or omissions of Watermaster, including but not limited to the market value of any crops damaged or destroyed by Watermaster.

(b) Watermaster shall be liable to Property Owners for all damage to any person or property which in any manner may be caused by Watermaster. Property Owners' remedies for any such damage shall include, without limitation:

1) requiring that Watermaster immediately pay for the cost of repair and other losses to Property Owner (including without limitation, consequential damages) caused by Watermaster; and

2) requiring that Watermaster restore any damaged property, including without limitation the Property Owner's Well(s), to a condition as near as reasonably possible to that which existed immediately prior to Watermaster's entry. If a Property Owner elects to require that Watermaster make such repairs and restoration and Watermaster does not timely perform such repairs and restoration, then Watermaster shall be liable to that Property Owner for the cost of restoring the damaged property to such condition, and shall further be liable to that Property Owner for all damages (including, without limitation, consequential damage) resulting from Watermaster's activities on the Property, and any and all associated costs that Property Owner incurs in its related restoration/repair activities.

9. Removal of Materials.

(a) Watermaster hereby warrants and represents that it will not cause the presence, use, storage or disposal of any Hazardous Substances (defined in Section 10 below) on or about the Property without the prior written consent of the then current Property Owner. Excluded from this provision are substances necessary to carry out the Activities, provided that said substances are labeled, packaged, stored, contained, handled, managed, transported, documented and disposed of by Watermaster in full compliance with all Applicable Legal Requirements.

(b) Any substance, product, waste or other material of any nature whatsoever which may give rise to liability under any of the Applicable Legal Requirements that Watermaster releases to the Property must be removed and properly disposed of by Watermaster in compliance with the Applicable Legal Requirements and all negative impacts remediated at the sole expense of Watermaster. Said remediation shall restore the Property to the condition existing immediately prior to the Effective Date of this Entry Permit.

(c) Watermaster agrees to immediately notify the then current Property Owner when Hazardous Substances have been released on the Property. Watermaster further agrees to properly notify all Applicable Authorities in the event of a release of Hazardous Substances on the Property. If Watermaster discovers any materials suspected to be hazardous in nature in or around the Watermaster's work area during the course of its Activities, it shall halt all Activities until the then current Property Owner, or its agent, can determine the nature of the material and the proper remediation, if any, that is required.

(d) All conditions and stipulations of this Section 9 shall be carried out to the satisfaction of both the then current Property Owner and the California Regional Water Quality Control Board — Colorado River Region.

(e) Failure by Watermaster to comply with any of the above provisions within ninety (90) days of written notification of default shall give Property Owner authority to have said default cured and remediated, and Watermaster agrees to pay that Property Owner all direct and indirect costs of said default.

(f) The Parties' rights and obligations under this Section 9 shall survive the termination of this Entry Permit and continue in effect until all claims against the Property Owner, Watermaster and Property related to this Entry Permit are absolutely barred by the applicable statutes of limitation.

10. Defined Terms.

For purposes of this Entry Permit, the following capitalized terms shall be defined as follows:

(a) Applicable Authorities: The Court administering the Stipulated Judgment, County of San Diego and any other applicable federal, state, regional or local governmental or quasi-governmental agency, body or authority having jurisdiction over the Property, the Meter Program, or the GWMP.

(b) Applicable Legal Requirements: Environmental Laws (as defined below), Stipulated Judgment, and any other statutes, ordinances, rules, codes, requirements, permits, regulations, standards (including any standards or requirements now or hereafter applicable to residential use or development of the Property), judgments, orders, writs, injunctions or decrees or the like, of Applicable Authorities.

(c) Environmental Laws: Any federal, state, regional or local statute, regulation, ordinance, rules, codes, requirements, permits, standards or requirements (including any standards or requirements now or hereafter applicable to residential use or development of the Property), judgments, regulations, orders, writs, injunctions or decrees or the like, relating to environmental conditions on, under or about the Property that could affect use or development of the Property for residential purposes, including, without limitation, soil and groundwater conditions underlying the Property, and environmental conditions pertaining to wetlands, waters of the United States, waters of the State of California, and listed state- or federally-, threatened or endangered species.

(d) Hazardous Materials: Any materials or substances (a) defined as a "hazardous waste," "extremely hazardous waste" or "restricted hazardous waste" under Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code; (b) defined as a "hazardous substance" under Section 26316 of the California Health and Safety Code; (c) defined as a "hazardous material," "hazardous substance" or "hazardous waste" under Section 25501 of the California Health and Safety Code, or under Section 25281 of the California Health and Safety Code; (d) petroleum or any other hydrocarbonic substance or by-product; (e) asbestos, PCBs, and other substances regulated under the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; (f) polychlorinated biphenyls; (g) listed under Article 9 or defined as "hazardous" or "extremely hazardous" pursuant to Article 11 of Title 22 of the California Administrative Code; (h) designated as a "hazardous substance" pursuant to the Clean Water Act (33 U.S.C. § 1251 et seq.); (i) defined as a hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. § 6901 et seq.); (j) listed by the State of California as a chemical known by the State to cause cancer or reproductive toxicity pursuant to Section 25249.8(a) of the California Health and Safety Code; or (k) found to be a pollutant, contaminant, toxic or hazardous waste or toxic or hazardous substance by any Applicable Authorities or in any reported decision of a federal or state



court, or which may give rise to liability under any federal or state common law theory based on negligence, trespass, intentional tort, nuisance or strict liability or under any reported decisions of a state or federal court.

11. Successors and Assigns.

Watermaster shall not assign any of its rights under this Entry Permit without the prior written consent of the then current Property Owner, which consent may be withheld for any reason or for no reason. Any assignment by Watermaster of this Entry Permit shall not release Watermaster from its obligations under this Entry Permit without an express release executed by the then current Property Owner.

12. Authorized Signatories.

The individuals executing this Entry Permit represent and warrant that they are authorized to execute this permit entry on behalf of the Party for whom each individual purports to sign and that when executed and delivered to the Parties, this Permit shall be a valid and binding obligation of the Parties.

13. No Business or Agency Relationship.

Property Owners and Watermaster acknowledge and agree that (i) nothing contained in this Entry Permit shall be construed to constitute the Parties as participants in a joint or common undertaking, (ii) nothing contained in this Entry Permit shall create any agency relationship between a Property Owner and Watermaster, and (iii) no Party shall have any right or authority to act on behalf of the other Party.

14. No Third Party Beneficiary.

This Entry Permit is not intended for the benefit of any third party and shall not be enforceable by any party who is not a Party.

15. Counterparts.

This Permit may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Entry Permit.

16. Waiver of Covenants and Conditions; No Waiver of Claims.

No covenant, condition, right or remedy under this Entry Permit shall be waived unless the waiver is in writing and signed by the Party claimed to have made the waiver. One waiver shall not be interpreted as a continuing waiver. The waiver by one Party of the performance of any covenant or condition under this Entry Permit shall not invalidate this Entry Permit nor shall it be considered a waiver by it of any other covenant or condition under this Entry Permit. By entering into this Entry Permit, neither Property Owner waives any legal rights with respect to potential claims or causes of action Watermaster has (or may have in the future) against Watermaster or against any other person or entity not a Party to this Entry Permit and all such claims are expressly reserved.

17. Governing Law.

The interpretation and enforcement of this Entry Permit shall be governed by the laws of the State of California. This Entry Permit shall be interpreted to give effect to its fair meaning and shall be construed as though it was prepared by all Parties. This Entry Permit contains the entire agreement of the Parties with respect to Watermaster's entry on and investigation of the Property, and all prior negotiations, documents, and discussions regarding the Watermaster's entry and Activities herein are superseded by this Entry Permit. Section headings in this Entry Permit are for convenience only and shall not be used in interpreting its provisions.

18. Venue.

Any controversy or claim arising out of or relating to this Entry Permit, or the breach thereof, shall be brought in the Court administering the Stipulated Judgment in the manner specified in Section VII.A of the Stipulated Judgment for a party to appeal a decision by the Watermaster Board.

19. Attorney's Fees.

In the event any Party to this Entry Permit initiates proceedings to enforce the terms of this Permit, the Party not substantially prevailing in such proceedings shall pay to the substantially prevailing Party all attorneys' fees incurred by the substantially prevailing Party, together with all costs of such proceeding.

20. Severability.

In the event that any provision of this Entry Permit is deemed unenforceable, the remaining provisions shall remain in full force and effect. In the event any provision of this Entry Permit is so held invalid, the Parties shall promptly renegotiate in good faith new provisions to restore this Entry Permit as nearly as possible to its original intent and effect.

21. Notice.

Unless otherwise specified herein, all notices or other communications between the Parties required or permitted hereunder shall be in writing and personally delivered, or sent by certified United States mail, postage prepaid, return receipt requested, or sent via overnight air courier (example, Federal Express) to the following addresses:

If to David Bauer, to:

Borrego Farms Inc.  
Attn: David Bauer  
32540 Couser Canyon Rd. , Valley Center,  
SAN DIEGO, California 92082, US  
Phone: 760-214-3755  
Fax: \_\_\_\_\_  
E-mail: borregofarms@gmail.com

With a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
E-mail: \_\_\_\_\_

If to Borrego Water District, to:

Borrego Water District  
806 Palm Canyon Drive  
Borrego Springs, CA 92004  
Phone: 760-767-5806  
Fax: 760-767-5994  
E-mail: [geoff@borregowd.org](mailto:geoff@borregowd.org)

With a copy to:

Board of Directors  
Borrego Water District  
806 Palm Canyon Drive  
Borrego Springs, CA 92004  
Phone: 760-767-5806  
Fax: 760-767-5994  
E-mail: [kathy@borregowd.org](mailto:kathy@borregowd.org)

If to Watermaster, to:

Samantha Adams, Executive Director  
c/o West Yost Associates  
23692 Birtcher Drive  
Lake Forest, CA 9263  
Phone: 949-600-7527  
Fax: 949-420-4040  
E-mail: [sadams@westyost.com](mailto:sadams@westyost.com)

With a copy to:

James Markman, Legal Counsel  
Richards Watson & Gershon  
1 Civic Center Circle  
PO Box 1059  
Brea, CA 92822-1059  
Phone: 714-990-0901  
E-mail: [jmarkman@rwglaw.com](mailto:jmarkman@rwglaw.com)

A notice shall be effective on the date of personal delivery if personally delivered, the next business day after deposit with the overnight air courier, or two (2) business days following the date the notice is postmarked, if mailed via certified mail as set forth above. Either Party may change the address to which notice is to be given to it by giving notice of such change of address in the manner set forth above for giving notice.

22. Watermaster Acceptance.

Watermaster shall indicate its acceptance of the terms and conditions of the permission granted under this Entry Permit by signing in the space provided below and returning the original executed copy of this Entry Permit to each Property Owner.

IN WITNESS WHEREOF, the Parties have caused this Entry Permit to be executed as of the latest day and year written below.

Dated: \_\_\_\_\_ WATERMASTER  
\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

Dated: \_\_\_\_\_ DAVID BAUER  
\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

Dated: \_\_\_\_\_ BORREGO WATER DISTRICT  
\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

**EXHIBIT A**  
**MAP DEPICTING AND DESCRIBING PROPERTY**



**EXHIBIT B**

Groundwater Monitoring Plan for the Borrego Springs Subbasin (GWMP)

Link below:

[2020 Report \(borregospringswatermaster.com\)](https://borregospringswatermaster.com/2020-report)

Resolution No. 23-02 of the Board of Directors of the Borrego Springs Watermaster Establishing  
a Revised Comprehensive Metering Program

Link Below:

[https://borregospringswatermaster.com/wp-content/uploads/2023/03/Resolution-23-02-  
Establishing-a-Revised-Metering-Program-Executed.pdf](https://borregospringswatermaster.com/wp-content/uploads/2023/03/Resolution-23-02-Establishing-a-Revised-Metering-Program-Executed.pdf)

**ENTRY PERMIT  
(Groundwater Monitoring Program)**

This Entry Permit is dated as of December 17, 2024, and is made by David Bauer (“**Present Property Owner**”) and Borrego Water District (“District”) sometimes collectively referred to herein as “**Property Owners**” and the Borrego Springs Watermaster (“**Watermaster**”) appointed under that certain Borrego Springs Subbasin Stipulated Judgment entered in *Borrego Water District v. All Persons Who Claim a Right to Extract Groundwater in the Borrego Valley Groundwater Subbasin, etc.*, Orange County Superior Court Case No. 37-2020-00005776 (“**Stipulated Judgment**”). Where appropriate, Property Owners and Watermaster are referred to collectively as “Parties” and individually as “Party.” References to a Party include, bind, and inure to the benefit of that Party’s Boardmembers, officers, agents, employees, successors in interest and assigns.

**RECITALS**

A. Present Property Owner is the owner of that certain real property commonly known as Assessor’s Parcel Number 140-070-27 within the County of San Diego, depicted on Exhibit “A” attached hereto and incorporated herein by reference (“**Property**”).

B. Present Property Owner is a party to the Stipulated Judgment. The Stipulated Judgment contemplates regular groundwater level and quality monitoring of certain wells under the approved Groundwater Monitoring Program (GWMP) attached hereto as Exhibit “B” and incorporated herein by reference, as this GWMP may be amended by the Watermaster from time to time. Watermaster has requested that Present Property Owner provide access to the well located on the portion(s) of the Property referenced as the “**Well Site**” on Exhibit “A” and referred to as 808-ghost so that Watermaster may take groundwater level measurements and/or groundwater quality samples from the Well(s) in accordance with the GWMP and pursuant to the terms of this Permit (the “**Activities**”).

C. The Parties anticipate and expect fee title to the Property will be conveyed by Present Property Owner to District on or about December 15, 2025.

D. The Property is used by Present Property Owner and will be used by District for residential, commercial, or other business purposes, including but not limited to extensive agricultural business uses. Unrestricted entry by Watermaster could interfere with those uses and expose Property Owners, and Property Owners’ agents, employees and invitees, Watermaster’s employees and contractors, and others on the Property to risk of injury.

E. Property Owners desire to allow Watermaster to enter onto the Property to access the Well Site as necessary for Watermaster to carry out the Activities pursuant to the terms of this Permit.

**TERMS**

This Entry Permit is issued subject to the following terms and conditions:

1. Purpose and Scope.

(a) For the Term of this Permit, as defined in Section 2 below, Property Owners hereby provides Watermaster a limited, non-exclusive license to enter onto the property to access the Well Site, under the terms and conditions set forth in this Entry Permit, solely in order to carry out the Activities.

(b) Only Watermaster's employees and contractors covered by Watermaster's or such contractors' comprehensive liability insurance, automobile insurance and workers compensation insurance consistent with the requirements of Section 7 below are permitted to enter the Well Site and conduct the Activities.

(c) Watermaster shall not enter onto the Well Site other than as necessary to conduct the Activities and shall not enter onto any other portion of the Property. Watermaster's request to enter onto any other portions of the Property in connection with Activities shall be considered by a Property Owner on a case by case basis and shall be subject to a new written entry permit agreement with that Property Owner at that Property Owner's request.

(d) Each entry shall be limited to the hours between 7:00 a.m. and 5:00 p.m., Monday through Friday, excluding holidays, unless otherwise agreed to in advance and in writing by the then current Property Owner.

(e) At the sole election of the then current Property Owner, that Property Owner or its representative may accompany Watermaster in any or all of the Activities. Upon a Property Owner's request, Watermaster shall provide a split sample to that Property Owner or its representative without cost to the Property Owner. Neither Property Owner shall have any responsibility or obligation whatsoever in connection with the Activities, except as provided in Section 6 below.

(f) If the Activities include any survey, test or other investigation, Watermaster shall provide the then current Property Owner a copy of the results of the Activities within ten (10) calendar days after the draft results are first made available to Watermaster and prior to their publication, without cost to that Property Owner.

(g) Failure to comply with the terms and conditions contained herein shall be cause for immediate termination of this Entry Permit.

2. Term of this Entry Permit.

(a) The term of this Entry Permit shall commence upon its full execution by the Parties (the "**Effective Date**") and shall remain in effect until either Property Owner notifies the Watermaster that they no longer wish to participate in the GWMP. The Entry Permit shall expire on the notification date, or other date specified in the notification by the Property Owner (the "**Termination Date**").

(b) Watermaster's entry and the Activities must cease on the Termination Date.



(c) The Parties' rights and obligations under Sections 4, 6, 7, 8, 9, 10, 11, 18 and 19 below shall survive the termination of this Entry Permit and continue in effect until all claims against that Property Owner, Watermaster and the Property related to this Entry Permit are absolutely barred by the applicable statutes of limitation.

3. Notice of Entry.

(a) Watermaster shall notify the then current Property Owner by telephone 760-767-5806 and email [geoff@borregowd.org](mailto:geoff@borregowd.org) and [borregofarms@gmail.com](mailto:borregofarms@gmail.com), at least seventy-two (72) hours prior to each entry onto the Well Site(s). The notice shall contain all of the following information:

- 1) The date, approximate time and approximate duration of the entry;
- 2) The Watermaster personnel who will be conducting the Activities during the entry; and
- 3) Watermaster's certification that the Watermaster personnel who will be conducting the Activities have been provided with a copy of this Entry Permit and are covered by Watermaster's comprehensive liability insurance, automobile insurance and workers compensation insurance.

4. Government Permits and Authorizations.

Watermaster shall comply with all Applicable Legal Requirements (defined in Section 10 below) and shall be solely responsible for and obtain at its expense all governmental permits and authorizations required by all Applicable Authorities (defined in Section 10 below) for Watermaster to perform the Activities and the restoration of the Property pursuant to this Entry Permit.

5. Non-Interference with Property Owner's Use of Property.

(a) Watermaster shall not modify the Property or the Well without the then current Property Owner's prior written consent. No ground disturbances are permitted without that Property Owner's prior written consent.

(b) Watermaster's entry upon and use of the Well Site shall at all times be subject to the rights of the then current Property Owner to use the Property and the Well located thereon. Watermaster shall not interfere with or disrupt the residential, agricultural, commercial or other business activities on the Property, and shall not endanger the health, safety or welfare of the then current Property Owner or that Property Owner's agents, employees, invitees, or Watermaster's employees or contractors, or others on the Property.

6. Assumption of Risk, Release and Indemnity.

(a) Watermaster assumes all risk of loss, damage and injury to itself, its employees and contractors which in any manner may arise out of entry upon or use of the Property under this Entry Permit. No Property Owner shall have any liability to Watermaster, its employees

or contractors or to any insurer, by way of subrogation or otherwise, on account of any loss, damage or injury to Watermaster's property, or to Watermaster's employees or contractors, regardless of whether such loss or damage is caused by any negligence of that Property Owner or Watermaster, unless Watermaster affirmatively demonstrates that that Property Owner acted with willful misconduct, and that such willful misconduct is the proximate cause of such loss, damage or injury. Any award of damages following such a showing of willful misconduct shall be limited to the actual amount of the monetary injury. If any dispute is not resolved following compliance with the dispute resolution procedures specified in Section VII.A of the Judgment, either Party may seek declaratory relief, specific performance and/or monetary damages for willful misconduct in accordance with the procedures set forth in Section VII.A of the Judgment, but no other remedies in law or equity.

(b) Watermaster shall keep the Property free of mechanic's liens and claims resulting from or in any way related to Watermaster's entry onto the Property or the Activities. Watermaster shall defend Property Owners and the Property against, and indemnify and hold Property Owners and the Property harmless from all liens, claims, losses, liabilities and expenses asserted against or incurred by the Property Owners or the Property and caused by Watermaster's entry or the Activities or in any way related to such entry or Activities, including the actual expense of legal representation whether by special counsel or by Property Owners' attorneys, and expert witness fees, arising out of or resulting from injury to or death of any person, or damage to any property or damage to any other interest of Property Owners, including, but not limited to, suit alleging noncompliance with any applicable Legal Requirements by Watermaster. Watermaster's duty to defend as described above shall arise immediately upon the making of any claim, the assertion of any cause of action, the initiation of any regulatory proceeding or other action against a Property Owner, and shall not be dependent upon a finding of any wrongdoing or fault on the part of Watermaster. The Parties' rights and obligations under this Section 6 shall survive termination of this Entry Permit and shall continue until all claims against Property Owners, Watermaster, and the Property are absolutely barred by the applicable statutes of limitation.

## 7. Insurance.

(a) Scope of Insurance. Watermaster shall, prior to any entry onto the Property, acquire and keep in full force and effect comprehensive liability insurance with a combined single limit coverage limit of not less than Two Million Dollars (\$2,000,000.00) covering bodily injury, personal injury, death and property damage liability per occurrence and in the aggregate, insuring the Property Owners against any and all liability with respect to or arising out of the entry or Activities. No policies issued on a "claims made" basis will be acceptable and no policies will have any deductible provision in excess of five percent (5%) of the total coverage maintained by the Watermaster. Watermaster shall also obtain and maintain all automobile and workers compensation insurance required by law with respect to the Activities. Watermaster shall provide the Property Owner with a certificate evidencing such coverage prior to Watermaster's entry onto the Property.

(b) Policy Form. All such liability insurance policies shall name the Property Owners as additional insureds. All public liability, property damage, and other casualty policies shall be written as primary policies and any insurance carried by the additional insureds on such policies shall not be contributing with such policies. All policies of insurance under this Entry

Permit shall be issued by reputable insurance companies with general policy holder's ratings of not less than A-, and which are qualified to do business in California.

(c) Blanket Policies. Notwithstanding anything to the contrary contained in this Section 7, Watermaster's obligation to carry insurance may be satisfied by coverage under a so-called blanket policy of insurance, provided, that the requirements set forth in this Section 7 are otherwise satisfied.

(d) Failure by Watermaster to Maintain Insurance. If Watermaster fails to secure and maintain insurance policies complying with the provisions of this Section 7, then the then current Property Owner may secure the appropriate insurance policy or policies, and Watermaster shall pay, upon demand, the cost of same to that Property Owner, plus a service fee equal to fifteen percent (15%) of the total annual premium cost of the policy or policies.

## 8. Remedies.

(a) If the Property suffers any damage by reason of the acts or omissions of Watermaster, Watermaster shall be solely responsible for restoring the Property to its condition existing immediately prior to the occurrence of such damage to the satisfaction of the Property Owner, and shall compensate the then current Property Owner for any damages caused by reason of the acts or omissions of Watermaster, including but not limited to the market value of any crops damaged or destroyed by Watermaster.

(b) Watermaster shall be liable to Property Owners for all damage to any person or property which in any manner may be caused by Watermaster. Property Owners' remedies for any such damage shall include, without limitation:

1) requiring that Watermaster immediately pay for the cost of repair and other losses to Property Owner (including without limitation, consequential damages) caused by Watermaster; and

2) requiring that Watermaster restore any damaged property, including without limitation the Property Owners' Well, to a condition as near as reasonably possible to that which existed immediately prior to Watermaster's entry. If a Property Owner elects to require that Watermaster make such repairs and restoration and Watermaster does not timely perform such repairs and restoration, then Watermaster shall be liable to that Property Owner for the cost of restoring the damaged property to such condition, and shall further be liable to that Property Owner for all damages (including, without limitation, consequential damage) resulting from Watermaster's activities on the Property, and any and all associated costs that Property Owner incurs in its related restoration/repair activities.

## 9. Removal of Materials.

(a) Watermaster hereby warrants and represents that it will not cause the presence, use, storage or disposal of any Hazardous Substances (defined in Section 10 below) on or about the Property without the prior written consent of the then current Property Owner. Excluded from this provision are substances necessary to carry out the Activities, provided that said substances are labeled, packaged, stored, contained, handled, managed, transported,

documented and disposed of by Watermaster in full compliance with all Applicable Legal Requirements.

(b) Any substance, product, waste or other material of any nature whatsoever which may give rise to liability under any of the Applicable Legal Requirements that Watermaster releases to the Property must be removed and properly disposed of by Watermaster in compliance with the Applicable Legal Requirements and all negative impacts remediated at the sole expense of Watermaster. Said remediation shall restore the Property to the condition existing immediately prior to the Effective Date of this Entry Permit.

(c) Watermaster agrees to immediately notify the then current Property Owner when Hazardous Substances have been released on the Property. Watermaster further agrees to properly notify all Applicable Authorities in the event of a release of Hazardous Substances on the Property. If Watermaster discovers any materials suspected to be hazardous in nature in or around the Watermaster's work area during the course of its Activities, it shall halt all Activities until the then current Property Owner, or its agent, can determine the nature of the material and the proper remediation, if any, that is required.

(d) All conditions and stipulations of this Section 9 shall be carried out to the satisfaction of both the then current Property Owner and the California Regional Water Quality Control Board — Colorado River Region.

(e) Failure by Watermaster to comply with any of the above provisions within ninety (90) days of written notification of default shall give the Property Owner authority to have said default cured and remediated, and Watermaster agrees to pay that Property Owner all direct and indirect costs of said default.

(f) The Parties' rights and obligations under this Section 9 shall survive the termination of this Entry Permit and continue in effect until all claims against the Property Owner, Watermaster and Property related to this Entry Permit are absolutely barred by the applicable statutes of limitation.

#### 10. Defined Terms.

For purposes of this Entry Permit, the following capitalized terms shall be defined as follows:

(a) Applicable Authorities: The Court administering the Stipulated Judgment, County of San Diego and any other applicable federal, state, regional or local governmental or quasi-governmental agency, body or authority having jurisdiction over the Property or the Water Quality Monitoring Plan.

(b) Applicable Legal Requirements: Environmental Laws (as defined below), Stipulated Judgment, and any other statutes, ordinances, rules, codes, requirements, permits, regulations, standards (including any standards or requirements now or hereafter applicable to residential use or development of the Property), judgments, orders, writs, injunctions or decrees or the like, of Applicable Authorities.

(c) Environmental Laws: Any federal, state, regional or local statute, regulation, ordinance, rules, codes, requirements, permits, standards or requirements (including any standards or requirements now or hereafter applicable to residential use or development of the Property), judgments, regulations, orders, writs, injunctions or decrees or the like, relating to environmental conditions on, under or about the Property that could affect use or development of the Property for residential purposes, including, without limitation, soil and groundwater conditions underlying the Property, and environmental conditions pertaining to wetlands, waters of the United States, waters of the State of California, and listed state- or federally-, threatened or endangered species.

(d) Hazardous Materials: Any materials or substances (a) defined as a “hazardous waste,” “extremely hazardous waste” or “restricted hazardous waste” under Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code; (b) defined as a “hazardous substance” under Section 26316 of the California Health and Safety Code; (c) defined as a “hazardous material,” “hazardous substance” or “hazardous waste” under Section 25501 of the California Health and Safety Code, or under Section 25281 of the California Health and Safety Code; (d) petroleum or any other hydrocarbonic substance or by-product; (e) asbestos, PCBs, and other substances regulated under the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; (f) polychlorinated biphenyls; (g) listed under Article 9 or defined as “hazardous” or “extremely hazardous” pursuant to Article 11 of Title 22 of the California Administrative Code; (h) designated as a “hazardous substance” pursuant to the Clean Water Act (33 U.S.C. § 1251 et seq.); (i) defined as a hazardous substance” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. § 6901 et seq.); (j) listed by the State of California as a chemical known by the State to cause cancer or reproductive toxicity pursuant to Section 25249.8(a) of the California Health and Safety Code; or (k) found to be a pollutant, contaminant, toxic or hazardous waste or toxic or hazardous substance by any Applicable Authorities or in any reported decision of a federal or state court, or which may give rise to liability under any federal or state common law theory based on negligence, trespass, intentional tort, nuisance or strict liability or under any reported decisions of a state or federal court.

11. Successors and Assigns.

Watermaster shall not assign any of its rights under this Entry Permit without the prior written consent of the then current Property Owner, which consent may be withheld for any reason or for no reason. Any assignment by Watermaster of this Entry Permit shall not release Watermaster from its obligations under this Entry Permit without an express release executed by the then current Property Owner.

12. Authorized Signatories.

The individuals executing this Entry Permit represent and warrant that they are authorized to execute this permit entry on behalf of the Party for whom each individual purports to sign and that when executed and delivered to the Parties, this Permit shall be a valid and binding obligation of the Parties.

13. No Business or Agency Relationship.

Property Owners and Watermaster acknowledge and agree that (i) nothing contained in this Entry Permit shall be construed to constitute the Parties as participants in a joint or common undertaking, (ii) nothing contained in this Entry Permit shall create any agency relationship between a Property Owner and Watermaster, and (iii) no Party shall have any right or authority to act on behalf of the other Party.

14. No Third Party Beneficiary.

This Entry Permit is not intended for the benefit of any third party and shall not be enforceable by any party who is not a Party.

15. Counterparts.

This Permit may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Entry Permit.

16. Waiver of Covenants and Conditions; No Waiver of Claims.

No covenant, condition, right or remedy under this Entry Permit shall be waived unless the waiver is in writing and signed by the Party claimed to have made the waiver. One waiver shall not be interpreted as a continuing waiver. The waiver by one Party of the performance of any covenant or condition under this Entry Permit shall not invalidate this Entry Permit nor shall it be considered a waiver by it of any other covenant or condition under this Entry Permit. By entering into this Entry Permit, neither Property Owner waives any legal rights with respect to potential claims or causes of action Watermaster has (or may have in the future) against Watermaster or against any other person or entity not a Party to this Entry Permit and all such claims are expressly reserved.

17. Governing Law.

The interpretation and enforcement of this Entry Permit shall be governed by the laws of the State of California. This Entry Permit shall be interpreted to give effect to its fair meaning and shall be construed as though it was prepared by all Parties. This Entry Permit contains the entire agreement of the Parties with respect to Watermaster's entry on and investigation of the Property, and all prior negotiations, documents, and discussions regarding the Watermaster's entry and Activities herein are superseded by this Entry Permit. Section headings in this Entry Permit are for convenience only and shall not be used in interpreting its provisions.

18. Venue.

Any controversy or claim arising out of or relating to this Entry Permit, or the breach thereof, shall be brought in the Court administering the Stipulated Judgment in the manner specified in Section VII.A of the Stipulated Judgment for a party to appeal a decision by the Watermaster Board.

19. Attorney's Fees.

In the event any Party to this Entry Permit initiates proceedings to enforce the terms of this Permit, the Party not substantially prevailing in such proceedings shall pay to the substantially prevailing Party all attorneys' fees incurred by the substantially prevailing Party, together with all costs of such proceeding.

20. Severability.

In the event that any provision of this Entry Permit is deemed unenforceable, the remaining provisions shall remain in full force and effect. In the event any provision of this Entry Permit is so held invalid, the Parties shall promptly renegotiate in good faith new provisions to restore this Entry Permit as nearly as possible to its original intent and effect.

21. Notice.

Unless otherwise specified herein, all notices or other communications between the Parties required or permitted hereunder shall be in writing and personally delivered, or sent by certified United States mail, postage prepaid, return receipt requested, or sent via overnight air courier (example, Federal Express) to the following addresses:

If to David Bauer, to:

Borrego Farms Inc.  
Attn: David Bauer  
32540 Couser Canyon Rd. , Valley Center,  
SAN DIEGO, California 92082, US  
Phone: 760-214-3755  
Fax: \_\_\_\_\_  
E-mail: borregofarms@gmail.com

With a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
E-mail: \_\_\_\_\_

If to Borrego Water District, to:

Borrego Water District  
806 Palm Canyon Drive  
Borrego Springs, CA 92004  
Phone: 760-767-5806  
Fax: 760-767-5994  
E-mail: geoff@borregowd.org

With a copy to:

Board of Directors  
Borrego Water District  
806 Palm Canyon Drive  
Borrego Springs, CA 92004  
Phone: 760-767-5806  
Fax: 760-767-5994  
E-mail: [kathy@borregowd.org](mailto:kathy@borregowd.org)

If to Watermaster, to:

Samantha Adams, Executive Director  
c/o West Yost Associates  
23692 Birtcher Drive  
Lake Forest, CA 9263  
Phone: 949-600-7527  
Fax: 949-420-4040  
E-mail: [sadams@westyost.com](mailto:sadams@westyost.com)

With a copy to:

James Markman, Legal Counsel  
Richards Watson & Gershon  
1 Civic Center Circle  
PO Box 1059  
Brea, CA 92822-1059  
Phone: 714-990-0901  
E-mail: [jmarkman@rwglaw.com](mailto:jmarkman@rwglaw.com)

business day after deposit with the overnight air courier, or two (2) business days following the date the notice is postmarked, if mailed via certified mail as set forth above. Either Party may change the address to which notice is to be given to it by giving notice of such change of address in the manner set forth above for giving notice.

22. Watermaster Acceptance.

Watermaster shall indicate its acceptance of the terms and conditions of the permission granted under this Entry Permit by signing in the space provided below and returning a counterpart original executed copy of this Entry Permit to each Property Owner.

*[Signatures on the following page]*



IN WITNESS WHEREOF, the Parties have caused this Entry Permit to be executed as of the latest day and year written below.

Dated: \_\_\_\_\_

WATERMASTER

\_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Dated: \_\_\_\_\_

DAVID BAUER

\_\_\_\_\_

Dated: \_\_\_\_\_

BORREGO WATER DISTRICT

\_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

**EXHIBIT A**  
**MAP DEPICTING AND DESCRIBING PROPERTY**



**EXHIBIT B**

Groundwater Monitoring Plan for the Borrego Springs Subbasin

Link below:

[2020 Report \(borregospringswatermaster.com\)](http://borregospringswatermaster.com)

# ATTACHMENT IV. A. STAFF REPORTS WASTEWATER





# **BORREGO WATER DISTRICT**

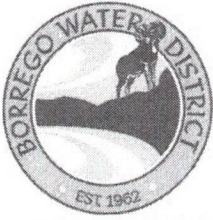
**December 2024**

## **WASTEWATER OPERATIONS REPORT**

There's no know problems with wastewater system at the moment:

**Rams Hill Wastewater Treatment Facility serving ID-1, ID-2 and ID-5 Total Cap. 0.25 MGD (million gallons per day):**

**Average flow:** 102387 (gallons per day)  
**Peak flow:** 139000 gpd SUNDAY, DECEMBER 29- 2024



## BORREGO WATER DISTRICT

RAMS HILL WASTEWATER TREATMENT FACILITY  
4861 Borrego Springs Rd, BORREGO SPRINGS, CA 92004  
(760) 767-5806 FAX (760) 767-5994

01/09/2025

CALIFORNIA REGIONAL WATER QUALITY  
CONTROL BOARD – REGION 7  
73-720 FRED WARING DR. SUITE 100  
PALM DESERT, CA. 92260

Attn: Adrian Lopez/WRCE

RE: December 2024 Borrego Springs WWTP

Dear Adrian,

Please find attached the December 2024 monthly monitoring reports and Lab results for Borrego springs district WWTP.

We are pleased to inform you that there's no known violations for this month.

If you have any questions please contact ROGELIO MARTINEZ/WT-III. (760)419-2764.

Respectfully,

Rogelio Martinez/ water plant operator III

CC: Geoff Poole/GM

**P.H. / D.O. LOG ; R.H.W.T.F., BORREGO WATER DISTRICT**

**YEAR,2024**

December

<b><u>DATE</u></b>	<b><u>LOCATION</u></b>	<b><u>P.H.</u></b>	<b><u>D.O</u></b>	<b><u>Alkalinity</u></b>	<b><u>Freeboard</u></b>
12/3/2024	EFFLUENT	7.60	6.52mg/l	180ppm	
12/3/2024	POND	7.52	5.60mg/l	180ppm	3.5ft
12/17/2024	EFFLUENT	7.53	5.55mg/l	180ppm	
12/17/2024	POND	7.31	6.94mg/l	180ppm	3.5ft

Berm Condition: Good and no Odors around the pond

# MONTHLY REPORT: R.H.W.T.F

MONTH: DECEMBER

YEAR: 2024

BORREGO WATER DISTRICT,  
RAMS HILL WASTEWATER TREATMENT FACILITY,  
4861 BORREGO SPRINGS ROAD,  
BORREGO SPRINGS, CA 92004  
760-767-5806; phone  
760-767-5994; fax

COMMENTS: THERE ARE NO SPILLS TO REPORT FOR DECEMBER 2024; THE FLOW REPORT IS ATTACHED.

Submitted by: ROGELIO MARTINEZ/BWD TO: GEOFF POOLE/BWD;

01/09/2024



DEC 2024	INFLUENT DAILY FLOW GAL.	TOTAL FLOW GAL.
1	139000 GAL	7592000 GAL
2	118000 GAL	7710000 GAL
3	97000 GAL	7807000 GAL
4	97000 GAL	7904000 GAL
5	98000 GAL	8002000 GAL
6	90000 GAL	8092000 GAL
7	108000 GAL	8200000 GAL
8	105000 GAL	8305000 GAL
9	98000 GAL	8403000 GAL
10	61000 GAL	8464000 GAL
11	68000 GAL	8532000 GAL
12	96000 GAL	8628000 GAL
13	98000 GAL	8726000 GAL
14	96000 GAL	8822000 GAL
15	99000 GAL	8921000 GAL
16	91000 GAL	9012000 GAL
17	89000 GAL	9101000 GAL
18	91000 GAL	9192000 GAL
19	86000 GAL	9278000 GAL
20	93000 GAL	9371000 GAL
21	93000 GAL	9464000 GAL
22	104000 GAL	9569000 GAL
23	101000 GAL	9670000 GAL
24	102000 GAL	9772000 GAL
25	93000 GAL	9865000 GAL
26	106000 GAL	9971000 GAL
27	123000 GAL	10094000 GAL
28	128000 GAL	10222000 GAL
29	139000 GAL	10361000 GAL
30	133000 GAL	10494000 GAL
31	134000 GAL	10628000 GAL

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
COLORADO RIVER BAIS REGION**

WDID NO.: 7A 37 0125 001  
ORDER NO.: R7-2007-0053

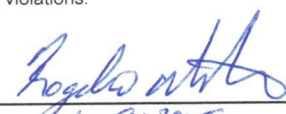
**MONITORING AND REPORTING  
BORREGO WATER DISTRICT - RAMS HILL WWTF  
MONTH: December  
YEAR: 2024**

REPORTING FREQUENCIES: **MONTHLY (Oct-March)**

December

TYPE OF SAMPLE:	INFLUENT			PONDS		
	Flow	BOD	TSS	PH	DO	Freeboard
CONSTITUENTS:	Flow	BOD	TSS	PH	DO	Freeboard
FREQUENCY:	Daily	Monthly	Monthly	Twice Monthly	Twice Monthly	Twice Monthly
DESCRIPTION:	Measurement	Grab	Grab	Grab	Grab	Measurement
UNITS:	gpd	mg/L	mg/L	s.u	mg/l	ft
REQUIREMENTS						
30-DAY MEAN:						
MAXIMUM:						
MINIMUM:						
DATE OF SAMPLE	December					
1	139000					
2	118000					
3	97000	37	63	7.52	5.60	3.5
4	97000					
5	98000					
6	90000					
7	108000					
8	105000					
9	98000					
10	61000					
11	68000					
12	96000					
13	98000					
14	96000					
15	99000					
16	91000					
17	89000			7.31	6.94	3.5
18	91000					
19	86000					
20	93000					
21	93000					
22	104000					
23	101000					
24	102000					
25	93000					
26	106000					
27	123000					
28	128000					
29	139000					
30	133000					
31	134000					
<b>30-DAY MEAN</b>	<b>102387</b>	<b>37</b>	<b>63</b>	<b>7.42</b>	<b>6.27</b>	<b>3.5</b>
<b>MAXIMUM</b>	<b>139000</b>	<b>37</b>	<b>63</b>	<b>7.52</b>	<b>6.94</b>	<b>3.5</b>
<b>MINIMUM</b>	<b>61000</b>	<b>37</b>	<b>63</b>	<b>7.31</b>	<b>5.60</b>	<b>3.5</b>

I declare under the penalty of law that I personally examined and am familiar with the information submitted in this document, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Signature:   
Date: 1-9-2025

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
COLORADO RIVER BAIS REGION**

WDID NO.: 7A 37 0125 001  
ORDER NO.: R7-2007-0053

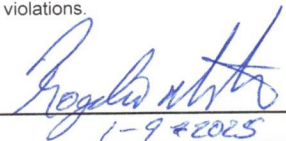
**MONITORING AND REPORTING  
BORREGO WATER DISTRICT - RAMS HILL WWTF**  
MONTH: December  
YEAR: 2024

REPORTING FREQUENCY: **MONTHLY (Oct - March)**

December

TYPE OF SAMPLE:	EFFLUENT					
	BOD	TSS	SS	T. Nitrogen	TDS	pH
CONSTITUENTS:	BOD	TSS	SS	T. Nitrogen	TDS	pH
FREQUENCY:	Twice Monthly	Twice Monthly	Twice Monthly	Twice Monthly	Twice Monthly	Twice Monthly
DESCRIPTION:	Grab	Grab	Grab	Grab	Grab	Grab
UNITS:	mg/L	mg/L	ml/L		ml/L	
REQUIREMENTS						
30-DAY MEAN:						
MAXIMUM:	30mg/l	30mg/l	0.3ml/l		700mg/l	9.0
MINIMUM:						
DATE OF SAMPLE						
1						
2						
3	9.0	5.0	0.0	16	500	7.6
4						
5						
6						
7						
8						
9						
10						
11						
12						
13						
14						
15						
16						
17	9.3	6.0	0.0	5.6	490	7.53
18						
19						
20						
21						
22						
23						
24						
25						
26						
27						
28						
29						
30						
31						
<b>30-DAY MEAN</b>	<b>9.2</b>	<b>5.5</b>	<b>0.0</b>	<b>10.8</b>	<b>495</b>	<b>7.57</b>
<b>MAXIMUM</b>	<b>9.2</b>	<b>6.0</b>	<b>0.0</b>	<b>16.0</b>	<b>500</b>	<b>7.60</b>
<b>MINIMUM</b>	<b>9.2</b>	<b>5.0</b>	<b>0.0</b>	<b>5.6</b>	<b>490</b>	<b>7.53</b>

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Signature:   
Date: 1-9-2025

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
COLORADO RIVER BASIN REGION**

WDID NO.: 7A 37 0125 001  
ORDEF NO: R 7-2019-0015

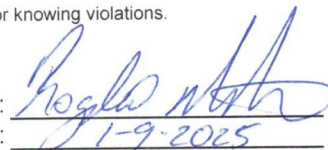
**MONITORING AND REPORTING  
BORREGO WATER DISTRICT - RAMS HILL WWTF**

Month December  
YEAR 2024

REPORTING FREQUENCY: **Monthly**  
December

TYPE OF SAMPLE:	Domestic Water Supply Well #11			Domestic Water Supply Well #12		
	TDS	PH		TDS	pH	
CONSTITUENTS:	TDS	PH		TDS	pH	
FREQUENCY:	Monthly	Monthly		Monthly	Monthly	
DESCRIPTION:	Grab	Grab		Grab	Grab	
UNITS:	mg/l	mg/L				
REQUIREMENTS						
30-DAY MEAN:						
MAXIMUM:						
MINIMUM:						
DATE OF SAMPLE						
1						
2						
3						
4						
5						
6						
7						
8						
9						
10						
11						
12						
13						
14						
15						
16						
17	320	8.1		290	8.1	
18						
19						
20						
21						
22						
23						
24						
25						
26						
27						
28						
29						
30						
31						
<b>30-DAY MEAN</b>	<b>320</b>	<b>8.1</b>		<b>290</b>	<b>8.1</b>	
<b>MAXIMUM</b>	<b>320</b>	<b>8.1</b>		<b>290</b>	<b>8.1</b>	
<b>MINIMUM</b>	<b>320</b>	<b>8.1</b>		<b>290</b>	<b>8.1</b>	

I declare under the penalty of law that I personally examined and am familiar with the information submitted in this document, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Signature:   
Date: 1-9-2025

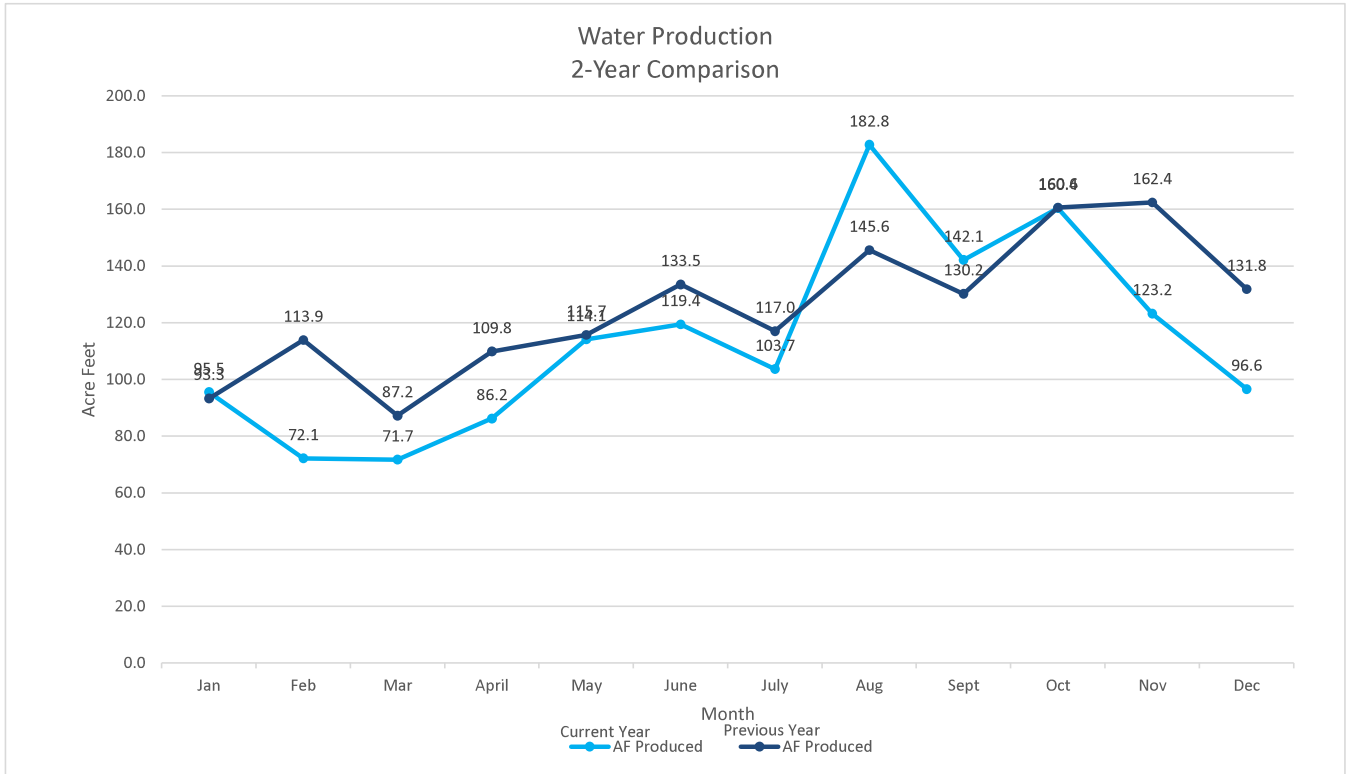
# ATTACHMENT IV. B. STAFF REPORTS WATER





# BORREGO WATER DISTRICT

## WATER PRODUCTION SUMMARY December 2024



### Past 12 months Production vs. Sales

	Jan-24	Feb-24	Mar-24	Apr-24	May-24	Jun-24	Jul-24	Aug-24	Sep-24	Oct-24	Nov-24	Dec-24	Past 12 Mo. TOT
AF Used	89.3	67.9	65.4	78.9	101.2	104.6	113.4	142.0	121.6	133.3	108.0	83.6	1209.2
AF Produced	95.5	72.1	71.7	86.2	114.1	119.4	103.7	182.8	142.1	160.4	123.2	96.6	1367.8
% Non Rev.	6.5%	5.9%	8.8%	8.5%	11.3%	12.4%	-9.4%	22.3%	14.4%	16.9%	12.3%	13.5%	13.1%

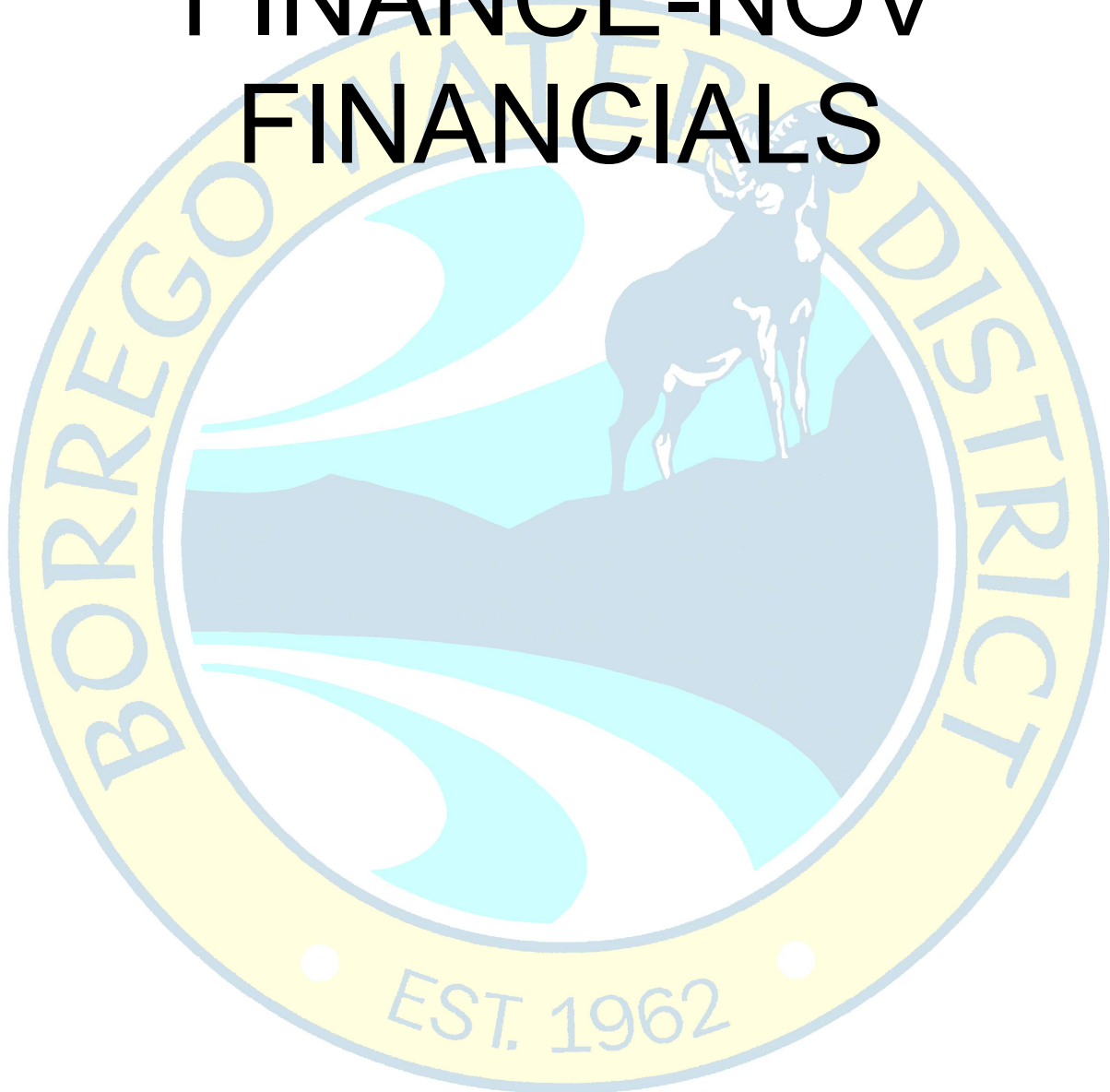
### Previous 12 Months Production vs. Sales

	Jan-23	Feb-23	Mar-23	Apr-23	May-23	Jun-23	Jul-23	Aug-23	Sep-23	Oct-23	Nov-23	Dec-23	Prior 12 Mo. TOT
AF Used	101.1	121.6	95.1	115.7	128.4	128.4	128.4	128.4	119.1	180.8	154.2	121.9	1523.1
AF Produced	93.3	113.9	87.2	109.8	115.7	133.5	117.0	145.6	130.2	160.6	162.4	131.8	1501.0
% Non Rev.	-8.4%	-6.8%	-9.1%	-5.4%	-11.0%	3.8%	-9.7%	11.8%	8.5%	-12.6%	5.0%	7.5%	-1.5%

### Non Revenue Water Summary

Dec-24 13.5%  
 Avg. Past 12 Mos. 10.3%  
 Avg. Past 24 Mos. 4.1%

**ATTACHMENT IV. C. a.  
STAFF REPORTS  
FINANCE-NOV  
FINANCIALS**





## TREASURER'S REPORT NOVEMBER 2024

	Bank Balance	Carrying Value	Fair Value	<u>% of Portfolio</u> Current Actual	Rate of Interest	Maturity	Valuation Source
<b>Cash and Cash Equivalents:</b>							
<b>Demand Accounts at CVB/LAIF</b>							
General Account/Petty Cash	\$ 2,273,874	\$ 2,198,947	\$ 2,198,947	61.26%	0.78%	N/A	CVB/WF
Payroll Account	\$ 96,771	\$ 82,947	\$ 82,947	2.31%	0.78%	N/A	WF
Grant Fund Account	\$ 287,919	\$ 99,867	\$ 99,867	2.78%	0.00%	N/A	WF
LAIF	\$ 1,207,717	\$ 1,207,717	\$ 1,207,717	33.65%	4.48%	N/A	LAIF
<b>Total Cash and Cash Equivalents</b>	<b><u>\$ 3,866,281</u></b>	<b><u>\$ 3,589,478</u></b>	<b><u>\$ 3,589,478</u></b>	<b><u>100.00%</u></b>			

Cash and investments conform to the District's Investment Policy statement filed with the Board of Directors on June 09, 2020  
 Cash, investments and future cash flows are sufficient to meet the needs of the District for the next six months.  
 Sources of valuations are CVB Bank, LAIF and US Trust Bank.

Jessica Clabaugh, Finance Officer





**Borrego Water District**  
**Water Enterprise Operating Budget Analysis**  
**11/01/2024 to 11/30/2024**

	<i><b>Budgeted FY2025</b></i>	<i><b>Actual Nov FY2025</b></i>	<i><b>Projected Nov FY2025</b></i>	<i><b>Year to Date FY2025</b></i>
<b><u>INCOME</u></b>				
<b>RATE REVENUE</b>				
<b>Water Rates Revenues</b>				
Commodity Rates				
Residential T1 & T2 Revenues	1,154,187	87,879	88,047	463,550
Residential T3 Revenues	267,750	63,316	75,003	408,451
Commercial	645,750	53,877	74,046	292,985
Irrigation	363,825	43,785	41,719	203,538
Total Commodity	<u>2,431,512</u>	<u>248,857</u>	<u>278,819</u>	<u>1,368,525</u>
Non-Commodity Charges				
Base Meter Charges	1,518,300	126,835	126,525	623,919
Meter Install/Repair	36,750	-	3,063	8,895
New Water Supply Connection Fee	26,124	274	2,177	5,532
Backflow Testing/Install	5,985	-	499	6,618
Bulk Water Sales	6,825	5,551	569	33,022
Total Non-Commodity	<u>1,593,984</u>	<u>132,660</u>	<u>132,832</u>	<u>677,986</u>
				-
<b>Total Water Rate Revenues</b>	<b>4,025,496</b>	<b>381,517</b>	<b>411,651</b>	<b>2,046,511</b>
<b>Availability Charges Collected thru Tax Roll</b>				
ID1 - Water	34,965	1,473	850	1,571
ID3/ID4 - Water Standby	117,000	19,393	2,846	21,249
<b>Total Availability (Tax Roll)</b>	<u>151,965</u>	<u>20,866</u>	<u>3,696</u>	<u>22,820</u>
<b>Other Income</b>				
Sale of Viking Ranch Property	225,000			247,089
Sale of Retired Fleet Truck				8,000
<b>Total Other Income</b>	<u>-</u>	<u>-</u>	<u>-</u>	<u>255,089</u>
<b>TOTAL WATER REVENUE</b>	<b>4,177,461</b>	<b>402,383</b>	<b>415,347</b>	<b>2,324,421</b>



**Borrego Water District  
Water Enterprise Operating Budget Analysis  
11/01/2024 to 11/30/2024**

	<b>Budgeted FY2025</b>	<b>Actual Nov FY2025</b>	<b>Projected Nov FY2025</b>		<b>Year to Date FY2025</b>
<b>EXPENSES</b>					
<b>OPERATING EXPENSES</b>					
<b>Operations &amp; Maintenance Expense</b>					
R&M Water	279,928	4,652	23,327	<i>service call rh1, false alarm issue at well 5 &amp; 9</i>	57,733
Telemetry	4,963	12,711	414		13,932
Trash Removal	5,956	616	496		3,092
Vehicle Expense	22,080	8,045	1,840		13,988
Fuel & Oil	42,445	4,180	3,537		15,282
Lab/Testing	34,338	7,487	2,862		22,222
Permit Fees	28,820	-	2,402		4,218
Pumping Electricity	525,000	41,890	43,750		223,846
<b>Total Operations &amp; Maintenance Expense</b>	<b>943,530</b>	<b>79,582</b>	<b>78,628</b>		<b>354,313</b>
<b>Professional Services</b>					
Accounting (Tax & Debt Filings)	4,268	-	-		-
Payroll Services	3,077	406	256		1,677
Audit Fees	27,350	4,400	2,279		14,960
IT & Cyber Security	38,400	19,928	3,200	<i>Springbrook Renewal</i>	26,778
Financial Consulting	79,411	2,864	6,618		23,054
Engineering (Dudek)	45,584	-	3,799		3,704
Legal Services - General	67,000	2,214	5,583		16,722
Advocacy	59,558	5,280	4,963		30,800
<b>Total Professional Services</b>	<b>324,648</b>	<b>35,092</b>	<b>26,698</b>		<b>117,694</b>
<b>Insurance Expense</b>					
ACWA/JPIA Program Insurance	120,322	-	-		98,890
ACWA/JPIA Workers Comp	15,803	4,023	-		4,023
<b>Total Insurance Expense</b>	<b>136,125</b>	<b>4,023</b>	<b>-</b>		<b>102,913</b>
<b>Personnel Expense</b>					
Board Meeting Expense	22,830	651	1,903		4,281
Salaries & Wages	1,131,468	99,566	94,289		467,643
<i>Contra Account - Salaries &amp; Wages</i>	<i>(57,436)</i>	<i>(7,839)</i>	<i>(4,786)</i>		<i>(29,383)</i>
Contract Labor/Consulting	9,926	-	827		-
Payroll Taxes	23,226	1,462	1,936		8,716
Benefits - Medical	190,841	19,968	15,903		93,918
Benefits - CalPERS	188,140	6,955	15,678		68,497
Trainings & Conferences	17,867	1,354	1,489		9,061
Uniforms	6,949	444	579		2,583
Safety Compliance & Emergency Prep	4,963	300	414		830
<b>Total Personnel Expense</b>	<b>1,538,774</b>	<b>122,860</b>	<b>128,231</b>		<b>626,146</b>



**Borrego Water District**  
**Water Enterprise Operating Budget Analysis**  
**11/01/2024 to 11/30/2024**

	<i>Budgeted FY2025</i>	<i>Actual Nov FY2025</i>	<i>Projected Nov FY2025</i>	<i>Year to Date FY2025</i>
<b>OPERATING EXPENSES (Con't)</b>				
<b>Office Expense</b>				
Office Supplies	23,823	4,161	1,985	11,455
Office Equipment	49,632	1,941	4,136	19,697
Postage & Freight	14,890	1,760	1,241	5,757
Property Tax	2,978	-	-	1,399
Telephone Expense	27,350	2,412	2,006	12,090
Dues & Subscriptions (ACWA/AWWA)	22,830	650	1,903	15,553
Printing & Publication	4,963	141	414	1,462
Office/Shop utilities	9,117	775	760	9,558
<b>Total Office Expense</b>	<u>155,583</u>	<u>11,840</u>	<u>12,444</u>	<u>76,970</u>
<b>TOTAL OPERATING EXPENSES</b>	<b>3,098,660</b>	<b>253,397</b>	<b>246,001</b>	<b>1,278,036</b>
<b>Debt Expense</b>				
BBVA Bank Note 2018A/B - Principal	337,138	-	-	349,860
BBVA Bank Note 2018A/B - Interest	49,821	-	-	20,248
2021 Bond Cap One - Principal	376,605	-	-	382,555
2021 Bond Cap One - Interest	140,571	-	-	66,772
<b>Total Debt Expense</b>	<u>904,135</u>	<u>-</u>	<u>-</u>	<u>853,569</u>
<b>GROUNDWATER MANAGEMENT EXPENSES (see GWM Detail )</b>				
Pumping Fees	100,000	-	-	-
GWM Expense	79,158	-	6,597	1,861
Legal Expense	100,000	3,057	8,333	22,317
Engineering/TAC Expense (Intera)	135,000	259	11,250	25,479
<b>TOTAL GROUNDWATER MGMT EXPENSES</b>	<u>414,158</u>	<u>3,316</u>	<u>26,180</u>	<u>49,658</u>
<b>TOTAL EXPENSES</b>	<u><b>4,416,953</b></u>	<u><b>256,713</b></u>	<u><b>272,181</b></u>	<u><b>2,181,263</b></u>
<b>NET INCOME</b>	<u><b>(239,492)</b></u>	<u><b>145,670</b></u>	<u><b>143,165</b></u>	<u><b>143,157</b></u>



**Borrego Water District**  
**Sewer Enterprise Operating Budget Analysis**  
**11/01/2024 to 11/30/2024**

	<i><b>Budgeted FY2025</b></i>	<i><b>Actual Nov FY2025</b></i>	<i><b>Projected Nov FY2025</b></i>	<i><b>Year to Date FY2025</b></i>
<b><u>INCOME</u></b>				
<b>RATE REVENUE</b>				
<b>Sewer Rates</b>				
TCS Holder Fees (SA2)	170,532	14,508	14,211	72,541
TCS User Fees (SA2)	135,653	12,117	11,304	60,586
RH Sewer User Fees (ID1)	171,377	14,342	14,281	75,740
Sewer Standby/Capacity Fees	-	273		273
Sewer User Fees (ID5)	193,989	16,115	16,166	80,568
<b>Total Sewer Rates</b>	<u>671,551</u>	<u>57,356</u>	<u>55,963</u>	<u>289,709</u>
<b>Availability Charges Collected thru Tax Roll</b>				
ID1 - Sewer Standby	34,965	1,473	394	1,670
<b>Total Availability (Tax Roll)</b>	<u>34,965</u>	<u>1,473</u>	<u>394</u>	<u>1,670</u>
<b>TOTAL SEWER REVENUE</b>	<b>706,516</b>	<b>58,829</b>	<b>56,356</b>	<b>291,379</b>



**Borrego Water District  
Sewer Enterprise Operating Budget Analysis  
11/01/2024 to 11/30/2024**

	<i>Budgeted FY2025</i>	<i>Actual Nov FY2025</i>	<i>Projected Nov FY2025</i>		<i>Year to Date FY2025</i>
<b>EXPENSES</b>					
<b>OPERATING EXPENSES</b>					
<b>Operations &amp; Maintenance Expense</b>					
R&M WWTF	135,360	9,938	11,280		24,788
Telemetry	677	1,163	100	<i>eq basin control issues, lift station service call</i>	7,062
Trash Removal	812	104	150		520
Vehicle Expense	3,011	507	251		825
Fuel & Oil	6,676	539	556		5,781
Lab/Testing	11,650	1,898	1,059		6,952
Permit Fees	12,352	-	1,029		459
<b>Total Operations &amp; Maintenance Expense</b>	<u>170,538</u>	<u>14,149</u>	<u>14,426</u>		<u>46,387</u>
<b>Professional Services</b>					
Accounting (Tax & Debt Filings)	582	-			-
Payroll Services	420	55	52.50		192
Audit Fees	3,730	600	310.83		2,040
IT & Cyber Security	5,236	2,717	436.33	<i>SpringBrook Renewal</i>	3,646
Financial Consulting	10,829	391	902.42		3,144
Engineering (Dudek)	6,216	-	518.00		-
Legal Services - General	9,136	302	761.33		4,321
Advocacy	8,122	720	676.83		4,200
<b>Total Professional Services</b>	<u>44,271</u>	<u>4,785</u>	<u>3,658</u>		<u>17,543</u>
<b>Insurance Expense</b>					
ACWA/JPIA Program Insurance	16,408	-			13,744
ACWA/JPIA Workers Comp	3,659	1,050	915		1,050
<b>Total Insurance Expense</b>	<u>20,067</u>	<u>1,050</u>	<u>915</u>		<u>14,794</u>
<b>Personnel Expense</b>					
Board Meeting Expense	3,113	89	259		584
Salaries & Wages	261,561	22,034	21,797		110,220
<i>Contra Account - Salaries &amp; Wages</i>	<i>(7,832)</i>	<i>(89)</i>	<i>(653)</i>		<i>(907)</i>
Contract Labor/Consulting	1,354	-	113		7,931
Payroll Taxes	5,369	323	447		2,090
Benefits - Medical	44,117	2,723	3,676		18,832
Benefits - CalPERS	43,492	1,562	3,624		15,065
Trainings & Conferences	2,436	65	203		695
Uniforms	948	61	79		353
Safety Compliance & Emergency Prep	677	-	56		-
<b>Total Personnel Expense</b>	<u>355,235</u>	<u>26,769</u>	<u>29,603</u>		<u>154,862</u>



**Borrego Water District**  
**Sewer Enterprise Operating Budget Analysis**  
**11/01/2024 to 11/30/2024**

	<i><b>Budgeted</b></i> <i><b>FY2025</b></i>	<i><b>Actual</b></i> <i><b>Nov</b></i> <i><b>FY2025</b></i>	<i><b>Projected</b></i> <i><b>Nov</b></i> <i><b>FY2025</b></i>	<i><b>Year to</b></i> <i><b>Date</b></i> <i><b>FY2025</b></i>
<b>OPERATING EXPENSES (Con't)</b>				
<b>Office Expense</b>				
Office Supplies	3,249	735	271	2,766
Office Equipment	6,768	399	564	1,988
Postage & Freight	2,030	240	169	773
Property Tax	406	-	-	-
Telephone Expense	3,730	329	311	1,648
Dues & Subscriptions (ACWA/AWWA)	3,113	89	259	2,113
Printing & Publication	677	19	56	199
Office/Shop utilities	1,243	580	104	3,273
<b>Total Office Expense</b>	<b>21,216</b>	<b>2,389</b>	<b>1,734</b>	<b>12,761</b>
<b>TOTAL OPERATING EXPENSES</b>	<b>611,327</b>	<b>49,142</b>	<b>50,336</b>	<b>246,347</b>
<b>Debt Expense</b>				
2021 Bond Cap One - Principal	64,545	-	-	64,545
2021 Bond Cap One - Interest	5,979	-	-	5,979
<b>Total Debt Expense</b>	<b>70,524</b>	<b>-</b>	<b>-</b>	<b>36,390</b>
<b>TOTAL EXPENSES</b>	<b>681,851</b>	<b>49,142</b>	<b>50,336</b>	<b>282,736</b>
<b><u>NET INCOME</u></b>	<b>24,665</b>	<b>9,686</b>	<b>6,021</b>	<b>8,642</b>



**Borrego Water District**  
**Pest Control Operating Budget Analysis**  
**11/01/2024 to 11/30/2024**

	<i><b>Budgeted FY2025</b></i>	<i><b>Actual Nov FY2025</b></i>	<i><b>Projected Nov FY2025</b></i>	<i><b>Year to Date FY2025</b></i>
<b><u>INCOME</u></b>				
<b>Charges Collected thru Tax Roll</b>				
Pest Control Standby	17,150	1,766	193	1,971
<b><u>TOTAL PEST CONTROL FUND REVENUE</u></b>	<b><u>17,150</u></b>	<b><u>1,766</u></b>	<b><u>193</u></b>	<b><u>1,971</u></b>
<b><u>EXPENSES</u></b>				
R&M Pest Control	1,500	-	300	-
ACWA/JPIA Program Insurance	500	-	100	128
Salaries & Wages	4,193	-	839	3,508
Benefits - Medical	711	-	142	702
Benefits - CalPERS	701	-	140	537
ACWA/JPIA Workers Comp	59	52	12	52
Payroll Taxes	87	-	17	75
<b><u>TOTAL PEST CONTROL FUND REVENUE</u></b>	<b><u>7,751</u></b>	<b><u>52</u></b>	<b><u>1,550</u></b>	<b><u>4,747</u></b>
<b><u>Net Income Pest Control Enterprise Fund</u></b>	<b><u>9,399</u></b>	<b>1,714</b>	<b>(1,357)</b>	



**Borrego Water District**  
**Flood Enterprise Operating Budget Analysis**  
**11/01/2024 to 11/30/2024**

	<i>Budgeted FY2025</i>	<i>Actual Nov FY2025</i>	<i>Projected Nov FY2025</i>	<i>Year to Date FY2025</i>	<i>% of Annual Budget TD</i>
<b><u>INCOME</u></b>					
ID1 - Flood Standby	34,965	1,473	1,182	1,571	4%
<b><u>TOTAL FLOOD CONTROL FUND REVENUE</u></b>	<u>34,965</u>	<u>1,473</u>	<u>1,182</u>	<u>1,571</u>	4%
<b><u>EXPENSES</u></b>					
ACWA/JPIA Program Insurance	550	-		255	46%
Legal Services - General	5,000	-	625	255	5%
Salaries & Wages	8,434	-	1,054	-	0%
Benefits - Medical	1,423	-	178	-	0%
Benefits - CalPERS	1,402	-	175	-	0%
ACWA/JPIA Workers Comp	118	-	15	-	0%
Payroll Taxes	173	-	22	-	0%
<b><u>TOTAL FLOOD CONTROL FUND EXPENSES</u></b>	<u>17,100</u>	<u>-</u>	<u>2,047</u>	<u>510</u>	3%
<b><u>Net Income Flood Enterprise Fund</u></b>	<u><u>17,865</u></u>	<u><u>1,473</u></u>	<u><u>(865)</u></u>		





**Borrego Water District**  
**Non-Rate Revenue Budget Analysis**  
**11/01/2024 to 11/30/2024**

	<i><b>Budgeted FY2025</b></i>	<i><b>Actual Nov FY2025</b></i>	<i><b>Projected Nov FY2025</b></i>	<i><b>Year to Date FY2025</b></i>
<b><u>INCOME</u></b>				
<b>OTHER INCOME</b>				
Penalties & Fees	50,000	(1,435)	5,000	47,174
BSUSD Well Agreement	35,000	1,500		1,500
1% Property Assessments	70,000	6,750	279	10,311
Interest Income	35,000	992	2,917	7,809
Sale of Parcels to State Parks		4,686		4,686
WM Meter Reading Income	3,333	4,261	550	4,261
<b>TOTAL OTHER INCOME</b>	<b>193,333</b>	<b>16,754</b>	<b>8,745</b>	<b>75,741</b>
<b><u>EXPENSES</u></b>				
Air Quality Study	36,341	-	3,028	24
<b>TOTAL NON-RATE REVENUE EXPENSES</b>	<b>36,341</b>	<b>-</b>	<b>3,028</b>	
<b><u>Net Income Non-Rate Revenue</u></b>	<b>156,992</b>	16,754	5,717	



**Borrego Water District  
Consolidated Enterprise Budget Analysis  
11/01-11/30/24**

	<i>Budgeted FY2025</i>	<i>Actual Nov FY2025</i>	<i>Projected Nov FY2025</i>	<i>YTD Nov FY2025</i>
<b><u>INCOME</u></b>				
TOTAL WATER RATE REVENUE	4,402,461	402,383	415,347	2,324,421
TOTAL WASTEWATER RATE REVENUE	706,517	58,829	56,356	291,379
TOTAL PEST CONTROL FUND REVENUE	17,150	1,766	193	1,971
TOTAL FLOOD CONTROL FUND REVENUE	34,965	1,473	1,182	1,571
TOTAL OTHER INCOME	42300	193,333	16,754	75,741
<b><u>GROSS INCOME</u></b>	<u>5,354,426</u>	<u>481,205</u>	<u>481,824</u>	<u>2,695,083</u>
<b><u>EXPENSES</u></b>				
TOTAL WATER ENTERPRISE EXPENSES	4,402,461	256,713	272,181	2,181,263
TOTAL WASTEWATER ENTERPRISE EXPENSES	681,848	49,142	50,336	282,736
TOTAL PEST CONTROL ENTERPRISE EXPENSES	7,751	52	1,550	4,747
TOTAL FLOOD CONTROL ENTERPRISE EXPENSES	17,100	-	2,047	510
TOTAL NON-RATE REVENUE EXPENSES	36,341	-	3,028	24
<b><u>TOTAL EXPENSES</u></b>	<u>5,145,501</u>	<u>305,908</u>	<u>329,143</u>	<u>2,469,280</u>
<b><u>CONSOLIDATED NET INCOME</u></b>	<u><b>208,925</b></u>	<u><b>175,297</b></u>	<u><b>152,681</b></u>	<u><b>225,803</b></u>



**Borrego Water District  
BPA Purchase & Capital Improvements Budget  
11/01-11/30/24**

	<i>Budgeted FY2025</i>	<i>Actual Nov FY2025</i>	<i>Year to Date FY2025</i>
<b><u>BPA Purchase Expense</u></b>			
Land - Installment Agreement Payment	17271	361,956	-
Fallowing Expense	17271	124,738	-
<b><u>BPA Purchase Expense</u></b>		<u>486,694</u>	<u>246,264</u>
<b><u>CAPITAL IMPROVEMENT PROJECTS (CIP)</u></b>			
<b>Water Enterprise CIP</b>			
<b>Water Projects</b>			
Upgrade Indian Head Booster Station	118,000	-	-
AMI Cash Funded Portion (Prop 68 Grant)	17160	100,000	-
ID4-11 Generator Switch	80,500	421	421
Well Site Security Upgrades	30,000	-	-
Lugo Building Upgrades (From Water R&M)	-	-	8,030
Emergency System Repairs	66,150	-	-
<b>Total Water Projects</b>	<u>394,650</u>	<u>421</u>	<u>4,570</u>
<b>Sewer Projects</b>			
Manhole Refurbishments	52,267	-	-
Lift Station Pump	11,000	-	-
<b>Total Sewer Projects</b>	<u>63,267</u>	<u>-</u>	<u>-</u>
<b>CASH FUNDED BPA PURCHASE &amp; CIP TOTAL</b>	<u><b>944,611</b></u>	<u><b>421</b></u>	<u><b>250,834</b></u>



**Borrego Water District**  
**Grant Funded CIP Budget Analysis**  
**11/01-11/30/24**

		<i><b>Budgeted</b></i>	<i><b>Actual Nov</b></i>	<i><b>Year to</b></i>
		<i><b>FY2025</b></i>	<i><b>FY2025</b></i>	<i><b>Date</b></i>
				<i><b>FY2025</b></i>
<b>GRANT FUNDED CIP</b>				
<b>Prop 68 Grant</b>				
AMI	<b>17160</b>	<i>1,200,000</i>	86,391	1,114,188
Component 5	<b>17194</b>	<i>125,000</i>	-	24,610
Grant Administration	<b>17195</b>	<i>75,000</i>	-	3,045
<b>Total Prop 68 Grant Projects</b>		<u><i>1,400,000</i></u>	<u>86,391</u>	<u>409,327</u>
 <b>2023 Appropriations Bill</b>				
BSR Pipeline	<b>17122</b>	<i>928,000</i>	48,900	48,900
Sungold Pipeline	<b>17121</b>	<i>2,464,000</i>	48,900	48,900
<b>2023 Appropriations Bill Total</b>		<u><i>3,392,000</i></u>	<u>97,800</u>	<u>97,800</u>
 <b>TOTAL GRANT FUNDED CIP</b>		 <b><i>4,792,000</i></b>	 <b>184,191</b>	 <b>507,126</b>



**Borrego Water District**  
**Cash Flow Analysis**  
**11/01-11/30/24**

	<u>Actual Nov FY25</u>
<b>Cash and Reserves at Beginning of Period</b>	3,402,940
<b>Cash Flows from Operating Activities</b>	
<i>Income Provided by Operating Activities</i>	158,543
<i>Decrease in Accounts Receivable</i>	129,766
<i>Increase in Accounts Payable</i>	66,041
<i>Decrease in Inventory</i>	1,245
<i>Customer Deposits Returned</i>	(1,200)
<b>Net Cash Provided by Operating Activities</b>	<b>\$ 354,395</b>
<b>Cash Flows from Non-Operating Activities</b>	
Other Income Received	16,754
Debt Service Disbursement	-
<b>Net Cash Provided by Other Income</b>	<b>\$ 16,754</b>
<b>Cash Flows from Capital Improvement Activities</b>	
<i>All CIP/BPA Purchase Activities (Cash + Grant)</i>	(184,612)
<i>Grant Monies Received</i>	-
<b>Net Cash Paid for Capital Improvements</b>	<b>\$ (184,612)</b>
<b>Net Change in Cash</b>	<b>\$ 186,538</b>
<b>Cash and Reserves at End of Period</b>	<b>\$ 3,589,478</b>
Restricted Reserves at End of Period	\$ 1,306,291
Unrestricted Reserves at End of Period	\$ 2,283,187
Water Reserves Portion	\$3,127,759
Sewer Reserves Portion	\$461,705
Non-218 Reserves Portion	\$880,105
<b>Fiscal Year Reserves Target</b>	<b>\$ 6,853,714</b>
<b>Fiscal Year Reserves Surplus/Shortfall to Date</b>	<b>\$ (3,264,236)</b>

To: BWD Board of Directors  
 From: Jessica Clabaugh  
 Subject: Consideration of the Disbursements and Claims Paid  
 Month Ending November 30, 2024




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**Vendor disbursements paid during this period:** \$ 617,176.47

**Significant items:**

ACWA-JPIA	General Liability Program exp Sept '25	\$ 50,449.52
Amerigas Propane	Propane for Generators	\$ 1,608.42
AT&T Mobility	Cell Phones for Crew	\$ 1,040.77
Babcock	Lab Services	\$ 10,943.97
CalPERS	Employee Retirement Benefits	\$ 8,517.50
Employee Health Benefits	Medical JPIA & AFLAC	\$ 22,690.36
Ramona Disposal	Garbage Collection	\$ 5,218.30
SC Fuels	Fuel For District Vehicles	\$ 6,572.69
SDGE	Payment on Oct Use	\$ 47,833.27
SDGE	Payment on Nov Use	\$ 37,031.42

**Capital Projects/Fixed Asset Outlays:**

Dudek	WWTF Nitrogen Control Plan - Sept	\$ 3,303.75
Parkhouse Tire	Tires for Ram 2500	\$ 1,396.15
Pacific Pipeline Supply, Inc.	Parts for Inventory	\$ 8,630.63
Xylem Water Solutions	Liftstation Pumps Preventative Maintenance Cont.	\$ 4,556.20

**Total Professional Services for this Period:**

BBK	General - June Invoices	\$ 6,247.70
BBK	Water Right Acquisition	\$ 285.60
BBK	Watermaster	\$ 15,665.80
BBK	Advocacy	\$ 6,000.00
BBK	Twin Tank Land Swap	\$ 1,749.47
Davis Farr, LP	Fees for FY24 Audit	\$ 12,000.00
Eddie Lopez	Fleet Mechanic Services	\$ 2,000.00
Interra Inc.	GWM Technical Support Oct	\$ 5,734.53
Nyhart	Annual Pension Valuation Report GASB 68-FY24	\$ 1,850.00
Nyhart	Annual Pension Valuation Report GASB 68-FY23	\$ 1,800.00
Raftelis	Financial Consuting - FY25 Rate Study	\$ 16,665.00

**Payroll for this Period:**

Gross Payroll	\$ 121,600.00
Employer Payroll Taxes and ADP Fee	\$ 2,246.53
<b>Total</b>	<u>\$ 123,846.53</u>

# NOVEMBER 2024



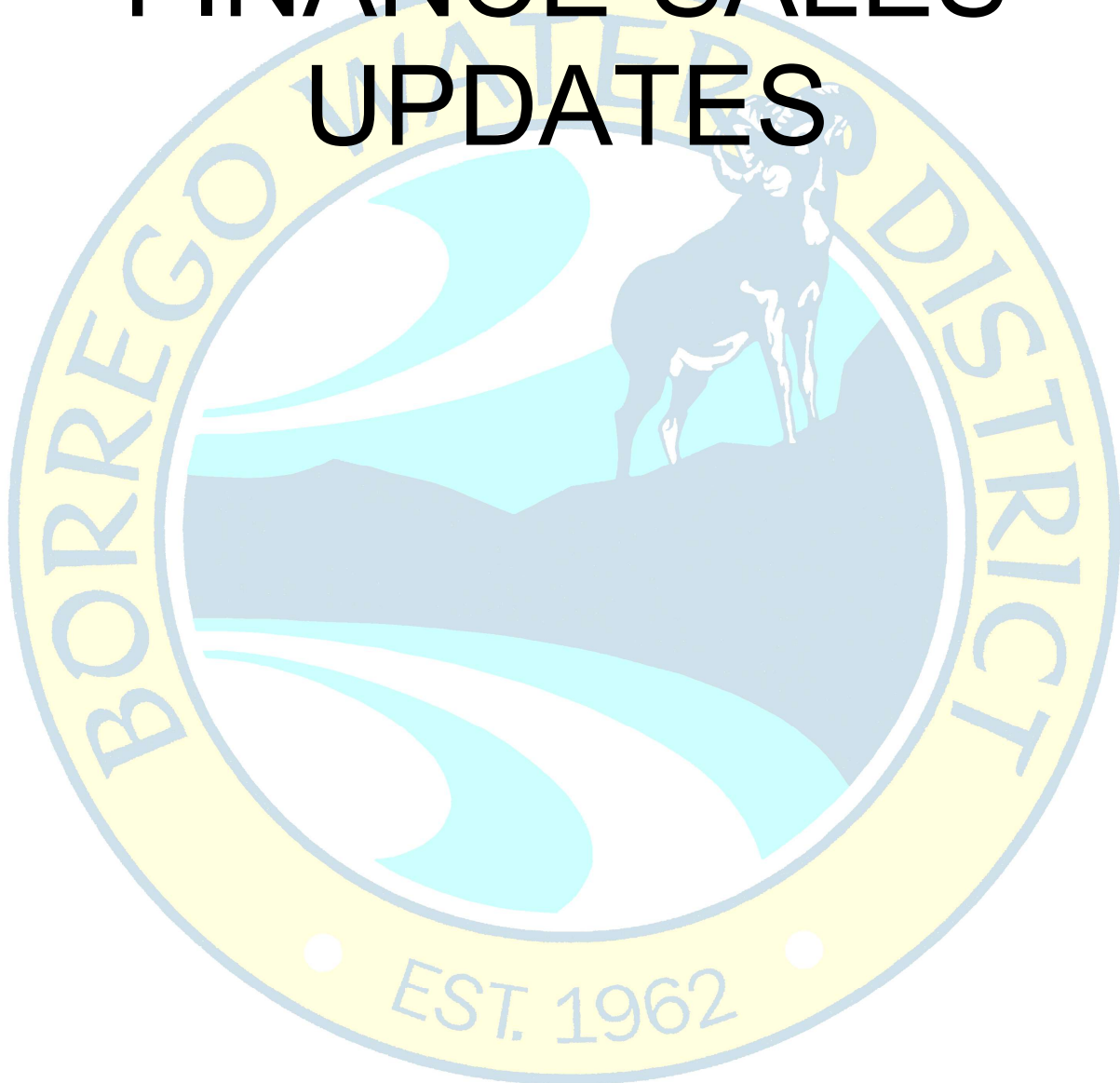
41576	3035	ACWA / JPIA Finance Dept.	12/17/2024	5,073.68
41549	1266	AFLAC	11/25/2024	1,548.76
41560	1001	AMERICAN LINEN INC.	12/04/2024	504.98
41539	61	AT&T MOBILITY	11/20/2024	1,040.77
41577	61	AT&T MOBILITY	12/17/2024	1,040.77
41578	9529	AT&T-CALNET 3	12/17/2024	659.54
41579	9255	BABCOCK LABORATORIES	12/17/2024	9,304.76
41561	10884	BEST BEST & KRIEGER ATTORNEYS AT LAW	12/04/2024	13,072.01
41580	10900	BORREGO AUTO PARTS & SUPPLY CO	12/17/2024	1,542.66
41581	11140	BORREGO SPRINGS HARDWARE	12/17/2024	221.75
100005	11170	BORREGO SPRINGS UNIFIED SCHOOL DISTRICT	11/20/2024	22,401.94
41562	1037	BORREGO SUN	12/04/2024	160.00
41550	1196	CASH	11/25/2024	400.00
100006	11169	CivicWell	11/20/2024	4,837.00
41563	11099	CONTROL SYSTEMS ENGINEERING INC	12/04/2024	13,873.98
41582	11190	DAVIS FARR LLP	12/17/2024	5,000.00
41542	1222	DEBBIE MORETTI	11/20/2024	140.00
41583	1447	DYNAMIC CONSULTING ENGINEERS	12/17/2024	97,800.00
41540	11153	EDDIE LOPEZ	11/20/2024	2,000.00
41564	1094	EMPIRE SOUTHWEST, LLC	12/04/2024	7,465.58
41541	11071	ESMERALDA LOPEZ-GARCIA	11/20/2024	187.53
41584	1136	HOME DEPOT CREDIT SERVICES	12/17/2024	860.86
41552	10863	HUGO RODARTE	11/25/2024	149.77
41554	10863	HUGO RODARTE	12/03/2024	149.77
41585	67	JWC ENVIRONMENTAL INC.	12/17/2024	4,159.35
41565	11139	KENDALL'S CAFE INC	12/04/2024	723.47
41530	10910	LORETO MOLINA TITO'S AUTO CARE	11/07/2024	372.47
41566	11090	LUPE'S GARDENING MAINTENANCE INC.	12/04/2024	585.00
41486	1000	MEDICAL ACWA-JPIA	10/18/2024	24,291.74
41586	11181	METRON FARNIER, LLC	12/17/2024	72,245.00
41567	93	MRC SMART TECHNOLOGY SOLUTIONS	12/04/2024	838.11
41551	11175	NEW YORK LIFE INSURANCE COMPANY	11/25/2024	277.82
41587	11114	OCEANUS BOTTLED WATER, INC	12/17/2024	51.00
41529	1208	PACIFIC PIPELINE SUPPLY INC	11/07/2024	138.57
41543	1208	PACIFIC PIPELINE SUPPLY INC	11/20/2024	201.12
41568	1208	PACIFIC PIPELINE SUPPLY INC	12/04/2024	1,067.32
41588	1208	PACIFIC PIPELINE SUPPLY INC	12/17/2024	416.30
41544	11132	PARKHOUSE TIRE, INC	11/20/2024	1,396.15
41569	11132	PARKHOUSE TIRE, INC	12/04/2024	1,157.36
41589	11083	QUADIENT FINANCE USA, INC.	12/17/2024	2,000.00
41590	9546	RAFTELIS FINANCIAL CONSULTANTS, INC.	12/17/2024	3,255.00
41591	9633	RAMONA DISPOSAL SERVICE	12/17/2024	5,218.30
41553	1065	SAN DIEGO GAS & ELECTRIC	11/25/2024	37,031.42
41570	1065	SAN DIEGO GAS & ELECTRIC	12/04/2024	6,213.31
41545	11067	SC FUELS	11/20/2024	3,461.04
41571	11067	SC FUELS	12/04/2024	1,028.38
41572	11086	SPRINGBROOK HOLDING COMPANY LLC	12/04/2024	18,359.60
41592	11086	SPRINGBROOK HOLDING COMPANY LLC	12/17/2024	727.00
41546	9046	STATE WATER RESOURCE CONTROL BOARD OPERATOR CERT	11/20/2024	90.00
100007	11174	THE REGENTS OF THE UNIVERSITY OF CALIFORNIA	11/20/2024	160,813.22
41573	9581	TRAVIS PARKER	12/04/2024	4,285.65
41593	3000	U.S.BANK CORPORATE PAYMENT SYS	12/17/2024	5,389.11
41574	1023	UNDERGROUND SERVICE ALERT	12/04/2024	50.70
41575	9439	USABLUEBOOK	12/04/2024	362.79
41547	92	XEROX FINANCIAL SERVICES	11/20/2024	365.28
41531	9602	XYLEM WATER SOLUTIONS USA,INC	11/07/2024	4,556.20
41594	11050	ZITO MEDIA	12/17/2024	289.50
Report Total (57 checks):				550,853.39

To: BWD Board of Directors  
 From: Jessica Clabaugh  
 Subject: Consideration of Watermaster related Income and Expenses for FY25

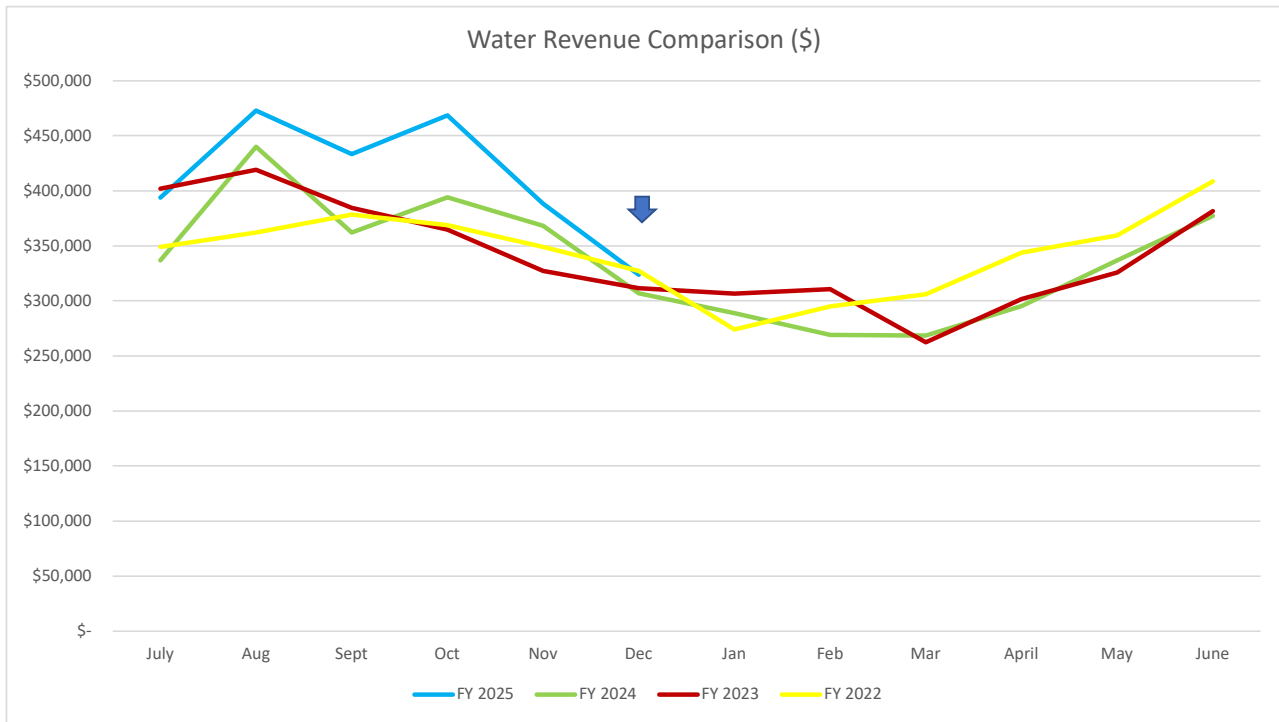


Month	Description	Pumping Fees	Legal Fees	Engineering	Sampling		
July 2024	BBK - Legal Fees		\$ 449.80				
	Intera			\$ 1,920.00			
August 2024	BBK - Legal Fees		\$ 1,324.52				
	Intera			\$ 9,240.00			
September 2024	BBK - Legal Fees		\$ 1,606.50				
	Intera			\$ 6,837.50			
October 2024	BBK - Legal Fees		\$ 15,880.00				
	Intera			\$ 5,734.53			
	Babcock - Sampling Fees				\$ 1,842.64		
November 2024	BBK - Legal Fees		\$ 3,057.00				
	Intera						
		<b>Year To Date</b>					
Year To Date		\$ -	\$ 22,317.82	\$ 23,732.03	\$ 1,842.64	\$ 47,892.49	

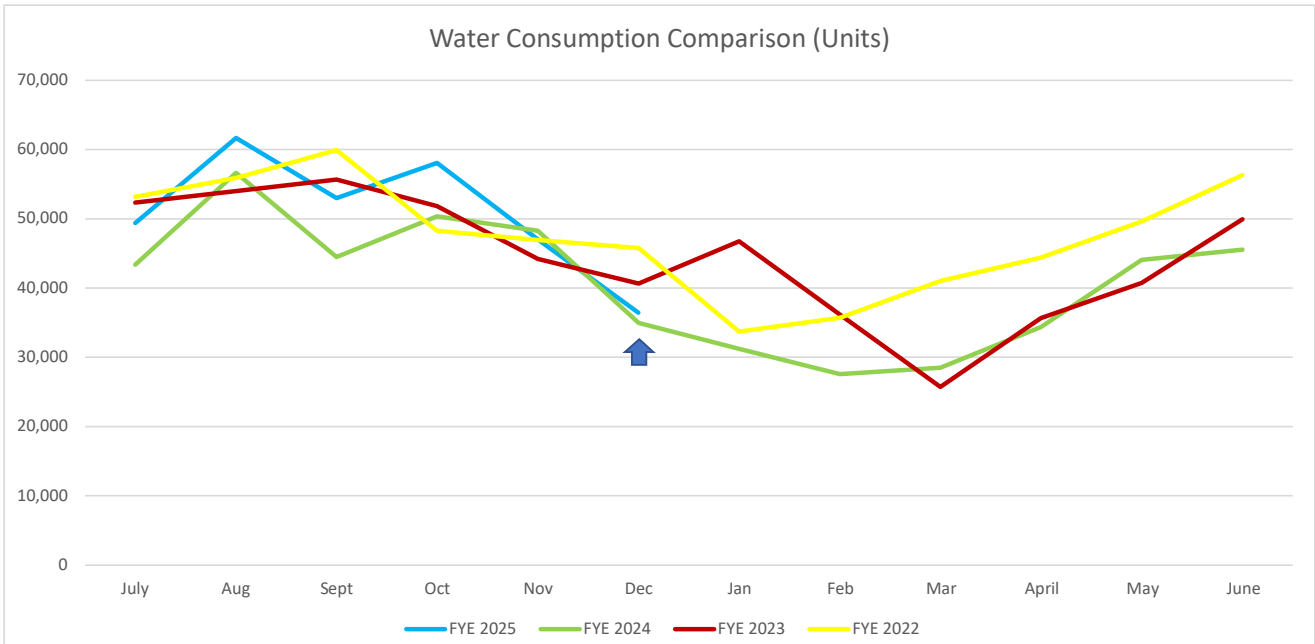
**ATTACHMENT IV. C. b.  
STAFF REPORTS  
FINANCE-SALES  
UPDATES**







Water Revenue Comparison % Change by Year										
	FY 2025	% Change	FY 2024	% Change	FY 2023	% Change	FY 2022	% Change	FY 2021	% Change
<b>July</b>	\$ 393,823	16.89%	\$ 336,916	-16.16%	\$ 401,848	15.14%	\$ 348,997	6.59%	\$ 327,431	-6.22%
<b>Aug</b>	\$ 472,985	7.48%	\$ 440,084	4.97%	\$ 419,234	15.84%	\$ 361,910	2.06%	\$ 354,612	3.85%
<b>Sept</b>	\$ 433,403	19.64%	\$ 362,241	-5.80%	\$ 384,544	1.66%	\$ 378,273	-0.87%	\$ 381,604	4.62%
<b>Oct</b>	\$ 468,581	18.94%	\$ 393,963	8.08%	\$ 364,527	-1.16%	\$ 368,822	8.72%	\$ 339,255	-6.03%
<b>Nov</b>	\$ 388,229	5.41%	\$ 368,317	12.61%	\$ 327,064	-6.24%	\$ 348,831	11.07%	\$ 314,050	-2.65%
<b>Dec</b>	\$ 323,893	5.58%	\$ 306,784	-1.54%	\$ 311,572	-4.77%	\$ 327,189	17.01%	\$ 279,625	21.86%
<b>Jan</b>			\$ 288,952	-5.74%	\$ 306,541	11.86%	\$ 274,051	10.19%	\$ 248,702	-1.58%
<b>Feb</b>			\$ 269,070	-13.41%	\$ 310,724	5.33%	\$ 295,010	14.68%	\$ 257,254	5.97%
<b>Mar</b>			\$ 268,421	2.28%	\$ 262,442	-14.22%	\$ 305,930	21.84%	\$ 251,086	3.87%
<b>April</b>			\$ 295,353	-2.07%	\$ 301,594	-12.27%	\$ 343,785	21.75%	\$ 282,380	14.79%
<b>May</b>			\$ 336,835	3.38%	\$ 325,823	-9.31%	\$ 359,288	13.33%	\$ 317,032	8.49%
<b>June</b>			\$ 377,161	-1.15%	\$ 381,558	-6.65%	\$ 408,755	12.33%	\$ 363,894	3.10%
<b>T</b>	\$ 2,480,914		\$ 4,044,097		\$ 4,097,471		\$ 4,120,841		\$ 3,716,925	



	FYE 2025	% Change	FYE 2024	% Change	FYE 2023	% Change	FYE 2022	% Change	FYE 2021	% Change
<b>July</b>	49,379	13.95%	43,333	-17.19%	52,327	-1.61%	53,184	-3.28%	54,989	-9.00%
<b>Aug</b>	61,691	8.89%	56,653	4.94%	53,985	-3.39%	55,879	-9.18%	61,530	9.56%
<b>Sept</b>	52,975	19.12%	44,473	-20.11%	55,671	-7.06%	59,897	-12.09%	68,138	10.58%
<b>Oct</b>	58,049	15.33%	50,334	-2.90%	51,836	7.36%	48,282	-16.03%	57,499	-9.07%
<b>Nov</b>	47,042	-2.52%	48,258	9.19%	44,196	-5.80%	46,918	-8.32%	51,175	-1.89%
<b>Dec</b>	36,435	4.25%	34,948	-14.05%	40,662	-11.15%	45,764	5.48%	43,385	40.75%
<b>Jan</b>			31,186	-33.32%	46,768	38.69%	33,722	-6.70%	36,144	2.47%
<b>Feb</b>			27,578	-23.82%	36,202	1.41%	35,700	-1.04%	36,076	5.96%
<b>Mar</b>			28,498	10.78%	25,726	-37.25%	40,997	21.00%	33,881	11.53%
<b>April</b>			34,353	-3.68%	35,664	-19.60%	44,357	6.47%	41,662	35.12%
<b>May</b>			44,093	8.19%	40,754	-17.81%	49,585	5.00%	47,223	1.51%
<b>June</b>			45,567		49,902	-11.39%	56,314	3.04%	54,654	-0.88%
<b>T</b>	305,571		443,707		577,134		570,599		586,356	

**2021**

	Water			Sewer	
	Revenue	Units Sold	Receipts	Revenue	Receipts
<b>Jan-21</b>	\$ 248,702	36,144	\$ 272,170	\$ 52,548	\$ 48,555
<b>Feb-21</b>	\$ 257,254	36,076	\$ 245,308	\$ 53,921	\$ 42,438
<b>Mar-21</b>	\$ 251,086	33,881	\$ 268,522	\$ 53,782	\$ 53,808
<b>Apr-21</b>	\$ 282,380	41,662	\$ 239,862	\$ 54,008	\$ 45,461
<b>May-21</b>	\$ 317,032	47,223	\$ 299,257	\$ 55,736	\$ 51,503
<b>Jun-21</b>	\$ 363,894	54,654	\$ 328,491	\$ 61,795	\$ 52,712
<b>Jul-21</b>	\$ 348,997	53,184	\$ 351,989	\$ 50,660	\$ 52,812
<b>Aug-21</b>	\$ 361,910	55,879	\$ 359,866	\$ 50,782	\$ 54,022
<b>Sep-21</b>	\$ 378,273	59,897	\$ 360,866	\$ 50,307	\$ 49,322
<b>Oct-21</b>	\$ 368,822	48,282	\$ 331,114	\$ 51,606	\$ 48,934
<b>Nov-21</b>	\$ 348,831	46,918	\$ 333,779	\$ 51,553	\$ 52,244
<b>Dec-21</b>	\$ 327,189	45,764	\$ 337,210	\$ 51,313	\$ 49,781

**2022**

	Water			Sewer	
	Revenue	Units Sold	Receipts	Revenue	Receipts
<b>Jan-22</b>	\$ 274,051	33,722	\$ 332,266	\$ 50,732	\$ 54,176
<b>Feb-22</b>	\$ 295,010	35,700	\$ 313,997	\$ 51,293	\$ 47,468
<b>Mar-22</b>	\$ 305,930	40,997	\$ 349,200	\$ 51,440	\$ 56,393
<b>Apr-22</b>	\$ 343,785	44,357	\$ 299,815	\$ 51,502	\$ 50,661
<b>May-22</b>	\$ 359,288	49,585	\$ 349,719	\$ 50,434	\$ 58,872
<b>Jun-22</b>	\$ 408,755	56,314	\$ 345,445	\$ 56,086	\$ 43,087
<b>Jul-22</b>	\$ 401,848	52,327	\$ 417,930	\$ 52,122	\$ 55,356
<b>Aug-22</b>	\$ 419,234	53,985	\$ 440,783	\$ 52,045	\$ 58,307
<b>Sep-22</b>	\$ 384,544	55,671	\$ 417,167	\$ 52,018	\$ 49,597
<b>Oct-22</b>	\$ 364,527	51,836	\$ 358,207	\$ 51,995	\$ 50,388
<b>Nov-22</b>	\$ 327,064	44,196	\$ 386,997	\$ 53,310	\$ 109,099
<b>Dec-22</b>	\$ 311,572	40,662	\$ 343,265	\$ 52,298	\$ 50,006

**2023**

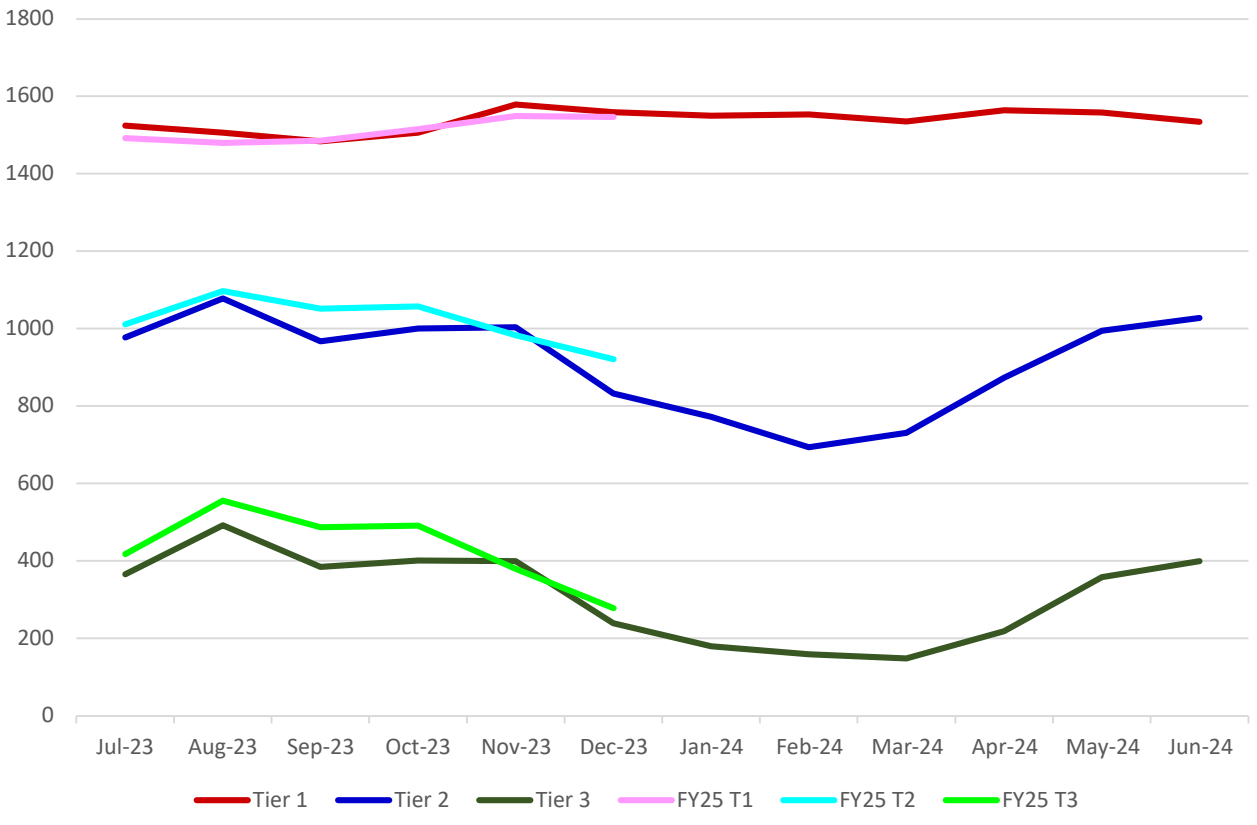
	Water			Sewer	
	Revenue	Units Sold	Receipts	Revenue	Receipts
<b>Jan-23</b>	\$ 306,541	46,768	\$ 358,007	\$ 52,783	\$ 55,622
<b>Feb-23</b>	\$ 310,724	36,202	\$ 271,637	\$ 52,494	\$ 48,506
<b>Mar-23</b>	\$ 262,442	25,726	\$ 265,433	\$ 52,613	\$ 44,373
<b>Apr-23</b>	\$ 301,594	35,664	\$ 268,825	\$ 52,526	\$ 59,729
<b>May-23</b>	\$ 325,823	40,754	\$ 280,870	\$ 52,718	\$ 49,242
<b>Jun-23</b>	\$ 381,558	49,902	\$ 351,393	\$ 58,815	\$ 66,375
<b>Jul-23</b>	\$ 336,916	43,333	\$ 362,706	\$ 54,822	\$ 52,785
<b>Aug-23</b>	\$ 440,084	56,653	\$ 348,130	\$ 54,880	\$ 58,183
<b>Sep-23</b>	\$ 362,241	44,473	\$ 437,193	\$ 54,771	\$ 55,641
<b>Oct-23</b>	\$ 393,963	50,334	\$ 342,799	\$ 55,779	\$ 47,842
<b>Nov-23</b>	\$ 368,317	48,258	\$ 399,675	\$ 54,854	\$ 58,970
<b>Dec-23</b>	\$ 306,784	34,948	\$ 363,936	\$ 54,867	\$ 47,894

**2024**

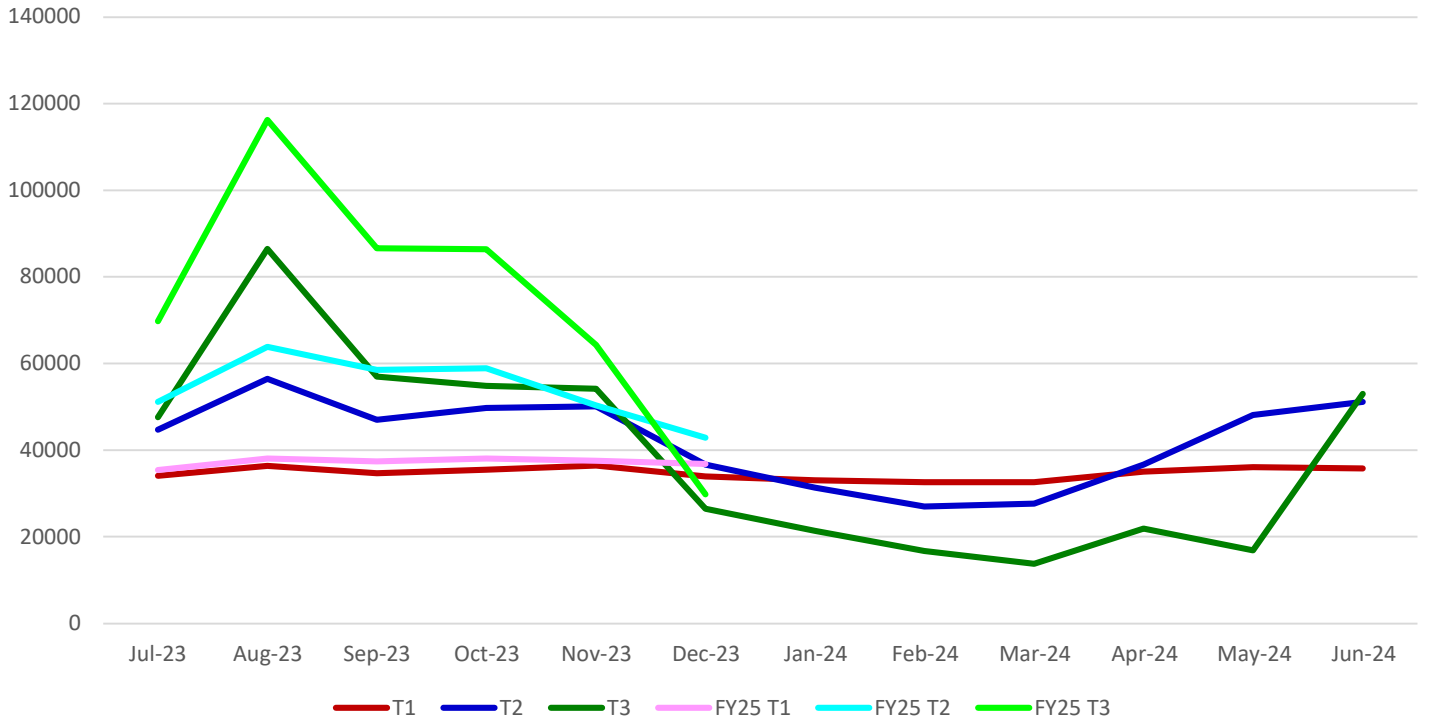
	Water			Sewer	
	Revenue	Units Sold	Receipts	Revenue	Receipts
<b>Jan-24</b>	\$ 288,952	31,186	\$ 300,985	\$ 54,829	\$ 60,478
<b>Feb-24</b>	\$ 269,070	27,578	\$ 280,212	\$ 54,826	\$ 52,876
<b>Mar-24</b>	\$ 268,421	28,498	\$ 256,562	\$ 54,827	\$ 54,129
<b>Apr-24</b>	\$ 295,353	34,353	\$ 291,401	\$ 54,827	\$ 57,962
<b>May-24</b>	\$ 336,835	44,093	\$ 342,380	\$ 54,829	\$ 61,019
<b>Jun-24</b>	\$ 377,161	45,567	\$ 352,699	\$ 60,848	\$ 51,398
<b>Jul-24</b>	\$ 393,823	49,379	\$ 364,315	\$ 57,028	\$ 62,470
<b>Aug-24</b>	\$ 472,985	61,691	\$ 378,460	\$ 57,038	\$ 55,563
<b>Sep-24</b>	\$ 433,403	52,975	\$ 332,130	\$ 57,135	\$ 58,669
<b>Oct-24</b>	\$ 468,581	58,049	\$ 442,852	\$ 57,084	\$ 55,976
<b>Nov-24</b>	\$ 388,229	47,042	\$ 424,916	\$ 57,142	\$ 63,879
<b>Dec-24</b>	\$ 323,893	36,435	\$ 410,988	\$ 57,233	\$ 51,478

## Qty Accounts per Residential Tier FY24

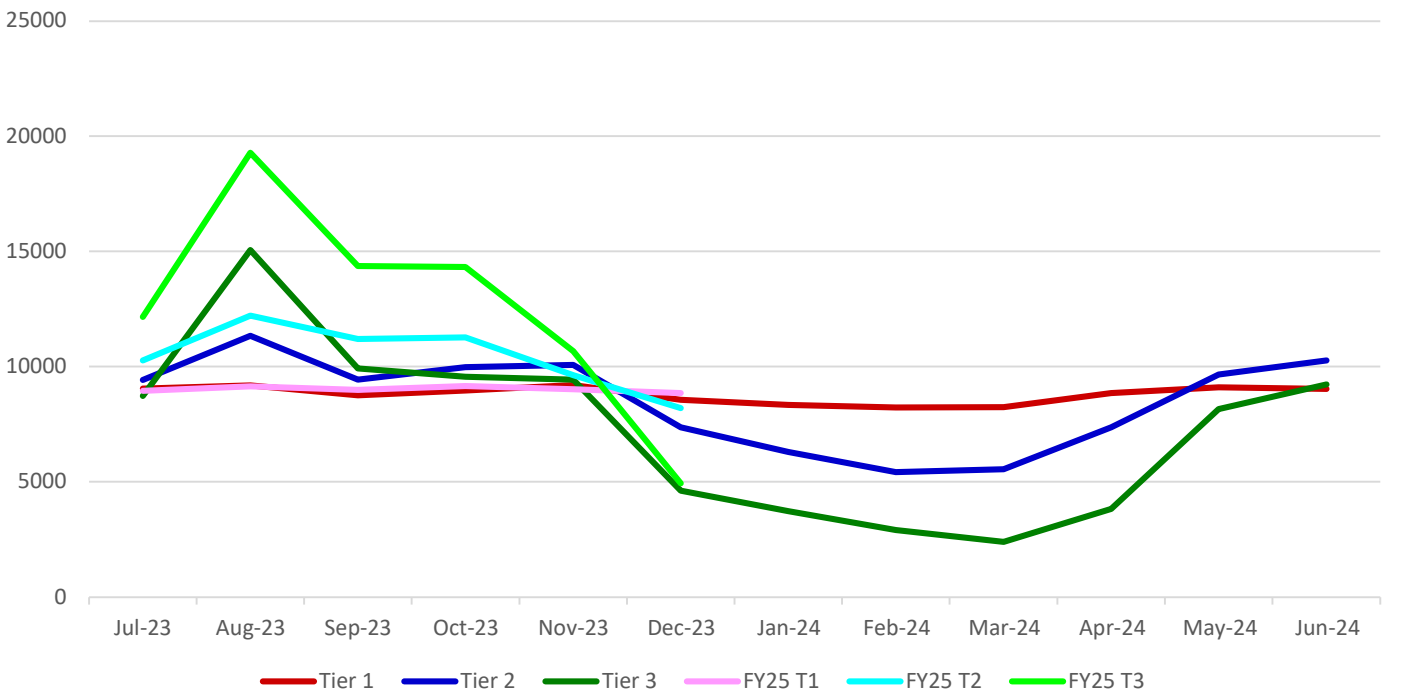
(1,737 total residential accounts)



Monthly Revenue by Residential Tier  
FY24 & FY25



Monthly Units Sold by Residential Tier  
FY24



FY2025					
	TIER	REVENUE	UNITS	# ACTS	Tier %
JULY	1	\$ 35,430	8,947	1,492	22.7%
	2	\$ 51,105	10,262	1,011	32.7%
	3	\$ 69,781	12,157	417	44.6%
AUG	1	\$ 38,052	9,147	1,480	17.4%
	2	\$ 63,905	12,219	1,097	29.3%
	3	\$ 116,283	19,284	556	53.3%
SEPT	1	\$ 37,415	8,994	1,485	20.5%
	2	\$ 58,550	11,195	1,051	32.1%
	3	\$ 86,639	14,368	487	47.4%
OCT	1	\$ 38,097	9158	1,515	20.8%
	2	\$ 58,932	11268	1,057	32.1%
	3	\$ 86,386	14326	491	47.1%
NOV	1	\$ 37,519	9019	1,549	24.6%
	2	\$ 50,360	9629	983	33.1%
	3	\$ 64,328	10668	379	42.3%
DEC	1	\$ 36,833	8854	1,546	33.6%
	2	\$ 42,917	8206	921	39.2%
	3	\$ 29,824	4946	278	27.2%

# ATTACHMENT IV. F. STAFF REPORTS GENERAL MANAGER





	<b>U.S. ENVIRONMENTAL PROTECTION AGENCY</b>  <b>Grant Agreement</b>	<b>GRANT NUMBER (FAIN):</b> 97T00901 <b>MODIFICATION NUMBER:</b> 0 <b>PROGRAM CODE:</b> CG	<b>DATE OF AWARD</b> 12/23/2024
		<b>TYPE OF ACTION</b> New	<b>MAILING DATE</b> 12/27/2024
		<b>PAYMENT METHOD:</b> Reimbursement	<b>ACH#</b> PEND
		<b>RECIPIENT TYPE:</b> Special District	
<b>RECIPIENT:</b> BORREGO WATER DISTRICT PUBLIC FACILITIES CORPORATION 806 Palm Canyon Drive Borrego Springs, CA 92004 <b>EIN:</b> 33-0713922		<b>PAYEE:</b> BORREGO WATER DISTRICT PUBLIC FACILITIES CORPORATION 806 Palm Canyon Drive Borrego Springs, CA 92004	
<b>PROJECT MANAGER</b> Jessica Clabaugh 806 Palm Canyon Drive Borrego Springs, CA 92004 <b>Email:</b> jessica@borregowd.org <b>Phone:</b> 760-767-5806		<b>EPA PROJECT OFFICER</b> Elizabeth Borowiec 75 Hawthorne Street, WTR-3-3 San Francisco, CA 94105 <b>Email:</b> borowiec.elizabeth@epa.gov <b>Phone:</b> 415-972-3419	
<b>EPA GRANT SPECIALIST</b> Norma Douglass Grant Branch, MSD-6 75 Hawthorne Street San Francisco, CA 94105 <b>Email:</b> Douglass.Norma@epa.gov <b>Phone:</b> 415-947-4136			
<b>PROJECT TITLE AND DESCRIPTION</b> Community Grants Program - Main and Sun Gold Pipeline Replacement Projects  This agreement provides funding to Borrego Water District to implement its project for the Borrego Springs Road Transmission Main and Sun Gold Pipeline Replacement Projects as directed in the 2023 Consolidated Appropriations Act or as identified in an approved Technical Correction if one has been approved for this project.  This assistance agreement provides full federal funding in the amount of \$3,392,667.00. Refer to terms and conditions. The activities to be performed are: 1) Preparation of NEPA documents including biological and cultural resources; 2) Preparation of Plans and Specs plus bid package; and 3) Final Report to EPA. The anticipated deliverables are NEPA documents and bid documents which are expected to lead to improved drinking water for the residents of the Borrego Water District. No subawards are included in this assistance agreement.			
<b>BUDGET PERIOD</b> 01/06/2025 - 07/01/2029	<b>PROJECT PERIOD</b> 01/06/2025 - 07/01/2029	<b>TOTAL BUDGET PERIOD COST</b> \$ 3,392,667.00	<b>TOTAL PROJECT PERIOD COST</b> \$ 3,392,667.00
<b>NOTICE OF AWARD</b>			
Based on your Application dated 03/14/2024 including all modifications and amendments, the United States acting by and through the US Environmental Protection Agency (EPA) hereby awards \$ 3,392,667.00. EPA agrees to cost-share 100.00% of all approved budget period costs incurred, up to and not exceeding total federal funding of \$ 3,392,667.00. Recipient's signature is not required on this agreement. The recipient demonstrates its commitment to carry out this award by either: 1) drawing down funds within 21 days after the EPA award or amendment mailing date; or 2) not filing a notice of disagreement with the award terms and conditions within 21 days after the EPA award or amendment mailing date. If the recipient disagrees with the terms and conditions specified in this award, the authorized representative of the recipient must furnish a notice of disagreement to the EPA Award Official within 21 days after the EPA award or amendment mailing date. In case of disagreement, and until the disagreement is resolved, the recipient should not draw down on the funds provided by this award/amendment, and any costs incurred by the recipient are at its own risk. This agreement is subject to applicable EPA regulatory and statutory provisions, all terms and conditions of this agreement and any attachments.			
<b>ISSUING OFFICE (GRANTS MANAGEMENT OFFICE)</b>		<b>AWARD APPROVAL OFFICE</b>	
<b>ORGANIZATION / ADDRESS</b> U.S. EPA, Region 9, U.S. EPA, Region 9 Grants Branch, MSD-6 75 Hawthorne Street San Francisco, CA 94105		<b>ORGANIZATION / ADDRESS</b> U.S. EPA, Region 9, Water Division, WTR-1 R9 - Region 9 75 Hawthorne Street San Francisco, CA 94105	
<b>THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY</b>			
<b>Digital signature applied by EPA Award Official</b> Carolyn Truong - Grants Management Officer			<b>DATE</b> 12/23/2024

## EPA Funding Information

FUNDS	FORMER AWARD	THIS ACTION	AMENDED TOTAL
EPA Amount This Action	\$ 0	\$ 3,392,667	\$ 3,392,667
EPA In-Kind Amount	\$ 0	\$ 0	\$ 0
Unexpended Prior Year Balance	\$ 0	\$ 0	\$ 0
Other Federal Funds	\$ 0	\$ 0	\$ 0
Recipient Contribution	\$ 0	\$ 0	\$ 0
State Contribution	\$ 0	\$ 0	\$ 0
Local Contribution	\$ 0	\$ 0	\$ 0
Other Contribution	\$ 0	\$ 0	\$ 0
Allowable Project Cost	\$ 0	\$ 3,392,667	\$ 3,392,667

Assistance Program (CFDA)	Statutory Authority	Regulatory Authority
66.202 - Congressionally Mandated Projects	2023 Consolidated Appropriations Act (PL 117-328)	2 CFR 200, 2 CFR 1500 and 40 CFR 33

Fiscal									
Site Name	Req No	FY	Approp. Code	Budget Organization	PRC	Object Class	Site/Project	Cost Organization	Obligation / Deobligation
-	2509W34005	24	E5C	0923DJL	000B81	4192	-	-	\$ 3,392,667
									\$ 3,392,667

## Budget Summary Page

Table A - Object Class Category (Non-Construction)	Total Approved Allowable Budget Period Cost
1. Personnel	\$ 145,127
2. Fringe Benefits	\$ 70,733
3. Travel	\$ 0
4. Equipment	\$ 0
5. Supplies	\$ 0
6. Contractual	\$ 141,753
7. Construction	\$ 3,035,054
8. Other	\$ 0
9. Total Direct Charges	\$ 3,392,667
10. Indirect Costs: 0.00 % Base :See Terms and Conditions	\$ 0
11. Total (Share: Recipient <u>0.00</u> % Federal <u>100.00</u> %)	\$ 3,392,667
12. Total Approved Assistance Amount	\$ 3,392,667
13. Program Income	\$ 0
14. Total EPA Amount Awarded This Action	\$ 3,392,667
15. Total EPA Amount Awarded To Date	\$ 3,392,667

## Administrative Conditions

### General Terms and Conditions

The recipient agrees to comply with the current Environmental Protection Agency (EPA) general terms and conditions available at: <https://www.epa.gov/grants/epa-general-terms-and-conditions-effective-october-1-2024-or-later>

These terms and conditions are in addition to the assurances and certifications made as a part of the award and the terms, conditions, or restrictions cited throughout the award.

The EPA repository for the general terms and conditions by year can be found at: <https://www.epa.gov/grants/grant-terms-and-conditions#general>.

### A. Federal Financial Reporting (FFR)

For awards with cumulative project and budget periods greater than 12 months, the recipient will submit an annual FFR (SF 425) covering the period from "project/budget period start date" to **September 30** of each calendar year to the EPA Finance Center in Research Triangle Park, NC. The annual FFR will be submitted electronically to [rtpfc-grants@epa.gov](mailto:rtpfc-grants@epa.gov) no later than **December 30** of the same calendar year. Find additional information at <https://www.epa.gov/financial/grants>. (Per 2 CFR § 200.344(b), the recipient must submit the Final FFR to [rtpfc-grants@epa.gov](mailto:rtpfc-grants@epa.gov) within 120 days after the end of the project period.)

### B. Procurement

The recipient will ensure all procurement transactions will be conducted in a manner providing full and open competition consistent with 2 CFR § 200.319. In accordance with 2 CFR § 200.324, the recipient and subawardee(s) must perform a cost or price analysis in connection with applicable procurement actions, including contract modifications. *State and Tribal government entities must follow procurement standards as outlined in 2 CFR § 200.317.*

### C. MBE/WBE Reporting, 40 CFR, Part 33, Subpart E (EPA Form 5700-52A)

The recipient agrees to submit a "MBE/WBE Utilization Under Federal Grants and Cooperative Agreements" report (EPA Form 5700-52A) annually for the duration of the project period. The current EPA Form 5700-52A with instructions is located at <https://www.epa.gov/grants/epa-grantee-forms>

This provision represents an approved exception from the MBE/WBE reporting requirements as described in 40 CFR Section 33.502.

Reporting is required for assistance agreements where funds are budgeted for procuring construction, equipment, services and supplies (including funds budgeted for direct procurement by the recipient or procurement under subawards or loans in the "Other" category) with a cumulative total that exceed the **Simplified Acquisition Threshold (SAT) currently set at \$250,000** (the dollar threshold will be automatically revised whenever the SAT is adjusted; See 2 CFR Section 200.1), including amendments and/or modifications. All procurement actions are reportable when reporting is required, not just the portion which exceeds the SAT.

Recipients with expended and/or budgeted funds for procurement are required to report annually whether the planned procurements take place during the reporting period or not. If no budgeted procurements take place during the reporting period, the recipient should check the box in section 4A when completing the form.

When completing the annual report, recipients are instructed to check the box titled “annual” in section 1B of the form. For the final report, recipients are instructed to check the box indicated for the “Final Report (project completed)” in section 1B of the form.

The annual reports are due by October 30th of each calendar year and the final report is due within 120 days after the end of the project period, whichever comes first. The recipient will submit the MBE/WBE report(s) and/or questions to [GrantsRegion9@epa.gov](mailto:GrantsRegion9@epa.gov) and the EPA Grants Specialist identified on page 1 of the award document.

#### **D. Indirect Costs**

The Cost Principles under 2 CFR Part 200, Subpart E apply to this award. Since there are no indirect costs included in the assistance budget, they are not allowable under this Assistance Agreement.

#### **E. Prior Approval of Payments for EPA Community Grants (Updated 6/13/23)**

Payment Requests are to be completed on Standard Form 270, "Request for Advance or Reimbursement" and submitted to the EPA Grants Branch with a copy to the EPA Project Officer. This form and instructions for completing it can be found at <https://www.epa.gov/grants/epa-grantee-forms>. The requests will report cumulative expenditures both (federal and non-federal) incurred under the grant. EPA will approve payments for allowable expenditures at the ratio shown in the latest Agreement.

Under this payment mechanism, the recipient submits for EPA approval the Standard Form 270 along with supporting cost documentation via email to [GrantsRegion9@epa.gov](mailto:GrantsRegion9@epa.gov), the EPA Project Officer, and the EPA Grants Specialist listed on this award document. Attachments must be submitted in pdf or other acceptable software format (e.g., DocuSign) and the Standard Form 270 must be electronically or digitally signed by your organization's authorized representative or their designee in accordance with EPA's Recipient/Applicant Information Notice (RAIN), [Establishment of Standards for Submission of Administrative and Financial Assistance Agreement Forms/Documents with Electronic or Digital Signatures by Email](#). Documentation to support costs claimed for reimbursement include copies of bills (vouchers, invoices, etc.), along with a description of services rendered, time spent, and charges. The table below provides examples of acceptable documentation. Also, as a reminder, please refer to the Grant-Specific Programmatic Terms and Conditions of this award for additional information regarding procurement documentation submission requirements.

After review and written notification of EPA's approval, the recipient will request funds via the U.S. Treasury's Automated Standard Application for Payment (ASAP) system for **80%** of the total allowable expenditures shown on the Standard Form 270 (i.e., the Federal share) for the period covered by the request. EPA may pay 100% of the allowable expenditures reported for the period of the request for grants for which the cost share requirement has been waived by EPA. Payment for costs approved by EPA and authorized for drawdown by the recipient via the ASAP System will be credited to the recipient's designated financial institution (See Financial Information in the [EPA General Terms and Conditions](#) applicable to this award). Any questioned or disallowed costs will be detailed in writing by EPA's Grants Management Officer.

<b>SUPPORTING DOCUMENTATION BY BUDGET CATEGORY</b>	
<b>BUDGET CATEGORY</b>	<b>ACCEPTABLE DOCUMENTATION</b>
<p>1. PERSONNEL-- (For both EPA-funded and non-EPA funded employees whose services will count towards the recipient's cost share) Records must: - meet the requirements in <a href="#">2 CFR § 200.430(g)</a> for producing accurate information regarding actual hours an employee worked performing the EPA agreement.- reflect 100% of actual hours worked daily and the projects, programs or activities worked, not estimated amounts or percentages. They must also reflect non-working hours used during the pay period. - be certified by an appropriate recipient manager indicating that the hours shown as worked in support of the EPA assistance agreement were actually spent on activities approved and eligible under the agreement for which the costs are claimed- contain names of employees charging time to the agreement, with explicit indication of number of hours charged, the hourly rate, and the total amount thereof charged.</p>	
<b>1a. Working Hours</b>	- copies of time sheets or equivalent personnel activity reports
<b>1b. Non-Working Hours--</b> (e.g., sick leave, annual leave, holiday pay, etc.) being charged to the agreement if not covered by a leave rate or included in fringe benefits.	- a schedule or report showing the non-working hour cost calculations and amounts claimed, including the applicable accruals and distribution methodologies for the periods used in the calculations.
<b>2. FRINGE BENEFITS--</b> if applicable, approved fringe rate or actual costs per employee.	- a schedule or report showing the fringe benefit cost calculations per employee, per pay period being claimed for payment and charged to the assistance agreement. Individual items included in approved fringe benefit rates must be identified.
<b>3. INDIRECT COSTS--</b> Either an approved indirect cost rate agreement covering the period for the indirect costs being claimed, or otherwise approved to use the 15% de minimis rate. See the <a href="#">General Terms and Conditions</a> for additional information.	- a schedule or report showing the indirect costs calculations and amounts claimed and charged to the assistance agreement, including the applicable rates and cost basis for the periods used in the calculations.
<b>4. TRAVEL--</b> <b>Note: First class/business class travel costs are not allowable.</b>	- listing of trips taken, trip dates, location, purpose, and actual costs incurred.- copy of signed and dated authorization documents

	for each trip. - written certification by employee's supervisor or other authorized official that the trip took place.- copy of signed and dated travel vouchers showing actual expenditures
<b>5. EQUIPMENT</b> -- Records must show equipment items, quantity, unit cost, and total amount consistent with the PO and RFP.	- copy of procurement requests- copy of vendor invoices- quotes or bid announcements as required
<b>6. SUPPLIES</b>	- invoices showing supply items, quantity, unit cost, and total amount consistent with the Purchase Order.- copy of procurement requests- copy of vendor invoices- quotes or bid announcements as required
<b>7. CONTRACTUAL</b> -- The contract agreement must include all applicable clauses stipulated at <a href="#">2 CFR § 200.327</a> and <a href="#">Appendix II</a> . <b>NOTE: Per the grant-specific Programmatic Terms and Conditions of the award, all contracts should have already been reviewed and approved by the EPA project officer.</b> Contracts for Architectural and Engineering services are included in this category. The costs for consultant compensation that are charged to the EPA assistance agreement (including cost shares) must not exceed the consultant cap (Level IV of the Executive Schedule) as described at <a href="#">2 CFR § 1500.10</a>	- documents showing quotes or bid announcements as required.- evidence of the selection decision and a cost and price analysis- copy of contractor invoices
<b>8. CONSTRUCTION</b> -- This category includes contracts for general construction and other contractor costs for activities described in EPA's Small and Disadvantaged Business (DBE) rule at <a href="#">40 CFR § 33.103</a>	- documents showing quotes or bid announcements as applicable.- evidence of the selection decision and a cost and price analysis- copy of contractor and vendor invoices
<b>9. OTHER</b> -- If subaward costs are being claimed, a copy of the executed subaward agreement must be provided. The subaward agreement must comply with the requirements of the subaward term and condition of the EPA award and <a href="#">2 CFR §§ 200.331 and 200.332</a> .	- invoices showing items, quantity, unit cost, and total amount. As applicable, ensure there are:- copies of procurement requests- copy of vendor invoices- quotes or bid announcements as required- documentation of participant support cost payments approved in the budget- cost Calculations/Allocations of shared costs like rent, utilities, etc.

## Programmatic Conditions

### GRANT-SPECIFIC PROGRAMMATIC TERMS AND CONDITIONS FOR EPA COMMUNITY GRANTS

#### a. Performance Reporting ([2 CFR 200.329](#))

The recipient agrees to submit performance reports to the EPA Project Officer *no later than 30 calendar days after the end of each federal fiscal quarter (January 30, April 30, July 30, and October 30)*. The final performance report must be submitted no later than 120 calendar days after the period of performance end date.

Performance reports must relate financial data and accomplishments to performance goals and objectives; include brief information on each of the following areas: 1) a comparison of actual accomplishments to the outputs/outcomes established in the assistance agreement workplan for the period; 2) the reasons for slippage if established outputs/outcomes were not met; and 3) additional pertinent information, including, when appropriate, analysis and formation of cost overruns or high unit costs.

The recipient agrees to inform EPA as soon as problems, delays, or adverse conditions become known which will materially impair the ability to meet the outputs/outcomes specified in the assistance agreement workplan.

#### b. Project changes

The recipient must obtain written EPA approval before implementing changes which alter the project performance standards; change the scope or objectives of the project or substantially alter the design of the project; transfer funds between construction and non-construction budget categories; significantly delay or accelerate the project schedule; substantially alter the facilities plan, design drawings and specifications, or the location, size, capacity, or quality of any major part of the project.

#### c. Right of Access ([2 CFR 200.337](#))

EPA will have access to all records including fiscal, procurement, and engineering data and files which are pertinent to the assistance agreement, and EPA may conduct site visits and inspections related to progress of the assistance agreement workplan activities.

#### • Procurement Document Submission

A copy of all proposed contracts for services and supplies over \$250,000 shall be submitted to the EPA Project Officer for review. The submittal of the proposed contracts shall include procurement records. A copy of all proposed contracts for construction shall be submitted to the EPA Project Officer for review. The submittal of the proposed contracts shall include procurement records.

(a) Recipient agrees to submit plans and specifications, requests for proposals, invitations for bid, scopes of work and/or plans and specifications to the EPA Project Officer for review prior to advertising for bids. Recipient will also submit any addenda to these documents to the EPA Project Officer for review prior to the opening of bids.

(b) Recipient agrees to submit to the EPA Project Officer, within ten calendar days after a bid



opening, the bid package of the lowest responsive, responsible bidder for review prior to the award of a contract. The bid package will include a bid tabulation, a copy of the proof of advertising, the bid bond of the low bidder, the signed EPA Form 5700-49 (Certification Regarding Debarment, Suspension, and Other Responsibility Matters), the MBE/WBE proposed utilization by the low bidder with a statement from Recipient that the efforts taken by the low bidder meet the regulatory requirements, and the recommendation to award a contract to the low bidder.

(c) Recipient agrees to submit to the EPA Project Officer for review any proposed contract for services, such as engineering or grant management, prior to signing each contract as well as any change orders executed after the award of the contract. A description of the process used to procure those services will also be submitted. Such contracts must comply with provisions in the regulations at [2 CFR Part 200](#) and/or [40 U.S.C. 1101 et seq.](#), or an equivalent State requirement as applicable to be accepted as allowable project costs.

#### d. Procurement

(a) The recipient agrees to procure all services (professional or otherwise), supplies, and construction awarded under this grant in accordance with [2 CFR 200.317 through 2 CFR 200.327](#) and [40 CFR Part 33](#).

(b) Recipient agrees to comply with the procurement processes for architectural and engineering (A/E) services as identified in [40 U.S.C. 1101 et seq.](#), or an equivalent State requirement.

Where equivalent State requirements are complied with, the source of the requirement (e.g., existing State legislation or regulation, etc.) must be stated, and a certification from the Governor of the State that the State's A/E procurement requirements are equivalent to [40 U.S.C. 1101 et seq.](#) must accompany the grant application. In lieu of a certification from the Governor, the Attorney General's certification submitted with each grant application may include this certification. The requirements of [40 U.S.C. 1101 et seq.](#) are:

- Public announcement of the solicitation (e.g., a Request for Qualifications);
- Evaluation and ranking of the submitted qualifications statements based on established, publicly available criteria (e.g., identified in the solicitation);

Evaluation criteria should be based on demonstrated competence and qualification for the type of professional services required (e.g., past performance, specialized experience, and technical competence in the type of work required);

- Discussion with at least three firms to consider anticipated concepts and compare alternative methods for furnishing services;
- Selection of at least three firms considered to be the most highly qualified to provide the services required; and
- Contract negotiation with the most highly qualified firm to determine compensation that is fair and reasonable based on a clear understanding of the project scope, complexity, professional nature, and the estimated value of the services to be rendered;

In the event that a contract cannot be negotiated with the most highly qualified firm, negotiation continues in order of qualification.

In the event that the State has no existing equivalent qualifications-based requirement for procurement, the federal requirements in [40 U.S.C. 1101 et seq.](#) apply.

#### **e. Cybersecurity Condition**

##### **Cybersecurity Grant Condition for Other Recipients, Including Intertribal Consortia**

(a) The recipient agrees that when collecting and managing environmental data under this assistance agreement, it will protect the data by following all applicable State or Tribal law cybersecurity requirements.

(b) (1) EPA must ensure that any connections between the recipient's network or information system and EPA networks used by the recipient to transfer data under this agreement, are secure. For purposes of this Section, a connection is defined as a dedicated persistent interface between an Agency IT system and an external IT system for the purpose of transferring information. Transitory, user-controlled connections such as website browsing are excluded from this definition.

If the recipient's connections as defined above do not go through the Environmental Information Exchange Network or EPA's Central Data Exchange, the recipient agrees to contact the EPA Project Officer no later than 90 days after the date of this award and work with the designated Regional/Headquarters Information Security Officer to ensure that the connections meet EPA security requirements, including entering into Interconnection Service Agreements as appropriate. This condition does not apply to manual entry of data by the recipient into systems operated and used by EPA's regulatory programs for the submission of reporting and/or compliance data.

(2) The recipient agrees that any subawards it makes under this agreement will require the subrecipient to comply with the requirements in (b)(1) if the subrecipient's network or information system is connected to EPA networks to transfer data to the Agency using systems other than the Environmental Information Exchange Network or EPA's Central Data Exchange. The recipient will be in compliance with this condition: by including this requirement in subaward agreements; and during subrecipient monitoring deemed necessary by the recipient under [2 CFR 200.332\(d\)](#), by inquiring whether the subrecipient has contacted the EPA Project Officer. Nothing in this condition requires the recipient to contact the EPA Project Officer on behalf of a subrecipient or to be involved in the negotiation of an Interconnection Service Agreement between the subrecipient and EPA.

#### **f. Signage**

The recipient is required to place a physical sign displaying the EPA logo at the construction site for this project in an easily visible location that can be directly linked to the work taking place. -The sign must be maintained in good condition throughout the construction period. In cases where the construction site covers a large area (e.g., lead service line replacement or septic tank repair/replacement projects), a sign should be placed in an easily visible location near where the work is being performed (e.g., entrance to the neighborhood, along a main road through town, etc.). Signage costs are considered an allowable grant expense, provided the costs associated with the signage are reasonable. Additionally, to increase public awareness of projects serving communities where English is not the predominant language, assistance recipients are encouraged to translate the language on signs (excluding the EPA logo or seal)

into the appropriate non-English language(s). The costs of such translation are allowable grant expenses, provided the costs are reasonable.

Procuring Signs: Consistent with section 6002 of RCRA, 42 U.S.C. 6962, and 2 CFR 200.323, recipients are encouraged to use recycled or recovered materials when procuring signs.

EPA Logo: The recipient will ensure that signage displays the EPA logo. The EPA logo must not be displayed in a manner that implies that EPA itself is conducting the project. Instead, the EPA logo must be accompanied with a statement indicating that the recipient received financial assistance from EPA for the project.

The recipient will ensure compliance with the sign specifications provided by the EPA Office of Public Affairs (OPA) available at: <https://www.epa.gov/grants/epa-logo-seal-specifications-signage-produced-epa-assistance-agreement-recipients>. As provided in the sign specifications from OPA, the EPA logo is the preferred identifier for assistance agreement projects and use of the EPA seal requires prior approval from the EPA. To obtain the appropriate EPA logo or seal graphic file, the recipient should send a request directly to [Londa Scott-Forte \(202-564-1504\)](mailto:Londa.Scott-Forte@epa.gov) and [Jini Ryan \(202-564-1075\)](mailto:Jini.Ryan@epa.gov). Please explain in the message that the EPA logo is to be used on signage at a construction site funded with EPA assistance and copy the EPA Project Officer on the message.

#### **g. Public or Media Events**

The Recipient agrees to notify the EPA Project Officer listed in this award document of public or media events publicizing the accomplishment of significant events related to construction projects as a result of this agreement and provide the opportunity for attendance and participation by federal representatives with at least ten (10) working days' notice.

#### **h. Federal Cross-cutting Requirements/Other Applicable Federal Laws**

Recipient must comply with federal cross-cutting requirements as well as other applicable federal laws as provided in EPA's [Community Grants Program Final Implementation Guidance](#), October 2022.

#### **i. American Iron and Steel (AIS)**

AIS requirements apply to State Revolving Fund assistance agreements signed on or after January 17, 2014, including all treatment works projects funded by a CWSRF assistance agreement and all public water system projects funded by a DWSRF assistance agreement signed on or after January 17, 2014. Based on the FY 2023 Consolidated Appropriations Act directive Congressional language ("Applicable Federal requirements that would apply to a Clean Water State Revolving Fund or Drinking Water State Revolving Fund project grant recipient shall apply to a grantee receiving a CPF grant under this section"), AIS requirements apply to this award agreement.

(a) *Definitions.* As used in this award term and condition—

(1) "iron and steel products" mean the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials.

(2) “steel” means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

(b) *Domestic preference.*

(1) This award term and condition requires that all iron and steel products used for a project for the construction, alteration, maintenance or repair of a public water system or treatment work are produced in the United States except as provided in paragraph (b)(2) of this section and condition.

(2) This requirement shall not apply in any case or category of cases in which the Administrator of the Environmental Protection Agency finds that—

(i) applying the requirement would be inconsistent with the public interest;

(ii) iron and steel products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or

(iii) inclusion of iron and steel products produced in the United States will increase the cost of the overall project by more than 25 percent.

(3) The Build America, Buy America (BABA) Act requirements do not supersede the AIS requirements, and both provisions still apply and work in conjunction. Compliance with AIS requirements meets the BABA requirements for iron and steel.

(c) *Request for a Waiver under (b)(2) of this section*

(1) Any recipient request to use foreign iron or steel products in accordance with paragraph

(b)(2) of this section shall include adequate information for federal Government evaluation of the request, including—

(i) A description of the foreign and domestic iron, steel, and/or manufactured goods;

(ii) Unit of measure;

(iii) Quantity;

(iv) Cost;

(v) Time of delivery or availability;

(vi) Location of the project;

(vii) Name and address of the proposed supplier; and

(viii) A detailed justification of the reason for use of foreign iron or steel products cited in accordance with paragraph (b)(2) of this section.

(2) If the Administrator receives a request for a waiver under this section, the waiver request shall be made available to the public for at least 15 days prior to making a finding based on the request.

(3) Unless the Administrator issues a waiver of this term, use of foreign iron and steel products is noncompliant with P.L. 117-103 and the Explanatory Statement for Division G of P.L. 117-103.

(d) This term and condition shall be applied in a manner consistent with United States obligations under international agreements.

#### **j. Build America, Buy America Act**

**This term and condition supplements the “Build America, Buy America” term and condition included in EPA’s [General Terms and Conditions](#).**

##### **(a) Definitions.**

As used in this award term and condition —

(1) “Construction materials” includes an article, material, or supply—other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives—that is or consists primarily of:

- non-ferrous metals;
- plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
- glass (including optic glass);
- lumber; or
- drywall.

(2) “Domestic content procurement preference” means all iron and steel used in the project are produced in the United States; the manufactured products used in the project are produced in the United States; or the construction materials used in the project are produced in the United States.

(3) “Infrastructure” includes, at a minimum, the structures, facilities, and equipment for, in the United States, roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property. Infrastructure includes facilities that generate, transport, and distribute energy.

(4) “Project” means the construction, alteration, maintenance, or repair of infrastructure in the United States.

##### **(b) Domestic Preference.**

This term and condition implements the Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, including Build America, Buy America Act, Pub. L. No. 117-58, §§70901-52. None of the funds provided under this award may be used for a project for infrastructure unless:

- (1) all iron and steel used in the project are produced in the United States--this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
- (2) all manufactured products used in the project are produced in the United States—this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and
- (3) all construction materials (excluding cement and cementitious materials, aggregates such as stone, sand, or gravel, or aggregate binding agents or additives) are manufactured in the United States. All manufacturing processes for the construction material occurred in the United States.
- (4) The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project but are not an integral part of the structure or permanently affixed to the infrastructure project.

(c) Waiver Request.

- (1) When necessary, recipients may apply for a waiver from these requirements.
- (2) A request to waive the application of the domestic content procurement preference must be in writing and submitted following the waiver instructions at <https://www.epa.gov/cwsrf/build-america-buy-america-baba>.
- (3) Waiver requests are subject to public comment for at least 15 days prior to making a finding based on the request.
- (4) Waiver requests are subject to review by the Office of Management and Budget's Made in America Office.
- (5) There may be instances where an award qualifies, in whole or in part, for an existing waiver described at <https://www.epa.gov/cwsrf/build-america-buy-america-baba-approved-waivers>.
- (6) The U.S. Environmental Protection Agency may grant a waiver based upon one of the exceptions as established in Section 70914(b) of the Infrastructure Investment and Jobs Act and further described in the Office of Management and Budget Memorandum M-22-11.
- (7) Any recipient waiver request to use foreign iron, steel, manufactured products, and/or

construction materials in an infrastructure project shall include adequate information for the Federal Government evaluation of the request, including—

- i. The Federal Award Identification Number (FAIN);
- ii. Location and description of the project;
- iii. Total cost of infrastructure expenditures, including federal and non-federal funds;
- iv. List of iron or steel item(s), manufactured products, and construction material(s) proposed to be excepted from Buy America requirements, including name, cost, country (ies) of origin (if known), relevant Product Services Code (PSC) and North American Industry Classification System (NAICS) code for each, unit of measure, quantity, time of delivery or availability, and name and address of the proposed supplier;
- v. A detailed justification of the reason for use of foreign iron, steel, manufactured products, and/or construction materials;
- vi. Anticipated impact if no waiver is issued; and
- vii. A certification that the federal official or assistance recipient made a good faith effort to solicit bids for domestic products supported by terms included in requests for proposals, contracts, and nonproprietary communications with the prime contractor.

(8) Unless a waiver applies, use of foreign iron, steel, manufactured products, and/or construction materials that are consumed in, incorporated into, or affixed to an infrastructure project is noncompliant with this term and condition pursuant to the Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, including Build America, Buy America Act, Pub. L. No. 117-58 §§70901-52.

#### (d) Waiver Evidence Submission.

(1) **Maintain** documentation of any use of materials which are considered de minimis and are covered by an [existing waiver](#) (e.g. miscellaneous, generally low-cost products that are essential for construction and are incorporated into the physical structure of the project) with grant project files for a period of three years from the date of submission of the final expenditure report, in accordance with [2 CFR 200.334](#).

(2) If recipient seeks coverage under an existing [BABA waiver](#), recipient agrees to submit available evidence to the EPA project officer to support such a determination as identified in the BABA waiver. Recipient shall maintain this evidence with grant project files for a period of three years from the date of submission of the final expenditure report, in accordance with [2 CFR 200.334](#).

#### k. Environmental Review

In accordance with the requirements of the National Environmental Policy Act, EPA has issued a categorical exclusion for this project in accordance with provisions in [40 CFR Part 6](#). If EPA determines that a categorical exclusion is not appropriate for this project, Recipient agrees to submit information necessary to issue a Finding of No Significant Impact. If the scope of the project changes, Recipient

understands that additional environmental review may be necessary.

## I. Davis-Bacon

### (a) Applicability of the Davis-Bacon (DB) Prevailing Wage Requirements.

The recipient agrees to include in all procurement contracts and subawards to provide assistance for the construction, alteration, and repair of treatment works carried out in whole or in part with funds made available by the FY 2023 Consolidated Appropriations Act a term and condition requiring compliance with section 513 of the Federal Water Pollution Control Act, also known as the Clean Water Act (CWA), and section 1450(e) of the Safe Drinking Water Act (SDWA) (42 U.S.C. 300j-9(e)) and require that procurement contractors and sub-grantees include such a term and condition in subcontracts and other lower tiered transactions. All contracts and subcontracts in excess of \$2,000 for the construction of treatment works carried out in whole or in part with assistance made available as stated herein shall include in full in the contract clauses as attached hereto entitled "Wage Rate Requirements Under the Clean Water Act, Section 513 and the Safe Drinking Water Act, Section 1450(e)." This term and condition applies to all subagreements to provide assistance under the authorities referenced herein, whether in the form of a subgrant, or any other vehicle to provide financing for a project.

If the recipient encounters a unique situation at a site that presents uncertainties regarding DB applicability, the recipient must discuss the situation with EPA before authorizing work on that site.

### (b) Obtaining Wage Determinations.

(1) Unless otherwise instructed by EPA on a project specific basis, the recipients shall use DOL General Wage Classifications for the locality in which the construction activity subject to DB will take place. Recipients must obtain proposed wage determinations for specific localities at [SAM.gov](https://sam.gov). If the recipient is a non-governmental entity, after the recipient obtains its proposed wage determination, it must submit the wage determination to [EPA\\_Grants\\_Info@epa.gov](mailto:EPA_Grants_Info@epa.gov) for approval prior to inserting the wage determination into a solicitation, contract or before issuing task orders, work assignments, or similar instruments to existing contractors (ordering instruments) unless subsequently directed otherwise by EPA's Award Official.

Note: Recipients must discuss unique situations that may not be covered by the DOL General Wage Classifications with EPA. If, based on discussions with a recipient, EPA determines that DB applies to a unique situation (e.g., unusually extensive excavation) the Agency will advise the recipient which General Wage Classification to use based on the nature of the construction activity at the site.

(2) Recipients shall obtain the wage determination for the locality in which a Community Grants activity subject to DB will take place *prior* to issuing requests for bids, proposals, quotes, or other methods for soliciting contracts (solicitation) for activities subject to DB. These wage determinations shall be incorporated into solicitations and any subsequent contracts. Prime contracts must contain a provision requiring that subcontractors follow the wage determination incorporated into the prime contract.

(i) While the solicitation remains open, the recipient shall monitor [SAM.gov](https://sam.gov) on a weekly basis to ensure that the wage determination contained in the solicitation remains current. The recipient shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e., bid opening) for the solicitation. If DOL modifies or



supersedes the applicable wage determination less than 10 days prior to the closing date, the recipient may request a finding from EPA that there is not a reasonable time to notify interested contractors of the modification of the wage determination. EPA will provide a report of the Agency's finding to the recipient.

(ii) If the recipient does not award the contract within 90 days of the closure of the solicitation, any modifications DOL makes to the wage determination contained in the solicitation shall be effective unless EPA, at the request of the recipient, obtains an extension of the 90-day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The recipient shall monitor [SAM.gov](http://SAM.gov) on a weekly basis if it does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.

(iii) If the recipient carries out a Community Grants activity subject to DB by issuing a task order, work assignment or similar instrument to an existing contractor (ordering instrument) rather than by publishing a solicitation, the recipient shall insert the appropriate DOL wage determination from [SAM.gov](http://SAM.gov) into the ordering instrument.

(3) Recipients shall review all subcontracts subject to DB entered into by prime contractors to verify that the prime contractor has required its subcontractors to include the applicable wage determinations.

(4) As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to a recipient's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the recipient has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or ordering instrument. If this occurs, the recipient shall either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the contract or ordering instrument by change order. The recipient's contractor must be compensated for any increases in wages resulting from the use of DOL's revised wage determination.

### (c) Contract and Subcontract Provisions

(1) The recipient shall insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of treatment works, and construction projects that would be [eligible under the Drinking Water State Revolving Fund Program](#), and which is subject to the labor standards provisions of any of the acts listed in § 5.1 or Title VI of the CWA or Section 1452(a)(5) of the SDWA, the following labor standards provisions.

(i) Minimum wages.

(l) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the applicable wage determination of the Secretary of Labor which the recipient obtained under the procedures specified in Item(b) Obtaining Wage Requirements, above, and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1 (b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(i)(IV) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (1)(i)(II) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. Recipients shall require that the contractor and subcontractors include the name of the recipient employee or official responsible for monitoring compliance with DB on the poster. Recipients may obtain wage determinations from <https://sam.gov/content/wage-determinations>.

(II)(A) The recipient, on behalf of EPA, shall require that contracts and subcontracts entered into under this agreement provide that any class of laborers or mechanics, including helpers, which is not listed in the wage determination, and which is to be employed under the contract shall be classified in conformance with the wage determination. The EPA Award Official shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(II)(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the recipient agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the recipient to the EPA Award Official. The Award Official will transmit the report, to the Administrator of the Wage and Hour Division (WHD) at [whd-cbaconformance\\_incoming@dol.gov](mailto:whd-cbaconformance_incoming@dol.gov). The WHD Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Award Official or will notify the Award Official within the 30-day period that additional time is necessary.

(II)(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the recipient do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the award official shall refer the questions, including the views of all interested parties and the recommendation of the Award Official, to the WHD Administrator for determination. The WHD Administrator, or an

authorized representative, at [whd-cbaconformance\\_incoming@dol.gov](mailto:whd-cbaconformance_incoming@dol.gov) will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the Award Official within the 30-day period that additional time is necessary.

(II)(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (1)(i)(II)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(III) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(IV) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account, assets for the meeting of obligations under the plan or program.

(ii) Withholding. The recipient, upon written request of the Award Official or an authorized representative of the Department of Labor, shall withhold or cause to withhold from the contractor under this contract or any other federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, EPA may, after written notice to the contractor, or recipient take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(iii) Payrolls and basic records.

(l) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been

communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(II)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the recipient who will maintain the records on behalf of EPA. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead, the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division website at <https://www.dol.gov/whd/forms/wh347.pdf> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker and shall provide them upon request to the recipient for transmission to the EPA, if requested by EPA, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the recipient.

(II)(B) Each payroll submitted to the recipient shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR Part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR Part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR Part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(II)(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (1)(iii)(II)(B) of this section.

(II)(D) The falsification of any of the above certifications may subject the contractor or

subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(III) The contractor or subcontractor shall make the records required under paragraph (1)(iii)(I) of this section available for inspection, copying, or transcription by authorized representatives of the EPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, EPA may, after written notice to the contractor, recipient, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(iv) Apprentices and Trainees.

(I) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the WHD Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(II) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and

individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(III) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

(v) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this contract.

(vi) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this term and condition.

(vii) Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(viii) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

(ix) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors), the recipient, borrower or subrecipient and EPA, the U.S. Department of Labor, or the employees or their representatives.

## (x) Certification of eligibility.

(I) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(II) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(III) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(d) Contract Provisions for Contracts in Excess of \$100,000.

(1) Contract Work Hours and Safety Standards Act. The recipient shall insert the following clauses set forth in paragraphs (1)(i), (ii), (iii), and (iv) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Item (c) Contract and Subcontract Provisions, above, or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(i) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(ii) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1)(i) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1)(i) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1)(i) of this section.

(iii) Withholding for unpaid wages and liquidated damages. The recipient, upon written request of the Award Official or an authorized representative of the Department of Labor, shall withhold or cause to withhold from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (1)(ii) of this section.

(iv) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1)(i) through (iv) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1)(i) through (iv) of this section.

(2) In addition to the clauses contained in Item (c) Contract and Subcontract Provisions, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in [29 CFR 5.1](#), the recipient shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the recipient shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of EPA and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

(e) Compliance Verification.

(1) The recipient shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(6), all interviews must be conducted in confidence. The recipient must use [Standard Form \(SF\) 1445](#) or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.

(2) The recipient shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, the recipient must conduct interviews with a representative group of covered employees within two weeks of each contractor or subcontractor's submission of its initial weekly payroll data and two weeks prior to the estimated completion date for the contract or subcontract. Recipients must conduct more frequent interviews if the initial interviews or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. Recipients shall immediately conduct necessary interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence.

(3) The recipient shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The recipient shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, the recipient must spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract. recipients must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. In addition, during the examinations, the recipient shall verify evidence of fringe benefit plans and payments thereunder by contractors and subcontractors who claim credit for fringe benefit contributions.



(4) The recipient shall periodically review contractor and subcontractor use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item 5(b) and (c) above.

(5) Recipients must immediately report potential violations of the DB prevailing wage requirements to the EPA DB contact listed above and to the appropriate DOL Wage and Hour District Office listed at <https://www.dol.gov/whd/america2.htm>.

#### **m. Recipient Work Force**

The recipient understands that the use of Recipient's work force to perform grant-funded construction is subject to provisions in [2 CFR Part 200](#). Recipient agrees that both the rates paid for direct labor and the types of and costs for fringe benefits for Recipient's work force performing grant-funded activities will be in accordance with normal rates and benefits applicable to similar work performed by Recipient's work force but funded entirely with Recipient's funds. Recipient agrees to maintain adequate file documentation to support both the basis for pay rates and benefits, and the total costs charged to the grant for work performed by Recipient's work force. Recipient also agrees to provide time sheets for each worker as back-up documentation when EPA payments are requested.

\*\*\*END OF DOCUMENT\*\*\*