

Borrego Water District Board of Directors
Special Meeting
November 9, 2023 @ 10:30 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:

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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, Johnson & Moran.
**Director Duncan Address: 3153 Club Circle W, 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. Amendment to David Bauer Agreement – S Anderson
- B. Adjustment to Reserve Fund Balance Designations – J Clabaugh
- C. VERBAL Borrego Springs Subbasin Watermaster Board – D Duncan/K Dice/T Driscoll
 1. Update on Board Activities
 2. Update on Technical Advisory Committee Activities
 3. William Bauer Carry Over Discussions – S Anderson
 4. Farmland Following Study by Borrego Spring Subbasin Watermaster Update- G Poole
 5. Future BWD/WM Board Meeting Schedule – G Poole

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

AGENDA: November 11, 2023: 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.

AD HOC:

- A. Prop 68 Implementation: Baker/Johnson
- B. Public Outreach: Dice/Johnson
- C. Grants: Dice/Johnson
- D. Cyber Security/Risk Management: Baker
- E. Developer's Agreement: Baker/Duncan
- F. Finance: Baker/Moran
- H. Borrego Springs Basin Water Quality: Moran/Johnson
- I. Automated Metering Infrastructure Selection: Baker/Moran

IV. STAFF REPORTS – VERBAL

- A. General Manager

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. 37-2020-00005776
- C. Conference with Real Property Negotiators (Gov. Code §Section 54956.8) Property APNs: 140-070-17, 140-070-18, 140-070-24, 140-070-27, 140-110-14, and 140-010-11 Agency Negotiator: Geoff Poole, BWD General Manager Negotiating Parties: BWD and David Bauer as potential seller regarding Price and Terms of Payment

VI. CLOSING PROCEDURE:

The next Board Meeting is scheduled for 9:00 AM November 14, 2023, to be available online and in person at 806 Palm Canyon Drive. See Board Agenda at BorregoWD.org for details, Agenda information available at least 72 hours before the meeting.

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Borrego Water District Board of Directors
Special Meeting
November 9, 2023
Agenda Item II.A

TO: Board of Directors
FROM: Geoffrey Poole, General Manager
SUBJECT: Amendment to David Bauer Agreement

RECOMMENDED ACTION:

Review and approve Amendment and authorize staff to wire transfer Progress Payment of \$279,688

ITEM EXPLANATION:

Due to the Watermaster Farmland Following Project involvement, David has been delayed in completing the following activities, but all for a good reason. The effective alternative(s) identified in the WM Study will prove to be much better for the environment and BWD following costs by eliminating the traditional chipping and/or spreading/hauling for Co Gen.

Legal Counsel has developed the attached Amendment which amends our Agreement with David on the parcels involved in the WM study (William Bs 120 acres + DBs 55 ac adjacent to Di Giorgio Rd). Future phases 2-5 of the Following Plan remain unchanged. Approximately half of the acreage will be followed in year one and much smaller parcels in years 2-5. In addition, BWD will pay D Bauer for completed following activities in the amount of \$279,688.

The parcels are not quite totally finished, since there are areas of the BWD property that are not part of the WM Project. Therefore, as identified in the Amendment, BWD and DB will develop a plan for addressing these areas and these costs will be added to the next reimbursement. Due to efficiencies created by David and his Team, the overall cost estimate for the Following activities has been reduced from \$971,000 to a not to exceed amount of \$850,000.00.

One related issue is Project Close Out. The WM Agreement allows for return of the property to a mutually agreeable condition. In recent discussions with WM Consultants, there would be a value to leaving the experiments up for an extended period of time. BWD could help locate and facilitate a partner to conduct the experiments, such as UCI. Responsible agency and funding source would need to be determined, but there would be time to work on that, since this would be a long term experiment. No decision is needed at this time, but Staff wanted to share its position on this issue at this time (subject to change).

Legal Counsel will be available to review the Amendment and answer any questions. As a bonus, David Bauer is scheduled to attend our meeting and share his stories and photos from this Project.

FISCAL IMPACT
\$279,688

ATTACHMENTS

1. Amendment to D Bauer Agreement

AMENDMENT NO. 1 TO PURCHASE AND SALE AGREEMENT BETWEEN DAVID AND
JULI BAUER, CO-TRUSTEES OF THE D&J BAUER FAMILY TRUST 11-18-04, AND
BORREGO WATER DISTRICT

This Amendment No. 1 (“Amendment”) to the May 31, 2023 Purchase And Sale Agreement (“PSA”) Between David and Juli Bauer, Co-Trustees Of The D&J Bauer Family Trust 11-18-04 (“Sellers”), and Borrego Water District (“District”) is dated and effective November 9, 2023 (“Effective Date”).

RECITALS

Whereas, the PSA required Sellers to undertake fallowing on the Sellers’ Parcels (on approximately 287 acres) and on the William Bauer Parcel (on approximately 110 acres) in exchange for the consideration described in the Agreement;

Whereas, Sellers and District are aware that the District and the Borrego Springs Watermaster (“Watermaster”) have received approval from the California Department of Water Resources to utilize Proposition 68 grant funding to conduct one or more fallowing projects on lands within the Borrego Springs Subbasin;

Whereas, the District and Watermaster have identified portions of the William Bauer Parcel and the approximately 35-acre SB-40 Grove (the “Project Sites”), both of which parcels are now owned by the District, as sites for Watermaster consultant Land IQ to conduct Brush Pile Sand Fence fallowing studies (“Watermaster Fallowing Project”);

Whereas, the District and the Watermaster entered into an agreement on November 9, 2023, to allow the Watermaster Fallowing Project to move forward (see attached Exhibit “A”, including its exhibits);

Whereas, Sellers and District are agreeable to allowing the Watermaster / Land IQ to conduct the Watermaster Fallowing Project on portions of the Project Sites, and to assist and cooperate with Watermaster and Land IQ to conduct such studies;

Whereas, Sellers and District agree that, under the terms of the Agreement, Sellers are entitled to compensation for the fallowing work they have conducted to date on the Project Sites, including for removal of irrigation lines and other work, as well as for fallowing work Sellers have conducted or will conduct in the future on the Project Sites and on other portions of the Sellers’ Parcels; and

Whereas, the Seller has also continued to fallow the 282 Di Giorgio parcel that is not part of the Project; and

Whereas, the Parties agree that the full amount of the fallowing payments anticipated to be paid by District to Sellers under the Agreement for the fallowing of the Project Sites are likely to be reduced as a result of the Watermaster Fallowing Project.

AMENDMENT TO AGREEMENT

1. Sellers and District agree that, notwithstanding anything to the contrary in the Agreement, including but not limited to the provisions of Section IV and Exhibits E and E.1., the amount of compensation payable by the Districts to Seller for undertaking fallowing on the William Bauer Parcel, SB 40 Grove and 282 Di Giorgio. The Parties understand that, consistent with the Land IQ project plan attached as an exhibit to Exhibit A to this Amendment, the Watermaster and its consultant will be performing fallowing work on portions, but not all, of the William Bauer Parcel and the SB 40 Grove. The District and Sellers agree that the Watermaster is allowed to undertake this work, which is designed to satisfy most of the Judgment fallowing standards (except for irrigation line removal).

2. The District and Sellers agree that Sellers shall, unless otherwise agreed to in writing by the Parties, remain responsible for conducting fallowing work on those portions of the William Bauer Parcel and the SB 40 Grove that are not fallowed by the Watermaster Fallowing Project, as agreed to by the Parties.

3. The District and Sellers agree that the District shall be responsible for paying Sellers for the fallowing work undertaken by Sellers to date on the William Bauer Parcel, SB 40 Grove and 282 Di Giorgio, per the terms of the Agreement in the amount of \$279,688.

4. The Parties agree to cooperate with Watermaster and Land IQ to determine whether any work undertaken by Sellers on the Project Sites for the benefit of the Watermaster Fallowing Project during the Project timeframe will be billed to Watermaster or to the District.

5. The Parties agree that this Amendment is not intended to affect any other portion of the Agreement, including but not limited to terms related to the District's obligation to pay Sellers' for conducting fallowing on Sellers' Parcels (other than the William Bauer Parcel and the SB 40 Grove, as described above). The District also remains obligated to purchase Sellers' Parcels and water rights (BPA), as described and under the schedules described in the Agreement. The total cost to fallow all parcels shall not exceed \$850,000.

**SIGNATURE PAGE TO AMENDMENT NO. 1 TO PURCHASE AND SALE
AGREEMENT BETWEEN DAVID AND JULI BAUER, CO-TRUSTEES OF THE D&J
BAUER FAMILY TRUST 11-18-04, AND BORREGO WATER DISTRICT**

BORREGO WATER DISTRICT

DAVID & JULI BAUER, Co-Trustees
Of the D&J Bauer Family Trust 11-18-04

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

By: _____

Printed Name: _____

Title: _____

Date: _____

Borrego Water District Board of Directors
Special Meeting
November 9, 2023
Agenda Item II.B

TO: Board of Directors

FROM: Geoffrey Poole, General Manager

SUBJECT: Adjustment to Reserve Fund Balance Designations – J Clabaugh

RECOMMENDED ACTION:

Revise and Approve New Reserve Fund Balances

ITEM EXPLANATION:

Out of an abundance of caution, staff is recommending the Board approve revised Reserve Fund Balances from what was approved by the Board in October. The Debt Service Reserve has been replenished to the annual total. Previously this Fund was half that amount based on remaining debt service payments for FY. The Risk Management Reserve has been reduced to fund the increase in Debt Service.

Grants Receivables from DWR for the Tank Replacement and to a lesser degree the reimbursement #1 from DWR Grant will help replenish the Reserve Funds. Staff will return to the Board with recommendations of where to allocate those funds once they arrive.

FISCAL IMPACT

See Attachment

ATTACHMENTS

1. New Reserve Fund Amounts

Borrego Water District
Low Reserves Fund Detail Analysis

TARGET BALANCE	CURRENT BALANCE	RESERVE TYPE	RESERVE DESCRIPTION
\$643,841	\$0	Non-218 Reserve	Reserves from Non-Rate Revenue. Should be about \$640k, but can be allocated wherever.
\$979,000	\$979,000	Debt Reserve	Reserve equal to current years' Debt Service Payments. FY24 amount is \$979k. (\$883,845 paid 10/01, \$95,000 remains)
\$0	\$0	Water Supply Reserve	TBD
\$0	\$0	System Growth Reserves	Development charges for new meters. Used to offset capital projects and new development related debt expenses
\$88,279	\$88,279	<i>TCS Expansion Reserve</i>	A System Growth Reserve. Accumulated EDU Sales and Expansion Fees since 2015. EDU Sales(\$24,320); Expansion Fees(\$53,959)
\$907,000	\$907,000	Operating/Working Capital Reserve	90 to 120 days O&M. FY24 Operating Budget is \$3.68M. 90 days is \$907k
\$244,750	\$244,750	Rate Covenant Stabilization Funds	Policy: 25% of Current Years' Debt Service Payments Due
\$184,000	\$184,000	Contingency Reserves	For unexpected operational/legislative expenses 5-10% of O&M. Using 5% for FY2024.
\$1,000,000	\$1,000,000	Capital R&R Reserve	Greater of \$1M or budgeted next years' cash CIP. FY25 CIP = \$979,361
\$1,250,000	\$174,971	Risk Management (Emergency) Reserves	\$1.25M. 15% allocated to sewer.
\$0	\$0	Other Reserves	None at the present time.

Green = Unrestricted Reserves
 Red = Contractually Required Reserves
 Orange = Reserves set by Board Policy

TOTAL	TOTAL Balance @ 09/30/23
\$5,296,870	\$3,578,000