

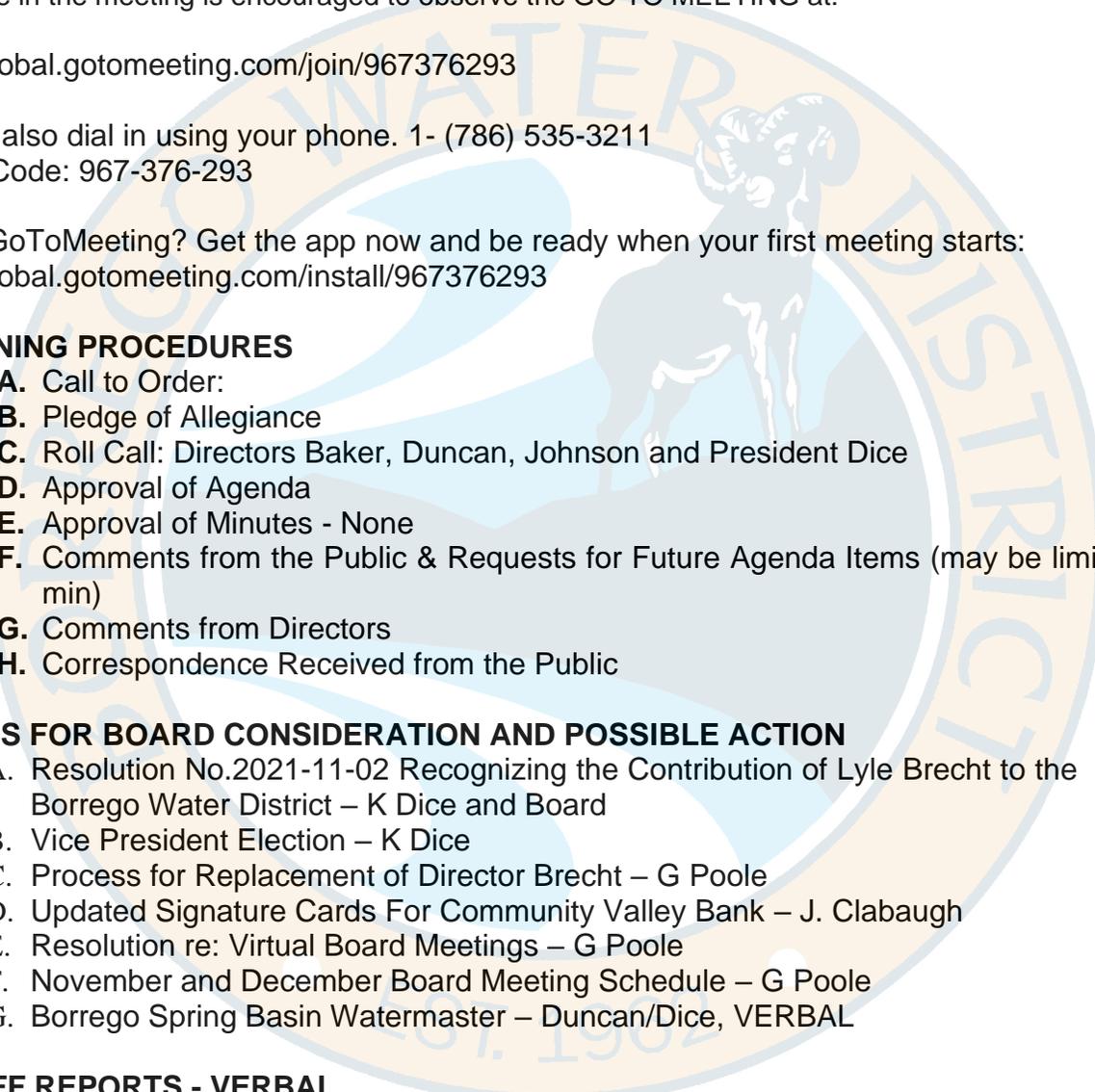
**Borrego Water District Board of Directors  
Special Meeting  
November 9, 2021 @ 9:00 a.m.  
806 Palm Canyon Drive  
Borrego Springs, CA 92004**

COVID-19 UPDATE: The Borrego Water District Board of Directors meeting as scheduled in an electronic format. BWD will be providing public access to the Meeting thru electronic means only to minimize the spread of the COVID-19 virus, based upon direction from the California Department of Public Health, the California Governor's Office and the County Public Health Office. Anyone who wants to listen to or participate in the meeting is encouraged to observe the GO TO MEETING at:

<https://global.gotomeeting.com/join/967376293>

You can also dial in using your phone. 1- (786) 535-3211  
Access Code: 967-376-293

New to GoToMeeting? Get the app now and be ready when your first meeting starts:  
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- I. OPENING PROCEDURES**
    - A. Call to Order:
    - B. Pledge of Allegiance
    - C. Roll Call: Directors Baker, Duncan, Johnson and President Dice
    - D. Approval of Agenda
    - E. Approval of Minutes - None
    - F. Comments from the Public & Requests for Future Agenda Items (may be limited to 3 min)
    - G. Comments from Directors
    - H. Correspondence Received from the Public
  
  - II. ITEMS FOR BOARD CONSIDERATION AND POSSIBLE ACTION**
    - A. Resolution No.2021-11-02 Recognizing the Contribution of Lyle Brecht to the Borrego Water District – K Dice and Board
    - B. Vice President Election – K Dice
    - C. Process for Replacement of Director Brecht – G Poole
    - D. Updated Signature Cards For Community Valley Bank – J. Clabaugh
    - E. Resolution re: Virtual Board Meetings – G Poole
    - F. November and December Board Meeting Schedule – G Poole
    - G. Borrego Spring Basin Watermaster – Duncan/Dice, VERBAL
  
  - III. STAFF REPORTS - VERBAL**
    - A. Water Sales and Revenues Update - J. Clabaugh
    - B. Land Subsidence Update - G Poole

AGENDA: November 9, 2021

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.

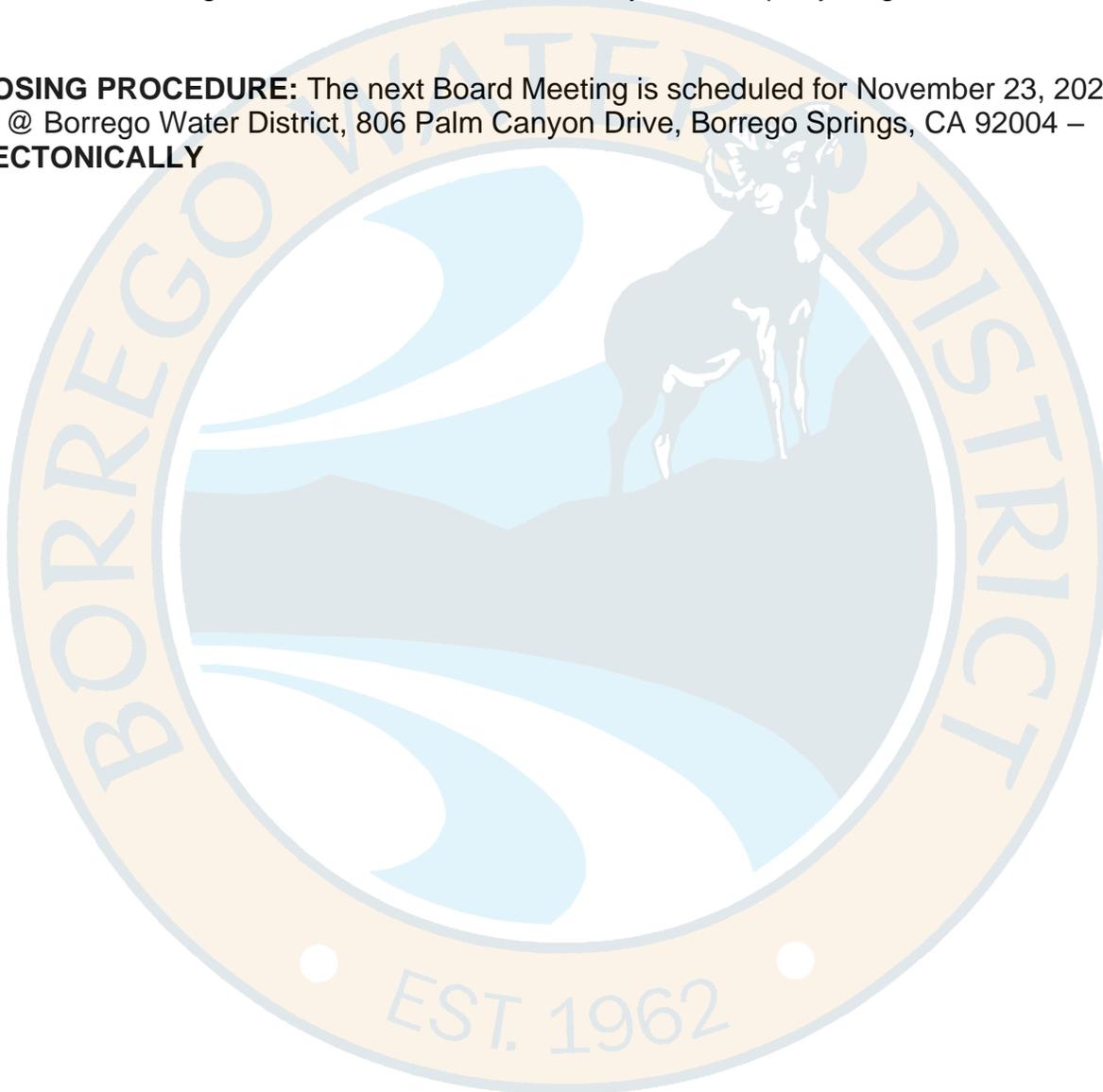
The Borrego Springs Water District complies with the Americans with Disabilities Act. Persons with special needs should call Geoff Poole at (760) 767 – 5806 at least 48 hours in advance of the start of this meeting, in order to enable the District to make reasonable arrangements to ensure accessibility.

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.

**IV. CLOSED SESSION:**

- A. Conference with Legal Counsel - Significant exposure to litigation pursuant to paragraph (3) of subdivision (d) of Section 54956.9: (Two (2) potential cases)
- B. Conference with Legal Counsel – Existing Litigation (BWD v. All Persons Who Claim a Right to Extract Groundwater, et al. (San Diego Superior Court case no. 37-2020-00005776)
- C. Property Negotiations – Conference with Real Property Negotiators (Gov. Code § Section 54956.8) Property APN: 140-303-0900 & 140-303-1100, 150 acres BWD Negotiator: Geoff Poole Negotiating Parties: Geoff Poole, General Manager and Owner: Viking Ranch: Price and Terms of Payment Property Negotiations

- v. CLOSING PROCEDURE:** The next Board Meeting is scheduled for November 23, 2021 at 9 AM @ Borrego Water District, 806 Palm Canyon Drive, Borrego Springs, CA 92004 – **ELECTONICALLY**



AGENDA: November 9, 2021

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.

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BORREGO WATER DISTRICT  
BOARD OF DIRECTORS MEETING  
NOVEMBER 9, 2021  
AGENDA ITEM II.A

November 3, 2021

TO: Board of Directors

FROM: Geoffrey Poole, General Manager/David Dale, PE District Engineer

SUBJECT: Resolution No.2021-11-02 Recognizing the Contribution of Lyle Brecht to the Borrego Water District

**RECOMMENDED ACTION:**

Approve Resolution No. 2021-11-02 Recognizing Lyle Brecht for his contributions to the Borrego Water District

**ITEM EXPLANATION:**

Unfortunately, BWD received a Resignation Email from Director Brecht on 10-31 informing us he was resigning on 11-1. Lyle made a great contribution to BWD and Borrego Springs and he will be missed. Staff has prepared the attached Resolution of Recognition.

**NEXT STEPS:**

President Dice will reach out to The Brechts and coordinate the delivery of the Resolution

**FISCAL IMPACT:**

N/A

**ATTACHMENTS:**

Resolution No. 2021-11-02 Recognizing Lyle Brecht for his contributions to the Borrego Water District

**RESOLUTION NO. 2021-11-02**

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE BORREGO WATER DISTRICT THANKING DIRECTOR LYLE BRECHT FOR HIS DEDICATION TO THE DISTRICT AND THE COMMUNITY**

**WHEREAS;** Lyle Brecht was elected to the Borrego Water District Board of Directors on November 29, 2010, and

**WHEREAS;** following Lyle's election to the Board of Directors, he immediately began to work with the other Board Members to address existing financial and operational challenges facing BWD at the time, and

**WHEREAS;** following years of instituting sound financial planning processes Lyle and the BWD Board transformed the Agency into one of credit worthy status with substantial Reserve Funds that it is today, and

**WHEREAS;** Lyle was also instrumental in identifying and addressing the Borrego Springs Sub Basin overdraft with his participation in the Borrego Water Coalition, Consultant selection for the Groundwater Sustainability Plan (GSP), GSP Advisory Committee and the Stipulated Judgment.

**NOW, THEREFORE** the Board of Directors and Staff of BWD wish to thank Lyle and his family for their tremendous and unwavering dedication to the entire community of Borrego Springs.

**PASSED AND ADOPTED** by the Board of Directors of the Borrego Water District this 9th day of November 2021.

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President of the Board of Directors of Borrego Water District

ATTEST:

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Secretary of the Board of Directors of Borrego Water District

I, Dave Duncan, Secretary of the Board of Directors of the Borrego Water District, do hereby certify that the foregoing resolution was duly adopted by the Board of Directors of said District at a Special Meeting held on the 9th day of November, 2021 and that it was so adopted by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

STATE OF CALIFORNIA

)

)

ss.

COUNTY OF SAN DIEGO

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Dave Duncan  
Secretary of the Board of Directors  
Of Borrego Water District

BORREGO WATER DISTRICT  
BOARD OF DIRECTORS MEETING  
NOVEMBER 9, 2021  
AGENDA ITEM II.B

November 3, 2021

TO: Board of Directors

FROM: Geoffrey Poole, General Manager/David Dale, PE District Engineer

SUBJECT: Vice President Election – K Dice

**RECOMMENDED ACTION:**

Nominate and Elect a New Vice President

**ITEM EXPLANATION:**

Director Brecht maintained the office of Vice President, which is required. Staff is requesting a Board discussion and election of a new Vice President.

**NEXT STEPS:**

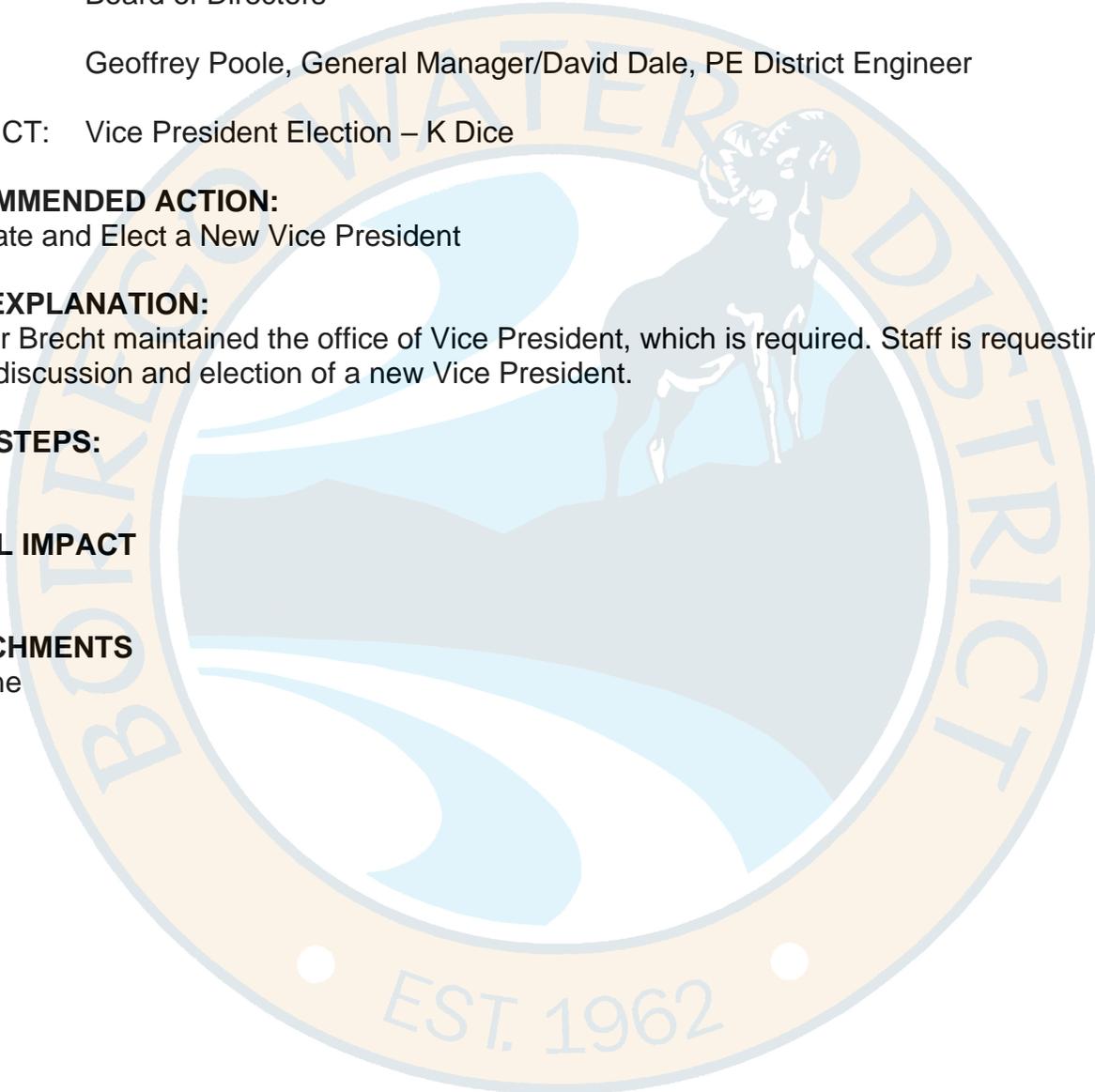
N/A

**FISCAL IMPACT**

N/A

**ATTACHMENTS**

1. None



BORREGO WATER DISTRICT  
BOARD OF DIRECTORS MEETING  
NOVEMBER 9, 2021  
AGENDA ITEM II.C

November 3, 2021

TO: Board of Directors

FROM: Geoffrey Poole, General Manager/David Dale, PE District Engineer

SUBJECT: Process for Replacement of Director Brecht – G Poole

**RECOMMENDED ACTION:**

Start the Process for the BWD Board to Appoint Lyle's Replacement

**ITEM EXPLANATION:**

BWD Legal Counsel prepared a Memo on Replacement of Directors 2 years ago with Director Ehrlich's departure and that memo still applies today. In summary, BWD must:

Notify the San Diego County Registrar of Voters of the vacancy within 15 days of the date the District's Board of Directors is notified of the vacancy or the effective date of the vacancy, whichever is later. Either call an election or appoint a new Director to fill the vacancy within 60 days of the date on which the Board was notified of the vacancy or the effective date of the vacancy, whichever is later. If the Board fails to take either action within the 60-day period, the County Board of Supervisors may appoint a new Director or order the District to call an election. Staff is recommending pursuing the option of BWD appointing the new Director. To accomplish this goal, the following steps are needed:

- File a "notice of vacancy" which must be posted in three or more conspicuous places in the District at least 15 days **before** an appointment is made.
- Identify a Board meeting at which the Board will consider the appointment and ensure it is within 60 days of the Board's notice of the vacancy or the effective date of the vacancy, whichever is later.
- Deliberate in open session and select replacement
- Once an appointment is made, the District must notify the San Diego County Registrar of the appointment within 15 days.

**NEXT STEPS:**

1. Follow steps outlined in Attached Legal Counsel Memo

**FISCAL IMPACT**

1. N/A

**ATTACHMENTS**

1. Memo from Legal Counsel

## Memorandum

**To:** Geoff Poole, General Manager  
Borrego Water District  
**File No.:** 31000.00001

**From:** Nicholaus Norvell  
Best Best & Krieger LLP

**Date:** June 4, 2019

**Re:** **Process for Filling Board Vacancy**

You have asked about the process and timeline for filling a vacancy on the Board of Directors of the Borrego Water District (“District”).

### SHORT ANSWER

Section 1780 of the Government Code requires that the District notify the San Diego County Registrar of Voters of the vacancy within 15 days of the date the District’s Board of Directors is notified of the vacancy or the effective date of the vacancy, whichever is later.

The District’s Board of Directors must then either call an election or appoint a new Director to fill the vacancy within 60 days of the date on which the Board was notified of the vacancy or the effective date of the vacancy, whichever is later. If the Board fails to take either action within the 60-day period, the County Board of Supervisors may appoint a new Director or order the District to call an election.

### ANALYSIS

The California Water District Law (Water Code § 34000 *et seq.*) governs the process for filling any District vacancies. Section 34707 states that “[i]f any office becomes vacant from any cause it shall be filled by appointment by the board.” Section 34707.5 further provides that “[n]otwithstanding any other provision of law, a vacancy in the office of board member who was elected to office shall be filled pursuant to Section 1780 of the Government Code.”

Government Code section 1780 provides the following procedures regarding the filling of a vacancy on the Board of Directors:

1. If applicable, the resigning Director should submit a letter of resignation stating the effective date of his or her resignation.
2. The District must notify the San Diego County Registrar of Voters of the vacancy within 15 days of the date the District’s Board of Directors is notified of the vacancy or the effective date of the vacancy, whichever is later.
3. Within 60 days of either the date on which the Board was notified of the vacancy or the effective date of the vacancy, whichever is later, a majority of the remaining Board members must vote to either:
  - a. Appoint a new Director to fill the vacancy, or
  - b. Call an election to fill the vacancy.

### ***Option #1: Filling a Vacancy By Appointment***

If the Board decides to fill the vacancy by appointment, the Board should take action at a meeting directing staff to file a “notice of vacancy” which must be posted in three or more conspicuous places in the District at least 15 days *before* an appointment is made. The notice may request that any interested person submit a letter of interest and/or a resume setting forth a brief summary of the person’s interest, qualifications, and background. Once an appointment is made, the District must notify the San Diego County Registrar of the appointment within 15 days. A person appointed to fill a vacancy will hold office until the next general district election that is scheduled at least 130 days after the date of the vacancy and thereafter until the person elected at that election to fill the vacancy has been seated on the Board.

If the Board desires to fill the vacancy by appointment, the following are both statutory procedures and practical advice we have provided to other California water districts concerning the appointment process:

- Post the notice of vacancy in at least three places around the District. Advertisements in the newspaper or press releases to the news media may also be used, but are not a substitute for the posting requirement.
- Identify a Board meeting at which the Board will consider the appointment and ensure it is within 60 days of the Board’s notice of the vacancy or the effective date of the vacancy, whichever is later. The District may identify a meeting either before posting the notice or after receipt of applications.
- Ask each applicant to attend the Board Meeting and be prepared to make a brief statement and perhaps answer questions.
- While the Board is hearing statements or asking questions of individual applicants, ask the other applicants to leave the room so that only one applicant is in the room at any one time. (Please note that the District cannot require this, but it is ordinarily agreed to without objection.)
- After all statements have been made, ask that all applicants remain outside the room while the Board deliberates in open session. (Again, the District cannot require this, but it is ordinarily agreed to without objection.)
- The appointment is made by a motion and a second just as is done with the appointment of officers. In the event there are more than two candidates, the voting procedure often becomes an issue. Although straw votes and secret ballots may not be used, there are a variety of ways to conduct the voting. The Board may choose to use a weighted voting system to eliminate all but two candidates and then entertain a motion and second, or it may simply vote on individual nominating motions until one candidate obtains a majority of the votes.
- In some cases, appointees have been asked to make a verbal commitment that he or she will not run for election at the next established election date. Please be aware that such a commitment is not legally enforceable as the person appointed serves the remainder of the term as any other official on the Board. This presumably includes the right to run again for the seat (unless there is a term limit or other restriction applicable to all officials).

## ***Option #2: Calling An Election To Fill The Vacancy***

Instead of an appointment, the Board can choose to fill the vacancy by calling an election which shall be held on the next established election date that is at least 130 days *after* the date the election is called. Persons elected to fill a vacancy shall hold office for the unexpired balance of the term of office.

### ***Failure To Call an Election or Appoint a Director Within 60 Days***

- Filing of Vacancy by San Diego County Board of Supervisors. If the vacancy is not filled by appointment and an election is not called within 60 days of the vacancy, then the County Board of Supervisors may fill the vacancy within 90 days of the vacancy or may order the District to call an election.
  
- Failure to Call for an Election or Appointment. If within 90 days of the vacancy, the Board of Supervisors has not filled the vacancy or ordered an election, the District must call an election which shall be held at the next established election date that is 130 days or more after the date the District calls the election.

BORREGO WATER DISTRICT  
BOARD OF DIRECTORS MEETING  
NOVEMBER 9, 2021  
AGENDA ITEM II.D

NOVEMBER 3, 2021

TO: Board of Directors

FROM: Jessica Clabaugh, Finance Officer

SUBJECT: Requesting To Update Bank Signature Cards

**RECOMMENDED ACTION:**

Approve the removal of Lyle Brecht from the bank signature cards due to his resignation presented on 11/01/2021

**ITEM EXPLANATION:**

Community Valley Bank Signature cards are currently still pending signatures, if not updated at this time Director Brecht's signature would be left blank leaving the update incomplete, by requesting and the Board approving the update Community Valley Bank will be able to update the current signature cards with the following signers:

**Board President** – Kathy Dice

**Secretary/Treasurer** - David Duncan

**Director** - Diane Johnson

**Director** - Tamara Baker

**General Manager** - Geoffrey Poole

**Finance Officer** - Jessica Clabaugh

**Executive Administrative Assistant** - Esmeralda Garcia.

**NEXT STEPS:**

Submit Request to CVB to update signature card

**FISCAL IMPACT:**

N/A

**ATTACHMENTS:**

None

BORREGO WATER DISTRICT  
BOARD OF DIRECTORS MEETING  
NOVEMBER 9, 2021  
AGENDA ITEM II.E

November 3, 2021

TO: Board of Directors

FROM: Geoffrey Poole, General Manager/David Dale, PE District Engineer

SUBJECT: Resolution No. 2021-11-01 Virtual Board Meetings

**RECOMMENDED ACTION:**

Resolution No.2021-11-01 Virtual Board Meetings

**ITEM EXPLANATION:**

To comply with State requirements, BWD must adopt a Resolution on a monthly basis pertaining to holding virtual meetings. The attached Resolution template was provided by the State and accomplishes the goal.

**NEXT STEPS:**

N/A

**FISCAL IMPACT**

N/A

**ATTACHMENTS**

1. Resolution 2021-11-01

**RESOLUTION NO.  
2021-11-01**

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE BORREGO WATER DISTRICT AUTHORIZING VIRTUAL BOARD AND COMMITTEE MEETINGS PURSUANT TO AB 361**

WHEREAS, the Borrego Water District (“District”) is committed to preserving and nurturing public access and participation in meetings of the Board of Directors; and

WHEREAS, all meetings of the District’s legislative bodies are open and public, as required by the Ralph M. Brown Act (Cal. Gov. Code 54950 – 54963), so that any member of the public may attend and participate in the District’s meetings; and

WHEREAS, starting in March 2020, in response to the spread of COVID-19 in the State of California, the Governor issued a number of executive orders aimed at containing the COVID-19 virus; and

WHEREAS, among other things, these orders waived certain requirements of the Brown Act to allow legislative bodies to meet virtually; and

WHEREAS, pursuant to the Governor’s executive orders, the District has been holding virtual meetings during the pandemic in the interest of protecting the health and safety of the public, District staff and Directors; and

WHEREAS, the Governor’s executive order related to the suspension of certain provisions of the Brown Act expires on September 30, 2021; and

WHEREAS, on September 16, 2021 the Governor signed AB 361 (in effect as of October 1, 2021 – Government Code Section 54953(e)), which allows legislative bodies to meet virtually provided there is a state of emergency, and either (1) state or local officials have imposed or recommended measures to promote social distancing; or (2) the legislative body determines by majority vote that meeting in person would present imminent risks to the health and safety of attendees; and

WHEREAS, such conditions now exist in the District, specifically, a state of emergency has been proclaimed related to COVID-19, state or local officials are recommending measures to promote social distancing, and because of the ongoing threat of COVID-19, meeting in person would present imminent risks to the health and safety of attendees;

**NOW, THEREFORE, BE IT RESOLVED THE BOARD OF DIRECTORS OF THE BORREGO WATER DISTRICT DOES HEREBY RESOLVE AS FOLLOWS:**

Section 1. Recitals. The Recitals set forth above are true and correct and are incorporated into this Resolution by this reference.

Section 2. Remote Teleconference Meetings: Consistent with the provisions of Government Code Section 54953(e), the Board of Directors finds and determines that (1) a state of emergency related to COVID-19 is currently in effect; (2) state or local officials have recommended measures to promote social distancing in connection with COVID-19; and (3) due to the COVID-19 emergency, meeting in person would present imminent risks to the health and safety of attendees. Based on such facts, findings and determinations, the Board authorizes staff to conduct remote teleconference meetings of the Board of Directors, including Committee meetings, under the provisions of Government Code Section 54953(e).

Section 3. Effective Date of Resolution. This Resolution shall take effect upon adoption and shall be effective for 30 days unless earlier extended by a majority vote of the Board of Directors in accordance with Section 4 of this Resolution.

Section 4. Extension by Motion. The Board of Directors may extend the application of this Resolution by motion and majority vote by up to 30 days at a time, provided that it makes all necessary findings consistent with and pursuant to the requirements of Section 54953(e)(3).

PASSED AND ADOPTED by the Board of Directors of the Borrego Water District this 9th day of November 2021.

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President of the Board of Directors of Borrego Water District

ATTEST:

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Secretary of the Board of Directors of Borrego Water District

I, Dave Duncan, Secretary of the Board of Directors of the Borrego Water District, do hereby certify that the foregoing resolution was duly adopted by the Board of Directors of said District at a Special Meeting held on the 9th day of November, 2021 and that it was so adopted by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

STATE OF CALIFORNIA

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)

ss.

COUNTY OF SAN DIEGO

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Dave Duncan  
Secretary of the Board of Directors  
Of Borrego Water District

BORREGO WATER DISTRICT  
BOARD OF DIRECTORS MEETING  
NOVEMBER 9, 2021  
AGENDA ITEM II.F

November 3, 2021

TO: Board of Directors

FROM: Geoffrey Poole, General Manager/David Dale, PE District Engineer

SUBJECT: November and December Board Meeting Schedule – G Poole

**RECOMMENDED ACTION:**

Set Board Meeting schedule for remainder of 2021

**ITEM EXPLANATION:**

The Board Meeting schedule for the remainder of November is 23<sup>rd</sup> and December 14<sup>th</sup> and 28<sup>th</sup>. Staff would like to hear the Board preferences regarding the meetings. Staff initial thoughts is to hold the November 23<sup>rd</sup> and December 14<sup>th</sup> meetings and cancelling the 28<sup>th</sup>.

**NEXT STEPS:**

Follow Board approved schedule

**FISCAL IMPACT**

N/A

**ATTACHMENTS**

1. None

BORREGO WATER DISTRICT  
BOARD OF DIRECTORS MEETING  
NOVEMBER 9, 2021  
AGENDA ITEM II.G

November 3, 2021

TO: Board of Directors

FROM: Geoffrey Poole, General Manager

SUBJECT: Borrego Spring Basin Watermaster  
i. Update on Activities – Duncan/Dice VERBAL

