

APPENDIX G

GSP Comments and Responses

Comments received by BWD regarding the Stipulated Judgment and BWD's responses have been added at the end of this Appendix.

APPENDIX G RESPONSES TO COMMENTS

Under the Sustainable Groundwater Management Act (SGMA), the County of San Diego (County) and Borrego Water District (BWD), as the Groundwater Sustainability Agency (GSA) for the Borrego Springs Groundwater Subbasin (Subbasin), has solicited and responded to comments from the public and from other agencies concerned with the Draft Groundwater Sustainability Plan (GSP). The Draft GSP was made available by the GSA for public review on March 22, 2019. The public comment period for the Draft GSP ended on May 21, 2019. Agencies, organizations, and individuals submitting comments on the plan are listed below, organized by category.

Letter Number	Organization/Commenter
C1	Borrego Springs Community Sponsor Group
I1	Janet Johnson
I2	Bill Carpenter
I3	Lee Grismer
I4	John Geyer
I5	Eric Nessa
I6	Larry Grismer
I7	Linda Goodrich
I8	Pat Hall
I9	Mike Himmerich
I10	Jeff Grismer
I11	Bill Bancroft
I12	Steve and Debbie Riehle
I13	Terry and Pam Rhodes
I14	Rebecca Falk
I15	Rebecca Falk
I16	Rebecca Falk
I17	Rebecca Falk
I18	Diane Johnson
I19	Bill Berkley
I20	Jack and Linda Laughlin
I21	Richard and Artemisa Walker
I22	Eric Nessa
I23	Marsha Boring
I24	John Peterson
I25	Robert Kleist
I26	Garold Edwards
I27	Mark Jorgenson
I28	Don Rideout
I29	Judy Davis
I30	Cary Lowe
I31	Bill Haneline

RESPONSES TO COMMENTS

Letter Number	Organization/Commenter
I32	Hugh Dietz
I33	Cristin McVey
I34	Henry Liu
I35	Susan Boutwell
I36	Thomas Hall
I37	Rudy Monica
I38	Lance Lundberg
I39	Barry Berndes
I40	David Leibert
I41	Elena and John Thompson
I42	Joseph Tatusko
I43	Paul Ocheltree
I44	Ray Shindler
I45	Ray Shindler
I46	Saul Miller
I47	Gary Haldeman
I48	Gary Haldeman
I49	Diane Martin
I50	I Donald
I51	Herbert Stone
I52	Karen and Fred Wise
I53	Jack Sims
I54	Joanne Sims
I55	James Roller
I56	Jeff Meagher
I57	Heather Davidson
I58	Linda Roller
I59	John and Mary Delaney
I60	Ellen Fitzpatrick
I61	Michael Wells
I62	Harold and Joanne Cohen
I63	Jennifer Edwards
I64	Wayne Boring
I65	Barbara Coates
I66	Timothy Kight
I67	Mary Leahy
I68	Betsy Knaak
I69	Ginger Dunlap-Dietz
I70	Charlene Aron
I71	Sandy Jorgenson-Funk
I72	Sally Theriault
I73	Bob Theriault

Letter Number	Organization/Commenter
I74	Merrij Smith
I75	Linda Mocere
I76	D.E. and R.A. Owen
I77	Gary Funk
I78	Linda McBride
I79	Jeanne Gemmell
I80	Cyril Weaver
I81	Marjorie and Paul Schuessler
I82	Alfred DeVico
I83	Liesel Paris
I84	Sal Mocerì
I85	Heidi Noyes
I86	Robin Montgomery
I87	William Bonnell
I88	James Rickard
I89	Grace Rickard
I90	Jim Wilson
O1	Agricultural Alliance for Water and Resource Education (AAWARE), Michelle Staples, Jackson Tidus, A Law Corporation
O2	AAWARE, Michelle Staples, Esq. and Boyd Hill, Esq., Jackson Tidus, A Law Corporation
O3	T2 Borrego (Owner of Rams Hill Golf Course), Russell McGlothlin, O'Melveny
O4	Tubb Canyon Desert Conservancy, J. David Garmon, President
O5	The Nature Conservancy, Sandi Matsumoto, Associate Director, California Water Program
O6	San Diego Audubon Society, James A. Peugh, Conservation Chair
O7	Anza Borrego Foundation, Bri Fordem, Executive Director
O8	Clean Water Action, Jennifer Clary, Water Program Manager
O9	Borrego Village Association, J. David Garmon, Acting President
O10	Borrego Springs Unified School District, James L. Markman
O11	Borrego Springs Unified School District, Martha Deichler, School Community Liaison
O12	Borrego Stewardship Council, Diane Johnson
O13	Borrego Stewardship Council, Diane Johnson
O14	Borrego Water District, Kathy Dice, President, Board of Directors
O15	Borrego Valley Endowment Fund, Bob Kelly, President
S1	California Department of Fish and Wildlife, Leslie MacNair, Regional Manager, Inland Desert Region
S2	California State Parks, Gina Moran, District Superintendent

Notes: L = local agency; C= community; O = organization; I = individual; S = state agency.

All comments received on the Draft GSP have been coded to facilitate identification and tracking. Each of the written comment letters and public hearing comments received during the public comment period were assigned an identification letter and number, provided in the list above. These letters and public hearing comments were reviewed and divided into individual comments, with each comment containing a single theme, issue, or concern. Individual comments and the responses to them were assigned corresponding numbers. Each letter is the submittal of a single

individual, agency, or organization. The comment letters' identification consists of two parts. The first part is the letter and number of the document and the second is the number of the comment. As an example, Comment S2-1 refers to the first comment made and addressed in Comment Letter S2. Copies of the bracketed comment letters may be requested by contacting the Plan Manager, or visiting the GSA's website at <https://www.sandiegocounty.gov/content/sdc/pds/SGMA/borrego-valley/GSP.html>.

To finalize the GSP, the GSA has prepared the following responses to comments that were received during the public review period.

Comment Letter I35

From: BorregoSue <lakes138@yahoo.com>
Sent: Monday, May 20, 2019 5:43 PM
To: LUEG, GroundWater, PDS
Subject: Draft Groundwater Sustainability Plan (GSP) Borrego Valley Groundwater Basin

To Jim Bennett,

As a Borrego Springs ratepayer I am concerned about the proposed GSP. Borrego Springs ground water supply has dropped drastically the past 30 years. Resident ratepayers use 10% of the water supply and have reduced their use over the last 10 years from 2400 acre feet/year to 1700 acre feet/year, but their water bills have increased 3 times. Agriculture uses 70% and golf courses 20% and neither have reduced water use appreciably. Therefore, REDUCTIONS SHOULD NOT BE PROPORTIONAL and should take into consideration our Severely Disadvantaged Community status. The municipal user allotment should be no less than 1700 af/yr.

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I35-1
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MANDATORY METERING of all water users, including agriculture and golf courses must be part of the plan and implemented immediately on approval of the GSP.

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I35-2
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Water quality is also of great concern as our water supply dwindles. Mandatory water quality monitoring of wells, including agriculture and golf courses must be included in the GSP.

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I35-3
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Borrego Springs is a desert community that attracts many visitors and retirees. We benefit from the state park and all it offers, as well as a thriving arts community. When Jim Desmond came to town to promote the Borrego Springs Revitalization Committee there were great ideas but none of them will come to fruition unless the GSP enables people to continue to live here and maintain their businesses here. Municipal ratepayers must be treated fairly. Perhaps a solution is for the revitalization committee and the county staff assigned to it to first find a way to come up with the approximately 20 million dollars needed to buy out the farmers.

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I35-4
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Susan Boutwell, Borrego Springs ratepayer

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Letter I35

Commenter: Susan Boutwell

Date: May 20, 2019

I35-1 The Groundwater Sustainability Agency (GSA) acknowledges your opposition to any groundwater use reductions for the municipal sector. While the Groundwater Sustainability Plan (GSP) does not set specific groundwater use reductions, the GSP includes Project and Management Action No. 3 – Pumping Reduction Program. As indicated in the GSP, the GSA will prepare the California Environmental Quality Act (CEQA) documentation (after GSP adoption) in advance of considering formal adoption and implementation of any groundwater use reductions and a specific ramp down schedule. The GSP also indicates an agreement among the pumpers is a possible scenario where groundwater use reductions could be developed.

This comment does not address the adequacy of the Draft GSP, and therefore, no further response is required or necessary.

I35-2 The GSA acknowledges your request that mandatory metering be required immediately upon approval of the GSP. In response, the GSP indicates that metering will be required with implementation of the GSP and is anticipated to be required within 90 days of GSP adoption.

I35-3 The GSA acknowledges the commenters request to impose mandatory water quality monitoring, including agricultural and golf course wells in the subbasin. The GSP indicates that the GSA has developed a water quality monitoring network of 30 wells and five additional wells were added to the network in Fall 2018. The GSP further states that the GSA continues to work with private landowners to expand the monitoring network.

I35-4 The GSA acknowledges the request for the possibility of using the County revitalization committee to find a way to come up with money to buy out farmers. This comment does not address the adequacy of the Draft GSP, and therefore, no further response is required or necessary.

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Comment Letter I36

From: TJH <tjhlaw@eschelon.com>
Sent: Tuesday, May 21, 2019 2:51 PM
To: LUEG, GroundWater, PDS
Cc: carylowe@cox.net; Bill Carpenter; marya88w@gmail.com; eddifordem@gmail.com
Subject: Borrego Water Crisis

Mr. Bennet: I own 6 vacant and unbuilt lots in Borrego Springs.

It distresses me that I may never be able to use or sell my lots. The water shortage is a de facto and permanent moratorium for me an many others.

The real problem, as you know, is the wasteful and excessive agricultural use of our finite and valuable water resource from the very limited and slowly replenishing aquifer.

The use by the citrus and agricultural users has depleted the water resource and prevented its use to and by higher priority uses, such as municipal, quasi-municipal and domestic uses.

The time has come to eliminate all citrus and agricultural uses from within the Borrego Groundwater Basin.

The 75% reduction on ag diversions will go part of the way, but a 100% reduction would free up the limited water supply to be devoted to higher priority uses, as mentioned.

Furthermore, the citrus and agricultural water users and landowners should be required to pay for the permanent following of all disturbed lands.

To let the citrus and palm trees die off without water and then to strip the land of all vegetation actually will be a disaster as well.

These owners should be held to the same standard as other users who extract a resource, cause damage and leave the mess for others to clean up.

If a miner dug a pit or mine, extracted minerals, he would be required to environmentally restore the site.

If a polluter spilled toxins on the ground, they would be held to clean it up.

If a farmer spilled chemicals on the ground, they would be compelled to clean it up.

If a farmer sells his farm with dead or dying trees on it, as "pollution", he should be held to clean up the "pollution" at his cost, not at that the community's public cost and expense.

"To pollute is to corrupt or defile, especially to contaminate the soil, air or water with noxious substances." Black's Law Dictionary (2004).

The real search should be for the proper following protocol, and costs, to determine how much the citrus and agricultural land owners and operators owe and should pay, to clean up their lands.

Not a search for \$20,000,000 to buy their lands, as someone has mentioned.

I36-1

I36-2

I36-3

Another thought is to prohibit the export of water or the products of water out of the Borrego Water Basin.

Exporting all fruit, plants and trees, which have consumed our limited water, should be prohibited.

Are these radical thoughts? I do not think so.

Thomas J. Hall, Esq.

Box 3948,

Reno, Nevada

89505

136-4

Letter I36

Commenter: Thomas Hall

Date: May 21, 2019

I36-1 The comment provides introductory statements that do not address the adequacy of the Draft Groundwater Sustainability Plan (GSP), and therefore, no further response is required or necessary. However, it should be mentioned that the GSP includes Project and Management Action (PMA) No. 1 – Water Trading Program, which upon implementation, would allow the ability for the permanent trade of baseline pumping allocations. Individuals such as yourself could purchase baseline pumping allocations for future development of your land.

I36-2 The Groundwater Sustainability Agency (GSA) acknowledges the request to require complete elimination of agricultural uses. While the GSP does not set specific groundwater use reductions, the GSP includes Project and Management Action No. 3 – Pumping Reduction Program. As indicated in the GSP, the GSA will prepare the California Environmental Quality Act (CEQA) documentation (after GSP adoption) in advance of considering formal adoption and implementation of any groundwater use reductions and a specific ramp down schedule. The GSP also indicates an agreement among the pumpers is a possible scenario where groundwater use reductions could be developed.

This comment does not address the adequacy of the Draft GSP, and therefore, no further response is required or necessary.

I36-3 The GSA acknowledges suggestions to require the agricultural users to pay for cleanup of their land once it is fallowed. The GSP includes PMA No. 4 – Voluntary Fallowing of Agricultural Land. As indicated in the GSP, the GSA will prepare policy development and CEQA documentation after GSP adoption in advance of considering formal adoption and implementation of a voluntary fallowing program.

This comment does not address the adequacy of the Draft GSP, and therefore, no further response is required or necessary.

I36-4 The comment suggests prohibiting the export of water and fruit, plants, and trees which have consumed the water. In response, the GSA is not aware of any exportation of water out of the basin. In regard to the suggestion to prohibit actual products from being exported out of the basin, the GSA remains committed to utilizing the tools provided in Sustainable Groundwater Management Act (SGMA) to bring the groundwater basin into sustainability.

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May 21, 2019

Borrego Valley Groundwater Sustainability Agency
C/O County of San Diego Planning & Development Services
Jim Bennett
5510 Overland Avenue Suite 310
San Diego, CA 92123

Via E-mail: PDS.LUEGGroundWater@sdcounty.ca.gov

Re: Comments on Draft GSP Regarding Conversion of Water Credits to BPA

As part of the Borrego Water District’s water credit program, the Borrego Water District and the County of San Diego have issued water credits to property owners overlying the basin who have voluntarily fallowed their land. The purpose of the water credit program is to encourage voluntary cessation of water use in exchange for “water credits” that may be applied to future development. The draft Groundwater Sustainability Plan released on March 21, 2019 (“GSP”) for the Borrego SpringsSubbasin (“Basin”) provides that existing water credits associated with the water credit program *may* be converted *at some time in the future* to a program using Baseline Pumping Allocation (“BPA”) applying the groundwater consumptive use factors developed by the groundwater sustainability agency (“GSA”). As a holder of water credits in the Basin, we urge the GSA to modify the GSP to explicitly provide for (a) the conversion of water credits to BPA using the same consumptive use factors applied to calculate BPA for agricultural acreage during the baseline period, and (b) the issuance of BPA to water credit holders at the same time that BPAs are issued for all pumpers in the Basin. Without such modifications, the undersigned object to the GSP as inequitable and unlawful.

Although the Sustainable Groundwater Management Act provides that it is not intended to alter groundwater rights, nor is an allocation issued pursuant to a GSP to be deemed a determination of water rights,¹ the proposed management actions concerning BPA (i.e., Pumping Reduction Program)(PMA No. 3 in the GSP) and the Water Trading Program (PMA No. 1 in the GSP) will effectively determine and control all opportunities afforded by a water right. This includes the amount of groundwater that may be pumped, the cost of pumping, how and when groundwater rights may be transferred, etc. Thus, to remain equitable, lawful, and immune from successful legal challenge, BPA *must* be granted to water credit holders on the same terms (consumptive use factors) established to set BPA for existing irrigators and issued at the same time as all BPAs. Doing so will treat all similar pumpers equally and will avoid disadvantaging land owners who voluntarily reduced water usage early in an effort to help the Basin.

I37-1

¹ See Water Code sections 10720.5(b)), 10726.4(a)(2), and 10726.8(b).

Borrego Valley Groundwater Sustainability Agency
May 21, 2019
Page 2

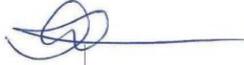
Conversion of water credits to BPA will also streamline management of the Basin by applying a single "currency" of water rights. For example, the BWD could develop a policy that requires a dedication to the BWD of BPA in exchange for extension of service for new developments (or an equivalent payment in lieu of BPA dedication). This would thereby avoid applying two BWD programs—one for water credit holders and one for BPA holders—that may result in disparate and unfair treatment of those pumpers that voluntarily worked with the BWD to advance water management in comparison to those that have not.² Without such conversion, other pumpers who are granted BPA would be afforded greater water use opportunities and advantages, including opportunities to accrue carryover, lease of allocation, and transfer and use of allocation to support groundwater production on different parcels, as compared to similarly-situated pumpers that were granted water credits. Such disparate treatment would render the Pumping Reduction Program ripe for legal challenge pursuant to a groundwater basin adjudication³ or other litigation.

This concern can be readily remedied by modifying the GSP to provide for the conversion of water credits to BPA for all water credit holders pursuant to the same consumptive use factors set forth in Appendix F, the elimination of the existing water credits program, and the issuance of such BPA when all BPAs are issued. The GSP could explain that the BWD would soon develop a new dedication program for extension of new water service based exclusively on BPA.

Pursuant to such changes to the GSP and a new BWD dedication program, we agree that the water credits-to-BPA conversion satisfies all obligations of the BWD pursuant to the water credits program such that the BWD would not bear any potential liability for breach of contract, or otherwise, relating to the water credits program.

Thank you for the opportunity to comment on the draft GSP.

Sincerely,


RUBY MOWICA 5/21/19

² The BPA calculation methodology set forth in Appendix F would result in a grant of more BPA per acre than has been granted in water credits for the same crop grown with the same method of irrigation and during the same time period. Thus, to deny a conversion of water credits to BPA at the same consumptive use factors would result in disparate treatment unless the BWD were to maintain two dedication programs with different dedication ratios respective of BPA and water credits, which would be unnecessarily complex.

³ See Code of Civil Procedure sections 830 et seq.

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137-1
Cont.

Letter I37

Commenter: Rudy Monica

Date: May 21, 2019

- I37-1** The Groundwater Sustainability Agency (GSA) acknowledges the comment and the benefits of converting water credits to baseline pumping allocations within the Groundwater Sustainability Plan (GSP). In response, the GSP is clear that water credits may be converted in a future program using Baseline Pumping Allocation (BPA) using the groundwater consumptive use factors developed by the GSA. In regard to your comments pertaining to groundwater rights, the comment calls for a legal conclusion to which the GSA is not required to respond.

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May 21, 2019

Borrego Valley Groundwater Sustainability Agency
 C/O County of San Diego Planning & Development Services
 Jim Bennett
 5510 Overland Avenue Suite 310
 San Diego, CA 92123

Via E-mail: PDS.LUEGGroundWater@sdcounty.ca.gov

Re: Comments on Draft GSP Regarding Conversion of Water Credits to BPA

As part of the Borrego Water District’s water credit program, the Borrego Water District and the County of San Diego have issued water credits to property owners overlying the basin who have voluntarily fallowed their land. The purpose of the water credit program is to encourage voluntary cessation of water use in exchange for “water credits” that may be applied to future development. The draft Groundwater Sustainability Plan released on March 21, 2019 (“GSP”) for the Borrego Springs Subbasin (“Basin”) provides that existing water credits associated with the water credit program *may* be converted *at some time in the future* to a program using Baseline Pumping Allocation (“BPA”) applying the groundwater consumptive use factors developed by the groundwater sustainability agency (“GSA”). As a holder of water credits in the Basin, we urge the GSA to modify the GSP to explicitly provide for (a) the conversion of water credits to BPA using the same consumptive use factors applied to calculate BPA for agricultural acreage during the baseline period, and (b) the issuance of BPA to water credit holders at the same time that BPAs are issued for all pumpers in the Basin. Without such modifications, the undersigned object to the GSP as inequitable and unlawful.

Although the Sustainable Groundwater Management Act provides that it is not intended to alter groundwater rights, nor is an allocation issued pursuant to a GSP to be deemed a determination of water rights,¹ the proposed management actions concerning BPA (i.e., Pumping Reduction Program) (PMA No. 3 in the GSP) and the Water Trading Program (PMA No. 1 in the GSP) will effectively determine and control all opportunities afforded by a water right. This includes the amount of groundwater that may be pumped, the cost of pumping, how and when groundwater rights may be transferred, etc. Thus, to remain equitable, lawful, and immune from successful legal challenge, BPA *must* be granted to water credit holders on the same terms (consumptive use factors) established to set BPA for existing irrigators and issued at the same time as all BPAs. Doing so will treat all similar pumpers equally and will avoid disadvantaging land owners who voluntarily reduced water usage early in an effort to help the Basin.

I38-1

¹ See Water Code sections 10720.5(b)), 10726.4(a)(2), and 10726.8(b).

Borrego Valley Groundwater Sustainability Agency
May 21, 2019
Page 2

Conversion of water credits to BPA will also streamline management of the Basin by applying a single "currency" of water rights. For example, the BWD could develop a policy that requires a dedication to the BWD of BPA in exchange for extension of service for new developments (or an equivalent payment in lieu of BPA dedication). This would thereby avoid applying two BWD programs--one for water credit holders and one for BPA holders--that may result in disparate and unfair treatment of those pumpers that voluntarily worked with the BWD to advance water management in comparison to those that have not.² Without such conversion, other pumpers who are granted BPA would be afforded greater water use opportunities and advantages, including opportunities to accrue carryover, lease of allocation, and transfer and use of allocation to support groundwater production on different parcels, as compared to similarly-situated pumpers that were granted water credits. Such disparate treatment would render the Pumping Reduction Program ripe for legal challenge pursuant to a groundwater basin adjudication³ or other litigation.

This concern can be readily remedied by modifying the GSP to provide for the conversion of water credits to BPA for all water credit holders pursuant to the same consumptive use factors set forth in Appendix F, the elimination of the existing water credits program, and the issuance of such BPA when all BPAs are issued. The GSP could explain that the BWD would soon develop a new dedication program for extension of new water service based exclusively on BPA.

Pursuant to such changes to the GSP and a new BWD dedication program, we agree that the water credits-to-BPA conversion satisfies all obligations of the BWD pursuant to the water credits program such that the BWD would not bear any potential liability for breach of contract, or otherwise, relating to the water credits program.

Thank you for the opportunity to comment on the draft GSP.

Sincerely,

Laura Ludberg
Laura Ludberg LLC
Ludberg Family Trust

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I38-1
Cont.

² The BPA calculation methodology set forth in Appendix F would result in a grant of more BPA per acre than has been granted in water credits for the same crop grown with the same method of irrigation and during the same time period. Thus, to deny a conversion of water credits to BPA at the same consumptive use factors would result in disparate treatment unless the BWD were to maintain two dedication programs with different dedication ratios respective of BPA and water credits, which would be unnecessarily complex.

³ See Code of Civil Procedure sections 830 et seq.

Letter I38

Commenter: Lance Lundberg

Date: May 21, 2019

- I38-1** The Groundwater Sustainability Agency (GSA) acknowledges the comment and the benefits of converting water credits to baseline pumping allocations within the Groundwater Sustainability Plan (GSP). In response, the GSP is clear that water credits may be converted in a future program using Baseline Pumping Allocation (BPA) using the groundwater consumptive use factors developed by the GSA. In regard to your comments pertaining to groundwater rights, the comment calls for a legal conclusion to which the GSA is not required to respond.

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Comment Letter I39

From: barry <barry.berndes@gmail.com>
Sent: Thursday, April 11, 2019 5:02 PM
To: LUEG, GroundWater, PDS; Barry Berndes | SAN DIEGAN
Subject: Borrego Springs vacant land owner's solution

Sirs:
The stewardship of this magnificent San Diego resources has a simplistic resolution: less is more.

Its inhabitants as a group
must be restricted by a percentage of the water they use by category:
Agro users
Golf course users
Residential users
Resort hotel users
Service Industry users

Each User Group Gets An Equal amount of the Aquifer Pie.

Then, just like with Solar, what the user don't use can be sold to the highest bidder or kept in the aquifer.

Ultimately, Borrego Springs will (die it's water shortage) be the desert retreat with fewer golf courses, fewer resorts, fewer agricultural orchards and fewer service industries as water allotments will allow.

So "Pull The Trigger" and do what you were appointed or elected to do.

Sincerely,
Barry Berndes
Buckskin Road
Property parcel #
141-010-41-00

Sent from my iPhone

I39-1

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Letter I39**Commenter: Barry Berndes****Date: April 11, 2019**

I39-1 The Groundwater Sustainability Agency (GSA) acknowledges the suggestion of reducing groundwater use by category and that each user group gets an equal amount of the water supply available. The Groundwater Sustainability Plan (GSP) includes Project and Management Action No. 3 – Pumping Reduction Program. The GSP does not set specific groundwater use reductions. Rather, as indicated in the GSP, the GSA will prepare the California Environmental Quality Act (CEQA) documentation (after GSP adoption) in advance of considering formal adoption and implementation of any groundwater use reductions and a specific ramp down schedule. The GSP also indicates an agreement among the pumpers is a possible scenario where groundwater use reductions could be developed.

This comment does not address the adequacy of the Draft GSP, and therefore, no further response is required or necessary.

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Comment Letter I40

From: David Leibert <david@thepalmsatindianhead.com>
Sent: Sunday, May 05, 2019 1:47 PM
To: LUEG, GroundWater, PDS
Subject: Borrego Springs Groundwater Sustainability Plan comment

May 5, 2019

County of San Diego Planning & Development Services
C/O: Jim Bennett
5510 Overland Avenue Suite 310
San Diego, CA 92123

PDS.LUEGGroundWater@sdcounty.ca.gov

RE: Borrego Springs Sub Basin

Dear Sir or Madam:

I am writing in regards to water rights we own on our property located at 2220 Hoberg Road in Borrego Springs, CA. (Parcel # 141-080-04). I have owned the approximately 20 acre hotel and restaurant property since 1993. There is a well on the property and I have spent a substantial amount of money maintaining and improving the well over time. I have been helpless in watching the water level in the well drop from 271 feet in December of 1993 to 324.02 feet on 4/30/19. The water level has dropped 53.02 feet over the last 25.5 years as a result of overdraft.

If the Groundwater Sustainability Plan is to be implemented, I feel it important to recognize and fairly compensate property owners with existing water rights whether or not they were pumping from their well at the time of the baseline pumping allocations approximation. At that time I was purchasing water for our property from the Borrego Water District and our amount of water usage could be easily ascertained.

I would expect either a cash buyout for our water rights or marketable water shares in exchange for any adjudicated action.

Sincerely,

David G. Leibert

 Virus-free. www.avast.com

I40-1

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Letter I40

Commenter: David Liebert

Date: May 5, 2019

I40-1 The commenter indicates ownership of a well on a property located at Assessor's Parcel Number (APN) 141-080-04 which is not being used. As stated in Appendix F of the Groundwater Sustainability Plan (GSP), baseline pumping allocations were included for each identified non-de minimis groundwater user for all existing pumpers in the basin. The "baseline pumping allocation" is defined as the amount of groundwater each pumper in the Subbasin is allocated prior to Sustainable Groundwater Management Act (SGMA)-mandated reductions. It is further defined as the verified maximum annual production, in acre-feet per year, for each well owner over the baseline pumping period. The baseline pumping period is the 5-year period from January 1, 2010, through December 31, 2014. This was to consider water use that was being used prior to SGMA taking effect on January 1, 2015 (California Water Code 10720.5[a]).

The commenter indicates they obtained their water from the Borrego Water District during the 5-year time period in which baseline pumping allocations (BPAs) were determined. As such, the GSP does not include a baseline pumping allocation for the commenter's property. Borrego Water District, as the pumper of the groundwater, received a BPA that included water that they sold to each of their customers.

This comment does not address the adequacy of the Draft GSP, and therefore, no further response is required or necessary.

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Comment Letter I41

From: Elena Thompson <elenathompson@cox.net>
Sent: Saturday, April 27, 2019 9:13 PM
To: LUEG, GroundWater, PDS
Subject: 4-29-19 Borrego Springs, CA., Groundwater Sustainability Plan (GSP) - Public Comment

Importance: High

<https://www.sandiegocounty.gov/content/sdc/pds/SQMA/borrego-valley.html>

By mail: County of San Diego Planning & Development Services
C/O: Jim Bennett
5510 Overland Avenue Suite 310
San Diego, CA 92123

To Whom It May Concern,

Our public comment is as follows:

1. Thank you for the opportunity to review and comment as a Borrego Springs resident, property owner and stakeholder, keen on seeing a stable and steady supply of potable residential water supply continue in our town.
2. In our view, the groundwater sustainability in Borrego Springs must be achieved before the mandated 2040 deadline seeing as Borrego Springs is in a "critical overdraft" situation TODAY (2019) and water is being used in a way by growers that fully risk depleting the entire water supply long before 2040.
3. Sustainability should be advanced to the earlier year of 2021, if not sooner.
4. Agricultural pumping of all water must begin to be measured starting in 2020 without exception. The agricultural sector is using 70% of all water in addition to polluting the water table with chemicals used in its operations. The growers/agricultural use in the valley poses the biggest risk to sustainability, both short and long term, and must totally stop in order to save the town of Borrego Springs and the ABD State Park.
5. The visuals and graphics in your presentation are shocking, to say the least. With plummeting water tables and water supply, deteriorating water quality, a radical approach must be taken immediately, now. No more waiting.
6. All water and wells must be protected and serviced to ensure potable drinking water and suitable water for residential use, without exception.
7. Municipal water supply must be the priority followed by golf courses (economic development). Agriculture is no longer sustainable in the Borrego Valley. Growers must go. Crops must be followed. There are few permanent jobs in this business. Those that are lost will find other opportunities in the valley.
8. Time is of the essence here. This matter has been studied over the decades without proper resolution as the aquifer continues to drop annually.
9. Residential real estate prices will all plummet without a reliable source of water. They have already been suppressed due to this ongoing and urgent crisis.
10. Stepped-up water conservation cannot increase amongst municipal users. These users cut back water usage years ago. There is no further opportunity for water reduction other than NOT to consume water or bathe. This is unacceptable.
11. Water increases cannot continue on municipal, residential users. Continual rate hikes are extremely harmful to municipal users, especially when growers get water for free and use 70% of it. It's unreasonable to expect municipal users to subsidize the growers and be punished with higher rates for unlimited grower usage, depleting the aquifer of its precious water supply.

I 41-1

I 41-2

I 41-3

I 41-4

I 41-5

I 41-6

I 41-7

I 41-8

I 41-9

Respectfully,

Elena & John Thompson
Residents and property owners, Borrego Springs
4-29-19

Letter I41

Commenter: Elena and John Thompson

Date: April 27, 2019

I41-1 The Groundwater Sustainability Agency (GSA) acknowledges the comment to accelerate groundwater reductions. While the Groundwater Sustainability Plan (GSP) does not set the specific groundwater reduction schedule, the GSP includes Project and Management Action (PMA) No. 3 – Pumping Reduction Program. As indicated in the GSP, the GSA will prepare the California Environmental Quality Act (CEQA) documentation (after GSP adoption) in advance of considering formal adoption and implementation of a specific ramp down schedule. The GSP also indicates an agreement among the pumpers is a possible scenario where groundwater use reductions could be developed.

This comment does not address the adequacy of the Draft GSP, and therefore, no further response is required or necessary.

I41-2 In response to the request that agricultural pumping be measured starting in 2020, the GSP states that at Plan adoption all non-de minimis groundwater extractors will be required to record monthly groundwater production and report to the GSA on an annual basis.

In response to the request that agricultural use in the valley totally stop, the GSP includes PMA No. 3, Pumping Reduction Program. As indicated in the GSP, the GSA will prepare CEQA documentation (after GSP adoption) in advance of considering formal adoption and implementation of groundwater use reductions and specific ramp down schedule. The GSP also indicates an agreement among the pumpers is a possible scenario where groundwater use reductions could be developed.

This comment does not address the adequacy of the Draft GSP, and therefore, no further response is required or necessary.

I41-3 The GSP includes the framework to bring the basin into sustainability.

This comment does not address the adequacy of the Draft GSP, and therefore, no further response is required or necessary.

I41-4 Chapter 3 of the GSP includes sustainability goals to protect current and future beneficial users and uses of water. The GSP includes a sustainability goal for groundwater levels to stabilize to ensure groundwater is maintained at adequate

levels for key municipal wells to protect residential users. The GSP also includes a sustainability goal for Title 22 drinking water standards to be met for potable water sources and water quality monitoring will occur throughout GSP implementation.

This comment does not address the adequacy of the Draft GSP, and therefore, no further response is required or necessary.

I41-5 The GSA acknowledges the comment to prioritize municipal water supply, the golf course use, and for agricultural use to be removed. While the GSP does not set the specific groundwater reductions by sector, the GSP includes PMA No. 3 – Pumping Reduction Program. As indicated in the GSP, the GSA will prepare CEQA documentation (after GSP adoption) in advance of considering formal adoption and implementation of a specific groundwater use reductions and a ramp down schedule. The GSP also indicates an agreement among the pumpers is a possible scenario where groundwater use reductions could be developed.

This comment does not address the adequacy of the Draft GSP, and therefore, no further response is required or necessary.

I41-6 This comment does not address the adequacy of the Draft GSP, and therefore, no further response is required or necessary.

I41-7 This comment does not address the adequacy of the Draft GSP, and therefore, no further response is required or necessary.

I41-8 The GSA acknowledges the commenter’s request to not have any additional water conservation for municipal users. The GSP includes PMA No. 2 – Water Conservation Program. The program would consist of separate components for the three primary water use sectors: agricultural, municipal, and recreation. As stated in the GSP, the specific components of the water conservation program would be developed (after GSP adoption) through a process of public outreach, data compilation, and program design for each sector.

This comment does not address the adequacy of the Draft GSP, and therefore, no further response is required or necessary.

I41-9 The GSA acknowledges your concern regarding water rates for municipal, residential users. The GSA will take this comment into consideration when considering imposing fees to fund GSP implementation.

This comment does not address the adequacy of the Draft GSP, and therefore, no further response is required or necessary.

Comment Letter I42

From: Joseph Tatusko <jatmpk@gmail.com>
Sent: Monday, April 01, 2019 5:39 PM
To: Bennett, Jim
Subject: GSP comment review process - Joe Tatusko #1

Hello Jim

I recommended as a retired 2014-2018 BWD Board member we add a second page in Spanish and English i.e. 2 sides important BWD information in the BWD bill envelope. I recommend a 2nd page in the BWD April bill a notice of this important GSP comment period of March 22 to May 21, 2019. Also, maybe an additional 2 day check out GSP physical document at the BWD office and SD County local BS library.

I will of course provide more technical comments in the near future.

Thanks,
Joe Tatusko
Retired BWD Board 2014-2018

P.S. I got a invalid email address for the PDS (pg. 2) email, please reply

I42-1

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Letter I42

Commenter: Joe Tatusko

Date: April 1, 2019

I42-1 The Groundwater Sustainability Agency (GSA) acknowledges your request of the Borrego Water District (BWD) to include noticing via April water bills in English and Spanish that mention the Groundwater Sustainability Plan (GSP) comment period. Additionally, the GSA acknowledges the request to have a check-out approach for the physical GSP document at the BWD office and County library. To aid Spanish speakers, the BWD translated the Executive Summary into Spanish and posted it on their website. Additionally, a hard copy of the Draft GSP was made available at three locations: the County of San Diego, BWD office, and the Borrego Springs County library.

This comment does not address the adequacy of the Draft GSP, and therefore, no further response is required or necessary.

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Comment Letter I43

Paul Ocheltree
200 Marine View Avenue
Del Mar, California 92014



April 15, 2019

SENT BY CERTIFIED MAIL

Kathy Dice President of the Borrego District Board of Directors
Geoffrey Poole General Manager of the Borrego Water District
P.O. Box 1870
806 Palm Canyon Drive
Borrego Springs, California 92004

RE: Borrego Valley GSP and SGMA reports.
Property description: 1193 Rango Way, Borrego Springs CA 92004, 40 acres, APN 199-140-21

Hello Kathy and Geoffrey,

We, Marilyn A. and Paul C. Ocheltree, are the property owners for the above reference property. We hereby hold and reserve the right to file a complaint (sue) to overturn and nullify any or all of the sections, restrictions, plans, actions and aspects of the GSP (Ground Water Sustainability Plan) which is being proposed for the Borrego Basin. We have and continue to reject similarly the SGMA (Sustainable Groundwater Management Act). We own the above land which inherently includes all of the titled land, soil, rocks, and water (a mineral) which are all a basic part of the titled land. Our land rights are established by old English law, common law, Federal and State law. We own all of the water, just the same as we would own the oil, gold or silver which could exist below the surface of our land. An ordinance passed by the County of San Diego and supported by the Borrego Water District does not supersede but is subject to the above laws. The SGMA and GSP serve to undermine, restrict and negate our ownership of the mineral rights attached to our land. The above acts propose to take our mineral rights without due compensation which is a violation of our constitutional rights. Thank you for our right to stand in objection to the SGMA, the GSP and all of the previous and future generations of these acts. Have a good day.

I43-1

Paul C. Ocheltree
 4/15/19
Property Owner

Marilyn A. Ocheltree
 4/15/19
Property Owner



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Letter I43

Commenter: Paul and Marilyn Ocheltree

Date: April 15, 2019

I43-1

The Groundwater Sustainability Agency (GSA) acknowledges the comment indicating the commenter reserves the right to file a complaint on any of information within the Groundwater Sustainability Plan (GSP) and that the commenter stands in objection to Sustainable Groundwater Management Act (SGMA) and any of its implementing requirements. Based on a review of historical aerial photography of the commenter's property located at 1193 Rango Way, Borrego Springs, California 92004, the on-site groundwater usage on said property appears to be 2 acre-feet or less per year. As such, the commenter is considered a de minimis extractor as defined by SGMA. A de minimis extractor is not subject to groundwater reduction requirements. The GSA will be regularly monitoring groundwater usage after the GSP is implemented. If available aerial photography or other information indicates that groundwater usage on the commenter's property is potentially increasing above 2 acre-feet per year, the commenter may be subject to reductions and additional requirements in accordance with the adopted GSP and implementing requirements.

This comment does not address the adequacy of the Draft GSP, and therefore, no further response is required or necessary.

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Comment Letter I44



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To: Ray Shindler
From: Thomas S. Bunn III
Date: September 11, 2017
Re: Groundwater allocations in the Borrego Springs basin

Question Presented

The Borrego Valley Groundwater Sustainability Agency must come up with a plan to make the Borrego Springs groundwater basin sustainable. The only practical way to do this is to limit groundwater extractions. Must the extractions be limited in proportion to current use?

Brief Answer

No. The agency may allocate groundwater extractions by any reasonable method. One reasonable method is to allocate the Borrego Water District its current pumping, and reduce agricultural and golf course pumping over time to a sustainable level. However, if there is an adjudication of groundwater rights, it is likely that the allocation would have to be made consistent with the adjudicated rights.

Statement of Facts

The Borrego Springs basin has been overdrafted for many years. The Department of Water Resources has designated the basin as a medium-priority basin subject to critical conditions of overdraft.

The principal groundwater users in the basin are the Borrego Water District, agricultural users, golf courses, domestic wells, and Anza-Borrego State Park.

The Borrego Valley Groundwater Sustainability Agency, comprising the Water District and San Diego County, has been designated as the groundwater sustainability agency (GSA) for the basin. Under the Sustainable Groundwater Management Act (SGMA), the GSA must develop and implement a groundwater sustainability plan by January 31, 2020. The plan must achieve sustainability for the basin within 20 years.

There is no practical source of supplemental water to the basin. As a result, to achieve sustainability, groundwater extractions must be substantially reduced.

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Extraction Allocations Under SGMA

If overdraft conditions are identified in a basin, SGMA requires the groundwater sustainability plan to contain projects or management actions to mitigate the overdraft. ¹ SGMA provides groundwater sustainability agencies with an array of powers to implement and enforce the groundwater sustainability plan, including the power to establish groundwater extraction allocations.² Neither SGMA nor the implementing regulations provide any detail or standards about how allocations are to be made. It appears that GSAs have broad discretion to allocate extractions, as long as the sustainability goals of the plan are met.

That discretion is not unlimited, however. Groundwater management under SGMA must be consistent with Article X, Section 2 of the California Constitution, which provides that water must be used reasonably and beneficially.³ Groundwater sustainability agencies must consider the interests of all beneficial uses and users of groundwater, including both holders of overlying groundwater rights and public water systems.⁴ Most significantly, groundwater sustainability plans may not alter groundwater rights.⁵ Specifically, a limitation on extractions by a groundwater sustainability agency is not a final determination of rights to extract groundwater.⁶

An argument can be made that the foregoing provisions mean that groundwater extraction allocations must be according to water rights. That would be consistent with the legislature’s statement that its intent is to “respect overlying and other proprietary rights to groundwater.”⁷ But there is no express directive in the statute to this effect. Contrast that with the express statement in the statute that federally reserved water rights to groundwater “shall be respected in full.”⁸ Statements of legislative intent are generally not binding in and of themselves, but are used by courts to interpret other provisions of a statute.

Another consideration is that groundwater law is complex, and it is impossible to state with certainty how a court would adjudicate rights in any particular basin. GSAs themselves do not have the power to determine water rights.⁹

In my opinion, the most reasonable interpretation of the statute, and the one a court is most likely to adopt, is that GSAs may allocate extractions by any reasonable method. But if there is an adjudication of

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¹ Wat. Code §10727.2(d)(3); Regs. §354.44.

² Wat. Code §10726.4(a)(2).

³ Wat. Code §10720.5(a).

⁴ Wat. Code §10723.2.

⁵ Wat. Code §10720.5(b).

⁶ Wat. Code §10726.4(a)(2).

⁷ SGMA uncodified findings (b)(4).

⁸ Wat. Code §10720.3(d).

⁹ Wat. Code §10726.8(b).



In the basin, the allocations must be made consistent with the adjudicated water rights. Otherwise, the GSA's allocation would effectively alter groundwater rights, in contravention of the statute.¹⁰

If the interested parties in a basin are unable to agree on a method of allocating extractions, it is very possible that an adjudication will be filed to determine water rights. Therefore, in their negotiations, parties will be comparing proposals with the likely results of an adjudication. The following overview is intended to help determine what those results might be.

California Groundwater Rights Law

Groundwater rights in an unadjudicated basin are traditionally classified as *overlying*, *appropriative*, or *prescriptive*. There is also a *self-help right*, as will be described below. And there are other types of rights I don't discuss here, including imported water return flow rights and federal reserved rights.

Overlying rights are the right of a property owner overlying the basin to pump water for reasonable beneficial use on the overlying land. Overlying rights are not quantified, but are *correlative*—that is, in times of shortage, all have equal priority and all must reduce pumping.

Appropriative rights are rights not used on overlying land, and include rights of water suppliers such as the District. They are lower in priority than overlying rights. If the basin is overdrafted, then appropriative rights must be curtailed first.

If an appropriator nevertheless pumps a quantity of water in an overdrafted basin continuously for over five years, and if certain other conditions—such as notice of the overdraft—are met, the appropriator gets a *prescriptive right* to continue to pump that quantity of water. For purposes of this analysis, I am assuming that the District has a prescriptive right in some amount.

The five-year period is referred to as the *prescriptive period*. There can be multiple prescriptive periods in a single basin, as long as each one is a five-year period of continuous overdraft. However, SGMA provides that prescriptive periods may not include the period between January 1, 2015, and the adoption of a groundwater sustainability plan.¹¹

A prescriptive right is higher priority than an overlying right. However, if an overlying landowner has pumped during the prescriptive period, it acquires a *self-help right* to the amount pumped during that period. The self-help right is a quantification of the overlying right, and is equal in priority to a prescriptive right.

It is apparent that in many cases, the total self-help rights plus the prescriptive rights will exceed the safe yield of the basin. The California Supreme Court has stated that when this happens, the prescriptive right is reduced, so that "the ratio of the prescriptive right to the remaining rights of the private defendant [is] as favorable to the former in time of subsequent shortage as it was throughout

¹⁰ Wat. Code §10720.5(b).

¹¹ Wat. Code §10720.5.



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the prescriptive period.¹² It is not completely clear what this means, but I believe it means that the prescriptive right is the same percentage of the safe yield as the prescriptive pumping is of total pumping during the prescriptive period. For example, if the prescriptive pumping was 10% of the total pumping during the prescriptive period, then the prescriptive right would be 10% of the safe yield during that period.

Groundwater Rights in Borrego Springs

I assume that the Water District is the only appropriator that can claim prescriptive rights. Applying these principles in a manner that favors the Water District, we would choose a prescriptive period in which the Water District’s continuous pumping was the greatest percentage of the total pumping. As mentioned above, that period must end before January 1, 2015. The Water District would be entitled to a prescriptive right equal to this percentage of the safe yield during that period. This will probably be a different amount than reducing all pumping proportionately from current amounts, because it depends on historical pumping, not current pumping.

Water Code Sections 106, 106.3, and 106.5

Water Code section 106 states that the domestic use of water is a higher use than irrigation. Water Code section 106.3 declares that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes, and state agencies must take that into account in policies, regulations, and grant criteria. Water Code section 106.5 provides for the protection of the right of a municipality to acquire and hold rights to the use of water for existing and future uses. Some have argued that these statutes mean that domestic and municipal uses should get priority in times of shortage. To my knowledge, no case has ever held that these statutes create a new category or priority of groundwater rights. But in the recent Santa Maria groundwater adjudication, the court did use these statutes to support its conclusion that parties with prescriptive rights (who are generally domestic and municipal users) do not lose their rights during times of surplus.¹³

For purposes of groundwater allocations under SGMA, I believe that Water Code sections 106, 106.3, and 106.5 furnish a powerful argument that domestic and municipal uses should not suffer the same reductions as irrigation.

Conclusion

The groundwater sustainability agency has broad discretion about how to allocate groundwater extraction among the competing uses, and is not required to reduce all users equally. There are several arguments for reducing domestic and municipal users less. It is a reasonable position that they should get what they are currently using, perhaps with a modest reduction for water conservation/water

¹² *City of Los Angeles v. City of San Fernando* (1975) 14 Cal.3d 199, 293.
¹³ *City of Santa Maria v. Adam* (2012) 211 Cal.App.4th 266, 297.



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efficiency, and that the remainder of the reduction should fall on irrigation users. Borrego Water District should be taking this position. Ultimately, the results of the negotiation may depend on the parties' perception of the likelihood of an adjudication, and the likely results in any adjudication.

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Letter I44

Commenter: Ray Shindler

Date: September 11, 2017

I44-1 The Groundwater Sustainability Agency (GSA) received an email from Ray Shindler with an attached September 11, 2017, memorandum regarding “Groundwater allocations in the Borrego Springs basin.”

This comment does not address the adequacy of the Draft Groundwater Sustainability Plan (GSP), and therefore, no further response is required or necessary.

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Comment Letter I45



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To: Borrego Springs Basin Advisory Committee
From: Thomas S. Bunn III
Date: October 24, 2017
Re: Response to Agricultural Representatives Agenda Paper #1

This is a response to the Agricultural Representatives Agenda Paper #1, dated September 21, 2017. The paper contains a number of omissions and incorrect statements. This memo does not attempt a line-by-line rebuttal, but points out the most significant issues.

The paper ignores the prescriptive right of the Water District

The paper repeatedly makes the point that the groundwater rights of overlying landowners have priority over municipal water rights. It fails to mention, however, that this is only true if the municipal water rights are appropriative rights, not if they are prescriptive rights. Overlying rights do not have priority over prescriptive rights. "Acquisition of a prescriptive right in groundwater rearranges water rights priorities among water users, elevating the right of the one acquiring it above that of an appropriator to a right equivalent in priority to that of a landowner." (*City of Santa Maria v. Adam* (2012) 211 Cal.App.4th 266, 297.)

The prescriptive right of the Water District is not acknowledged anywhere in the paper. Yet the Water District clearly has acquired a prescriptive right by pumping water in an overdrafted basin for a continuous period of five years, where there was knowledge of the overdraft and where the pumping was actual, open and notorious, hostile and adverse to the overlying users, and under claim of right. (*City of Santa Maria v. Adam* (2012) 211 Cal.App.4th 266, 291.)

"The effect of a prescriptive right [is] to give to the party acquiring it [the Water District] and take away from the private defendant against whom it was acquired [overlying landowners] either (1) enough water to make the ratio of the prescriptive right to the remaining rights of the private defendant as favorable to the former in time of subsequent shortage as it was throughout the prescriptive period or (2) the amount of the prescriptive taking, whichever is less." (*City of Los Angeles v. City of San Fernando* (1975) 14 Cal.3d 199, 293.) In other words, the pumping during the prescriptive period is reduced pro rata to the safe yield.

Thus, the argument in the paper that agricultural water use cannot be reduced without agreement on an agricultural fallowing and landowner pumping rights transfer program is incorrect.

I45-1

The paper ignores the priority for domestic use in Water Code sections 106, 106.3, and 106.5

Water Code section 106 states that the domestic use of water is a higher use than irrigation. Water Code section 106.3 declares that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes, and state agencies must take that into account in policies, regulations, and grant criteria. Water Code section 106.5 provides for the protection of the right of a municipality to acquire and hold rights to the use of water for existing and future uses.

It is routinely argued in groundwater adjudications that these statutes mean that domestic and municipal uses should get priority in times of shortage. Because adjudications are generally resolved by settlement, no appellate court has yet considered the nature and extent of this priority. But in the recent Santa Maria groundwater adjudication, the court did use these statutes to support its conclusion that parties with prescriptive rights (who are generally domestic and municipal users) do not lose their rights during times of surplus. (*City of Santa Maria v. Adam* (2012) 211 Cal.App.4th 266, 297.)

For purposes of groundwater allocations under SGMA, Water Code sections 106, 106.3, and 106.5 furnish a powerful argument that domestic and municipal uses should not suffer the same reductions as irrigation.

Even if the Water District did not have a prescriptive right, the landowners would still have to reduce their pumping

The paper does not acknowledge that landowners, who represent the vast majority of pumping, would have to reduce their pumping by almost the same amount, even if no allocation were made to the Water District at all. As among overlying users, the rights are correlative: each may use only their reasonable share [of the safe yield] when water is insufficient to meet the needs of all. (*City of Santa Maria v. Adam* (2012) 211 Cal.App.4th 266, 279.)

The paper incorrectly cites *Mojave* and other cases

The paper cites the *Mojave* case (*City of Barstow v. Mojave Water Agency*¹ (2000) 23 Cal.4th 1224) for the proposition that groundwater rights of overlying landowners have priority over municipal water rights. But, as previously stated, that is only true if there are no prescriptive rights, as was the case in *Mojave*. (23 Cal.4th at p. 1241.)

The paper also cites *Mojave* for the following proposition: “[A]n across-the-board reduction of groundwater production by all sectors is contrary to California water law, except in the rare situation where an entire city’s economy is built entirely on junior appropriations in excess of overdraft, which situation does not exist here.” The “situation” described in the *Mojave*

¹ The paper uses the incorrect name of *City of Barstow v. Adelanto*.



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case, however, was not that at all, but where a “restriction to safe yield on a strict priority basis might have deprived parties who had been using substantial quantities of ground water for many years of all further access to such water.” (23 Cal.4th at pp. 1246-47.) That is exactly the situation here.

Finally, the paper says that overlying water rights need to be based on the highest year of production during the period of overdraft. It cites three adjudications for this, but the formula used in those adjudications was based on stipulation, not a judicial ruling. It goes on to say the California Supreme Court has upheld use of the highest year of production, citing *Hi-Desert County Water Dist. v. Blue Skies Country Club, Inc.* (1994) 23 Cal.App.4th 1723, 1727. First, the case was not a Supreme Court case, but a court of appeal case. Second, and more significantly, the formula in the case was again based on a stipulation and was not an issue before the court. It is incorrect to say the formula was “upheld” by the court.

Conclusion

Groundwater sustainability agencies are given the authority to determine groundwater extraction allocations. (Wat. Code 10726.4(a).) A reasonable approach would be to allocate the Water District its historical use, and allocate the remainder of the safe yield to overlying users, without any compensation to those users. This approach would be consistent with SGMA and California water rights law.

I45-1
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