

**Borrego Water District Board of Directors**  
**Special Meeting**  
**June 19, 2018 @ 9:00 a.m.**  
**806 Palm Canyon Drive**  
**Borrego Springs, CA 92004**

**I. OPENING PROCEDURES**

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

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

- A. Resolution No. 2018-06-02 Authorizing Execution and Delivery by the District of a Loan Agreement and Promissory Notes and Approving Certain Other Actions with Respect Thereto - W Diven, Esq. – BB&K (3-82)
- B. Resolution No. 2018-06-03 Authorizing Execution and Delivery by the District of an Installment Sale Agreement and an Assignment Agreement with Respect to the Financing of the Acquisition, Construction, and Installation of Certain Improvements to the Districts Sewer Enterprise and Water Enterprise and Approving Certain Other Actions with Respect Thereto – W. Diven Esq. – BB&K (83-142)

**ADJOURN BWD MEETING AND CONVENE BORREGO WATER DISTRICT PUBLIC FACILITIES CORPORATION BOARD OF DIRECTOR MEETING. FOLLOWING PFC BOARD MEETING, THE BWD BOARD WILL RE-CONVENE (83-142)**

- C. Fiscal Year 2018-19 Draft Budget and CIP – K Pittman (148-204)
- D. CIP Contract Construction Management Budget Item – L. Brecht (205-209)
- E. Transition Management Consulting Budget Item – L. Brecht (210-212)
- F. New CIP & Operations Reporting Requirements – L Brecht (213)
- G. BWD Cyber Policy - K Pittman (214-243)
- H. BWD Comment Letter on County of San Diego Property Specific Requests process– L Brecht (244-250)
- I. Conditional Approval of USGS Drill Rig for BWD Replacement Well Investigation – T. Driscoll/G Poole (251-262)
- J. Final Budgets for Water and Sewer Project Submitted for State Grant Funding – G Poole (263)

**III. INFORMATIONAL ITEMS**

- A. AB 1668 & SB 606: Impacts on Future Rate Structure – H. Ehrlich
  - 1. E-Correspondence from Rebecca Falk and H. Ehrlich Response (264-265)

AGENDA: June 19, 2018

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 – Board Secretary 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.

- B. BWD Groundwater Sustainability Plan Advisory Committee Representative Report  
– D Duncan, Verbal (266)

**IV. STAFF REPORT (267-268)**

- A. General Manager
  - 1. Contracting and Purchasing Policy
  - 2. Construction Management Plan and Schedule
  - 3. Club Circle Trash Contract Update
  - 4. Club Circle Reimbursements Update
  - 5. AT&T Cell Tower at Rams Hill – G Poole
  - 6. Mesquite Ranch Request for Waiver of Sewer Stand By Fees
  - 7. Downstream Sewerline Repair/Maintenance Update
  - 8. Preparation for Prop 218 Rate Setting Cycle

**V. CLOSED SESSION:**

- A. Conference with Legal Counsel - Significant exposure to litigation pursuant to paragraph (2) of subdivision (d) of Section 54956.9: (two (2) potential cases)
- B. Conference with legal counsel for Public Employee Performance Evaluation - Title: General Manager Employee Performance Review- pursuant to subdivision (d) (4) of Government Code Section (Government Code § 54957).

**VI. CLOSING PROCEDURE**

- A. Suggested Items for Next/Future Agenda
- B. The next Meeting of the Board of Directors is scheduled for June 27th 2018, at the Borrego Water District

AGENDA: June 19, 2018

All Documents for public review on file with the District's secretary located at 806 Palm Canyon Drive, Borrego Springs CA 92004

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BORREGO WATER DISTRICT  
BOARD OF DIRECTORS MEETING – JUNE 19, 2018  
AGENDA BILL 2.A

June 12, 2018

**TO:** Board of Directors, Borrego Water District

**FROM:** Geoff Poole, GM

**SUBJECT:** Resolution No. 2018-06-01 Authorizing Execution and Delivery by the District a Loan Agreement and Promissory Note and Approving Certain Other Actions with Respect Thereto - W Diven, Esq. – BB&K

**RECOMMENDED ACTION:**  
Approve Resolution No. 2018-06-02

**ITEM EXPLANATION:**

Starting over one year ago, a Board Committee of Directors Brecht/Ehrlich and Staff have been working with Fieldman/Rolapp, BBK, Brandis/Stahlman and others on the issuance of bond financing for upcoming BWD capital improvements. The net result has seen BWD presented with a very competitive interest rate, term and other bond covenants from Pacific Western Bank on the “new money” and a slight improvement in the rate on BWD’s existing BBVA Compass debt through a refinancing.

Consultants, Staff and the Committee are recommending approval of the attached Resolution to begin the transaction. A memo from Bond Counsel, Warren Diven, is currently under development and will be added to the packet once completed to provide additional information and the specific Resolutions and accompanying information. This action is a little out of the usual since the BWD Public Facilities Corporation Board will also be meeting as part of this transaction. Staff and Warren Diven are working on the format of both Agendas as we speak and they will be incorporated into the next draft of the Agenda.

**FISCAL IMPACT**

BWD will receive approximately \$5.5 million for upcoming, planned CIP expenditures

**ATTACHMENTS**

1. Memo from Legal Counsel
2. Resolution No 2018-06-02

Indian Wells  
(760) 568-2611

Irvine  
(949) 263-2600

Los Angeles  
(213) 617-8100

Manhattan Beach  
(310) 643-8448

**Warren B. Diven**  
Partner  
(619) 525-1337  
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(951) 686-1450

Sacramento  
(916) 325-4000

Walnut Creek  
(925) 977-3300

Washington, DC  
(202) 785-0600

## Memorandum

**To:** President and Board of Directors, Borrego Water District  
Geoff Poole, General Manager, Borrego Water District

**From:** Warren B. Diven

**Date:** June 12, 2018

**Re:** June 19th Borrego Water District Board of Directors Meeting and Borrego Water District Public Facilities Corporation Board of Directors Meeting - Consideration of Approval of Resolutions to Authorize the Execution and Delivery of 2018 Installment Purchase Agreement and 2018 Loan Agreement

At the June 19, 2018 special meeting of the Borrego Water District (the “**District**”), the Board of Directors (the “**BWD Board**”) will be asked to consider the approval of the following resolutions:

- Resolution authorizing the execution and delivery of by the District of a Loan Agreement and Promissory Notes and Approving Certain Other Actions in Connection Thereto (the “**Loan Agreement Resolution**”); and
- Resolution authorizing the execution and delivery of by the District of an Installment Purchase Agreement and an Assignment Agreement with respect to the Financing of the Acquisition, Construction and Installation of certain Improvements to the District’s Water Enterprise and Sewer Enterprise and Approving Certain Other Actions in Connection Thereto (the “**Installment Purchase Agreement Resolution**”).

By adopting the Loan Agreement Resolution, the BWD Board will be:



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- Authorizing the District to enter into a Loan Agreement with Compass Bank, dba BBVA Compass Bank (the “**Compass Bank**”) pursuant to which the Bank will make two loans to the District:
  - Loan 2018A - the proceeds of this loan will be used to defease and prepay the Installment Payments (the “**2008 Installment Payments**”) that remain due and owing by the District pursuant to the Installment Purchase Agreement entered into in 2008 by and between the District and the Borrego Water District Public Facilities Corporation (the “**Corporation**”). The 2008 Installment Payments have been assigned by the Corporation to Citizens Business Bank.
  - Loan 2018B – the proceeds of this loan will be used to prepay a loan made to the District by Compass Bank in 2015.
- Authorizing the execution and delivery of separate promissory notes to secure the repayment of the Loans.
- Authorizing the District to enter into an Escrow Deposit and Trust Agreement (the “**Escrow Agreement**”) to establish the terms and conditions pursuant to which the 2008 Installment Payments will be defeased and prepaid.
- Designating Loan 2018A as a “qualified tax-exempt obligation.”

By adopting the Installment Purchase Agreement Resolution, the Board will be:

- Authorizing the District to enter into an Installment Purchase Agreement (2018 Capital Improvement Project) (the “**IPA**”) by and between the Corporation and the District pursuant to which the Corporation agrees to finance the acquisition, construction and installation of certain capital improvements to the District’s Sewer Enterprise and Water Enterprise (the “**Project**”).
- Authorizing the District to act as the agent to the Corporation to carry out the acquisition, construction and installation of the Project.
- Authorizing the District to repurchase the Project from the Corporation and to pay the purchase price of the Project in Installment Payments to be set out in the IPA.
- Awarding the purchase of the 2018 Installment Payments to Pacific Western Bank (“**Pacific Western**”).



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- Authorizing the District to enter into an Assignment Agreement with the Corporation and Pacific Western pursuant to which the Corporation will assign its rights to receive the 2018 Installment Payments to Pacific Western.
- Designating the Installment Purchase Agreement as a “qualified tax-exempt obligation.”

\* \* \*



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At the June 19, 2018 special meeting of the Borrego Water District Public Facilities Corporation (as defined above, the “**Corporation**”), the Board of Directors (the “**PFC Board**”) will be asked to consider the approval of the following resolutions:

- Resolution authorizing execution and delivery by the Corporation of an Escrow Deposit and Trust Agreement and Approving Certain Other Actions with Respect Thereto (the “**PFC Escrow Agreement Resolution**”); and
- Resolution authoring execution and delivery by the Corporation of an Installment Purchase Agreement and an Assignment Agreement and Approving Certain Other Actions with Respect Thereto (the “**PFC Installment Purchase Agreement Resolution**”).

By adopting the PFC Escrow Agreement Resolution, the PFC Board will be approving the Escrow Agreement as defined above.

By adopting the PFC Installment Purchase Agreement Resolution, the PFC Board will be approving the Installment Purchase Agreement and the Assignment Agreement as defined above.

Please feel free to provide any questions that you may have either prior to or during the Borrego Water District meeting or the Corporation meeting, as applicable.

## **RESOLUTION NO. 2018-06-02**

### **RESOLUTION OF THE BOARD OF DIRECTORS OF BORREGO WATER DISTRICT AUTHORIZING EXECUTION AND DELIVERY BY THE DISTRICT OF A LOAN AGREEMENT AND PROMISSORY NOTES AND APPROVING CERTAIN OTHER ACTIONS IN CONNECTION THERETO**

**WHEREAS**, the Borrego Water District (the “District”) is authorized under the provisions of Articles 10 and 11 of Chapter 3 of Part 1 of Division 2 of Title 5 of the California Government Code, commencing with section 53570 of said Code (the “Bond Law”), to issue its “revenue bonds” as defined therein, including “bonds, warrants, notes or other evidence of indebtedness” for the purpose of refunding certain outstanding obligations of the District; and

**WHEREAS**, in 2015 the District obtained a loan from Compass Bank to refund an outstanding obligation of the District pursuant to a loan agreement (the “2015 Prior Loan”), between the District and Compass Bank and executed and delivered a promissory note (the “2015 Prior Note”) to evidence the obligations of the District to Compass Bank under the 2015 Prior Loan; and

**WHEREAS**, the District has incurred certain debt obligations referred to as the “Borrego Water District Refunding Installment Purchase Payments for Improvement District No. 4 (Water Enterprise Improvements) Series 2008 (Bank Qualified)” (the “2008 Prior Obligations”) made under an Installment Purchase Agreement, dated as of August 1, 2008 (the “2008 Installment Purchase Agreement”), by and between the District and the Borrego Water District Public Facilities Corporation (the “Corporation”); and

**WHEREAS**, the District, has determined that it is in the best interest of the District to defease and prepay the 2008 Prior Obligations; and

**WHEREAS**, the District has determined to obtain two loans (“Loan 2018A” and “Loan 2018B” and, together, the “Loans”) from Compass Bank, dba BBVA Compass Bank (the “Bank”) pursuant to a loan agreement (the “Loan Agreement”) and to execute and deliver to separate promissory notes for each loan: (1) Note 2018A to be made and secured for Loan 2018A for the purpose of defeasing and prepaying the 2008 Prior Obligations and (2) Note 2018B (together with Note 2018A, the “Notes”) to be made and secured for Loan 2018B to prepay the 2015 Prior Note; and

**WHEREAS**, the Notes, and any bonds or other obligations issued on a parity therewith in accordance with the terms of the Loan Agreement, will be payable from and secured by a pledge of and lien on the Net Revenues (as defined in the Loan Agreement); and



**WHEREAS**, forms of the Loan Agreement and the Notes are on file with the Secretary of the Board of Directors of the District (the “Board”) and have been made available to the Board; and

**WHEREAS**, in order to establish the terms and conditions pursuant to which the 2008 Prior Obligations will be defeased and prepaid, it is necessary for the District and the Corporation must enter into an Escrow Deposit and Trust Agreement with U.S. Bank National Association (the “Escrow Agreement”), as escrow bank; and

**WHEREAS**, as the result of the passage of SB 450 that became effective on January 1, 2018, Section 5852.1 of the Government Code of the State of California (“Section 5852.1”) provides that the Board of Directors obtain from an underwriter, financial advisor or private lender and disclose, in a meeting open to the public, prior to authorization of the Loan Agreement, good faith estimates of: (a) the true interest cost of the Notes, (b) the finance charge of the Notes, meaning the sum of all fees and charges paid to third parties, (c) the amount of proceeds of the Loans received less the finance charge described above and any reserves or capitalized interest paid or funded with proceeds of the Installment Payment Rights and (d) the sum total of all Loan Payments (as defined in the Loan Agreement) under each of the Loans calculated to the final maturity of each of the Notes plus the fees and charges paid to third parties not paid with the proceeds of the Notes; and

**WHEREAS**, in accordance with Section 5852.1, the Board of Directors has obtained such good faith estimates from Fieldman, Rolapp & Associates, Inc., the municipal advisor to the District (the “Municipal Advisor”), and such estimates are disclosed in Exhibit A attached hereto (the “SB 450 Summary”); and

**WHEREAS**, the District has not issued or effected the issuance of, and does not reasonably expect to issue or effect the issuance of more than \$10,000,000 of tax exempt obligations during the 2018 calendar year and, therefore, desires to designate Note 2018A as a “qualified tax-exempt obligation” as defined by Section 265(b)(3) of the Internal Revenue Code of 1986, as amended (a “Qualified Tax-Exempt Obligation”); and

**WHEREAS**, all other legal prerequisites to the adoption of this Resolution have been met; and

**NOW, THEREFORE, BE IT RESOLVED, DETERMINED AND ORDERED BY THE BOARD OF DIRECTORS OF THE BORREGO WATER DISTRICT AS FOLLOWS:**

SECTION 1. Approval of Loan Agreement and Notes. The Loan Agreement and the Notes presented at this meeting are approved, and the President and Vice-President of the Board of Directors and the General Manager of the District (each, an “Authorized Officer”) are each, acting alone, authorized to execute, acknowledge and deliver the Loan Agreement and the Notes on behalf of the District. The principal of Note 2018A shall be in an amount of not to exceed \$2,350,000 and the interest rate of Note 2018A shall not exceed 3.70% per annum. The principal of Note 2018B shall be in an amount of not to exceed \$875,000 and the interest rate of Note 2018B shall not exceed 4.50% per annum.

SECTION 2. Approval of the Escrow Agreement. The Escrow Agreement presented at this meeting is approved and each Authorized Officer, acting alone, authorized to executed and deliver the Escrow Agreement on behalf of the District.

SECTION 3. Modifications. The approval of the Loan Agreement, the Notes and the Escrow Agreement given by this Resolution shall apply to any modification or amendment of any of said documents which is agreed upon and approved by the Authorized Officer executing the Loan Agreement, the Notes and the Escrow Agreement and Best Best & Krieger LLP as General Counsel and Special Counsel to the District, as being necessary to carry out the provisions thereof and the authorizations and direction provided in this resolution.

SECTION 4. Designation of Loan 2018A as a “Qualified Tax-Exempt Obligation”. Based upon the fact that the District has not issued or effected the issuance of, and does not reasonably expect to issue or effect the issuance of more than \$10,000,000 of tax exempt obligations during the 2018 calendar year, the District hereby designates the Installment Purchase Agreement as a “qualified tax-exempt obligation.”

SECTION 5. Further Action. Each Authorized Officer and the other officers of the District are hereby authorized and directed, jointly and severally, to do any and all things and to execute and deliver any and all documents which they may deem necessary or advisable in order to consummate the execution and delivery of the agreements approved hereby and to otherwise effectuate the purpose of this Resolution, and such actions previously taken by such officers are hereby ratified and confirmed.

SECTION 6. Effective Date. This resolution shall take effect upon adoption.

**PASSED AND ADOPTED** by said Board on this \_\_\_\_\_ day of \_\_\_\_\_, 2018 by the following vote:

**AYES:**

**NOES:**

**ABSENT:**

**ABSTAIN:**

STATE OF CALIFORNIA )

)

COUNTY OF SAN DIEGO )

I, \_\_\_\_\_, Secretary of the Board of Directors of the Borrego Water District, do hereby certify that the foregoing is a true and correct copy of a resolution passed and adopted by the Board of Directors of the Borrego Water District at a meeting of said Board held on the \_\_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Name: \_\_\_\_\_  
Secretary of the Board of Directors of the  
Borrego Water District

## EXHIBIT A

### SB 450 SUMMARY

Set forth below are **good faith estimates** of Fieldman, Rolapp & Associates, Inc., the municipal advisor, as required under Section 5852.1 of the California Government Code (the “Code”) for Loan 2018A to defease and prepay the 2008 Prior Obligations. **The following estimates have no bearing on, and should not be misconstrued as, any not-to-exceed financial parameters authorized by resolution.**

(a) The true interest cost of the bonds is estimated at 3.35%, calculated as provided in Section 5852.1(a)(1)(A) of the Code.

(b) The finance charge of the Bonds, including all fees and charges paid to third parties, is estimated at \$68,325.

(c) Proceeds of the Bonds received by the District for the sale of the Bonds, including the estimated principal amount of the proposed Bonds of \$2,308,000 less the finance charges set forth in (b) above, is equal to \$2,239,675.

(d) The total payment amount calculated as provided in Section 5852.1(a)(1)(D) of the Code is estimated at \$2,731,919.

Set forth below are **good faith estimates** of Fieldman, Rolapp & Associates, Inc., the municipal advisor, as required under Section 5852.1 of the California Government Code (the “Code”) for Loan 2018B to prepay the 2015 Prior Note. **The following estimates have no bearing on, and should not be misconstrued as, any not-to-exceed financial parameters authorized by resolution.**

(a) The true interest cost of the bonds is estimated at 4.2%, calculated as provided in Section 5852.1(a)(1)(A) of the Code.

(b) The finance charge of the Bonds, including all fees and charges paid to third parties, is estimated at \$0.

(c) Proceeds of the Bonds received by the District for the sale of the Bonds, including the estimated principal amount of the proposed Bonds of \$849,035 less the finance charges set forth in (b) above, is equal to \$849,035.

(d) The total payment amount calculated as provided in Section 5852.1(a)(1)(D) of the Code is estimated at \$968,741.

The foregoing are estimates and the final costs will depend on market conditions and can be expected to vary from the estimated amounts set forth above.

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LOAN AGREEMENT

Dated as of July 1, 2018

By and Between

BORREGO WATER DISTRICT

And

BBVA COMPASS BANK

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## **LOAN AGREEMENT**

THIS LOAN AGREEMENT, (this “Loan Agreement”), dated for convenience as of July 1, 2018, is by and between COMPASS BANK d/b/a BBVA Compass, an Alabama banking corporation, with all right and authority to conduct business in the State of California (the “Bank”), and the BORREGO WATER DISTRICT, a duly organized and validly existing political subdivision of the State of California (the “District”);

### **W I T N E S S E T H:**

**WHEREAS**, the District is authorized under the provisions of Articles 10 and 11 of Chapter 3 of Part 1 of Division 2 of Title 5 of the California Government Code, commencing with section 53570 of said Code (the “Bond Law”), to issue its “revenue bonds” as defined therein, including “bonds, warrants, notes or other evidence of indebtedness” for the purpose of refunding certain outstanding obligations of the District; and

**WHEREAS**, in 2015 the District determined that it was in the interests of the District at such time to obtain the proceeds of a 2015 Prior Loan from the Bank pursuant to the 2015 Prior Loan Agreement to refund the outstanding 2015 Prior Obligations in accordance with the Bond Law; and

**WHEREAS**, the obligations of the District under the Prior Loan Agreement are evidenced by the Prior Promissory Note, dated May 22, 2015, executed and delivered by the District, in the principal amount of \$1,125,000 (the “2015 Prior Note”); and

**WHEREAS**, the District previously incurred certain debt obligations (as defined herein, the “2008 Prior Obligations”) pursuant to the 2008 Prior Obligations Agreement; and

**WHEREAS**, the District has determined that it is at this time in the best interests of the District to defease and prepay the 2008 Prior Obligations;

**WHEREAS**, the District desires to incur a new indebtedness to the Bank and the Bank is willing to make a loan to the District for the purpose of defeasing and prepaying the 2008 Prior Obligations;

**WHEREAS**, the District and the Bank desire to enter into this Loan Agreement to (a) establish and declare the terms and conditions upon which (a) Note 2018A is to be made and secured into for the purpose of defeasing and prepaying the 2008 Prior Obligations and (b) Note 2018B is to be made and secured to prepay the 2015 Prior Note;

**WHEREAS**, in order to provide for the execution and delivery of the Notes, to establish and declare the terms and conditions upon which each of the Notes is to be made and secured, and to secure the payment of the principal thereof, prepayment premium (if any) and interest thereon, the District has authorized the execution and delivery of this Loan Agreement and each of the Notes; and

**WHEREAS**, all things necessary to make the Notes when issued, executed and delivered, the valid and binding obligation of the District, and to secure the District’s obligations under this

Loan Agreement and the Notes by a valid pledge of the Net Revenues herein pledged to the payment of the principal of, prepayment premium (if any) and interest on the Notes have been done and performed, as required by law, and the District is now fully authorized to enter into this Loan Agreement, subject to the terms hereof; and

**NOW, THEREFORE, THIS LOAN AGREEMENT WITNESSETH**, that in order to secure the payment of the principal of and the interest and prepayment premium (if any) on the Notes at any time outstanding under this Loan Agreement, and to secure the performance and observance of all the covenants and conditions herein and therein set forth, and to declare the terms and conditions upon and subject to which the Loans are premised, and in consideration of the premises and of the mutual covenants herein contained and of the making of the Loans by the Bank, and for other valuable considerations, the receipt whereof is hereby acknowledged, the District does hereby covenant and agree, for the benefit of the Bank from time to time of the Loans, as follows:

## **ARTICLE I**

### **DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICABILITY**

Section 1.1. Definitions. Unless the context otherwise requires, the terms defined in this section shall for all purposes hereof and of any amendment hereof or supplement hereto and of any report or other document mentioned herein or therein have the meanings defined herein, the following definitions to be equally applicable to both the singular and plural forms of any of the terms defined herein.

“Additional Revenues” means, with respect to the issuance of any Parity Obligations (other than the Notes and the 2018 Installment Payments), any or all of the following amounts:

(a) An allowance for Net Revenues from any additions or improvements to or extensions of an Enterprise which, during all or any part of the most recently completed Fiscal Year or for any more recent consecutive twelve (12) month period selected by the District, were not in service, in an amount equal to ninety percent (90%) of the estimated additional average annual Net Revenues to be derived from such additions, improvements and extensions for the first thirty-six (36) month period in which each addition, improvement or extension is respectively to be in operation, all as shown by the certificate or opinion of an Authorized Representative or Independent Engineer.

(b) An allowance for Net Revenues arising from any increase in the charges made for service from an Enterprise which has become effective (or adopted but not yet effective) prior to the incurring of such Parity Obligations but which, during all or any part of the most recently completed Fiscal Year or for any more recent consecutive twelve (12) month period selected by the District, was not in effect, in an amount equal to the total amount by which the Net Revenues would have been increased if such increase in charges had been in effect during the whole of such Fiscal Year or twelve (12) month period, all as shown by the certificate or opinion of an Authorized Representative or Independent Financial Consultant.

“Assignee” means any entity to whom the rights of the Bank shall be lawfully assigned hereunder.

“Authorized Representative” means the District’s President and General Manager, the Treasurer/Secretary or any other person designated as an Authorized Representative of the District by a Certificate of the District signed by its President or General Manager or Treasurer/Secretary and filed with the Bank.

“Bank” means (a) initially, Compass Bank, an Alabama banking corporation, or (b) any Assignee of Bank’s right, title or interest in this Loan Agreement and the Notes and other amounts due hereunder. Whenever in this Loan Agreement any reference is made to the Bank and such reference concerns rights which the Bank has assigned to the Assignee, such reference shall be deemed to refer to the Assignee.

“Blue Sky Law” means state level anti-fraud statutes which regulate both the offer and sale of securities as well as the registration and reporting requirements for broker-dealers and individual stock brokers doing business (both directly and indirectly) in each state, as well as investment advisers seeking to offer their investment advisory services in the state, and enforced by each individual states’ attorney-general.

“Board” means the Board of Directors of the District.

“Bond Counsel” means Best Best & Krieger LLP, or any other attorney or firm of attorneys acceptable to the District of nationally recognized expertise with respect to legal matters relating to debt obligations of political subdivisions.

“Business Day” means a day other than a Saturday, Sunday or legal holiday, on which banking institutions in the State of California are not closed.

“Certificate,” “Request” and “Requisition” of the District means a written certificate, request or requisition signed in the name of the District by its Authorized Representative. Any such instrument and supporting opinions or representations, if any, may, but need not, be combined in a single instrument with any other instrument, opinion or representation, and the two or more so combined shall be read and construed as a single instrument.

“Closing Date” means the date on which the Loans are funded by the Bank.

“Code” means the Internal Revenue Code of 1986, as amended. Each reference to a section of the Code herein shall be deemed to include the United States Treasury regulations.

“Costs of Issuance” means all items of expense directly or indirectly payable by or reimbursable to the District relating to the execution and delivery of this Loan Agreement.

“Debt Service” means, for any Fiscal Year, the sum of (1) the interest falling due during such Fiscal Year on all Parity Obligations that are outstanding under the documents or agreements pursuant to which they were issued, assuming that all outstanding serial Parity Obligations are retired as scheduled and that all outstanding term Parity Obligations are redeemed from sinking fund payments as scheduled (except to the extent that such interest has been fully capitalized and

is invested in Federal Securities that mature at times and in such amounts as are necessary to pay the interest to which such amounts are pledged), (2) the principal amount of all serial Parity Obligations (that are outstanding under the documents or agreements pursuant to which they were issued) falling due by their terms during such Fiscal Year, and (3) the minimum amount of term Parity Obligations (that are outstanding under the documents or agreements pursuant to which they were issued) required to be paid or called and redeemed during such Fiscal Year, together with the redemption premiums, if any, thereon; provided that, (A) whenever interest as described herein accrues at other than a fixed rate, such interest shall be assumed to be a rate equal to the greater of (i) the actual rate on the date of calculation, or if the Parity Obligations are not yet outstanding, the initial rate (if established and binding), (ii) if the Parity Obligations have been outstanding for at least twelve months, the average rate over the twelve months immediately preceding the date of calculation, and (iii) (x) if interest on the Parity Obligations is excludable from gross income under the applicable provisions of the Code, the most recently published The Bond Buyer Bond Revenue Index (or comparable index if no longer published) plus one hundred fifty (150) basis points, or (y) if interest is not so excludable, the interest rate on direct U.S. Treasury Obligations with comparable maturities, plus one hundred fifty (150) basis points, and (B) for purposes of calculating the Debt Service on any Parity Obligation requiring a balloon payment at maturity, such interest shall be assumed to be a rate equal to the greater of (i) the actual rate on the date of calculation, or (ii) six percent (6%), and the principal shall be assumed to be fully amortized, solved for substantially level debt service, over a period of fifteen (15) years from the date of calculation.

“Default Rate” means a rate of interest equal to 3.00%.

“District” means the Borrego Water District, a duly organized and validly existing political subdivision of the State of California.

“Escrow Agreement” means the Escrow Deposit and Trust Agreement by and between the District, the Corporation and the Escrow Bank to establish the terms and conditions pertaining to the defeasance and prepayment of the 2008 Prior Obligations.

“Escrow Bank” means U.S. Bank National Association.

“Enterprises” means, collectively, the Sewer Enterprise and the Water Enterprise. “Enterprise” means the Sewer Enterprise or the Water Enterprise, as applicable.

“Event of Default” means an event described in Section 6.1 hereof.

“Federal Securities” means: (a) any direct general obligations of the United States of America (including obligations issued or held in book entry form on the books of the Department of the Treasury of the United States of America), for which the full faith and credit of the United States of America are pledged; and (b) obligations of any agency, department or instrumentality of the United States of America, the timely payment of principal and interest on which are fully, unconditionally and directly or indirectly secured or guaranteed by the full faith and credit of the United States of America.

“Fiscal Year” means any twelve-month period extending from July 1 in one calendar year to June 30 of the succeeding calendar year, both dates inclusive, or any other twelve-month period selected and designated by the District, as applicable, as its official fiscal year period.

“Generally Accepted Accounting Principles” means the generally accepted accounting principles as presented and recommended by the American Institute of Certified Public Accountants or its successor, or by any other generally accepted authority on such procedures, and includes, as applicable, the standards set forth by the Governmental Accounting Standards Board or its successor.

“General Manager” means the General Manager of the District.

“Governmental Authority” means any governmental or quasi-governmental entity, including any court, department, commission, board, bureau, agency, administration, central bank, service, district or other instrumentality of any governmental entity or other entity exercising executive, legislative, judicial, taxing, regulatory, fiscal, monetary or administrative powers or functions of or pertaining to government, or any arbitrator, mediator or other person with authority to bind a party at law.

“Independent Certified Public Accountant” means a certified public accountant or any firm of certified public accountants appointed by the District that is independent according to the Statement of Auditing Standards No. 1 of the American Institute of Certified Public Accountants.

“Independent Engineer” means any registered engineer or firm of engineers generally recognized to be well-qualified in engineering matters relating to enterprises similar to the Sewer Enterprise and the Water Enterprise, appointed and paid by the District, and who or each of whom:

- (i) is in fact independent and not under the domination of the District;
- (ii) does not have a substantial financial interest, direct or indirect, in the District; and
- (iii) is not connected with the District as an officer or employee of the District, but may be regularly retained to make reports to the District.

“Independent Financial Consultant” means a financial consultant qualified in the field of municipal finance, appointed and paid by the District, and who:

- (i) is in fact independent and not under the domination of the District or any member thereof;
- (ii) does not have a substantial financial interest, direct or indirect, in the operations of the District; and
- (iii) is not connected with the District as an officer or employee of the District or any member thereof, but may be regularly retained to audit the accounting records of and make reports thereon to the District.

“Insurance Consultant” means any nationally recognized independent actuary, insurance company or broker that has actuarial personnel knowledgeable with respect to insurance carried, by, required for and available to special districts operating facilities similar to the Sewer Enterprise and the Water Enterprise, including a pooled self-insurance program in which premiums are established on the basis of the recommendation of an actuary of national reputation. The Bank hereby approves of the Association of California Water Agencies Joint Powers Insurance Authority as meeting this definition of Insurance Consultant.

“Interest Account” means the account by that name in the Revenue Fund established pursuant to Section 4.3 hereof

“Interest Component” means the portion of each Loan Payment designated as Interest Component, as such is set forth on Exhibit A hereto as to Note 2018A and on Exhibit B hereto as to Note 2018B.

“Loan” means either (i) Loan 2018A or (ii) Loan 2018B.

“Loan Agreement” means this Loan Agreement, dated as of June \_\_, 2018, between the Bank and the District, as originally executed and as from time to time supplemented or amended in accordance with the terms hereof.

“Loan Payments” means all payments required to be paid by the District, as such is set forth on Exhibit A hereto as to Loan 2018A and Exhibit B hereto as to Loan 2018B, on each Loan Payment Date pursuant to Section 4.2, and including any prepayment thereof pursuant to Section 3.4 or 3.5 hereof.

“Loan Payment Date” or “Payment Date” means each April 1 and October 1 of each year, commencing October 1, 2018, and continuing to and including the date on which the Loan Payments have been paid in full; provided that if any Loan Payment Date shall fall on a non-Business Day, the Loan Payment Date shall be the next succeeding Business Day and interest on such payment shall accrue to and including such next succeeding Business Day.

“Loan 2018A” means the Loan made by the Bank to the District in exchange for Note 2018A.

“Loan 2018B” means the Loan made by the Bank to the District in exchange for Note 2018B.

“Material Adverse Effect” means an event or occurrence which adversely affects in a material manner (a) the assets, liabilities, condition (financial or otherwise), business, facilities or operations of the District, an Enterprise or both Enterprises, (b) the ability of the District to carry out its business in the manner conducted as of the date of this Loan Agreement or to meet or perform its obligations under this Loan Agreement on a timely basis, or the (c) the validity or enforceability of this Loan Agreement.

“Material Litigation” means any action, suit, proceeding, inquiry or investigation against the District in any court or before any arbitrator of any kind or before or by any Governmental Authority, of which the District has notice or knowledge and which, (i) if determined adversely to

the District, may have a Material Adverse Effect, (ii) seeks to restrain or enjoin any of the transactions contemplated hereby, or (iii) may adversely affect the ability of the District to perform its obligations under this Loan Agreement.

“Maximum Annual Debt Service” means the greatest amount of Debt Service with respect to the Parity Obligations to which reference is made coming due in any Fiscal Year including the Fiscal Year in which the calculation is made or any subsequent Fiscal Year.

“Net Proceeds” means insurance proceeds or an eminent domain award (including any proceeds of sale to a governmental entity under threat of the exercise of eminent domain powers), paid with respect to an Enterprise, to the extent remaining after payment therefrom of all expenses incurred in the collection thereof.

“Net Revenues” means for any Fiscal Year the sum of (a) the Sewer Enterprise Net Revenues for such Fiscal Year, (b) the Water Enterprise Net Revenues for such Fiscal Year and (c) the Property Tax Revenues allocated to the District for such Fiscal Year.

“Note” means either (i) Note 2018A or (ii) Note 2018B.

“Notes” means, collectively, the Note 2018A and Note 2018B.

“Note 2018A” means the Promissory Note executed and delivered by the District on \_\_\_\_\_, 2018, in the original principal amount of \$\_\_\_\_\_, in the form attached hereto as Exhibit D.

“Note 2018B” means the Promissory Note executed and delivered by the District on \_\_\_\_\_, 2018, in the original principal amount of \$\_\_\_\_\_, in the form attached hereto as Exhibit E.

“Operation and Maintenance Costs” means the Sewer Enterprise Operation and Maintenance Costs and the Water Enterprise Operation and Maintenance Costs.

“Parity Obligations” means each Note and corresponding Loan Payments, the 2018 Installment Payments and all other bonds, notes, loan agreements, installment sale agreements, leases, or other obligations of the District payable from and secured by a pledge of and lien upon any of the Net Revenues incurred on a parity with the Notes and the 2018 Installment Payments, issued in accordance with Section 5.13 hereof.

“Parity Obligations Documents” means, collectively, the indenture of trust, trust agreement, installment purchase agreement, loan agreement or other document authorizing the issuance of any Parity Obligations or any securities which evidence Parity Obligations.

“Parity Obligation Payment Date” means the Loan Payment Date and any other payment date for Parity Obligations (other than the Notes).

“President” means the President of the Board of Directors of the District.

“Principal Account” means the account by that name in the Revenue Fund established pursuant to Section 4.3 hereof.

“Principal Component” means the portion of each Loan Payment designated as Principal Component, as such is set forth on Exhibit A hereto as to Note 2018A and on Exhibit B hereto as to Note 2018B.

“Property Tax Revenues” means all property tax revenues as defined in Revenue and Taxation Code Section 95 required to be allocated to the District.

“Rate Covenant Stabilization Fund” means either (a) the Sewer Enterprise Rate Covenant Stabilization Fund or (b) the Water System Rate Covenant Stabilization Fund.

“Rate Covenant Stabilization Funds” means, collectively, the Sewer Enterprise Rate Covenant Stabilization Fund and the Water Enterprise Rate Covenant Stabilization Fund.

“Request of the District” or “Written Request” means a request in writing signed by the President or General Manager, or by any other officer of the District duly authorized for that purpose.

“Resolution” means the Resolution No. 2018-07-\_\_\_, adopted by the Board on June 19, 2018, authorizing the execution and delivery of this Loan Agreement, and otherwise providing for the execution and delivery of the Notes.

“Revenue Fund” has the meaning ascribed thereto in Section 4.3 hereof.

“Sewer Enterprise” means, collectively, the entire sewer collection, transmission, treatment and disposition of wastewater and sewage system now owned or operated by the District, and all other properties, structures or works hereafter acquired and constructed by the District and determined to be a part of the Sewer Enterprise, including, but not limited to, any and all properties and assets, real and personal, tangible and intangible, of the District, now or hereafter existing, used or pertaining to the collection, transmission, treatment and disposition system, including all pipes, valves, machinery and all other appurtenances necessary, useful or convenient for the collection, transmission storage, treatment, transmission and disposition of wastewater, and any necessary lands, rights of way and other real or personal property useful in connection therewith, and all additions, extensions, expansions, improvements and betterments thereto and equipments thereof; *provided, however*, that to the extent the District is not the sole owner of an asset or property, only the District’s ownership interest in such asset or property shall be considered to be part of the Sewer Enterprise.

“Sewer Enterprise Net Revenues” means, for any Fiscal Year, the Sewer Enterprise Revenues for such Fiscal Year less the Sewer Enterprise Operation and Maintenance Costs for such Fiscal Year.

“Sewer Enterprise Operation and Maintenance Costs” means the reasonable and necessary costs and expenses paid or incurred by the District for maintaining and operating the Sewer Enterprise, calculated in accordance with Generally Accepted Accounting Principles, including but not limited to (a) costs of electricity and other forms of energy supplied to the Sewer Enterprise, (b) the reasonable expenses of management and repair and other costs and expenses necessary to maintain and preserve the Sewer Enterprise in good repair and working order, (b) the reasonable administrative costs of the District attributable to the operation and maintenance of the Sewer



Enterprise, such as salaries and wages of employees, overhead, taxes (if any) and insurance premiums, and (c) all other reasonable and necessary costs of the District or charges required to be paid by it comply with the terms of this Installment Purchase Agreement or any Contract or of to any resolution or indenture authorizing the issuance of any Bonds or of such Bonds, but excluding in all cases depreciation, replacement and obsolescence charges or reserves therefor and amortization of intangibles or other bookkeeping entries of a similar nature and all costs or expenses incurred by or on behalf of the District.

“Sewer Enterprise Rate Covenant Stabilization Fund” means the fund by that name established and maintained pursuant to Section 5.3(d) hereof.

“Sewer Enterprise Revenues” means all gross income and revenue received or receivable by the District from the ownership and operation of the Sewer Enterprise, calculated in accordance with Generally Accepted Accounting Principles, including all rates, fees, charges (including connection fees), insurance proceeds and condemnation awards received by the District and all other income and revenue howsoever derived by the District from the Sewer Enterprise; provided, however, that (i) any specific charges levied for the express purpose of reimbursing others for all or a portion of the cost of the acquisition or construction of specific sewer facilities, (ii) grants that are designated by the grantor for a specific Sewer Enterprise purpose (and are therefore not available for general operational purposes), (iii) customers’ sewer related deposits subject to refund until such deposits have become the property of the District, (iv) the proceeds of any ad valorem property taxes, and (v) the proceeds of any special assessments or special taxes levied upon real property within any improvement district served by the District for the purpose of paying special assessment bonds or special tax obligations of the District relating to the Sewer Enterprise, are not Revenues and are not subject to the lien hereof. Notwithstanding the foregoing, there shall be deducted from Sewer Enterprise Revenues any amounts (of Sewer Enterprise Revenues) transferred into the Sewer Enterprise Rate Covenant Stabilization Fund, and there shall be added to Sewer Enterprise Revenues any amounts transferred out of the Sewer Enterprise Rate Covenant Stabilization Fund and into the Revenue Fund.

“State” means the State of California.

“Subordinate Debt” means indebtedness or other obligations (including but not limited to loans, leases and installment sale agreements) hereafter issued or incurred and secured by a pledge of and lien on Net Revenues subordinate to the pledge and lien securing the Loan Payments.

“Term” or “Term of this Loan Agreement” means the time during which this Loan Agreement is in effect, as provided in Section 3.3 hereof.

“2008 Prior Obligations” means the obligations of the District referred to as the “Borrego Water District Refunding Installment Purchase Payments for Improvement District No. 4 (Water Enterprise Improvements) Series 2008 (Bank Qualified),” issued in the original principal amount of \$2,775,000, \$2,615,000 of which is outstanding on the Closing Date, pursuant to the terms of the 2008 Installment Purchase Agreement.

“2008 Prior Obligations Agreement” means the Installment Purchase Agreement, dated as of August 1, 2008, between the District, as purchaser, and the Borrego Water District Public

Facilities Corporation, as seller, as originally executed and as it may have been amended or supplemented from time to time in accordance with its terms.

“2018 Installment Payments” means the mandatory sinking fund payments scheduled to be paid by the District under and pursuant to the 2018 Installment Purchase Agreement.

“2018 Installment Purchase Agreement” means the Installment Purchase Agreement, dated as of July 1, 2018, by and between the District and the Borrego Water District Public Facilities Corporation.

“Water Enterprise” means, collectively, the entire water collection, storage, treatment, transmission and distribution system now owned or operated by the District, and all other properties, structures or works hereafter acquired and constructed by the District and determined to be a part of the Water Enterprise, including, but not limited to, any and all properties and assets, real and personal, tangible and intangible, of the District, now or hereafter existing, used or pertaining to the collection, storage, treatment, transmission and distribution system, including all contractual rights to water supply and transmission, as well as all pipes, valves, machinery and all other appurtenances necessary, useful or convenient for the collection, storage, treatment, transmission and distribution of water, and any necessary lands, rights of way and other real or personal property useful in connection therewith, and all additions, extensions, expansions, improvements and betterments thereto and equippings thereof; *provided, however*, that to the extent the District is not the sole owner of an asset or property, only the District’s ownership interest in such asset or property shall be considered to be part of the Water Enterprise.

“Water Enterprise Maintenance and Operation Costs” means the reasonable and necessary costs and expenses paid or incurred by the District for maintaining and operating the Water Enterprise, calculated in accordance with Generally Accepted Accounting Principles, including but not limited to (a) costs of acquisition of water, including all associated treatment and delivery costs, to be used by the Water Enterprise, (b) costs of electricity and other forms of energy supplied to the Water Enterprise, (c) the reasonable expenses of management and repair and other costs and expenses necessary to maintain and preserve the Water Enterprise in good repair and working order, (d) the reasonable administrative costs of the District attributable to the operation and maintenance of the Water Enterprise, such as salaries and wages of employees, overhead, taxes (if any) and insurance premiums, and (e) all other reasonable and necessary costs of the District or charges required to be paid by it to comply with the terms hereof or of any resolution authorizing the issuance of any Parity Obligations or of such Parity Obligations, such as compensation, reimbursement and indemnification of the trustee for any such Parity Obligations and fees and expenses of Independent Certified Public Accountants, Independent Financial Consultant’s and Independent Engineers, but in all cases excluding (i) debt service payable on obligations incurred by the District with respect to the Water Enterprise, including but not limited to the Loan Payments and debt service payments on any Parity Obligations, (ii) depreciation, replacement and obsolescence charges or reserves therefor, and (iii) amortization of intangibles or other bookkeeping entries of a similar nature.

“Water Enterprise Net Revenues” means, for any Fiscal Year, the Water Enterprise Revenues for such Fiscal Year less the Water Enterprise Operation and Maintenance Costs for such Fiscal Year.

“Water Enterprise Rate Covenant Stabilization Fund” means the fund by that name established and maintained pursuant to Section 5.3(d) hereof.

“Water Enterprise Revenues” means all gross income and revenue received or receivable by the District from the ownership and operation of the Water Enterprise, calculated in accordance with Generally Accepted Accounting Principles, including all rates, fees, charges (including connection fees), insurance proceeds and condemnation awards received by the District and all other income and revenue howsoever derived by the District from the Water Enterprise; *provided, however,* that (i) any specific charges levied for the express purpose of reimbursing others for all or a portion of the cost of the acquisition or construction of specific water facilities, (ii) grants that are designated by the grantor for a specific Water Enterprise purpose (and are therefore not available for general operational purposes), (iii) customers’ water related deposits or any other water related deposits subject to refund until such deposits have become the property of the District, (iv) the proceeds of any ad valorem property taxes, and (v) the proceeds of any special assessments or special taxes levied upon real property within any improvement district served by the District for the purpose of paying special assessment bonds or special tax obligations of the District relating to the Water Enterprise, are not Revenues and are not subject to the lien hereof. Notwithstanding the foregoing, there shall be deducted from Revenues any amounts (of Revenues) transferred into the Rate Covenant Stabilization Fund as contemplated by Section 5.3(d) hereof, and there shall be added to Revenues any amounts transferred out of the Rate Covenant Stabilization Fund and into the Revenue Fund, as contemplated by Section 5.3(d) hereof.

Section 1.2. Liability of District Limited to Net Revenues. Notwithstanding anything to the contrary contained in this Loan Agreement, the District shall not be required to advance any money derived from any source of income other than the Net Revenues, for the payment of the principal of or interest or prepayment premiums, if any, on the Notes or for the performance of any covenants herein contained, nor for the maintenance and operation of the Sewer Enterprise from any source of income other than the Sewer Enterprise Revenues or for the maintenance and operation of the Water Enterprise from any source of income other than the Water Enterprise Revenues . The District may, however, advance funds for any such purpose so long as such funds are derived from a source legally available for such purpose without incurring any indebtedness. The Notes shall be payable exclusively from the Net Revenues as in this Loan Agreement provided. The credit of the District is not pledged for the payment of the Notes or its interest. The principal of and interest on the Notes and any prepayment premiums upon the prepayment thereof shall not be payable from or secured by a legal or equitable pledge of, or charge, lien or encumbrance upon, any of the property of the District or any of its income, receipts, or revenues, except the Net Revenues pledged to the payment thereof as provided in this Loan Agreement.

Section 1.3. Benefits of Loan Agreement Limited to Parties. Nothing contained herein and except as it relates to the holders of Parity Obligations other than the Notes, expressed or implied, is intended to give to any person other than the District and the Bank any right, remedy or claim under or pursuant hereto. Any agreement or covenant required herein to be performed by or on behalf of the District shall be for the sole and exclusive benefit of the Bank.

Section 1.4. Successor Is Deemed Included in all References to Predecessor. Whenever the District is named or referred to herein, such reference shall be deemed to include the successor to the powers, duties and functions that are presently vested in the District, and all agreements and

covenants required hereby to be performed by or on behalf of the District shall bind and inure to the benefit of the successors thereof whether so expressed or not.

Section 1.5. Waiver of Personal Liability. No member of the Board and no officer, agent, or employee of the District, or of any department or agency thereof, shall be individually or personally liable for the payment of the principal of or interest on the Notes, but nothing contained herein shall relieve any such member, officer, agent or employee from the performance of any official duty provided by law or hereby.

Section 1.6. Article and Section Headings, Gender and References. The headings or titles of the several articles and sections hereof and the table of contents appended hereto shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof. Words of any gender shall be deemed and construed to include all genders. All references herein to “articles,” “sections” and other subdivisions or clauses are to the corresponding articles, sections, subdivisions or clauses hereof; and the words “hereby,” “herein,” “hereof,” “hereto,” “herewith” and other words of similar import refer to the Loan Agreement as a whole and not to any particular article, section, subdivision or clause hereof.

Section 1.7. Partial Invalidity. If any one or more of the agreements or covenants or portions thereof required hereby to be performed by or on the part of the District shall be contrary to law, then such agreement or agreements, such covenant or covenants or such portions thereof shall be null and void and shall be deemed separable from the remaining agreements and covenants or portions thereof and shall in no way affect the validity hereof or the Notes; but the Bank shall retain all the rights and benefits accorded to it under any applicable provisions of law. The District hereby declares that it would have adopted this Loan Agreement and each and every other article, section, paragraph, subdivision, sentence, clause and phrase hereof irrespective of the fact that any one or more articles, sections, paragraphs, subdivisions, sentences, clauses or phrases hereof or the application thereof to any person or circumstance may be held to be unconstitutional, unenforceable or invalid.

## ARTICLE II

### REPRESENTATIONS AND WARRANTIES

Section 2.1. Representations and Warranties of the District. The District makes the following representations and warranties to the Bank as of the date of the execution and delivery of this Loan Agreement:

(a) The District is a duly organized and validly existing political subdivision of the State of California.

(b) The District has full legal right, power and authority under the laws of the State to adopt the Resolution and to enter into this Loan Agreement and the Notes and the transactions contemplated herein, and to carry out its obligations hereunder and thereunder.

(c) With the exception of the pledge of the Net Revenues relating to the Loans made hereunder, the Net Revenues have not otherwise been pledged and there are no other liens against the Net Revenues, senior to, or on parity with the Loan Payments.

(d) By all necessary official action, the District has duly adopted the Resolution, has duly authorized and approved the execution and delivery of, and the performance of its obligations under, this Loan Agreement and the Notes and the consummation by it of all other transactions contemplated by this Loan Agreement and the Notes. When executed and delivered by the District, this Loan Agreement and the Notes will be in full force and effect and will constitute legal, valid and binding agreements or obligations of the District, enforceable in accordance with their respective terms, except as enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws or equitable principles relating to or limiting creditors rights generally, the application of equitable principles, the exercise of judicial discretion and the limitations on legal remedies against public entities in the State.

(e) The District's comprehensive annual financial report for the period ended June 30, 2017, presents fairly the financial condition of the District and the Enterprises as of the date thereof and the results of operation for the period covered thereby. Except as has been disclosed to the Bank, there has been no change in the financial condition of the District or either of the Enterprises since June 30, 2017, that will in the reasonable opinion of the District materially impair its ability to perform its obligations under this Loan Agreement and the Notes. All information provided by the District to the Bank with respect to the financial performance of the each Enterprise is accurate in all material respects as of its respective date and does not omit any information necessary to make the information provided not misleading.

(f) As currently conducted, the District's activities with respect to each of the Enterprises are in all material respects in compliance with all applicable laws, administrative regulations of the State of California and of the United States and any agency or instrumentality of either, and any judgment or decree to which the District is subject.

(g) To the best of its knowledge, after reasonable investigation, the District is not in any material respect in breach of or default under any constitutional provision, law or administrative regulation of the State or of the United States or any agency or instrumentality of either or any judgment or decree or any loan agreement, indenture, bond, note, resolution, agreement or other instrument to which the District is a party or to which the District or any of its property or assets is otherwise subject (including, without limitation, the Notes and this Loan Agreement), and no event has occurred and is continuing which with the passage of time or the giving of notice, or both, would constitute a default or event of default under any such instrument; and the adoption of the Resolution, the execution, delivery of the Notes and the execution and delivery of this Loan Agreement and compliance with the District's obligations therein and herein will not in any material respect conflict with, violate or result in a breach of or constitute a default under, any constitutional provision, law, administrative regulation, judgment, decree, loan agreement, indenture, agreement, mortgage, lease or other instrument to which the District is a party or to which the District or any of its property or assets is otherwise subject, nor will any such execution, delivery, adoption or compliance result in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon any of the property or assets of the District or under the terms of any such law, regulation or instruments, except as provided by the Notes and this Loan Agreement.

(h) No action, suit, proceeding, inquiry or investigation at law or in equity before or by any court, government agency, public board or body, is pending and served or, to the best of the

District's knowledge, threatened against the District: (i) in any way affecting the existence of the District or in any way challenging the respective powers of the several offices or the titles of the officials of the District to such offices; (ii) affecting or seeking to prohibit, restrain or enjoin the making, execution or delivery of the Notes or this Loan Agreement or the application of the proceeds of the Loan; (iii) in any way contesting or affecting, as to the District, the validity or enforceability of the Notes or this Loan Agreement; (iv) in any way contesting the powers of the District or its authority with respect to the adoption of the Resolution, or the execution and delivery of the Notes or this Loan Agreement; or (v) in any way contesting or challenging the consummation of the transactions contemplated hereby or thereby or that might materially adversely affect the ability of the District to perform and satisfy its obligations under the Notes or this Loan Agreement; nor to the best of the District's knowledge is there any basis for any such action, suit, proceeding, inquiry or investigation, wherein an unfavorable decision, ruling or finding would materially adversely affect the proceedings authorizing the Notes or this Loan Agreement or the performance by the District of its obligations thereunder, or the authorization, execution, delivery or performance by the District of the Notes or this Loan Agreement.

(i) The District is not in default, and at no time has defaulted in any material respect, on the 2008 Prior Obligations.

(j) All consents, approvals, authorizations, orders, licenses or permits of any governmental authority, legislative body, board, agency or commission having jurisdiction of the matter, that are required for the due authorization by, or that would constitute a condition precedent to or the absence of which would materially adversely affect the making or accepting of the Loan and the execution, delivery of and performance of the Notes and this Loan Agreement by the District have been duly obtained (except for such approvals, consents and orders as may be required under the Blue Sky or securities laws of any state in connection with the offering and sale of the Loans or Notes, as to which no representation is made).

(k) The District has the legal authority to apply and will apply, or cause to be applied, the proceeds from the Loan as provided in and subject to all of the terms and provisions of the Bond Law, the Resolution, the Notes and this Loan Agreement.

(l) Any certificate, signed by any official of the District authorized to do so in connection with the transactions described in this Loan Agreement, shall be deemed a representation and warranty by the District to the Bank as to the statements made therein.

(m) Since the most current date of the information, financial or otherwise, supplied by the District to the Bank, as described on Exhibit F hereto.

(i) There has been no change in the assets, liabilities, financial position or results of operations of the District which might reasonably be anticipated to cause a Material Adverse Effect;

(ii) The District has not incurred any obligations or liabilities which might reasonably be anticipated to cause a Material Adverse Effect; and

(iii) The District has not (A) incurred any material indebtedness, other than the Loan Payments and trade accounts payable arising in the ordinary course of the District's business and not past due, or (B) guaranteed the indebtedness of any other person.

(n) The District has had no financial advisory relationship with the Bank with respect to the Loans, nor with any investment firm controlling, controlled by or under common control with the Bank.

(o) Inasmuch as this loan represents a negotiated transaction, the District understands, and hereby confirms, that the Bank is not acting as a fiduciary of the District, but rather is acting solely in its capacity as Bank, for its own account.

Section 2.2. Representations and Warranties of the Bank. The Bank makes the following representations and warranties to the District as of the date of the execution and delivery of this Loan Agreement:

(a) The Bank is an Alabama banking corporation, with all right and authority to conduct business in the State of California, and with full corporate power to enter into and undertake its duties and obligations hereunder and has sufficient knowledge and experience in financial and business matters, including purchase and ownership of taxable municipal obligations, to be able to evaluate the economic risks and merits of the investment represented by the Loans and Notes.

(b) The execution, delivery and performance of this Loan Agreement has been duly authorized by all necessary corporate actions on the part of the Bank and do not require any further approvals or consents.

(c) To the knowledge of the Bank, the execution, delivery and performance of this Loan Agreement does not and will not result in any breach of or constitute a default under any indenture, mortgage, contract, agreement or instrument to which the Bank is a party by which it or its property is bound.

(d) There is no pending or, to the knowledge of the Bank, threatened action or proceeding before any court or administrative agency which will materially adversely affect the ability of the Bank to perform its obligations under this Loan Agreement.

(e) The Bank will deliver to the District a certificate or letter substantially in the form set forth in Exhibit B attached hereto, and will abide by all transfer restrictions herein and therein.

### **ARTICLE III**

#### **TERMS OF THE LOANS; ISSUANCE OF THE NOTES**

Section 3.1. Proceeds; Issuance and Transfer of the Notes. The Bank hereby agrees to make Loan 2018A and Loan 2018B to the District in the aggregate principal amount of \$\_\_\_\_\_ and \$\_\_\_\_\_, respectively, and the District hereby agrees to borrow such amounts from the Bank.

The obligations of the District under this Loan Agreement with respect to Loan 2018A shall be evidenced by Note 2018A executed and delivered by the District on the Closing Date in the aggregate principal amount of \$\_\_\_\_\_, in substantially the form set forth in Exhibit D attached hereto and by this reference incorporated herein, with necessary or appropriate variations, omissions and insertions, as permitted or required by this Loan Agreement and the Bond Law.

The obligations of the District under this Loan Agreement with respect to Loan 2018B shall be evidenced by Note 2018B executed and delivered by the District on the Closing Date in the aggregate principal amount of \$\_\_\_\_\_, in substantially the form set forth in Exhibit E attached hereto and by this reference incorporated herein, with necessary or appropriate variations, omissions and insertions, as permitted or required by this Loan Agreement and the Bond Law.

The Bank may assign its rights hereunder, and may transfer a Note, subject to the requirements of Section 3.7 herein, but only upon surrender of such Note to the District for transfer, accompanied by delivery of a duly written instrument of transfer in a form acceptable to the District. Proof of the execution of any such transfer, and of the holding and ownership of such Note shall be sufficient for any purpose hereof (except as otherwise herein provided), if made in the form of the Assignment attached to such Note in Exhibit D or Exhibit E hereto, as applicable. Whenever a Note shall be surrendered for transfer, the District shall execute, authenticate and deliver a new Note to the transferee.

Section 3.2. Deposit and Application of Proceeds. The Loans shall be made by the Bank to the District in immediately available funds on the Closing Date.

The District hereby instructs, and the Bank hereby agrees, to wire the proceeds of Loan 2018A in the amount of \$\_\_\_\_\_ directly to the Escrow Bank under the Escrow Agreement for the defeasance and prepayment of the outstanding principal amount of the 2008 Prior Obligations on October 1, 2018 pursuant to the Escrow Agreement.

If, following the defeasance of the 2008 Prior Obligations, there remain any amounts owing, or disputed as being owed, under the 2008 Prior Obligations Agreement, the District hereby agrees to pay such amounts in full, and thereafter separately seek any remedies or restitution that it may be entitled against any such parties at that time. To the extent permitted by law, the District covenants to indemnify, defend and hold harmless the Bank, against any loss, liability or expense, including legal fees (including fees of outside counsel and the allocated costs of internal attorneys), incurred in connection with any such unforeseen circumstances relating to an incomplete discharge of the 2008 Prior Obligations.

The Bank shall not be liable for the accuracy of any calculations as to the sufficiency of moneys deposited with it to pay the principal, interest or premiums, if any, on the 2008 Prior Obligations.

[Add language regarding the prepayment of the 2015 Loan.]

[Include provisions pertaining to the payment of Costs of Issuance.]

The Bank shall have no obligation to make any payment or disbursement of any type whatsoever except from the proceeds of the Loans. The Bank shall have no obligation to incur



any financial liability in the performance of its duties hereunder, and the Bank may rely and shall be fully protected in acting upon the payment instructions contained herein.

Section 3.3. Term of this Loan Agreement. The Term of this Loan Agreement shall commence on the Closing Date, and shall end on the date on which the Notes shall be paid in full or provision for such payment shall be made as provided herein.

Section 3.4. Optional Prepayment. SUBJECT TO NEGOTIATION PRIOR TO RATE LOCK [The District may prepay all or any part of the principal portion of the Note 2018A due on or after October 1, 20\_\_, on any date (in integral multiples of \$5,000) in the order of Principal Components of the Note 2018A due as directed by the District, on and after October 1, 20\_\_, from any available funds.]

[The District may prepay all or any part of the principal portion of the Note 2018B due on or after October 1, 20\_\_, on any date (in integral multiples of \$5,000) in the order of Principal Components of the Note 2018B due as directed by the District, on and after October 1, 20\_\_, from any available funds.]

[Before making any prepayment pursuant to this Section 3.4, the District shall, within five (5) days following the event permitting the exercise of such right to prepay, give written notice to the Bank describing such event and specifying the date on which the prepayment will be paid, which date shall be not less than thirty (30) nor more than forty-five (45) days from the date such notice is given.]

Section 3.5. Prepayment upon Casualty Loss or Governmental Taking. At the District's option, and upon thirty (30) days' prior written notice to the Bank, the Notes shall be subject to prepayment as a whole or in part on any date, from the Net Proceeds of casualty insurance or a governmental taking of either Enterprise or portions thereof by eminent domain proceedings, under the circumstances and upon the conditions and terms prescribed herein, at a prepayment price equal to the sum of the principal prepaid plus accrued interest thereon to the date fixed for prepayment, without premium.

Section 3.6. Execution of the Loan Agreement. The execution of this Loan Agreement by an Authorized Representative shall constitute conclusive evidence of such officers' and the Board's approval hereof, including any changes, insertions, revisions, corrections, or amendments as may have been made hereto.

Section 3.7. Assignment by the Bank. The Bank's right, title and interest in and to this Loan Agreement and the Notes and all proceeds, with prior written notice to the District, may be assigned and reassigned to one or more assignees or sub-assignees by Bank, without the necessity of obtaining the consent of District; provided, that such assignment shall not result in more than thirty-five (35) assignees or sub-assignees of the Bank's rights and interests in the Loan Agreement, or that such assignment shall not result in the creation of any interest in the Loan Agreement and the Notes in an aggregate principal amount that is less than one hundred thousand dollars (\$100,000); and provided that either the Bank shall remain the payee or a single entity shall be designated as payee for purposes of receiving all Loan Payments from the District, and further provided that Bank has filed with the District at least five Business Days' prior written notice

thereof along with an executed copy of an investor's letter addressed to the District and the Bank substantially in the form of the letter delivered by the Bank on the Closing Date attached hereto as Exhibit B. The District shall pay all Loan Payments hereunder to the Bank, as provided in Section 4.2 hereof, or under the written direction of the assignee named in the most recent assignment or notice of assignment filed with the District. During the term of this Loan Agreement, the District shall each keep a complete and accurate record of all such notices of assignment.

Section 3.8. Closing Conditions. The Bank has entered into this Loan Agreement in reliance upon the representations and warranties of the District contained in this Loan Agreement and to be contained in the documents and instruments to be delivered on the Closing Date and upon the performance by the District of the obligations of the District pursuant to this Loan Agreement at or prior to the Closing Date. Accordingly, the obligation of Bank to consummate the Loans and execute this Loan Agreement is subject to the fulfillment to the reasonable satisfaction of the Bank of the following conditions:

(a) The representations and warranties of the District contained in this Loan Agreement shall be true, complete and correct on the Closing Date.

(b) All representations, warranties and covenants made herein, and in certificates or other instruments delivered pursuant hereto or in connection herewith, shall be deemed to have been relied upon by the Bank notwithstanding any investigation heretofore or hereafter made by the Bank or on their behalf.

(c) On the Closing Date, the Resolution, the Notes and this Loan Agreement shall be in full force and effect and shall not have been amended, modified or supplemented, except as may have been agreed to in writing by the Bank.

(d) On the Closing Date, the District will have adopted and there will be in full force and effect such resolutions as in the opinion of Bond Counsel shall be necessary in connection with the transactions contemplated by this Loan Agreement, and all necessary action of the District relating to the issuance of the Notes will have been taken, will be in full force and effect and will not have been amended, modified or supplemented, except as may have been agreed to in writing by the Bank.

(e) At or prior to the Closing Date, the Bank will have received the following documents:

(i) the approving opinion, dated the Closing Date and addressed to the Bank, of Bond Counsel in form and content satisfactory to the Bank, to the effect that the Loan Agreement and the Notes are valid and binding agreements of the District, subject to customary exceptions;

(ii) a certificate or certificates, dated the date of the Closing and signed on behalf of the District by an Authorized Representative, to the effect that (I) the representations and warranties contained in this Loan Agreement are true and correct in all material respects on and as of the date of the Closing with the same effect as if made on the Closing Date; (II) no litigation of any nature is then pending or, to his or her knowledge, threatened, seeking to restrain or enjoin the issuance and delivery of the Notes or the collection of revenues to pay the principal thereof and

interest thereon, questioning the proceedings and authority by which such pledge is made, affecting the validity of the Notes or contesting the existence or boundaries of the District or the title of the present officers to their respective offices; (III) no authority or proceedings for the issuance and delivery of the Notes has been repealed, revoked or rescinded and no petition or petitions to revoke or alter the authorization to issue and deliver the Notes has been filed with or received by the District; and (IV) the District has complied with all the agreements and covenants and satisfied all the conditions on its part to be performed or satisfied at or prior to, and to the extent possible before, the Closing Date;

(iii) a certified copy of the Resolution;

(iv) the opinion of the District's general counsel, dated the Closing Date, addressed to the Bank, to the effect that:

(A) the District is a duly organized and validly existing political subdivision of the State of California, and has all requisite power and authority thereunder: (a) to adopt the Resolution, and to enter into, execute, deliver and perform its covenants and agreements under this Loan Agreement and the Notes; (b) to make, execute and deliver the Notes; (c) to pledge the Net Revenues as contemplated by this Loan Agreement; and (d) to carry on its activities as currently conducted;

(B) the District has taken all actions required to be taken by it prior to the Closing Date material to the transactions contemplated by this Loan Agreement and the Notes, and the District has duly authorized the execution and delivery of, and the due performance of its obligations under, this Loan Agreement and the Notes;

(C) the adoption of the Resolution, the execution and delivery by the District of this Loan Agreement and the Notes and the compliance with the provisions of this Loan Agreement and the Notes, to the best of such counsel's knowledge after due inquiry, do not and will not conflict with or violate in any material respect any California constitutional, statutory or regulatory provision, or, to the best of such counsel's knowledge after due inquiry, conflict with or constitute on the part of the District a material breach of or default under any agreement or instrument to which the District is a party or by which it is bound;

(D) except as has been disclosed to the Bank, no litigation is pending with service of process completed or, to the best of such counsel's knowledge after due inquiry, threatened against the District in any court in any way affecting the titles of the officials of the District to their respective positions, or seeking to restrain or to enjoin the execution and delivery of the Loan Agreement or the Notes, or the collection of revenues, pledged or to be pledged to pay the principal of and interest on the Notes, or in any way contesting or affecting the validity or enforceability of the Loan Agreement or the Notes, or contesting the powers of the District or its authority with respect to the Loan Agreement or the Notes;

(E) to the best of such counsel's knowledge after due inquiry, no authorization, approval, consent or other order of the State or any local agency of the State, other than such authorizations, approvals and consents which have been obtained, is required for the

valid authorization, execution and delivery by the District of the Notes or this Loan Agreement; and

(F) to the best of such counsel's knowledge after due inquiry, the District is not in breach of or default under any applicable law or administrative regulation of the State or any applicable judgment or decree or any loan agreement, indenture, bond, note, resolution, agreement or other instrument to which the District is a party or is otherwise subject, which breach or default would materially adversely affect the District's ability to enter into or perform its obligations under the Notes or this Loan Agreement, and no event has occurred and is continuing which, with the passage of time or the giving of notice, or both, would constitute a default or an event of default under any such instrument; and

(v) payment of the fees and expenses of Kutak Rock LLP, counsel to the Bank, in the amount of \$\_\_\_\_\_;

(vi) evidence of liability and casualty insurance referenced in Section 5.6 hereof; and

(vii) such additional legal opinions, certificates, instruments and other documents as the Bank or its counsel may reasonably request to evidence the truth and accuracy, as of the date of this Loan Agreement and as of the Closing Date, of the representations, warranties, agreements and covenants of the District contained herein and the due performance or satisfaction by the District at or prior to the Closing Date of all agreements then to be performed and all conditions then to be satisfied by the District.

## ARTICLE IV

### SECURITY

Section 4.1. Pledge of Net Revenues. All Parity Obligations, including the Notes and related Loan Payments, shall be secured by a lien on and pledge of Net Revenues, and within such lien priority, such Parity Obligations shall be of equal rank without preference, priority or distinction of any Parity Obligations over any other Parity Obligations. The District does hereby grant such lien on and pledge of Net Revenues to secure Parity Obligations. The District hereby represents and states that it has not previously granted any lien or charge on any of the Net Revenues; provided, however, that out of Net Revenues there may be apportioned such sums for such purposes as are expressly permitted by this Article IV.

Section 4.2. Repayment of the Notes. The District hereby agrees to repay the Note 2018A from Net Revenues as provided herein in the aggregate principal amount of \$\_\_\_\_\_ together with interest (calculated at the rate of 3.35%, on the basis of a 360-day year of twelve 30-day months) on the unpaid principal balance thereof, payable in semi-annual Loan Payments in the respective amounts and on the respective Loan Payment Dates specified in Exhibit A hereto, and by this reference made a part hereof.

The District hereby agrees to repay the Note 2018B from Net Revenues as provided herein in the aggregate principal amount of \$\_\_\_\_\_ together with interest (calculated at the rate of

4.20%, on the basis of a 360-day year of twelve 30-day months) on the unpaid principal balance thereof, payable in semi-annual Loan Payments in the respective amounts and on the respective Loan Payment Dates specified in Exhibit B hereto, and by this reference made a part hereof.

So long as either Note is owned by Compass Bank, all principal and interest payments with respect to such Note shall be made by wire transfer using the following wiring instructions (unless the District shall receive subsequent wiring instructions from the Bank):

[Compass Bank — Public Finance  
201 North Highway 183 Leander, Texas 78641  
(512) 421-6901  
ABA: 113-010-547 Account: GL 90124099]

[BBI: Do not post Contact: LDFCpublicfinance.us@bbva.com  
Attention: Susan Boswell, Tracy Sheard, Nancy Allen  
RE: Borrego Water District Loan #: 32-10006890-18]

[Mailing Address:  
Compass Bank  
Nancy Allen or Susan Boswell  
PO Box 1190  
Leander, Texas 78646]

Section 4.3. Revenues; Establishment and Application of Revenue Fund. In order to carry out and effectuate the commitment and pledge contained in Section 4.1 hereof, the District agrees and covenants that all Net Revenues shall be received by the District in trust and shall be deposited when and as received by the District's Sewer Enterprise account and Water Enterprise account (referred to herein as the "Revenue Fund"), which fund the District agrees and covenants to maintain so long as any Parity Obligations remain outstanding, and all moneys in the Revenue Fund shall be so held in trust and applied and used solely as provided as follows:

(a) All Revenues in the Revenue Fund shall be set aside or used by the District in the following order of priority:

(1) Maintenance and Operation Costs. In order to carry out and effectuate the pledge and lien contained herein, the District agrees and covenants to pay:

(A) all Sewer Enterprise Maintenance and Operation Costs (including amounts reasonably required to be set aside in contingency reserves for the Sewer Enterprise, the payment of which is not then immediately required) from the Revenue Fund as they become due and payable.

(B) all Water Enterprise Maintenance and Operation Costs (including amounts reasonably required to be set aside in contingency reserves for the Water Enterprise, the payment of which is not then immediately required) from the Revenue Fund as they become due and payable.

The District shall annually prepare budgets for Sewer Enterprise Maintenance and Operation Costs and for Water Enterprise Maintenance and Operations Costs.

(b) All Net Revenues remaining in the Revenue Fund (after payment of all Maintenance and Operation Costs and after payment of debt service on each Parity Obligation Payment Date, shall transferred by the District from the Revenue Fund and allocated to the following respective accounts (each of which the District shall establish and maintain within the Revenue Fund), the following amounts in the following order of priority, the requirements of each such account (including the funding of any deficiencies in any such account resulting from insufficient Net Revenues necessary to make any earlier required deposit) at the time of deposit to be satisfied before any transfer is made to any account subsequent in priority:

(1) Interest Account. On each Parity Obligation Payment Date on which the interest on Parity Obligations is payable, the District shall deposit in the Interest Account an amount required to cause the aggregate amount on deposit in the Interest Account to equal the amount of interest becoming due and payable on such Parity Obligation Payment Date on all outstanding Parity Obligations. No deposit need be made into the Interest Account if the amount contained therein is at least equal to the interest becoming due and payable upon all outstanding Parity Obligations on such Parity Obligation Payment Date. All moneys in the Interest Account shall be used and withdrawn by the District solely for the purpose of paying interest on the Parity Obligations as it shall become due and payable (including accrued interest on any Parity Obligations purchased or redeemed prior to maturity pursuant to this Loan Agreement). In the event that the amounts on deposit in the Interest Account on any Parity Obligation Payment Date are insufficient for any reason to pay the aggregate amount of interest then coming due and payable on the outstanding Parity Obligations, the District shall apply such amounts to the payment of interest on each of the outstanding Parity Obligations on a pro rata basis.

(2) Principal Account. On each Parity Obligation Payment Date on which the principal of Parity Obligations is payable, the District shall deposit in the Principal Account an amount required to cause the aggregate amount on deposit in the Principal Account to equal the principal amount of the Parity Obligations coming due and payable on such Parity Obligation Payment Date and the amount of principal becoming due and payable on any mandatory sinking account payment due on all outstanding Parity Obligations, if any. All moneys in the Principal Account shall be used and withdrawn by the District solely for the purpose of paying the principal of the Parity Obligations at the maturity date or upon early redemption, as the case may be. In the event that the amounts on deposit in the Principal Account on any Parity Obligation Payment Date are insufficient for any reason to pay the aggregate amount of principal then coming due and payable on the outstanding Parity Obligations, the District shall apply such amounts to the payment of principal on each of the outstanding Parity Obligations on a pro rata basis.

(3) Redemption Account. The District shall establish and maintain a Redemption Account, amounts in which shall be used and withdrawn by the District solely for the purpose of paying the principal, interest and premium (if any) on the Principal Components to be redeemed pursuant to Section [3.4 or] 3.5[, as applicable].

(4) Reserve Accounts. Payments required to replenish any debt service reserve accounts established for Parity Obligations shall be made in accordance with the terms hereof and

such Parity Obligations Documents, without preference or priority, and in the event of any insufficiency of such moneys, ratably without any discrimination or preference.

(5) Subordinate Debt Repayment. Payments relating to principal and interest on or with respect to Subordinate Debt in accordance with the terms of such Subordinate Debt, without preference or priority, and in the event of any insufficiency of such moneys, ratably based on the respective principal amounts (including any accreted value) without any discrimination or preference.

(6) Subordinate Debt Reserve Accounts. To make payments required with respect to Subordinate Debt to replenish reserve accounts established therefor in accordance with the terms of such Subordinate Debt, without preference or priority, and in the event of any insufficiency of such moneys, ratably based on the respective principal amounts (including any accreted value) without any discrimination or preference.

(7) General Expenditures. For any lawful purpose of the District, including, but not limited to, any costs of capital improvements to either of the Enterprises.

Section 4.4. Special Obligation of the District; Obligations Absolute. The District's obligation to pay the Loan Payments shall be a special obligation of the District limited solely to Net Revenues as provided herein. Under no circumstances shall the District be required to advance moneys derived from any source of income other than Net Revenues and other sources specifically identified herein for the payment of the Loan Payments, nor shall any other funds or property of the District be liable for the payment of the Loan Payments. Notwithstanding the foregoing provisions of this Section, however, nothing herein is intended to prohibit the District voluntarily from making any payment hereunder from any source of available funds of the District.

The obligations of the District to pay the Loan Payments from Net Revenues, and to perform and observe the other agreements contained herein, shall be absolute and unconditional and shall not be subject to any defense or any right of setoff, counterclaim or recoupment arising out of any breach of the District, the Bank of any obligation to the District or otherwise with respect to the Enterprises, whether hereunder or otherwise, or out of indebtedness or liability at any time owing to the District by the Bank. Until such time as all of the Loan Payments shall have been fully paid or prepaid, the District (a) will not suspend or discontinue payment of any Loan Payments, (b) will perform and observe all other agreements contained in this Loan Agreement, and (c) will not terminate this Loan Agreement for any cause, including, without limiting the generality of the foregoing, the occurrence of any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, destruction of or damage to the Enterprises or any Enterprise, sale of the Enterprises or any Enterprise, the taking by eminent domain of title to or temporary use of any component of the Enterprises or any Enterprise, commercial frustration of purpose, any change in the tax or other laws of the United States of America or the State or any political subdivision of either thereof or any failure of the Bank to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with this Loan Agreement.

Section 4.5. Reduction upon Partial Prepayment. In the event the District prepays less than all of the remaining Principal Components of the Loan Payments pursuant to Sections [3.4

or] 3.5 hereof, the amount of such prepayment shall be applied by the Bank to the outstanding Principal Components in inverse order of Loan Payment Date, unless otherwise requested by District and agreed to by Bank in its reasonable discretion.

Section 4.6. Rate on Overdue Loan Payments. In the event the District should fail to make any of the Loan Payments required in Section 4.2 hereof on or before the due date therefor (after a 10 day grace period), the Loan Payment in default shall continue as an obligation of the District until the amount in default shall have been fully paid, and the District agrees to pay the same with interest thereon, to the extent permitted by law, from the date thereof at the Default Rate.

## ARTICLE V

### COVENANTS OF THE DISTRICT

Section 5.1. Operation and Maintenance of the Enterprises. The District will maintain and preserve each Enterprise in good repair and working order at all times and will operate each Enterprise in an efficient and economical manner and will pay all Sewer Enterprise Maintenance and Operation Costs and all Water Enterprise Maintenance and Operation Costs as they become due and payable.

Section 5.2. Against Sale or Other Disposition of Property. The District will not sell, lease, or otherwise dispose of either Enterprise or any part thereof essential to the proper operation of such Enterprise or to the maintenance of the Revenues. The District will not enter into any agreement or lease that impairs the operation of either Enterprise or any part thereof necessary to secure adequate Revenues for the payment of the Loan Payments or that would otherwise impair the rights of the District with respect to the Revenues or the operation of such Enterprise. Any real or personal property that has become non-operative or that is not needed for the efficient and proper operation of either Enterprise, or any material or equipment that has become worn out, may be sold at not less than the fair market value thereof. The District shall deposit the proceeds of such sale in the Revenue Fund.

Section 5.3. Rates, Fees, and Charges.

(a) The District will, at all times while any Parity Obligation remains outstanding, fix, prescribe and collect rates, fees and charges in connection with each Enterprise so as to yield Revenues at least sufficient, after making reasonable allowances for contingencies and errors in the estimates, to pay the following amounts in the order set forth below:

- (1) All Sewer Enterprise Maintenance and Operation Costs;
- (2) All Water Enterprise Maintenance and Operation Costs;
- (3) The Debt Service payments and all other payments (including payments under reimbursement agreements) with respect to all Parity Obligations as they become due and payable;



(4) All amounts, if any, required to restore the balance in any reserve accounts established for Parity Obligations in accordance with the terms of such Parity Obligations Documents, without preference or priority; and

(5) All payments required to meet any other obligations of the District that are charges, liens, encumbrances upon, or which are otherwise payable from the Revenues during such Fiscal Year.

(b) Furthermore, the District shall fix, prescribe, revise and collect rates, fees and charges for the services and facilities furnished by the Enterprises during each Fiscal Year which are sufficient to yield estimated Net Revenues which are at least equal to one hundred twenty-five percent (125%) of the aggregate amount of Debt Service on all Parity Obligations payable from Net Revenues coming due and payable during such Fiscal Year. The District may make adjustments, from time to time, in its rates, fees and charges as it deems necessary, but shall not reduce its rates, fees and charges below those in effect unless the Net Revenues resulting from such reduced rates, fees and charges shall at all times be sufficient to meet the requirements set forth in this paragraph.

(c) If the District violates the covenants set forth in subsections (a) or (b) hereof, such violation shall not, in and of itself, be a default under this Loan Agreement and shall not give rise to a declaration of an Event of Default so long as (i) Net Revenues (calculated without taking into account any amounts transferred into the Revenue Fund from the Sewer Enterprise Rate Covenant Stabilization Fund or the Water Enterprise Rate Covenant Stabilization Fund pursuant to subsection (d) below), are at least equal to one hundred five percent (105%) of Maximum Annual Debt Service coming due and payable during such Fiscal Year, and (ii) within 120 days after the date such violation is discovered, the District either (y) transfers enough moneys from such Rate Covenant Stabilization Funds sufficient to yield estimated Net Revenues which are at least equal to one hundred twenty-five percent (125%) of the aggregate amount of Debt Service on all Parity Obligations payable from Net Revenues coming due and payable during such Fiscal Year in compliance with subsection (b) hereof, or (z) hires an Independent Financial Consultant to review the revenues and expenses of the Enterprises, and abides by such consultant's recommendations to revise the schedule of rates, fees, expenses and charges, and to revise any Sewer Enterprise Maintenance and Operation Costs and any Water Enterprise Maintenance and Operations Costs insofar as practicable, and to take such other actions as are necessary so as to produce Net Revenues to cure such violation for future compliance; *provided, however*, that, if the District does not, or cannot, transfer from the Sewer Enterprise Rate Covenant Stabilization Fund and/or the Water Enterprise Rate Covenant Stabilization Fund the amount necessary to comply with subsection (b) hereof, or otherwise cure such violation within six (6) months after the date such violation is discovered, the Notes shall thereafter accrue interest at the Default Rate and an Event of Default shall be deemed to have occurred under Section 6.1(a)(2) hereof.

(d) There is hereby created separate funds to be known as the "Sewer System Rate Covenant Stabilization Fund" and the "Water System Rate Covenant Stabilization Fund," to be held and maintained by the District. Neither Rate Covenant Stabilization Fund is pledged to secure payment of the Loan Payments. Amounts in each Rate Covenant Stabilization Fund shall be applied solely for the uses and purposes set forth in this subsection (d). The District shall have the right to deposit into either Rate Covenant Stabilization Fund from time to time any amount of

funds which are legally available therefor; provided that deposits for each Fiscal Year may be made until (but not after) one hundred twenty (120) days following the end of such Fiscal Year.

For the purpose of computing the amount of Revenues for any Fiscal Year for purposes of the preceding subsection (a), or the amount of Net Revenues for any Fiscal Year for purposes of the preceding subsection (b), the District shall be permitted to transfer amounts on deposit in either or both Rate Covenant Stabilization Funds to the Revenue Fund, such transfers to be made until (but not after) one hundred twenty (120) days after the end of such Fiscal Year. In addition, the District shall be permitted to withdraw amounts on deposit in either Rate Covenant Stabilization Fund for any other lawful purpose.

Section 5.4. Collection of Rates and Charges. The District will have in effect at all times rules and regulations requiring each consumer or customer utilizing the Sewer Enterprise and/or the Water Enterprise facilities to pay the rates, fees and charges applicable to such use or benefit received. Except in connection with the receipt of federal or State funding, the District will not permit any part of the Sewer Enterprise and/or the Water Enterprise or any facility thereof to be used or taken advantage of free of charge by any corporation, firm or person, or by any public agency (including the United States of America, the State of California and any city, county, district, political subdivision, public corporation or agency of any thereof).

Section 5.5. Competitive Facilities. Except for any Enterprise facilities existing as of the date hereof, the District will not, to the extent permitted by law, acquire, maintain or operate and will not, to the extent permitted by law and within the scope of its powers, permit any other public or private agency, authority, city, special district, or political subdivision or any person whomsoever to acquire, maintain or operate within the sphere of influence of the District any enterprise competitive with the Sewer Enterprise and/or the Water Enterprise; provided, however, that the District may, with the written consent of the Bank first had and obtained, assign all or a portion of the Sewer Enterprise and/or the Water Enterprise to another entity provided such entity assumes the obligations of the District hereunder.

Section 5.6. Tax Covenants. The District hereby covenants that, notwithstanding any other provision of this Loan Agreement, it will make no use of the proceeds of Loan 2018A or of any other amounts, regardless of the source, or of any property or take any action, or refrain from taking any action, that would cause Note 2018A to be “arbitrage bonds” within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended (the “Code”).

The District will not use or permit the use of either Enterprise or any portion thereof by any person other than a governmental unit as such term is used in Section 141 of the Code, in such manner or to such extent as would result in the loss of exclusion from gross income for federal income tax purposes of the portion of the 2014 Installment Payments constituting interest under Section 103 of the Code.

The District will not make any use of the proceeds from Loan 2018A or any other funds of the District, or take or omit to take any other action, that would cause the obligation provided herein to be “federally guaranteed” within the meaning of Section 149(b) of the Code or “private activity bonds” within the meaning of Section 141 of the Code. To that end, so long as any Loan Payments on Note 2018A are unpaid, the District, with respect to such proceeds and such other

funds, will comply with all requirements of such Sections and all regulations of the United States Department of the Treasury issued thereunder and under Section 103 of the Internal Revenue Code of 1954, as amended, to the extent such requirements are, at the time, applicable and in effect.

The District is will assure the filing of an information report for Note 2018A in compliance with Section 149 (e) of the Tax Code.

The District has complied with the Code, with respect to Note 2018A, and the District shall not knowingly take or omit to take any action that, under existing law, may adversely affect the exclusion from gross income for federal income tax purposes, or the exemption from any applicable State tax of the interest on Note 2018A.

Note 2018A is eligible for designation as "qualified tax-exempt obligations" under Section 265(b)(3) of the Tax Code.

Section 5.7. Insurance.

(a) The District will procure and maintain insurance on each Enterprise with commercial insurers or through participation in a joint powers insurance authority, in such amounts, with such deductibles and against such risks (including accident to or destruction of each Enterprise) as are usually insurable in accordance with industry standards with respect to similar enterprises.

In the event of any damage to or destruction of an Enterprise caused by the perils covered by such insurance, the proceeds of such insurance shall be applied to the repair, reconstruction or replacement of the damaged or destroyed portion of such Enterprise. The District shall cause such repair, reconstruction or replacement to begin promptly after such damage or destruction shall occur and to continue and to be properly completed as expeditiously as possible, and shall pay out of the proceeds of such insurance all costs and expenses in connection with such repair, reconstruction or replacement so that the same shall be completed and such Enterprise shall be free and clear of all liens and claims. If the proceeds received by reason of any such loss shall exceed the costs of such repair, reconstruction or replacement, the excess shall be applied to prepay the Notes and any other Parity Obligations, on a pro rata basis, in the manner provided in Section 3.5 hereof and in the instruments authorizing such Parity Obligations.

Alternatively, if the proceeds of such insurance are sufficient to enable the District to retire all outstanding Parity Obligations, the District may elect not to repair, reconstruct or replace the damaged or destroyed portion of such Enterprise, and thereupon such proceeds shall be applied to the prepayment of such Parity Obligations and to the payment of all other amounts due hereunder, and as otherwise required by the documents pursuant to which other Parity Obligations were issued.

(b) The District will procure and maintain commercial general liability insurance covering claims against the District for bodily injury or death, or damage to property, occasioned by reason of the ownership or operation of each Enterprise, such insurance to afford protection in such amounts and against such risks as are usually covered in connection with similar enterprises.

(c) The District will procure and maintain workers' compensation insurance against liability for compensation under the Workers' Compensation Insurance and Safety Act of California, or any act hereafter enacted as an amendment or supplement or in lieu thereof; such insurance to cover all persons employed in connection with each Enterprise.

(d) All policies of insurance required to be maintained herein shall provide that the Bank shall be given thirty (30) days' written notice of any intended cancellation thereof or reduction of coverage provided thereby.

(e) In lieu of obtaining insurance coverage as required by this Section, such coverage may, with the prior written consent of the Bank, be maintained by the District in the form of self-insurance. The District shall certify to the Bank that (i) the District has segregated amounts in a special insurance reserve meeting the requirements of this Section; (ii) an Insurance Consultant certifies annually, on or before January 1 of each year in which self-insurance is maintained, in writing to the Bank that the District's general insurance reserves are actuarially sound and are adequate to provide the necessary coverage; and (iii) such reserves are held in a separate trust fund by an 'independent' trustee. Any statements of self-insurance shall be delivered to the Bank. The District shall pay or cause to be paid when due the premiums for all insurance policies required hereby.

Section 5.8. Eminent Domain. If all or any part of an Enterprise shall be taken by eminent domain proceedings, the resulting Net Proceeds thereof shall be applied as follows:

(a) If (1) the District delivers to the Bank a Certificate of the District showing (i) the estimated loss of annual Net Revenues, if any, suffered or to be suffered by the District by reason of such eminent domain proceedings, (ii) a general description of the additions, betterments, extensions or improvements to such Enterprise proposed to be acquired by the District from any Net Proceeds, and (iii) an estimate of the additional annual Net Revenues to be derived from such additions, betterments, extensions or improvements, and (2) on the basis of such certificate, determines that the estimated additional annual Net Revenues will sufficiently offset the estimated loss of annual Net Revenues resulting from such eminent domain proceedings so that the ability of the District to meet its obligations hereunder will not be substantially impaired (which determination shall be final and conclusive); then the District shall promptly proceed with the acquisition of such additions, betterments, extensions or improvements substantially in accordance with such Certificate of the District and such Net Proceeds shall be applied for the payment of the costs of such acquisition, and any balance of such Net Proceeds not required by the District for such purpose shall be applied to prepay the Notes and any other Parity Obligations, on a pro rata basis, in the manner provided in Section 3.5 hereof and in the instruments authorizing such other Parity Obligations.

(b) If the foregoing conditions are not met, then such Net Proceeds shall be applied to prepay the Principal Components of the Loan Payments and the principal amounts of any other Parity Obligations, on a pro rata basis, in the manner provided in Section 3.5 hereof and in the instruments authorizing such other Parity Obligations.

Section 5.9. Additional Information. The District agrees to furnish to the Bank, promptly, from time to time, such information regarding the operations, financial condition and property of the District and each Enterprise as the Bank may reasonably request.

Section 5.10. Compliance with Law and Contracts. The District will faithfully comply with, keep, observe, and perform all valid and lawful obligations or regulations now or hereafter imposed on its operation of each Enterprise by contract, or prescribed by any law of the United States of America or of the State of California, or by any officer, board, or commission having jurisdiction or control.

Section 5.11. Punctual Payment. The District will punctually pay the principal and interest to become due on the Notes, in strict conformity with the terms hereof, and will faithfully observe and perform all the agreements, conditions, covenants and terms contained herein required to be observed and performed by it, and will not rescind this Loan Agreement for any cause.

Section 5.12. Protection of Security and Rights of the Bank. The District will preserve and protect the security of the Notes and the rights of the Bank and will warrant and defend the Bank's rights against all claims and demands of all persons. From and after the Closing Date, the Notes shall be incontestable by the District.

Section 5.13. Parity Obligations.

(a) So long as either of both Notes are outstanding, the District shall not issue or incur any obligations payable from Revenues or Net Revenues senior or superior to the payment of Debt Service on the Notes. The District may at any time issue Parity Obligations payable from Net Revenues on a parity with the Notes in such principal amount as shall be determined by the District subject to the following specific conditions, which are hereby made conditions precedent to the issuance and delivery of such Parity Obligations:

(i) No Event of Default shall have occurred and be continuing;

(ii) The Net Revenues (calculated without taking into account any amounts transferred into the Revenue Fund from the Rate Covenant Stabilization Fund pursuant to Section 5.3(d) hereof), either (i) as shown in the audited financial statements of the District for the most recent Fiscal Year for which an audit is available, or (ii) as shown by the books of the District for any more recent twelve (12) month period selected by the District, as verified by an Authorized Representative of the District, plus in either case (at the option of the District) the Additional Revenues, shall be at least equal to one hundred twenty-five percent (125%) of the amount of Maximum Annual Debt Service on all outstanding Parity Obligations and the Parity Obligations to be issued as calculated on a combined basis; and

(iii) Except with respect to the Notes, and at the District's sole discretion, there may be established from the proceeds of such Parity Obligations a reserve fund for the security of such Parity Obligations, in an amount equal set forth in the applicable Parity Obligation Document.

The provisions of subsection (2) of this Section 5.13 shall not apply to any Parity Obligations if, and to the extent that (i) all of the proceeds of such Parity Obligations (other than proceeds applied to pay costs of issuing such Parity Obligations and to make the reserve fund

deposit required pursuant to subsection (3) of this Section) shall be deposited in an irrevocable escrow held in cash or invested in Federal Securities for the purpose of paying the principal of and interest and premium (if any) on such outstanding Parity Obligations, and (ii) at the time of the incurring of such Parity Obligations, the District certifies in writing that maximum annual debt service on such Parity Obligations will not exceed Maximum Annual Debt Service on the outstanding Parity Obligations being refunded, and (iii) the final maturity of such Parity Obligations is not later than the final maturity of the Parity Obligations being refunded.

(b) In order to maintain the parity relationship of debt service payments on all Parity Obligations permitted hereunder, the District covenants that all payments in the nature of principal and interest or reserve account replenishment with respect to any Parity Obligations, will be structured to occur semi-annually on the Loan Payment Dates, in each year as such payments are due with respect to the Debt Service payments, and reserve account replenishment with respect to any Parity Obligations will be structured to occur within one year, and to otherwise structure the terms of such Parity Obligations to ensure that they are in all respects payable on a parity with the Debt Service payments on the Notes and all Parity Obligations, and not prior thereto.

(c) The District may issue or incur Subordinate Debt; provided, however, that Net Revenues (calculated without taking into account any amounts transferred into the Revenue Fund from the Rate Covenant Stabilization Funds pursuant to Section 5.3(d) hereof), either (i) as shown in the audited financial statements of the District for the most recent Fiscal Year for which an audit is available, or (ii) as shown by the books of the District for any more recent twelve (12) month period selected by the District, as verified by an Authorized Representative of the District, plus in either case (at the option of the District) the Additional Revenues, shall be at least equal to one hundred ten percent (110%) of the amount of Maximum Annual Debt Service on all outstanding Parity Obligations and the maximum annual debt service on the Subordinate Debt to be issued.

Section 5.14. Against Encumbrances. The District hereby covenants and agrees that it shall not incur any obligations that are secured by a pledge and lien on the Net Revenues that is senior to the pledge and lien on the Net Revenues contained herein. The District will not make any pledge of or place any lien on the Net Revenues except as provided herein. The District may pledge Net Revenues to secure Parity Obligations issued in accordance with Section 5.13 hereof. The District may at any time, or from time to time, issue evidences of indebtedness for any lawful purpose that are payable from and secured by a pledge of and lien on Net Revenues that is subordinate in all respects to the pledge of and lien on the Net Revenues provided herein.

Section 5.15. Further Assurances. The District will adopt, make, execute and deliver any and all further resolutions, instruments, and assurances as may be reasonably necessary or proper to carry out the intention or to facilitate the performance hereof and for the better assuring and confirming unto the Bank of the rights and benefits provided to it herein.

Section 5.16. Financial Reports. Promptly upon receipt by the District and in no event later than one hundred eighty (180) days after the close of each Fiscal Year (unless otherwise agreed in writing by the Bank), the District will furnish, or cause to be furnished, to the Bank an audit report of an Independent Certified Public Accountant with respect to such Fiscal Year, of the District, including each Enterprise, for said Fiscal Year.

At the same time as the District provides the audit to the Bank, the District shall also provide to the Bank a statement as to whether Net Revenues for such Fiscal Year were equal to at least 1.25 times the Debt Service for such Fiscal Year, calculated as provided in Section 5.3 hereof. In addition, the District shall deliver to the Bank, not later than thirty (30) days after the close of each Fiscal Year (unless otherwise agreed in writing by the Bank), a copy of the District's adopted budget for the then current Fiscal Year. The District shall also deliver to the Bank a copy of any update to the District's budget adopted for a Fiscal Year with thirty (30) days of the adoption of such updated budget.

Section 5.17. Observance of Laws and Regulations. The District will well and truly keep, observe and perform or cause to be kept, observed and performed all valid and lawful obligations or regulations now or hereafter imposed on it by contract, or prescribed by any law of the United States, or of the State, or by any officer, board or commission having jurisdiction or control, as a condition of the continued enjoyment of any and every right, privilege or franchise now owned or hereafter acquired and enjoyed by the District, including the District's right to exist and carry on business as a California special district, to the end that such rights, privileges and franchises shall be maintained and preserved, and shall not become abandoned, forfeited or in any manner impaired.

Section 5.18. Budget. The District hereby covenants to take such action as may be necessary to include all Loan Payments and all other amounts due hereunder in its annual budget and to make the necessary annual appropriations for all such Loan Payments and all other amount due hereunder.

Section 5.19. Notices. The District shall provide to the Bank:

(a) Immediate notice by telephone, promptly confirmed in writing, of any event, action or failure to take any action which constitutes an Event of Default under this Loan Agreement, together with a detailed statement by an Authorized Representative of the steps being taken by the District to cure the effect of such Event of Default.

(b) Prompt written notice (i) of any action, suit or proceeding or any investigation, inquiry or similar proceeding by or before any court or other governmental authority, domestic or foreign, against the District or an Enterprise or the Enterprises or the Revenues which involve claims equal to or in excess of \$250,000 or that seeks injunctive relief, or (ii) of any loss or destruction of or damage to any portion of an Enterprise or the Enterprises in excess of \$250,000.

(c) Prompt written notice of any Material Litigation, Material Adverse Effect or any investigation, inquiry or similar proceeding by any Governmental Authority with respect to any matter that relates to or could materially impact Revenues.

(d) Promptly upon notice thereof, any termination or cancellation of any insurance policy which the District is required to maintain, or any uninsured or partially uninsured loss through liability or property damage, or through fire, theft or any other cause affecting the District property in excess of an aggregate of \$250,000.

(e) With reasonable promptness, such other information respecting the District, Enterprise, and the operations, affairs and financial condition of the District as the Bank may from time to time reasonably request.

## ARTICLE VI

### EVENTS OF DEFAULT AND REMEDIES

#### Section 6.1. Events of Default and Remedies.

(a) Events of Default. The following shall be Events of Default hereunder:

(1) Failure by the District to pay any Principal Component or Interest Component on a Note or the Notes when due and payable; after a ten (10) day grace period.

(2) Failure by the District to observe and perform any covenant, condition or agreement on its part contained herein pertaining to an Enterprise or the Enterprises, other than in clause (1) of this subsection, for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied has been given to the District by the Bank; *provided, however,* if in the reasonable opinion of the District the failure stated in the notice can be corrected, but not within such thirty (30) day period, the Bank shall not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the District within such thirty (30) day period and diligently pursued until the default is corrected.

(3) Default by the District under any Parity Obligation (or Subordinate Debt which requires or permits the immediate acceleration thereof).

(4) Institution of any proceeding under the United States Bankruptcy Code or any federal or state bankruptcy, insolvency, or similar law or any law providing for the appointment of a receiver, liquidator, trustee, or similar official of the District or of all or substantially all of its assets, by or with the consent of the District, or institution of any such proceeding without its consent that is not permanently stayed or dismissed within sixty (60) days, or agreement by the District with the District's creditors to effect a composition or extension of time to pay the District's debts, or request by the District for a reorganization or to effect a plan of reorganization, or for a readjustment of the District's debts, or a general or any assignment by the District for the benefit of the District's creditors.

(5) Any statement, representation or warranty made by the District in or pursuant to this Loan Agreement or its execution, delivery or performance proves to have been false, incorrect, misleading, or breached in any material respect on the date made, and is continuing for a period of thirty (30) days after written notice specifying such misrepresentation or breach and requesting that it be remedied has been given to the District by the Bank; *provided, however,* that the Bank and the District may agree that action by the District to cure such failure may be extended beyond such thirty-day period.

(6) This Loan Agreement or any material provision of this Loan Agreement shall at any time for any reason cease to be the legal, valid and binding obligation of the District or shall cease to be in full force and effect, or shall be declared to be unenforceable, invalid or



void, or the validity or enforceability thereof shall be contested by the District, or the District shall renounce the same or deny that it has any further liability hereunder.

(7) Dissolution, termination of existence or insolvency of the District.

(8) Any court of competent jurisdiction with jurisdiction to rule on the validity of any provision of this Loan Agreement shall find or rule that this Loan Agreement is not valid or not binding on the District.

(b) Remedies on Default. Whenever any Event of Default shall have happened and be continuing, the Bank shall have the right, at its option upon notice to the District, to declare the unpaid aggregate Principal Components of the Notes, and the interest accrued thereon, to be immediately due and payable, whereupon the same shall immediately become due and payable.

The Bank shall also have the right, at its option upon notice to the District, to (i) apply to and obtain from any court of competent jurisdiction such decree or order as may be necessary to require officials of the District to charge and collect rates for services provided by the District and the Enterprises sufficient to meet all requirements of this Loan Agreement, and (ii) take whatever action at law or in equity as may appear necessary or desirable to collect the Loan Payments then due or thereafter to become due during the Term of this Loan Agreement, or enforce performance and observance of any obligation, agreement or covenant of the District under this Loan Agreement, subject to the following paragraph.

Notwithstanding any provision of this Loan Agreement, the District's liability to pay the Loan Payments and other amounts hereunder shall be limited solely to Net Revenues as provided in Article IV hereof. In the event that Net Revenues shall be insufficient at any time to pay a Principal Component and/or Interest Loan Component in full, the District shall not be liable to pay or prepay such delinquent Loan Payment other than from Net Revenues.

Section 6.2. Application of Funds upon Acceleration. Upon the date of the declaration of acceleration as provided in Section 6.1, all Net Revenues thereafter received by the District shall be applied in the following order:

First, to the payment, without preference or priority, and in the event of any insufficiency of such Net Revenues ratably without any discrimination or preference, of the reasonable fees, costs and expenses of the Bank and any other holder of Parity Obligations, if any, in carrying out the provisions of this article, including reasonable compensation to their respective accountants and counsel;

Second, to the payment of the Operations and Maintenance Costs; and

Third, to the payment of the entire unpaid aggregate Principal Components of the Loan Payments and the unpaid principal amount of any other Parity Obligations and the accrued interest thereon, with interest on the overdue payments at the rate or rates of interest applicable to the Notes and such other obligations if paid in accordance with their respective terms.

Section 6.3. Other Remedies of the Bank. The Bank shall have the right:

(a) by mandamus or other action or proceeding or suit at law or in equity to enforce its rights against the District or any director, officer or employee thereof, and to compel the District or any such director, officer or employee to perform and carry out its or his duties under the agreements and covenants required to be performed by it or him contained herein;

(b) by suit in equity to enjoin any acts or things that are unlawful or violate the rights of the Bank; or

(c) by suit in equity upon the happening of an Event of Default to require the District and its Board, officers and employees to account as the trustee of an express trust.

Section 6.4. Non-Waiver. Nothing in this article or in any other provision hereof, or in the Notes, shall affect or impair the obligation of the District, which is absolute and unconditional, to pay the principal of and interest on the Notes to the Bank when due, as herein provided, out of the Net Revenues herein pledged for such payment, or shall affect or impair the right of the Bank, which is also absolute and unconditional, to institute suit to enforce such payment by virtue of the contract embodied in this Loan Agreement.

A waiver of any default or breach of duty or contract by the Bank shall not affect any subsequent default or breach of duty or contract or impair any rights or remedies on any such subsequent default or breach of duty or contract. No delay or omission by the Bank to exercise any right or remedy accruing upon any default or breach of duty or contract shall impair any such right or remedy or shall be construed to be a waiver of any such default or breach of duty or contract or an acquiescence therein, and every right or remedy conferred upon the Bank by law or by this article may be enforced and exercised from time to time and as often as shall be deemed expedient by the Bank. If any action, proceeding or suit to enforce any right or exercise any remedy is abandoned or determined adversely to the Bank, the District and the Bank shall be restored to their former positions, rights and remedies as if such action, proceeding or suit had not been brought or taken.

Section 6.5. Remedies Not Exclusive. No remedy herein conferred upon or reserved to the Bank is intended to be exclusive of any other remedy. Every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity.

Section 6.6. Prosecution and Defense of Suits. The District shall promptly, upon request of the Bank or its assignee, from time to time take or cause to be taken such action as may be necessary or proper to remedy or cure any defect in or cloud upon the title to either Enterprise whether now existing or hereafter arising and shall prosecute all such suits, actions and other proceedings as may be appropriate for such purpose.

## ARTICLE VII

### NOTICES

Section 7.1. Notices. All written notices under this Loan Agreement shall be given by first class mail or personal delivery to the party entitled thereto at its address set forth below, or at such address as the party may provide to the other party in writing from time to time. Notice is effective either (a) upon transmission by facsimile transmission, (b) upon actual receipt after deposit in the United States mail, postage prepaid, or (c) in any other case, upon actual receipt. The District or the Bank may, by written notice to the other parties, from time to time modify the address or number to which communications are given hereunder.

If to the District:        Borrego Water District  
                                  806 Palm Canyon Drive  
                                  Borrego Springs, CA 92004  
                                  Attention: General Manager  
                                  Fax: (760) 767-5994

If to the Bank:            BBVA Compass Bank  
                                  4180 La Jolla Village Dr. Suite 350  
                                  La Jolla, CA 92037  
                                  Attention: \_\_\_\_\_  
                                  Fax: (858) 200-7245

## ARTICLE VIII

### AMENDMENTS; DISCHARGE; GENERAL AUTHORIZATION; EFFECTIVE DATE

#### Section 8.1. Amendments Permitted.

(a) This Loan Agreement and the rights and obligations of the District and of the Bank may be modified or amended at any time by a written supplemental agreement entered into by the District and the Bank.

(b) From and after the time any supplemental agreement becomes effective pursuant to this Article, this Loan Agreement shall be deemed to be modified and amended in accordance therewith, and the respective rights, duties, and obligations under this Loan Agreement and the Bank shall thereafter be determined, exercised, and enforced hereunder subject in all respects to such modification and amendments, and all the terms and conditions of any such supplemental agreement shall be deemed to be part of the terms and conditions of this Loan Agreement for any and all purposes.

#### Section 8.2. Discharge of Loan Agreement.

(a) If the District shall pay or cause to be paid or there shall otherwise be paid to the Bank the principal of and the interest and the prepayment premium, if any, on this Loan Agreement at the times and in the manner stipulated herein, then all agreements, covenants and

other obligations of the District to the Bank hereunder shall thereupon cease, terminate and become void and be discharged and satisfied.

(b) This Loan Agreement shall be deemed to have been paid within the meaning and with the effect expressed in subsection (a) of this section if (1) in case this Loan Agreement is to be prepaid on any date prior to its final principal payment date, the District shall have mailed a notice of prepayment to the Bank, (2) there shall have been deposited with the Bank, or an escrow agent reasonably acceptable to the Bank, either money in an amount that shall be sufficient or Federal Securities that are not subject to redemption except by the holder thereof prior to maturity (including any such securities issued or held in book-entry form on the books of the Department of the Treasury of the United States of America), the interest on and principal of which when paid will provide money that, together with the money, if any, deposited with the Bank or such escrow agent at the same time, shall be sufficient to pay when due the interest to become due on this Loan Agreement on and prior to the final principal payment date or prepayment date thereof, as the case may be, and the principal of and prepayment premiums, if any, on this Loan Agreement on and prior to the final principal payment date or the prepayment date thereof, as the case may be, and (3) if this Loan Agreement is not subject to prepayment within the next succeeding sixty (60) days, the District shall have mailed a notice to the Bank that the deposit required by clause (2) above has been made with the Bank or such escrow agent and that this Loan Agreement is deemed to have been paid in accordance with this section and stating the principal payment dates or prepayment date, as the case may be, upon which money is to be available for the payment of the principal of and prepayment premiums, if any, on this Loan Agreement.

Section 8.3. General Authorization. The Authorized Representatives of the District, and each of them individually, are hereby authorized and directed, for and in the name of and on behalf of the District, to execute and deliver any and all documents, to do any and all things and take any and all actions that may be necessary or advisable, in their discretion, in order to consummate the financing and to effect the purposes of this Loan Agreement. All actions heretofore taken by officers, employees, and agents of the District that are in conformity with the purposes and intent of this Loan Agreement are hereby approved, confirmed, and ratified.

Section 8.4. Binding Effect. This Loan Agreement shall inure to the benefit of and shall be binding upon the Bank and the District and their respective successors and assigns.

Section 8.5. Severability. In the event any provision of this Loan Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 8.6. Further Assurances and Corrective Instruments. The Bank and the District agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the expressed intention of this Loan Agreement.

Section 8.7. Applicable Law. This Loan Agreement shall be governed by and construed in accordance with the laws of the State of California.

Section 8.8. Captions. The captions or headings in this Loan Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or Section of this Loan Agreement.

Section 8.9. Expenses. The fees and disbursements of bond counsel, financial advisor, placement agent to the District, the cost of preparing documentation of the Loans, CDIAC fees, fees of Bank's counsel and other miscellaneous expenses of the District incurred in connection with the Loans shall all be the obligation of the District. The Bank shall have no responsibility for any expenses associated with the procurement and consummation of the Loans, including, but not limited to, the expenses identified above as the obligation of the District.

Section 8.10. Agreement to Pay Attorneys' Fees and Expenses. The District will pay the Bank its reasonable attorney fees incurred subsequent to an Event of Default.

Section 8.11. Sovereign Immunity. The District does not enjoy any rights of immunity on the grounds of sovereign immunity in respect of its obligations under the Loan Agreement or otherwise with respect to the Notes. To the extent the District has or hereafter may acquire under any applicable law any rights to immunity from legal proceedings on the grounds of sovereignty, the District hereby waives, to the extent permitted by law, such rights to immunity for itself in respect of its obligations arising under or related to the Loan Agreement or otherwise with respect to the Notes.

Section 8.12. Judicial Reference.

(a) The Bank and the District hereby agree: (i) each proceeding or hearing based upon or arising out of, directly or indirectly, this Loan Agreement or any document related thereto, any dealings between the District and the Bank related to the subject matter of this Loan Agreement or any related transactions, and/or the relationship that is being established between the District and the Bank (hereinafter, a "Claim") shall be determined by a consensual general judicial reference (the "Reference") pursuant to the provisions of Section 638 et seq. of the California Code of Civil Procedure, as such statutes may be amended or modified from time to time; (ii) upon a written request, or upon an appropriate motion by either the Bank or the District, as applicable, any pending action relating to any Claim and every Claim shall be heard by a single Referee (as defined below) who shall then try all issues (including any and all questions of law and questions of fact relating thereto), and issue findings of fact and conclusions of law and report a statement of decision. The Referee's statement of decision will constitute the decision of the court with respect to the Claim. The Bank and the District agree that the Referee's remedies shall include the power to issue all legal and equitable relief appropriate under the circumstances before the Referee; (iii) the Bank and the District shall promptly and diligently cooperate with one another, as applicable, and the Referee, and shall perform such acts as may be necessary to obtain prompt and expeditious resolution of all Claims in accordance with the terms of this Section 8.12; (iv) either the Bank or the District, as applicable, may file the Referee's findings, conclusions and statement with the clerk or judge of any appropriate court, file a motion to confirm the Referee's report and have judgment entered thereon. If the report is deemed incomplete by such court, the Referee may be required to complete the report and resubmit it; (v) the District and the District, as applicable, will each have such rights to assert such objections as are set forth in Section 638 et seq. of the California Code of Civil Procedure; and (vi) all proceedings shall be closed to the public and

confidential, provided, however, that all records relating to the Reference shall be publically available when the order thereon becomes final.

(b) The parties to the Reference proceeding shall select a single neutral referee (the “Referee”), who shall be a retired judge or justice of the courts of the State of California, or a federal court judge, in each case, with at least ten (10) years of judicial experience in civil matters. The Referee shall be appointed in accordance with Section 638 of the California Code of Civil Procedure (or pursuant to comparable provisions of federal law if the dispute falls within the exclusive jurisdiction of the federal courts). If within ten (10) days after the request or motion for the Reference, the parties to the Reference proceeding cannot agree upon a Referee, then any party to such proceeding may request or move that the Referee be appointed by the Presiding Judge of the San Diego County Superior Court, or of the U.S. District Court for the Southern District of California. The Referee shall determine all issues relating to the applicability, interpretation, legality and enforceability of this Section 8.12.

(c) No provision of this Section 8.12 shall limit the right of either the Bank or the District, as the case may be, to (i) exercise such self-help remedies as might otherwise be available under applicable law, or (ii) obtain or oppose provisional or ancillary remedies, including without limitation injunctive relief, writs of possession, the appointment of a receiver, and/or additional or supplementary remedies from a court of competent jurisdiction before, after, or during the pendency of any Reference. The exercise of, or opposition to, any such remedy does not waive the right of the Bank or the District to the Reference pursuant to this Section 8.12(c).

(d) Promptly following the selection of the Referee, the parties to such Reference proceeding shall each advance equal portions of the estimated fees and costs of the Referee. In the statement of decision issued by the Referee, the Referee shall award costs, including reasonable attorneys’ fees, to the prevailing party, if any, and may order the Referee’s fees to be paid or shared by the parties to such Reference proceeding in such manner as the Referee deems just.

Section 8.13. Net-Net-Net Contract. This Loan Agreement is a “net-net-net contract” and the District hereby agrees that the Loan Payments are an absolute net return to the Bank, free and clear of any expenses, charges or set-offs whatsoever.

Section 8.14. Execution in Counterparts. This Loan Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

\* \* \* \* \*

[Signature page to follow]

IN WITNESS WHEREOF, the Bank has caused this Loan Agreement to be executed in its corporate name by its duly authorized officer; and the District has caused this Loan Agreement to be executed in its name by its General Manager, as of the date first above written.

BBVA COMPASS BANK d/b/a BBVA  
Compass,  
an Alabama banking corporation

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

BORREGO WATER DISTRICT

By: \_\_\_\_\_  
Geoffrey Poole / General Manager

**EXHIBIT A**

**LOAN PAYMENT SCHEDULE FOR NOTE 2018A**

Principal of and interest on Note 2018A shall be payable in installments on the Loan Payment Dates, and in the amounts, as set forth in the following schedule:

<u>Loan Payment Date</u>	<u>Principal Component</u>	<u>Interest Component</u>	<u>Total Loan Payment</u>
October 1, 2018			
April 1, 2019			
October 1, 2019			
April 1, 2020			
October 1, 2020			
April 1, 2021			
October 1, 2021			
April 1, 2022			
October 1, 2022			
April 1, 2023			
October 1, 2023			
April 1, 2024			
October 1, 2024			
April 1, 2025			
October 1, 2025			
April 1, 2026			
October 1, 2026			
April 1, 2027			
October 1, 2027			
April 1, 2028			
October 1, 2028			



**EXHIBIT B**

**LOAN PAYMENT SCHEDULE FOR NOTE 2018B**

Principal of and interest on Note 2018B shall be payable in installments on the Loan Payment Dates, and in the amounts, as set forth in the following schedule:

<u>Loan Payment Date</u>	<u>Principal Component</u>	<u>Interest Component</u>	<u>Total Loan Payment</u>
October 1, 2018			
April 1, 2019			
October 1, 2019			
April 1, 2020			
October 1, 2020			
April 1, 2021			
October 1, 2021			
April 1, 2022			
October 1, 2022			
April 1, 2023			
October 1, 2023			
April 1, 2024			
October 1, 2024			
April 1, 2025			
October 1, 2025			

## EXHIBIT C

### FORM OF INVESTOR LETTER

This letter is to provide you with certain representations and agreements in connection with the execution and delivery of the Promissory Notes (collectively, the “Notes”) issued by the Borrego Water District (the “District”) on \_\_\_\_\_, 2018, in the original principal amount of \$\_\_\_\_\_, evidencing obligations of the District under a Loan Agreement dated as of June 1, 2018, by and between BBVA Compass Bank d/b/a BBVA Compass, an Alabama banking corporation (the “Bank,” the “undersigned,” “us” or “we,” as applicable), and the District (the “Loan Agreement”). Capitalized terms not otherwise defined herein will have the meanings set forth in the Loan Agreement.

We hereby represent and warrant to you and agree with you as follows:

(i) the Bank is duly organized, validly existing and in good standing under the laws of the jurisdiction in which it was incorporated or formed and has the full legal right, power and authority to make the Loans and to enter into the Loan Agreement;

(ii) the undersigned is a duly appointed, qualified, and acting officer of the Bank and is authorized to cause the Bank to make the representations and warranties contained herein on behalf of the Bank;

(iii) the Bank has sufficient knowledge and experience in financial and business matters, including purchase and ownership of municipal and other obligations similar to the Notes, to be able to evaluate the risks and merits of the investment represented by the Notes and is able to bear the economic risks of such investment;

(iv) the Bank understands that neither the Notes nor Loan Agreement have been registered with any federal or state securities agency or commission; and further understands that the Notes and Loan Agreement (a) are not being registered or otherwise qualified for sale under the “Blue Sky” laws and regulations of any state; (b) will not be listed in any stock or other securities exchange; and (c) will not carry a rating from any rating service;

(v) the Bank acknowledges that it has either been supplied with or has been given access to information to which a reasonable investor would attach significance in making investment decisions, and the Bank has had the opportunity to ask questions and receive answers from knowledgeable individuals concerning the legal, physical and fiscal condition of the District and the District’s Enterprises, as well as the insurance, security and prepayment arrangements set forth in the Loan Agreement and the Notes, so that, as a reasonable investor, the Bank has been able to make an informed investment decision to enter into the Loan Agreement for the purchase of the Notes;

(vi) the Bank understands and acknowledges that no official statement, offering memorandum or any disclosure document has been prepared, nor is any contemplated to be prepared;

(vii) the Bank acknowledges that there is no reserve fund required for the Notes;

(viii) the Bank understands and acknowledges it is making the Loans and purchasing the Notes on a private placement basis, and it is not intended that the transaction be subject to the requirements of Rule 15c2-12 promulgated under the Securities Exchange Act of 1934, as amended (“Rule 15c2-12”), and therefore the District has not undertaken, other than as provided in the Loan Agreement, to provide to or for the benefit of holders of the Notes financial or operating data or any other information with respect to the District or the Notes on an ongoing basis;

(ix) the Bank has made its own inquiry and analysis with respect to the Notes and the security therefore, and other material factors affecting the security and payment of the Notes;

(x) the Bank is either:

(a) an “accredited investor” as such term is defined in Rule 501(a) promulgated under the Securities Act of 1933, as amended (the “Securities Act”); or

(b) a “qualified institutional buyer” as such term is defined in Rule 144A promulgated under the Securities Act;

(xi) the Bank is making the Loans and purchasing the Notes for its own account and not with present view toward resale or distribution, and we have not offered, offered to sell, offered for sale or sold any of the Notes by means of any form of general solicitation or general advertising, and we are not an underwriter of the Notes within the meaning of Section 2(11) of the Securities Act; provided, however, that the Bank reserves the right to sell, transfer or redistribute the Notes without the consent of the District in accordance with the Loan Agreement and all applicable securities laws, and agrees that any such sale, transfer or redistribution by the Bank shall be in accordance with the Loan Agreement;

(xii) the Bank recognizes that an investment in the Notes involves significant risks, there is no established market for the Notes and that none is likely to develop; and

(xiii) the Bank further acknowledges that it is responsible for consulting with its advisors concerning any obligations, including, but not limited to, any obligations pursuant to federal and state securities and income tax laws it may have with respect to subsequent assignments or assignees of the Notes if and when any such future disposition of the Notes may occur.

IN WITNESS WHEREOF, the undersigned has executed this Certificate as of the \_\_\_\_\_ day of \_\_\_\_\_, 2018.

BBVA COMPASS BANK d/b/a BBVA  
Compass,  
an Alabama banking corporation

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

**EXHIBIT D**

**FORM OF PROMISSORY NOTE 2018A**

**No. 1**

**\$ \_\_\_\_\_**

**\$ \_\_\_\_\_**

**BORREGO WATER DISTRICT**

**EVIDENCING OBLIGATIONS UNDER A LOAN AGREEMENT DESCRIBED HEREIN**

**INTEREST RATE:** 3.35 %

**CLOSING DATE:** \_\_\_\_\_, 2018

**MATURITY DATE:** **October 1, 2028**

**REGISTERED OWNER:** **BBVA COMPASS BANK d/b/a BBVA Compass, an Alabama banking corporation**

**PRINCIPAL AMOUNT:**

The Borrego Water District (the "District") for value received, hereby promises to pay to the registered owner named above, or registered assigns (the "Owner"), on the Maturity Date set forth above, unless prepaid prior thereto as hereinafter provided, the principal amount set forth above, and to pay interest on such principal amount from the Closing Date set forth above, or from the most recent Loan Payment Date (as hereinafter defined) to which interest has been paid or duly provided for. Interest on the unpaid principal balance of the Note 2018A shall be payable quarterly on each April 1 and October 1, commencing October 1, 2018 (each, a "Loan Payment Date"), at the interest rate set forth above, until the principal amount hereof is paid in full or made provision for such payment has been made, all as more particularly set forth on Exhibit A to the Loan Agreement dated as of June \_\_, 2018 (the "Loan Agreement"), between the District and Compass Bank, as lender thereunder (the "Bank"); *provided, however*, that if at the time of authentication of the Note 2018A, interest is in default on the Note 2018A, the Note 2018A shall bear interest from the Loan Payment Date to which interest has previously been paid or made available for payment; *and provided further*, that interest shall be calculated at the Default Rate for overdue principal and, to the extent permitted by law, overdue interest on the Loan 2018A.

The Note 2018A evidences the obligations of the District under the Loan Agreement, under which the Bank has made a loan (the "Loan 2018A") to the District for the purpose of refinancing certain outstanding Prior Obligations of the District as described in the Loan Agreement. The District is authorized to enter into the Loan Agreement and to issue the Note 2018A in the aggregate principal amount of \$ \_\_\_\_\_ pursuant to Resolution No. 2018-07- \_\_, adopted by the Board of Directors of District on June \_\_, 2018 (the "Resolution"), and Section 53570 et seq. of the California Government Code (the "Bond Law"). Reference is made to the Loan Agreement for the complete provisions thereof, and by acceptance hereof the registered owner of the Note 2018A assents to said terms and conditions as if fully set forth herein. The Loan Agreement is authorized

under, and the Note 2018A is issued under, and both are to be construed in accordance with, the Bond Law and other laws of the State of California.

Pursuant to the Loan Agreement, the principal of and interest on this Note 2018A and Note 2018B (as defined in the Loan Agreement) are payable from Net Revenues (as defined in the Loan Agreement), and funds held under the Loan Agreement to the extent provided in the Loan Agreement. The District has agreed in the Loan Agreement to collect Net Revenues sufficient to pay the payments on Loan 2018A and Note 2018A and Loan 2018B (as defined in the Loan Agreement) and Note 2018B when due to the extent provided in the Loan Agreement.

The Note 2018A is subject to optional prepayment in accordance with the terms of the Loan Agreement. The Note 2018A is also subject to extraordinary prepayment in accordance with the terms of the Loan Agreement.

This Note 2018A shall be registered in the name of the Owner hereof, as to both principal and interest. Each registration and transfer of registration of this Note 2018A shall be entered by the District in books kept by it for this purpose and authenticated by its manual signature upon the certificate of authentication endorsed hereon.

The Loan Agreement and the rights and obligations of the District thereunder may be modified or amended as set forth therein. The principal of the Note 2018A is subject to acceleration upon a default as prescribed in the Loan Agreement.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED by the District that all acts, conditions and things required by law to exist, happen and be performed precedent to and in the issuance of this Note 2018A have existed, happened and been performed in due time, form and manner as required by law, and that the amount of this Note 2018A, together with all other indebtedness of the District, does not exceed any debt limit prescribed by the laws or Constitution of the State of California.

IN WITNESS WHEREOF, the District has caused this Note 2018A to be dated the Closing Date shown first above, to be signed by the manual signature of its President, and attested to by the manual signature of its General Manager, and has caused this Note 2018A to be dated as of the dated date set forth above.

BORREGO WATER DISTRICT

By: \_\_\_\_\_  
Beth A. Hart, President

ATTEST:

By:  
Geoffrey Poole, General Manager

ASSIGNMENT

For value received, the undersigned does hereby sell, assign and transfer unto \_\_\_\_\_ the within Note and does hereby irrevocably constitute and appoint \_\_\_\_\_ attorney to transfer such Note on the register of the District, with full power of substitution in the premises.

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

Signature: \_\_\_\_\_

Note: The signature(s) to this Assignment must correspond with the name(s) as written on the face of the within Note in every particular, without alteration or enlargement or any change whatsoever.

**EXHIBIT E**

**FORM OF PROMISSORY NOTE 2018B**

No. 1

\$ \_\_\_\_\_

\$ \_\_\_\_\_

**BORREGO WATER DISTRICT**

**EVIDENCING OBLIGATIONS UNDER A LOAN AGREEMENT DESCRIBED HEREIN**

**INTEREST RATE:** 4.20 %

**CLOSING DATE:** \_\_\_\_\_, 2018

**MATURITY DATE:** **October 1, 2025**

**REGISTERED OWNER:** **BBVA COMPASS BANK d/b/a BBVA Compass, an  
Alabama banking corporation**

**PRINCIPAL AMOUNT:**

The Borrego Water District (the "District") for value received, hereby promises to pay to the registered owner named above, or registered assigns (the "Owner"), on the Maturity Date set forth above, unless prepaid prior thereto as hereinafter provided, the principal amount set forth above, and to pay interest on such principal amount from the Closing Date set forth above, or from the most recent Loan Payment Date (as hereinafter defined) to which interest has been paid or duly provided for. Interest on the unpaid principal balance of this Note 2018B shall be payable quarterly on each April 1 and October 1, commencing October 1, 2018 (each, a "Loan Payment Date"), at the interest rate set forth above, until the principal amount hereof is paid in full or made provision for such payment has been made, all as more particularly set forth on Exhibit B to the Loan Agreement dated as of June \_\_, 2018 (the "Loan Agreement"), between the District and Compass Bank, as lender thereunder (the "Bank"); *provided, however*, that if at the time of authentication of this Note 2018B, interest is in default on this Note 2018B, this Note 2018B shall bear interest from the Loan Payment Date to which interest has previously been paid or made available for payment; *and provided further*, that interest shall be calculated at the Default Rate for overdue principal and, to the extent permitted by law, overdue interest on Loan 2018B.

This Note 2018B evidences the obligations of the District under the Loan Agreement, under which the Bank has made a loan (the "Loan 2018B") to the District for the purpose of refinancing certain outstanding Prior Obligations of the District as described in the Loan Agreement. The District is authorized to enter into the Loan Agreement and to issue this Note 2018B in the aggregate principal amount of \$\_\_\_\_\_ pursuant to Resolution No. 2018-07-\_\_, adopted by the Board of Directors of District on June \_\_, 2018 (the "Resolution"), and Section 53570 et seq. of the California Government Code (the "Bond Law"). Reference is made to the



Loan Agreement for the complete provisions thereof, and by acceptance hereof the registered owner of this Note 2018B assents to said terms and conditions as if fully set forth herein. The Loan Agreement is authorized under, and this Note 2018B is issued under, and both are to be construed in accordance with, the Bond Law and other laws of the State of California.

Pursuant to the Loan Agreement, the principal of and interest on this Note 2018B and Note 2018A (as defined in the Loan Agreement) are payable from Net Revenues (as defined in the Loan Agreement), and funds held under the Loan Agreement to the extent provided in the Loan Agreement. The District has agreed in the Loan Agreement to collect Net Revenues sufficient to pay the payments on Loan 2018B and Note 2018B (as defined in the Loan Agreement) and Loan 2018A and Note 2018A when due to the extent provided in the Loan Agreement.

The Note 2018B is subject to optional prepayment in accordance with the terms of the Loan Agreement. The Note 2018B is also subject to extraordinary prepayment in accordance with the terms of the Loan Agreement.

This Note 2018B shall be registered in the name of the Owner hereof, as to both principal and interest. Each registration and transfer of registration of this Note 2018B shall be entered by the District in books kept by it for this purpose and authenticated by its manual signature upon the certificate of authentication endorsed hereon.

The Loan Agreement and the rights and obligations of the District thereunder may be modified or amended as set forth therein. The principal of this Note 2018B is subject to acceleration upon a default as prescribed in the Loan Agreement.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED by the District that all acts, conditions and things required by law to exist, happen and be performed precedent to and in the issuance of this Note 2018B have existed, happened and been performed in due time, form and manner as required by law, and that the amount of this Note 2018B, together with all other indebtedness of the District, does not exceed any debt limit prescribed by the laws or Constitution of the State of California.

IN WITNESS WHEREOF, the District has caused this Note 2018B to be dated the Closing Date shown first above, to be signed by the manual signature of its President, and attested to by the manual signature of its General Manager, and has caused this Note 2018B to be dated as of the dated date set forth above.

BORREGO WATER DISTRICT

By: \_\_\_\_\_  
Beth A. Hart, President

ATTEST:

By:  
Geoffrey Poole, General Manager

ASSIGNMENT

For value received, the undersigned does hereby sell, assign and transfer unto \_\_\_\_\_ the within Note and does hereby irrevocably constitute and appoint \_\_\_\_\_ attorney to transfer such Note on the register of the District, with full power of substitution in the premises.

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

Signature: \_\_\_\_\_

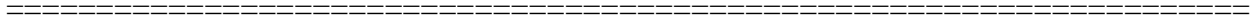
Note: The signature(s) to this Assignment must correspond with the name(s) as written on the face of the within Note in every particular, without alteration or enlargement or any change whatsoever.

**EXHIBIT F**

**MATERIALS PROVIDED BY DISTRICT TO BANK**

1. Request for Proposal Borrego Water District 2018 Capital Improvement Project dated April 30, 2018 containing the following information:
  - a. Total District Revenue Pledge
  - b. Ten Largest Retail Water Customers FY 2017
  - c. Sewer and Water Connections
  - d. Water and Sewer Monthly Capacity Fees
  - e. Summary of Water Production and Water Consumption in Acre Feet
  - f. Current Water and Sewer Rates
  - g. Comparative Water Rates
  - h. Comparative Sewer Rates
- 2017 2. Borrego Water District Annual Financial Report for the Fiscal Year Ended June 30,
3. Borrego Water District Fiscal Year 2017-2018 Annual Budget
- 2016 4. Borrego Water District Annual Financial Report for the Fiscal Year Ended June 30,
- 2015 5. Borrego Water District Annual Financial Report for the Fiscal Year Ended June 30,

**EXHIBIT G**  
**ESCROW AGREEMENT**



**ESCROW DEPOSIT AND TRUST AGREEMENT**

**by and among the**

**BORREGO WATER DISTRICT,**

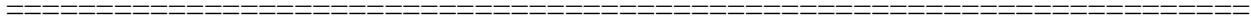
**BORREGO WATER DISTRICT PUBLIC FACILITIES CORPORATION**

**and**

**U.S. BANK NATIONAL ASSOCIATION,**

**as Escrow Bank**

**Dated July \_\_, 2018**



## ESCROW DEPOSIT AND TRUST AGREEMENT

This ESCROW DEPOSIT AND TRUST AGREEMENT is made and entered into on July \_\_, 2018, by and among the BORREGO MUNICIPAL WATER DISTRICT (the “District”), a municipal water district duly organized and existing under and by virtue of the laws of the State of California, the BORREGO WATER DISTRICT PUBLIC FACILITIES CORPORATION (the “Corporation”), a nonprofit corporation duly organized and existing under and by virtue of the laws of the State of California, and U.S. BANK NATIONAL ASSOCIATION, as Escrow Bank (the “Escrow Bank”);

### WITNESSETH:

WHEREAS, the District has incurred certain debt obligations referred to as the “Borrego Water District Refunding Installment Purchase Payments for Improvement District No. 4 (Water Enterprise Improvements) Series 2008 (Bank Qualified)” (the “2008 Prior Obligations”) pursuant to installment purchase payments (the “Installment Purchase Payments”) made under an Installment Purchase Agreement, dated as of August 1, 2008 (the “Installment Purchase Agreement”), by and between the District and the Corporation; and

WHEREAS, there is \$2,180,000 aggregate principal amount of the 2008 Prior Obligations outstanding on the date hereof; and

WHEREAS, the District has determined that it is in the best interests of the District to prepay and defease all of the outstanding 2008 Prior Obligations and to call the 2008 Prior Obligations for prepayment on October 1, 2018, all in accordance with the provisions of the Installment Purchase Agreement; and

WHEREAS, pursuant to Section 312 of the Prior Installment Purchase Agreement, in the event the District deposits with an escrow agent non-callable Federal Securities (as defined in the Installment Purchase Agreement), or non-callable Federal Securities and cash in an amount, together with the interest to accrue thereon fully sufficient to pay and discharge all 2008 Prior Obligations to be defeased (including all principal, premium, if any, and interest) at or before their respective maturity dates, then all obligations of the Corporation and the District with respect to the 2008 Prior Obligations shall cease and terminate; and

WHEREAS, the District proposes to make a deposit of moneys hereunder and to appoint the Escrow Bank as its agent for the purpose of applying said deposit to the payment of principal of and interest on the 2008 Prior Obligations in accordance with the instructions provided by this Escrow Deposit and Trust Agreement and in accordance with the Installment Purchase Agreement, and the Escrow Bank will accept said appointment; and

WHEREAS, to obtain moneys to make such deposit, the District proposes to cause to be executed and delivered a Promissory Note in the original principal amount \$\_\_\_\_\_ (“2018A Note”) pursuant to a Loan Agreement, dated as of \_\_\_\_\_ 1, 2018 (the “Loan Agreement”), by and between the District and Compass Bank d/b/a BBVA Compass; and

WHEREAS, the District wishes to make such a deposit with the Escrow Bank and to enter into this Escrow Deposit and Trust Agreement for the purpose of providing the terms and conditions for the deposit and application of amounts so deposited; and

WHEREAS, the Escrow Bank has full powers to act with respect to the irrevocable escrow and trust created herein and to perform the duties and obligations to be undertaken pursuant to this Escrow Deposit and Trust Agreement.

NOW, THEREFORE, in consideration of the above premises and of the mutual promises and covenants herein contained and for other valuable consideration, the parties hereto do hereby agree as follows:

Section 1. Appointment of Escrow Bank. The District and the Corporation hereby appoints the Escrow Bank as escrow bank for all purposes of this Escrow Deposit and Trust Agreement and in accordance with the terms and provisions of this Escrow Deposit and Trust Agreement, and the Escrow Bank hereby accepts such appointment.

Section 2. Establishment of Escrow Fund. There is hereby created by the District with, and to be held by, the Escrow Bank, as security for the payment of the 2008 Prior Obligations, an irrevocable escrow to be maintained in trust by the Escrow Bank on behalf of the District and for the benefit of Purchaser (as defined in the Installment Purchase Agreement), said escrow to be designated the "Escrow Fund." All moneys and Federal Securities deposited in the Escrow Fund shall be held as a special fund for the payment of the 2008 Prior Obligations in accordance with the provisions of the Installment Purchase Agreement. If at any time the Escrow Bank shall receive actual knowledge that the moneys in the Escrow Fund will not be sufficient to make any payment required by Section 4 hereof, the Escrow Bank shall notify the District of such fact and the District shall immediately cure such deficiency. The Escrow Bank may conclusively rely upon the verification report by Grant Thornton, dated \_\_\_\_\_, 2018 as to the sufficiency of the funds to make the payments required for a full prepayment of the outstanding 2008 Prior Obligations.

Section 3. Deposit into Escrow Fund; Investment of Amounts. Concurrently with delivery of the 2018A Note, the District shall transfer or cause to be to be transferred to the Escrow Bank for deposit into the Escrow Fund the amount of \$\_\_\_\_\_ in immediately available funds from the proceeds of the 2018A Note.

The Escrow Bank shall invest \$\_\_\_\_\_ of the moneys deposited into the Escrow Fund pursuant to the preceding paragraph in the Federal Securities set forth in Exhibit A attached hereto and by this reference incorporated herein (the "Escrowed Federal Securities"). The remainder in the Escrow Fund (\$\_\_\_\_\_) shall be held in cash uninvested (the "Cash"). The Escrowed Federal Securities shall be deposited with and held by the Escrow Bank in the Escrow Fund solely to make payments due on the 2008 Prior Obligations as set forth herein.

No substitution or reinvestment of the Escrowed Federal Securities shall be permitted without the prior written consent of the Insurer and any agency then rating the 2008 Prior Obligations. Escrow Bank shall not be liable or responsible for any loss resulting from any reinvestment made pursuant to this Escrow Deposit and Trust Agreement and in full compliance with the provisions hereof. Upon the written request of the District and subject to the conditions and limitations herein set forth and applicable governmental rules and regulations, the Escrow Bank shall sell, redeem or otherwise dispose of the Escrowed Federal Securities, provided that there are substituted therefor from the proceeds of the Escrowed Federal Securities other Federal Securities, but only after the District has obtained and delivered to the Escrow Bank: (i) an unqualified opinion of Best Best & Krieger LLP, to the effect that the substitution of securities is permitted under the Installment Purchase Agreement and that such substitution will not adversely



affect the exclusion from gross income for federal income tax purposes of the interest portion of the 2008 Prior Obligations or interest with respect to the 2008 Prior Obligations; and (ii) a report by a firm of independent certified public accountants to the effect that the substitution described in said report will not adversely affect the sufficiency of the amounts of securities, investments and money in the Escrow Fund to pay the principal of and interest on the 2008 Prior Obligations maturing on the redemption date and to pay the redemption price of the 2008 Prior Obligations maturing after the redemption date on the redemption date. The Escrow Bank shall not be liable or responsible for any loss resulting from any reinvestment or substitution made pursuant to this Escrow Deposit and Trust Agreement and in full compliance with the provisions hereof

Section 4. Instructions as to Application of Deposit to the Escrow Fund. The District hereby irrevocably directs and instructs the Escrow Bank to cause to be applied the interest on and maturing principal amount of the Escrowed Federal Securities and the Cash on deposit in the Escrow Fund to prepay the 2008 Prior Obligations in full on October 1, 2018 at a prepayment price equal to 101% of the principal amount thereof, together with interest thereon, all as more particularly set forth in Exhibit B attached hereto and hereby made a part hereof. For such purpose of call and prepayment prior to maturity of the 2008 Prior Obligations, the District will give or cause to be given notice of prepayment of the 2008 Prior Obligations, such notice of prepayment to be given timely for prepayment of the 2008 Prior Obligations in accordance with the applicable provisions of the Installment Purchase Agreement.

Section 5. Application of Certain Terms of Installment Purchase Agreement. All of the terms of the Installment Purchase Agreement relating to the making of payments of principal and interest on the 2008 Prior Obligations are incorporated in this Escrow Deposit and Trust Agreement as if set forth in full herein.

Section 6. Compensation to Escrow Bank. The District shall pay the Escrow Bank full compensation for its duties under this Escrow Deposit and Trust Agreement, including out-of-pocket costs such as publication costs, prepayment expenses, legal fees and other costs and expenses relating hereto and, in addition, fees, costs and expenses relating to the purchase of any Federal Securities after the date hereof, pursuant to a separate agreement between the District and the Escrow Bank. Under no circumstances shall amounts deposited in the Escrow Fund be deemed to be available for said purposes.

Section 7. Liabilities and Obligations of Escrow Bank. The Escrow Bank shall have no obligation to make any payment or disbursement of any type or incur any financial liability in the performance of its duties under this Escrow Deposit and Trust Agreement unless the District shall have deposited sufficient funds with the Escrow Bank to satisfy such obligation. The Escrow Bank may rely and shall be protected in acting upon the written instructions of the District or its agents relating to any matter or action as Escrow Bank under this Escrow Deposit and Trust Agreement.

The Escrow Bank undertakes such duties as specifically set forth herein and no implied duties or obligations shall be read into this Escrow Deposit and Trust Agreement against the Escrow Bank.

The District hereby assumes liability for, and hereby agrees (whether or not any of the transactions contemplated hereby are consummated) to indemnify, protect, save and hold harmless the Escrow Bank and its respective successors, assigns, agents and servants from and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs,

expenses and disbursements (including legal fees and disbursements) of whatsoever kind and nature which may be imposed on, incurred by, or asserted against, at any time, the Escrow Bank (whether or not also indemnified against by any other person under any other agreement or instrument) and in any way relating to or arising out of the execution and delivery of this Escrow Deposit and Trust Agreement, the establishment of the Escrow Fund, the retention of the moneys therein and any payment, transfer or other application of moneys or securities by the Escrow Bank in accordance with the provisions of this Escrow Deposit and Trust Agreement, or as may arise by reason of any act, omission or error of the Escrow Bank made in good faith in the conduct of its duties; *provided, however*, that the District shall not be required to indemnify the Escrow Bank against its own negligence or misconduct. The indemnities contained in this Section 7 shall survive the termination of this Escrow Deposit and Trust Agreement and the resignation or removal of the Escrow Bank.

The Escrow Bank shall have the right to accept and act upon instructions, including funds transfer instructions (“Instructions”) given pursuant to this Agreement and delivered using Electronic Means (“Electronic Means” shall mean the following communications methods: e-mail, facsimile transmission, secure electronic transmission containing applicable authorization codes, passwords and/or authentication keys issued by the Escrow Bank, or another method or system specified by the Escrow Bank as available for use in connection with its services hereunder); provided, however, that the District shall provide to the Escrow Bank an incumbency certificate listing officers with the authority to provide such Instructions (“Authorized Officers”) and containing specimen signatures of such Authorized Officers, which incumbency certificate shall be amended by the District whenever a person is to be added or deleted from the listing. If the District elects to give the Escrow Bank Instructions using Electronic Means and the Escrow Bank in its discretion elects to act upon such Instructions, the Escrow Bank’s understanding of such Instructions shall be deemed controlling. The District understands and agrees that the Escrow Bank cannot determine the identity of the actual sender of such Instructions and that the Escrow Bank shall conclusively presume that directions that purport to have been sent by an Authorized Officer listed on the incumbency certificate provided to the Escrow Bank have been sent by such Authorized Officer. The District shall be responsible for ensuring that only Authorized Officers transmit such Instructions to the Escrow Bank and that the District and all Authorized Officers are solely responsible to safeguard the use and confidentiality of applicable user and authorization codes, passwords and/or authentication keys upon receipt by the District. The Escrow Bank shall not be liable for any losses, costs or expenses arising directly or indirectly from the Escrow Bank’s reliance upon and compliance with such Instructions notwithstanding such directions conflict or are inconsistent with a subsequent written instruction. The District agrees: (i) to assume all risks arising out of the use of Electronic Means to submit Instructions to the Escrow Bank, including without limitation the risk of the Escrow Bank acting on unauthorized Instructions, and the risk of interception and misuse by third parties; (ii) that it is fully informed of the protections and risks associated with the various methods of transmitting Instructions to the Escrow Bank and that there may be more secure methods of transmitting Instructions than the method(s) selected by the District; (iii) that the security procedures (if any) to be followed in connection with its transmission of Instructions provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances; and (iv) to notify the Escrow Bank immediately upon learning of any compromise or unauthorized use of the security procedures.

The Escrow Bank shall not have any liability hereunder except to the extent of its own negligence or willful misconduct. In no event shall the Escrow Bank be liable for any special indirect or consequential damages.

The Escrow Bank may consult with counsel of its own choice and the opinion of such counsel shall be full and complete authorization to take or suffer in good faith any action hereunder in accordance with such opinion of counsel.

The Escrow Bank shall not be responsible for any of the recitals or representations contained herein.

The District acknowledges that to the extent regulations of the Comptroller of the Currency or other applicable regulatory entity grant the District the right to receive brokerage confirmations of security transactions as they occur, the District specifically waives receipt of such confirmations to the extent permitted by law. The Escrow Bank will furnish the District periodic cash transaction statements which include detail for all investment transactions made by the Escrow Bank hereunder.

If the Escrow Bank learns that the Department of the Treasury or the Bureau of Public Debt will not, for any reason, accept a subscription of the Escrowed Federal Securities that is to be submitted pursuant to this Escrow Agreement, the Escrow Bank shall promptly request alternative written investment instructions from the District with respect to escrowed funds which were to be invested in securities. The Escrow Bank shall follow such instructions and, upon the maturity of any such alternative investment, the Escrow Bank shall hold funds uninvested and without liability for interest until receipt of further written instructions from the District. In the absence of investment instructions from the District, the Escrow Bank shall not be responsible for the investment of such funds or interest thereon. The Escrow Bank may conclusively rely upon the District's selection of an alternative investment as a determination of the alternative investment's legality and suitability and shall not be liable for any losses related to the alternative investments or for compliance with any yield restriction applicable thereto.

No provision of this Escrow Deposit and Trust Agreement shall require the Escrow Bank to expend or risk its own funds or otherwise incur any financial liability in the performance or exercise of any of its duties hereunder, or in the exercise of its rights or powers.

The Escrow Bank may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents, attorneys, custodians or nominees appointed with due care, and shall not be responsible for any willful misconduct or negligence on the part of any agent, attorney, custodian or nominee so appointed.

The Escrow Bank shall not be liable for the accuracy of any calculations provided as to the sufficiency of the moneys or Escrowed Federal Securities deposited with it to pay the principal, interest, or premiums, if any, on the 2008 Prior Obligations.

The Escrow Bank may conclusively rely, as to the truth and accuracy of the statements and correctness of the opinions provided to it in connection with this Escrow Deposit and Trust Agreement, and shall be protected in acting, or refraining from acting, upon any written notice, instruction, request, certificate, document or opinion furnished to the Escrow Bank in accordance with this Escrow Deposit and Trust Agreement and reasonably believed by the Escrow Bank to have been signed or presented by the proper party, and it need not investigate any facts or matter stated in such notice, instruction, request, certificate or opinion.

Section 8. Amendment. This Escrow Deposit and Trust Agreement may be modified or amended at any time by a supplemental agreement which shall become effective when the

written consents of the Purchaser shall have been filed with the Escrow Bank. This Escrow Deposit and Trust Agreement may be modified or amended at any time by a supplemental agreement, without the consent of the Purchaser, but only (1) to add to the covenants and agreements of any party, other covenants to be observed, or to surrender any right or power herein or therein reserved to the District, (2) to cure, correct or supplement any ambiguous or defective provision contained herein, (3) in regard to questions arising hereunder or thereunder, as the parties hereto or thereto may deem necessary or desirable and which, in the opinion of counsel, shall not adversely affect the interests of the owners of the 2008 Prior Obligations and the Insurer (as such term is defined in the Installment Purchase Agreement) or the 2018A Note and that such amendment will not cause interest with respect to the 2008 Prior Obligations or the 2018A Note to become subject to federal income taxation.

Section 9. Termination; Unclaimed Money. This Escrow Deposit and Trust Agreement shall terminate when the 2008 Prior Obligations have been paid; *provided, however*, that (i) money held by the Escrow Bank pursuant to this Escrow Agreement for the payment and discharge of any of the 2008 Prior Obligations (which shall not be payable as to interest from and after the date set for prepayment) which remain unclaimed for one (1) year after such payments were due, shall be repaid by the Escrow Bank to the District free from the trust created by the Installment Purchase Agreement and this Escrow Deposit and Trust Agreement, and the Escrow Bank shall thereupon be released and discharged with respect thereto and hereto and all liability of the Escrow Bank with respect to such money shall thereupon cease and (ii) excess moneys held by the Escrow Bank not needed for the payment and discharge of the 2008 Prior Obligations shall be transferred to the District to pay principal of and interest on the 2018A Note.

Section 10. Severability. If any section, paragraph, sentence, clause or provision of this Escrow Deposit and Trust Agreement shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, sentence, clause or provision shall not affect any of the remaining provisions of this Escrow Deposit and Trust Agreement.

Section 11. Notice of Escrow Bank. Any notice to or demand upon the Escrow Bank may be served and presented, and such demand may be made, at the principal corporate trust office of the Escrow Bank as specified by the Escrow Bank as Prior Trustee in accordance with the provisions of the Installment Purchase Agreement or by physical delivery with confirmation of receipt or by confirmed telecopy. Any notice to or demand upon the District shall be deemed to have been sufficiently given or served for all purposes by being mailed by registered or certified mail, and deposited, postage prepaid, in a post office letter box, addressed to such party as provided in the Installment Purchase Agreement (or such other address as may have been filed in writing by the District with the Escrow Bank).

Section 12. Merger or Consolidation of Escrow Bank. Any company into which the Escrow Bank may be merged or converted or with which may be consolidated or any company resulting from any merger, conversion or consolidation to which it shall be a party or any company to which the Escrow Bank may sell or transfer all or substantially all of its corporate trust business, provided such company shall be eligible to act as Trustee under the Indenture and the Installment Purchase Agreement, shall be the successor hereunder to the Escrow Bank without the execution or filing of any paper or any further act.

Section 13. Execution in Several Counterparts. This Escrow Deposit and Trust Agreement may be executed in any number of counterparts and each of such counterparts shall

for all purposes be deemed to be an original; and all such counterparts shall constitute but one and the same instrument.

Section 14. Governing Law. This Escrow Deposit and Trust Agreement shall be construed in accordance with and governed by the constitution and the laws of the State of California (the “State”) applicable to contracts made and performed in the State.

IN WITNESS WHEREOF, the District, the Corporation and the Escrow Bank have each caused this Escrow Deposit and Trust Agreement to be executed by their duly authorized officers all as of the date first above written.

BORREGO WATER DISTRICT

By: \_\_\_\_\_  
President of the Board of Directors

BORREGO WATER DISTRICT PUBLIC  
FACILITIES CORPORATION

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

U.S. BANK NATIONAL ASSOCIATION, as  
Escrow Bank

By: \_\_\_\_\_  
Authorized Signatory

EXHIBIT A

IDENTIFICATION OF AND PAYMENT SCHEDULE FOR  
ESCROWED FEDERAL SECURITIES RELATING  
TO THE 2008 PRIOR OBLIGATIONS

<u>Security</u>	<u>Maturity Date</u>	<u>Par Amount</u> \$	<u>Rate</u> %
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EXHIBIT B

PAYMENT SCHEDULE OF 2008 PRIOR OBLIGATIONS

<u>Date</u>	<u>Principal</u>	<u>Interest</u>	<u>Principal Redeemed</u>
10/01/2018	\$160,000.00	\$49,050.00	\$2,020,000.00





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BORREGO WATER DISTRICT  
BOARD OF DIRECTORS MEETING – JUNE 19, 2018  
AGENDA BILL 2.B

June 12, 2018

TO: Board of Directors, Borrego Water District

FROM: Geoff Poole, GM

SUBJECT: Resolution No. 2018-06-02 Authorizing Execution and Delivery by the District of an Installment Sale Agreement and an Assignment Agreement and Approving Certain Other Actions with Respect Thereto – W. Diven Esq. – BB&K

**RECOMMENDED ACTION:**

Approve Resolution No. 2018-06-03

**ITEM EXPLANATION:**

This item is another action needed for the BWD Bond Financing, see the Memo above from Bond Counsel Diven for a description to proposed resolution.

**FISCAL IMPACT**

BWD will receive approximately \$5.5 million for upcoming, planned CIP expenditures

**ATTACHMENTS**

1. Resolution No 2018-06-03

## **RESOLUTION NO. 2018-06-03**

**RESOLUTION OF THE BOARD OF DIRECTORS OF BORREGO WATER DISTRICT  
AUTHORIZING EXECUTION AND DELIVERY BY THE DISTRICT OF AN INSTALLMENT  
PURCHASE AGREEMENT AND AN ASSIGNMENT AGREEMENT WITH RESPECT TO THE  
FINANCING OF THE ACQUISITION, CONSTRUCTION AND INSTALLATION OF CERTAIN  
IMPROVEMENTS TO THE DISTRICT'S WATER ENTERPRISE AND SEWER ENTERPRISE  
AND APPROVING CERTAIN OTHER ACTIONS IN CONNECTION THERETO**

**WHEREAS**, the Board of Directors (the "Board of Directors") of Borrego Water District (the "District"), has determined that it is in the best interest of the District and the property owners and residents served by the District's water enterprise (the "Water Enterprise") and sewer enterprise (the "Sewer Enterprise" and, together with the Water Enterprise, the "Enterprises") that the District finance certain improvements to the Enterprises (the "Project"); and

**WHEREAS**, in order to accomplish the financing of the construction of the Project, it is necessary that the District enter into an Installment Purchase Agreement (2018 Capital Improvement Project) with the Borrego Water District Public Facilities Corporation (the "Corporation") hereinafter more particularly described, and that certain other action be taken and authorized; and

**WHEREAS**, the aforementioned Installment Purchase Agreement provides that the District's obligation to make the 2018 Installment Payments (as defined in the Installment Purchase Agreement) for the purchase from the Corporation of the Project shall be secured by a pledge of and a charge and lien upon Net Revenues (as defined in the Installment Purchase Agreement) of the District, and that the District covenants to establish, maintain and collect Revenues (as defined in the Installment Purchase Agreement) from each of the Enterprises in each fiscal year in amounts sufficient to pay the 2018 Installment Payments; and

**WHEREAS**, in order to accomplish the financing of the acquisition, construction, installation and equipping of the Project, the District, with the assistance of Fieldman, Rolapp & Associates, Inc. the municipal advisor to the District (the "Municipal Advisor") and Brandis-Tallman LLC, the placement agent to the District (the "Placement Agent"), solicited proposals for the direct sale of the right to receive the 2018 Installment Payments ("Installment Payment Rights") which rights would be assigned by the Corporation to the responsible bidder submitting that proposal for the purchase of the Installment Payment Rights offering the most advantageous proposal for the District in consideration of all terms of such proposal; and

**WHEREAS**, District staff, the Municipal Advisor and the Placement Agent have determined that Pacific Western Bank ("Pacific Western"), submitted the proposal with the most advantageous proposal in consideration of all of the terms of the proposal and has recommended that the purchase of the Installment Payment Rights be awarded to Pacific Western Bank; and

**WHEREAS**, as the result of the passage of SB 450 that became effective on January 1, 2018, Section 5852.1 of the Government Code of the State of California (“Section 5852.1”) provides that the Board of Directors obtain from an underwriter, financial advisor or private lender and disclose, in a meeting open to the public, prior to authorization of the Installment Purchase Agreement, good faith estimates of: (a) the true interest cost of the Installment Payment Rights, (b) the finance charge of the Installment Payment Rights, meaning the sum of all fees and charges paid to third parties, (c) the amount of proceeds of the Installment Payment Rights received less the finance charge described above and any reserves or capitalized interest paid or funded with proceeds of the Installment Payment Rights and (d) the sum total of all 2018 Installment Payments calculated to the final maturity of the 2018 Installment Payments plus the fees and charges paid to third parties not paid with the proceeds of the Installment Payment Rights; and

**WHEREAS**, in accordance with Section 5852.1, the Board of Directors has obtained such good faith estimates from the Municipal Advisor, and such estimates are disclosed in Exhibit A attached hereto (the “SB 450 Summary”); and

**WHEREAS**, in order to enable the Corporation to assign the Installment Payment Rights to Pacific Western it is necessary for the Corporation, the District and Pacific Western to enter into an Assignment Agreement; and

**WHEREAS**, the Board of Directors has determined that it is in the best interest of the District and desirable that an Installment Purchase Agreement and the Assignment Agreement be approved as hereinafter described for the purposes provided above; and

**WHEREAS**, the District has not issued or effected the issuance of, and does not reasonably expect to issue or effect the issuance of more than \$10,000,000 of tax exempt obligations during the 2018 calendar year and, therefore, desires to designate the Installment Purchase Agreement as a “qualified tax-exempt obligation” as defined by Section 265(b)(3) of the Internal Revenue Code of 1986, as amended (a “Qualified Tax-Exempt Obligation”); and

**WHEREAS**, all other legal prerequisites to the adoption of this Resolution have been met; and

**NOW, THEREFORE**, BE IT RESOLVED, DETERMINED AND ORDERED BY THE BOARD OF DIRECTORS OF THE BORREGO WATER DISTRICT AS FOLLOWS:

SECTION 1. Approval of Installment Purchase Agreement. The agreement entitled “Installment Purchase Agreement (2018 Capital Improvement Project)” presented at this meeting to be entered into by and between the District and the Corporation, which provides generally for (a) the acquisition, construction and installation of the Project by the Corporation, (b) the appointment of the District by the Corporation as its agent for purposes of undertaking the acquisition, construction and installation of the Project, (c) the purchase by the District from the Corporation of the Project, and (d) the payment by the District to the Corporation from the Net Revenues of the 2018 Installment Payments (each as defined in the Installment Purchase Agreement), is approved, and the President and Vice-President of the Board of Directors and the General Manager of the District (each, an “Authorized Officer”) are each, acting alone, authorized to execute, acknowledge and delivery said agreement on behalf of the District. The principal component of all 2018 Installment Payments shall be in an amount of not to exceed \$5,625,000 and the interest rate with respect to the interest components of the 2018 Installment Payments shall not exceed 4.10% per annum.

SECTION 2. Award of Purchase of the Installment Purchase Rights. The purchase of the Installment Purchase Rights is hereby awarded to Pacific Western Bank.

SECTION 3. Approval of the Assignment Agreement. The agreement entitled “Assignment Agreement “ presented at this meeting to be entered into by and among the Corporation, the District and Pacific Western Bank, which provides generally for (a) right to receive all 2018 Installment Payments from the District under the Installment Purchase Agreement, together with any and all of the other rights of the Corporation under the Installment Purchase Agreement as may be necessary to enforce payment of such 2018 Installment Payments when due or otherwise to protect the interests of Pacific Western, (b) the acceptance by Pacific Western Bank of such assignment, and (c) establishment of conditions precedent to the obligation of Pacific Western Bank to purchase the Installment Payment Rights, is approved, and each Authorized Officer, acting alone, is authorized to execute, acknowledge and delivery said agreement on behalf of the District.

SECTION 4. Modifications. The approval of the Installment Purchase Agreement and the Assignment Agreement given by this resolution shall apply to any modification or amendment of any of said documents which is agreed upon and approved by the Authorized Officer executing the Installment Purchase Agreement and the Assignment Agreement and Best Best & Krieger LLP as General Counsel and Special Counsel to the District, as being necessary to carry out the provisions thereof and the authorizations and direction provided in this resolution.

SECTION 5. Designation of Installment Purchase Agreement as a “Qualified Tax-Exempt Obligation”. Based upon the fact that the District has not issued or effected the issuance of, and does not reasonably expect to issue or effect the issuance of more than \$10,000,000 of tax exempt obligations during the 2018 calendar year, the District hereby designates the Installment Purchase Agreement as a “qualified tax-exempt obligation.”

SECTION 6. Further Action. Each Authorized Officer and the other officers of the District are hereby authorized and directed, jointly and severally, to do any and all things and to execute and deliver any and all documents which they may deem necessary or advisable in order to consummate the execution and delivery of the agreements approved hereby and to otherwise effectuate the purpose

of this Resolution, and such actions previously taken by such officers are hereby ratified and confirmed.

SECTION 7. Effective Date. This resolution shall take effect upon adoption.

**PASSED AND ADOPTED** by said Board on this \_\_\_\_\_ day of \_\_\_\_\_, 2018 by the following vote:

- AYES:**
- NOES:**
- ABSENT:**
- ABSTAIN:**

STATE OF CALIFORNIA                )  
   )  
 COUNTY OF SAN DIEGO               )

I, \_\_\_\_\_, Secretary of the Board of Directors of the Borrego Water District, do hereby certify that the foregoing is a true and correct copy of a resolution passed and adopted by the Board of Directors of the Borrego Water District at a meeting of said Board held on the \_\_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
 Name: \_\_\_\_\_  
 Secretary of the Board of Directors of the  
 Borrego Water District

## **EXHIBIT A**

### **SB 450 SUMMARY**

Set forth below are **good faith estimates** of Fieldman, Rolapp & Associates, Inc., the municipal advisor, as required under Section 5852.1 of the California Government Code (the “Code”). **The following estimates have no bearing on, and should not be misconstrued as, any not-to-exceed financial parameters authorized by resolution.**

- (a) The true interest cost of the bonds is estimated at 3.825%, calculated as provided in Section 5852.1(a)(1)(A) of the Code.
- (b) The finance charge of the Bonds, including all fees and charges paid to third parties, is estimated at \$88,000.
- (c) Proceeds of the Bonds received by the District for the sale of the Bonds, including the estimated principal amount of the proposed Bonds of \$5,588,000 less the finance charges set forth in (b) above, is equal to \$5,500,000.
- (d) The total payment amount calculated as provided in Section 5852.1(a)(1)(D) of the Code is estimated at \$8,090,709.

The foregoing are estimates and the final costs will depend on market conditions and can be expected to vary from the estimated amounts set forth above.



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INSTALLMENT PURCHASE AGREEMENT  
(2018 Capital Improvement Project)

by and between

BORREGO WATER DISTRICT

and

BORREGO WATER DISTRICT PUBLIC FACILITIES CORPORATION

Dated as of July 1, 2018

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INSTALLMENT PURCHASE AGREEMENT  
(2018 Capital Improvement Project)

This INSTALLMENT PURCHASE AGREEMENT (2018 Capital Improvement Project), made and entered into as of July 1, 2018 (the “Installment Purchase Agreement”), by and between BORREGO WATER DISTRICT, a water district duly organized and existing under and by virtue of the laws of the State of California (the “District”), and BORREGO WATER DISTRICT PUBLIC FACILITIES CORPORATION, a nonprofit public benefit corporation duly organized and existing under and by virtue of the laws of the State of California (the “Corporation”).

W I T N E S S E T H:

WHEREAS, the District is authorized by Division 13 of the Water Code of the State of California (the “Law”), including but not limited to Section 35565, to, among other powers, provide water and sewer services for the beneficial use or uses of the District, its inhabitants, or the owners of rights to water in the District (“Services”); and

WHEREAS, the District is also authorized by the Law, including but not limited to Section 35565.2 and Section 35600, to sell real and personal property and to acquire real and personal property in order to achieve its public purposes of providing Services within the District; and

WHEREAS, the Board of Directors of the District has determined that it will be in the best interest of the District to finance the acquisition, construction and installation of certain capital improvements to its Sewer and Water Enterprises as described in Exhibit A attached hereto and incorporated herein by this reference (the “Project”); and

WHEREAS, in order to finance the Project, the District and the Corporation are entering into this Installment Purchase Agreement, whereby the District will acquire the Project from the Corporation and obligate itself to make installment payments in the amounts and on the dates set forth in Exhibit B attached hereto and incorporated herein by reference (the “Installment Payments”); and

WHEREAS, the District and the Corporation desire to provide for the Corporation to assign this Installment Purchase Agreement to Pacific Western Bank, a California state-chartered bank (the “Bank”), in consideration of the Bank paying to the Corporation an amount sufficient to finance the Project and to pay costs of the financing including special counsel fees, municipal advisor fees and other expenses in connection therewith; and

WHEREAS, the Project will be constructed by the District as the agent of the Corporation pursuant to the provisions hereof;

WHEREAS, the District has determined that the purchase of the Project by the District is necessary and proper for District uses and purposes under the terms of the Law; and

WHEREAS, the District and the Corporation have duly authorized the execution of this Installment Purchase Agreement; and

WHEREAS, all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and delivery of this Installment Purchase Agreement do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the parties hereto are now duly authorized to execute and enter into this Installment Purchase Agreement;

NOW, THEREFORE, IN CONSIDERATION OF THESE PREMISES AND OF THE MUTUAL AGREEMENTS AND COVENANTS CONTAINED HEREIN AND FOR OTHER VALUABLE CONSIDERATION, THE PARTIES HERETO DO HEREBY AGREE AS FOLLOWS:

## ARTICLE I

### DEFINITIONS

SECTION 1.01.     Definitions. Unless the context otherwise requires, the terms defined in this section shall for all purposes hereof and of any amendment hereof or supplement hereto and of any report or other document mentioned herein or therein have the meanings defined herein, the following definitions to be equally applicable to both the singular and plural forms of any of the terms defined herein.

#### Accountant's Report

The term "Accountant's Report" means a report signed by an Independent Certified Public Accountant.

#### Additional Revenues

The term "Additional Revenues" means, with respect to the issuance of any Parity Obligations (other than the 2018 Notes and the 2018 Installment Payments), any or all of the following amounts:

(a) An allowance for Net Revenues from any additions or improvements to or extensions of an Enterprise or the Enterprises which, during all or any part of the most recently completed Fiscal Year or for any more recent consecutive twelve (12) month period selected by the District, were not in service, in an amount equal to ninety percent (90%) of the estimated additional average annual Net Revenues to be derived from such additions, improvements and extensions for the first thirty-six (36) month period in which each addition, improvement or extension is respectively to be in operation, all as shown by the certificate or opinion of an Authorized Representative or Independent Engineer.

(b) An allowance for Net Revenues arising from any increase in the charges made for service from an Enterprise which has become effective (or adopted but not yet effective) prior to the incurring of such Parity Obligations but which, during all or any part of the most recently completed Fiscal Year or for any more recent consecutive twelve (12) month period selected by the District, was not in effect, in an amount equal to the total amount by which the Net Revenues would have been increased if such increase in charges had been in effect during the whole of such

Fiscal Year or twelve (12) month period, all as shown by the certificate or opinion of an Authorized Representative or Independent Financial Consultant.

#### Assignment Agreement

The term “Assignment Agreement” means that certain Assignment Agreement by and between the Corporation and the Bank dated as of the date hereof, as supplemented or amended from time to time.

#### Authorized Representative

The term “Authorized Representative” means the District’s President and General Manager, the Treasurer/Secretary or any other person designated as an Authorized Representative of the District by a Certificate of the District signed by its President or General Manager or Treasurer/Secretary and filed with the Bank.

#### Bank

The term “Bank” means initially Pacific Western Bank, a California state-chartered bank, or its successors or assigns, as assignee of the Corporation.

#### Closing Date

The term “Closing Date” means the date that the Corporation, or the Bank, delivers to the District the Sale Price.

#### Code

The term “Code” means the Internal Revenue Code of 1986, as amended. Each reference to a section of the Code herein shall be deemed to include the United States Treasury regulations.

#### Contracts

The term “Contracts” means the 2018 Loan Agreement, this Installment Purchase Agreement and any amendments and supplements hereto, and all contracts of the District authorized and executed by the District, the payments under which are on parity with the Installment Payments and which are secured by a pledge and lien on the Net Revenues.

#### Corporation

The term “Corporation” means Borrego Water District Public Facilities Corporation, a nonprofit public benefit corporation duly organized and existing under and by virtue of the laws of the State of California.

#### Cost of Delivery

The term “Cost of Delivery” means all items of expense directly or indirectly payable by or reimbursable to the Corporation or the District and related to the authorization, execution and delivery of this Installment Purchase Agreement and the Assignment Agreement, including, but

not related to, costs of preparation and reproduction of documents, legal fees and charges, fees and expenses of consultants and professionals, and any other charge, cost or fee in connection with the execution and delivery of this Installment Purchase Agreement, including, but not limited to, the fees of CDIAC and the Bank's counsel.

### Debt Service

The term "Debt Service" means, for any Fiscal Year, the sum of (1) the interest falling due during such Fiscal Year on all Parity Obligations that are outstanding under the documents or agreements pursuant to which they were issued, assuming that all outstanding serial Parity Obligations are retired as scheduled and that all outstanding term Parity Obligations are redeemed from sinking fund payments as scheduled (except to the extent that such interest has been fully capitalized and is invested in Federal Securities that mature at times and in such amounts as are necessary to pay the interest to which such amounts are pledged), (2) the principal amount of all serial Parity Obligations (that are outstanding under the documents or agreements pursuant to which they were issued) falling due by their terms during such Fiscal Year, and (3) the minimum amount of term Parity Obligations (that are outstanding under the documents or agreements pursuant to which they were issued) required to be paid or called and redeemed during such Fiscal Year, together with the redemption premiums, if any, thereon; provided that, (A) whenever interest as described herein accrues at other than a fixed rate, such interest shall be assumed to be a rate equal to the greater of (i) the actual rate on the date of calculation, or if the Parity Obligations are not yet outstanding, the initial rate (if established and binding), (ii) if the Parity Obligations have been outstanding for at least twelve months, the average rate over the twelve months immediately preceding the date of calculation, and (iii) (x) if interest on the Parity Obligations is excludable from gross income under the applicable provisions of the Code, the most recently published The Bond Buyer Bond Revenue Index (or comparable index if no longer published) plus one hundred fifty (150) basis points, or (y) if interest is not so excludable, the interest rate on direct U.S. Treasury Obligations with comparable maturities, plus one hundred fifty (150) basis points, and (B) for purposes of calculating the Debt Service on any Parity Obligation requiring a balloon payment at maturity, such interest shall be assumed to be a rate equal to the greater of (i) the actual rate on the date of calculation, or (ii) six percent (6%), and the principal shall be assumed to be fully amortized, solved for substantially level debt service, over a period of fifteen (15) years from the date of calculation.

### Default Rate

The term "Default Rate" means the interest rate due on the unpaid portion of any Installment Payment due pursuant to Section 4.01 hereof. Such Default Rate shall also be applicable upon the occurrence and continuation of an Event of Default pursuant to Section 8.01 and shall be equal to the interest rate applicable to the principal portion of Installment Payments, plus 4.00%; provided, however, that such Default Rate shall be a minimum of eight percent (8%).

### Determination of Taxability

The term "Determination of Taxability" means and shall be deemed to have occurred on the first to occur of the following:

(i) on that date when the District files any statement, supplemental statement or other tax schedule, return or document which discloses that an Event of Taxability shall have occurred;

(ii) on the date when the Bank notifies the District that it has received a written opinion from Bond Counsel to the effect that an Event of Taxability has occurred, which notice shall be accompanied by a copy of such opinion of Bond Counsel, unless, within 180 days after receipt by the District of such notification and copy of such opinion from the Bank, the District shall deliver to the Bank a ruling or determination letter issued to or on behalf of the District by the Commissioner or any District Director of the Internal Revenue Service (or any other governmental official exercising the same or a substantially similar function from time to time) to the effect that, after taking into consideration such facts as form the basis for the opinion that an Event of Taxability has occurred, an Event of Taxability shall not have occurred;

(iii) on the date when the District shall be advised in writing by the Commissioner or any District Director of the Internal Revenue Service (or any other government official or agent exercising the same or a substantially similar function from time to time) that, based upon any review or audit or upon any other ground whatsoever, an Event of Taxability has occurred; or

(iv) on that date when the District shall receive notice from the Bank that the Internal Revenue Service (or any other government official or agency exercising the same or a substantially similar function from time to time) has assessed the interest component of the Installment Payments as includable in the gross income of the Bank due to the occurrence of an Event of Taxability;

*provided*, however, that no Determination of Taxability shall occur under subparagraph (iii) or subparagraph (iv) above unless the District has been afforded the opportunity, at its expense, to contest any such assessment, and, further, no Determination of Taxability shall occur until such contest, if made, has been finally determined; provided further, however, that upon demand from the Bank, the District shall reimburse the Bank for any payments, including any taxes, interest, penalties or other charges, such Bank shall be obligated to make as a result of the Determination of Taxability.

#### District

The term “District” means Borrego Water District, a water district duly organized and existing under and by virtue of the laws of the State of California.

#### Enterprises; Enterprise

The term “Enterprises” means, collectively, the Sewer Enterprise and the Water Enterprise. The term “Enterprise” means the Sewer Enterprise or the Water Enterprise, as applicable.

#### Event of Default

The term “Event of Default” means an event described in Section 8.01.

#### Event of Taxability



The term “Event of Taxability” means the taking of any action by the District, or the failure to take any action by the District, or the making by the District of any misrepresentation in this Agreement or the certificate regarding federal arbitrage which has been executed and delivered by the District in connection with this Agreement, which has the effect of causing the interest component of the Installment Payments to be includable, in whole or in part, in the gross income of the Bank for federal income tax purposes.

#### Federal Securities

The term “Federal Securities” means: (a) any direct general obligations of the United States of America (including obligations issued or held in book entry form on the books of the Department of the Treasury of the United States of America), for which the full faith and credit of the United States of America are pledged; and (b) obligations of any agency, department or instrumentality of the United States of America, the timely payment of principal and interest on which are fully, unconditionally and directly or indirectly secured or guaranteed by the full faith and credit of the United States of America.

#### Fiscal Year

The term “Fiscal Year” means the period beginning on July 1 of each year and ending on the last day of June of the next succeeding year, or any other twelve-month period selected and designated as the official Fiscal Year of the District.

#### Generally Accepted Accounting Principles

The term “Generally Accepted Accounting Principles” means the generally accepted accounting principles as presented and recommended by the American Institute of Certified Public Accountants or its successor, or by any other generally accepted authority on such procedures, and includes, as applicable, the standards set forth by the Governmental Accounting Standards Board or its successor.

#### General Manager

The term “General Manager” means the General Manager of the District.

#### Governmental Authority

The term “Governmental Authority” means any governmental or quasi-governmental entity, including any court, department, commission, board, bureau, agency, administration, central bank, service, district or other instrumentality of any governmental entity or other entity exercising executive, legislative, judicial, taxing, regulatory, fiscal, monetary or administrative powers or functions of or pertaining to government, or any arbitrator, mediator or other person with authority to bind a party at law.

#### Independent Certified Public Accountant

The term “Independent Certified Public Accountant” means any firm of certified public accountants appointed by the District, and each of whom is independent pursuant to the Statement on Auditing Standards No. 1 of the American Institute of Certified Public Accountants.

#### Installment Payment Date; 2018 Installment Payment Dates

The term “Installment Payment Date” means any date on which Installment Payments are scheduled to be paid by the District under and pursuant to any Contract. The term “2018 Installment Payment Date” means April 1 and October 1 of each year commencing on [October/April 1, 201[8/9].

#### Installment Payments; 2018 Installment Payments

The term “Installment Payments” means the installment payments of interest and principal scheduled to be paid by the District under and pursuant to the Contracts. The term “2018 Installment Payments” means the mandatory sinking fund payments set forth in Exhibit B hereto scheduled to be paid by the District under and pursuant to this Installment Purchase Agreement.

#### Installment Purchase Agreement

The term “Installment Purchase Agreement” means this Installment Purchase Agreement, by and between the District and the Corporation, dated as of July 1, 2018, as originally executed and as it may from time to time be amended or supplemented in accordance herewith.

#### Insurance Consultant

The term “Insurance Consultant” means any nationally recognized independent actuary, insurance company or broker that has actuarial personnel knowledgeable with respect to insurance carried, by, required for and available to special districts operating facilities similar to the Water Enterprise, including a pooled self-insurance program in which premiums are established on the basis of the recommendation of an actuary of national reputation. The Bank hereby approves of the Association of California Water Agencies Joint Powers Insurance Authority as meeting this definition of Insurance Consultant.

#### Law

The term “Law” means the Water District Law of the State of California (being Division 13 of the Water Code of the State of California, as amended) and all laws amendatory thereof or supplemental thereto.

#### Maximum Annual Debt Service

The term “Maximum Annual Debt Service” means the greatest amount of Debt Service with respect to the Parity Obligations to which reference is made coming due in any Fiscal Year including the Fiscal Year in which the calculation is made or any subsequent Fiscal Year.

#### Material Adverse Effect

The term “Material Adverse Effect” means an event or occurrence which adversely affects in a material manner (a) the assets, liabilities, condition (financial or otherwise), business, facilities or operations of the District, an Enterprise or both Enterprises, (b) the ability of the District to carry out its business in the manner conducted as of the date of this Installment Purchase Agreement or to meet or perform its obligations under this Installment Purchase Agreement on a timely basis, or the (c) the validity or enforceability of this Installment Purchase Agreement.

#### Material Litigation

The term “Material Litigation” means any action, suit, proceeding, inquiry or investigation against the District in any court or before any arbitrator of any kind or before or by any Governmental Authority, of which the District has notice or knowledge and which, (i) if determined adversely to the District, may have a Material Adverse Effect, (ii) seeks to restrain or enjoin any of the transactions contemplated hereby, or (iii) may adversely affect the ability of the District to perform its obligations under this Installment Purchase Agreement.

#### Net Proceeds

The term “Net Proceeds” means insurance proceeds or an eminent domain award (including any proceeds of sale to a governmental entity under threat of the exercise of eminent domain powers), paid with respect to an Enterprise, to the extent remaining after payment therefrom of all expenses incurred in the collection thereof.

#### Net Revenues

The term “Net Revenues” means for any Fiscal Year the sum of (a) the Water Enterprise Net Revenues for such Fiscal Year, (b) the Sewer Enterprise Net Revenues for such Fiscal Year and (c) the Property Tax Revenues allocated to the District for such Fiscal Year.

#### Note 2018A

The term “Note 2018A” means the Promissory Note executed and delivered by the District on \_\_\_\_, 2018, in the original principal amount of \$\_\_\_\_\_ pursuant to the 2018 Loan Agreement.

#### Note 2018B

The term “Note 2018B” means the Promissory Note executed and delivered by the District on \_\_\_\_, 2018, in the original principal amount of \$\_\_\_\_\_ pursuant to the 2018 Loan Agreement.

#### Operation and Maintenance Costs

The term “Operation and Maintenance Costs” means the Sewer Enterprise Operation and Maintenance Costs and the Water Enterprise Operation and Maintenance Costs.

#### Parity Obligations

The Term “Parity Obligations” means the 2018 Installment Payments, each 2018 Note together with the corresponding Loan Payments thereon, and all other bonds, notes, loan agreements, installment purchase agreements, leases, or other obligations of the District payable from and secured by a pledge of and lien upon any of the Net Revenues incurred on a parity with the 2018 Installment Payments and each of the 2018 Notes, together with the related Loan Payments thereon, issued or incurred in accordance with Section 6.15 hereof.

#### Parity Obligations Documents

The term “Parity Obligations Documents” means, collectively, the indenture of trust, trust agreement, installment purchase agreement, loan agreement or other document authorizing the issuance of any Parity Obligations or any securities which evidence Parity Obligations.

#### Parity Obligation Payment Date

The term “Parity Obligation Payment Date” means 2018 Installment Payment Dates, the Loan Payment Dates and any other payment date for Parity Obligations (other than the 2018 Installment Payments and each 2018 Note and the related Loan Payments).

#### Project

The term “Project” means any additions, betterments, extensions or improvements to the Water Enterprise and/or Sewer Enterprise designated by the Board of Directors of the District as a Project, the acquisition and construction of which is to be paid for or refinanced by the proceeds of any Contracts or Bonds. The “Project” to be financed from the proceeds of this Installment Purchase Agreement means the Project described in Exhibit B hereto and as may be modified in conformance with Section 3.03 hereof.

#### Property Tax Revenues

The term “Property Tax Revenues” means all property tax revenues as defined in Revenue and Taxation Code Section 95 required to be allocated to the District.

#### Purchase Price

The term “Purchase Price” means the principal amount plus interest thereon owed by the District to the Corporation under the terms hereof as provided in Section 4.01.

#### Revenues

The term “Revenues” means the sum of (a) the Water Enterprise Revenues, (b) the Sewer Enterprise Revenues and (c) the Property Tax Revenues.

### Revenue Fund

The term “Revenue Fund” means the fund by that name established pursuant to Section 5.02 hereof.

### Sale Price

The term “Sale price” means the amount paid by the Corporation to the District as provided in Section 3.01.

### Sewer Enterprise

The term “Sewer Enterprise” means, collectively, the entire sewer collection, transmission, treatment and disposition of wastewater and sewage system now owned or operated by the District, and all other properties, structures or works hereafter acquired and constructed by the District and determined to be a part of the Sewer Enterprise, including, but not limited to, any and all properties and assets, real and personal, tangible and intangible, of the District, now or hereafter existing, used or pertaining to the collection, transmission, treatment and disposition system, including all pipes, valves, machinery and all other appurtenances necessary, useful or convenient for the collection, transmission storage, treatment, transmission and disposition of wastewater, and any necessary lands, rights of way and other real or personal property useful in connection therewith, and all additions, extensions, expansions, improvements and betterments thereto and equipments thereof; *provided, however*, that to the extent the District is not the sole owner of an asset or property, only the District’s ownership interest in such asset or property shall be considered to be part of the Sewer Enterprise.

### Sewer Enterprise Net Revenues

The term “Sewer Enterprise Net Revenues” means, for any Fiscal Year, the Sewer Enterprise Revenues for such Fiscal Year less the Sewer Enterprise Operation and Maintenance Costs for such Fiscal Year.

### Sewer Enterprise Operation and Maintenance Costs

The term “Sewer Enterprise Operation and Maintenance Costs” means the reasonable and necessary costs and expenses paid or incurred by the District for maintaining and operating the Sewer Enterprise, calculated in accordance with Generally Accepted Accounting Principles, including but not limited to (a) costs of electricity and other forms of energy supplied to the Sewer Enterprise, (b) the reasonable expenses of management and repair and other costs and expenses necessary to maintain and preserve the Sewer Enterprise in good repair and working order, (b) the reasonable administrative costs of the District attributable to the operation and maintenance of the Sewer Enterprise, such as salaries and wages of employees, overhead, taxes (if any) and insurance premiums, and (c) all other reasonable and necessary costs of the District or charges required to be paid by it comply with the terms of this Installment Purchase Agreement or any Contract or of to any resolution or indenture authorizing the issuance of any Bonds or of such Bonds, but excluding in all cases depreciation, replacement and obsolescence charges or reserves therefor and amortization of intangibles or other bookkeeping entries of a similar nature and all costs or expenses incurred by or on behalf of the District.

### Sewer Enterprise Proportionate Share

The term “Sewer Enterprise Proportionate Share” means the amount of the Purchase Price of the Project allocable to the Sewer Enterprise divided by the total amount of the Purchase Price of the Project.

### Sewer Enterprise Rate Stabilization Fund

The term “Sewer Enterprise Rate Stabilization Fund” means the fund by that name established and maintained pursuant to Section 5.04(a) hereof.

### Sewer Enterprise Revenues

The term “Sewer Enterprise Revenues” means all gross income and revenue received or receivable by the District from the ownership and operation of the Sewer Enterprise, calculated in accordance with Generally Accepted Accounting Principles, including all rates, fees, charges (including connection fees), insurance proceeds and condemnation awards received by the District and all other income and revenue howsoever derived by the District from the Sewer Enterprise; *provided, however*, that (i) any specific charges levied for the express purpose of reimbursing others for all or a portion of the cost of the acquisition or construction of specific sewer facilities, (ii) grants that are designated by the grantor for a specific Sewer Enterprise purpose (and are therefore not available for general operational purposes), (iii) customers’ sewer related deposits subject to refund until such deposits have become the property of the District, (iv) the proceeds of any ad valorem property taxes, and (v) the proceeds of any special assessments or special taxes levied upon real property within any improvement district served by the District for the purpose of paying special assessment bonds or special tax obligations of the District relating to the Sewer Enterprise, are not Revenues and are not subject to the lien hereof. Notwithstanding the foregoing, there shall be deducted from Sewer Enterprise Revenues any amounts (of Sewer Enterprise Revenues) transferred into the Sewer Enterprise Rate Stabilization Fund, and there shall be added to Sewer Enterprise Revenues any amounts transferred out of the Sewer Enterprise Rate Stabilization Fund and into the Revenue Fund.

### Subordinate Debt

The term “Subordinate Debt” means indebtedness or other obligations (including but not limited to loans, leases and installment sale agreements) hereafter issued or incurred and secured by a pledge of and lien on Net Revenues subordinate to the pledge and lien securing the Parity Obligations.

### 2018 Loan Agreement

The term “2018 Loan Agreement” means the Loan Agreement dated as of June \_\_, 2018, by and between the District and Compass Bank.

### 2018 Loan Payments

The term “2018 Loan Payments” means all payments required to be paid by the District on the 2018 Notes pursuant to the 2018 Loan Agreement.

### 2018 Note; 2018 Notes

The term “2018 Note” means either (i) Note 2018A or Note 2018B. The term “2018 Notes” means, collectively, Note 2018A and Note 2018B.

### Water Enterprise

The term “Water Enterprise” means, collectively, the entire water collection, storage, treatment, transmission and distribution system now owned or operated by the District, and all other properties, structures or works hereafter acquired and constructed by the District and determined to be a part of the Water Enterprise, including, but not limited to, any and all properties and assets, real and personal, tangible and intangible, of the District, now or hereafter existing, used or pertaining to the collection, storage, treatment, transmission and distribution system, including all contractual rights to water supply and transmission, as well as all pipes, valves, machinery and all other appurtenances necessary, useful or convenient for the collection, storage, treatment, transmission and distribution of water, and any necessary lands, rights of way and other real or personal property useful in connection therewith, and all additions, extensions, expansions, improvements and betterments thereto and equipments thereof; *provided, however*, that to the extent the District is not the sole owner of an asset or property, only the District’s ownership interest in such asset or property shall be considered to be part of the Water Enterprise.

### Water Enterprise Net Revenues

The term “Water Enterprise Net Revenues” means, for any Fiscal Year, the Water Enterprise Revenues for such Fiscal Year less the Water Enterprise Operation and Maintenance Costs for such Fiscal Year.

### Water Enterprise Operation and Maintenance Costs

The term “Water Enterprise Operation and Maintenance Costs” means the reasonable and necessary costs and expenses paid or incurred by the District for maintaining and operating the Water Enterprise, calculated in accordance with Generally Accepted Accounting Principles, including but not limited to (a) costs of acquisition of water, including all associated treatment and delivery costs, to be used by the Water Enterprise, (b) costs of electricity and other forms of energy supplied to the Water Enterprise, (c) the reasonable expenses of management and repair and other costs and expenses necessary to maintain and preserve the Water Enterprise in good repair and working order, (d) the reasonable administrative costs of the District attributable to the operation and maintenance of the Water Enterprise, such as salaries and wages of employees, overhead, taxes (if any) and insurance premiums, and (e) all other reasonable and necessary costs of the District or charges required to be paid by it to comply with the terms of this Installment Purchase Agreement or any Contract or of any resolution or indenture authorizing the issuance of any Bonds or of such Bonds, but excluding in all cases depreciation, replacement and obsolescence charges or reserves

therefor and amortization of intangibles or other bookkeeping entries of a similar nature and all costs or expenses incurred by or on behalf of the District.

#### Water Enterprise Proportionate Share

The term “Water Enterprise Proportionate Share” means the amount of the Purchase Price of the Project allocable to the Water Enterprise divided by the total amount of the Purchase Price of the Project.

#### Water Enterprise Rate Stabilization Fund

The term “Water Enterprise Rate Stabilization Fund” means the fund by that names established and maintained pursuant to Section 5.04(b) hereof.

#### Water Enterprise Revenues

The term “Water Enterprise Revenues” means all gross income and revenue received or receivable by the District from the ownership and operation of the Water Enterprise, calculated in accordance with Generally Accepted Accounting Principles, including all rates, fees, charges (including connection fees), insurance proceeds and condemnation awards received by the District and all other income and revenue howsoever derived by the District from the Water Enterprise; *provided, however*, that (i) any specific charges levied for the express purpose of reimbursing others for all or a portion of the cost of the acquisition or construction of specific water facilities, (ii) grants that are designated by the grantor for a specific Water Enterprise purpose (and are therefore not available for general operational purposes), (iii) customers’ water related deposits or any other water related deposits subject to refund until such deposits have become the property of the District, (iv) the proceeds of any ad valorem property taxes, and (v) the proceeds of any special assessments or special taxes levied upon real property within any improvement district served by the District for the purpose of paying special assessment bonds or special tax obligations of the District relating to the Water Enterprise, are not Revenues and are not subject to the lien hereof. Notwithstanding the foregoing, there shall be deducted from Water Enterprise Revenues any amounts (of Water Enterprise Revenues) transferred into the Water Enterprise Rate Stabilization Fund, and there shall be added to Water Enterprise Revenues any amounts transferred out of the Water Enterprise Rate Stabilization Fund and into the Revenue Fund.

## ARTICLE II

### REPRESENTATIONS AND WARRANTIES: OPINIONS OF COUNSEL

SECTION 2.01.      Representations by the District. The District makes the following representations:

- (a) The District is a California Water District duly organized and existing under and pursuant to the laws of the State of California.
- (b) The District has full legal right, power and authority to enter into this Installment Purchase Agreement and carry out its obligations hereunder, to carry out and consummate all



other transactions contemplated by this Installment Purchase Agreement, and the District has complied with the provisions of the Law in all matters relating to such transactions.

(c) By proper action, the District has duly authorized the execution, delivery and due performance of this Installment Purchase Agreement and this Installment Purchase Agreement constitutes the legal, valid and binding agreement of the District enforceable against the District in accordance with its terms.

(d) The District will not take or, to the extent within its power, permit any action to be taken which results in the interest paid for the installment purchase of the Project under the terms of this Installment Purchase Agreement being included in the gross income of the Corporation or its assigns for purposes of federal or State of California income taxation.

(e) The District has determined that it is necessary and proper for District uses and purposes within the terms of the Law that the District acquire the Project in the manner provided for in this Installment Purchase Agreement, in order to provide essential services and facilities to persons residing in the District.

(f) No consent, approval, authorization, order, filing, registration, qualification, election or referendum, of or by any court or governmental agency or public body whatsoever is required in connection with the delivery or sale of the 2018 Installment Payments or the consummation of the other transactions effected or contemplated herein or hereby. The District gives no representation or warranty with regard to compliance with Blue Sky or similar securities requirements.

(g) The execution and delivery of this Installment Purchase Agreement, the consummation of the transactions therein and herein contemplated, including the Project, and the fulfillment of or compliance with the terms and conditions thereof and hereof, do not and will not conflict with or constitute a violation or breach of or default (with due notice or the passage of time or both) under any applicable law or administrative rule or regulation, or any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, lease, contract or other agreement or instrument to which the District is a party or by which it or its properties are otherwise subject or bound, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the District, which conflict, violation, breach, default, lien, charge or encumbrance would have consequences that would materially and adversely affect the consummation of the transactions contemplated by this Installment Purchase Agreement or the financial condition, assets, properties or operations of the District.

(h) The District acknowledges that (i) Pacific Western Bank, as the Bank, is acting solely for its own loan account and not as a fiduciary for the District or in the capacity of broker, dealer, municipal securities underwriter or municipal advisor, (ii) the Bank has not provided, and will not provide, financial, legal (including securities law), tax, accounting or other advice to or on behalf of the District with respect to the 2018 Installment Payments, (iii) the Bank has expressed no view regarding the legal sufficiency of its representations for purposes of compliance with any legal requirements applicable to any other party, if any, or the correctness of any legal interpretation made by counsel to any other party, if any, with respect to any such

matters, and (iv) the District has sought and obtained financial, legal, tax, accounting and other advice (including as it relates to structure, timing, terms and similar matters) with respect to the financing effectuated through this Installment Purchase Agreement from its financial, legal and other advisors (and not from the Bank nor the Bank's legal counsel Nixon Peabody LLP) to the extent that the District desired to obtain such advice. There is no action, suit, proceeding, inquiry or investigation before or by any court or federal, state, municipal or other governmental authority pending or, to the knowledge of the District after reasonable investigation, threatened against or affecting the District or the assets, properties or operations of the District which, if determined adversely to the District or its interests, would have a material and adverse effect upon the consummation of the transactions contemplated by or the validity of this Installment Purchase Agreement, or upon the ability of the District to make 2018 Installment Payments hereunder, and the District is not in default with respect to any order or decree of any court or any order, regulation or demand of any federal, state, municipal or other governmental authority, which default might have consequences that would materially and adversely affect the consummation of the transactions contemplated by this Installment Purchase Agreement, or the financial condition, assets, properties or operations of the District.

(i) The District reasonably believes that sufficient funds can be obtained to make all 2018 Installment Payments and all other amounts required to be paid pursuant to this Installment Purchase Agreement.

(j) The District has never non-appropriated or defaulted under any of its payment or performance obligations or covenants, either under any of its bonds, notes, or other debt obligations.

(k) During the term of this Installment Purchase Agreement, the Project will be used by the District only for the purpose of performing one or more governmental or proprietary functions of the District consistent with the permissible scope of the District's authority.

(l) The District does not enjoy any rights of immunity on the grounds of sovereign immunity in respect of its obligations under the Installment Purchase Agreement or otherwise with respect to the 2018 Installment Payments. To the extent the District has or hereafter may acquire under any applicable law any rights to immunity from legal proceedings on the grounds of sovereignty, the District hereby waives, to the extent permitted by law, such rights to immunity for itself in respect of its obligations arising under or related to the Installment Purchase Agreement or otherwise with respect to the 2018 Installment Payments.

SECTION 2.02. Representations and Warranties by the Corporation. The Corporation makes the following representations and warranties:

(a) The Corporation is duly organized and in good standing under the laws of the State of California, has full legal right, power and authority to enter into this Installment Purchase Agreement and to carry out and consummate all transactions contemplated by this Installment Purchase Agreement and by proper action has duly authorized the execution and delivery and due performance of this Installment Purchase Agreement.

(b) The execution and delivery of this Installment Purchase Agreement and the consummation of the transactions herein contemplated will not violate any provision of law, any order of any court or other agency of government, or any indenture, material agreement or other instrument to which the Corporation is now a party or by which it or any of its properties or assets is bound, or be in conflict with, result in a breach of or constitute a default (with due notice or the passage of time or both) under any such indenture, agreement or other instrument, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the properties or assets of the Corporation.

Except as provided herein, the Corporation will not assign this Installment Purchase Agreement, its right to receive 2018 Installment Payments from the District, or its duties and obligations hereunder to any other person, firm or corporation so as to impair or violate the representations, covenants and warranties contained in this Section 2.02.

SECTION 2.03. Opinion of General Counsel for the District and the Corporation. Concurrently with the execution and delivery of this Installment Purchase Agreement, general counsel for the District and the Corporation shall provide the opinion or opinions to the effect that:

(a) The District is a water district duly organized and existing under and pursuant to the laws of the State of California.

(b) This Installment Purchase Agreement have been duly approved by the Board of Directors of the District and executed by the authorized officers of the District.

(c) This Installment Purchase Agreement and the Assignment Agreement have been duly approved by the Board of Directors of the Corporation and executed by authorized officers of the Corporation.

(d) There is no litigation pending or threatened affecting this Installment Purchase Agreement or the Revenues.

### ARTICLE III

#### SALE AND REPURCHASE OF THE PROJECT

SECTION 3.01. The Project. The Corporation agrees to acquire, construct, install and equip the Project and to provide funds for and assist the District in acquiring property and easements which are necessary for the construction and installation of the Project. The Corporation hereby appoints the District as its agent to carry out all phases of the acquisition, construction, installation and equipping of the Project and the District, as agent of the Authority, assumes all rights, duties, responsibilities and liabilities of the Corporation regarding the construction, installation and equipping of the Project, except as limited herein. The District, as agent of the Corporation, may enter into any purchase order, construction management agreement, architecture or engineering contract or construction contract required for the design, acquisition, construction, installation and completion of the Project. The Corporation hereby assigns to the District all rights and powers to enforce in its own name or the name of the Corporation such purchase orders or contracts as are required for design, acquisition, construction, installation, purchase and completion of the Project, which enforcement may be by auction at law or in equity;

provided that the assignment made by the Corporation herein shall not prevent the Corporation, or its assignee, from asserting such rights and powers in its own behalf.

SECTION 3.02. Purchase of the Project by the District; Appointment of District as Agent of the Corporation. The District hereby agrees to repurchase from the Corporation the Project and the Corporation hereby agrees to sell to the District the Project at the Purchase Price and on the terms and conditions hereinafter set forth.

SECTION 3.03. Substitution of the Project. The District may substitute other property or facilities of the Sewer Enterprise and/or the Water Enterprise for those components of the Project listed in Exhibit A hereto, but only if the District first obtains the consent of the Bank and files with the Corporation a statement of the District;

(a) identifying the property, facilities or combination thereof, to be substituted and the components of the Project that they will replace; and

(b) stating that the estimated costs of the substituted property, facilities or combination thereof is not less than the cost of the components of the Project being replaced.

#### ARTICLE IV

#### INSTALLMENT PAYMENTS

SECTION 4.01. Purchase Price.

(a) The District hereby agrees to pay to Corporation, as the Purchase Price of the Project hereunder, the aggregate principal amount of \$[\_\_\_\_\_], together with interest calculated on a 30/360 basis; that is, by applying the ratio of the interest rate over a year of 360 days, multiplied by the outstanding principal balance, multiplied by the actual number of days the principal balance is outstanding. All interest payable hereunder is computed using this method.

SECTION 4.02. 2018 Installment Payments. The District shall, subject to any rights of optional prepayment provided in Article VII, pay the Corporation the Purchase Price in mandatory sinking fund payments constituting the 2018 Installment Payments in the amounts and on the 2018 Installment Payment Dates as set forth in Exhibit B hereto.

On or before April 1 and October 1 of each year commencing [October/April 1, 201[8/9] through and including October 1, 20[\_\_\_], the District shall, from the moneys in the Revenue Fund pay to the Bank at the payment address set forth in Section 10.10 hereof, the 2018 Installment Payment due on the respective dates shown on Exhibit B.

Each 2018 Installment Payment shall be paid to the Corporation in lawful money of the United States of America. In the event the District fails to make any of the payments required to be made by it under this Section 4.02, such payment shall continue as an obligation of the District until such amount shall have been fully paid and the District agrees to pay the same with interest accruing thereon at the rate of interest then applicable to the remaining unpaid principal balance of the 2018 Installment Payments if paid in accordance with their terms.

The obligation of the District to make the 2018 Installment Payments is absolute and unconditional, and until such time as the Purchase Price shall have been paid in full (or provision for the payment thereof shall have been made pursuant to Article IX), the District will not discontinue or suspend any 2018 Installment Payments required to be made by it under this section when due, whether or not the Project or any part thereof is operating or operable or has been completed, or its use is suspended, interfered with, reduced or curtailed or terminated in whole or in part, and such payments shall not be subject to reduction whether by offset or otherwise and shall not be conditional upon the performance or nonperformance by any party of any agreement for any cause whatsoever.

Upon the occurrence of an Event of Default, the Default Rate shall apply. Upon the occurrence of an Event of Taxability, the Taxable Rate shall apply.

## ARTICLE V

### SECURITY

SECTION 5.01.      Pledge of Net Revenues. All Parity Obligations, including the 2018 Installment Payments, shall be secured by a lien on and pledge of Net Revenues, and within such lien priority, such Parity Obligations shall be of equal rank without preference, priority or distinction of any Parity Obligations over any other Parity Obligations. The District does hereby grant such lien on and pledge of Net Revenues to secure Parity Obligations.

SECTION 5.02.      Revenues; Establishment of Revenue Fund.

(a) In order to carry out and effectuate the pledge and lien contained herein, the District agrees and covenants that all Revenues shall be received by the District in trust hereunder and shall be deposited when and as received in a special fund designated as the "Revenue Fund," which fund is hereby established and which fund the District agrees and covenants to maintain and to hold separate and apart from other funds so long as any Parity Obligation remain unpaid.

(b) All Revenues in the Revenue Fund shall be set aside or be used by the District in the following order of priority:

(1) The District shall, from the moneys in the Revenue Fund, pay (i) all Operation and Maintenance Costs (including amounts reasonably required to be set aside in contingency reserves for Operation and Maintenance Costs, the payment of which is not then immediately required) as they become due and payable.

(2) All Net Revenues remaining in the Revenue Fund (after payment of all Maintenance and Operation Costs) on each Parity Obligation Payment Date, shall be transferred by the District from the Revenue Fund and allocated to the following respective accounts (each of which the District shall establish and maintain within the Revenue Fund), the following amounts in the following order of priority, the requirements of each such account (including the funding of any deficiencies in any such account resulting from insufficient Net Revenues necessary to make any earlier required deposit) at the time of deposit to be satisfied before any transfer is made to any account subsequent in priority:

(i) Interest Account. On each Parity Obligation Payment Date, the District shall deposit in the Interest Account an amount required to cause the aggregate amount on deposit in the Interest Account to equal the amount of interest becoming due and payable on such Parity Obligation Payment Date on all outstanding Parity Obligations. No deposit need be made into the Interest Account if the amount contained therein is at least equal to the interest becoming due and payable upon all outstanding Parity Obligations on such Parity Obligation Payment Date. All moneys in the Interest Account shall be used and withdrawn by the District solely for the purpose of paying interest on the Parity Obligations as it shall become due and payable (including accrued interest on any Parity Obligations purchased or redeemed prior to maturity pursuant to this Loan Agreement). In the event that the amounts on deposit in the Interest Account on any Parity Obligation Payment Date are insufficient for any reason to pay the aggregate amount of interest then coming due and payable on the outstanding Parity Obligations, the District shall apply such amounts to the payment of interest on each of the outstanding Parity Obligations on a pro rata basis.

(ii) Principal Account. On each Parity Obligation Payment Date on which the principal of Parity Obligations is payable, the District shall deposit in the Principal Account an amount required to cause the aggregate amount on deposit in the Principal Account to equal the principal amount of the Parity Obligations coming due and payable on such Parity Obligation Payment Date and the amount of principal becoming due and payable on any mandatory sinking account payment due on all outstanding Parity Obligations, if any. All moneys in the Principal Account shall be used and withdrawn by the District solely for the purpose of paying the principal of the Parity Obligations at the maturity date or upon early redemption, as the case may be. In the event that the amounts on deposit in the Principal Account on any Parity Obligation Payment Date are insufficient for any reason to pay the aggregate amount of principal then coming due and payable on the outstanding Parity Obligations, the District shall apply such amounts to the payment of principal on each of the outstanding Parity Obligations on a pro rata basis.

(iii) Redemption Account. The District shall establish and maintain a Redemption Account, amounts in which shall be used and withdrawn by the District solely for the purpose of paying the principal, interest and premium (if any) on the Principal Components to be redeemed pursuant to Section 3.4 or 3.5, as applicable.

(iv) Reserve Accounts. Payments required to replenish any debt service reserve accounts established for Parity Obligations shall be made in accordance with the terms hereof and such Parity Obligations Documents, without preference or priority, and in the event of any insufficiency of such moneys, ratably without any discrimination or preference.

(v) Subordinate Debt Repayment. Payments relating to principal and interest on or with respect to Subordinate Debt in accordance with the terms of such Subordinate Debt, without preference or priority, and in the event of any

insufficiency of such moneys, ratably based on the respective principal amounts (including any accreted value) without any discrimination or preference.

(vi) Subordinate Debt Reserve Accounts. To make payments required with respect to Subordinate Debt to replenish reserve accounts established therefor in accordance with the terms of such Subordinate Debt, without preference or priority, and in the event of any insufficiency of such moneys, ratably based on the respective principal amounts (including any accreted value) without any discrimination or preference.

(3) All remaining money in the Revenue Fund after making the payments under (2)(i) through (vi) may be used for any lawful purpose of the District, including, but not limited to, any costs of capital improvements to the Sewer Enterprise and/or the Water Enterprise, as applicable.

SECTION 5.03. Investments. All moneys held by the District in the Revenue Fund shall be invested in Federal Securities, the Local Agency Investment Fund, the San Diego Treasurer's Pooled Money Fund and/or money market mutual funds as authorized pursuant to and the investment earnings thereon shall remain on deposit in such fund, except as otherwise provided herein.

SECTION 5.04. Rate Stabilization Funds.

(a) Water Enterprise Rate Stabilization Fund. There is hereby created a separate fund to be known as the "Water Enterprise Rate Stabilization Fund," to be held and maintained by the District. The Water Enterprise Rate Stabilization Fund is not pledged to secure payment of the 2018 Installment Payments. Amounts in the Water Enterprise Rate Stabilization Fund shall be applied solely for the uses and purposes set forth in this subsection (a). The District shall have the right to deposit into the Water Enterprise Rate Stabilization Fund from time to time any amount of funds which are legally available therefor; provided that deposits for each Fiscal Year may be made until (but not after) one hundred twenty (120) days following the end of such Fiscal Year.

For the purpose of computing the amount of Water Enterprise Net Revenues for any Fiscal Year, the District shall be permitted to transfer amounts on deposit in the Water Enterprise Rate Stabilization Fund to the Revenue Fund, such transfers to be made until (but not after) one hundred twenty (120) days after the end of such Fiscal Year. In addition, the District shall be permitted to withdraw amounts on deposit in the Water Enterprise Rate Stabilization Fund for any other lawful purpose.

(b) Sewer Enterprise Rate Stabilization Fund. There is hereby created a separate fund to be known as the "Sewer Enterprise Rate Stabilization Fund," to be held and maintained by the District. The Sewer Enterprise Rate Stabilization Fund is not pledged to secure payment of the 2018 Installment Payments. Amounts in the Sewer Enterprise Rate Stabilization Fund shall be applied solely for the uses and purposes set forth in this subsection (a). The District shall have the right to deposit into the Sewer Enterprise Rate Stabilization Fund from time to time any amount of funds which are legally available therefor; provided that deposits for each Fiscal Year

may be made until (but not after) one hundred twenty (120) days following the end of such Fiscal Year.

For the purpose of computing the amount of Sewer Enterprise Net Revenues for any Fiscal Year, the District shall be permitted to transfer amounts on deposit in the Sewer Enterprise Rate Stabilization Fund to the Revenue Fund, such transfers to be made until (but not after) one hundred twenty (120) days after the end of such Fiscal Year. In addition, the District shall be permitted to withdraw amounts on deposit in the Sewer Enterprise Rate Stabilization Fund for any other lawful purpose.

## ARTICLE VI

### COVENANTS OF THE DISTRICT

SECTION 6.01. Operation and Maintenance of the Enterprises. The District will maintain and preserve each of the Enterprises in good repair and working order at all times and will operate each Enterprise in an efficient and economical manner and will pay all Maintenance and Operation Costs of each Enterprise as they become due and payable.

SECTION 6.02. Against Sale or Other Disposition of Property. The District will not sell, lease, or otherwise dispose of either Enterprise or any part thereof essential to the proper operation of such Enterprise or to the maintenance of the Revenues. The District will not enter into any agreement or lease that impairs the operation of the either Enterprise or any part thereof necessary to secure adequate Revenues for the payment of the Parity Obligations or that would otherwise impair the rights of the District with respect to the Revenues or the operation of either Enterprise. Any real or personal property that has become nonoperative or that is not needed for the efficient and proper operation of the either Enterprise, or any material or equipment that has become worn out, may be sold at not less than the fair market value thereof. The District shall deposit the proceeds of such sale in the Revenue Fund.

SECTION 6.03. Rates, Fees, and Charges.

(a) The District will, at all times while any Parity Obligation remains outstanding, fix, prescribe and collect rates, fees and charges in connection with the Enterprises so as to yield Revenues at least sufficient, after making reasonable allowances for contingencies and errors in the estimates, to pay the following amounts in the order set forth below:

- (1) All Maintenance and Operation Costs of the Enterprises;
- (2) The Debt Service payments and all other payments (including payments under reimbursement agreements) with respect to all Parity Obligations as they become due and payable;
- (3) All amounts, if any, required to restore the balance in any reserve accounts established for Parity Obligations in accordance with the terms of such Parity Obligations Documents, without preference or priority; and
- (4) All payments required to meet any other obligations of the District that are



charges, liens, encumbrances upon, or which are otherwise payable from the Revenues during such Fiscal Year.

(b) Furthermore, the District shall fix, prescribe, revise and collect rates, fees and charges for the services and facilities furnished by each Enterprise during each Fiscal Year which are sufficient to yield estimated Net Revenues which are at least equal to one hundred twenty-five percent (125%) of the aggregate amount of Debt Service on all Parity Obligations payable from Net Revenues coming due and payable during such Fiscal Year. The District may make adjustments, from time to time, in its rates, fees and charges as it deems necessary, but shall not reduce its rates, fees and charges below those in effect unless the Net Revenues resulting from such reduced rates, fees and charges shall at all times be sufficient to meet the requirements set forth in this paragraph.

(c) If the District violates the covenants set forth in subsections (a) or (b) hereof, such violation shall not, in and of itself, be a default under any Parity Obligation and shall not give rise to a declaration of an Event of Default so long as (i) Net Revenues (calculated without taking into account any amounts transferred into the Revenue Fund from the Rate Stabilization Funds pursuant to subsection (d) below), are at least equal to one hundred five percent (105%) of Maximum Annual Debt Service coming due and payable during such Fiscal Year, and (ii) within 120 days after the date such violation is discovered, the District either (y) transfers enough moneys from the Rate Stabilization Fund sufficient to yield estimated Net Revenues which are at least equal to one hundred twenty-five percent (125%) of the aggregate amount of Debt Service on all Parity Obligations payable from Net Revenues coming due and payable during such Fiscal Year in compliance with subsection (b) hereof, or (z) hires an Independent Financial Consultant to review the revenues and expenses of the Enterprises, and abides by such consultant's recommendations to revise the schedule of rates, fees, expenses and charges, and to revise any Operation and Maintenance Costs insofar as practicable, and to take such other actions as are necessary so as to produce Net Revenues to cure such violation for future compliance; provided, however, that, if the District does not, or cannot, transfer from either or both of the Rate Stabilization Funds the amount necessary to comply with subsection (b) hereof, or otherwise cure such violation within six (6) months after the date such violation is discovered, the Parity Obligations shall thereafter accrue interest at the Default Rate and an Event of Default shall be deemed to have occurred under the applicable section of the Parity Obligations Documents.

(d) There are hereby created separate funds to be known as the "Sewer Enterprise Rate Stabilization Fund" and the "Water Enterprise Rate Stabilization Fund," to be held and maintained by the District. The Rate Stabilization Funds are not pledged to secure payment of the Parity Obligations. Amounts in the Rate Stabilization Funds shall be applied solely for the uses and purposes set forth in this subsection (d). The District shall have the right to deposit into the Rate Stabilization Funds from time to time any amount of funds which are legally available therefor; provided that deposits for each Fiscal Year may be made until (but not after) one hundred twenty (120) days following the end of such Fiscal Year.

For the purpose of computing the amount of Revenues for any Fiscal Year for purposes of the preceding subsection (a), or the amount of Net Revenues for any Fiscal Year for purposes of the preceding subsection (b), the District shall be permitted to transfer amounts on deposit in either

of both of the Rate Stabilization Funds to the Revenue Fund, such transfers to be made until (but not after) one hundred twenty (120) days after the end of such Fiscal Year. In addition, the District shall be permitted to withdraw amounts on deposit in either or both Rate Stabilization Funds for any other lawful purpose.

SECTION 6.04. Collection of Rates and Charges. The District will have in effect at all times rules and regulations requiring each consumer or customer utilizing the facilities of either Enterprise to pay the rates, fees and charges applicable to such use or benefit received. Except in connection with the receipt of federal or State funding, the District will not permit any part of either Enterprise or any facility thereof to be used or taken advantage of free of charge by any corporation, firm or person, or by any public agency (including the United States of America, the State of California and any city, county, district, political subdivision, public corporation or agency of any thereof).

SECTION 6.05. Tax Covenants. The District hereby covenants that, notwithstanding any other provision of this Installment Purchase Agreement, it will make no use of the proceeds of the Installment Purchase Agreement or of any other amounts, regardless of the source, or of any property or take any action, or refrain from taking any action, that would cause the Installment Purchase Agreement to be “arbitrage bonds” within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended (the “Code”).

The District will not use or permit the use of the Project or any portion thereof by any person other than a governmental unit as such term is used in Section 141 of the Code, in such manner or to such extent as would result in the loss of exclusion from gross income for federal income tax purposes of the portion of the 2018 Installment Payments constituting interest under Section 103 of the Code.

The District will not make any use of the proceeds from the sale of the Project or any other funds of the District, or take or omit to take any other action, that would cause the obligation provided herein to be “federally guaranteed” within the meaning of Section 149(b) of the Code or “private activity bonds” within the meaning of Section 141 of the Code. To that end, so long as any 2018 Installment Payments are unpaid, the District, with respect to such proceeds and such other funds, will comply with all requirements of such Sections and all regulations of the United States Department of the Treasury issued thereunder and under Section 103 of the Internal Revenue Code of 1954, as amended, to the extent such requirements are, at the time, applicable and in effect.

The District will assure the filing of an information report for the 2018 Installment Payments in compliance with Section 149 (e) of the Tax Code.

The District has complied with the Code, with respect to the 2018 Installment Payments, and the District shall not knowingly take or omit to take any action that, under existing law, may adversely affect the exclusion from gross income for federal income tax purposes, or the exemption from any applicable State tax of the interest on the 2018 Installment Payments.

The 2018 Installment Payments are eligible for designation as “qualified tax-exempt obligations” under Section 265(b)(3) of the Tax Code.

SECTION 6.06.        Maintenance and Operation of the Enterprises. The District will maintain and preserve the Enterprises in good repair and working order at all times and will operate the Enterprises in an efficient and economical manner and will pay all Sewer Enterprise Operation and Maintenance Costs as they become due and payable.

SECTION 6.07.        Payment of Claims. The District will pay and discharge any and all lawful claims for labor, materials or supplies which, if unpaid, might become a lien on the Revenues or the funds or accounts created hereunder or on any funds in the hands of the District pledged to pay the Parity Obligations which might impair the security of the 2018 Installment Payments.

SECTION 6.08.        Competitive Facilities. Except for any facilities of the Sewer Enterprise and the Water Enterprise as of the date hereof, the District will not, to the extent permitted by law, acquire, maintain or operate and will not, to the extent permitted by law and within the scope of its powers, permit any other public or private agency, authority, city, special district, or political subdivision or any person whomsoever to acquire, maintain or operate within the sphere of influence of the District any Sewer Enterprise and/or Water Enterprise competitive with the Sewer Enterprise and/or Water Enterprise, as applicable; provided, however, that the District may, with the written consent of the Bank first had and obtained, assign all or a portion of the Water Enterprise to another entity provided such entity assumes the obligations of the District hereunder.

SECTION 6.09. Insurance.

(a) The District will procure and maintain insurance on the Enterprises with commercial insurers or through participation in a joint powers insurance authority, in such amounts, with such deductibles and against such risks (including accident to or destruction of the Enterprises) as are usually insurable in accordance with industry standards with respect to similar enterprises.

In the event of any damage to or destruction of an Enterprise or the Enterprises caused by the perils covered by such insurance, the proceeds of such insurance shall be applied to the repair, reconstruction or replacement of the damaged or destroyed portion of such Enterprise or the Enterprises, as applicable. The District shall cause such repair, reconstruction or replacement to begin promptly after such damage or destruction shall occur and to continue and to be properly completed as expeditiously as possible, and shall pay out of the proceeds of such insurance all costs and expenses in connection with such repair, reconstruction or replacement so that the same shall be completed and such Enterprise or the Enterprises, as applicable, shall be free and clear of all liens and claims. If the proceeds received by reason of any such loss shall exceed the costs of such repair, reconstruction or replacement, the excess shall be applied to prepay the 2018 Installment Payments and any other Parity Obligations, on a pro rata basis, in the manner provided in Section 7.01 hereof and in the instruments authorizing such Parity Obligations.

Alternatively, if the proceeds of such insurance are sufficient to enable the District to retire all outstanding Parity Obligations, the District may elect not to repair, reconstruct or replace the damaged or destroyed portion of such Enterprise or the Enterprises, as applicable, and thereupon such proceeds shall be applied to the prepayment of such Parity Obligations and to the payment of all other amounts due hereunder, and as otherwise required by the documents pursuant to which other Parity Obligations were issued.

(b) The District will procure and maintain commercial general liability insurance covering claims against the District for bodily injury or death, or damage to property, occasioned by reason of the ownership or operation of the Enterprises, such insurance to afford protection in such amounts and against such risks as are usually covered in connection with similar enterprises.

(c) The District will procure and maintain workers' compensation insurance against liability for compensation under the Workers' Compensation Insurance and Safety Act of California, or any act hereafter enacted as an amendment or supplement or in lieu thereof; such insurance to cover all persons employed in connection with the Enterprises.

(d) All policies of insurance required to be maintained herein shall provide that the Bank shall be given thirty (30) days' written notice of any intended cancellation thereof or reduction of coverage provided thereby.

(e) In lieu of obtaining insurance coverage as required by this Section, such coverage may, with the prior written consent of the Bank, be maintained by the District in the form of self-insurance. The District shall certify to the Bank that (i) the District has segregated amounts in a special insurance reserve meeting the requirements of this Section; (ii) an Insurance Consultant

certifies annually, on or before January 1 of each year in which self-insurance is maintained, in writing to the Bank that the District's general insurance reserves are actuarially sound and are adequate to provide the necessary coverage; and (iii) such reserves are held in a separate trust fund by an 'independent' trustee. Any statements of self-insurance shall be delivered to the Bank. The District shall pay or cause to be paid when due the premiums for all insurance policies required hereby.

SECTION 6.10.        Eminent Domain. If all or any part of the Water Enterprise shall be taken by eminent domain proceedings, the resulting Net Proceeds thereof shall be applied as follows:

(a)        If (1) the District delivers to the Bank a Certificate of the District showing (i) the estimated loss of annual Net Revenues, if any, suffered or to be suffered by the District by reason of such eminent domain proceedings, (ii) a general description of the additions, betterments, extensions or improvements to the Water Enterprise proposed to be acquired by the District from any Net Proceeds, and (iii) an estimate of the additional annual Net Revenues to be derived from such additions, betterments, extensions or improvements, and (2) on the basis of such certificate, determines that the estimated additional annual Net Revenues will sufficiently offset the estimated loss of annual Net Revenues resulting from such eminent domain proceedings so that the ability of the District to meet its obligations hereunder will not be substantially impaired (which determination shall be final and conclusive); then the District shall promptly proceed with the acquisition of such additions, betterments, extensions or improvements substantially in accordance with such Certificate of the District and such Net Proceeds shall be applied for the payment of the costs of such acquisition, and any balance of such Net Proceeds not required by the District for such purpose shall be applied to prepay the 2018 Notes and any other Parity Obligations, on a pro rata basis, in the manner provided in Section 3.5 hereof and in the instruments authorizing such other Parity Obligations.

(b)        If the foregoing conditions are not met, then such Net Proceeds shall be applied to prepay the Principal Components of the Loan Payments and the principal amounts of any other Parity Obligations, on a pro rata basis, in the manner provided in Section 3.5 hereof and in the instruments authorizing such other Parity Obligations.

SECTION 6.11.        Additional Information. The District agrees to furnish to the Bank, promptly, from time to time, such information regarding the operations, financial condition and property of the District and the Water Enterprise as the Bank may reasonably request.

SECTION 6.12.        Compliance with Law and Contracts. The District will faithfully comply with, keep, observe, and perform all valid and lawful obligations or regulations now or hereafter imposed on its operation of the Enterprises by contract, or prescribed by any law of the United States of America or of the State of California, or by any officer, board, or commission having jurisdiction or control.

SECTION 6.13.        Punctual Payment. The District will punctually pay the principal and interest to become due on the 2018 Installment Payments, in strict conformity with the terms hereof, and will faithfully observe and perform all the agreements, conditions, covenants and terms

contained herein required to be observed and performed by it, and will not rescind this Loan Agreement for any cause.

SECTION 6.14. Protection of Security and Rights of the Bank. The District will preserve and protect the security of the 2018 Installment Payments and the rights of the Bank and will warrant and defend the Bank's rights against all claims and demands of all persons. From and after the Closing Date, the 2018 Installment Payments shall be incontestable by the District.

SECTION 6.15. Parity Obligations.

(a) So long as any Parity Obligation is outstanding, the District shall not issue or incur any obligations payable from Revenues or Net Revenues senior or superior to the payment of Debt Service on such Parity Obligation. The District may at any time issue or incur Parity Obligations payable from Net Revenues on a parity with the 2018 Installment Payments in such principal amount as shall be determined by the District subject to the following specific conditions, which are hereby made conditions precedent to the issuance and delivery of such Parity Obligations:

(1) No Event of Default shall have occurred and be continuing;

(2) The Net Revenues (calculated without taking into account any amounts transferred into the Revenue Fund from the Rate Stabilization Funds pursuant to Section 5.04 hereof), either (i) as shown in the audited financial statements of the District for the most recent Fiscal Year for which an audit is available, or (ii) as shown by the books of the District for any more recent twelve (12) month period selected by the District, as verified by an Authorized Representative of the District, plus in either case (at the option of the District) the Additional Revenues, shall be at least equal to one hundred twenty-five percent (125%) of the amount of Maximum Annual Debt Service on all outstanding Parity Obligations and the Parity Obligations to be issued calculated on a combined basis; and

(3) Except with respect to the 2018 Installment Payments, and at the District's sole discretion, there may be established from the proceeds of such Parity Obligations a reserve fund for the security of such Parity Obligations, in an amount equal set forth in the applicable Parity Obligation Document.

The provisions of subsection (2) of this Section 6.15(a) shall not apply to any Parity Obligations if, and to the extent that (i) all of the proceeds of such Parity Obligations (other than proceeds applied to pay costs of issuing such Parity Obligations and to make the reserve fund deposit required pursuant to subsection (3) of this Section) shall be deposited in an irrevocable escrow held in cash or invested in Federal Securities for the purpose of paying the principal of and interest and premium (if any) on such outstanding Parity Obligations, and (ii) at the time of the incurring of such Parity Obligations, the District certifies in writing that maximum annual debt service on such Parity Obligations will not exceed Maximum Annual Debt Service on the outstanding Parity Obligations being refunded, and (iii) the final maturity of such Parity Obligations is not later than the final maturity of the Parity Obligations being refunded.

(b) In order to maintain the parity relationship of debt service payments on all Parity Obligations permitted hereunder, the District covenants that all payments in the nature of

principal and interest or reserve account replenishment with respect to any Parity Obligations, will be structured to occur semi-annually on April 1 and October 1, in each year as such payments are due with respect to the Debt Service payments, and reserve account replenishment with respect to any Parity Obligations will be structured to occur within one year, and to otherwise structure the terms of such Parity Obligations to ensure that they are in all respects payable on a parity with the Debt Service payments on all Parity Obligations, and not prior thereto.

(c) The District may issue or incur Subordinate Debt; provided, however, that Net Revenues (calculated without taking into account any amounts transferred into the Revenue Fund from the Rate Stabilization Funds pursuant to Section 5.04 hereof), either (i) as shown in the audited financial statements of the District for the most recent Fiscal Year for which an audit is available, or (ii) as shown by the books of the District for any more recent twelve (12) month period selected by the District, as verified by an Authorized Representative of the District, plus in either case (at the option of the District) the Additional Revenues, shall be at least equal to one hundred ten percent (110%) of the amount of Maximum Annual Debt Service on all outstanding Parity Obligations and the maximum annual debt service on the Subordinate Debt to be issued.

SECTION 6.16. Against Encumbrances. The District hereby covenants and agrees that it shall not incur any obligations that are secured by a pledge and lien on the Net Revenues that is senior to the pledge and lien on the Net Revenues contained herein. The District will not make any pledge of or place any lien on the Net Revenues except as provided herein. The District may pledge Net Revenues to secure Parity Obligations issued in accordance with Section 6.15 hereof. The District may at any time, or from time to time, issue evidences of indebtedness for any lawful purpose that are payable from and secured by a pledge of and lien on Net Revenues that is subordinate in all respects to the pledge of and lien on the Net Revenues provided herein.

SECTION 6.17. Further Assurances. The District will adopt, make, execute and deliver any and all further resolutions, instruments, and assurances as may be reasonably necessary or proper to carry out the intention or to facilitate the performance hereof and for the better assuring and confirming unto the Bank of the rights and benefits provided to it herein.

SECTION 6.18. Financial Reports. Promptly upon receipt by the District and in no event later than one hundred eighty (180) days after the close of each Fiscal Year (unless otherwise agreed in writing by the Bank), the District will furnish, or cause to be furnished, to the Bank an audit report of an Independent Certified Public Accountant with respect to such Fiscal Year, of the District, including the Water Enterprise, for said Fiscal Year.

At the same time as the District provides the audit to the Bank, the District shall also provide to the Bank a statement as to whether Net Revenues for such Fiscal Year were equal to at least 1.25 times the Debt Service for such Fiscal Year, calculated as provided in Section 6.03 hereof and a certification that no Event of Default has occurred and is continuing hereunder. In addition, the District shall deliver to the Bank, not later than thirty (30) days after its adoption (unless otherwise agreed in writing by the Bank), a copy of the District's adopted budget for the then current Fiscal Year. The District shall also deliver to the Bank a copy of any update to the District's budget adopted for a Fiscal Year with thirty (30) days of the adoption of such updated budget. [The District shall also provide the Bank with internally-prepared quarterly updates within

45 days of the end of each fiscal quarter. SUBJECT TO APPROVAL BY THE DISTRICT.]

SECTION 6.19.      Observance of Laws and Regulations. The District will well and truly keep, observe and perform or cause to be kept, observed and performed all valid and lawful obligations or regulations now or hereafter imposed on it by contract, or prescribed by any law of the United States, or of the State, or by any officer, board or commission having jurisdiction or control, as a condition of the continued enjoyment of any and every right, privilege or franchise now owned or hereafter acquired and enjoyed by the District, including the District's right to exist and carry on business as a California special district, to the end that such rights, privileges and franchises shall be maintained and preserved, and shall not become abandoned, forfeited or in any manner impaired.

SECTION 6.20.      Budget. The District hereby covenants to take such action as may be necessary to include all 2018 Installment Payments and all other amounts due hereunder in its annual budget and to make the necessary annual appropriations for all such 2018 Installment Payments and all other amount due hereunder.

SECTION 6.21.      Notices. The District shall provide to the Bank:

(a) Immediate notice by telephone, promptly confirmed in writing, of any event, action or failure to take any action which constitutes an Event of Default under this Loan Agreement, together with a detailed statement by an Authorized Representative of the steps being taken by the District to cure the effect of such Event of Default.

(b) Prompt written notice (i) of any action, suit or proceeding or any investigation, inquiry or similar proceeding by or before any court or other governmental authority, domestic or foreign, against the District or either Enterprise or the Revenues which involve claims equal to or in excess of \$250,000 or that seeks injunctive relief, or (ii) of any loss or destruction of or damage to any portion of either Enterprise in excess of \$250,000.

(c) Prompt written notice of any Material Litigation, Material Adverse Effect or any investigation, inquiry or similar proceeding by any Governmental Authority with respect to any matter that relates to or could materially impact Revenues.

(d) Promptly upon notice thereof, any termination or cancellation of any insurance policy which the District is required to maintain, or any uninsured or partially uninsured loss through liability or property damage, or through fire, theft or any other cause affecting the District property in excess of an aggregate of \$250,000.

(e) With reasonable promptness, such other information respecting the District, Enterprise, and the operations, affairs and financial condition of the District as the Bank may from time to time reasonably request.



## ARTICLE VII

### PREPAYMENT OF 2018 INSTALLMENT PAYMENTS

#### SECTION 7.01. Prepayment.

(a) Optional Prepayment. The District may prepay all or any part of the principal portion of the 2018 Installment Payments due before October 1, 2021, (in integral multiples of \$5,000) in inverse order of principal payments due, from any available funds at a prepayment price equal to the 101% of principal portion of the 2018 Installment Payments to be prepaid, together with the interest portion of such 2018 Installment Payments to the prepayment date.

The District may prepay all or any part of the principal portion of the 2018 Installment Payments due on or after October 1, 2021, on any Interest Payment Date (in integral multiples of \$5,000) in inverse order of principal payments due on and after October 1, 2021, from any available funds at a prepayment price equal to the principal portion of the 2018 Installment Payments to be prepaid, together with the interest portion of such 2018 Installment Payments to the prepayment date.

Notwithstanding any such prepayment, the District shall not be relieved of its obligations hereunder, including its obligations under Article IV, until the Purchase Price shall have been fully paid (or provision for payment thereof shall have been provided to the written satisfaction of the Corporation).

(b) Mandatory Sinking Fund Prepayment. The Purchase Price of the Project is subject to mandatory sinking fund prepayment on each Installment Payment Date as set forth in Exhibit B hereto.

SECTION 7.02. Method of Prepayment. Before making any prepayment pursuant to Section 7.01, the District shall, within five (5) days following the event permitting the exercise of such right to prepay or creating such obligation to prepay, give written notice to the Corporation and the Bank describing such event and specifying the date on which the prepayment will be paid, which date shall be not less than thirty (30) nor more than forty-five (45) days from the date such notice is given.

## ARTICLE VIII

### EVENTS OF DEFAULT AND REMEDIES OF THE CORPORATION

SECTION 8.01. Events of Default and Acceleration of Maturities. The following shall constitute Events of Default hereunder:

(a) if default shall be made in the due and punctual payment of any 2018 Installment Payment or any Contract or Bond when and as the same shall become due and payable;

(b) if default shall be made by the District in the performance of any of the agreements or covenants required herein to be performed by it, and such default shall have

continued for a period of sixty (60) days after the District shall have been given notice in writing of such default by the Corporation; or

(c) if the District shall file a petition or answer seeking arrangement or reorganization under the federal bankruptcy laws or any other applicable law of the United States of America or any state therein, or if a court of competent jurisdiction shall approve a petition filed with or without the consent of the District seeking arrangement or reorganization under the federal bankruptcy laws or any other applicable law of the United States of America or any state therein, or if under the provisions of any other law for the relief or aid of debtors any court of competent jurisdiction shall assume custody or control of the District or of the whole or any substantial part of its property;

then and in each and every such case during the continuance of such Event of Default specified in clause (c) above, the Corporation shall, and for any other such Event of Default the Corporation may, by notice in writing to the District, declare the entire principal amount of the unpaid 2018 Installment Payments and the accrued interest thereon to be due and payable immediately, and upon any such declaration the same shall become immediately due and payable, anything contained herein to the contrary notwithstanding. This subsection however, is subject to the condition that if at any time after the entire principal amount of the unpaid 2018 Installment Payments and the accrued interest thereon shall have been so declared due and payable and before any judgment or decree for the payment of the moneys due shall have been obtained or entered the District shall deposit with the Corporation a sum sufficient to pay the unpaid principal amount of the 2018 Installment Payments or the unpaid payment of any other Parity Obligation referred to in clause (a) above due prior to such declaration and the accrued interest thereon, with interest on such overdue installments, at the rate or rates applicable to the remaining unpaid principal balance of the 2018 Installment Payments or such Parity Obligations if paid in accordance with their terms, and the reasonable expenses of the Corporation, and any and all other defaults known to the Corporation (other than in the payment of the entire principal amount of the unpaid 2018 Installment Payments and the accrued interest thereon due and payable solely by reason of such declaration) shall have been made good or cured to the satisfaction of the Corporation or provision deemed by the Corporation to be adequate shall have been made therefor, then and in every such case the Corporation, by written notice to the District, may rescind and annul such declaration and its consequences; but no such rescission and annulment shall extend to or shall affect any subsequent default or shall impair or exhaust any right or power consequent thereon.

The District or the Corporation shall immediately notify the Bank of an Event of Default.

SECTION 8.02. Action on Default or Termination. Upon the occurrence of an Event of Default (as that term is defined in this Installment Purchase Agreement), the Default Rate shall apply and in each and every such case during the continuance of such Event of Default anything in this Installment Purchase Agreement to the contrary notwithstanding, upon the occurrence and continuance of an Event of Default, the Bank shall be entitled, upon notice in writing to the Corporation, to control and direct the enforcement of all rights and remedies granted to the Corporation under this Installment Purchase Agreement, including, without limitation, acceleration of the unpaid 2018 Installment Payments as described in this Installment Purchase Agreement and the right to annul any declaration of acceleration.

SECTION 8.03. Application of Funds Upon Acceleration. Upon the date of the declaration of acceleration as provided in Section 8.01, all Revenues thereafter received shall be applied in the following order:

First, to the payment, without preference or priority, and in the event of any insufficiency of such moneys ratably without any discrimination or preference, of the fees, costs and expenses of the Corporation or the Bank, if any, and any other holder of Parity Obligations in carrying out the provisions of this article, including reasonable compensation to its accountants and counsel;

Second, to the payment of the Operation and Maintenance Costs; and

Third, to the payment pro rata of the entire principal amount of the 2018 Installment Payments and the unpaid principal amount of all Parity Obligations and the accrued interest thereon, with interest on the overdue installments at the rate or rates of interest applicable to the 2018 Installment Payments and such Parity Obligations if paid in accordance with their respective terms.

SECTION 8.04. Other Remedies of the Corporation. The Corporation shall have the right:

(a) by mandamus or other action or proceeding or suit at law or in equity to enforce its rights against the District or any director, officer or employee thereof, and to compel the District or any such director, officer or employee to perform and carry out its or his duties under the Law and the agreements and covenants required to be performed by it or him contained herein;

(b) by suit in equity to enjoin any acts or things which are unlawful or violate the rights of the Corporation; or

(c) by suit in equity upon the happening of an Event of Default to require the District and its directors, officers and employees to account as the trustee of an express trust.

SECTION 8.05. Non-Waiver. Nothing in this article or in any other provision hereof shall affect or impair the obligation of the District, which is absolute and unconditional, to pay the 2018 Installment Payments to the Corporation at the respective due dates or upon prepayment from the Net Revenues, the Revenue Fund and the other funds herein pledged for such payment, or shall affect or impair the right of the Corporation, which is also absolute and unconditional, to institute suit to enforce such payment by virtue of the contract embodied herein.

A waiver of any default or breach of duty or contract by the Corporation shall not affect any subsequent default or breach of duty or contract or impair any rights or remedies on any such subsequent default or breach of duty or contract. No delay or omission by the Corporation to exercise any right or remedy accruing upon any default or breach of duty or contract shall impair any such right or remedy or shall be construed to be a waiver of any such default or breach of duty or contract or an acquiescence therein, and every right or remedy conferred upon the Corporation by the Law or by this article may be enforced and exercised from time to time and as often as shall be deemed expedient by the Corporation.

If any action, proceeding or suit to enforce any right or exercise any remedy is abandoned or determined adversely to the Corporation, the District and the Corporation shall be restored to their former positions, rights and remedies as if such action, proceeding or suit had not been brought or taken.

SECTION 8.06. Remedies Not Exclusive. No remedy herein conferred upon or reserved to the Corporation is intended to be exclusive of any other remedy, and each such remedy shall be cumulative and shall be in addition to every other remedy given hereunder now or hereafter existing in law or in equity or by statute or otherwise and may be exercised without exhausting and without regard to any other remedy conferred by the Law or any other law.

## ARTICLE IX

### DISCHARGE OF OBLIGATIONS

SECTION 9.01. Discharge of Obligations. When

(a) all or any portion of the 2018 Installment Payments shall have become due and payable in accordance herewith or a written notice of the District to prepay all or any portion of the 2018 Installment Payments shall have been filed with the Corporation and the Bank; and

(b) there shall have been deposited with a trustee at or prior to the 2018 Installment Payment Dates or date (or dates) specified for prepayment, in trust for the benefit of the Corporation or the Bank and irrevocably appropriated and set aside to the payment of all or any portion of the 2018 Installment Payments, sufficient moneys and Federal Securities, the principal of and interest on which when due will provide money sufficient to pay all principal, prepayment premium, if any, and interest of such 2018 Installment Payments to their respective 2018 Installment Payment Dates or prepayment date or dates as the case may be; and

(c) if an opinion of bond counsel acceptable to the Corporation is filed with the Corporation to the effect that the actions authorized by and taken pursuant to this Article IX shall not adversely affect the tax exempt status of the interest portion of the 2018 Installment Payments, the rights, title and interest of the Corporation herein and the obligations of the District hereunder shall, with respect to all or such portion of the 2018 Installment Payments as have been so provided for, thereupon cease, terminate, become void and be completely discharged and satisfied (except for the right of a trustee and the obligation of the District to have such moneys and such Federal Securities applied to the payment of such 2018 Installment Payments). In such event, upon request of the District a trustee shall cause an accounting for such period or periods as may be requested by the District to be prepared and filed with the District and shall execute and deliver to the District all such instruments as may be necessary or desirable to evidence such total or partial discharge and satisfaction, as the case may be, and, in the event of a total discharge and satisfaction, the trustee shall pay over to the District, after payment of all amounts due the trustee pursuant to any trust agreement, as an overpayment of 2018 Installment Payments, all such moneys or such Federal Securities held by it pursuant hereto other than such moneys and such Federal Securities, as are required for the payment or prepayment of the 2018 Installment Payments, which moneys and Federal Securities shall continue to be held by the

trustee in trust for the payment of the 2018 Installment Payments and shall be applied by the trustee to the payment of the 2018 Installment Payments of the District.

## ARTICLE X

### MISCELLANEOUS

SECTION 10.01. Liability of District Limited to Net Revenues. Notwithstanding anything contained herein, the District shall not be required to advance any moneys derived from any source of income other than the Net Revenues, the Revenue Fund and the other funds provided herein for the payment of the 2018 Installment Payments or for the performance of any agreements or covenants required to be performed by it contained herein. The District may, however, advance moneys for any such purpose so long as such moneys are derived from a source legally available for such purpose and may be legally used by the District for such purpose.

The obligation of the District to make the 2018 Installment Payments is a special obligation of the District payable solely from such Net Revenues, Revenue Fund and other funds, and does not constitute a debt of the District or of the State of California or of any political subdivision thereof within the meaning of any constitutional or statutory debt limitation or restriction.

SECTION 10.02. Benefits of Installment Purchase Agreement Limited to Parties. Nothing contained herein, expressed or implied, is intended to give to any person other than the District, the Corporation or the Bank any right, remedy or claim under or pursuant hereto, and any agreement or covenant required herein to be performed by or on behalf of the District or the Corporation shall be for the sole and exclusive benefit of the other party.

SECTION 10.03. Successor and Bank is Deemed Included in all References to Predecessor. Whenever the District, the Corporation or the Bank is named or referred to herein, such reference shall be deemed to include the successor or assignee to the powers, duties and functions that are presently vested in the District, the Corporation or the Bank and all agreements and covenants required hereby to be performed by or on behalf of the District, the Corporation or the Bank shall bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not.

SECTION 10.04. Waiver of Personal Liability. No director, officer or employee of the District shall be individually or personally liable for the payment of the 2018 Installment Payments, but nothing contained herein shall relieve any director, officer or employee of the District from the performance of any official duty provided by any applicable provisions of law or hereby.

SECTION 10.05. Article and Section Headings, Gender and References. The headings or titles of the several articles and sections hereof and the table of contents appended hereto shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof, and words of any gender shall be deemed and construed to include all genders. All references herein to “Articles,” “Sections” and other subdivisions or clauses are to the corresponding articles, sections subdivisions or clauses hereof; and the words “hereby,” “herein,”

“hereof,” “hereto,” “herewith” and other words of similar import refer to this Installment Purchase Agreement as a whole and not to any particular article, section, subdivision or clause hereof.

SECTION 10.06. Partial Invalidity. If any one or more of the agreements or covenants or portions thereof required hereby to be performed by or on the part of the District or the Corporation shall be contrary to law, then such agreement or agreements, such covenant or covenants or such portions thereof shall be null and void and shall be deemed separable from the remaining agreements and covenants or portions thereof and shall in no way affect the validity hereof. The District and the Corporation hereby declare that they would have executed this Installment Purchase Agreement, and each and every other article, section, paragraph, subdivision, sentence, clause and phrase hereof irrespective of the fact that any one or more articles, sections, paragraphs, subdivisions, sentences, clauses or phrases hereof or the application thereof to any person or circumstance may be held to be unconstitutional, unenforceable or invalid.

SECTION 10.07. Assignment. This Installment Purchase Agreement and any rights hereunder may be assigned by the Corporation or the Bank, as a whole or in part, without the necessity of obtaining the prior consent of the District.

SECTION 10.08. Net Contract. This Installment Purchase Agreement shall be deemed and construed to be a net contract, and the District shall pay absolutely net during the term hereof the 2018 Installment Payments and all other payments required hereunder, free of any deductions and without abatement, diminution or set-off whatsoever.

SECTION 10.09. California Law. THIS INSTALLMENT PURCHASE AGREEMENT SHALL BE CONSTRUED AND GOVERNED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA.

SECTION 10.10. Notices. All written notices to be given hereunder shall be given by mail to the party entitled thereto at its address set forth below, or at such other address as such party may provide to the other party in writing from time to time, namely:

If to the District:                      Borrego Water District  
806 Palm Canyon Drive  
Borrego Springs, California 92004  
Attention: General Manager

If to the Corporation:                Borrego Water District Public Facilities Corporation  
806 Palm Canyon Drive  
Borrego Springs, California 92004  
Attention: President

If to the Bank:                        Pacific Western Bank  
9701 Wilshire Blvd., Suite 700  
Beverly Hills, CA 90212  
Attention: Christopher Baron, Managing Director

SECTION 10.11. Effective Date. This Installment Purchase Agreement shall become effective upon its execution and delivery, and shall terminate when the Purchase Price shall have

been fully paid (or provision for the payment thereof shall have been made to the written satisfaction of the Corporation).

SECTION 10.12. Execution in Counterparts. This Installment Purchase Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

SECTION 10.13. Indemnification of Corporation, the Bank. The District hereby agrees to indemnify and hold harmless the Corporation and the Bank if and to the extent permitted by law, from and against all claims, advances, damages and losses, including legal fees and expenses, arising out of or in connection with the acceptance or the performance of its duties hereunder and under the Assignment Agreement; provided that no indemnification will be made for willful misconduct or gross negligence hereunder or under the Assignment Agreement by the Corporation.

SECTION 10.14. Amendments Permitted.

(a) This Installment Purchase Agreement and the rights and obligations of the Corporation, the District and the Bank may be modified or amended at any time by an amendment hereto which shall become binding when the written consent of the Bank, shall have been filed with the Corporation and the District.

(b) This Installment Purchase Agreement and the rights and obligations of the Corporation, the District and the Bank may also be modified or amended at any time by an amendment hereto which shall become binding upon adoption, without the consent of the Bank, but only to the extent permitted by law and only for any one or more of the following purposes-

(1) to add to the covenants and agreements of the Corporation or the District contained in this Installment Purchase Agreement other covenants and agreements thereafter to be observed or to surrender any right or power herein reserved to or conferred upon the Corporation or the District, and which shall not adversely affect the interests of the Bank;

(2) to cure, correct or supplement any ambiguous or defective provision contained in this Installment Purchase Agreement or in regard to questions arising under this Installment Purchase Agreement, as the Corporation or the District may deem necessary or desirable and which shall not adversely affect the interests of the Bank; and

(3) to make such other amendments or modifications as may be in the best interests of the Bank.

SECTION 10.15. Third Party Beneficiary. The Bank is made a party beneficiary hereunder with all rights of a third party beneficiary.

SECTION 10.16. Judicial Reference. The Corporation and the District hereby agree: (i) each proceeding or hearing based upon or arising out of, directly or indirectly, this Installment Purchase Agreement or any document related thereto, any dealings between the District and the Corporation related to the subject matter of this Installment Purchase Agreement or any related

transactions, and/or the relationship that is being established between the District and the Corporation (hereinafter, a "Claim") shall be determined by a consensual general judicial reference (the "Reference") pursuant to the provisions of California Code of Civil Procedure Section 638 *et seq.*, as such statutes may be amended or modified from time to time; (ii) upon a written request, or upon an appropriate motion by either the Corporation or the District, as applicable, any pending action relating to any Claim and every Claim shall be heard by a single Referee (as defined below) who shall then try all issues (including any and all questions of law and questions of fact relating thereto), and issue findings of fact and conclusions of law and report a statement of decision. The Referee's statement of decision will constitute the conclusive determination of the Claim. The Corporation and the District agree that the Referee shall have the power to issue all legal and equitable relief appropriate under the circumstances before the Referee; (iii) the Corporation and the District shall promptly and diligently cooperate with one another, as applicable, and the Referee, and shall perform such acts as may be necessary to obtain prompt and expeditious resolution of all Claims in accordance with the terms of this Section 10.16; (iv) either the Corporation or the District, as applicable, may file the Referee's findings, conclusions and statement with the clerk or judge of any appropriate court, file a motion to confirm the Referee's report and have judgment entered thereon (if the report is deemed incomplete by such court, the Referee may be required to complete the report and resubmit it); (v) the Corporation and the District, as applicable, will each have such rights to assert such objections as are set forth in California Code of Civil Procedure Section 638 *et seq.*; and (vi) all proceedings shall be closed to the public and confidential, and all records relating to the Reference shall be permanently sealed when the order thereon becomes final.

(a) Selection of Referee; Powers. The parties to the Reference proceeding shall select a single neutral referee (the "Referee"), who shall be a retired judge or justice of the courts of the State, or a federal court judge, in each case, with at least ten (10) years of judicial experience in civil matters. The Referee shall be appointed in accordance with California Code of Civil Procedure Section 638 (or pursuant to comparable provisions of federal law if the dispute falls within the exclusive jurisdiction of the federal courts). If within ten (10) days after the request or motion for the Reference, the parties to the Reference proceeding cannot agree upon a Referee, then any party to such proceeding may request or move that the Referee be appointed by the Presiding Judge of the Los Angeles County Superior Court. The Referee shall determine all issues relating to the applicability, interpretation, legality and enforceability of this Section 10.16.

(b) Provisional Remedies and Self Help. No provision of this Section 10.16 shall limit the right of either the Corporation or the District, as the case may be, to (i) exercise such self-help remedies as might otherwise be available under applicable law, or (ii) obtain or oppose provisional or ancillary remedies, including without limitation injunctive relief, writs of possession, the appointment of a receiver, and/or additional or supplementary remedies from a court of competent jurisdiction before, after, or during the pendency of any Reference. The exercise of, or opposition to, any such remedy does not waive the right of the Corporation or the District to the Reference pursuant to this Section 10.16(b).

(c) Costs and Fees. Promptly following the selection of the Referee, the parties to such Reference proceeding shall each advance equal portions of the estimated fees and costs of the Referee. In the statement of decision issued by the Referee, the Referee shall award costs,



including reasonable attorneys' fees, to the prevailing party, if any, and may order the Referee's fees to be paid or shared by the parties to such Reference proceeding in such manner as the Referee deems just.

*[Signature Page Follows]*

IN WITNESS WHEREOF, the parties hereto have executed and attested this Installment Purchase Agreement (2018 Capital Improvement Project) by their officers thereunto duly authorized as of the day and year first written above.

BORREGO WATER DISTRICT

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President

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Secretary

BORREGO WATER DISTRICT PUBLIC  
FACILITIES CORPORATION

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President

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Secretary

EXHIBIT A

DESCRIPTION OF THE PROJECT

The Project comprises the following described improvements to the District's Water Enterprise and Sewer Enterprise. The estimated value of each component of the Project is listed opposite its name.

WATER ENTERPRISE COMPONENTS

VALUE

\$

SEWER ENTERPRISE COMPONENTS

VALUE

\$

EXHIBIT B

PURCHASE PRICE

1. The Purchase Price shall be subject to mandatory sinking fund prepayment in the following 2018 Installment Payments.

2. The 2018 Installment Payments are payable in the amounts and on the 2018 Installment Payment Dates as follows:

2018 Installment Payment Date	2018 Principal Payment	2018 Interest Payments	Total Installment Payments
[October/April 1, 201[8/9] April 1, 2019	,000		\$
October 1, 2019 April 1, 2020	,000		
October 1, 2020 April 1, 2021	,000		
October 1, 2021 April 1, 2022	,000		
October 1, 2022 April 1, 2023	,000		
October 1, 2023 April 1, 2024	,000		
October 1, 2024 April 1, 2025	,000		
October 1, 2025 April 1, 2026	,000		
October 1, 2026 April 1, 2027	,000		
October 1, 2027 April 1, 2028	,000		
October 1, 2028 April 1, 2029	,000		
October 1, 2029 April 1, 2030	,000		
October 1, 2030 April 1, 2031	,000		
October 1, 2031 April 1, 2032	,000		
October 1,2032 April 1, 2033	,000		
October 1, 2033	,000		
Total			_____

This is an estimated amortization schedule. Actual amounts may vary if payments are made on different days and in different amounts.

Upon the occurrence of an Event of Default, the Default Rate shall apply. Upon the occurrence of an Event of Taxability, the Taxable Rate shall apply.

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ASSIGNMENT AGREEMENT

by and among

BORREGO WATER DISTRICT PUBLIC FACILITIES CORPORATION,

BORREGO WATER DISTRICT

and

PACIFIC WESTERN BANK

Dated as of July 1, 2018

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## ASSIGNMENT AGREEMENT

This Assignment Agreement is made and entered into as of July 1, 2018 by and among BORREGO WATER DISTRICT PUBLIC FACILITIES CORPORATION, a nonprofit public benefit corporation duly organized and existing under the laws of the State of California (the "Corporation"), BORREGO WATER DISTRICT, a water district duly organized and validly existing under the laws of the State of California (the "District") and PACIFIC WESTERN BANK, a California state-chartered bank (including its successors and assigns, the "Assignee");

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL AGREEMENTS AND COVENANTS CONTAINED HEREIN AND FOR OTHER VALUABLE CONSIDERATION, THE PARTIES HERETO DO HEREBY AGREE AS FOLLOWS:

### SECTION 1. Assignment.

The Corporation, for good and valuable consideration in hand received, does hereby sell, assign and transfer to the Assignee, without recourse, all of its rights, title, and interest in the Installment Purchase Agreement (2018 Capital Improvement Project), dated as of July 1, 2018, by and between the District and the Corporation, (the "Installment Purchase Agreement") including the right to receive all 2018 Installment Payments from the District under the Installment Purchase Agreement, together with any and all of the other rights of the Corporation under the Installment Purchase Agreement as may be necessary to enforce payment of such 2018 Installment Payments when due or otherwise to protect the interests of the Assignee.

### SECTION 2. Acceptance.

The Assignee hereby accepts the foregoing assignment for the purpose of securing the right assigned to it to receive all such 2018 Installment Payments from the District under the Installment Purchase Agreement and the other rights assigned to it, subject to the terms and provisions of the Installment Purchase Agreement.

### SECTION 3. Release and Indemnification.

The District shall, to the extent permitted by law, indemnify and save the Assignee, and its respective officers, agents, directors and employees, harmless from and against all claims, losses, liabilities, costs, expenses and damages, including legal fees and expenses, arising out of (a) the use, maintenance, condition or management or operation of, or from any work or thing done on, the Project, the Water System or the Sewer System by the District, including injury or damages to any persons or property arising therefrom, (b) any breach or default on the part of the District in the performance of any of its obligations under the Installment Purchase Agreement, or (c) any act of negligence of the District or of any of its agents, contractors, servants, employees or licensees with respect to the Project, the Water System or the Sewer System. No indemnification is made under this Section for willful misconduct or gross negligence by the Assignee or its officers, agents, directors or employees. The provisions of this Section shall continue in full force and effect, notwithstanding the termination of the Term of the Installment Purchase Agreement for any reason.

#### SECTION 4. Closing Conditions.

(a) The Assignee hereby enters into this Agreement in reliance upon its own due diligence and the representations and warranties of the District contained herein and the representations and warranties to be contained in the documents and instruments to be delivered on the Closing Date and upon the performance by the District and the Corporation of their respective obligations both on and as of the date hereof and as of the Closing Date. Accordingly, the obligations of the Assignee under this Assignment Agreement to purchase, to accept the assignment of and to pay for the 2018 Installment Payments shall be subject to the accuracy in all material respects of the representations and warranties of the District contained herein as of the date hereof and as of the Closing Date, to the accuracy in all material respects of the statements of the officers and other officials of the District and the Corporation made in any certificate or document furnished pursuant to the provisions hereof, to the performance by the District and the Corporation of their respective obligations to be performed hereunder, at or prior to the Closing Date, and also shall be subject to the following additional conditions:

(i) At the Closing Date, the Installment Purchase Agreement shall have been duly authorized, executed and delivered by the respective parties thereto, all in substantially the forms heretofore submitted to the Assignee, with only such changes as shall have been agreed to in writing by the Assignee, and shall be in full force and effect, and the Resolution shall be in full force and effect;

(ii) On the Closing Date, all necessary action of the District relating to the execution and delivery of the Installment Purchase Agreement will have been taken and will be in full force and effect and will not have been amended, modified or supplemented; and

(iii) At or prior to the Closing Date, the Assignee shall have received the following documents, in each case satisfactory in form and substance to the Assignee:

(A) Bond Opinion. The unqualified approving opinion of Best Best & Krieger LLP, bond counsel for the District (“Bond Counsel”), dated the Closing Date, addressed to the District, as to the validity and enforceability of the Installment Purchase Agreement and the tax-exempt status of the 2018 Installment Payments;

(B) Reliance Letter. A reliance letter from Bond Counsel permitting the Assignee to rely upon the approving opinion referred to in subparagraph (A), above;

(C) Supplemental Opinion. A supplemental opinion of Bond Counsel, dated the Closing Date and addressed to the Assignee, to the effect that:

(1) the 2018 Installment Payments are exempt from registration under the Securities Act of 1933, as amended, and the Installment Purchase Agreement is exempt from qualification pursuant to the Trust Indenture Act of 1939, as amended; and

(2) assuming due authorization, execution and delivery by the Assignee, this Assignment Agreement has been duly authorized, executed and delivered by the District and constitutes a legal, valid and binding agreement of the District, except as the



enforcement thereof may be limited by bankruptcy, insolvency, reorganization, arrangement, moratorium and other laws affecting the enforcement of creditors' rights generally and by the application of equitable principles (regardless of whether such enforceability is considered in equity or at law), to the exercise of judicial discretion in appropriate cases, and to the limitations on legal remedies against school districts in the State of California and except that no opinion is expressed with respect to any indemnification or contribution provisions contained in this Assignment Agreement;

(D) Certificate of the District. A certificate signed by a duly authorized official of the District to the effect that (A) this Assignment Agreement and the Installment Purchase Agreement have been duly executed and delivered, (B) the representations, warranties and covenants of the District herein and therein are true and correct in all material respects as of the Closing Date, and (C) the District has complied with all the terms of the Installment Purchase Agreement to be complied with by the District prior to or concurrently with the Closing Date and such documents are in full force and effect;

(E) Resolutions.

(1) A certificate of the Secretary of the Board of Directors of the District or his or her designee, together with a fully executed copy of the Resolution No. [\_\_\_\_\_] of the Board of Directors of the District, to the effect that such copy is a true and correct copy of such Resolution;

(2) A certificate of the Secretary of the Board of Directors of the Corporation or his or her designee, together with a fully executed copy of the Resolution No. [\_\_\_\_\_] of the Board of Directors of the Corporation, to the effect that such copy is a true and correct copy of such Resolution;

(F) Assignment. An executed copy of this Assignment Agreement;  
and

(G) Additional Documents. Such additional legal opinions, certificates, proceedings, instruments and other documents as Bond Counsel or the Assignee may reasonably request to evidence the truth and accuracy, as of the Closing Date, of the representations contained herein and the due performance or satisfaction by the District at or prior to such time of all agreements then to be performed and all conditions then to be satisfied.

(b) At or prior to the Closing Date, the District shall have received a letter from Assignee in the form attached as Attachment "A" hereto duly executed by an officer of Assignee who is duly authorized to execute such letter on behalf of Assignee.

#### SECTION 5. Expenses.

The fees and disbursements of Bond Counsel, the fees and disbursements of the municipal advisor to the District, the cost of preparing the documents, fees of the counsel to the Assignee and other miscellaneous expenses of the District incurred in connection with the offering and delivery of the Bonds shall all be the obligation of the District. The Assignee shall

have no responsibility for any expenses associated with the issuance of the Bonds, including, but not limited to, the expenses identified above as the obligation of the District.

**SECTION 6. Assignment to Assignee; Effect; Restrictions on Assignments.**

The District understands and agrees that, upon the execution and delivery of this Assignment Agreement (which is occurring simultaneously with the execution and delivery hereof), all right, title and interest of the Corporation in and to this Installment Purchase Agreement will be sold, assigned and transferred to the Assignee (all such rights assigned pursuant to the Assignment Agreement, the "Assigned Rights"). The District hereby consents to such sale, assignment and transfer. The Corporation hereby directs the District, and the District hereby agrees, to pay the Assignee all payments payable by the District under the Installment Purchase Agreement. Whenever in the Installment Purchase Agreement any reference is made to the Corporation and such reference concerns any Assigned Rights, such reference shall be deemed to refer to the Assignee.

The Assigned Rights, and all proceeds therefrom, may be further participated, assigned and reassigned in whole or in part to one or more assignees or subassignees by the Assignee (including, but not limited to, in connection with the creation of fractional interests with institutional investors so long as such assignment complies with applicable State law), without the necessity of obtaining the consent of the District; provided, that any such participation, assignment, transfer or conveyance (i) shall be made only to investors each of whom the transferor Assignee reasonably believes is a "qualified institutional buyer" as defined in Rule 144A(a)(1) promulgated under the Securities Act of 1933, as amended (the "Securities Act") or an "accredited investor" as defined in Section 501(a)(1), (2), (3) or (7) of Regulation D promulgated under the Securities Act of 1933, as amended, and in either case is purchasing the Assigned Rights (or any interest therein) for its own account with no present intention to resell or distribute the Assigned Rights (or interest therein), subject to each investor's right at any time to dispose of the Assigned Rights or any interest therein as it determines to be in its best interests, (ii) shall not result in more than 35 owners of the Assigned Rights or the creation of any interest in the Assigned Rights in an aggregate principal component that is less than \$100,000 (or the then aggregate unpaid principal component of 2018 Installment Payments) and (iii) shall not require the District to make 2018 Installment Payments, send notices or otherwise deal with respect to matters arising under the Installment Purchase Agreement with or to more than one trustee, owner, servicer or other fiduciary or agent or entity (herein referred to as the "Servicer") and any trust agreement, participation agreement or custodial agreement under which multiple ownership interests in the Assigned Rights are created shall provide the method by which the owners of such interests shall establish the rights and duties of a single Servicer to act on their behalf with respect to the Assigned Rights, including with respect to the exercise of rights and remedies on behalf of such owners upon the occurrence of an Event of Default hereunder. The Corporation (including the initial Assignee pursuant to the Assignment Agreement) and the District hereby acknowledge and agree that the restrictions and limitations on transfer as provided in this Section 10.06 shall apply to the first and subsequent assignees and sub-assignees of any of the Assigned Rights (or any interest therein).

No assignment, transfer or conveyance permitted by this Section 6 that changes the Servicer or its payment instructions or mailing address shall be effective until the District shall

have received a written notice of assignment that discloses the name, payment instructions and address of each such assignee; provided, that if such assignment is made to a bank or trust company as trustee or paying agent for owners of certificates of participation, trust certificates or partnership interests evidencing interests in the Assigned Rights, it shall thereafter be sufficient that the District receives notice of the name, payment instructions and address of such bank or trust company that acts as the Servicer. During the Term of the Installment Purchase Agreement, the District shall keep, or cause to be kept, a complete and accurate record of all such assignments in form necessary to comply with Section 149 of the Code. The District shall retain all such notices as a register of all Assignees and shall make all payments to the Assignee or Servicer designated in such register. The District shall not have the right to, and shall not, assert against the initial Assignee or any subsequent Assignee any claim, counterclaim or other right that the District may have against the Corporation. If the Assignee notifies the District of its intent to assign the Assigned Rights (or any interest therein) to a different Servicer, the District agrees that it shall execute and deliver to the requesting Assignee a notice and acknowledgment of assignment in form reasonably required by such Assignee within five (5) business days after its receipt of such request.

The District hereby acknowledges and agrees that (i) the Assignee has not been in the chain of title of the Project, does not operate, control or have possession of the Property or the Project and has no control over the work performed by any vendor with respect to the Property or the Project, and (ii) the Assignee has no obligation with respect the installation, operation, use, storage or maintenance of the Project.

[Remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have executed this Assignment Agreement by their officers thereunto duly authorized as of the day and year first written above.

BORREGO WATER DISTRICT PUBLIC FACILITIES CORPORATION

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

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

BORREGO WATER DISTRICT

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

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

PACIFIC WESTERN BANK, as Assignee

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

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

**ATTACHMENT "A"**

**PURCHASER LETTER**

\_\_\_\_\_, 2018

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

Re: \$\_\_\_\_\_ Borrego Water District  
Installment Purchase Agreement  
(2018 Capital Improvement Project)

Ladies and Gentlemen:

In connection with the purchase by the undersigned (the "Purchaser") of right to receive the Installment Payments (the "Installment Payment Rights") to be made by the Borrego Water District (the "District") pursuant to the Installment Purchase Agreement (2018 Capital Improvement Project), dated as of \_\_\_\_\_ 1, 2018, by and between the District and the Borrego Water District Public Facilities Corporation (the "Corporation"), and with knowledge that the District has sold such rights to the Purchaser in reliance upon the representations, warrants, covenants and acknowledgements of the Purchaser as follows:

- (a) The Purchaser has received all information relating to the sale of the Installment Payment Rights which the Purchaser has requested and deemed necessary in order to purchase the Installment Payment Rights, and the Purchaser understands that all documents, records and books pertaining to the Installment Payment Rights have been made available to the Purchaser and its attorneys and/or accountants.
- (b) The Purchaser understands that the Purchaser is purchasing the Installment Payment Rights without being furnished any formal offering or disclosure document prepared by or on behalf of the District and that this transaction has not been scrutinized by any federal or state agency or authority, and has not been registered or qualified with any such agency or authority.
- (c) The Purchaser is sufficiently knowledgeable and experienced in financial and business matters, including the purchase and ownership of municipal and other tax exempt obligations such as the Installment Payment Rights, to be able to evaluate the risks and merits of the Installment Payment Rights.
- (d) The Purchaser understands that the Installment Payment Rights are not secured by any pledge of any moneys received or to be received from taxes imposed by the State of California

or any political subdivision or taxing district thereof including, without implied limitation, the District, and that the Installment Payment Rights never will represent or constitute a general obligation, debt or bonded indebtedness of the District, the County of San Diego (the "County"), the State of California or any political subdivision thereof and that no right will exist to have taxes levied by the District, the County, the State of California or any political subdivision thereof for the payment of principal of and interest on the Installment Payment Rights, and that the liability of the District with respect to the transaction contemplated in connection with the Installment Payment Rights are subject to further limitations as set forth in the Installment Payment Rights.

(e) The Purchaser has been informed that the Installment Payment Rights (i) are not being registered or otherwise qualified for the sale under the "Blue Sky" laws and regulations of any jurisdiction, (ii) will not be listed on any stock or other securities exchange, and (iii) will carry no rating from any rating service.

(f) The Purchaser is the sole purchaser of the Installment Payment Rights for its own loan account and not with the view to reselling the Installment Payment Rights or any portion thereof; provided, however, that the Purchaser may transfer, sell or participate the Installment Payment Rights in accordance with the Installment Purchase Agreement.

(g) The Purchaser acknowledges that Best Best & Krieger LLP, Bond Counsel to the District for the Installment Payment Rights, has not engaged or undertaken to review the accuracy, completeness or sufficiency of any information concerning the Installment Payment Rights furnished to the Purchaser in connection with the purchase thereof. The Purchaser represents that the Purchaser is not relying on any statements or omissions by or involving Bond Counsel nor is the Purchaser relying on the work or involvement of Bond Counsel in connection with the transactions contemplated hereunder, in deciding whether to execute and deliver this letter or purchase the Installment Payment Rights.

Very truly yours,

\_\_\_\_\_

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

Name: \_\_\_\_\_

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

# **NOTICE OF SPECIAL MEETING AND AGENDA**

## **Borrego Water District Public Facilities Corporation**

### **Special Meeting**

**June 19, 2018 @ 9:00 a.m.**

**806 Palm Canyon Drive**

**Borrego Springs, CA 92004**

#### **I. Opening Procedures**

- A.** Call to Order
- B.** Roll Call
- C.** Approval of Agenda
- D.** Comments from the Public & Requests for Future Agenda Items (may be limited to 3 minutes)
- E.** Comments from Directors

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

- A.** Resolution No. 2018-06-04 Authorizing Execution and Delivery by the Corporation of an Escrow Deposit and Trust Agreement and Approving Certain Other Actions with Respect Thereto (144-145)

The Escrow Deposit and Trust Agreement may be found in the Borrego Water District agenda materials.

- B.** Resolution No. 2018-06-05 Authorizing Execution and Delivery by the Corporation of an Installment Sale Agreement and an Assignment Agreement and Approving certain other Actions with Respect Thereto (146-147)

The Installment Agreement and the Assignment Agreement may be found in the Borrego Water District agenda materials.

#### **III. CLOSING PROCEDURE**

- A.** Suggested Items for Next/Future Agenda

## RESOLUTION 2018-06-04

### **RESOLUTION OF THE BOARD OF DIRECTORS OF BORREGO WATER DISTRICT PUBLIC FACILITIES CORPORATION AUTHORIZING EXECUTION AND DELIVERY BY THE CORPORATION OF AN ESCROW DEPOSIT AND TRUST AGREEMENT AND APPROVING CERTAIN OTHER ACTIONS WITH RESPECT THERETO**

**WHEREAS**, Borrego Water District Public Facilities Corporation (the “Corporation”) was organized and exists for the purposes, among others, of participating with the Borrego Water District (the “District”) in the acquisition, construction and installation of projects for the collection, treatment and distribution of water, purchasing and leasing real and personal property in connection with such projects, and assisting the District in financing, acquiring and constructing such projects; and

**WHEREAS**, the District has incurred certain debt obligations referred to as the “Borrego Water District Refunding Installment Purchase Payments for Improvement District No. 4 (Water Enterprise Improvements) Series 2008 (Bank Qualified)” (the “2008 Prior Obligations”) made under an Installment Purchase Agreement, dated as of August 1, 2008 (the “2008 Installment Purchase Agreement”), by and between the District and the Corporation; and

**WHEREAS**, the District, has determined that it is in the best interest of the District to defease and prepay the 2008 Prior Obligations; and

**WHEREAS**, the District has determined to obtain a loan (“Loan 2018A”) from BBVA Compass Bank pursuant to a loan agreement (the “Loan Agreement”) and to execute and deliver a promissory note for the purpose of defeasing and prepaying the 2008 Prior Obligations

**WHEREAS**, there has been prepared and filed with the Secretary of this Board of Directors the form of an Escrow Deposit and Trust Agreement (the “Escrow Agreement”) among the District, the Corporation and U.S. Bank National Association, as escrow bank (the “Escrow Bank”), to provide for the defeasance and prepayment of the 2008 Prior Obligations;; and

**WHEREAS**, this Board has reviewed and considered the form of such Escrow Agreement and finds the document suitable for approval or consent by this Board of Directors, subject to the conditions set forth in this resolution.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF BORREGO WATER DISTRICT PUBLIC FACILITIES CORPORATION AS FOLLOWS:**

Approval of Escrow Agreement. The agreement entitled “Escrow Deposit and Trust Agreement” to be entered into among the District, the Corporation and the Escrow Bank is approved, and the President and Secretary of the Board of Directors of the Corporation (the “President” and “Secretary”) are authorized to execute, acknowledge and delivery said agreement on behalf of the Corporation.





## RESOLUTION 2018-06-05

### **RESOLUTION OF THE BOARD OF DIRECTORS OF BORREGO WATER DISTRICT PUBLIC FACILITIES CORPORATION AUTHORIZING EXECUTION AND DELIVERY BY THE CORPORATION OF AN INSTALLMENT PURCHASE AGREEMENT AND AN ASSIGNMENT AGREEMENT AND APPROVING CERTAIN OTHER ACTIONS WITH RESPECT THERETO**

**WHEREAS**, Borrego Water District Public Facilities Corporation (the “Corporation”) was organized and exists for the purposes, among others, of participating with the Borrego Water District (the “District”) in the acquisition, construction and installation of projects for the collection, treatment and distribution of water, purchasing and leasing real and personal property in connection with such projects, and assisting the District in financing, acquiring and constructing such projects; and

**WHEREAS**, the Board of Directors of the District has determined that it is in the best interest of the District and the property owners and residents served by the District’s water and sewer enterprises that the District finance certain improvements to the District’s water and sewer enterprises (the “Project”); and

**WHEREAS**, in order to accomplish the financing of the acquisition, construction, installation and equipping of the Project, it is necessary that the District and the Corporation enter into an Installment Purchase Agreement and the Corporation, the District and Pacific Western Bank, a California state-chartered bank, as the assignee (the “Assignee”) of the Corporation’s rights under the Installment Purchase Agreement enter into an Assignment Agreement for provide for such assignment, each hereinafter more particularly described, and that certain other action be taken and authorized; and

**WHEREAS**, the Board of Directors of the Corporation (the “Board”) has determined that the execution and delivery by the Corporation of the Installment Purchase Agreement and Assignment Agreement will be consistent with and in the furtherance of the purposes for which the Corporation was organized and exists and will be in the best interest of the District and its water users; and

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF BORREGO WATER DISTRICT PUBLIC FACILITIES CORPORATION AS FOLLOWS:**

Approval of Installment Purchase Agreement. The agreement entitled “Installment Purchase Agreement” to be entered into by and between the District and the Corporation, which provide generally for (a) the acquisition, construction and installation of the Project by the Corporation, (b) the appointment of the District by the Corporation as its agent for purposes of undertaking the acquisition, construction and installation of the Project, (c) the purchase by the District from the Corporation of the Project, and (d) the payment by the District to the Corporation from the Net Revenues of the District of 2018 Installment Payments (each as defined in the Installment Purchase Agreement), is approved, and the President and Secretary of the Board of Directors of the Corporation (the “President” and “Secretary”) are authorized to execute, acknowledge and deliver said agreement on behalf of the Corporation.



BORREGO WATER DISTRICT  
BOARD OF DIRECTORS MEETING – JUNE 19, 2018  
AGENDA BILL 2.C

June 12, 2018

**TO:** Board of Directors, Borrego Water District  
**FROM:** Geoff Poole, General Manager  
**SUBJECT:** Approving Fiscal Year 2018-19 Budget & Capital Improvement Plan – K Pittman

**RECOMMENDED ACTION:**

Approve Resolution No 2018-06-01 adopting the Fiscal Year 2018-19 Budget and CIP.

**ITEM EXPLANATION:**

Attached is the Budget for 2018-19. Staff is prepared to answer any questions.

**FISCAL IMPACT:**

See Attachment

**ATTACHMENT:**

1. Proposed 2018-19 Budget and CIP
2. Resolution No 2018-06-01 approving 2018-19 Budget/CIP

**BORREGO WATER DISTRICT**

**FISCAL YEAR 2018-2019**

**ANNUAL BUDGET**

**ADOPTED**

**June 19, 2018**

**SUBMITTED BY:**

**GEOFF POOLE  
GENERAL MANAGER**

**TO:**

---

**BOARD OF DIRECTORS**

**BETH HART  
PRESIDENT**

**LYLE BRECHT  
VICE-PRESIDENT**

**JOE TATUSKO  
SECRETARY/TREASURER**

**RAYMOND DELAHAY  
DIRECTOR**

**HARRY EHRLICH  
DIRECTOR**

**FISCAL YEAR 2018-2019  
ANNUAL BUDGET  
ADOPTED  
June 19, 2018**

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# **BORREGO WATER DISTRICT**

June 19, 2018

Board of Directors:

This Fiscal Year 2018-2019 consolidated budget was prepared in compliance with the laws of the State of California and reflects the Board of Directors' (Board) goals and priorities and the District's strategic plans by which to achieve these goals and priorities.

The Operations and Management (O&M) and Capital Improvements Projects (CIP) and non-O&M expenses budgets contained in this FY 2019 consolidated budget package represent management's best assessment of a budget to successfully accomplish the District's goals and priorities for FY 2019. This budget document will be used as a guideline to address the dynamics of the District's operations and the economic challenges of maintaining the District's financial stability and enabling the District to supply dependable potable water and sewer and wastewater treatment to its customers.

The budget shows total revenues for FY 2019 projected to be approximately \$4,700,000. This revenue budget also includes projected GSP Grant funding of \$500,000 and Capital Improvement Bond Funding of \$5,500,000.

The FY 2019 projected revenues assumes that monthly base service rates will increase approximately 6% (all meter sizes); residential water rates for Tier 1 (< 7 units/mo) will increase from \$3.35 to \$3.56/unit in FY 2019; Tier 2 (> 7 units/mo) = \$3.92/unit in FY 2019; Non-Residential water rates will increase from \$3.55 to \$3.77/unit in FY 2019; and revenue from sewer rates will increase 4,4,4% between FY 2019-FY 2021.

Included in this budget package is the proposed Board Resolution to adopt and approve the FY 2019 budget; an Organizational Chart establishing 11.5 authorized positions for FY 2018-2019; a detailed revenue and operations and maintenance expenses budget; CIP budget with associated justification from the District's consulting engineer, non-CIP budget items; GSP expenditures for future reimbursement; an updated District's Reserves Policy; a proposed Board Resolution Establishing Water & Sewer Rates for FY 2018-2019 and a projected cash flow analysis for the next eight fiscal years which includes the proposed rate increases.

Thank you for your consideration.

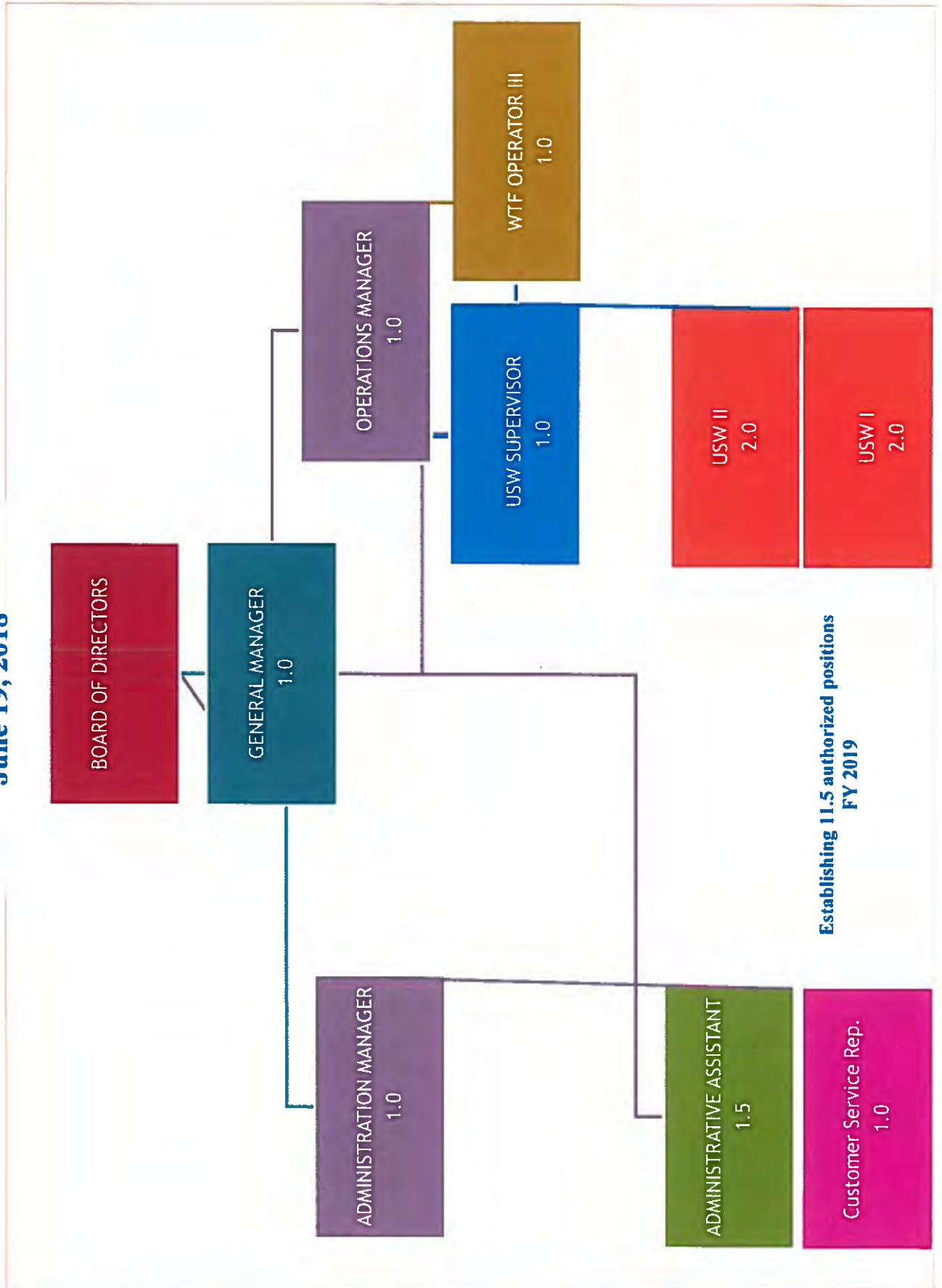
Sincerely,

Geoff Poole  
General Manager

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# BORREGO WATER DISTRICT ORGANIZATIONAL CHART

June 19, 2018





	C	S	W	AF
1	<b>BWD</b>	<b>5/23/2017</b>		<b>6/19/2018</b>
2	<b>BUDGET CASH FLOW</b>	<b>ADOPTED</b>	<b>Actual YTD</b>	<b>ADOPTED</b>
3	<b>2018-2019</b>	<b>BUDGET</b>	<b>and Projected</b>	<b>BUDGET</b>
4		<b>FY 2018</b>	<b>2017-2018</b>	<b>2018-2019</b>
5				
6	<b>REVENUE</b>			
7	<b>WATER REVENUE</b>			
8	Residential Water Sales	949,885	914,483	950,994
9	Commercial Water Sales	302,856	410,973	417,885
10	Irrigation Water Sales	210,597	230,527	237,061
11	GWM Surcharge	160,274	172,994	181,749
12	Water Sales Power Portion	457,206	485,230	514,706
13	<b>TOTAL WATER COMMODITY REVENUE:</b>	<b>2,080,818</b>	<b>2,214,206</b>	<b>2,302,395</b>
14				
15	Readiness Water Charge	1,114,240	1,083,240	1,154,976
18	Meter Install/Reconnect Fees	1,360	51,425	20,680
19	Backflow Testing/installation	7,000	7,400	5,100
20	Bulk Water Sales	600	22,147	1,200
21	Penalty & Interest Water Collection	19,000	48,748	40,000
22	<b>TOTAL WATER REVENUE:</b>	<b>3,223,018</b>	<b>3,457,086</b>	<b>3,524,351</b>
23				
24	<b>PROPERTY ASSESSMENTS/AVAILABILITY CHARGES</b>			
25	641500 1% Property Assessments	62,303	60,942	62,300
26	641502 Property Assess wtr/swr/fld	106,212	106,107	106,212
28	641501 Water avail Standby	82,445	85,571	82,376
30	641504 ID 3 Water Standby (La Casa)	33,722	34,281	33,647
31	641503 Pest standby	17,882	16,539	17,870
32	<b>TOTAL PROPERTY ASSES/AVAIL CHARGES:</b>	<b>302,563</b>	<b>303,440</b>	<b>302,404</b>
33				
34	<b>SEWER SERVICE CHARGES</b>			
35	Town Center Sewer Holder fees	226,391	221,023	234,593
36	Town Center Sewer User Fees	85,015	84,146	88,695
37	Sewer user Fees	267,460	271,205	278,304
39	Penalty Interest-Sewer	3,000	570	1,248
41	<b>TOTAL SEWER SERVICE CHARGES:</b>	<b>581,866</b>	<b>576,945</b>	<b>602,840</b>
42				
43	<b>OTHER INCOME</b>			
48	Water Credits income		69,250	22,000
49	WTF Solar Rebate			50,000
50	R/H Surplus Water Revenue			200,000
51	Interest Income	6,600	19,718	6,000
52	<b>TOTAL OTHER INCOME:</b>	<b>6,600</b>	<b>122,633</b>	<b>278,000</b>
53				
54	<b>TOTAL INCOME:</b>	<b>4,114,047</b>	<b>4,460,104</b>	<b>4,707,595</b>
55				
56	<b>GRANT &amp; DEBT PROCEEDS</b>			
57	Prop 1 GSP Grant			500,000
58	Pacific Western Bank 2018 IPA			5,500,000
59	<b>TOTAL GRANT &amp; DEBT PROCEEDS:</b>			<b>6,000,000</b>
60				
61	<b>TOTAL INCOME, GRANT &amp; DEBT PROCEEDS:</b>			<b>10,707,595</b>
71				

	C	S	W	AF
1	<b>BWD</b>	<b>5/23/2017</b>		<b>6/19/2018</b>
2	<b>BUDGET CASH FLOW</b>	<b>ADOPTED</b>	<b>Actual YTD</b>	<b>ADOPTED</b>
3	<b>2018-2019</b>	<b>BUDGET</b>	<b>and Projected</b>	<b>BUDGET</b>
4		<b>FY 2018</b>	<b>2017-2018</b>	<b>2018-2019</b>
72	<b>EXPENSES</b>			
73				
74	<b>MAINTENANCE EXPENSE</b>			
75	R & M Buildings & Equipment	185,000	179,785	180,000
76	R & M - WWTP	185,000	146,658	180,000
77	Telemetry	8,000	11,979	10,000
78	Trash Removal	4,200	8,343	4,200
79	Vehicle Expense	18,000	15,802	18,000
80	Fuel & Oil	23,000	27,907	30,000
81	<b>TOTAL MAINTENANCE EXPENSE:</b>	<b>423,200</b>	<b>390,473</b>	<b>422,200</b>
82				
83	<b>PROFESSIONAL SERVICES EXPENSE</b>			
84	Tax Accounting (Taussig)	3,000	3,000	3,000
85	Administrative Services (ADP)	3,000	2,990	3,000
86	Audit Fees (Squamliner)	15,995	15,996	16,995
87	Computer billing (Accela/Parker)	13,500	16,330	25,000
88	Financial/Technical Consulting (Raftelis) (Fieldman) (Holt Group)	41,000	53,048	80,000
89	Engineering (Dynamic/Dudek)	50,000	65,419	60,000
90	District Legal Services (Downey Brand/BBK)	20,000	106,447	100,000
91	Testing/lab work (Babcock Lab)	8,400	11,460	12,000
92	Regulatory Permit Fees (SWRB/DEH/Dig alerts/APCD)	27,160	21,747	25,000
93	Management Consulting (CIP)			50,000
94	<b>TOTAL PROFESSIONAL SERVICES EXPENSE:</b>	<b>182,055</b>	<b>296,437</b>	<b>374,994</b>
95				
96	<b>INSURANCE EXPENSE</b>			
97	ACWA/JPIA Program Insurance	57,000	54,682	57,000
98	ACWA/JPIA Workers Comp	16,000	15,679	17,600
99	<b>TOTAL INSURANCE EXPENSE:</b>	<b>73,000</b>	<b>70,361</b>	<b>74,600</b>
100				
101	<b>DEBT EXPENSE</b>			
102	Compass Bank Note 2018A	251,475	251,475	254,500
103	Compass Bank Note 2018B	143,312	143,274	143,000
104	Pacific Western Bank 2018 IPA			500,000
105	<b>TOTAL DEBT EXPENSE:</b>	<b>394,787</b>	<b>394,749</b>	<b>897,500</b>
106				
107	<b>PERSONNEL EXPENSE</b>			
108	Board Meeting Expense (board stipend/board secretary)	22,000	21,440	25,000
109	Salaries & Wages (gross)	826,000	806,714	890,000
110	Salaries & Wages offset account (board stipends/staff project salaries)	(55,000)	(86,533)	(60,000)
111	Consulting services/Contract Labor	24,000	10,339	15,000
112	Taxes on Payroll	22,000	22,412	22,300
113	Medical Insurance Benefits	220,100	218,502	229,000
114	Calpers Retirement Benefits	179,200	153,433	170,170
115	Conference/Conventions/Training/Seminars	8,000	18,749	17,000
116	<b>TOTAL PERSONNEL EXPENSE:</b>	<b>1,246,300</b>	<b>1,165,057</b>	<b>1,308,470</b>
117				
118	<b>OFFICE EXPENSE</b>			
119	Office Supplies	18,000	18,149	20,000
120	Office Equipment/ Rental/Maintenance Agreements	35,000	41,699	35,000
121	Postage & Freight	15,000	13,273	15,000
122	Taxes on Property	2,331	2,334	2,334
123	Telephone/Answering Service/Cell	19,000	19,060	24,000
124	Dues & Subscriptions (ACWA/CSDA)	21,526	19,290	21,000
125	Printing, Publications & Notices	3,000	2,417	2,500
126	Uniforms	5,400	5,899	6,500
127	OSHA Requirements/Emergency preparedness	4,000	3,400	4,000
128	<b>TOTAL OFFICE EXPENSE:</b>	<b>123,257</b>	<b>125,521</b>	<b>130,333</b>
129				
130	<b>UTILITIES EXPENSE</b>			
131	Pumping-Electricity	300,000	306,320	308,000
132	Office/Shop Utilities	20,000	7,623	1,200
134	<b>TOTAL UTILITIES EXPENSE:</b>	<b>320,000</b>	<b>313,943</b>	<b>311,392</b>
135				
136	<b>GROUNDWATER MANAGEMENT EXPENSE</b>			
137	SGMA GSP Costs	120,000	211,039	308,000
138	Prop 1 Grant Expense	30,000	-	60,000
140	<b>TOTAL GWM EXPENSE:</b>	<b>270,000</b>	<b>211,039</b>	<b>360,645</b>
141				
142	<b>TOTAL EXPENSES:</b>	<b>3,032,600</b>	<b>2,967,581</b>	<b>3,880,134</b>
150				
151	<b>UNEXPENDED DEBT PROCEEDS:</b>			<b>4,698,000</b>
152				
153	<b>TOTAL EXPENSES AND UNEXPENDED DEBT PROCEEDS:</b>			<b>8,578,134</b>
154				
155	<b>NET OPERATING INCOME:</b>	<b>1,081,447</b>	<b>1,555,617</b>	<b>827,461</b>
156				

	C	S	W	AF
1	<b>BWD</b>	<b>5/23/2017</b>		<b>6/19/2018</b>
2	<b>BUDGET CASH FLOW</b>	<b>ADOPTED</b>	<b>Actual YTD</b>	<b>ADOPTED</b>
3	<b>2018-2019</b>	<b>BUDGET</b>	<b>and Projected</b>	<b>BUDGET</b>
4		<b>FY 2018</b>	<b>2017-2018</b>	<b>2018-2019</b>
157	<b><u>CIP PROJECTS</u></b>			
158	<b>Water</b>			
160	Operating Cash Funded			342,000
161	Debt Funded			602,000
162	Grant Funded			265,000
163	<b>TOTAL WATER CIP:</b>			<b>1,209,000</b>
164	<b>Sewer</b>			
165	Operating Cash Funded			0
166	Debt Funded			200,000
167	Grant Funded			0
168	<b>TOTAL SEWER CIP:</b>			<b>200,000</b>
169				
208	<b>TOTAL CIP EXPENSES:</b>	<b>2,219,500</b>	<b>816,935</b>	<b>1,409,000</b>
209				
210	<b><u>CASH RECAP</u></b>			
211	Cash beginning of period	4,589,663	4,149,656	4,570,637
212	Net Cash Flow	1,081,447	1,486,942	485,461
213	Total Non O&M Expenses	(2,219,500)	(813,935)	(1,409,000)
214	<b>CASH RESERVES AT END OF PERIOD</b>	<b>3,451,611</b>	<b>4,822,663</b>	<b>5,056,098</b>
215	<b>FY Reserves Target</b>			<b>5,380,000</b>
216	<b>Reserves Surplus/(Shortfall)</b>			<b>(323,902)</b>
217				
218				
219				
220				

	B	C	D	E	F
6	<b>BWD</b>				
7	<b>INCOME/EXPENSE</b>				
8	<b>CONDENSED BUDGET</b>				
9	<b>2018-2019</b>				
10	<b>6/19/2019</b>				
11					
12					
13					
14					
15		<b>TOTAL</b>			
16	<b>REVENUE</b>	<b>BUDGET</b>	<b>WATER</b>	<b>ID4-WATER</b>	<b>SEWER</b>
17					
18	Water Sales	3,342,602	1,136,485	2,206,117	
19	GWM Surcharge	181,749	61,795	119,954	
21	1% Property Assessment	62,300	21,182	41,118	
22	Water Availability Standby	240,105	81,636	158,469	
23	Sewer Revenue	602,840			602,840
26	Water Credit Revenue	22,000	7,480	14,520	
27	Other Income	250,000	200,000		50,000
28	Interest Income	6,000	2,040	3,000	960
33	<b>TOTAL PROPOSED INCOME FY 2019:</b>	<b>4,707,595</b>	<b>1,510,617</b>	<b>2,543,178</b>	<b>653,800</b>
34					
35	<b>GRANT &amp; DEBT PROCEEDS</b>				
36	Prop 1 GSP Grant	500,000	170,000	330,000	
37	Pacific Western Bank 2018 IPA	5,500,000	1,870,000	3,630,000	
38	<b>TOTAL GRANT &amp; DEBT PROCEEDS:</b>	<b>6,000,000</b>	<b>2,040,000</b>	<b>3,960,000</b>	<b>-</b>
39					
40	<b>TOTAL PROPOSED INCOME, GRANT &amp; DEBT PROCEEDS FY 2019:</b>	<b>10,707,595</b>	<b>3,550,617</b>	<b>6,503,178</b>	<b>653,800</b>
42					
43	<b>EXPENSE</b>				
44					
45	Repairs & Maintenance	422,200	82,348	159,852	180,000
46	Professional Services	374,994	94,874	223,872	56,249
47	Insurance	74,600	18,874	44,536	11,190
48	Personnel Expense	909,300	230,053	542,852	136,395
49	Employee Benefits	399,170	100,990	238,304	59,876
50	Office expense	130,333	32,974	77,809	19,550
51	Utilities	311,392	78,782	185,901	46,709
52	Compass Bank Note 2018A	254,500	-	254,500	-
53	Compass Bank Note 2018B	143,000	48,620	94,380	
54	Pacific Western Bank 2018 IPA	500,000	170,000	330,000	
55	GWM	360,645	122,619	238,026	
56					
57	<b>TOTAL ANTICIPATED EXPENSE FY 2019:</b>	<b>3,880,134</b>	<b>980,134</b>	<b>2,390,032</b>	<b>509,968</b>
58					
59	<b>UNEXPENDED DEBT PROCEEDS:</b>	<b>4,698,000</b>	<b>1,488,738</b>	<b>2,889,904</b>	<b>319,358</b>
60	<b>TOTAL EXPENSES AND UNEXPENDED DEBT PROCEEDS:</b>	<b>8,578,134</b>	<b>2,468,872</b>	<b>5,279,935</b>	<b>829,326</b>
61					
62	<b>NET INCOME (EXPENSE):</b>	<b>827,461</b>	<b>1,081,744</b>	<b>1,223,243</b>	<b>(175,526)</b>
63					
64	<b>TOTAL CIP EXPENSE:</b>	<b>1,409,000</b>			
65	<b>TOTAL CIP CASH EXPENSE:</b>	<b>342,000</b>	<b>(109,480)</b>	<b>(212,520)</b>	<b>664,000</b>
66					
67	<b>TOTAL ANNUAL NET CASH FLOW FY 2019:</b>	<b>485,461</b>	<b>1,191,224</b>	<b>1,435,763</b>	<b>(839,526)</b>
68					



# BORREGO WATER DISTRICT

June 19, 2018

TO: Board of Directors, Borrego Water District  
FROM: Geoff Poole, General Manager  
SUBJECT: Fiscal Year 2018-19 Budget and Capital Improvement Plan

Transmitted herewith is the Proposed Final Fiscal Year 2018-19 Budget and Capital Improvement Plan for the Borrego Water District. The consolidated budget was prepared in compliance with the laws of the State of California and reflects the Board of Directors' (Board) goals/priorities and the District's strategic plans by which to achieve them.

2018-19 is a millstone year in which BWD has re-established its financial position to allow for Bond financing with the planned issuance of \$5.3 million in debt for Capital Improvement Plan construction, as well as additional funding to refinance existing debt.

2018-19 will also bring the potential for BWD to receive \$35 million dollars for GSP implementation efforts funded through a line item appropriation in the Water Bond of 2018 appearing on the November 2018 ballot. If approved the \$35 million will be used for farmland fallowing, recreational water conservation and basin planning efforts pertaining to the GSP

The amount budgeted in each category represents Management's best assumptions to successfully accomplish the District's objectives. A summary of the FY 2018-19 budget is below:

### Budget Components for FY 2018-19 - Revenues

Water sales are projected to remain stable (FY 2018-19 = 1,600 afy). The previously approved Prop 218 rate and fee increases of 6% for FY 18-19 has been included and will increase revenues by an estimated \$185,000.

Monthly Meter stand by fees are also proposed to be increased by 6% in compliance with the Boards most recent Prop 218 process. The increase is projected to increase Meter Fee revenues by approximately \$69,000 in FY 18-19.

The past Prop 218 process undertaken by BWD also included rate increases for sewer customers in an amount of a maximum of 4% which will increase annual sewer revenues by \$24,000.

Property tax revenues are expected to remain constant and within BWD's legal authority to assess.

Non-budgeted revenue: BWD is also aggressively pursuing a number of State grants and although the revenue is technically not included in the Budget, once received, the additional revenue will have a positive effect on the Districts financial position and reserve fund levels.

### Budget Components for FY 2018-19 – Expenses

- In FY 2018-19, BWD and the County of San Diego will continue to work on the development of the Borrego Basin Groundwater Sustainability Plan (GSP). The GSP is being conducted to comply with the 2014 Sustainable Groundwater Management Act. In March of 2017, the County of San Diego entered into a contract with Dudek as the Prime Consultant for completion of the Plan. Certain BWD expenses are planned to be incurred that are outside the scope of the GSP, so an estimated \$360,000 has been included in FY 2018-19 budget for this purpose. BWD has compiled a list of GSP related expenses since 2015 and that is now included in the Budget documents.
- All existing programs in BWD Operations, Maintenance and Administration areas are fully funded through 2018-19. The major programs in the Water Operations Enterprise include system operations and maintenance, water quality monitoring, meter testing/replacement, pipeline replacement, reporting and the inevitable emergency pipeline repairs that happen each year. When possible, BWD staff (including temporary help) will be used to perform all pipeline repairs in FY 2018-19, emergency and planned. Capital projects planned for the year include the aforementioned pipeline repairs as well as the replacement of the Twin Tanks, with an approximate cost of \$600,000, repair/replacement of 3 existing BWD storage tanks that are part of a State Grant application.
- In the Sewer Operations Enterprise, BWD is planning to construct a series of improvements at the Wastewater Treatment Facility to replace equipment/components that has passed its useful life. These projects are planned to be funded by State Grants. Engineering assessments are underway to evaluate the feasibility of enhancing wastewater treatment levels to tertiary which would allow for use on local irrigation demands. Other planned improvements include adding infrastructure to improve the ability to adequately maintain portions of the sewer collection system.
- In the Administration Department, all programs are fully funded.

Included in this Budget Package are the proposed Board Resolution to adopt and approve the FY 2018-19 Budget, detailed revenue and expenses, Capital Improvement Plan with project explanations and justifications from the District's Contract Engineer (Carlos Beltran – Dynamic Engineering), Non CIP expenses, updated Reserve Policy and a projected Cash Flow that includes proposed future rate increases. I would personally like to thank the BWD staff and Board for their hard work in preparing and reviewing this Proposed Budget for FY 2018-19.

Sincerely

Geoff Poole  
General Manager

May 11, 2018

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

**Attn: Geoff Poole, General Manager**

**Subject: Borrego Water District Capital Improvements Program**

Mr. Poole,

I have reviewed the proposed Capital Improvements Program (CIP) prepared for the next ten years and I agree with the projects identified in the schedule as the most essential projects for the district at this time. The estimated construction costs identified in the CIP for these improvement projects are adequate for planning purposes.

If you have any questions please feel free to contact me at (760) 545-0162.;

Sincerely,



Carlos Beltran, P.E.  
Principal Engineer.

CAPITAL IMPROVEMENT PROJECTS	FY 2018-19	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24	FY 2024-25	FY 2025-26	FY 2026-27	FY 2027-28
<b>WELLS, BOOSTER STATIONS, RESERVOIRS &amp; ASSOCIATED TRANSMISSION MAINS</b>										
Water Treatment Facility (phase 1)					\$ 636,000		\$ 250,000			
Water Treatment Facility (phase 2)						\$ 650,000		\$ 250,000		
3 New wells drilled over 5 years				\$ 1,500,000		\$ 1,500,000				
Country Club Tank Recoating, 1999 1.0 MG							\$ 250,000			
New 900 Reservoir										
Transmission line to convey Well 5 water directly to C.C. Reservoir (Pipeline 2)		\$ 120,000	\$ 151,000	\$ 120,000	\$ 151,000					
Transmission line to convey Well 12 water directly to Tilling T-Di Giorgio (Pipeline 3)					\$ 688,000					
Transmission pipeline Slash M Rd. west to Country Club Tank (Pipeline 4)		\$ 175,700								
Transmission line to convey well 16 water directly to ID1 900 Reservoir (Pipeline 1)-Bond	\$ 112,000									
New well: Phase I = Exploration/Test Well & Phase II = Drill Well -Grant & Bond	\$ 265,000	\$ 1,235,000								
Replace Twin Tanks-(Prop 1 grant)	\$ 600,000									
Replace Wilcox Diesel Motor-(Prop 1 grant)	\$ 59,000									
Replace Indianhead Reservoir-(Prop 1 grant)	\$ 294,000									
Rams Hill #2, 1980 galv. 0.44 MG recoating -(Prop 1 grant)	\$ 161,000									
<b>WASTEWATER TREATMENT FACILITIES</b>										
Sewer main replacement Club Circle		\$ 200,000		\$ 100,000			\$ 100,000			
Solar Project							\$ 500,000			
TSC-La Casa Bypass	\$ 100,000	\$ 500,000								
Rehab 7 manholes & install weir-Downstream (use clarifier rehab placeholder)										
Force main replacement at La Casa-Bond	\$ 150,000									
Plant-Grit removal at the headworks- (11,500 from balance line 25)-Prop 1 grant	\$ 100,000									
Clarifier Rehab- (118,500 budget placeholder)-Prop 1 Grant	\$ 118,500									
<b>PIPELINE REPLACEMENT /IMPROVEMENT PROGRAM</b>										
Emergency water pipeline repairs	\$ 26,000	\$ 25,000	\$ 26,000	\$ 30,000	\$ 30,000	\$ 30,000	\$ 35,000	\$ 35,000	\$ 35,000	\$ 35,000
10" Bypass at ID1 Booster Station 2	\$ 15,000									
Borrego Springs Road, Walking H Drive to Country Club Road Phase 1 (Pipeline 5)			\$ 205,000							
Borrego Springs Road, Walking H Drive to Country Club Road Phase 2 (Pipeline 5)				\$ 205,000						
Frying Pan Road N & S for Approx 3,400' (Pipeline 8)			\$ 313,600							
Borrego Springs Road, Weather Vane Drive to Barrel Drive (Pipeline 10)			\$ 105,000							
De Anza Dr. 1600 block west from Yaqui Road (Pipeline 12)			\$ 252,000							
Club Circle Pipeline Evaluation		\$ 50,000								
Double O Road N & S for Approx. 3,400' (Pipeline 9)	\$ 165,000	\$ 83,000								
Pipeline for Santiago and ID5 (Pipeline 11)-Bond	\$ 110,000	\$ 104,000								
<b>TOTAL - CAPITAL IMPROVEMENTS PROGRAM</b>	<b>\$ 2,274,500</b>	<b>\$ 2,492,700</b>	<b>\$ 1,051,600</b>	<b>\$ 1,955,000</b>	<b>\$ 1,504,000</b>	<b>\$ 2,180,000</b>	<b>\$ 1,135,000</b>	<b>\$ 286,000</b>	<b>\$ 35,000</b>	<b>\$ 35,000</b>
<b>TOTAL - SHORT LIVED ASSETS (FROM SHEET 2)</b>	<b>\$ 342,000</b>	<b>\$ 177,000</b>	<b>\$ 215,000</b>	<b>\$ 80,000</b>	<b>\$ 25,000</b>	<b>\$ 15,000</b>	<b>\$ 195,000</b>	<b>\$ 60,000</b>	<b>\$ 240,000</b>	<b>\$ 240,000</b>
<b>TOTAL CIP AND SHORT LIVED ASSETS ANNUAL BUDGET</b>	<b>\$ 2,616,500</b>	<b>\$ 2,669,700</b>	<b>\$ 1,266,600</b>	<b>\$ 2,035,000</b>	<b>\$ 1,529,000</b>	<b>\$ 2,195,000</b>	<b>\$ 1,330,000</b>	<b>\$ 346,000</b>	<b>\$ 275,000</b>	<b>\$ 275,000</b>



	A	F	G	H	I	J	K	L	M	N	O
2	<b>CIP-SHORT LIVED ASSETS</b>	FY 2018-19	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24	FY 2024-25	FY 2025-26	FY 2026-27	FY 2027-28
3											
4											
5	<b>WELLS</b>										
6	ID1-8, 125 Hp	\$ 60,000		\$ 15,000				\$ 50,000			
7	ID-1 Well 12 pump and casing/cleaning			\$ 100,000					\$ 40,000		
8	ID-1 16		\$ 100,000							\$ 100,000	\$ 100,000
9	ID4-11, 200 Hp			\$ 100,000						\$ 100,000	\$ 100,000
10	ID4-18				\$ 40,000				\$ 20,000		
11	Well Rehabilitation	\$ 110,000						\$ 100,000			
12											
13	<b>TANKS</b>										
14	Rams Hill #1-cleaning		\$ 15,000				\$ 15,000			\$ 15,000	\$ 15,000
15											
16	<b>BOOSTER/PRESSURE REDUCING STATIONS</b>										
17											
18	<b>WASTEWATER TREATMENT FACILITY</b>										
19	Clarifier Rehab					\$ 25,000				\$ 25,000	\$ 25,000
20											
21	<b>EQUIPMENT</b>										
22	Emergency Generator Mobile Trailer	\$ 12,000	\$ 25,000								
23	Backhoe	\$ 125,000									
24	Pickup	\$ 35,000	\$ 37,000		\$ 40,000			\$ 45,000			
25											
26	<b>TOTAL SHORT LIVED ASSETS REPLACEMENT PROGRAM</b>	\$ 342,000	\$ 177,000	\$ 215,000	\$ 80,000	\$ 25,000	\$ 15,000	\$ 195,000	\$ 60,000	\$ 240,000	\$ 240,000
27											
28											

## M E M O R A N D U M

**DATE:** 2/12/18

**TO:** Board of Directors BWD

**FROM:** Carlos Beltran, BWD District Engineer & Geoff Poole, General Manager

**Re:** Borrego Water District – 2017-2025 CIP Project Summary and Narratives

The following table shows the summary of the 2017-2025 projects. The CIP projects are described in detail on the following pages.

**CIP # CAPITAL IMPROVEMENT PROJECTS FISCAL YEARS 2017-2025 SUMMARY**

<b><u>WELLS, BOOSTER STATIONS, RESERVOIRS &amp; ASSOCIATED TRANSMISSION MAINS</u></b>	
1	Water Treatment Facility (phase 1)
2	Water Treatment Facility (phase 2)
3	New well assessments (Exploration Phase) and acquire land
4	Drill new wells
5	Country Club Tank Recoating, 1999 1.0 MG
6	New 900 Reservoir
7	Transmission line to convey well 16 water directly to ID1 900 Reservoir (Pipeline 1)
8	Transmission line to convey Well 5 water directly to C.C. Reservoir (Pipeline 2)
9	Transmission line to convey Well 12 water directly to Tilting T-Di Giorgio (Pipeline 3)
10	Transmission pipeline Slash M Rd. west to Country Club Tank
11	Replace Twin Tanks – Possible Prop 1 Grant
12	Replace Wilcox Diesel Motor – Possible Prop 1 Grant
13	Replace Indianhead Reservoir – Possible Prop 1 Grant
14	Rams Hill #2, 1980 galv. 0.44 MG recoating – Possible Prop 1 Grant

<b><u>WASTEWATER TREATMENT FACILITIES</u></b>	
15	Sewer main Replacement at Club Circle
16	Force main replacement at La Casa del Zorro; Cleanouts on existing force main
17	Town Center Sewer at La Casa Del Zorro Bypass
18	Grit Removal – Prop 1 Grant Possible
19	Clarifier Upgrade - Prop 1 Grant Possible
20	Rehab 7 manholes, Install weir etc...

<b><u>PIPELINE REPLACEMENT /IMPROVEMENT PROGRAM</u></b>	
21	Emergency water pipeline repairs
22	10" Bypass at ID1 Booster Station 2
23	Borrego Springs Road, Walking H Drive to Country Club Road Phase 1 (Pipeline 5)
24	Borrego Springs Road, Walking H Drive to Country Club Road Phase 2 (Pipeline 5)
25	T Anchor Drive, Frying Pan Road to Double O Road (Pipeline 6)
26	Weather Vane Drive, Frying Pan Road to Double O Road (Pipeline 7)
27	Frying Pan Road, north and south from T Anchor Drive (Pipeline 8)
28	Double O Road, north and south from T Anchor Drive (Pipeline 9)
29	Borrego Springs Road, Weather Vane Drive to Barrel Drive (Pipeline 10)
30	Pipeline for Santiago and ID5 (Pipeline 11)
31	De Anza Dr. 1600 block west from Yaqui Road (Pipeline 12)

## CIP PROJECTS 2017-2025 NARRATIVES

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## CIP ITEM No. 1 AND 2: Water Treatment Facility (Phase 1 and 2)

### A. Project Description / Justification

Budget: \$1,535,000

The following are excerpts from “Draft Working Technical Memorandum” prepared by Dudek, written to the Borrego Water District dated June 16, 2017:

As a public water system, the BWD is regulated by the State Water Resources Control Board’s Department of Drinking Water. California regulations related to drinking water are contained within California Code of Regulations (CCR) Title 17 and Title 22. California drinking water MCLs that shall not be exceeded in the water supplied to the public are listed in CCR Title 22 Chapter 15. The BWD samples groundwater quality from water wells at intervals required by the DDW.

While none of the BWD’s wells currently exceed California drinking water MCLs, treatment alternatives for COCs are discussed herein to explore options in the event that groundwater quality were to become impaired. Non-treatment and treatment options to meet drinking water standards typically include blending, wellhead treatment, or supplementing the impaired source of supply.

The Borrego Springs Groundwater Subbasin of the Borrego Valley Groundwater Basin (BVGB) has been determined to be in overdraft. There is a potential risk associated with temporal changes in groundwater quality that may result in exceedances of California drinking water maximum contaminant levels (MCLs) in Borrego Water District (BWD) production wells due to the long-standing critical overdraft. Thus, it assesses current and historical groundwater quality data and the inter-relationship between groundwater levels and groundwater quality. The main constituents of concern (COCs) are arsenic, nitrate, sulfate, fluoride, total dissolved solids (TDS), and radionuclides. Of primary concern is the potential for water quality degradation and the relative risk that the groundwater supply will not meet MCLs.

The USGS found that concentrations of TDS and nitrate exceed their respective water quality standard thresholds in portions of the upper aquifer of the Borrego Springs Groundwater Subbasin (for reference with depth the BVGB is comprised of three aquifers: upper, middle, and lower). The highest concentrations of both constituents were generally found in the northern portion of the Borrego Springs Groundwater Subbasin, and the concentration of TDS was found to increase as groundwater levels decline. Sulfate, another COC, was also found to increase in concentration as groundwater levels decline. In addition to nitrate, TDS, and sulfate, other potential COCs in the BVGB include arsenic and gross alpha radiation, though the latter appears to be confined to the Ocotillo Wells Groundwater Subbasin. Since the compilation of available groundwater quality data by the USGS in 2015, additional data have been collected by the BWD for its active production wells in 2016 and for seven private wells located in the South Management Area (SMA) of the Borrego Springs Groundwater Subbasin. This recent data indicates that arsenic concentrations exceed the California drinking water MCL of 10 micrograms per liter ( $\mu\text{g/L}$ ) in portions of the lower aquifer in the SMA. Additionally, review of historical arsenic data for BWD wells located in the SMA indicates an increasing arsenic trend in well ID1-2, and a linear regression analysis indicates a good correlation of fit among arsenic concentration, groundwater production, and declining groundwater levels in well ID1-8. Based on the 2-year lag linear regression of groundwater production and arsenic data from well ID1-8, groundwater production in excess of 300 AFY at well ID1-8 is possible and further analysis is needed before conclusions can be

reached. Thus, arsenic concentrations in the lower aquifer of the Borrego Springs Groundwater Subbasin are determined to be a primary COC. Because groundwater quality data for the Borrego Springs Groundwater Subbasin are limited, further data collection and evaluation is required to verify the predicted exceedance of the arsenic drinking water standards in well ID1-8 and potential for other wells in the Borrego Springs Groundwater Subbasin to exceed the arsenic drinking water standard or other COC.

**B. Project Design / Process Flow:**

Once it has been determined if a treatment process is necessary, an engineering report will be prepared indicating the best and most efficient method of treatment. The CIP breaks the treatment into phases. Environmental documents will be prepared and distributed. After approval, the project(s) will be sent out to public bidding and then constructed. The CIP shows these projects starting in FY 2022-23.

**C. Cost Estimate:**

Project costs are highly speculative at this time due to the fact that current water quality does not require treatment. Due to the falling groundwater table, this may change in the future with depth dependent water quality. The budget is \$1,535,000.

**D. Project Estimated Timeline: Why is the project proposed for FY 2022 :**

Since there is no immediate risk of water contamination in BWD Production wells, it is yet to be determined when and where future treatment will be necessary based on the factors outlined above. For planning purposes, it is assumed that treatment will be needed in FY 2022.

**E. Impacts of Deferral:**

It is risky to wait this long, but once contamination is realized, deferring the improvements is not an option. Fines, public backlash and other interventions from State regulators would occur if drinking water standards are not met.

# CIP ITEM No. 3 AND 4: Exploration, Land Acquisition for Replacement Wells

## A. Project Description / Justification

Budget: \$4,500,000

BWD has identified three wells that will need to be replaced within the next eight years. Wells ID1-8, ID4-4 and ID1-10 cannot be rehabilitated again will need to be replaced due to age and falling groundwater levels. Two high yield wells may replace these three wells.

## B. Project Design / Process Flow:

Dudek prepared a report "Draft Working Technical Memorandum" dated June 16, 2017 that describes three separate Subbasin within the BWD service boundary. The report identifies that the Central Management Basin has the best chance for water that meets the requirements of California Code of Regulations (CCR) Title 17 and Title 22.

The BWD has already initiated preliminary review of potential new sources of supply in the Borrego Springs Subbasin and will further identify strategic sources of supply that meet Title 22 potable drinking water quality requirements.

Once a site has been selected, an exploration phase will commence. If the water quality and depth is acceptable, the land will be acquired for the wellsite and the well will be constructed to municipal standards.

## C. Cost Estimate:

The cost estimate for the exploration and land acquisition phase is \$500,000. The wells are estimated to cost \$1,000,000 each to construct.

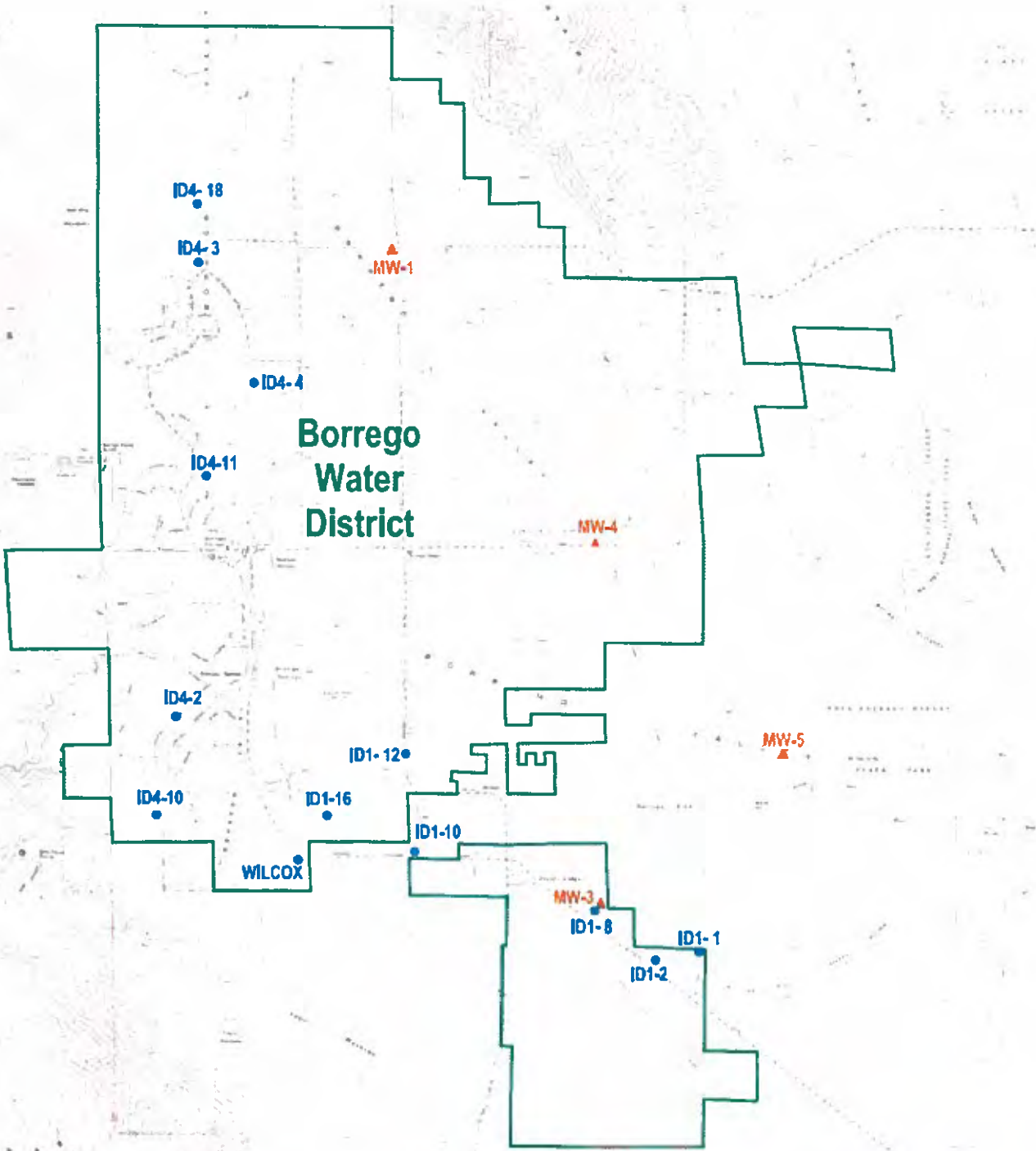
## F. Project Estimated Timeline: Why is the project proposed for FY 2019 and beyond:

Due to the fact that certain BWD wells have reached the end of their useful life, it is imperative to investigate and construct the replacement wells before any existing well fails. Recent award of State of California to BWD provides initial funding for the investigation, there it is time to begin the process

Exploration and land acquisition for Replacement Well #1:	FY 2018-2019
Construct Replacement Well #1:	FY 2019-2020
Explore and Construct Replacement Well #2:	FY 2020-2021
Explore and Construct Replacement Well #3:	FY 2023-2024

## G. Impacts of Deferral:

Construction of replacement wells is needed before complete failure to ensure maximum water availability flow, operations flexibility and emergency response for BWD Customers. Deferring installation of replacement wells increases the likelihood experiencing these problems in the future.



ID1-8 ● Production Well  
 MW-3 ▲ Monitor Well

**Borrego Water District  
 Water Resources Management Plan  
 DISTRICT LOCATION MAP  
 San Diego County, California**

# CIP ITEM No. 5: Country Club Tank Rehabilitation

## A. Project Description / Justification

Budget \$ 250,000

The Country Club Tank is located approximately 1-½ mile west of the intersection of Title T and Borrego Springs Road (S3). The tank has a capacity of 1.0 million gallons and is composed of coated steel. The California Department of Health Services requires the District to physically inspect the inside of the domestic water reservoirs every three years. This service is performed by a consultant that utilizes divers and provides a written report as well as a video. The tank was constructed approximately 17 years ago. The tank is in good condition currently, but it is anticipated that it will need to be recoated on a regular schedule in fiscal year 2024-25.

## B. Project Design / Process Flow:

After the inspection report is delivered and the tank needs recoating, the District Engineer will prepare engineering documents and the project will be sent out for public bidding with Board approval.

## C. Cost Estimate:

Without a recent dive inspection, an accurate cost estimate is difficult because the number of metal repairs necessary is unknown. Experience with past projects gives an approximate cost estimate of \$250,000 to recoat and repair the tank.

## D. Project Estimated Timeline. Why is Project Proposed for 2023:

Based on experience, it is estimated that a recoating will be needed in 2023. The actual date of recoating will be determined following the periodic video inspections. Following is the estimated schedule based on this timeline:

Dive Inspection:	February 2023
Receive Dive Inspection Report:	March 2023
Engineering/design completion:	March 2023 – April 2023
Project Bidding:	April 2024 – May 2024
Repair Recoat Tank:	June 2024 – July 2024

## E. Impacts of Deferral:

Following completion of planned inspections, the magnitude of the corrosion will be known and a plan to repair developed. Deferral of the necessary maintenance could lead to increased repair costs or the need for replacement of the Reservoir completely before the end of its useful life.



Item	Quan	Unit	Description	Unit Cost	Amount
1	1	LS	Mobilization/ Demobilization, Temporary Facilities, Construction Sign, Insurance, Payment Bond, Taxes, Permits, Fees and Similar Expenses	\$22,500	\$ 22,500
2	18,800	SF	Sandblast Complete Interior Including Columns, Rafters, Appurtenances, Exterior Roof Coatings to SSPC-SP 10. Remove and Legally Dispose of Spent Blast Material.	\$ 3.75	\$ 70,500
3	1	LS	Remove and replace metal components as necessary	\$ 3,500	\$ 3,500
3	18,800	SF	Recoat Interior Surfaces. This Item to be Considered Lump Sum Unless the Area is Shown to be Materially Different than shown.	\$ 5.10	\$ 95,880
4	1	LS	Coating Inspection and Testing	\$ 3,500	\$ 3,500
5	1	EA	Replace Manway Gasket	\$ 750	\$ 750
6	1	LS	Hydrostatic Testing, VOC Testing, Disinfection of Tank, Bacteriological Testing	\$ 3,800	\$ 3,800

Construction Subtotal: \$200,430

Contingency (10%): \$ 20,043

Subtotal Construction: \$220,473

Engineering/Contract Document Preparation \$ 20,000

Construction Inspection: \$ 9,527

Total Project Estimate: \$250,000



Country Club Tank Location

## CIP ITEM No. 6: 900 Tank – COMPLETE IN 2018

### A. Project Description / Justification:

Budget \$ 525,000

A tank near Rams Hill is important to be able to serve the development and golf course. The existing 800 tank experienced various leaks in the past due to a failed liner which was replaced and repaired multiple times without long term success. Based on this experience, a decision was made to abandon the tank and construct a new one. Various operational advantages were realized by locating the tank up the hill at the Rams Hill #2 Tank site.

Replacing the R-2 tank with a potable water storage tank (900 tank) has been completed and provides direct feed of water from Well 16 and still serve the Rams Hill area, as well as ID-1. The tank stores Well 16 water only without major changes to the distribution system. In the future, this tank could be used for treatment if necessary.

### B. Project Design / Process Flow:

The existing R-2 tank was replaced with a new potable water bolted steel tank (now called “900 tank” due to its elevation) without as many modifications to the distribution system. Most of the piping is already in place to allow for a direct feed from Well 16 to the 900 tank location. Some modifications would be necessary to the distribution system. There are existing rights to allow the District to install and operate a tank in this location.

### C. Cost Estimate

The project has been bid at a cost of \$500,000.

### D. Project Estimated Timeline:

Construction of tank: **COMPLETE**

## CIP ITEM No. 7-10: Transmission Pipelines

### A. Project Description / Justification

The District’s water distribution system was piecemealed together over time as the District took over smaller Districts in the area. The smaller pipelines were interconnected in partial measures. There is a need to deliver water in a more efficient manner. The District has identified four main transmission pipelines that should be installed for a more functional system. The transmission lines would have no service laterals connected, and would serve only to deliver water to the tanks or to another part of the distributions system. These projects are not considered pipeline replacement projects; they will enhance the distribution system operation.

### B. Project Design / Process Flow:

Pipelines 1, 2 and 4 are projects that can possibly be installed by District staff over time; thus, saving District funds. Pipeline 3 (Well 12 to Tilting T and Di Giorgio) is a more complex project and may require professional design and implementation.

### C. Cost Estimate

Estimates were derived using pipeline lengths and cost per unit length. Not enough information is available to do a detailed analysis at this time.

Transmission line to convey well 16 water directly to ID1 900 Reservoir (Pipeline 1)	\$112,000
Transmission line to convey Well 5 water directly to C.C. Reservoir (Pipeline 2)	\$625,000
Transmission line to convey Well 12 water directly to Tilting T-Di Giorgio (Pipeline 3)	\$668,000
Transmission line Slash M Rd. west to Country Club Tank (Pipeline 4)	\$175,700

**Total: \$1,600,700**

### D. Project Estimated Timeline:

Transmission line to convey well 16 water directly to ID1 900 Reservoir (Pipeline 1)	FY 2018-19
Transmission line to convey Well 5 water directly to C.C. Reservoir (Pipeline 2)	FY 2017-23
Transmission line to convey Well 12 water directly to Tilting T-Di Giorgio (Pipeline 3)	FY 2022-23
Transmission line Slash M Rd. west to Country Club Tank (Pipeline 4)	FY 2019-20

### E. Impacts of Deferral:

Pressure fluctuations and chlorine concentrations can vary in the operation of a pipeline coming directly from a well. Therefore, connecting water meters to these lines is not recommended and Transmission Mains from the well to the nearest reservoir is proposed. Deferral of these improvements only delays completion of the optimal configuration of service to BWD customers.

## CIP ITEM No. 11: Twin Tanks

### A. Project Description / Justification

The Twin Tanks are located approximately ½ mile southwest of the intersection of Palm Canyon Drive and Montezuma Valley Road (S22). The two tanks have a capacity of 220,000 gallons each and are composed of galvanized steel. The California Department of Health Services requires the District to physically inspect the inside of the domestic water reservoirs every three years. This service is performed by a consultant that utilizes divers and provides a written report as well as a video. The past inspection report recommended that the tanks be recoated and minor metal repairs made. The tank inspections were received in February 2017. The tanks are highly corroded. The tanks are scheduled for replacement in the 2017-2018 CIP. BWD is working with the State of California to receive Grant funding for this expenditure.

### B. Project Design / Process Flow:

When the tanks were inspected in 2017, the divers installed a plug in the pipe that interconnects the tank because there is no valve there to allow for one tank to be taken out of service. Staff installed a permanent valve. After the inspection report was delivered, it was determined that the tanks need replacement.

There are two tanks. Twin Tank #1 is the south tank, and Twin Tank #2 is the north tank. The tanks will be replaced with a single 440,000 gallon bolted steel tank. No change in capacity is proposed. The tank will be installed at the same location as the existing tanks. The bolted steel tank will be approximately 55 feet in diameter and 24 feet high. The coating will be fusion or powder coated steel. The estimated life of the tank is approximately 30 years if it is properly maintained.

### C. Cost Estimates:

**Twin Tanks Project**

ITEM	DESCRIPTION OF WORK	SUB COSTS	COST
1	Construction Cost (Ex. Tanks Demo, New Tank Construction and Piping).		\$ 557,750.00
2	Construction - Contingency 10%		\$ 55,775.00
3	Land Purchase		
4	Engineering, Design and Specifications, Bid Support	\$ 18,450.00	
5	Preliminary Engineering Report		
6	Construction Management and Inspection Services	\$ 22,000.00	
7	Construction Staking	\$ 2,300.00	
8	Geotechnical Testing (Tank Foundation/Pad)	\$ 2,700.00	
9	Administrative Cost During Construction	\$ 8,500.00	
10	Design Services During Construction	\$ 3,500.00	
11	Legal Fees		
12	Financing Costs		
<b>Twin Tanks Project Total Cost:</b>		<b>\$ 57,450.00</b>	<b>\$ 613,525.00</b>

**D. Project Estimated Timeline: Why is 2017-18 Proposed?**

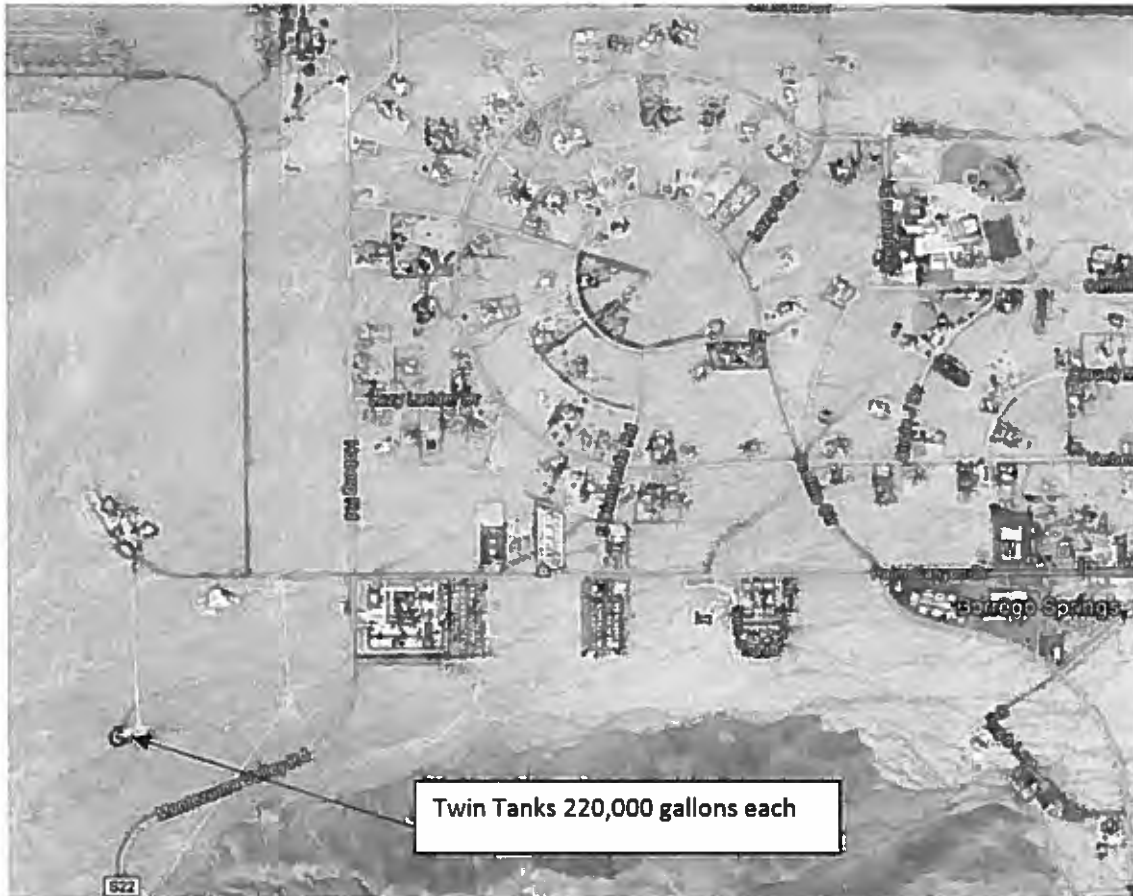
The extent of the corrosion in the tank requires replacement as soon as possible. The project would have started earlier but construction is delayed due to the time needed to complete the Grant Application, which is scheduled for March of 2018.

Planning Initiated:	2017-18
Engineering/design completion:	2018-19
Project Bidding:	2018-19
Repair Recoat Tank:	2018-19

**E. Impacts of Deferral:**

Observed corrosion in the Twin Tanks has prompted BWD to recommend replacement instead of repair. Deferral of this Project leads to the potential for further degradation of the tank and possible failures.

*Figure 1 - Twin Tanks Location*



## CIP ITEM No. 12: Replace Wilcox Diesel Motor

### A. Project Description / Justification

Budget \$49,775

The District has received a Notice of Violation (number 225200) from the APCD on July 7, 2015. In the violation notice, the APCD indicated that the diesel engine must be replaced with an emissions compliant engine, the engine must be refitted with emissions equipment or the engine taken out of service. Due to the age of the engine it is not feasible to install aftermarket controls to meet the new emissions requirement. Therefore, the options include replacement or taking the well out of service (revoking the existing permit to operate). The Wilcox Well is considered an emergency source of water when the electric power is out of service, so it is a critical component of the water distribution system and must be kept online. The alternative to replace the engine is the most cost effective and environmentally friendly option.

The proposed project includes new equipment purchase, necessary construction permits of the APCD, removal of the existing diesel engine and installation of the new compliant engine.

The proposed project includes replacing the existing 80hp diesel engine with a Tier 4 emissions compliant for standby diesel engines. This is considered a green component due to the enhanced energy efficiency of the engine and near-zero emissions. Replacing the existing diesel engine is much more cost effective than to bring electric power to the site and install an electric engine. BWD is working with the State of California to receive Grant funding for this expenditure.

### B. Project Design / Process Flow

On May 11, 2004, EPA signed the final rule introducing Tier 4 emission standards, which are phased-in over the period of 2008-2015. The Tier 4 standards require that emissions of PM and NOx be further reduced by about 90%. Such emission reductions can be achieved through the use of control technologies, including advanced exhaust gas after treatment.

The new diesel engine will comply with EPA Tier 4 Final and EU Stage IV emissions standards. It will employ Diesel Oxidation Catalyst (DOC) technology or Diesel Particulate Filters (DPF) to meet the Tier 4 Final/Stage IIIB requirement for near-zero Particulate Matter (PM) emissions. The Tier 4 regulation and later amendments for Engine power between 75hp and 175hp have numeric not-to exceed values for various pollutants and also include a number of provisions:

- *Smoke Opacity*—Existing Tier 2-3 smoke opacity standards and procedures continue to apply in some engines. Exempted from smoke emission standards are engines certified to PM emission standards at or below 0.07 g/kWh (because an engine of such low PM level has inherently low smoke emission).
- *Crankcase Ventilation*—The Tier 4 regulation does not require closed crankcase ventilation in nonroad engines. However, in engines with open crankcases, crankcase emissions must be measured and added to exhaust emissions in assessing compliance.
- *DEF Refill Interval*—For SCR-equipped nonroad diesel engines, a minimum DEF (urea solution) refill interval is defined as at least as long (in engine-hours) as the vehicle's fuel capacity.

- *Emergency Operation*—In order to facilitate the use of certain nonroad engines in temporary emergency situations, the engines can be equipped with an AECD to override performance inducements related to the emission control system—for example, to allow engine operation without urea in the SCR system during an emergency. This flexibility is intended primarily for engines used in construction equipment and portable equipment used for temporary power generation and flood control.
- *ABT Program*—Similarly to earlier standards, the Tier 4 regulation includes such provisions as averaging, banking and trading of emission credits and FEL limits for emission averaging.

C. Cost Estimate:

Replace Wilcox Diesel Engine with APCD Compliant Engine						
No.	Qua	Unit	Description	Unit Cost	Total Cost	
<b>1 Construction Cost</b>						
1.1	1	LS	Replace Wilcox Diesel Engine	\$ 40,000.00	\$	40,000
				Project Construction Cost:	\$	40,000
				10% Contingency:	\$	5,775
				<b>Total Construction Cost:</b>	<b>\$</b>	<b>45,775</b>
<b>2 Admin and Engineering</b>						
2.1	1	LS	Preliminary Engineering, Engineering Plans and Specifications		\$	2,000
2.2	1	LS	Construction Management		\$	2,000
<b>TOTAL PRELIMINARY PROJECT ESTIMATED COST</b>					<b>\$</b>	<b>49,775</b>

D. Project Timeline. Why is 2018 Proposed?

APCD is requiring replacement of the motor to meet air quality standards. BWD staff has negotiated an agreement with APCD to defer enforcement until BWD receives State Grant proceeds are received, projected for mid-2018.

Planning Initiated:	2017-18
Bid Project:	2018-19
Construction:	2018-19

- E. Impact of Deferral: BWD was informed that APCD requirements mandate replacement of the motor. Deferral of this project creates the potential of further enforcement action by APCD.

## CIP ITEM No. 13: Replace Indian Head Reservoir

### A. Project Description / Justification

The District contracted a dive inspection on February 2, 2017 to determine the condition of the interior of the tanks. The last inspection occurred October 14, 2014. Inspections occur approximately every three years. The inspection of the Indian Head Tank identified that the tank may be at the end of its useful life and requires replacement. BWD is working with the State of California to receive Grant funding for this expenditure.

### B. Project Design/Flow

The tank will be replaced with a single 220,000-gallon bolted steel tank. No change in capacity is proposed. The tank will be installed at the same location as the existing tank. The bolted steel tank will be approximately 38 feet in diameter and 24 feet high. The coating will be fusion or powder coated steel.

The estimated life of the tank is approximately 30 years if it is properly maintained. After completion of the tank, it will be filled with water. The water will be tested for Volatile Organic Compounds (VOC) and bacteria prior to putting the tank into service. No change in capacity is proposed.



**Figure 4 - Location of Indianhead tank**



C. Cost Estimate:

**Indian Head Project**

ITEM	DESCRIPTION OF WORK	SUB COSTS	COST
1	Construction Cost (Ex. Tank Demo, New Tank Construction and Piping).		\$ 543,250.00
2	Construction - Contingency 10%		\$ 54,325.00
3	Land Purchase		
4	Engineering, Design and Specifications, Bid Support	\$ 18,450.00	
5	Preliminary Engineering Report		
6	Construction Management and Inspection Services	\$ 22,000.00	
7	Construction Staking	\$ 2,300.00	
8	Geotechnical Testing (Tank Foundation/Pad)	\$ 2,700.00	
9	Administrative Cost During Construction	\$ 8,500.00	
10	Design Services During Construction	\$ 3,500.00	
11	Legal Fees		
12	Financing Costs		
<b>Indian Head Project Total Cost:</b>		<b>\$ 57,450.00</b>	<b>\$ 597,575.00</b>

D. Project Estimated Timeline: Why is 2017-18 Proposed?

The extent of the corrosion in the tank requires replacement as soon as possible. The project would have started earlier but construction is delayed due to the time needed to complete the Grant Application, which is scheduled for March of 2018.

Planning Initiated: 2017-18  
 Bid Project: 2018-19  
 Construction: 2018-19

E. Impact of Deferral

Observed corrosion in the Indian Head Tank has prompted BWD to recommend replacement instead of repair. Deferral of this Project leads to the potential for further degradation of the tank and possible failures.

## CIP ITEM No. 14: Rams Hill #2 Tank Replacement

### A. Project Description / Justification

Budget: \$604,725

The District contracted a dive inspection on October 19, 2016 to determine the condition of the interior of the tanks. The last inspection occurred in 2012. Inspections occur approximately every three years. The inspection of the Twin Tanks has identified areas that are in need of repair/replacement and BWD is requesting replacement of the Tank. BWD is working with the State of California to receive Grant funding for this expenditure.

#### Rams Hill No. 2 Project

ITEM	DESCRIPTION OF WORK	SUB COSTS	COST
1	Construction Cost (Ex. Tank Demo, New Tank Construction and Piping).		\$ 549,750.00
2	Construction - Contingency 10%		\$ 54,975.00
3	Land Purchase		
4	Engineering, Design and Specifications, Bid Support	\$ 18,450.00	
5	Preliminary Engineering Report		
6	Construction Management and Inspection Services	\$ 22,000.00	
7	Construction Staking	\$ 2,300.00	
8	Geotechnical Testing (Tank Foundation/Pad)	\$ 2,700.00	
9	Administrative Cost During Construction	\$ 8,500.00	
10	Design Services During Construction	\$ 3,500.00	
11	Legal Fees		
12	Financing Costs		
<b>Rams Hill No. 2 Project Total Cost:</b>		<b>\$ 57,450.00</b>	<b>\$ 604,725.00</b>

### B. Project Design/Flow

The tank will be replaced with a single bolted steel tank. No change in capacity is proposed. The tank will be installed at the same location as the existing tank. The bolted steel tank will be approximately 38 feet in diameter and 24 feet high. The coating will be fusion or powder coated steel.

The estimated life of the tank is approximately 30 years if it is properly maintained.

After completion of the tank, it will be filled with water. The water will be tested for Volatile Organic Compounds (VOC) and bacteria prior to putting the tank into service. No change in capacity is proposed.

Continuous slip lining uses a long continuous pipe, such as HDPE, Fusible PVC, or Welded Steel Pipe, that are connected into continuous pieces of any length prior to installation. The continuous carrier pipe is pulled through the existing host pipe starting at an insertion pit and continuing to a receiving pit. Either the insertion pit, the receiving pit, or both can be manholes or other existing access points if the size and material of the new carrier pipe can maneuver the existing facilities.

Segmental slip lining is very similar to continuous slip lining. The difference is primarily based on the pipe material used as the new carrier pipe. When using any bell and spigot pipe such as FRP, PVC, HDPE or Spirally Welded Steel Pipe, the individual pieces of pipe are lowered into place, pushed together, and pushed along the existing pipe corridor. Using either method the annular space between the two pipes must be grouted. In the case of sanitary sewer lines, the service laterals must be reconnected via excavation.

**A. Cost Estimate**

A budget of \$400,000 was allocated in the CIP for this project. Actual costs will depend on the type of rehabilitation or construction selected.

**B. Project Timeline. Why is 2020 proposed?**

Due to the age of the Club Circle system, the materials used and degradation over time needs to be investigated further. Although no serious issues have been experienced yet, investigation of the condition of the system is needed to prevent sewer collection system issues.

The projects are proposed to begin in FY 2019-20 and continue in FY 2021-22 and FY 2024-25.

**C. Impact of Deferral:**

Further investigative work is needed to determine the condition of the Club Circle sewer system. Deferring this item could contribute to reduced service and possible failures in extreme situations.

## CIP ITEM No. 16 La Casa Del Zorro area sewer system & force main cleanout

### A. Project Description / Justification

Budget: \$150,000

The Wastewater Treatment Facility services approximately 20 percent of the community of Borrego Springs. Specifically, it serves the Rams Hill residential community and the Town Center area, which includes hotels, a motel, and small business along Palm Canyon Drive. The remaining 80 percent of Borrego Springs is serviced by individual septic tank-subsurface disposal systems.

The sewer is collected and flows by gravity to a pump station located along Borrego Valley Road, approximately 0.6 miles north of Tilting T Drive. The pump station was installed within the past 10 years. The raw sewage is pumped via a sewer force main approximately 2.8 miles to a point 150 feet north of Borrego Springs Road at Yaqui Pass Road. The sewer then flows by gravity inside the La Casa Del Zorro Resort property (located at 3845 Yaqui Pass Road in Borrego Springs, CA) via an 18" PVC gravity main owned by the District and then along Borrego Springs Road to the wastewater treatment plant located at 4861 Borrego Springs Road.

There has been a history of high hydrogen sulfide gas levels and odors detected at manholes located downstream of where the sewer force main discharges into the 18-inch gravity pipeline, at or near the La Casa Del Zorro Resort, especially during the high residency season (November through March) and during holidays.

The intention of this project is to install cleanouts on the existing force main to allow the District to clean the force main.

### B. Project Design/Flow

The District will install cleanouts every approximate 500 feet in the existing force main. There will be approximately 30 cleanouts to be installed.

### C. Cost Estimate:

It is estimated that each cleanout will cost approximately \$5,000, therefore the project cost estimate is \$150,000.00.

### D. Project Timeline: Why is 2019 Proposed?

Hydrogen sulfide contributes to odors as well as corrosion of infrastructure. Much needed maintenance on the force main is also planned for improved operations and reduced corrosion-related issues.

The projects are scheduled to be started FY 2018-19

### E. Impacts of Deferral:

The proposed improvements are needed for odor control in the sewer collection system and deferral of these improvements could lead to continued odors as well as corrosion of infrastructure.

## CIP ITEM No. 17: Town Center Sewer La Casa Bypass

### A. Project Description / Justification

Budget \$500,000

The Wastewater Treatment Facility services approximately 20 percent of the community of Borrego Springs. Specifically it serves the Rams Hill residential community and the Town Center area, which includes hotels, a motel, and small business along Palm Canyon Drive. The remaining 80 percent of Borrego Springs is serviced by individual septic tank-subsurface disposal systems.

The sewer is collected and flows by gravity to a pump station located along Borrego Valley Road, approximately 0.6 miles north of Tilting T Drive. The pump station was installed within the past 10 years. The raw sewage is pumped via a sewer force main approximately 2.8 miles to a point 150 feet north of Borrego Springs Road at Yaqui Pass Road. The sewer then flows by gravity inside the La Casa Del Zorro Resort property (located at 3845 Yaqui Pass Road in Borrego Springs, CA) via an 18" PVC gravity main owned by the District and then along Borrego Springs Road to the wastewater treatment plant located at 4861 Borrego Springs Road.

There has been a history of high hydrogen sulfide gas levels and odors detected at manholes located downstream of where the sewer force main discharges into the 18-inch gravity pipeline, at or near the La Casa Del Zorro Resort, especially during the high residency season (November through March) and during holidays.

The La Casa Del Zorro Resort has recently installed P-traps upstream of multiple lateral service connections to the Borrego Water District sanitary sewer system. There have been no odor complaints since the P-traps have been installed.

### B. Project Design/Flow

To be proactive in case the problem resurfaces, the District has completed an engineering investigation to determine the best course of action. CIP Project # 15 is recommended as a Phase one to minimize the odors. In the event the odor problem continues, this proposed re-alignment of the sewer line is needed as a conditional Phase 2 project. When the Phase One work is complete a decision can be made regarding Phase Two.

### C. Cost Estimate:

A placeholder was put in the CIP for \$500,000.

### D. Project Timeline – Why is 2020 Proposed?

It is expected that following completion of phase one, it will take approximately 6 months to determine the success of Phase One (CIP #15) = 2020

Estimated project completion date is FY 2019-20

### E. Impact of Deferral

Deferral of this project will perpetuate the potential for odor and high hydrogen sulfide concentrations.

## CIP ITEM No. 18: Plant Grit Removal at the Headworks

### A. Project Description / Reasons for Capital Expense

Budget \$214,000

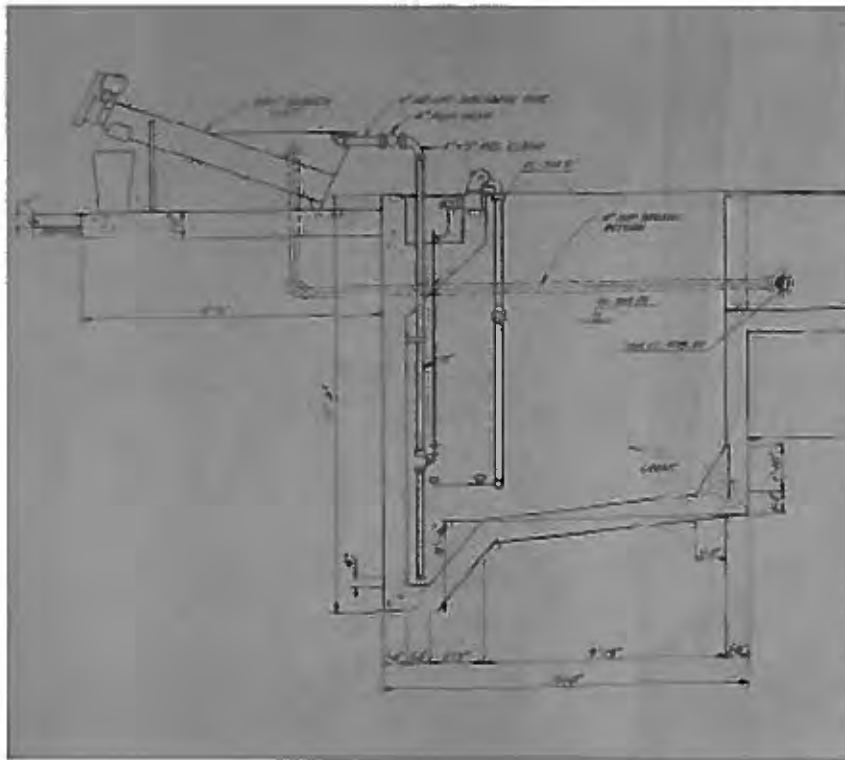
The wastewater treatment facility headworks consist of an influent flowmeter (Parshall Flume), a grit settling basin, positive displacement air blower system, and an “auger-style” grit separator. Recent improvements to the headworks include installation of a new ultrasonic flow meter unit, repair of the original bar screen, replacement of comminutor (Muffin Monster) unit, and replacement of the positive-displacement style blower unit that provides aeration to the aerobic sludge digester.

The existing “auger-style” grit separator housing and drive unit are extremely corroded (see photos below), do not adequately process settled grit, and leak raw influent wastewater onto the surface area. Furthermore, according to operations staff, the original air-lift system has not worked properly for quite some time, and should be replaced with a fluid pumping system capable of pumping settled grit and solids from the bottom of the grit chamber to the separator. Without a functional grit removal system, floating solids are transported through the WWTF facility. BWD is working with the State of California to receive Grant funding for this expenditure.



### B. Project Design/Flow:

The headworks dimensions are 54” tall x 30” wide x 18 ½’ Long. The primary channel includes a Muffin Monster Grinder. There is also a by-pass stationary bar screen. The onsite power is 240V 3 phase 60 Hz. The alternatives for this are to replace the existing failed grit separator, or no action. If nothing is done, solids and particulate matter can enter the WWTF, causing problems with the treatment process and possible effluent violations.



WWTF Headworks Drawing (profile view)

C. Cost Estimate: \$214,000

D. Project Timeline. Why is 2019 Proposed?

The grit auger is a critical component at the beginning of the waste water treatment process. The existing equipment is very close to the end of its useful life.

The project is scheduled to be completed in FY 2018-19

E. Impact of Deferral:

Replacement of the Grit Removal Auger will improve WWTP Plant operations and deferral of this improvement increases the risk of maintenance issues and/or equipment failure.

## CIP ITEM No. 19: Clarifier Upgrade at WWTP

### F. Project Description / Reasons for Capital Expense

Budget \$200,000

The water plant is comprised of (2) gravity settling basins (clarifiers) intended to separate and settle our stabilized solids (MLSS) from the secondary effluent stream. The clarifiers are equipped with a center-well structure, skimmer/scrapper arms, and main drive unit.

**Deficiencies noted in this area:** The exposed steel components in the clarifiers exhibit notable signs of corrosion and wear. Skimmer/scrapper arms should be replaced to ensure efficient collection and removal of settleable and floatable material from the effluent stream. The center-well structure and related piping should be sandblasted and recoated to extend service life, and the main drive units display significant signs of excess wear and should be completely replaced in order to ensure continued operation.



G. Cost Estimate: \$200,000

H. Project Timeline. Why is 2019 Proposed?

The clarifier is a critical component at the beginning of the waste water treatment process. The existing equipment is very close to the end of its useful life.

The project is scheduled to be completed in FY 2018-19

I. Impact of Deferral:

Replacement of the clarifier will improve WWTP Plant operations and deferral of this improvement increases the risk of maintenance issues and/or equipment failure.



## CIP ITEM No. 20: Emergency Water Pipeline Repairs

### A. Project Description / Reasons for Capital Expense

Budget \$225,000 (average \$28,125 per fiscal year)

The District's water distribution system is aging. Some parts of the distribution system were installed in the 1960's and are starting to reach their life expectancy. The pressure in the system is over 100psi in many areas. Each year there are water pipe breaks that the District repairs. The CIP has included these costs as routine repairs each year.

### B. Project Design/Flow

When a pipeline breaks, the District responds immediately to repair the leak. If the roadway is affected, the County sends an inspector to the project site.

### C. Cost Estimate

The cost in the CIP is based on historical trends.

### D. Timeline

The schedule for this item is based on whenever the pipelines break and deferral is not an option.

## CIP ITEM No. 21-31: Pipeline Replacement / Improvement Program

**A. Project Description/ Reason for expense.**

Water pipelines are out of sight and “out of mind” until there are breaks and water leaks. Many parts of the distribution system are approaching their useful life. Every year the District is proactive in replacing and installing new water pipelines in the distribution system. The District has identified and prioritized several sections of pipelines within the distribution system. They are the following:

10" Bypass at ID1 Booster Station 2
Borrego Springs Road, Walking H Drive to Country Club Road Phase 1 (Pipeline 5)
Borrego Springs Road, Walking H Drive to Country Club Road Phase 2 (Pipeline 5)
T Anchor Drive, Frying Pan Road to Double O Road (Pipeline 6)
Weather Vane Drive, Frying Pan Road to Double O Road (Pipeline 7)
Frying Pan Road, north and south from T Anchor Drive (Pipeline 8)
Double O Road, north and south from T Anchor Drive (Pipeline 9)
Borrego Springs Road, Weather Vane Drive to Barrel Drive (Pipeline 10)
Pipeline for Santiago and ID5 (Pipeline 11)
De Anza Dr. 1600 block west from Yaqui Road (Pipeline 12)

**B. Project Design/ Flow**

The regularly scheduled water pipeline replacement program is to be completed by in house District staff as they become available.

**C. Cost Estimate**

Pipeline 5 CIP Line 23 CIP Line 24	8" Water Main from the intersection of Borrego Springs Road and Walking H Drive to the intersection of Borrego Springs Road and Country Club Road. Total length 5850 feet at \$70.00 per foot Estimated cost \$410,000.00
Pipeline 6 CIP Line 25	6" Water Main going west to east on T Anchor Drive from Frying Pan Road to Double O Road. Total length 525 feet at \$65.00 per foot Estimated cost \$34,125.00

Pipeline 7 CIP Line 26	6" Water Main going west to east on Weather Vane Drive from Frying Pan Road to Double O Road. Total length 525 feet at \$65.00 per foot Estimated cost \$34,125.00
Pipeline 8 CIP Line 27	6" Water Main going north and south on Frying Pan Road from T Anchor Drive. Total length 3110 feet at \$80.00 per foot Estimated cost \$248,000.00
Pipeline 9 CIP Line 28	6" Water Main going north and south on Double O Road from T Anchor Drive. Total length 3920 feet at \$80.00 per foot Estimated cost \$313,600.00
Pipeline 10 CIP Line 29	8" Water Main from intersection of Borrego Springs Road and Weather Vane Drive to the intersection of Borrego Springs Road and Barrel Drive. Total length 1500 feet at \$70.00 per foot Estimated cost \$105,000.00
Pipeline 11 CIP Line 30	6" Water Main going east from Double O Road to Di Giorgio Total length 1700 feet at \$65.00 per foot Estimated cost \$214,000
Pipeline 12 CIP Line 31	6" Water Main 1600 Block of De Anza Drive Total length 1260 feet at \$200.00 per foot Estimated cost \$252,000

#### D. Project Timeline

The CIP shows these projects starting in FY 2017-18 and finishing in FY 2021-22. The completion of these projects is dependent on staff availability, and if there are any unanticipated emergency water pipeline breaks that will change the priority of the replacement schedule. The projects are needed to replace aging infrastructure, improve system redundancy and water flow.

## BWD Bond Financing Use of Funds & Scheduling

### Use of Funds:

The Projects identified in this CIP will be prioritized and selected BWD fully expects that substantially all 2018 Bond proceeds dedicated to Capital Improvements and deposited in the Construction Fund created under the Indenture will be expended within three years, as follows.

#### 2018-19

Project #3: BWD Production Well Replacement-Investigation	\$ 265,000
Project #7: Transmission Main from Well 16 to ID1 900 Reservoir	112,000
Project #16: Sewer Force main Replacement & American Legion Lateral	150,000
Project #27: Frying Pan Road, N and S of T Anchor Drive (Phase 1)	165,000
Project #30: Pipeline for Santiago and ID5 (Phase 1)	<u>110,000</u>
	\$ 802,000

#### 2019-20

Project #3: BWD Production Well Replacement – Construction	\$1,235,000
Project #8: Well 5 water directly to C.C. Reservoir (Phase 1)	120,000
Project #10: Slash M Rd. west to Country Club Tank	175,700
Project #15: Sewer main Replacement at Club Circle (Phase 1)	200,000
Project #27: Frying Pan Road, N and S of T Anchor Drive (Phase 2)	83,000
Project #30: Pipeline for Santiago and ID5 – (Phase 2)	<u>104,000</u>
	\$ 1,917,700

#### 2020-21

Project #4: BWD Production Well Replacement #2	\$ 1,548,700
Project #8: Well 5 water directly to C.C. Reservoir (Phase 2)	151,000
Project #23: B. S. Rd, Walking H Drive to Country Club Road (Phase 1)	205,000
Project #24: B. S. Rd, Walking H Drive to Country Club Road (Phase 2)	205,000
Project #28: Double O Road, N and S of T Anchor Dr	313,600
Project #29: BS Rd, Weather Vane Drive to Barrel Dr	105,000
Project #31: De Anza Dr. 1600 block west from Yaqui Road	<u>252,000</u>
	\$2,780,300

GRAND TOTAL	\$5,500,000
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STATUS REPORT ON CALIFORNIA WATER BOARDS FUNDING APPLICATIONS

May 15, 2018

Introduction:

The Borrego Water District (BWD) has applied to the Water Boards for funding assistance for two important projects. TRAC was asked on December 18, 2017 to help facilitate this process.

The two projects are:

- Project 34239 – Replacement of Three Reservoir Tanks (Indian Head, Rams Hill 2, and Twin Tanks; Upgrade of the Wilcox Well Emergency Pump.

The source of funds is Proposition 1 monies from the Drinking Water State Revolving Fund. The current requested amount will be \$478,000.

- Project 34661 – Wastewater Treatment Plant Upgrade

The source of funds is Proposition 1 monies from the Clean Water State Revolving Fund. The current requested amount is \$1,460,070.

The process for application completion is similar for each project, but they request significantly different information. Once completed, however, the applications components are posted by BWD to the FFAST site, maintained by the Waterboards. That way both applicant and Waterboard staff can view the information whenever required.

Status of Applications:

**Project 34239 (Water Supply) required elements**

- |   |             |
|---|-------------|
| • General Information Package + 7 required attachments    | Submitted   |
| • Environmental Package Construction + 4 attachments      | Submitted   |
| • Technical Package Construction + 7 attachments          | In Process  |
| • Financial Security Package Conservation +12 attachments | May 21,2018 |
| • TMF Assessment Form                                     | May 21,2018 |

Unresolved Issues: We have asked Waterboard staff to waive the requirements for several time consuming and expensive studies involving outside consulting help:

- Cultural Resources/National Historic Preservation Act – Survey & Report
- Wildlife Resources – Endangered Species Act and Fish and Wildlife Conservation Act
- Air Quality Act- Air Quality Modeling

**Project 34661 (Waste Water Treatment Plant Upgrade)**

- |  |           |
|--|-----------|
| • General Information Package + 5 required attachments | Submitted |
| • Environmental Package + 4 required attachments       | Submitted |
| • Technical Package + 9 required attachments           | Submitted |
| • Financial Security Package + 12 required attachments | Submitted |
| • Unresolved Issues                                    | None      |

Staff negotiated successfully with other Waterboards staff, reviewing Project 34661 (WWTP Upgrade) that based on the Categorical Exemption for CEQA, no federal funds involved, that each project was simply a replacement or upgrade of facilities on their existing footprints, and that the Borrego Valley is an Air Quality Attainment Area, that requirements for the studies described above should be waived.

We have requested a similar waiver for Project 34239 (Water Supply) and Waterboards Staff cannot make the determination at this time. Therefore, we are proceeding with completion of all Grant components and getting them submitted on or before May 21<sup>st</sup>. If these other studies are required, that will be determined by Waterboard and they will inform BWD at that time.

	A	B	C	D	E	F	G	H	I	M	O
1											
2		<b>GSP EXPENDITURES</b>									
3		<b>Beginning 1/1/2015</b>									
4		<b>GWM Accounting #54800</b>									
5											
6											
7	DATE	DESCRIPTION	LEGAL	BVGB GSP	Portable Monitoring System	Water Credits Policy	Grant research	Bond	CASGEM Water Level Program	TOTALS	Justification of Expenditure
8											
9											
10	FY 2015										
11	January	Downey Brand	\$ 5,456.69							\$ 5,456.69	
12	January	The Brattle Group		8,700.00						\$ 8,700.00	
13	January	USGS		905.24						\$ 905.24	
14	February	Downey Brand	6,126.00							\$ 6,126.00	
15	February	USGS		3,615.92						\$ 3,615.92	
16	March	Downey Brand	3,525.00							\$ 3,525.00	
17	March	The Brattle Group		13,567.50						\$ 13,567.50	
18	April	Downey Brand	7,137.78							\$ 7,137.78	
19	April	The Brattle Group		10,781.25						\$ 10,781.25	
20	May	The Brattle Group		12,187.50						\$ 12,187.50	
21	May	Downey Brand	5,206.60							\$ 5,206.60	
22	June	The Brattle Group		3,412.50						\$ 3,412.50	
23	June	Downey Brand	1,050.00							\$ 1,050.00	
24		<b>TOTAL EXPENSES FY 2015</b>								<b>\$ 81,671.98</b>	
25	FY 2016										
26	July	Downey Brand	534.95							\$ 534.95	
27	July	The Regents			15,000.00					\$ 15,000.00	
28	September	Downey Brand	1,312.50							\$ 1,312.50	
29	October	Downey Brand	1,900.67							\$ 1,900.67	
30	October	USGS		4,426.18						\$ 4,426.18	
31	November	Downey Brand	450.00							\$ 450.00	
32	November	Raftelis		5,375.00						\$ 5,375.00	
33	November	Dudek		16,976.40						\$ 16,976.40	
34	December	Downey Brand	1,462.50							\$ 1,462.50	
35	December	Dudek		8,758.75		5,526.25				\$ 14,285.00	
36	January	Downey Brand	2,369.50							\$ 2,369.50	
37	February	Downey Brand	4,370.00							\$ 4,370.00	
38	February	Dudek		27,913.64						\$ 27,913.64	
39	March	Downey Brand	2,964.00	32,577.01						\$ 35,541.01	
40	March	Wendy Quinn-Minutes GSP advisory committee		162.50						\$ 162.50	
41	March	County of SD-Notice of exemption					200.00			\$ 200.00	
42	March	Dudek					53.75			\$ 53.75	
43	April	Downey Brand	3,573.07							\$ 3,573.07	
44	April	Wendy Quinn-Minutes GSP advisory committee		200.00						\$ 200.00	
45	April	Dudek					2,980.00			\$ 2,980.00	
46	May	Downey Brand	5,313.50							\$ 5,313.50	
47	May	Dudek					1,260.00			\$ 1,260.00	
48	June	Downey Brand	1,406.00							\$ 1,406.00	
49	June	Dudek		1,813.64						\$ 1,813.64	
50		<b>TOTAL EXPENSES FY 2016</b>								<b>\$ 148,879.81</b>	
51											

	A	B	C	D	E	F	G	H	I	M	O
2		<b>GSP EXPENDITURES</b>									
3		<b>Beginning 1/1/2015</b>									
4		<b>GWM Accounting #54800</b>									
52	<b>FY 2017</b>										
53	August	Downey Brand	190.00							190.00	
54	August	Dudek		39,583.64						39,583.64	
55	October	Dudek		7,650.00						7,650.00	
56	November	One Eleven		1,425.00		142.50	142.50		2,295.00	4,005.00	
57	December	Downey Brand	1,925.00							1,925.00	
58	December	Dudek		10,695.76						10,695.76	
59	December	Dudek					1,330.00			1,330.00	
60	February	Downey Brand	1,945.00							1,945.00	
61	March	Downey Brand	323.50							323.50	
62	April	McDougal Love Eckis	33.00							33.00	
63	April	Downey Brand	868.89							868.89	
64	May	One Eleven				665.00				665.00	
65	May	Wendy Quinn-Minutes GSP advisory committee		200.00						200.00	
66	May	Geoff Poole-Staff allocation		3,968.19						3,968.19	
67	June	Wendy Quinn-Minutes GSP advisory committee		162.50						162.50	
68	June	Geoff Poole-Staff allocation		6,030.81						6,030.81	
69	June	Dudek					385.00			385.00	
70		<b>TOTAL EXPENSES FY 2017</b>								<b>\$ 79,961.29</b>	
71	<b>FY 2018</b>										
72	July	Geoff Poole-Staff allocation		3,415.68						3,415.68	
73	July	Ellen Wehr						9,645.00		9,645.00	
74	July	Wendy Quinn-Minutes SGMA advisory committee		250.00						250.00	
75	August	Geoff Poole-Staff allocation		4,002.75						4,002.75	
76	August	One Eleven		1,520.00		190.00				1,710.00	
77	September	Downey Brand	1,115.25							1,115.25	
78	September	One Eleven		760.00						760.00	
79	September	Geoff Poole-Staff allocation		3,202.20						3,202.20	
80	September	Wendy-Minutes SGMA advisory committee		262.50						262.50	
81	September	Lesar Development Consultants					20,000.00			20,000.00	
82	October	Downey Brand	2,691.00							2,691.00	
83	October	BBK	7,892.50							7,892.50	
84	October	Wendy-Minutes SGMA advisory committee		212.50						212.50	
85	October	Geoff Poole-Staff allocation		4,500.60						4,500.60	
86	October	Lesar Development Consultants					17,269.80			17,269.80	
87	November	BBK	13,209.25							13,209.25	
88	November	Wendy-Minutes SGMA advisory committee		250.00						250.00	
89	November	One Eleven		760.00		570.00			2,380.00	3,710.00	
90	November	Geoff Poole-Staff allocation		4,345.20						4,345.20	
91	December	Geoff Poole-Staff allocation		4,846.80						4,846.80	
92	December	Babcock-Water Testing BS Sub-basin		3,230.00						3,230.00	
93	December	CSU-Sacramento-GSP Advisory Committee		3,017.38						3,017.38	
94	December	Lesar Development Consultants					7,730.20			7,730.20	
95	January	Downey Brand	858.00							858.00	
96	January	Geoff Poole-Staff allocation		5,077.60						5,077.60	
97	January	Babcock-Water Testing BS Sub-basin		350.00						350.00	
98	February	BBK	5,396.19							5,396.19	
99	February	Wendy-Minutes SGMA advisory committee		262.51						262.51	
100	February	One Eleven		190.00		570.00	95.00		285.00	1,140.00	
101	February	Geoff Poole-Staff allocation		4,246.64						4,246.64	
102	March	BBK	14,833.23							14,833.23	
103	March	Dudek		1,490.00						1,490.00	
104	March	Geoff Poole-Staff allocation		5,164.40						5,164.40	
105	March	The Rick Alexander Company		5,355.00						5,355.00	
106	March	In-Situ Inc -Well Water Level Recorders							10,465.34	10,465.34	
107											
108		<b>TOTAL:</b>	<b>\$ 105,439.57</b>	<b>\$ 277,800.69</b>	<b>\$ 15,000.00</b>	<b>\$ 7,663.75</b>	<b>\$ 51,446.25</b>	<b>\$ 9,645.00</b>	<b>\$ 15,425.34</b>	<b>\$ 482,420.60</b>	
109											



**BORREGO WATER DISTRICT**  
**POLICY STATEMENT**

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**SUBJECT: CASH RESERVES POLICY**

**NO: 2011-05-01**

**ADOPTED: 2011-05-25**

**AMENDED: 2015-05-27**

**AMENDED: 2016-05-25**

**AMENDED: 2017-05-24**

**AMENDED: 2018-06-19**

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**I. BACKGROUND AND INTRODUCTION**

Reserves are needed because of risk. Water and sewer operations are inherently risky, given the potential liability associated with repairing and replacing infrastructure necessary for maintaining 24x7 operations for supplying potable water and sewer and wastewater treatment services to the homes and businesses of Borrego Springs. In addition, water operations have risk associated with the volatility of revenue due to weather conditions. Reserves also assist in reducing rate shocks. Without them a water utility is exposed to rate instability. Rate instability increases the cost of borrowing, which drives up rates. In addition, reserves help the District improve its credit rating, which translates into lower interest rates on debt and thus lower rates for the District's customers. Also, sometimes bond or loan covenants require a debt reserve or recommend a rate stabilization reserve.

Many utilities operate in a state of revenue deficiency, which means they either rely on existing reserves, skimp on funding reserves, or defer economically prudent repair and replacement of capital infrastructure to the future where higher costs will be borne by ratepayers to repair or replace infrastructure that has failed catastrophically. Becoming revenue sufficient means that a utility can count on receiving adequate revenues to fully fund utility operations, including debt service obligations, and some portion of capital improvements from rate revenues and reserves. Reserve accounts are a vital part of water and sewer and wastewater treatment system's financial health.

This Board believes that operating with revenue sufficiency is required, not only to remain creditworthy for future capital borrowing, but also to replace depleted reserves necessary to operate most economically. For these reasons, the District will maintain reserve funds so as to provide working capital for operations; funds required by law, ordinance and bond covenants; and necessary cash for the scheduled and unscheduled repair and replacement of capital infrastructure; as well as funds set aside for groundwater management purposes.

Reserves are also necessary for the District to stabilize rates due to normal revenue and cost uncertainties, and to provide a prudent amount of insurance against economic downturns and emergencies. The efficient and discrete management of these cash reserves, when combined with their appropriate replacement as they are drawn down from time-to-time add additional assurance that the current levels of service reliability and quality that the District's ratepayers have grown to expect will continue into the future.

This reserve policy is based upon prudent financial management practices and those amounts required by legal, legislative, and contractual obligations that are critical to the financial health of the District. This policy defines

required fund types for segregation purposes and their funding levels that are based upon this District's unique operating, capital investment and financial plans. Both restricted reserves and Board discretionary reserves for the water enterprise and the sewer and wastewater enterprise will be funded by rates specific to those enterprises so as to meet California Proposition 218 requirements. That is, reserves specific to the needs of the District's water enterprise will be accumulated from water rates. Reserves specific to the needs of the District's sewer and wastewater enterprise will be funded from sewer and wastewater treatment rates.

**II. RESTRICTED RESERVES.** Restricted Reserves are established and utilized for narrowly defined purposes and are protected by law or covenant. The District's Restricted Reserves for its water and sewer and wastewater treatment enterprises are the following:

**Debt Reserves.** Reserves equal to the annual principle and interest (P&I) for debt obligations of the District shall be formally transferred and restricted in accordance with all legal requirements.

**System Growth Reserves.** These reserves generated from development charges for new meters as specified by the District's New Development policy in effect are used to offset capital projects or debt service related to new development in the District so that new development pays for itself rather than requiring a subsidy from existing ratepayers.

### **III. BOARD DISCRETIONARY RESERVES**

**Operating or Working Capital Reserves.** The purpose of an operating reserve is to have liquid cash on hand for the continued day-to-day operations of the utility. The Operating Reserve may be used for cash flow purposes to fund necessary expenses without the need to wait for billed revenue to come in as well as any unexpected increases in operating expenses. The amount of the Operating Reserve is commonly pegged to a certain percentage of the utility's total operating expenses. The set percentage is usually dictated by the utility's bill frequency; if customers are billed on a monthly basis, then revenue continuously comes in and the need to have a significant amount of funds within the Operating Reserve is not necessary. Based on industry standards, The Operating Reserve, in the case of monthly billing, should equal around 90 days of expenses (3 months). As the bill frequency is less frequent, the Operating Minimum Reserve should be increased to account for the time delay of receiving cash on hand. The operating or working capital reserve shall be a minimum reserve of no less than 90 days of Operating and Maintenance annual expenses (O&M), with an ideal operating reserve target of 120-days of annual O&M expenses.

**Rate Covenant Stabilization Funds.** These reserves include the Sewer Enterprise Rate Stabilization Fund and the Water Enterprise Rate Stabilization Fund. The purpose of these reserves are used to stabilize water and sewer revenues in order to maintain adequate debt coverage ratios required by the District's lenders. These reserve funds shall be maintained at level of thirty (30%) percent of the revenue generated from the commodity revenues for water services and thirty (30%) percent of the total revenues from sewer services.

**Contingency Reserves.** The purpose of this reserve is to accommodate unexpected operational changes,

legislative impacts or other economic events that may affect the District’s enterprise operations, which could not have been reasonably anticipated at the time the budget was prepared. The target level for this reserve is a minimum of five percent (5%) and a maximum of ten percent (10%) of the District’s total enterprise-wide operating expenses. Generally, the level will be increased as the level of economic uncertainty increases.

**Capital Repair and Replacement Reserve (Capital Reserve).** A Capital Repair and Replacement Reserve is used primarily to meet and ensure the timely construction of necessary capital improvements without any delays due to cash flow concerns. Capital expenses can fluctuate quite a bit from year-to-year and the Capital Reserve may be leveraged to smooth out significant changes in expenses and; thereby, avoiding any undue rate shock to District customers. It may also serve as collateral and reassurance when awarding a construction contract. A sound target for a Capital Reserve is to have an average years’ worth of capital expenses based on the District’s adopted Capital Improvement Plan (CIP). At a minimum, the Capital Reserve should be funded to at least an amount equivalent to the total annual depreciation value of the system and these funds can be used as a reasonable reinvestment amount into the system. The Capital Reserve target is a reserve equal to the inflated value of a rolling average of the subsequent 5 years of the District’s Capital Improvements Plan for water infrastructure repair and replacement (R&R) and sewer and wastewater R&R.

**Emergency Reserves.** The purpose of the emergency reserve is to protect the District and its customers against the impacts from unanticipated emergencies that would severely impact the District’s ability to deliver the water and/or sewer and wastewater treatment services to its customers. This reserve provides funding for emergency repairs or failure of essential equipment that must be immediately replaced and are unanticipated by the Capital Improvements Plan (CIP). The emergency reserve target is \$2,000,000, that should be sufficient to finance the required cash flow and liquidity until such time that adequate emergency financing can be secured from conventional outside resources.

**IV. OTHER RESERVE FUNDS.** The District's Board may establish other cash reserve funds for specific needs that are over and above the reserves noted above as may be necessary from time to time.

**RESERVES TARGETS FOR FY 2019**

<b>DEBT</b>	<b>\$ 900,000</b>
<b>SYSTEM GROWTH</b>	<b>Accumulated developer’s charges</b>
<b>WORKING CAPITAL</b>	<b>\$1,000,000</b>
<b>RATE COVENANT STABILATION FUNDS</b>	<b>\$ 740,000</b>
<b>CONTINGENCY</b>	<b>\$ 300,000</b>
<b>CAPITAL REPAIRS</b>	<b>\$ 440,000</b>
<b>EMERGENCY</b>	<b><u>\$2,000,000</u></b>
 <b>FY RESERVES TARGET</b>	 <b><u>\$5,380,000</u></b>

The Reserves Targets will continue to increase each FY based on capital structure changes and CIP spending.

	A	I	J	K	L	M	N	O	P
1	<b>BORREGO WATER DISTRICT</b>								
2	<b>EIGHT YEAR NET INCOME/ WORKING CAPITAL PROJECTION</b>	Projected	Projected	Projected	Projected	Projected	Projected	Projected	Projected
3		FY 2018-19	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24	FY 2024-25	FY 2025-26
4	Prop 218 Approved Water/Sewer Revenue Increases	6%	6%	6%	8%	6%	4%	4%	3%
5	Projected Water Revenue Increase-commodity	6%	6%	6%	8%	6%	4%	4%	3%
6	Expected Water Revenue Increase-commodity	4%	4%	4%	8%	6%	4%	4%	3%
7	Prop 18 approved Water Revenue Increase-base	6%	6%	6%	8%	6%	4%	4%	3%
8	Expected Water Revenue Increase - base	6%	6%	6%	8%	6%	4%	4%	3%
9	Projected/Expected Sewer Revenue Increase	4%	4%	4%	8%	6%	4%	4%	3%
10	Existing Water Rate Revenue - commodity	\$ 2,213,842	\$ 2,302,396	\$ 2,394,492	\$ 2,490,271	\$ 2,689,493	\$ 2,850,862	\$ 2,964,897	\$ 3,083,493
11	Existing Water Rate Revenue -base	\$ 1,089,600	\$ 1,154,976	\$ 1,224,275	\$ 1,297,731	\$ 1,401,550	\$ 1,485,642	\$ 1,545,068	\$ 1,606,871
12	Additional Water Revenue-commodity	\$ 88,554	\$ 92,096	\$ 95,780	\$ 199,222	\$ 161,370	\$ 114,034	\$ 118,596	\$ 92,505
13	Additional Water Revenue-base	\$ 65,376	\$ 69,299	\$ 73,456	\$ 103,818	\$ 84,093	\$ 59,426	\$ 61,803	\$ 48,206
14	Existing Sewer Rate Revenue	\$ 578,454	\$ 601,592	\$ 625,656	\$ 650,682	\$ 702,737	\$ 744,901	\$ 774,697	\$ 805,685
15	Additional Sewer Revenue	\$ 23,138	\$ 24,064	\$ 25,026	\$ 52,055	\$ 42,164	\$ 29,796	\$ 30,988	\$ 24,171
16	Other non variable Income (includes GSP costs reimbursement)	\$ 648,631	\$ 6,000	\$ 156,000	\$ 156,000	\$ 156,000	\$ 156,000	\$ 156,000	\$ 156,000
17	<b>Total Revenue (/w Other Rev.)</b>	<b>\$ 4,707,595</b>	<b>\$ 4,250,422</b>	<b>\$ 4,594,684</b>	<b>\$ 4,949,779</b>	<b>\$ 5,237,406</b>	<b>\$ 5,440,662</b>	<b>\$ 5,652,048</b>	<b>\$ 5,816,930</b>
18									
19	<b>Grant/Bond Proceeds</b>								
20	Grant Funding	\$ 500,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
21	CIP Debt Funding	\$ 5,500,000	\$ -	\$ -	\$ 5,880,000	\$ -	\$ -	\$ -	\$ -
22	<b>Total Grant/Bond Proceeds</b>	<b>\$ 6,000,000</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 5,880,000</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>
23									
24	<b>Total Revenue and Grant/Bond Proceeds</b>	<b>\$ 10,707,595</b>	<b>\$ 4,250,422</b>	<b>\$ 4,594,684</b>	<b>\$ 10,829,779</b>	<b>\$ 5,237,406</b>	<b>\$ 5,440,662</b>	<b>\$ 5,652,048</b>	<b>\$ 5,816,930</b>
25									
26	O&M Expenses (4% per year escalation)	\$ 3,880,134	\$ 4,035,339	\$ 4,196,753	\$ 4,364,623	\$ 4,539,208	\$ 4,720,776	\$ 4,909,607	\$ 5,105,992
27	Unexpended Debt Proceeds	\$ 4,698,000	\$ 2,780,300	\$ -	\$ 3,844,000	\$ 2,210,000	\$ -	\$ -	\$ -
28	<b>Total Expenses and Unexpended Debt proceeds:</b>	<b>\$ 8,578,134</b>	<b>\$ 6,815,639</b>	<b>\$ 4,196,753</b>	<b>\$ 8,208,623</b>	<b>\$ 6,749,208</b>	<b>\$ 4,720,776</b>	<b>\$ 4,909,607</b>	<b>\$ 5,105,992</b>
29									
30	<b>Net Operating Income:</b>	<b>\$ 827,461</b>	<b>\$ 215,083</b>	<b>\$ 397,931</b>	<b>\$ 585,156</b>	<b>\$ 698,198</b>	<b>\$ 719,886</b>	<b>\$ 742,441</b>	<b>\$ 710,938</b>
31									

	A	I	J	K	L	M	N	O	P
36	CIP Financing								
37	Cash CIP	\$ 342,000	\$ 177,000	\$ 216,000	\$ 80,000	\$ 25,000		\$ 1,530,000	\$ 405,000
38	Grant CIP	\$ 265,000							
39	2022 CIP Debt				\$ 2,036,000	\$ 1,529,000	\$ 2,210,000		
40	2018 IPA Debt CIP	\$ 802,000	\$ 1,917,700	\$ 2,780,300				\$ -	\$ -
41	<b>Total CIP Expense:</b>	<b>\$ 1,409,000</b>	<b>\$ 2,094,700</b>	<b>\$ 2,996,300</b>	<b>\$ 2,116,000</b>	<b>\$ 1,554,000</b>	<b>\$ 2,210,000</b>	<b>\$ 1,530,000</b>	<b>\$ 405,000</b>
42									
43	<b>Existing &amp; Future Debt Service</b>								
44	Compass Bank Note 2018A	\$ 254,000	\$ 254,000	\$ 254,000	\$ 254,000	\$ 254,000	\$ 254,000	\$ 254,000	\$ 254,000
46	Compass Bank Note 2018B	\$ 143,000	\$ 143,000	\$ 143,000	\$ 143,000	\$ 143,000	\$ 143,000	\$ -	\$ -
47	2022 New CIP Debt				\$ 400,000	\$ 400,000	\$ 400,000	\$ 400,000	\$ 400,000
48	2018 Pacific Western Bank IPA	\$ 500,000	\$ 500,000	\$ 500,000	\$ 360,000	\$ 360,000	\$ 360,000	\$ 360,000	\$ 360,000
49	<b>Total Debt Service</b>	<b>\$ 897,000</b>	<b>\$ 897,000</b>	<b>\$ 897,000</b>	<b>\$ 1,157,000</b>	<b>\$ 1,157,000</b>	<b>\$ 1,157,000</b>	<b>\$ 1,014,000</b>	<b>\$ 1,014,000</b>
50	Debt Coverage Ratio (EBIT/Debt Service)	1.92	1.24	1.44	1.51	1.60	1.62	1.73	1.70
51									
52	<b>Total SGMA GSP District Costs:</b>	<b>\$ 368,000</b>	<b>\$ 300,000</b>	<b>\$ 200,000</b>	<b>\$ 200,000</b>	<b>\$ 200,000</b>	<b>\$ 200,000</b>	<b>\$ 200,000</b>	<b>\$ 200,000</b>
53									
54	<b>Net Annual Cash Flow</b>	<b>\$ 485,461</b>	<b>\$ 38,083</b>	<b>\$ 181,931</b>	<b>\$ 505,156</b>	<b>\$ 673,198</b>	<b>\$ 719,886</b>	<b>\$ (787,559)</b>	<b>\$ 305,938</b>
55									
56	Beginning Reserves Level	\$ 4,570,637	\$ 5,056,098	\$ 5,094,180	\$ 5,276,112	\$ 5,781,268	\$ 6,454,466	\$ 7,174,351	\$ 6,386,792
57	Ending Reserves Level with revenue adjustment	\$ 5,056,098	\$ 5,094,180	\$ 5,276,112	\$ 5,781,268	\$ 6,454,466	\$ 7,174,351	\$ 6,386,792	\$ 6,692,731
58									
59	<b>Reserve Target Level</b>	<b>\$ 5,380,000</b>	<b>\$ 5,990,919</b>	<b>\$ 6,608,875</b>	<b>\$ 7,113,550</b>	<b>\$ 7,273,784</b>	<b>\$ 7,549,208</b>	<b>\$ 7,397,337</b>	<b>\$ 7,213,910</b>
60									
61	Reserve Surplus (Shortfall)	\$ (323,902)	\$ (896,738)	\$ (1,332,764)	\$ (1,332,283)	\$ (819,318)	\$ (374,857)	\$ (1,010,544)	\$ (521,180)
62									

**BORREGO WATER DISTRICT  
PROPOSED RATES FOR  
FISCAL YEARS 2019-2021  
Adopted May 23, 2018**

**Sewer Rates**

The District provides sewer service to areas 1, 2 and 5. Changes are being proposed for all Areas. The District's monthly sewer charges are based on one equivalent dwelling unit (EDU) usage of 250 gallons per day, for a typical single family residence. Non-Residential projected EDU requirements are determined on a case-by-case basis. Sewer customers in area 2 (TCS) are charged a fixed monthly holder fee, and a monthly user fee based on number of EDU's

Sewer service charges are proposed to change as shown in the following table:

	Current Rates FY 2018	FY 2019 Projected	FY 2020 Projected	FY 2021 Projected
Sewer Area 1	\$40.33	\$41.94	\$43.62	\$45.37
Sewer Area 5	\$46.90	\$48.78	\$50.73	\$52.76
TCS User	\$46.90	\$48.78	\$50.73	\$52.76
TCS Holder	\$25.75	\$26.78	\$27.85	\$28.97
BSR	\$25.75	\$26.78	\$27.85	\$28.97
BSR Usage	\$1.89	\$1.97	\$2.05	\$2.13

**Water Rates**

The District's water rates have two components: 1) a **Fixed Meter Charge** based on the customer's meter size, to recover a portion of the District's fixed costs of operating, maintaining and delivering water, and 2) a **Commodity Charge**, determined by the amount of water used. It is proposed that the fixed charges, applicable to all customers account for 33% of the District's ongoing expenses, and 67% of such expenses should be funded on a consumption basis. It is further proposed that both charges increase at the rate of 6% per year for four years, in order to meet future increases in expenses, provide reserves, and provide sufficient reserves to meet any future debt obligations, and to allow for additional annual increases to pass through inflation. The proposed rates would consider two tiers, calculated to address the costs incurred by the District to deliver water, the difference based on basic domestic (i.e., indoor) water usage, and outdoor irrigation.

Fixed water meter charges are proposed to change as shown in the following table:

Meter size	Current Rates FY 2018	FY 2019 Projected	FY 2020 Projected	FY 2021 Projected
¾"	\$36.99	\$39.21	\$41.57	\$44.07
1"	\$47.99	\$50.87	\$53.93	\$57.17
1 ½"	\$75.48	\$80.01	\$84.82	\$89.91
2"	\$108.46	\$114.97	\$121.87	\$129.19
3"	\$196.43	\$208.22	\$220.72	\$233.97
4"	\$295.41	\$313.14	\$331.93	\$351.85
6"	\$570.32	\$604.54	\$640.82	\$679.27

Commodity Rates are proposed to change as shown in the following table:

Residential	Current Rates FY 2018	FY 2019 Projected	FY 2020 Projected	FY 2021 Projected
Tier 1 1-7	\$3.35	\$3.56	\$3.78	\$4.01
Tier 2 >7	\$3.69	\$3.92	\$4.16	\$4.41
Non-Residential	Current Rates	FY 2019 Projected	FY 2020 Projected	FY 2021 Projected
Tier1	\$3.55	\$3.77	\$4.00	\$4.24

**Other Rates and Fees**

Any rates or fees associated with water or sewer service that are not addressed in this notice shall remain in full force and effect as previously adopted by the Board of Directors.

**Pass Through Costs**

Pursuant to AB 3030, the District Board will also authorize the pass-through of future rate and charge increases by San Diego Gas & Electric for electricity rates associated with storing, treating, pumping, and delivering water. This authorization will be in effect for five years, until June 30, 2021. The Board will hold a public hearing to review the proposed increases prior to enacting any such changes.

**RESOLUTION NO. 2018-05-02**

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE  
BORRERO WATER DISTRICT ESTABLISHING WATER AND  
SEWER SERVICE RATES FOR FY 2018-2019**

**WHEREAS**, the Borrego Water District is a California Water District established pursuant to Section 34000 et seq. of the California Water Code; and

**WHEREAS**, the Board has determined that the District is facing increasing costs for the administration, operation, maintenance and improvements of the water and sewer systems and services, the District's water and sewer rates need to be increased in order for the District to pay for its costs of providing service; and

**WHEREAS**, on June 9, 2016, the Board held a duly noticed public hearing in accordance with the provisions of Article XIID of the California Constitution (Proposition 218), received oral and written testimony, and having determined that there was no majority protest, approved a schedule of water and sewer rates for a five year period beginning with FY 2017 and ending with FY 2021; and

**WHEREAS**, the Board held a public meeting to discuss the budget and rate increase for FY 2018-2019 on May 15, 2018.

**WHEREAS**, the Board approved the budget and rate increase at the May 23, 2018 Board Meeting.

**WHEREAS**, On May 31, 2018, a notice regarding the rate increase will be mailed to all of the District's affected ratepayers.

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

The Board finds that the adoption of the rates and charges set forth herein is necessary and reasonable to fund the administration, operation, maintenance and improvements of the District water and sewer system. Based on this finding, the Board determines that the adoption of the rates and charges established by this Resolution are exempt from the requirements of the California Environmental Quality Act pursuant to section 21080(b)(8) of the Public Resource Code and section 15273(a) of the State CEQA Guidelines.

The Board hereby adopts the rates and charges for each separate rate classification for each separate service area as set forth in Exhibit A attached to this Resolution. These increases will be effective July 1, 2018 and beginning with the August 2018 billing.

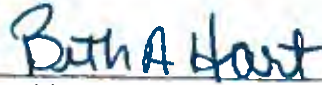
All resolutions or administrative actions by the Board, or parts thereof, which are inconsistent with any provision of this Resolution, are hereby superseded, to the extent of such inconsistency. Any rates or fees associated with water or sewer service that are not addressed in this Resolution or Exhibit A shall remain in full force and effect as previously adopted by the Board.



In any section, subsection, clause or phrase in this Resolution or the attached Exhibits is for any reason held to be invalid; the validity of the remainder of the Resolution or Exhibits shall not be affected thereby.

The increased rates and charges set forth herein shall become effective July 1, 2018 and beginning with the August, 2018 billing.

**PASSED, ADOPTED AND APPROVED** at a special meeting of the Board of Directors of the Borrego Water District held on 23<sup>RD</sup> day of May, 2018.



President of the Board of Directors  
Of Borrego Water District

ATTEST:



Secretary/Treasurer of the Board of Directors  
Of Borrego Water District

STATE OF CALIFORNIA )

) ss.

COUNTY OF SAN DIEGO )

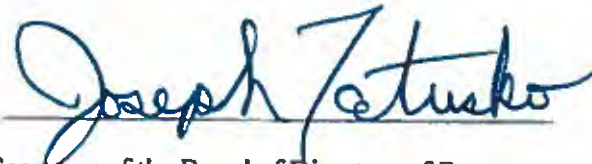
I, Joseph Tatusko, Secretary of the Board of Directors of the Borrego Water District, do hereby certify that the foregoing resolution was duly adopted by the Board of Directors of said District at a regular board meeting held on the 23<sup>rd</sup> day of May, 2018, and that it was so adopted by the following vote:

AYES: DIRECTORS: *Tatusko, Ehrlich, Delahay, Hart.*

NOES: DIRECTORS:

ABSENT: DIRECTORS: *Brecht.*

ABSTAIN: DIRECTORS



Secretary of the Board of Directors of Borrego Water District

STATE OF CALIFORNIA )

) ss.

COUNTY OF SAN DIEGO )

I, Joseph Tatusko, Secretary of the Board of Directors of the Borrego Water District, do hereby certify that the above and foregoing is a full, true and correct copy of RESOLUTION NO. 2018-05-02, of said Board, and that the same has not been amended or repealed.

Dated:



Secretary of the Board of Directors of Borrego Water District

**RESOLUTION NO. 2018-06-01**

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE BORREGO WATER DISTRICT APPROVING THE OPERATIONS, MAINTENANCE, CAPITAL IMPROVEMENTS AND GROUNDWATER MANAGEMENT BUDGETS AND BOARD DESIGNATED RESERVES FUND POLICY FOR FISCAL YEAR 2018-2019**

**WHEREAS**, the Board of Directors has reviewed and considered the Budget as presented for Fiscal Year 2018-2019 hereinafter referred to as the “Budget” which is attached hereto as Exhibit A and incorporated by reference, and

**WHEREAS**, the Budget provides a comprehensive plan of financial operations for the District including an estimate of revenues and the anticipated requirements for expenditures, appropriations, and reserves for the forthcoming fiscal year, and

**WHEREAS**, the Budget establishes the basis for incurring liability and making expenditures on behalf of the District.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Directors of the Borrego Water District, that the Budget and each and every part thereof, is hereby approved and adopted for the Fiscal Year 2018-2019.

**PASSED, ADOPTED AND APPROVED** at a regular meeting of the Board of Directors of the Borrego Water District held on June 19, 2018.

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Beth A. Hart  
President of the Board of Directors  
Of Borrego Water District

ATTEST:

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Joseph Tatusko  
Secretary/Treasurer of the Board of Directors  
Of Borrego Water District

STATE OF CALIFORNIA    )  
  ) ss.

COUNTY OF SAN DIEGO )

I, Joseph Tatusko, Secretary of the Board of Directors of the Borrego Water District, do hereby certify that the foregoing resolution was duly adopted by the Board of Directors of said District at a regular meeting held on the 19<sup>th</sup> day of June, 2018, and that it was so adopted by the following vote:

AYES: DIRECTORS:

NOES: DIRECTORS:

ABSENT: DIRECTORS:

ABSTAIN: DIRECTORS

\_\_\_\_\_  
Secretary of the Board of Directors of  
Borrego Water District

STATE OF CALIFORNIA )

) ss.

COUNTY OF SAN DIEGO )

I, Joseph Tatusko, Secretary of the Board of Directors of the Borrego Water District, do hereby certify that the above and foregoing is a full, true and correct copy of RESOLUTION NO. 2018-06-01, of said Board, and that the same has not been amended or repealed.

Dated: June 19, 2018

\_\_\_\_\_  
Secretary of the Board of Directors of  
Borrego Water District

BORREGO WATER DISTRICT  
BOARD OF DIRECTORS MEETING – JUNE 19, 2018  
AGENDA BILL 2.D

June 12, 2018

**TO:** Board of Directors, Borrego Water District  
**FROM:** Geoff Poole, General Manager  
**SUBJECT:** CIP Contract Construction Management Budget Item – L Brecht

**RECOMMENDED ACTION:**

Receive report from Director Brecht and direct staff as deemed appropriate

**ITEM EXPLANATION:**

Director Brecht has requested this item be placed on the Agenda.

**FISCAL IMPACT:**

TBD

**ATTACHMENT:**

Memo from Director Brecht

## **CONSTRUCTION MANAGER FOR FY 2019-2021 CIP BUILD**

Q: Does the Board wish to budget for a Construction Manager to manage its \$5.5M debt-financed FY 2019-FY 2021 CIP build?

With debt-financed CIP, 85% of all \$5.5M borrowings must be spent within 3-years of closing to maintain the tax-deductibility of this debt.

That means, CIP progress must be tracked and accounted for at least monthly with progress reports on letting contracts, managing construction, and addressing problems to assure CIP projects are completed on-time and on-budget.

**BORREGO WATER DISTRICT (BWD)**  
**CAPITAL IMPROVEMENT PLAN (CIP) FACILITIES SENIOR ENGINEER**  
**CONTRACT POSITION**

**DEFINITION**

Under general supervision, plans, organizes, directs, coordinates, and oversees the activities of capital projects and the geographical information system. Implements provisions of the Master Plan; makes recommendations for action and assists in the development and implementation of policy, procedure, and department budget; performs related duties as required.

**CLASS CHARACTERISTICS**

This single incumbent supervisory class is responsible for overall management of capital facilities planning, construction, and mapping activities, including supervising assigned staff. It is distinguished from the District Engineer, which is responsible for all District engineering functions. It is distinguished from the Development Services Senior Engineer, which is responsible for development projects.

**ESSENTIAL FUNCTIONS**

Essential functions include, but are not limited to, the following:

- Plans, assigns, supervises, reviews, and evaluates the work of assigned staff; provides staff training and development; assists in the selection of staff; reviews work for accuracy and compliance with department standards; studies and standardizes procedures to improve department efficiency; participates in necessary disciplinary actions; writes performance appraisals; ensures high level of customer service; provides assistance to staff in resolving problems; ensures safe work methods are followed and appropriate safety precautions and equipment are utilized; and conducts safety meetings;
- Manages and administers capital improvement projects, including those designed by outside consultants, from the preliminary design stages through construction and acceptance of the improvements by the District; assists in selection of consulting engineers; administers contracts for the design/construction of capital improvement projects;
- Oversees and performs a variety of professional and paraprofessional engineering work, including the preparation of project plans, specifications, and engineering estimates; directs and/or coordinates capital project inspections;
- Prepares engineering calculations and construction cost estimates; prepares and maintains project schedules; prepares legal descriptions and plat maps and the coordination of all survey work; meets with property owners, developers, contractors, and engineers to review District policy, procedures, and projects;
- Performs plan review; evaluates compliance with laws, ordinances, and acceptable engineering standards and recommends corrections or improvements; prepares legal descriptions and deeds for easements and rights-of-way;

- Prepares and evaluates requests for proposals relating to projects requiring contract engineering work; directs the preparation of project cost estimates for competitive bidding purposes; reviews plans of consulting engineering firms performing work for the District ; performs construction contract modifications and negotiates contract changes and change order costs;
- Receives complaints and inquiries from the public and provides information.
- Compiles and analyzes statistical data and prepares technical reports relating to public works projects and programs; assists in the preparation of cost projections for the department budget and monitors expenditures;
- Coordinates capital project activities with other department staff, District personnel, District legal representation, and agencies; provides technical assistance to other departments and District personnel; attends and makes presentations to District committees, commissions, and Board of Directors;
- Holds regular meetings with staff to communicate expectations, receive feedback, resolve problems, develop trusting relationships, provide motivation and employee recognition, stay abreast of staff's work activities, and provide required resources for work assignments;
- Operates copiers and a variety of office equipment;
- Performs duties in a professional manner and works well with others or in a team setting;
- Establish and maintain cooperative working relationships with co-workers, outside agencies, and the public;
- Regular attendance and adherence to prescribed work schedule to conduct job responsibilities;
- Observes safe work practices and safety methods; performs other duties as assigned.

## QUALIFICATIONS GUIDELINES

### Knowledge, Skills, and Abilities

#### Knowledge of:

- Principles and practices of employee supervision including selection, training, work evaluation, and discipline;
- Principles, practices, and methods of civil engineering principles, practices, and techniques with particular reference to the planning, design, construction, and operation of water supply and wastewater collection and reclamation systems and facilities;
- Principles and practices of contract administration;
- Business data processing applications related to the solution of engineering problems and the maintenance of records; computer applications relating to the work;
- Administrative principles and methods including goal setting, program and budget development and implementation;
- Relevant occupational health and safety regulations and guidelines; safe work methods and safety practices relevant to the work.

#### Ability to:

- Plan, organize, administer, and coordinate a variety of complex engineering programs and services;
- Plan, organize, assign, direct, review, and evaluate the work of assigned staff;
- Select, motivate, and evaluate staff and provide for their training and professional development;
- Develop and implement goals, objectives, policies, procedures, work standards, and internal controls;



- Analyze complex technical and administrative engineering problems, evaluate alternative solutions, and adopt effective courses of action;
- Select consultants and contractors; assess final work product for compliance with contract or agreement;
- Prepare clear and concise reports, correspondence, and other written materials;
- Exercise sound independent judgment within general policy guidelines;
- Establish and maintain effective working relationships with other employees and those contacted in the course of the work.

### Education & Experience

Any combination of education or experience that would likely provide the necessary knowledge and abilities is qualifying. A typical way to obtain these knowledge and abilities would be: a Bachelor's degree from an accredited college or university in civil, environmental, or a related engineering field, and; four years of professional engineering experience in the design, construction, maintenance, or operation of water distribution facilities and/or wastewater collection, treatment, and reclamation facilities required, with at least one year in a lead role preferred. Experience in a construction management role highly preferred.

### Licenses, Certificates, and Special Requirements

- Possession of a current and valid California Professional Engineer's license is required.

### PHYSICAL DEMANDS AND WORK ENVIRONMENT

The physical demands and work environment described here are representative of those that must be met by an employee to successfully perform the essential functions of this job. Employees may be required to wear and/or use personal protective and other safety equipment. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

While performing the duties of this job, the employee is frequently required to sit; talk or hear; use hands and fingers to grasp and feel objects, tools, or controls; and reach with hands and arms. Employees are occasionally required to stand, walk, stoop, kneel, crouch, or reach and may occasionally be required to lift up to 25 pounds. Specific vision abilities required by this job include close vision and the ability to adjust focus.

Environment: Office environment. Frequently works in or around areas with minor amounts of dust. Some work done on ladders up to 4 feet above ground. Infrequent work done in field setting. Noise level is usually quiet.

BORREGO WATER DISTRICT  
BOARD OF DIRECTORS MEETING – JUNE 19, 2018  
AGENDA BILL 2.E

June 12, 2018

TO: Board of Directors, Borrego Water District  
FROM: Geoff Poole, General Manager  
SUBJECT: Transition Management Consulting Budget Item – L Brecht

**RECOMMENDED ACTION:**

Receive report from Director Brecht and direct staff as deemed appropriate

**ITEM EXPLANATION:**

Director Brecht has requested this item be placed on the Agenda.

**FISCAL IMPACT:**

TBD

**ATTACHMENT:**

**Memo From Director Brecht**

## TRANSITION MANAGEMENT ASSISTANCE

**Proposal:** To retain Brian Brady as a management consultant to the Board during the 2019 FY.

**Objective:** To provide organizational development and capacity building advice to the Board.

**Rationale:** The District is presently undergoing two major transitions: (a) transitioning from a small water district with a “private water district style” and a pure cash-driven investment in CIP to a primarily debt-driven CIP that requires a set of new management practices and systems for ongoing accountability to meet CIP construction schedules and budgets, and (b) transitioning from a public water district management and governance style to new management and governance responsibilities of a Groundwater Sustainability Agency (GSA) as defined by the Sustainable Groundwater Management Act (SGMA). These transitions will require new systems, policies, and practices to keep District costs to ratepayers under control.

**Consultant’s Commitment & Budget:** Approximately 40 hours per month average, as required, from September 1, 2018 through June 30, 2019 to be shortened or extended upon determination by the Board. The 10-month budget for this assistance is approximately \$50,000.

**Day-to-day working arrangement with the District’s GM:** The consultant shall have full transparency into all aspects of the District’s present operational activities and access to staff, as well as full transparency into the District’s activities and responsibilities as a Groundwater Sustainability Agency (GSA) in developing a Groundwater Sustainability Plan (GSP) for the Borrego Springs Subbasin. The need for this transparency is in order to provide useful and timely organizational development and capacity building advice to the Board for managing the transitions the District is presently undergoing.

**Selection Criteria:** The Board has previous experience with Brian Brady providing transition management advice to the Board during the 2011 FY. In that case the transition was from policy-driven governance to strategic planning governance in order to rescue the District from severe financial distress due to business decisions made by the 2007-2010 Board.

**Background:** The District’s present CIP construction management approach, as just one example of the present systems that must change, has been informal and untimely (not occurring to a schedule or budget as developed for the FY budget). This approach has been acceptable and not a problem as it has enabled the District to report better than anticipated cash flow for the past 8 FYs. However, this CIP construction approach is not acceptable for debt financed CIP, which must occur on schedule and on budget or lose its non-taxability.

## TRANSITION MANAGEMENT ASSISTANCE

The responsibilities of the District as a GSA under SGMA are straightforward and align with the fiduciary duties of the Board to the District. However, the development of the GSP in conjunction with the County of San Diego presents some difficult tensions. How one achieves sustainable use of the Basin is path dependent and has severe economic and social implications for the community and potentially existential financial implications for the District.

### **Project Focus Deliverables:**

- 1) Advice regarding transitioning from a pure cash-driven investment in CIP to a primarily debt-driven CIP that requires ongoing accountability to meet CIP construction schedules on time and on budget;
- 2) Advice regarding the systems development and analytical work necessary for input to the District's Proposition 218 process beginning in the winter of 2019. E.g. how can we minimize adding costs upon cost to ratepayers? Can the District invest to develop a different cost curve for future rates? Is the District adequately avoiding "paving the cowpaths" (investing in fixing things that should have been discarded long ago)?
- 3) Administrative and management systems reengineering advice to handle the two major transitions the District is experiencing;
- 4) SGMA-GSP systems administrative and management systems development advice for the District to better address its GSA responsibilities;
- 5) Other - TBD

BORREGO WATER DISTRICT  
BOARD OF DIRECTORS MEETING – JUNE 19, 2018  
AGENDA BILL 2.F

June 12, 2018

TO: Board of Directors, Borrego Water District  
FROM: Geoff Poole, General Manager  
SUBJECT: New CIP & Operations Reporting Requirements – L Brecht

**RECOMMENDED ACTION:**

Receive report from Director Brecht and direct staff as deemed appropriate

**ITEM EXPLANATION:**

Director Brecht has requested this item be placed on the Agenda.

**FISCAL IMPACT:**

TBD

**ATTACHMENT:**

None

BORREGO WATER DISTRICT  
BOARD OF DIRECTORS MEETING – JUNE 19, 2018  
AGENDA BILL 2.G

June 12, 2018

TO: Board of Directors, Borrego Water District  
FROM: Geoff Poole, General Manager  
SUBJECT: BWD Cyber Policy – K Pittman

**RECOMMENDED ACTION:**

Review Cyber Policy and direct staff as deemed appropriate

**ITEM EXPLANATION:**

A BWD Board Committee of Directors Ehrlich and Tatusko worked with Kim on the development of the attached Cyber Policy. Staff is requesting a review of the document by the Board of Directors.

**FISCAL IMPACT:**

TBD

**ATTACHMENT:**

1. Proposed BWD Cyber Policy

**ELECTRONIC COMMUNICATIONS**

BWD uses various forms of electronic communication including, but not limited to, communications via computers, email, telephones, cell phones, smart phones, text messaging, internet, PDAs, etc. All electronic communications are official BWD records and are the property of BWD. BWD reserves the right to access and disclose all messages sent through its system for any purpose.

Messages transmitted over the electronic communications system should be limited to BWD business activities, for the accomplishment of business, administration, or practices. The following general policies apply:

- Computers and all data transmitted through BWD servers are BWD property owned by BWD for the purpose of conducting BWD business. These items must be maintained according to BWD rules and regulations. Computers must be kept clean and employees must exercise care to prevent loss and damage. Prior authorization must be obtained before any BWD property may be removed from premises.
- All electronic communications also remain the sole property of BWD and are to be used for BWD business. For example, email messages are considered BWD records.
- Electronic information created by an employee using any computer or any means of electronic communication is also the property of BWD and remains the property of BWD.
- Information stored in BWD computers and file servers is the property of BWD and may not be distributed outside BWD in any form whatsoever without the written permission of the BWD General Manager.
- Violation of any of the provisions of this policy, whether intentional or not, will subject BWD employees to disciplinary action up to, and including, termination.

**1. Personal Use of Electronic Communications Systems**

BWD provides computers, electronic communications, electronic information and information technology resources, including the internet, to its employees to help them do their job. Generally, these resources and property should be used only for business related purposes; however, there are a few exceptions. Limited, occasional, or incidental use of electronic communications for personal use may be permitted under the following circumstances.

- Personal use may not interfere with the productivity of the employee or his/her co-workers;
- Personal use may not involve any prohibited activity described in this policy
- Personal use may not disrupt or delay the performance of BWD business;

*BORREGO WATER DISTRICT (BWD)*

**PERSONNEL POLICY #511: ELECTRONIC COMMUNICATIONS**

- Personal use may not consume BWD resources or otherwise deplete system resources available for BWD business purposes;
- Personal use may not be used for personal employee gain or commercial ventures;
- Personal use may not support or advocate non-BWD related business purposes; and
- Not impact or place at Risk BWD's record retention program that is regulated by various record retention laws.

## 2. E-Mail

When using District e-mail and other forms of electronic communication, appropriate workplace etiquette must be observed. The guidelines for appropriate and effective communication include:

- Communicating urgent matters for immediate response, with several people quickly or other time sensitive matters.
- Keeping all messages as brief as possible to minimize reading time, thereby keeping communication efficient.
- Using the simple rules of who, what, when, where and why to answer any anticipated questions.
- Avoiding sensitive or confidential subject matter that should be addressed in person, or private communication if possible.
- Checking message content for accuracy and good business writing style (i.e., using correct grammar, spelling and punctuation).
- Following up regularly when a response is expected or requested and has not been received in a timely manner.
- Reading all messages daily or regularly and responding when requested or expected.
- Avoiding the use of all capital letters.
- Avoiding the "reply all" function, when not necessary or intended.
- Saving, printing or deleting messages after reading to avoid using the e-mail server as permanent storage.



## PERSONNEL POLICY #511: ELECTRONIC COMMUNICATIONS

Effective: March 1, 2018

Supersedes: January 1, 2015

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### Retention

No e-mail messages will be considered by BWD to be retained in the ordinary course of business. However, the content of some e-mail messages could be classified as a record pursuant to the guidelines established by management and to the following criteria:

- Content required by law to be retained;
- Content which is documentation of notice to a member of the public of an action or position taken on behalf of BWD;
- Content which is documentation of a BWD policy, BWD regulation, or official decision made on behalf of BWD;
- Content which is documentation of a transaction of business between BWD and another party; and

Employees should make themselves familiar with the provisions of BWD's Records Retention Policy to determine if an e-mail is required to be maintained as a printed and/or electronic document

### Security

**Computer viruses transmitted via electronic mail pose a serious business threat to the District. To minimize this risk:**

- **ITT (Information Technology Technician) will scan incoming internet e-mail for viruses**
- **E-mail users are required to refrain from opening e-mail attachments that are not business related.**
- **Third party desktop e-mail software clients that retrieve electronic mail from the internet are not allowed. The District sanctioned e-mail client is GoDaddy for desktop devices.**
- **If you feel you have received an inappropriate e-mail, contact ITT/HR (Information Technology Technician / Human Resources).**

### 3. Access of another Person's Electronic Communications

Employees may not intercept, eavesdrop on, record, read, alter, retrieve, receive, send, or use another person's Electronic Communications and/or storage without proper authorization.

*BORREGO WATER DISTRICT (BWD)*

**PERSONNEL POLICY #511: ELECTRONIC COMMUNICATIONS**

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**4. BWD-Wide Web Site Policies**

The external (or public) BWD World Wide web site (bvgsp.org) maintained by BWD represents a fundamental communication tool to providing critical BWD information. The BWD's web site is for "official use" only. All information disseminated through the website must be related to the official duties and responsibilities of employees and department.

The California Public Records Act applies to information processed, sent, and stored on the internet. Confidential information should not be posted on BWD's external website. Management must approve all information that is posted on the web site.

No BWD employee or official may use BWD's web site for campaign related purposes. Such campaign related purposes include, but are not limited to, the following:

- Statements in support or opposition to any candidate or ballot measure;
- Requests for campaign funds or references to any solicitations of campaign funds;
- And references to the campaign schedule or activities of any candidate.

The BWD official web site may not be linked to any private web site related to a candidate's campaign for elective office, but it may link directly to the home page of the election-related pages where general election and candidate information can be found.

**5. Internet**

Access to the Internet has been provided to staff members for the benefit of BWD. It allows employees to connect to information resources around the world. Every staff member has the responsibility to maintain and enhance the organizations' public image and to use the internet in a productive manner. Employees accessing the internet are representing BWD. Employees are responsible for seeing that the Internet is used in an effective, ethical, and lawful manner. To ensure that all employees are responsible, productive internet users and are protecting BWD's public image, the following guidelines have been established:

**a. Unacceptable Use of the Internet**

All existing BWD policies apply to employee use of computers, electronic communications, electronic information, and the Internet. This includes policies that deal with misuse of BWD assets or resources. It is a violation of BWD policy to use computers, electronic communications, electronic information, or the Internet, in a manner that is: discriminatory, harassing, or obscene; constitutes copyright or trademark infringement; violates software licensing rules; is illegal; or is against BWD policy. It is also a violation of policy to use computers, electronic communications, electronic information, or the Internet to communicate confidential or sensitive information or trade secrets.

**BORREGO WATER DISTRICT (BWD)**

## PERSONNEL POLICY #511: ELECTRONIC COMMUNICATIONS

Effective: March 1, 2018

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While it is not possible to provide an exhaustive list of every type of inappropriate use of the Internet, all users should be aware that appropriate use of the Internet includes, but is not limited to, the following rules:

- Never use an account assigned to another user;
- Never make an unauthorized attempt to enter any computer;
- Never post, send, or provide access to any confidential employer materials or information;
- Never access or send sexually-suggestive material;
- No gambling;
- No trademark, copyright, and licensing stipulation infringements;
- No proprietary and confidential information;
- No solicitation, according to the BWD's policy;
- No personal sites; and
- No threatening or inappropriate blogs.

### b. Communications

Each employee is responsible for the content of all text, audio, or images that they place or send over the Internet. Fraudulent, harassing, or obscene messages are prohibited. All messages communicated over the internet should have your name attached. No messages should be transmitted under an assumed name. Employees may not attempt to obscure the origin of any message. Information published on the internet should not violate or infringe upon the rights of others. No abusive, profane, or offensive language is transmitted through the system.

### c. Monitoring of Communications and Passwords

BWD reserves the right to inspect all BWD property to ensure compliance with its rules and regulations, without notice to the employee and at any time, not necessarily in the employee's presence. BWD computers and all electronic communications and electronic information are subject to monitoring and no one should expect privacy regarding such use. BWD reserves the right to access, review, and monitor electronic files, information, messages, text messages, e-mail, Internet history, browser-based webmail systems, and other digital archives and to access, review, and monitor the use of computers, software, and electronic communications to ensure that no misuse or violation of BWD policy or any law occurs. E-mail may be monitored by BWD and there is no expectation of privacy. Assume that e-mail may be accessed, forwarded, read, or heard by someone other than the intended recipient, even if marked as private.

Passwords must have the following requirements:

- Minimum of 8 characters in length
- Must have at least one Capital letter, one lower case letter, one (1) number and one Symbol
- Your username, first/last name, or both are not allowed as part of your password
- You are required to change your password every 90 days

*BORREGO WATER DISTRICT (BWD)*

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Employee passwords may be used for purposes of security but the use of a password does not affect the BWD's ownership of the electronic information or ability to monitor the information. BWD may override an employee's password for any reason.

All passwords created by the user or issued to the user are for the purpose of communication and are not to be shared, given or otherwise disclosed to any other person. All security features contained within BWD's Electronic Communications Systems such as passwords, codes, or delete functions will not prevent BWD from accessing employees' business or personal Electronic Communications, stored or otherwise, on the Electronic Communications Systems.

d. No right of privacy

The BWD respects the individual privacy of its employees. However, employee privacy does not extend to the employee's work-related conduct or to the use of BWD-provided equipment or supplies. Employees should be aware that the terms of this policy limit their privacy in the workplace.

BWD's Electronic Communications Systems and Electronic Storage are BWD's property and are intended for BWD business. All Electronic Communications and Electronic Storage within these systems are the property of BWD, regardless of the content, including any personal communications. BWD reserves the right to monitor the Electronic Communications Systems for any reason, including the right to review, audit and disclose all matters sent over and/or stored in the Electronic Communications Systems.

As a result, employees should be aware that no Electronic Communications transmitted on the Electronic Communications Systems, or Electronic Storage contained within the systems, is private or confidential. Employees should have no expectation of privacy with respect to any use, including storage, business or personal, of BWD's Electronic Communications Systems.

Employees should be aware that Electronic Communications and/or Electronic Storage can be copied, modified, and/or forwarded to others without the express permission of the original author. Therefore, employees must use caution in the storage, transmission, and dissemination of Electronic Communications outside of BWD and must comply with all state and federal laws. Electronic Communications and/or Electronic Storage of BWD may be recognized as official records in need of protection/retention in accordance with the laws of California. All e-mail and Internet messages are subject to state and federal laws, including but not limited to the California Public Records Act, open meeting laws, and the federal Electronic Communications Privacy Act.

The California Public Records Act (CPRA), Government Code Section 6520, *et seq* requires BWD to make all public records available for inspection and to provide copies upon request. A public record is any writing (which includes electronic documents) related to the conduct of the public's business prepared, owned, used, or retained by BWD. The CPRA includes a number of exceptions from the disclosure requirement. Any information on

**BORREGO WATER DISTRICT (BWD)**

**PERSONNEL POLICY #511: ELECTRONIC COMMUNICATIONS**

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BWD's information system may be subject to disclosure under the CPRA. If there is some doubt, the employee should contact the ITT/HR for advice as to whether the information is public record. All public records must be retained in accordance with BWD's Record Retention Policy.

**6. Internet**

BWD views social networks such as web based discussion or conversation pages and other forms of social networking such as Facebook, Twitter, You Tube, etc., as significant new forms of public communication. As such, we hold all of our employees who engage in social networking to the same standards we hold for any public communications. Therefore, all employees have an obligation to BWD to ensure that any public communication they make, including social networking communications, must not negatively impact the reputation of BWD or bring disrepute in any way to BWD, its partners, customers, suppliers, etc. Additionally, engaging in social networking during your workday can negatively impact your productivity and work performance. Therefore, it is your responsibility to regulate your social networking so that it does not impact your productivity or cause performance issues.

Identified below are general guidelines and examples of prohibited communications. Please note that this list contains examples only and is not intended to be, nor is it an exhaustive list of prohibited communications. *The absence of, or lack of explicit reference to, a specific site does not limit the extent of the application of this policy.* Where no policy or guideline exists, employees should use their professional judgment and take the most prudent action possible. Consult with management if you are uncertain.

**General Guidelines and Examples of Prohibited Communications:**

- You may not use BWD's logo on your posts unless given written consent by the General Manager.
- Do not link to BWD's website or post BWD material on a social media site without prior, written permission
- All BWD policies that regulate off-duty conduct apply to social media activity including, but not limited to, policies related to illegal harassment, code of conduct, non-competition, protecting confidential and/or proprietary information. Violation of this policy may lead to discipline up to and including termination.

**7. Software**

In order to ensure that devices throughout the District can be maintained in a timely and cost effective manner, and to ensure that the District is compliant with software licensing issues, the following guidelines and restrictions apply:

**BORREGO WATER DISTRICT (BWD)**

## PERSONNEL POLICY #511: ELECTRONIC COMMUNICATIONS

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- All software installed on District computing devices must be legally licensed by the District.
- Employees are not authorized to install personal copies or software on District computing devices.
- All hardware and software installations and upgrades on District business devices must be performed by authorized IT personnel. Employees are not authorized to install or upgrade computing hardware or software unless designated.
- To insure compatibility and interoperability between all District computers, all software must adhere to standards for operating systems, email systems, office suite software and internet browsers (among others). Exceptions to standards are valid on a case-by-case basis as required by District business functions.
- The Information Technology Technician (ITT) or other persons authorized by the General Manager is the only one authorized to run software on each business computing device to provide necessary support and inventory services.

### 8. Security

ITT is responsible for providing the security and safeguards of the District's networking infrastructure from malicious attacks and other cyber threats that exist as well as other internal threats, by installing the appropriate antivirus application/s. All of the District's computing devices are required to have Anti-virus, Anti-Malware and Intrusion Prevention /Detection. This applies to all servers, workstations, laptops, and tablets (computing devices) as stated below:

- Installed software must be able to detect and remove all known types of malicious software.
- Updates are to be performed regularly as updates are available.
- Security and antivirus systems are to be active when the server is in operation and periodic virus scans are to be performed during off hours as to prevent degradation.
- A third party is hired to annually perform a vulnerability scan to ensure effective security is in place and to detect any future unforeseen security issues.

Any computer that is found on the District's network without anti-virus, anti-malware, or intrusion prevention/detection software and/or with either of these disabled will be considered compromised and will be quarantined by ITT until the situation can be inspected and be rectified.

## PERSONNEL POLICY #511: ELECTRONIC COMMUNICATIONS

Effective: March 1, 2018

Supersedes: January 1, 2015

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### 9. Social Engineering Awareness

Social Engineering is the use of deception to manipulate individuals into divulging confidential or personal information that may be used for fraudulent purposes. Social engineering attacks can include any one (or more) of the following:

- Telephone, e-mail, letter, personal contact or other electronic means (skype chat, text messaging, etc.) attempting to collect sensitive District information.
- Any attempt by an individual (including internal employees) attempting to gain information via pressure techniques – i.e. social pressure, social encouragement or simply being tricked or deceived.

The following is a listing of techniques, key phrases, etc. that could be used with any of the above (or other) types of attempts:

- An urgent matter
- Forgotten password
- Computer virus warning, scam or emergency
- Intimidation from higher management
- Name dropping – which may give the appearance that legitimate and/or authorized persons know of and/or approve
- Information requested that may reveal confidential information such as passwords, security level, or other information
- Claiming to be an agent of or “affiliated with” a particular company, etc.
- A person that is utilizing techniques such as trying to become “friendly” or “familiar” by using compliments, etc.

If a social engineering attempt is detected, the first line of defense is to ignore the request with the following exceptions:

- If the requester is an employee or agent (contractor, vendor, volunteer or other), then the person receiving the request must contact HR/ITT. Under no circumstances should any information that is unauthorized be released.
- For personal and on premise attempts, if the requester is persistent and the employee is uncomfortable handling the situation, he/she is to contact HR/ITT, if they are unavailable, contact next available person in management. If the employee feels threatened by the requester, then the employee should remove themselves from the situation.

All District employees, contractors, consultants, temporary employees, and other workers including all personnel affiliated with third parties utilizing the District's electronic communication systems are responsible for understanding and adhering to this policy. Unauthorized or improper use, may result in disciplinary action up to, and including termination. The measure of discipline will correspond to the gravity of the offense as weighed by its potential effect on the District, customers and employees.

**BORREGO WATER DISTRICT (BWD)**

**PERSONNEL POLICY #514: STAFF EXPENSE REIMBURSEMENT**

Effective: March 1, 2018

Supersedes: January 1, 2009

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BWD will reimburse employees for reasonable expenses incurred during the course of business, through pre-approved business expenditures travel or entertainment as described below:

***All cash advances must be accounted for and expense receipts submitted within one week.***

**CREDIT CARD USE**

Credit cards will be issued to specific employees who either travel on a regular basis on BWD business, or have the need to frequently purchase supplies or services. Credit cards shall be used only for legitimate, approved business of BWD, subject to the following regulations. These cards should be used for all approved expenses as authorized in this section.

- No personal items may be charged on the business credit card;
- All charges must be in line with travel guidelines or as approved by management; and
- Receipts must be submitted to the Cal Card Program Administrator within one week of making the charge.
- Card will be immediately terminated if employee leaves the company.

Credit Card Limits: Each authorized credit card holder has a spending limit up to \$5,000, unless preapproved. It is the responsibility of the cardholder to monitor the charges being incurred and to make sure that the credit card limit is not exceeded. If a credit card limit is exceeded, the cardholder may be held personally liable for all charges related to the exceeded limit.

Credit Card Statement Payment Procedures: Once statements are received, they will be forwarded to the appropriate employee for review and approval. Since prompt payment is required to avoid late charges, prompt response by the employee is required. The statement will then be forwarded to the Administration Manager for review and G/L coding. Any irregularities will be sent back to the employee for clarification and if appropriate to the employee's supervisor and/or GM. No statement will be paid without proper receipts turned into AP. If proper receipts or approved substitute receipts are not turned in, the employee may be liable for the charge.

All District credit cards are to be used for official District business only. No personal use of the District credit card is allowed. If an employee is found to be violating this policy, they will be subject to disciplinary action, up to and including immediate termination.

**EMPLOYEE INCURRED EXPENSES**

Expenses under the amount of \$50, which are incurred by employees for BWD purposes, will be reimbursed through petty cash. Expenses over that amount will be reimbursed through normal accounting procedures after you have completed and submitted an expense report. All expenses must be approved in advance by management before submitting to Accounts Payable for reimbursement.



**BORREGO WATER DISTRICT (BWD)**

**PERSONNEL POLICY #514: STAFF EXPENSE REIMBURSEMENT**

Effective: March 1, 2018

Supersedes: January 1, 2009

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**MILEAGE**

The mileage reimbursement rate to operate privately-owned vehicles will be the allowable IRS rate in effect at the time the expense is incurred.

**TRAVEL**

- Air Travel – Employees are expected to get the least expensive flight, however, refundable tickets should be purchased.
- Car Rentals – BWD's policy is to allow you to rent a mid-size automobile where you get the best rate and most convenient rental. When renting a car on BWD business, use your BWD issued corporate credit card and do not purchase additional car rental loss and damage coverage.

**LODGING**

The reimbursement rate should not exceed State of California Government rate or \$150 per night, exclusive of tax, or whatever is a comparable rate in the area. Staff members should always try to get a state rate whenever possible.

**BUSINESS MEALS & TIPS**

The following guidelines should be used for reimbursement of meals while traveling on BWD business. Special circumstances may require approval to justify reimbursement for amounts above the following:

Partial Day Travel

Breakfast	\$15.00
Lunch	\$20.00
Dinner	\$35.00

Full Day Travel

\$70.00/day

Gratuities will be reimbursed up to 20%

This list is not all-inclusive. See HR regarding additional reimbursable business expenses.

**SECTION 4-14**  
**BORREGO WATER DISTRICT**  
**CYBER SECURITY AWARENESS TRAINING**  
**AND EDUCATIONAL PROGRAM (CSATE)**

**PURPOSE**

The Borrego Water District (BWD) Cyber Security policy includes a detailed description of what the district has in place to protect itself from outside cyber-attack and defines our Cyber Security Awareness Training and Education (CSATE) program for the (BWD) and to establish the minimum requirements for the CSATE Program.

**APPLICABILITY**

This policy applies to all employees, any consultants or, third party contractors, as appropriate, who have access to the BWD Computers or Networks.

**SCOPE**

The BWD recognizes that in order to have a successful CSATE Program, it is necessary to train all individuals using computer information resources and handling sensitive information on how to protect this information and what is expected of them.

This document outlines the CSATE Program needed for employees, users and, as appropriate, outside contractors, consultants, vendors, suppliers, etc. to support our information security policies and procedures.

**BWD CSATE POLICY**

- General security training will be provided as part of the new hire orientation and for existing employees annually and/or as needed.. An acknowledgement of all training will be signed by the employee at the end of the training/orientation.
- Training will be conducted by the districts Information Technology Technician(ITT) and Human Resource Manager (HR) and addresses our information security policies and procedures. All existing and new employees of the BWD will be trained by but not limited to web based training, online courses, webinars, training provided by third parties, etc. For non-employees, such as contractors, consultants and third parties, security policies may be set by contract.

- Application-specific security training may be given on a specific software or web-based application by ITT/HR . It emphasizes the types of sensitive information that are accessed and processed on the specific application, as well as important access control features to protect and handle BWD sensitive information and contained by the application.
- Job-specific security training will be provided to employees who have access to BWD sensitive information.
- Information response security training will be provided for Information Technology staff, which will enable them to react to a possible incident or preventing a threat from becoming an incident. This training helps reduce risk through appropriate training as first responders.
- Web-based security training (e.g., security videos and security briefings/presentations on the web) may be utilized to provide security awareness on handling, transmitting and storing sensitive information, including contractors, consultants and outside third parties.
- Security reminders, such as emails, newsletters, articles, postings will be provided as they become available.
- Security awareness briefings for all staff will be done annually and/or when needed.

## **BWD CSATE TRAINING**

BWD uses various forms of electronic communication including, but not limited to, communications via computers, email, telephones, cell phones, smart phones, text messaging, internet, PDAs, etc. All electronic communications are official BWD records and are the property of BWD. BWD reserves the right to access and disclose all messages sent through its system for any purpose.

A copy of this policy and training will be provided to all new employees, board members, contractors or third parties with access to BWD sensitive information.

Computer Security training will be provided to employees, board members, contractors (as needed) and third parties (as needed) on an annual basis and documented by certificates of training or attendance rosters.

## **ELECTRONIC COMMUNICATIONS**

- Messages transmitted over the electronic communications system should be limited to BWD business activities, for the accomplishment of business, administration, or practices.

- Computers and all data transmitted through BWD servers are BWD property owned by BWD for the purpose of conducting BWD business. These items must be maintained according to BWD rules and regulations. Access and maintenance of servers is limited to ITT/HR personnel only
- 
- Computers must be kept clean and employees must exercise care to prevent loss and damage. Laptops and tablets issued to employees or Board Members are the property of BWD and may only be used for BWD business. These items must remain in the care of the employee or Board Member. Computers, laptops or tablets may be cleaned using a non static dry cloth or the use of compressed air. If the use of compressed air is used, ensure the can is at least 2" away from item being cleaned using short bursts of air and do not spray directly into computer openings.
- 
- Areas around the computer must be kept clean to avoid damage to the computer. For example, any containers of liquids (water, coffee) and food items must be kept away from keyboard, monitor and CPU.
- 
- Prior authorization through ITT/HR must be obtained before any BWD property may be removed from premises.
- 
- All electronic communications also remain the sole property of BWD and are to be used for BWD business. For example, email messages are considered BWD records.
- 
- Electronic information created by an employee using any computer or any means of electronic communication is also the property of BWD and remains the property of BWD.
- 
- Information stored in BWD computers and file servers is the property of BWD and may not be distributed outside BWD in any form whatsoever without the written permission of the BWD General Manager.
- 
- Violation of any of the provisions of this policy, whether intentional or not, will subject BWD employees to disciplinary action up to, and including, termination.

## **1. Personal Use of Electronic Communications Systems**

BWD provides computers, electronic communications, electronic information and information technology resources, including the internet, to its employees to help them do their job. Generally, these resources and property should be used only for business related purposes; however, there are a few exceptions. Limited, occasional, or incidental use of electronic communications for personal use may be permitted under the following circumstances.

- Personal use may not interfere with the productivity of the employee or his/her co-workers;
- Personal use may not involve any prohibited activity described in this policy;
- Personal use may not disrupt or delay the performance of BWD business;
- Personal use may not consume BWD resources or otherwise deplete system resources available for BWD business purposes;

- Personal use may not be used for personal employee gain or commercial ventures;
- Personal use may not support or advocate non-BWD related business purposes; and
- Not impact or place at risk BWD's record retention program that is regulated by various record retention laws.

## **2. E-Mail**

### **E-Mail**

**When using District e-mail and other forms of electronic communication, appropriate workplace etiquette must be observed. The guidelines for appropriate and effective communication include:**

- **Communicating urgent matters for immediate response, with several people quickly or other time sensitive matters.**
- **Keeping all messages as brief as possible to minimize reading time, thereby keeping communication efficient.**
- **Using the simple rules of who, what, when, where and why to answer any anticipated questions.**
- **Avoiding sensitive or confidential subject matter that should be addressed in person or private communication if possible.**
- **Checking message content for accuracy and good business writing style (i.e., using correct grammar, spelling and punctuation).**
- **Following up regularly when a response is expected or requested and has not been received in a timely manner.**
- **Reading all messages daily or regularly and responding when requested or expected.**
- **Avoiding the use of all capital letters.**
- **Avoiding the "reply all" function, when not necessary or intended.**
- **Saving, printing or deleting messages after reading to avoid using the e-mail server as permanent storage.**

### **Retention**

**No e-mail messages will be considered by BWD to be retained in the ordinary course of business. However, the content of some e-mail messages could be classified as a record pursuant to the guidelines established by management and to the following criteria:**

- **Content required by law to be retained;**

- Content which is documentation of notice to a member of the public of an action or position taken on behalf of BWD;
- Content which is documentation of a BWD policy, BWD regulation, or official decision made on behalf of BWD;
- Content which is documentation of a transaction of business between BWD and another party; and

Employees should make themselves familiar with the provisions of BWD's Records Retention Policy to determine if an e-mail is required to be maintained as a printed and/or electronic document.

Employees must log off of email prior to leaving work station to avoid unauthorized / accidental use of your email.

## **Security**

**Computer viruses transmitted via electronic mail pose a serious business threat to the District. To minimize this risk:**

- **ITT(Information Technology Technician) will scan incoming internet e-mail for viruses**
- **E-mail users are required to refrain from opening e-mail attachments that are not business related.**
- **Third party desktop e-mail software clients that retrieve electronic mail from the internet are not allowed. The District sanctioned e-mail client is GOdaddy for desktop devices.**
- **If you feel you have received an inappropriate e-mail, contact ITT/HR (Information Technology Technician / Human Resources)**

### **3. Access of another Person's Electronic Communications**

Employees may not intercept, eavesdrop on, record, read, alter, retrieve, receive, send, or use another person's Electronic Communications and/or storage without proper authorization.

### **4. BWD-Wide Web Site Policies**

The external (or public) BWD World Wide web site (bvqsp.org) maintained by BWD represents a fundamental communication tool to providing critical BWD information. The BWD's web site is for "official use" only. All information disseminated through the website must be related to the official duties and responsibilities of employees and department.

The California Public Records Act applies to information processed, sent, and stored on the internet. Confidential information should not be posted on BWD's external website. Management must approve all information that is posted on the web site.

No BWD employee or official may use BWD's web site for campaign related purposes. Such campaign related purposes include, but are not limited to, the following:

- Statements in support or opposition to any candidate or ballot measure;
- Requests for campaign funds or references to any solicitations of campaign funds;
- And references to the campaign schedule or activities of any candidate.

The BWD official web site may not be linked to any private web site related to a candidate's campaign for elective office, but it may link directly to the home page of the election-related pages where general election and candidate information can be found.

## **5. Internet**

Access to the Internet has been provided to staff members for the benefit of BWD. It allows employees to connect to information resources around the world. Every staff member has the responsibility to maintain and enhance the organizations' public image and to use the internet in a productive manner. Employees accessing the internet are representing BWD. Employees are responsible for seeing that the Internet is used in an effective, ethical, and lawful manner. To ensure that all employees are responsible, productive internet users and are protecting BWD's public image, the following guidelines have been established:

### **a. Unacceptable Use of the Internet**

All existing BWD policies apply to employee use of computers, electronic communications, electronic information, and the Internet. This includes policies that deal with misuse of BWD assets or resources. It is a violation of BWD policy to use computers, electronic communications, electronic information, or the Internet, in a manner that is: discriminatory, harassing, or obscene; constitutes copyright or trademark infringement; violates software licensing rules; is illegal; or is against BWD policy. It is also a violation of policy to use computers, electronic communications, electronic information, or the Internet to communicate confidential or sensitive information or trade secrets.

While it is not possible to provide an exhaustive list of every type of inappropriate use of the Internet, all users should be aware that appropriate use of the Internet includes, but is not limited to, the following rules:

- Never use an account assigned to another user;
- Never make an unauthorized attempt to enter any computer;
- Never post, send, or provide access to any confidential employer materials or information;
- Never access or send sexually-suggestive material;
- No gambling;
- No trademark, copyright, and licensing stipulation infringements;
- No proprietary and confidential information;

- No solicitation, according to the BWD's policy;
- No personal sites; and
- No threatening or inappropriate blogs.

b. Communications

Each employee is responsible for the content of all text, audio, or images that they place or send over the Internet. Fraudulent, harassing, or obscene messages are prohibited. All messages communicated over the internet should have your name attached. No messages should be transmitted under an assumed name. Employees may not attempt to obscure the origin of any message. Information published on the internet should not violate or infringe upon the rights of others. No abusive, profane, or offensive language is transmitted through the system.

c. Monitoring of Communications and Passwords

BWD reserves the right to inspect all BWD property to ensure compliance with its rules and regulations, without notice to the employee and at any time, not necessarily in the employee's presence. BWD computers and all electronic communications and electronic information are subject to monitoring and no one should expect privacy regarding such use. BWD reserves the right to access, review, and monitor electronic files, information, messages, text messages, e-mail, Internet history, browser-based webmail systems, and other digital archives and to access, review, and monitor the use of computers, software, and electronic communications to ensure that no misuse or violation of BWD policy or any law occurs. E-mail may be monitored by BWD and there is no expectation of privacy. Assume that e-mail may be accessed, forwarded, read, or heard by someone other than the intended recipient, even if marked as private.

Passwords must have the following requirements:

- Minimum of 8 characters in length
- Must have at least one Capital letter, one lower case letter, one (1) number and one Symbol
- Your username, first/last name, or both are not allowed as part of your password
- You are required to change your password every 90 days

Employee passwords may be used for purposes of security but the use of a password does not affect the BWD's ownership of the electronic information or ability to monitor the information. BWD may override an employee's password for any reason.

All passwords created by the user or issued to the user are for the purpose of communication and are not to be shared, given or otherwise disclosed to any other person. All security features contained within BWD's Electronic Communications Systems such as passwords, codes, or delete functions will not prevent BWD from accessing employees' business or personal Electronic Communications, stored or otherwise, on the Electronic Communications Systems.

d. No right of privacy



The BWD respects the individual privacy of its employees. However, employee privacy does not extend to the employee's work-related conduct or to the use of BWD-provided equipment or supplies. Employees should be aware that the terms of this policy limit their privacy in the workplace.

BWD's Electronic Communications Systems and Electronic Storage are BWD's property and are intended for BWD business. All Electronic Communications and Electronic Storage within these systems are the property of BWD, regardless of the content, including any personal communications. BWD reserves the right to monitor the Electronic Communications Systems for any reason, including the right to review, audit and disclose all matters sent over and/or stored in the Electronic Communications Systems.

As a result, employees should be aware that no Electronic Communications transmitted on the Electronic Communications Systems, or Electronic Storage contained within the systems, is private or confidential. Employees should have no expectation of privacy with respect to any use, including storage, business or personal, of BWD's Electronic Communications Systems.

Employees should be aware that Electronic Communications and/or Electronic Storage can be copied, modified, and/or forwarded to others without the express permission of the original author. Therefore, employees must use caution in the storage, transmission, and dissemination of Electronic Communications outside of BWD and must comply with all state and federal laws. Electronic Communications and/or Electronic Storage of BWD may be recognized as official records in need of protection/retention in accordance with the laws of California. All e-mail and Internet messages are subject to state and federal laws, including but not limited to the California Public Records Act, open meeting laws, and the federal Electronic Communications Privacy Act.

The California Public Records Act (CPRA), Government Code Section 6520, *et seq* requires BWD to make all public records available for inspection and to provide copies upon request. A public record is any writing (which includes electronic documents) related to the conduct of the public's business prepared, owned, used, or retained by BWD. The CPRA includes a number of exceptions from the disclosure requirement. Any information on BWD's information system may be subject to disclosure under the CPRA. If there is some doubt, the employee should contact the ITT/HR for advice as to whether the information is public record. All public records must be retained in accordance with BWD's Record Retention Policy.

## **6. Internet**

BWD views social networks such as web based discussion or conversation pages and other forms of social networking such as Facebook, Twitter, You Tube, etc., as significant new forms of public communication. As such, we hold all of our employees who engage in social networking to the same standards we hold for any public communications. Therefore, all employees have an obligation to BWD to ensure that any public communication they make, including social networking communications, must not negatively impact the reputation of BWD or bring disrepute in any way to BWD, its partners, customers, suppliers, etc. Additionally, engaging in social networking during your workday can negatively impact your productivity and

work performance. Therefore, it is your responsibility to regulate your social networking so that it does not impact your productivity or cause performance issues.

Identified below are general guidelines and examples of prohibited communications. Please note that this list contains examples only and is not intended to be, nor is it an exhaustive list of prohibited communications. *The absence of, or lack of explicit reference to, a specific site does not limit the extent of the application of this policy.* Where no policy or guideline exists, employees should use their professional judgment and take the most prudent action possible. Consult with management if you are uncertain.

#### **General Guidelines and Examples of Prohibited Communications:**

- You may not use BWD's logo on your posts unless given written consent by the General Manager.
- Do not link to BWD's website or post BWD material on a social media site without prior, written permission

All BWD policies that regulate off-duty conduct apply to social media activity including, but not limited to, policies related to illegal harassment, code of conduct, non-competition, protecting confidential and/or proprietary information. Violation of this policy may lead to discipline up to and including termination.

#### **7. Software**

In order to ensure that devices throughout the District can be maintained in a timely and cost effective manner, and to ensure that the District is compliant with software licensing issues, the following guidelines and restrictions apply:

- All software installed on District computing devices must be legally licensed by the District.
- Employees are not authorized to install personal copies or software on District computing devices.
- All hardware and software installations and upgrades on District business devices must be performed by authorized IT personnel. Employees are not authorized to install or upgrade computing hardware or software unless designated.
- To insure compatibility and interoperability between all District computers, all software must adhere to standards for operating systems, email systems, office suite software and internet browsers (among others). Exceptions to standards are valid on a case-by-case basis as required by District business functions.
- The Information Technology Technician (ITT) or other persons authorized by the General Manager is the only one authorized to run software on each business computing device to provide necessary support and inventory services.

#### **8. Security**

ITT is responsible for providing the security and safeguards of the District's networking

infrastructure from malicious attacks and other cyber threats that exist as well as other internal threats, by installing the appropriate antivirus application/s. All of the District's computing devices are required to have Anti-virus, Anti-Malware and Intrusion prevention /Detection. This applies to all servers, workstations, laptops, and tablets (computing devices) as stated below:

- Installed software must be able to detect and remove all known types of malicious software.
- Updates are to be performed regularly as updates are available.
- Security and antivirus systems are to be active when the server is in operation and periodic virus scans are to be performed during off hours as to prevent degradation.
- A third party is hired to annually perform a vulnerability scan to ensure effective security is in place and to detect any future unforeseen security issues.

Any computer that is found on the District's network without anti-virus, anti-malware, or intrusion prevention/detection software and/or with either of these disabled will be considered compromised and will be quarantined by ITT until the situation can be inspected and rectified.

## **9. Social Engineering Awareness**

Social Engineering is the use of deception to manipulate individuals into divulging confidential or personal information that may be used for fraudulent purposes. Social engineering attacks can include any one (or more) of the following:

- Telephone, e-mail, letter, personal contact or other electronic means (skype chat, text messaging, etc.) attempting to collect sensitive District information.
- Any attempt by an individual (including internal employees) attempting to gain information via pressure techniques – i.e. social pressure, social encouragement or simply being tricked or deceived.

The following is a listing of techniques, key phrases, etc. that could be used with any of the above (or other) types of attempts:

- An urgent matter
- Forgotten password
- Computer virus warning, scam or emergency
- Intimidation from higher management
- Name dropping – which may give the appearance that legitimate and/or authorized persons know of and/or approve
- Information requested that may reveal confidential information such as passwords, security level, or other information
- Claiming to be an agent of or “affiliated with” a particular company, etc.
- A person that is utilizing techniques such as trying to become “friendly” or “familiar” by using compliments, etc.

If a social engineering attempt is detected, the first line of defense is to ignore the request with the following exceptions:

- If the requester is an employee or agent (contractor, vendor, volunteer or other), then the person receiving the request must contact HR/ITT. Under no circumstances should any information that is unauthorized be released.
- For personal and on premise attempts, if the requester is persistent and the employee is uncomfortable handling the situation, he/she is to contact HR/ITT, if they are unavailable, contact next available person in management. If the employee feels threatened by the requester, then the employee should remove themselves from the situation.

All District employees, contractors, consultants, temporary employees, and other workers including all personnel affiliated with third parties utilizing the District's electronic communication systems are responsible for understanding and adhering to this policy. Unauthorized or improper use, may result in disciplinary action up to, and including termination. The measure of discipline will correspond to the gravity of the offense as weighed by its potential effect on the District, customers and employees.

## **COMPLIANCE**

Violations of this policy may lead to the suspension or revocation of system privileges and/or disciplinary action up to and including termination of employment. The BWD reserves the right to advise appropriate authorities of any violation of law.

## **ACCOUNTABILITY**

ITT/HR staff will be responsible for coordinating with HR to ensure that appropriate training material is made available and training is scheduled on a regular basis.

ITT/HR staff and HR are responsible for ensuring that a user acknowledgement has been signed prior to providing access to the BWD network.

ITT/HR staff is responsible for ensuring compliance with this policy and the controls created to safeguard the BWD network. All violations of this policy will be documented and reported to senior management for review and appropriate action(s).

## **EXCEPTIONS**

Any updates, changes or exceptions to this policy must be approved by The General Manager.

**SECTION 4-16**  
**BORREGO WATER DISTRICT**  
**CYBER SECURITY AWARENESS**  
**PHYSICAL SECURITY**

**PURPOSE**

The purpose of this policy is to outline access to the District's system and technology premises, associated access control and system backup.

**SCOPE**

The scope of this policy covers any "secured" facility for the District. These facilities include, but are not limited to:

Boardroom Audio cabinet  
Server room in Administration office  
SCADA Computer in Shop office  
WTF (Wastewater Treatment Facility)

**PROCEDURE**

Only authorized employees, contractors or third parties are to be inside the District offices, shop or WWTF. Contractors, third parties or visitors are to check and sign in with the front office prior to entering any District facility. Any unauthorized persons will be asked to leave or appropriate authorities notified.

**Boardroom Audio Cabinet:** Only authorized employees are to operate the equipment located in the audio cabinet.

**Server room:** This door is to remain locked at all times. Only authorized employees have access to this room.

**SCADA Computer:** This door is to remain locked at all times. Only authorized employees have access to the SCADA equipment.

**WTF:** This facility door is to remain locked at all times. Only authorized employees have access to the facilities.

**Backup of Server**

Backup is the process of copying a collection of data, the object, from "primary" to "secondary" storage for the purpose of recovery in the event of a system failure. To be useful for recovery, the collection of data must be consistent. At least one offsite location is recommended for the storing of the backup data. The backup of the BWD

server is performed by the HR manager or designee. Below is the procedure for backing up the server located in the Administration office server room:

An external storage device (#1) is plugged into the server during the day and overnight.

1. Every morning, remove the storage device from the server and plug in the second storage device (#2) in the same location on the server.
2. The storage device removed, (#1), is to be removed from the office location at the end of the work day. Typically, the device is brought home with the HR manager and returned the next business day.
3. Repeat the procedure every business morning.

These backups are for disaster recovery and not an archive.

#### **VIOLATION**

Any employee in violation of this policy is subject to disciplinary action, up to and including termination of employment.

**SECTION 4-17**  
**BORREGO WATER DISTRICT**  
**CYBER SECURITY AWARENESS**  
**REPORTING SECURITY BREACHES**

**PURPOSE**

The purpose of this policy is to ensure that the District has a procedure and policy for reporting information security breaches or possible breaches.

**SCOPE**

This policy applies to any District security breach.

**DEFINITION**

A security breach is defined as: an act that leads to damage of a system or unauthorized access to the system.

**PROCEDURE**

1. Once an incident has occurred or first noticed, the ITT/HR/WTF manager should be notified.
2. The ITT/HR/WTF manager will assess the situation and determine if further assistance is needed to remedy the situation.
3. Contacts to appropriate third party vendors may be necessary.
4. If no assistance is needed, the ITT/HR manager will proceed to correct the problem.

ITT/HR/WWTF will:

- a. Gather evidence and prepare a written summary of the incident.
  - b. Will complete appropriate documentation of the incident and notify the General Manager.
  - c. Will monitor the progress of the investigation
5. Once threat has been identified and isolated, ITT/WWTF manager will take the appropriate steps to recover the system.

**COMPLIANCE**

Existing law requires a person or business conducting business in California and any agency, as defined, that owns or licenses computerized data that includes personal information, as defined, to disclose a breach in the security of the data to a resident of

California whose unencrypted personal information was, or is reasonably believed to have been, acquired by an unauthorized person in the most expedient time possible and without unreasonable delay, as specified.

This law would also require a person or business conducting business in California, and any agency, that owns or licenses computerized data that includes personal information to disclose a breach of the security of the data to a resident of California whose encrypted personal information was, or is reasonably believed to have been acquired by an unauthorized person and the encryption key or security credential was, or is reasonably believed to have been acquired by an unauthorized person and the person, business, or agency that owns or licenses the encrypted information has a reasonable belief that the encryption key or security credential could render that personal information readable or useable.





**4. Sensitivity of Data/Information Involved** Check all of the following that apply to this incident.

<b>Sensitivity of Data</b>	
<b>Category</b>	<b>Example</b>
<b>Public</b>	This information has been specifically approved for public release by the General Manager. Unauthorized disclosure of this information will not cause problems for Department of Public Welfare, its customers, or its business partners. Examples are marketing brochures and material posted to Department of Public Welfare web pages. Disclosure of agency information to the public requires the existence of this label, the specific permission of the information Owner, or long-standing practice of publicly distributing this information.
<b>Internal Use Only</b>	This information is intended for use within The Borrego Water District, and in some cases within affiliated organizations, such as business partners. Unauthorized disclosure of this information to outsiders may be against laws and regulations, or may cause problems for the BWD, its customers, or its business partners. This type of information is already widely distributed within the BWD, or it could be so distributed within the organization without advance permission from the information owner. Examples are an agency telephone book and most internal electronic mail messages.
<b>Restricted/Confidential (Privacy Violation)</b>	This information is private or otherwise sensitive in nature and must be restricted to those with a legitimate business need for access. Unauthorized disclosure of this information to people without a business need for access may be against laws and regulations, or may cause significant problems for the BWD, its customers, or its business partners. Decisions about the provision of access to this information must be cleared through the information owner. Examples are customer transaction account information and worker performance evaluation records. Other examples include citizen data and legal information protected by attorney-client privilege.
<b>Unknown/Other</b>	Describe in the space provided

<input type="checkbox"/> Public	<input type="checkbox"/> Restricted / Confidential (Privacy violation)
<input type="checkbox"/> Internal Use Only	<input type="checkbox"/> Unknown / Other – please describe:

Provide a brief description of data that was compromised:

**5. Who Else Has Been Notified?**

Provide Person and Title:

<b>6. What Steps Have Been Taken So Far?</b> Check all of the following that apply to this incident.	
<input type="checkbox"/> No action taken <input type="checkbox"/> System Disconnected from network <input type="checkbox"/> Updated virus definitions & scanned system	<input type="checkbox"/> Restored backup from tape <input type="checkbox"/> Log files examined (saved & secured) <input type="checkbox"/> Other – please describe:
Provide a brief description:	
<b>7. Incident Details</b>	
Date and Time the Incident was discovered:	
Has the incident been resolved?	
Physical location of affected system(s):	
Number of sites affected by the incident:	
Approximate number of systems affected by the incident:	
Approximate number of users affected by the incident:	
Are non-Commonwealth systems, such a business partners, affected by the incident? (Y or N – if Yes, please describe)	
Please provide any additional information that you feel is important but has not been provided elsewhere on this form.	

BORREGO WATER DISTRICT  
BOARD OF DIRECTORS MEETING – JUNE 19, 2018  
AGENDA BILL 2.H

June 12, 2018

TO: Board of Directors, Borrego Water District  
FROM: Geoff Poole, General Manager  
SUBJECT: BWD Comment Letter on County of San Diego Property Specific Requests Process– L Brecht

**RECOMMENDED ACTION:**

Review Comment Letter Cyber Policy and direct staff as deemed appropriate

**ITEM EXPLANATION:**

Director Brecht and Legal Counsel worked on the development of the attached BWD Comment Letter on the County of San Diego Property Specific Requests process. The intent of this agenda item is to solicit comments from the Board and then submit the letter as part of the Public Comment process ongoing PSR process.

**FISCAL IMPACT:**

TBD

**ATTACHMENT:**

1. DRAFT BWD Comment Letter
2. EIR Maps

[Borrego Water District letterhead]

June 19, 2018

Mark Wardlaw, Director  
Planning and Development Services  
County of San Diego  
1600 Pacific Highway  
San Diego, CA 92101

Re: Borrego Water District's Input Regarding PDS2012-3800-12-005, PDS2014-REZ-14-006; LOG NO. PDS2012-ER-12-00-003; SCH NO. 2015121012 (DS8 and DS24)

The Board of Directors of the Borrego Water District ("District") wishes to provide its input to the San Diego County ("County") Planning and Development Services staff, Planning Commission and Board of Supervisors regarding the County's proposed action on the DS8 and DS24 analysis areas. Those analysis areas are within the municipal service area of the District. As the "responsible agency", charged by law with providing water within the affected area, the District believes that its input should be afforded great weight by the County.

More specifically, the District is concerned that approval of the proposed project will further deplete the groundwater supply within the Borrego Basin and will seriously and adversely affect the ability of the District and County to achieve a sustainable groundwater supply as required under the Sustainable Groundwater Management Act (SGMA). The District Board of Directors believes that County approval of these types of upzoning requests simply creates "false hope" among the development community that actual "wet" water will materialize in the future to support their projects even though the local groundwater basin has extremely limited water available and is currently in a "critical" overdraft condition.

### **Project Description**

The specific portion of the proposed project that this letter addresses is the Desert Subregion, specifically within the Borrego Springs CPA, which is identified by the County as the two (2) property specific request (PSR) analysis areas -- DS8 and DS24. The land that is affected by these analysis areas totals 338 acres. This proposed project would result in the re-designation of the County's General Plan Land Use designation within the affected areas. Specifically, this re-designation of the Land Use plan would allow for the development of an additional 542 dwelling units within the subject area, from the currently allowed dwelling unit count of 353.

### **Applicable Law**

As the local agency with land use authority, the County is required to consider the impact to groundwater supplies and recharge when making land use decisions. Specifically, the California

Environmental Quality Act (CEQA) and interpreting case law requires the County to consider whether a proposed project will substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level. (CEQA, Guidelines, Appendix G.) Additionally, both SB 610 (Water Code §§ 10910-10915) and SB 221 (Govt. Code § 66473.7) require the county to determine whether water supplies are sufficient to serve the project.

## **Background**

### **Water Supply Sustainability and Recharge Ability**

Obviously, adequate freshwater supply is the basis of human wellbeing and public health. Economic development and quality of life also depend on it. Freshwater is as essential to human life as air. Water shortages, if not timely addressed, deliver a severe hit to a community's economy and jobs. To avoid certain economic collapse, good water management policies are necessary.

The Borrego Springs Subbasin (Borrego Basin) of the Borrego Valley Groundwater Basin is the sole source of water for the Borrego Valley and all municipal use provided by the District. As the County is aware, the Borrego Basin has been designated by the California Department of Water Resources as being in "critical" overdraft (DWR Bulletin 118, Basin No. 7-24; General Plan Amendment and Rezone Subsequent Environmental Impact Report ("SEIR"), § 2.8.2.)

At this time, there are no plans to import water from outside the Borrego Valley due to the economic cost of a pipeline and the uncertainty of available and affordable imported supply from the Colorado River. (See *Southeast California Regional Basin Study Evaluates Water Supply and Demand in Borrego, Coachella and Imperial Valleys* by the US Bureau of Reclamation [2014].) Importation of new water supplies from nearby groundwater basins has also been ruled out due to availability of potential adequate supply and cost. (*Borrego Spring Pipeline Feasibility Study: Final Report* by the US Environmental Protection Agency p Region 9 [2012].)

At the current rate of use, the groundwater supply is simply not sustainable. (*Hydrogeology, Hydrologic Effects of Development, and Simulation of Groundwater Flow in the Borrego Valley, San Diego County* by US Geological Survey [2015].)

The District and the County have entered into a Memorandum of Understanding to act as the multi-agency Groundwater Sustainability Agency (GSA) for the Borrego Basin. In addition, the County has adopted its Groundwater Ordinance, in order to protect, preserve and maintain groundwater supplies with the County and, more specifically, in Borrego. (San Diego Code of Regulatory Ordinances § 67.701 et seq.)

In the District's service area, there are presently approximately 3,000 existing County approved, legally buildable, but as yet unbuilt, Equivalent Dwelling Units (EDUs). (Dudek, *Theoretical Water Demand at Buildout of Present Unbuilt Lots Under County's Current Zoning in Borrego Springs* [October 4, 2016].) Present County zoning for the District's service area may be unsupported under SGMA constraints. Even with drastic reductions in residential EDUs, it is

uncertain that municipal demand can be met, given current competition with agriculture, recreation, and other water users of the basin, including potential water for Groundwater Dependent Ecosystems necessary to maintain the desert ecosystems of the Anza-Borrego Desert State Park and surrounding area.

Even if the Borrego Basin did have access to adequate supplies for all potential users, it is uncertain that Borrego, as a Severely Disadvantaged Community, would be able to afford the resultant water rates. (Raftelis Financial Consultants, *Borrego Water District County Zoning and SGMA Impact Assessment* [November 17, 2016] and *Borrego Water District Water Rates Affordability Assessment* [October 4, 2017].)

As the County's SEIR indicates, the implementation of the proposed project would result in an increased demand of 270.5 acre-feet per year. (SEIR, §2.8.3.2.) Further, the SEIR states,

“Based on the information from the 2015 USGS Groundwater Study, groundwater use reductions are anticipated to be significant and may necessitate reconsideration of the land use designations within Borrego Springs to properly align land use designations with reduced development potential given the anticipated groundwater use restrictions under the Sustainable Groundwater Management Act.

Future development of land uses consistent with the Proposed Project would increase groundwater demand and exacerbate the present unsustainable use of groundwater resources. **Therefore, the Proposed Project would result in a potentially significant impact to groundwater supplies and recharge (Impact HY-2).**” (emphasis in original.)

The SEIR also goes on to conclude that, even with mitigation measures, the effects on groundwater supplies and recharge within the District is significant and unavoidable. (SEIR, Table S-1.)

Under *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 434, the ultimate question under CEQA is whether the EIR adequately addresses the reasonably foreseeable impacts of water supply to the project. The SEIR addresses infeasible mitigation measures or alternatives, but should identify feasible alternatives.

### Water Quality

In addition to the above, the SEIR provides that the 2011 PEIR Groundwater Study determined implementation of the General Plan would result in potentially significant impacts to water quality from proposing land uses in groundwater dependent areas, which include DS8 and DS24. While groundwater quality issues in those areas are today somewhat isolated, future growth would potentially lead to contamination due to the introduction of contaminants associated with increased population and increased impervious surface. Also, water quality impacts would occur as decreased water levels would induce flow of high salinity, poor quality connate water found in deeper formational materials of the aquifer. As noted in the SEIR, if continuing unabated, this

would eventually necessitate the additional costly treatment of groundwater to make the water suitable as a drinking water supply. (SEIR, § 2.8.3.1.)

The County Groundwater Study also determined there would be potentially significant impacts to water quality from proposing land uses in groundwater dependent areas that are currently experiencing groundwater contamination. Therefore, proposed land uses would have the potential to exacerbate existing groundwater quality impacts. “The Proposed Project would result in a potentially significant impact to water quality standards and requirements (Impact HY-1).

Mitigation measures, which could potentially reduce impacts to groundwater quality, such as importing water from other sources, or placing a moratorium on building permits, were found to be infeasible. Thus, impacts to water quality within the District are significant and unavoidable. (SEIR, § 2.8.5.1.) The District is concerned that such additional stress on its already “critical” overdraft conditions will cause serious lasting harm to the groundwater quality in the District, affecting its service population.

The District also notes that developers are required to comply with the provisions of the District’s updated Policy for Water and Sewer Infrastructure for New Developments (2018).

**Conclusion**

For the above reasons, the District requests that the County Planning Commission and Board of Supervisors seriously consider the requests for the DS8 and DS24 analysis areas, on the basis of such actions’ impacts on water supply sustainability and recharge ability, as well as water quality, within the Borrego Springs Water District.

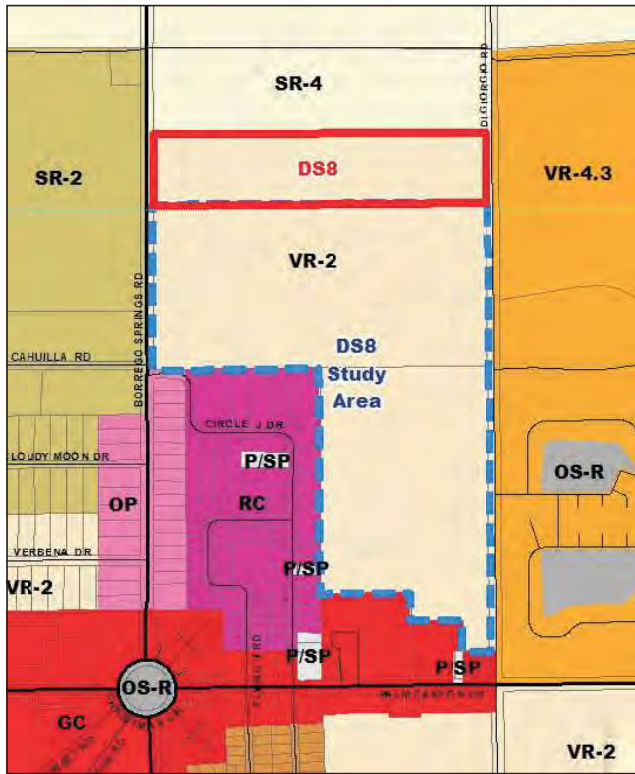
Should you have any questions or wish to discuss, please do not hesitate to contact me at your earliest convenience.

Sincerely,

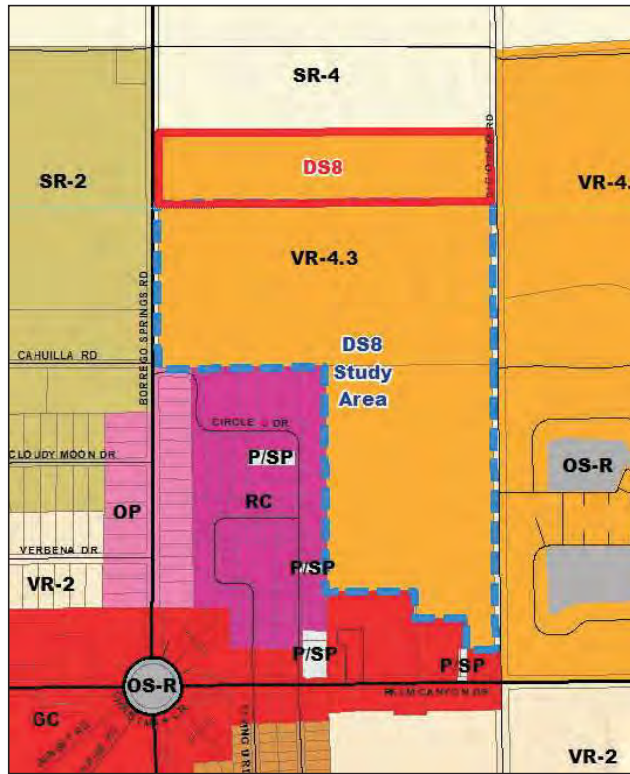
Geoff Poole  
General Manager  
Borrego Water District

cc: Board of Directors, Borrego Water District  
Board of Supervisors, San Diego County  
Planning Commission, San Diego County

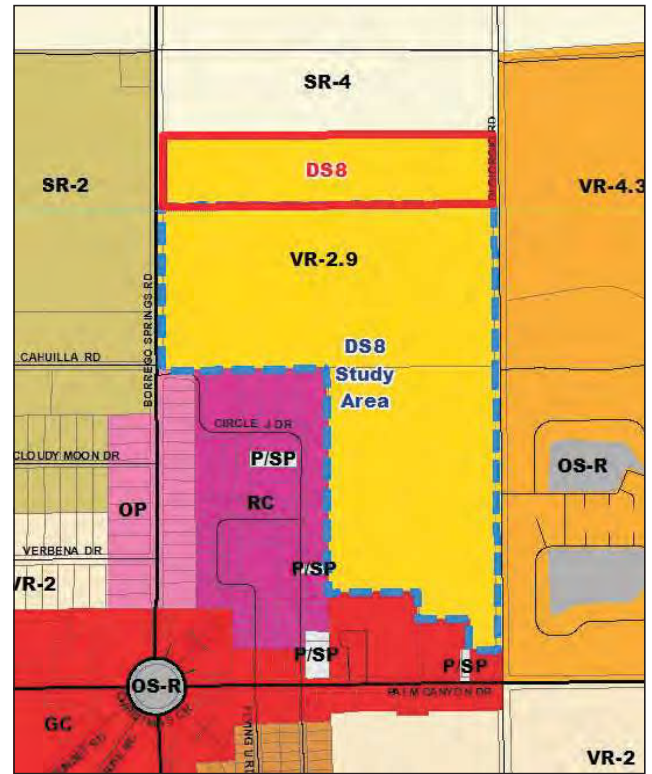




Existing GP Designation (337 DU)



Proposed GP Designation (726 DU)

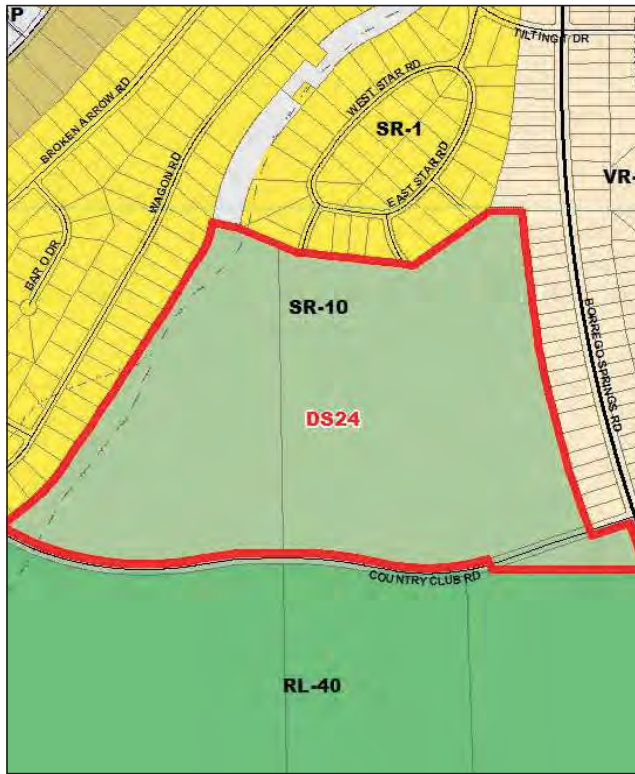


Reduced Density Alternative (489 DU)

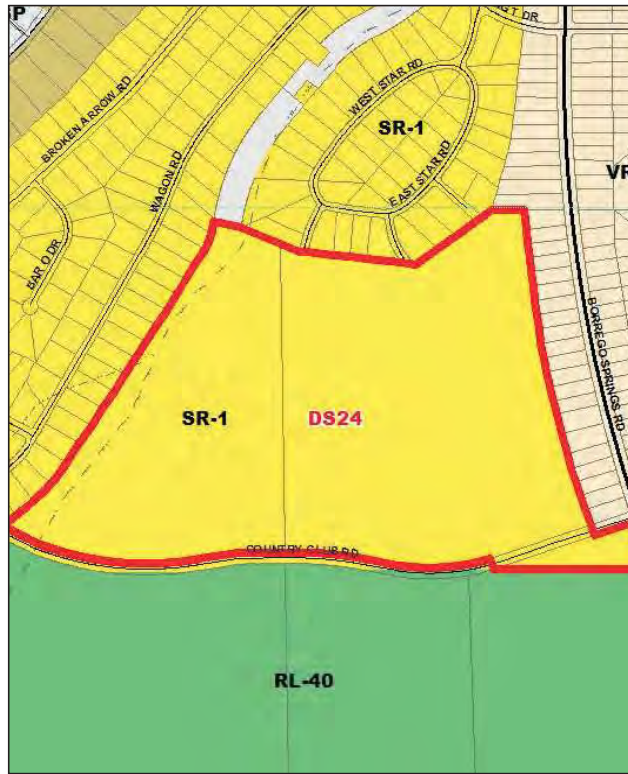


No Scale

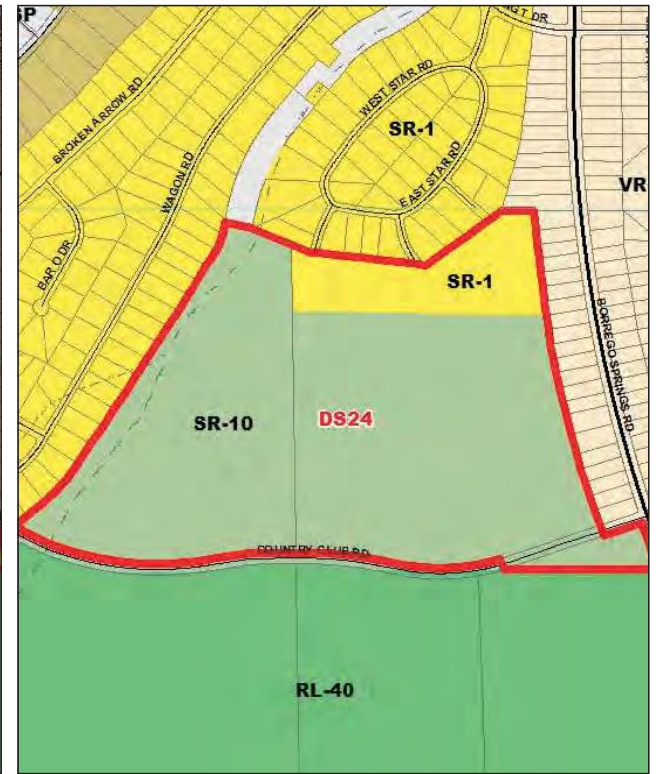
Source: County of San Diego 2017



Existing GP Designation (16 DU)



Proposed GP Designation (169 DU)



Reduced Density Alternative (34 DU)



No Scale

Source: County of San Diego 2017

BORREGO WATER DISTRICT  
BOARD OF DIRECTORS MEETING – JUNE 19, 2018  
AGENDA BILL 2.I

June 12, 2018

**TO:** Board of Directors, Borrego Water District  
**FROM:** Geoff Poole, General Manager  
**SUBJECT:** Conditional Approval of USGS Drill Rig for BWD Replacement Well Investigation – M. Wright – USGS/G Poole

**RECOMMENDED ACTION:**

Conditionally approve the use of USGS for drilling investigative test wells for BWD

**ITEM EXPLANATION:**

As part of the State of California Prop One SDAC Grant, BWD is to receive funding for drilling a replacement well. The first step in the process is to evaluate the alternatives and develop a recommended site. Dudek has already been retained and this work is underway.

Once the site is selected, a test well is drilled and it appears the USGS is a viable alternative for this part of the project. USGS operates a number of different rigs for various conditions and are more than qualified based on experience and knowledge of the Borrego Basin.

Staff and Dudek have been in discussions with Michael Wright from USGS and the attached estimate has been developed. Based on his experience, Trey feels the USGS estimate is comparable to production wells done by private contractors paying prevailing wage and he recommends proceeding with USGS. Staff concurs with this recommendation, under one condition. The possibility exists that well drilling may need to be competitively bid as part of the Grant rules issued by the State, which is due in the next few weeks. If bidding is required by the State, staff will return with a recommended plan to complete the work.

**FISCAL IMPACT:**

See attached Proposal. Most of these costs will be reimbursed by the State of California under the PROP ONE SDAC GRANT process currently underway. The final amount has not been determined yet. Staff and Dudek are determining how much money can be moved over from the meter installation project of the Grant to the well drilling project.

**ATTACHMENT:**

1. USGS Proposal

May 10, 2018

Mr. Geoff Poole  
General Manager  
Borrego Water District  
806 Palm Canyon Drive  
Borrego Springs, California 92004

Dear Mr. Poole:

This letter confirms discussions between our respective staffs, concerning the cooperative program between the Borrego Water District (BWD) and the U.S. Geological Survey (USGS) during the period October 1, 2018 to September 30, 2019. The work proposed under the enclosed Joint Funding Agreement (JFA) is included as an attachment to this letter.

The total cost of the proposed cooperative water-resources program in Federal Fiscal Year 2019 (FFY19) is \$258,700. Of this total, BWD will contribute \$251,700 and, subject to the availability of Cooperative Matching Funds (CMF), the USGS will contribute \$7,000. The proposed program for this period and associated costs are presented in Table 1.

**Table 1**

<b>Task</b>	<b>USGS CMF</b>	<b>Borrego Water District</b>	<b>Total</b>
Task 1 – Drilling	\$5,200	\$225,000	<b>\$230,200</b>
Task 2 – Water Quality	\$700	\$13,300	<b>\$14,000</b>
Task 3 – Website	\$1,100	\$13,400	<b>\$14,500</b>
Task 4 – Gravity Monitoring	To be determined	To be determined	<b>Estimated cost \$6,000.</b>
<b>Total</b>	<b>\$7,000</b>	<b>\$251,700</b>	<b>\$258,700<sup>1</sup></b>

1. Does not include gravity monitoring estimate.

Borrego Water District Cooperative Drilling Program:  
Plans, and Costs

Enclosed are XX copies of Joint Funding Agreement (JFA) for your approval. Work performed with funds from this agreement will be conducted on a reimbursible basis. If the JFA is acceptable, please return one copy with original signatures to our office for further processing. The second copy is for your files.

If you have any questions concerning the program described above, please contact Mike Wright (619) 225-6120. If you have any administrative questions, please contact Nancy Mora at (619) 225-6428.

Sincerely,

Eric Reichard  
Director  
USGS California Water Science Center

DRAFT

## **BACKGROUND**

Groundwater is virtually the sole source of water supply in Borrego Valley, California (fig. 1). Groundwater in the Borrego Valley has been developed for agricultural, recreational and municipal uses. Because there is relatively little groundwater recharge in the basin, pumping has resulted in a groundwater-level declines (Moyle, 1982; Mitten and others, 1988; Henderson, 2001; and Netto, 2001). The results from the recent development and calibration of a three-dimensional (3D) integrated hydrologic flow model, the Borrego Valley Hydrologic Model (BVHM), indicates that water levels are likely to continue decline in the foreseeable future (Faunt and others, 2015). Model simulations indicate that if current (as of 2010) stresses on the groundwater basin are constant over a 50-year period, groundwater-level decline will be >125 feet (ft) in the largely agricultural northern portion of the basin and 25 -125 ft in middle portion of the basin where the majority of municipal pumpage occurs. In the most drastic, but realistic, management scenario (6) where municipal and recreational pumpage are reduced by 50 percent and agricultural pumpage by 40 percent over a 20-year period, water levels are still predicted to decline 25-50 ft in the northern and middle portions of the basin.

As groundwater levels decline, there is the potential to change the distribution of flow contribution from the underlying aquifers to wells. Lowering the water table in shallow aquifers may draw chemical constituents (e.g. nitrate and totals dissolved solids) from anthropogenic sources present near the water table into a well. Declining water levels also cause a decrease in the saturated thickness of shallow aquifers, which may result in a larger proportion of produced water from a given well to be derived from deeper aquifer units. Groundwater from deeper aquifers is typically older, has been in contact with aquifer materials longer, and may contain more dissolved chemical constituents (e.g. arsenic and fluoride), resulting in the degradation of the water quality.

To ensure long-term dependability of groundwater resources in the Borrego Valley, and to comply with the Sustainable Groundwater Management Act (SGMA) of California, a groundwater management plan will need to consider how water quality and water levels will change over time within the upper, middle and lower aquifers. Since, vertical distribution of groundwater chemistry will likely vary systematically across the basin, and because little is known about the vertical distribution of water quality in the Borrego Valley basin, the drilling and construction of a multi-well monitoring site is needed to help in understanding differences in water level and water quality with depth.

## **OBJECTIVES**

The objectives of this study are to further characterize the geologic, hydrologic, and chemical characteristics of the aquifer system of the Borrego Springs Subbasin (Subbasin) in support of the Borrego Valley Groundwater Basin Sustainability Plan (GSP).;

## **APPROACH**

A multiple-well monitoring site is proposed to be drilled in the Subbasin (figs. 1 and 2) to characterize the geologic, hydrologic and chemical characteristics of the groundwater aquifers used for water supply. The exact location of the site will be determined jointly by the Borrego Valley Groundwater Sustainability Agency (GSA), Dudek, and USGS technical staff.

### **Task 1: Drilling, Well Construction and Development**

USGS drilling operations are expected to span a period of about 10-15 days. USGS personnel will have access to the wells for monitoring, testing, and sampling throughout the span of agreed-upon work between the USGS and BWD. A USGS hydrologist will be on-site during the drilling and construction phase to log and coordinate site events, record borehole and drilling conditions, collect and describe drill cuttings, and provide regular progress updates.

The general approach used by the USGS Research Drilling Operation will be to set a surface casing, and drill a borehole using a mud-rotary technique up to a depth of approximately 1,000 ft. The depth of the monitoring site may be modified based on hydrogeological conditions encountered or budget constraints.

Drill cuttings will be collected during drilling at regular intervals generally every 10-20 ft and/or at changes in lithology. Cutting samples and field descriptions of lithology will be re-evaluated offsite under microscopic examination for grain size, texture, sorting, rounding, color, and any other noticeable features, such as wood or shell fragments.

Upon reaching total depth, a suite of borehole geophysical logs will be collected to measure physical properties of earth materials near the borehole. Next, three to five monitoring wells will be installed at different depths and isolated from each other by a low-permeability grout to allow the monitoring of groundwater levels, water quality, and hydraulic properties. This aquifer-specific information is important for understanding the three-dimensional movement of water and dissolved constituents in the groundwater system. Each monitoring well will be assembled using two-inch diameter schedule-80 polyvinyl chloride (PVC) casing, using a well screen interval of 20–90 feet in length with a slot size of 0.020 inches, that is surrounded by a gravel pack. The GSA, Dudek, and USGS technical staff will assess the geologic, hydrologic, and logistical factors, and determine conjointly the final well design. Exact casing and screen depths will vary; however, the approach will seek to align wells in the same part(s) of the aquifer used for groundwater withdrawal. Finally, the wells will be secured within a locking flush-mounted vault and protected by a set of bumper posts, if needed. The USGS will develop the wells using jetting, surging, and swabbing techniques to obtain representative measurements of aquifer-system conditions. Please note that this proposal assumes that drill cuttings and development water can be contained and disposed of on-site; off-site disposal of cuttings and/or development water are not included in this proposal.

In addition, the USGS will use a hand-held X-Ray Fluorescence (XRF) analyzer spectrophotometer to determine elemental compositions of selected cuttings (Groover and Izbicki, 2016), including constituents of concern, such as arsenic and uranium. These data will be used to

## Borrego Water District Cooperative Drilling Program: Plans, and Costs

evaluate the vertical distribution of selected elements within the basin fill and may be used to evaluate any variations in water quality observed within, and between, the different aquifer units in the Subbasin. Sequence-stratigraphic methods, along with new lithologic and geophysical data, will be used to identify sequence boundaries, assign deposits into known regional sequences and may help correlate the strata between the nearby wells.

A Level-3 Static survey, using high-precision global navigation satellite systems equipment (Rydland and Densmore, 2012), will be conducted to compute the location of the multiple-well monitoring sites. This method will also be used to establish a reference mark and vertical geodetic control at the monitoring site, in conjunction with procedures described by Cunningham (2011).

Data collected during drilling, geophysical logging, and well construction will be compiled and entered into appropriate USGS databases, such as the National Water Information System (<http://waterdata.usgs.gov/nwis>) and/or Borehole Log Archiver (<http://logarchiver.usgs.gov/>), and archived locally in the San Diego Project Office according to USGS Office of Groundwater Technical Memorandum 2010.01. Individual well completion reports will be prepared and submitted to the Department of Water Resources for assignment and approval of an official State Well Number. A copy of the well completion reports, along with a description of the site boring, well-construction procedures, well-completion diagram, well-development notes, field lithologic log showing sequence-stratigraphic units, geophysical-log data, and other available preliminary data, will be sent to the GSA.

### **Task 2: Water Quality Sampling**

Representative water samples will be collected from each well of the new monitoring wells in conjunction with the GSP regional groundwater-monitoring program to assess the groundwater quality in the Subbasin. Field measurements of temperature, pH, specific conductance, dissolved oxygen and sulfide (if needed), and alkalinity will be recorded. Samples will be processed following techniques described in the USGS National Field Manual (USGS, variously dated). Constituents selected for sampling will be decided on jointly by the GSA, Dudek, and USGS technical staff, but may include: major/minor ions, selected trace elements, the stable isotopes of water, and nutrients. One quality assurance blank and replicate will be collected as part of the water quality sampling event.

### **Task 3: Website and Documentation**

Data collected as part of this proposal will be integrated into the existing USGS Borrego Valley website (<https://ca.water.usgs.gov/projects/borrego/>). All data collected for this study will be managed, quality-assured, and all suitable data archived in the NWIS. These data will be available to the public through the USGS NWIS online system NWISWeb (<http://waterdata.usgs.gov/nwis>).



#### **Task 4: Gravity Survey - Microgravity monitoring of groundwater storage change**

The USGS is proposing to install one or more gravity monuments in the subbasin. These monuments will be used to monitor groundwater storage change in unconfined aquifers. Typically, groundwater storage change is estimated by observing groundwater-level changes in wells and multiplying the observed changes by an assumed value of specific yield (Kennedy, 2015). In many cases, an assumption about the confined or unconfined nature of the aquifer is required to convert groundwater-level changes to storage changes. A more direct way to measure groundwater storage change is through microgravity measurements that are directly related to changes in the mass of water at the water table and in the unsaturated zone (Kennedy, 2015). The change in gravity is compared to change in water level to better determine storage change. Repeated measurements, at a station or network of microgravity stations, can be used to determine the change in water mass in the aquifer at discrete points, the areal extent of storage change over the network, and the volume of the change (Parker and Pool, 1998). Coupled with measurements from water-table observation wells, microgravity data also can be used to estimate specific yield of the aquifer at that location (Pool and Eychaner, 1995). With permission from the GSA, gravity stations in the subbasin may be used in a network of absolute gravity stations in southern California. This network can be used to determine regional groundwater mass changes and changes in storage. The network design is expected to be completed in the fall of 2018 or spring of 2019. The cost of monitoring and analysis is of individual benchmarks or networks has not yet been determined, it is expected to be \$3,000 to \$6,000 depending on number of stations and frequency of measure; the estimated \$6,000 figure has been included in cost estimates in this proposal. If the GSA is interested in this task the USGS can provide a detailed cost upon demand.

#### **COST AND BUDGET**

The total cost of the proposed work is \$258,700. For studies done with local agencies, the U.S. Geological Survey may have Cooperator Matching Funds (CMF) to share costs for certain expenses, such as labor and travel, subject to availability of these funds through congressional appropriations. If the GSA decides to fund this research the USGS will determine the availability of CMF. Costs are based upon a 12-hour day and 7-day weekly work schedule assuming no restrictions to site access or operations. Costs associated with each task are presented in the following Table 1 for Federal Fiscal Year 2019:

Borrego Water District Cooperative Drilling Program:  
Plans, and Costs

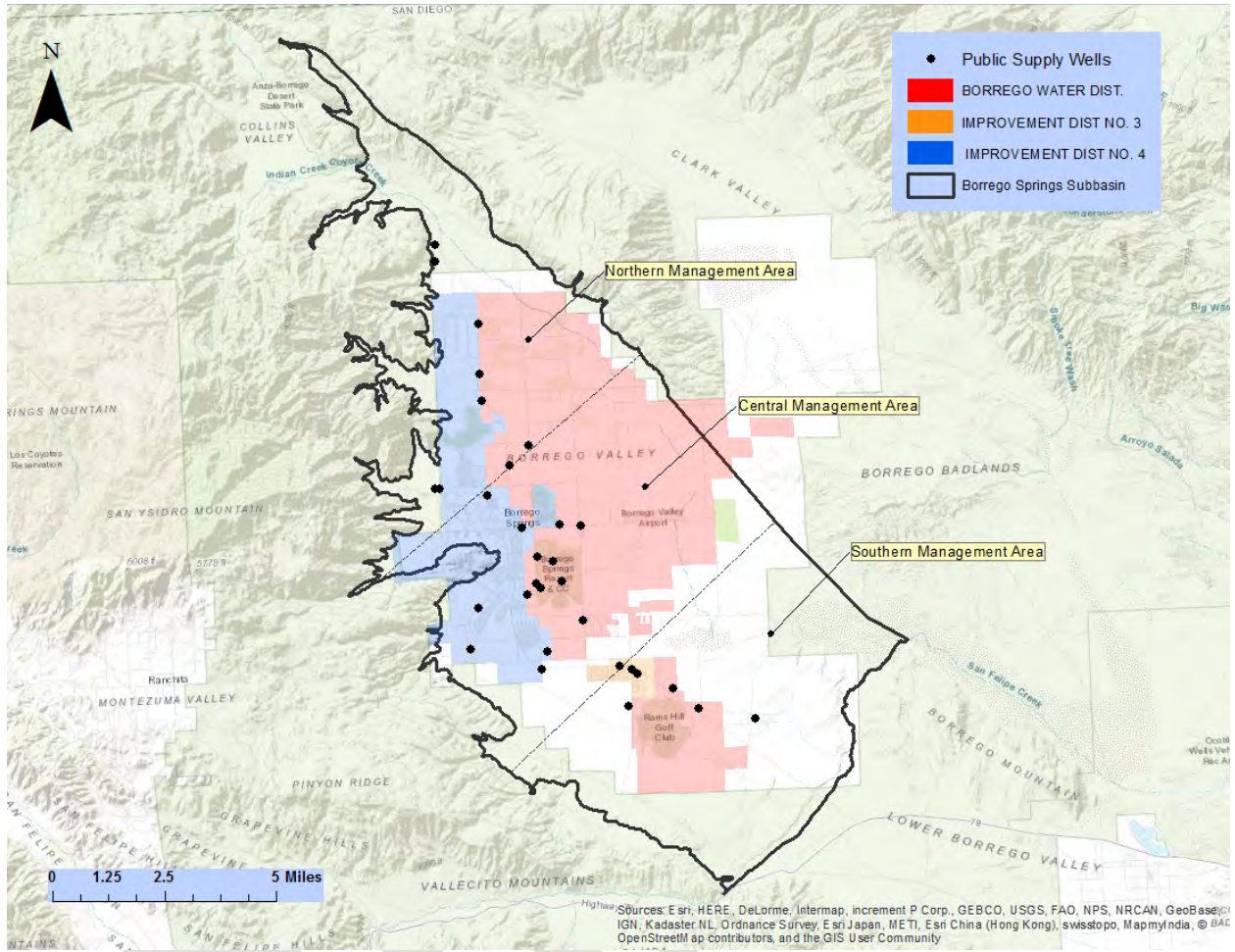
**Table 1**

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Task 4 – Gravity Survey	To be determined	To be determined	<b>Estimated cost \$6,000.</b>
<b>Total</b>	<b>\$7,000</b>	<b>\$251,700</b>	<b>\$258,700</b>

DRAFT

# Borrego Water District Cooperative Drilling Program: Plans, and Costs

## Figures



**Figure 1. Borrego Springs subbasin, management areas and locations of public supply wells from the Division of Drinking Water database.**

# Borrego Water District Cooperative Drilling Program: Plans, and Costs

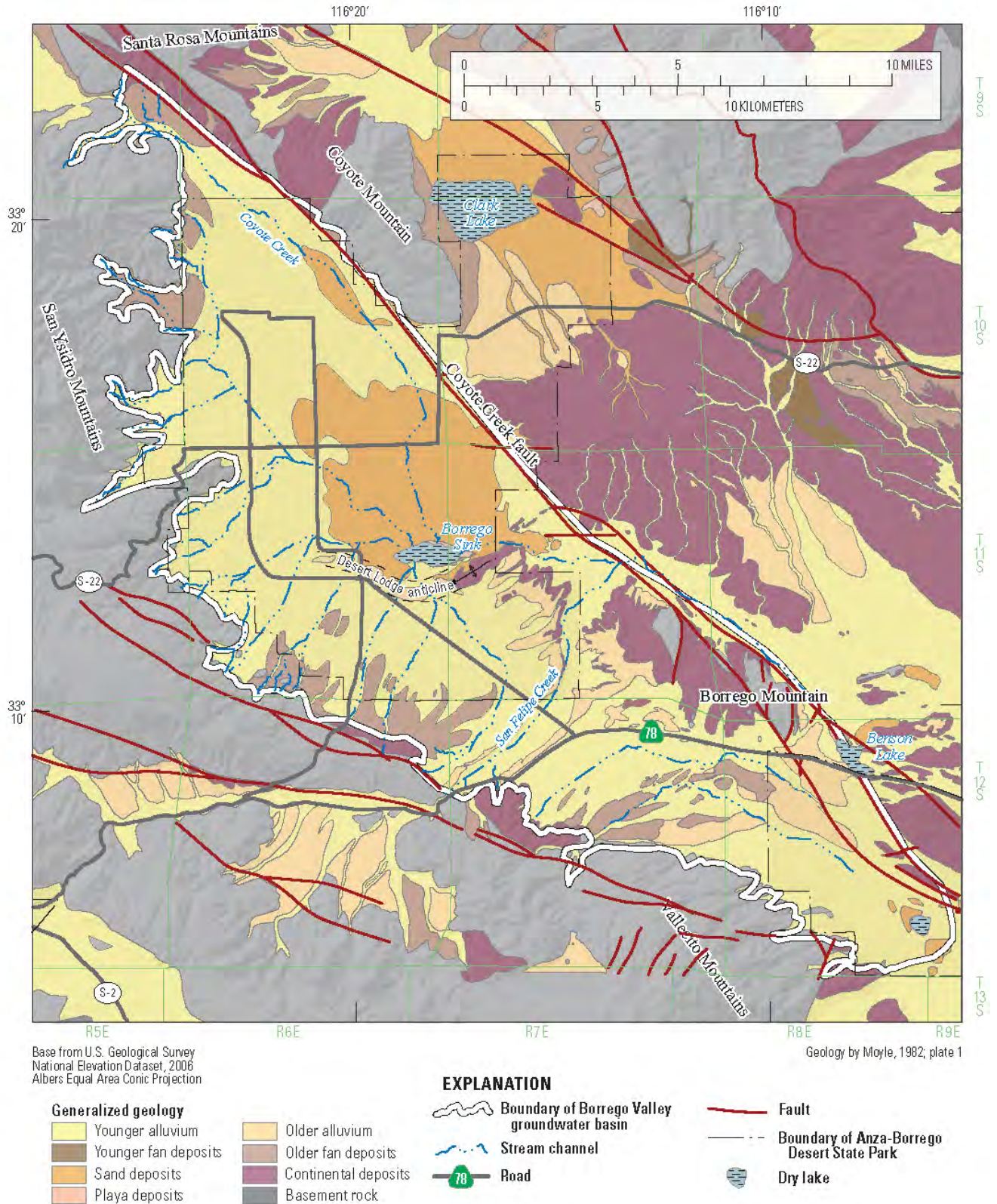


Figure 2. Maps showing Borrego Valley, California. From Faunt and others, 2015.

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Borrego Water District Cooperative Drilling Program:  
Plans, and Costs

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U.S. Geological Survey, [variously dated], National field manual for the collection of water-quality data: U.S. Geol. Surv. Tech. Water Res. Inv., book 9, chap. A1–A9.

DRAFT

BORREGO WATER DISTRICT  
BOARD OF DIRECTORS MEETING – JUNE 19, 2018  
AGENDA BILL 2.J

June 12, 2018

TO: Board of Directors, Borrego Water District  
FROM: Geoff Poole, General Manager  
SUBJECT: Final Budgets for Water and Sewer Project Submitted for State Grant Funding – G Poole

**RECOMMENDED ACTION:**

Review Final Budget for Projects and direct staff as deemed appropriate

**ITEM EXPLANATION:**

Staff has submitted all required components of both the Water (Replace Indian Head, Twin and RH#2 Tanks and Wilcox Motor) and Sewer (Grit removal, Clarifyer Rehabilitation (2)) State Grant Applications. The last step in that process was the development of Final Plans and Specifications, and following are the Final Cost Estimates for the Projects:

<b>WATER</b>	<b>SEWER</b>
Replace Rams Hill #2 = \$604,725	Upgrade Grit Removal/Equipment = \$214,000
Replace Twin Tanks = 623,525	<u>Rehabilitate Two Clarifiers = \$200,000</u>
Replace IndianHead = 587,575	<b>TOTAL</b> \$414,000
<u>Replace Wilcox Motor = \$49,775</u>	
<b>TOTAL</b> \$1,865,600	

All cost estimates have been increased from the Preliminary Engineering Report phase of the project on all projects since more detail is now known about the specifics needed for completion of construction. The most significant change in the estimates is due to the recommendation from Staff that the RH#2 tank be replaced and not repaired.

**FISCAL IMPACT:**

It is anticipated that these projects will be funded by the State of CA

**ATTACHMENT:**

None

BORREGO WATER DISTRICT  
BOARD OF DIRECTORS MEETING – JUNE 19, 2018  
AGENDA BILL 3.A

June 12, 2018

TO: Board of Directors, Borrego Water District  
FROM: Geoff Poole, General Manager  
SUBJECT: AB 1668 & SB 606 – H. Ehrlich

**RECOMMENDED ACTION:**

Director Ehrlich requested this item be placed on the Agenda. In addition an e-correspondence was received on this topic from Rebecca Falk and H. Ehrlich Response

Rebecca Falk email:

I just read an article about the two bills that just passed the CA Legislature, <http://bit.ly/2syhHuL>, [AB 1668](#) and [SB 606](#).

I skimmed/read the two bills and noted a few things, among which is that as a small district we seem to be exempt from a lot of the stipulations in these laws, but I am not sure of my reading. I did notice that use of swamp coolers is mentioned in AB 1668 as something that has to be taken into account in indoor use of water, and I wonder if that has happened in Borrego. I'm not sure Trey's methodology does that, or what the percentage of swamp cooler users is among those whose water goes through the waste treatment facility versus those whose water goes into private septic systems. And of course, most water use from swamp coolers goes directly back into the ground without passing through either type of system. As swamp coolers are a significant way many Borregans can afford to cool their homes during the hot months, I thought I'd bring that up.

I was looking for word from the state that some of the measures in the water emergency declaration would now be mandatory, but that isn't what I saw in these bills.

Correct me if I am wrong!

Becky



Director Ehrlich Response:

Hi Becky. At your suggestion I reviewed the bills. I was familiar with SB 606 but had not read AB 1668. Both bills passed and were signed by the Governor so are effective 1/1/2019. A quick summary response is below as to your comments:

The majority of the new legislation only applies to "urban water suppliers" and "agricultural water suppliers" both of which BWD is not classified as such. We are less than 3,000 AF per year or 3,000 connections and we do not supply agricultural customers with 10,000 acres or more land in production. With that said the bills do provide for identifying planning by cities or counties wherein small water suppliers (BWD is one) reside by 1/1/2020 for drought and water shortage plans as defined in the code.

The issue of water use by water coolers/swamp coolers is suggested as one factor for establishing base line use for per capita consumption in future years. I am not expert enough to know how much my coolers use per day or month but it is certainly dependent upon type and size. I would also suggest that this is corrolary to indoor use that we look at as 7 HCF for residential customers now. As to the planning and calculation in the GSP, while not a large number it certainly adds to the ongoing and average residence use most of the year (7- 9 months). Certainly residents do not use them when not needed due to energy costs also.

I could do a more detail review but this is the gist. AS to making emergency declarations mandatory, SB 606 revises Water Code 350 to make agencies "shall" declare an emergency or shortage if supplies can not meet human needs use. We are not there but as you know we are heading in that direction at current use on the basin. We will have to address that issue at some future point, again.

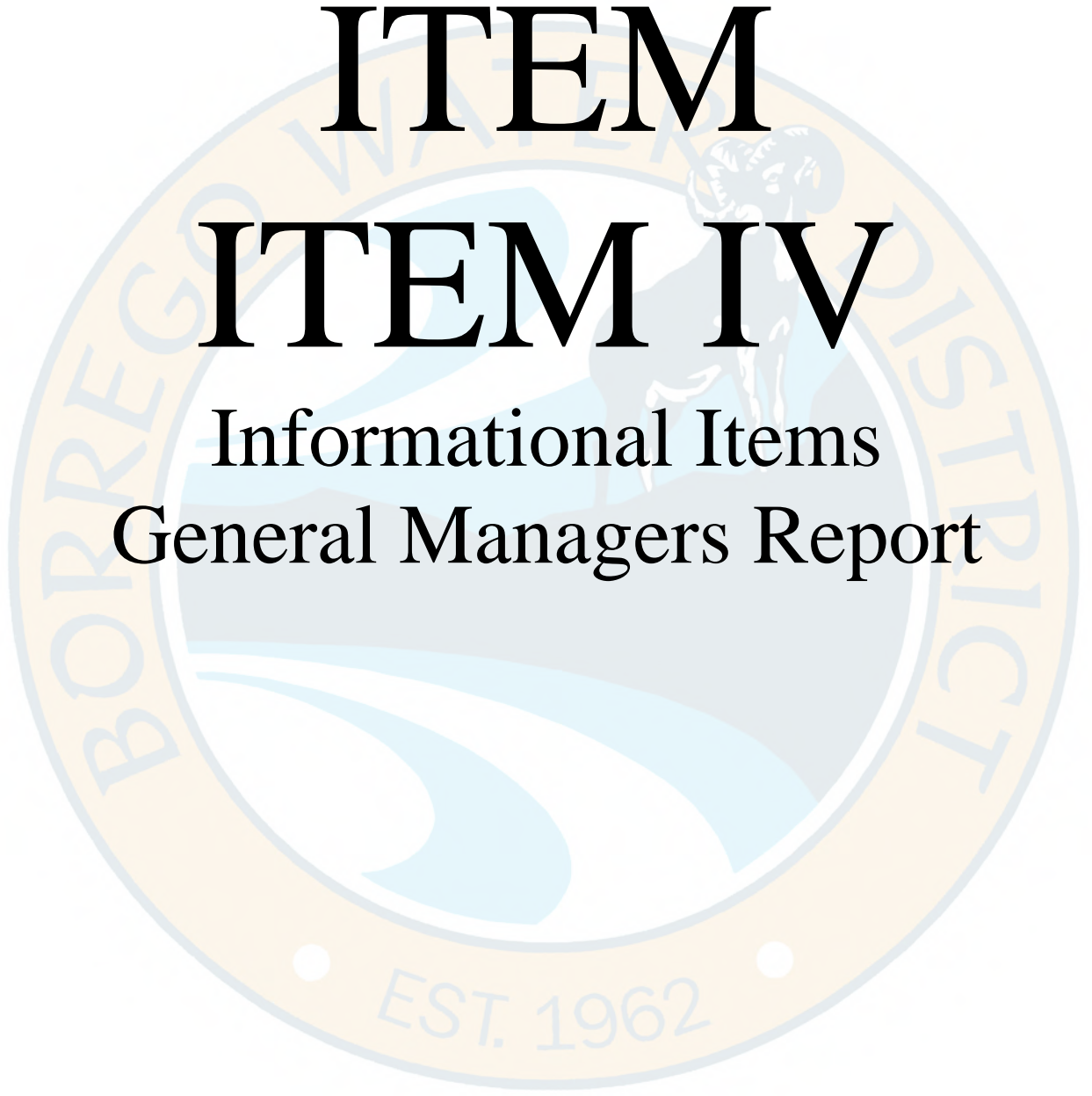
Any more questions, we should have Geoff and Trey review and report on the future implications of this legislation at some point.

Harry Ehrlich, SDA  
760.415-6148

# ITEM

## III B

BWD Groundwater  
Sustainability Plan Advisory  
Committee Representative  
Report – D Duncan, Verbal

The seal of the Borough of Westchester District is a circular emblem. It features a central figure of a Native American holding a bow and arrow, set against a background of a landscape with a sun and water. The text "BOROUGH OF WESTCHESTER DISTRICT" is written around the perimeter of the seal, and "EST. 1962" is at the bottom. The seal is rendered in a light blue and gold color scheme.

# ITEM ITEM IV

Informational Items  
General Managers Report

BORREGO WATER DISTRICT  
BOARD OF DIRECTORS MEETING – JUNE 19, 2018  
AGENDA BILL 4

June 12, 2018

TO: Board of Directors, Borrego Water District  
FROM: Geoff Poole, General Manager  
SUBJECT: General Manager's Report

**RECOMMENDED ACTION:**

**Contracting and Purchasing Policy:** – Kim has completed the draft Policy and one meeting of the Sub Committee is being planned so the document can be presented to the Board at the June 27<sup>th</sup> Meeting

**Construction Management Plan and Schedule:** – Staff is beginning on the development of a Master Construction Management Plan and Schedule on all planed BWD Projects. Carlos Beltran, BWD District Engineer, has provided a template and it will be reviewed with the O and I Committee and customized for BWD. Staff expect to return to the Board in July with this item.

**Club Circle Trash:** Staff and Susan Pecival are working on obtaining new pricing for the Club Circle Trash Contract. Conversations with the local providers are being scheduled as we speak.

**Club Circle Reimbursements Update:** President Hart, Legal Counsel and Staff have been working with the HOAs on the reimbursements and that process is proceeding.

**ATT Cell Tower:** ATT Legal responded to the BWD Contract Amendments and BWD Counsel is not comfortable with the request to eliminate the Completion Deposit. As soon as Staff received the response from ATT, an evaluation of the access issue was conducted and the conclusion is BWD does not have the right to access the site for cell purposes unless it was a BWD-only facility. When Staff informed Rams Hill of its intent to put this item on the Agenda for Board discussion and possible action, Cathy Milkey requested the item be deferred until the Regular Meeting in July.

**Mesquite Ranch Request:** Mesquite Ranch has also requested a deferral in Board discussion on this item until July or August. In the coming weeks, I will work with Kim on understanding the history and requirements of the Developer and be ready to present to the Board.

**Preparations for Upcoming Prop 218 Rate Setting Cycle:** Staff and Director Brecht were recently meeting to discuss Budget and Finance issues and it became clear, the need exists to start preparing for the upcoming rate setting process. Staff and Director Brecht would like to have this discussion with the full Board.