

APPENDIX G RESPONSES TO COMMENTS

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

Letter Number	Organization/Commenter
C1	Borrego Springs Community Sponsor Group
I1	Janet Johnson
12	Bill Carpenter
13	Lee Grismer
14	John Geyer
15	Eric Nessa
16	Larry Grismer
17	Linda Goodrich
18	Pat Hall
19	Mike Himmerich
I10	Jeff Grismer
I11	Bill Bancroft
l12	Steve and Debbie Riehle
I13	Terry and Pam Rhodes
l14	Rebecca Falk
I15	Rebecca Falk
I16	Rebecca Falk
l17	Rebecca Falk
I18	Diane Johnson
I19	Bill Berkley
120	Jack and Linda Laughlin
I21	Richard and Artemisa Walker
122	Eric Nessa
123	Marsha Boring
124	John Peterson
125	Robert Kleist
126	Garold Edwards
127	Mark Jorgenson
128	Don Rideout
129	Judy Davis
130	Cary Lowe
I31	Bill Haneline

Letter Number	Organization/Commenter
132	Hugh Dietz
133	Cristin McVey
134	Henry Liu
135	Susan Boutwell
136	Thomas Hall
137	Rudy Monica
138	Lance Lundberg
139	Barry Berndes
140	David Leibert
I41	Elena and John Thompson
142	Joseph Tatusko
143	Paul Ocheltree
144	Ray Shindler
145	Ray Shindler
146	Saul Miller
147	Gary Haldeman
148	Gary Haldeman
149	Diane Martin
150	I Donald
I51	Herbert Stone
152	Karen and Fred Wise
153	Jack Sims
154	Joanne Sims
155	James Roller
156	Jeff Meagher
157	Heather Davidson
158	Linda Roller
159	John and Mary Delaney
160	Ellen Fitzpatrick
I61	Michael Wells
162	Harold and Joanne Cohen
163	Jennifer Edwards
164	Wayne Boring
165	Barbara Coates
166	Timothy Kight
167	Mary Leahy
168	Betsy Knaak
169	Ginger Dunlap-Dietz
170	Charlene Aron
171	Sandy Jorgenson-Funk
172	Sally Theriault
173	Bob Theriault
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Letter Number	Organization/Commenter
174	Merrij Smith
175	Linda Mocere
176	D.E. and R.A. Owen
177	Gary Funk
178	Linda McBride
179	Jeanne Gemmell
180	Cyril Weaver
I81	Marjorie and Paul Schuessler
182	Alfred DeVico
183	Liesel Paris
184	Sal Moceri
185	Heidi Noyes
186	Robin Montgomery
187	William Bonnell
188	James Rickard
189	Grace Rickard
190	Jim Wilson
O1	Agricultural Alliance for Water and Resource Education (AAWARE), Michelle Staples, Jackson Tidus, A Law Corporation
O2	AAWARE, Michelle Staples, Esq. and Boyd Hill, Esq., Jackson Tidus, A Law Corporation
O3	T2 Borrego (Owner of Rams Hill Golf Course), Russell McGlothlin, O'Melveny
04	Tubb Canyon Desert Conservancy, J. David Garmon, President
O5	The Nature Conservancy, Sandi Matsumoto, Associate Director, California Water Program
06	San Diego Audubon Society, James A. Peugh, Conservation Chair
07	Anza Borrego Foundation, Bri Fordem, Executive Director
08	Clean Water Action, Jennifer Clary, Water Program Manager
O9	Borrego Village Association, J. David Garmon, Acting President
O10	Borrego Springs Unified School District, James L. Markman
011	Borrego Springs Unified School District, Martha Deichler, School Community Liaison
O12	Borrego Stewardship Council, Diane Johnson
O13	Borrego Stewardship Council, Diane Johnson
O14	Borrego Water District, Kathy Dice, President, Board of Directors
O15	Borrego Valley Endowment Fund, Bob Kelly, President
S1	California Department of Fish and Wildlife, Leslie MacNair, Regional Manager, Inland Desert Region
S2	California State Parks, Gina Moran, District Superintendent

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

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

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

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

BWD Responses to Comments on Proposed SGMA Alternative to a GSP Stipulation Documents

Borrego Water District Response to Public Comment Stipulated Judgment – Borrego Springs Sub Basin January 3, 2020

COMMENTS RECEIVED FROM

Comment letters were received by BWD during the 30-day Stipulated Judgment review from the following:

COMMENT #	<u>AUTHOR</u>
#1	Borrego Springs Unified School District Elementary School Well, James Markman
- Atty	
#2	Gary Haldeman, Borrego Resident
#3	Bob Manthei, Borrego Resident
#4	Becky Falk, Borrego Resident
#5	Lundberg Family Trust, Water Credit Holder
#6	Seldon Mc Kee, Borrego Resident
#7	Judy Haldeman, Borrego Resident
#8	County of San Diego
#9	Tubb Canyon Desert Conservancy
#10	Tubb Canyon Landowners Association
#11	Audubon Society
#12	California State Parks
#13	Clean Water Action

Requested Changes to Stipulated Judgment

Water Rights/Legal Process

1. #1: The amount of water production requested to be non-reducible is the annual amount of 22-acre feet stated in the July 13, 2018 allocation letter provided to the School District by the San Diego County Planning & Development Services department.

RESPONSE: Judgment Revised Accordingly, see section III.D.(2).

2. #3: All BWD Ratepayers will be indirectly obligated to pay much more for water service as a consequence of the BWD actions as Plaintiff leading to overwhelming and unsustainable cost. There is no provision in the proposal protecting the ratepayer from extended litigation as that litigation directly and indirectly govern the cost of water service afforded the ratepayer:

RESPONSE: Comment noted. BWD is not anticipating "overwhelming cost" as part of this process. It is anticipated that the adjudication will result in a stipulated judgment without significant litigation.

3. #3: Stipulated Judgment must include assurances that the individual ratepayer will be allowed to drill a De Minimus well in the future.

RESPONSE: Well drilling permit issuance remains a function of the County of San Diego. Also, de minimis pumpers are exempt from most provisions of the Stipulated Judgment, see section III.H.

4. #13: We propose that disadvantaged community water systems like Borrego Water District be exempt from mandatory reductions under the stipulated judgement, and instead be allowed to comply with laws and regulations that regulate residential water use, as they may be updated3.... We recommend that minimum usage be set at a level based on actual human needs and incorporating current best practices and available technology for water conservation.

RESPONSE: Comment Acknowledged:

5. Include De Minimus pumpers in Stipulated Judgment requirements

RESPONSE: Comment Acknowledged: The Code of Civil Procedure provides the court with authority to make de minimis pumpers fully or partially subject to the judgment, or exempt, in the Court's discretion, and absent a finding that the de minimis pumpers are causing significant harm, there is no basis for subjecting them to the Stipulated Judgment requirements. (See Water Code, § 10730(a); CCP § 833(d).)

Governance

- 1. #2: Community WM Board Member should be selected by the Community
- 2. #4.2: Community WM Board Member should be selected by Nominating Committee
- 3. #6: Community WM Board Member should be selected by BWD
- 4. #9: Community WM Board Member should be selected by Nominating Committee
- 5. #10: De Minimus Pumpers should have a seat on WM Board
- 6. #11: Lack of Environmental representation on Board
- 7. #13: WM Board should consist of 7 members without super majority
- 8. #13: WM Board should not select the Community Member

RESPONSE: The Stipulated Judgment has been revised accordingly to take into account concerns of community selection of Community Watermaster Board member. The BWD Board will make

- the selection of the WM Board Community after local organizations provide a slate of candidates and a public forum is held by the BWD.
- 9. #4.2: It is important for the Community Member and Alternate Member to be appointed/selected and seated for the first meeting of the Watermaster (WM) Board.
 - RESPONSE: WM Board Community Member will be seated as soon as practical, estimated to be Feb/Mar 2020
- 10. #4 and #6: Community Member should have a budget of \$10,000-\$20,000/yr & staff and/or support equivalent to the staff and support the other members will have.
 - RESPONSE: Comment noted. The community member will be given authorization in the Judgment to appeal Watermaster decisions, see section VII.A.1. However, we are not aware of any judgments that compel Watermaster funds to be collected and directed to support any particular sector. Each party is responsible for their own costs.
- 11. 4.2: There should be a mechanism for the Watermaster Board Membership or weight of votes to shift over time to accommodate major changes in the percentages of water rights held by the participating sectors.
 - RESPONSE: Comment Acknowledged: While the court has authority to hear such a request and reformulate the WM Board in the future, if the court deemed appropriate, see Section VII.A., see section IV.
- 12. #8: Include language to include an alternative in the event the County Board of Supervisors declines to participate on the WM Board.
 - RESPONSE: Comment Acknowledged: BWD feels County involvement on the WM Board is essential.
- 13.#11: WM Board should include a permanent Environmental Representative or a rotation of appointees representing the interests outside the influence of the other members already sitting on the Board.
 - RESPONSE: Comment Acknowledged: Audubon Society, and others, could get involved in the existing nomination process by encouraging candidates with the desired knowledge and experience to apply.
- 14. #11, #12 and #13: The Environmental Working Groups (EWG) roles/duties should be elaborated
 - RESPONSE: Comment Acknowledged: The Stipulation requires the formation of the EWG, and the BWD will ensure the WM Board creates the EWG to meet the environmental interests affected by the Basin.
- 15. #12: Avoid the potential of allowing a minority of members to make WM Board decisions.

RESPONSE: Stipulated Judgment revised accordingly to require at least 3 affirmative votes on all matters not requiring a Supermajority, see section IV.B.2.

Rampdown/BPA

1. #4.1: Eliminate Overpumping Provision: I would like to see an orderly decrease in water use as expected under the state sustainability law rather than an increased allowance for pumping in the first three years, because such increases encourage continued overpumping for three years followed by selling water rights before the overpumping needs to be made up within the first five years of the Plan by subsequent pumping of less water than allocated. This is a detrimental pattern for providing job transitions for residents.

RESPONSE: Comment Acknowledged: Although a benefit from overpumping, job retention was not the motivator for creating the provision; the vast majority of Agricultural pumpers are currently unmetered and the 3 years provides an opportunity for them to first determine their current actual usage and then how to meet rampdown provisions. If a property owner were to sell land where Overpumping has occurred, the new owner would inherit the obligation and under pump in years 4 and 5 or pay the penalty.

2. #8 Revisit Carryover provisions and consider limiting to the following year. Current proposal may not satisfy DWR requirement for sustainability in 20 years.

RESPONSE: Comment Acknowledged: The TAC and Watermaster Board will evaluate this issue

3. #8: De Minimus pumpers in SGMA for ALL users less than 2 afy and Stipulation defines as DOMESTIC, requesting change to SGMA definition of ALL.

RESPONSE: The Judgment is consistent with SGMA in allowing 2 afy or less of pumping for domestic use to qualify as de minimis. The Judgment also specifies that public agencies pumping less than 2 afy for any use are considered de minimis

4. #12: 20 afy allocation should not be impacted by future fee transfers and not include de minimus use from Horsecamp Park.

RESPONSE: The Judgment is not drafted to identify State Park APN's, so the State Park allocation may be used on all State Park lands existing now or in the future. Because the Horsecamp Park is de minimis use already, its status will not change under the Judgment and use at the camp will remain recognized as de minimis.

Water Quality

1. 4.1: Keeping our water quality high, which means providing for environmental reviews for any intrabasin water transfers and for additional pumping allowed, especially in our Central Management Area, as these could affect water quality.

<u>RESPONSE</u>: BWD also places a high priority on water quality. WM, with input from TAC, may condition or restrict intrabasin transfers if necessary to protect the Basin, if scientifically merited, see section III.I.5.

2. 4.1: Close the data gap and expand the Water Quality Monitoring Program into the northern and eastern parts of the Central Management Area. That monitoring needs to happen now in order to have adequate data in two or three years to know if there is any impact from the Northern Management Area where water quality is impacted from agricultural use, on water in the Central Management Area that serves most of the town. This is especially important during the time we are entering that will see changing patterns of water pumping in the valley.

RESPONSE: Comment Acknowledged: The stipulating parties/BPA holders have agreed to fund the continuation on all water quality sampling started by the GSP process. BWD will continue to sample its wells more often than required and pursue grants to expand the network. The Stipulation includes language requiring the TAC and WM to develop a Water Quality program within 24 months, see section VI.B. Any party can attend the public meetings and raise the applicable issues regarding the future water quality monitoring program. The combined efforts of GSP initiated testing (soon to be paid by pumpers) and ongoing BWD sampling (approx. 40 total) is a good start and additional sites are always desired. BWD will continue to pursue grants for as many as 10 repurposed abandoned wells for monitoring. BWD is comfortable with the current sampling and plans to expand in the future.

3. #4.3: What provisions are there for environmental assessments prior to any intrabasin transfers and for ensuring that pumping after water trading doesn't impact one area more than another, or create new problems? Will there be an anti-degradation analysis for water use prior to such trades and transfers?

RESPONSE: BWD (for BWD-involved transfers), and WM, with input from the TAC, will have the flexibility to determine the extent of any additional science hased reviews and limitations on future water transfers, as may be needed and/or required by law.

4. #4.3: A provision to limit this transfer of water rights to parcel(s) in the same management area as the original parcel, unless environmental assessments and degradation analyses as mentioned in item #1 above are conducted prior to the transfer being approved?

RESPONSE: The Judgment gives WM the authority, with input from the TAC, to so require if scientifically merited, see section III.1.5.

Fallowing Standards/Transfers

1. #4.3: Is there any water right being left with fallowed land that can be used for restoration at some point? If not, please consider doing this. The water demand of land fallowing is not considered. Exhibit 3 includes minimal requirements for permanent land fallowing that are inadequate to prevent negative impacts including blight. At minimum, sufficient water should remain with the land to ensure proper dust mitigation, including cover cropping and/or spraying. Additionally, these requirements are not applied to temporary transfers, even if those transfers span multiple years. Given the severe local climate, we fear that dust mitigation could be required even for

single-year transfers. We strongly recommend that these standards be made more protective of public health and applicable to both temporary and permanent transfers.4

RESPONSE: Comment Acknowledged: The use of water on future fallowed land, or not, would be determined as part of each land transaction and BPA adjusted accordingly, see section III.J.

2. #7: Land in the basin is very inexpensive – 20 acres could be found for \$20,000, which would make 100 AF of water very easy to acquire. If this is to be a deterrent to speculation, once acre for 5 AF of water is not good enough to inhibit speculation.

RESPONSE: Comment Acknowledged. Speculation will be further discouraged by other provisions of the Judgment, including rampdown and assessment requirements.

3. #8: Revise Anti Speculation Provision: add "or project applicant/developer (with consent from the property owner) should have the ability to purchase needed water rights

RESPONSE: BWD believes this addition is unnecessary as under the Judgment developers can already work with the landowner to purchase BPA, attach the BPA to the land, and transfer the land and the BPA to the developer at the appropriate time. Also, allowing any entity claiming to be a developer to purchase BPA separate from land would defeat the purpose of the antispeculation provision.

4. #8 Add language stating a Fire Department burn permit and Smoke Management Plan approved by County APCD may be required for agricultural burning.

RESPONSE: Comment noted. Nothing in the Judgment relieves any party or entity from obtaining all legally required permits.

Miscellaneous

1. #11: There should be a full discussion presented in the final report on why there was an exemption of CEQA oversight and under what circumstances.

RESPONSE: BWD will follow all required CEQA procedures. See accompanying BWD resolution and staff report. However, final approval of the Judgment rests with the Court and courts are not subject to CEQA. (State CEQA Guidelines § 15379; *see also Hillside Memorial Park & Mortuary v. Golden State Water Co.* (2011) 205 Cal.App.4th 534, 550-51 (West Coast Basin); *Calif. Am. Water v. City of Seaside* (2010) 183 Cal.App.4th 471, 481-82 (Seaside Basin).)

2. #12: Cost Recovery for State Parks for WM entry to conduct environmental or cultural resource review.

RESPONSE: Comment noted. The State Parks can address this issue in any individual right of entry agreement it enters into with the Watermaster.

3. #12: Water used for firefighting and other natural disasters should be exempted.

RESPONSE: Judgment revised accordingly, see section III.A.

Borrego Water District Further Response to Public Comment/Questions/Clarifications Stipulated Judgment – Borrego Springs Sub Basin January 3, 2020

Comment letters were received by BWD from the following:

COMMENT #	<u>AUTHOR</u>
#1	Borrego Spring Unified School District Elementary School Well, James Markman -
Attny	
#2	Gary Haldeman, Borrego Resident
#3	Bob Manthei, Borrego Resident
#4	Becky Falk, Borrego Resident
#5	Lundberg Family Trust, Water Credit Holder
#6	Seldon Mc Kee, Borrego Resident
#7	Judy Haldeman, Borrego Resident
#8	County of San Diego
#9	Tubb Canyon Desert Conservancy
#10	Tubb Canyon Landowners Association
#11	Audubon Society
#12	California State Parks
#13	Clean Water Action

Water Rights/Legal Process

1. #3: There is no clear indication that De Minimus Water Rights would be protected from confiscation. —

RESPONSE: De Minimus pumpers are largely exempt from SGMA and the Stipulated Judgment, as finally determined by the court approval.

2. #3: Legal process of service alone to all affected parties will represent formidable expense to BWD.

RESPONSE: Cost of Service is being shared by all pumpers based on their proportional BPA (BWD @ 10% +/-) or an estimated \$10,000 or less for BWD's share.

3. #3: WM and Staff operating without Court approval is another cost for BWD Ratepayers.

RESPONSE: Except for the first several months of 2020, there is no time in which the WM will be running "without Court approval". WM start up and ongoing expenses will be shared by all pumpers based on their proportional BPA.

4. #3: Economic and social Institutional forces at work will solve the problem naturally.

RESPONSE: In 1982 when USGS determined the Subbasin was in serious overdraft, this was the argument – "market forces would solve the overdraft by the year 2000." Yet, between 1982 and 2010 the overdraft more than doubled. In BWD's view, SGMA has been the driver toward resolving overdraft, in contrast to other forces.

1. #3: Water policy should be defined and implemented by State and Federal agencies.

RESPONSE: Comment noted. SGMA requires local action to address the Basin's overdraft either in the form of a GSP or a court judgment that is approved by the California Department of Resources and establishes functionally equivalent management.

2. #11 CEQA related review of implementation of the Physical Solution has been removed from the Stipulated Judgment. There should be a full discussion presented in the final report on why there was an exemption of CEQA oversight and under what circumstances.

RESPONSE: See above response.

Governance

1. #4.2: There are regular meetings with 72 hours notice for agendas and Special meetings with 24 hours notice, and also the possibility of an Adjournment to a new location and time for a meeting with the notice put on the door of the meeting place within 24 hours of the Adjournment decision.

RESPONSE: These processes are described in and consistent with the Brown Act.

2. #4.2: Is the Community Watermaster Board Member a "Party" in that he or she can appeal to a court, request mediation for an unresolved issue, and/or hire a specialist?

RESPONSE: The Judgment has been revised to make explicit that the Community Representative can appeal any Watermaster decisions, whether or not the representative is a Basin landowner.

3. #11: The WM Board Term is not identified.

RESPONSE: The term of each WM member is indefinite, which is common in adjudicated basins, with the ability of the appointing entities to change their representatives.

4. #11: More information is desired on the Environmental Group that will advise the Watermaster on Groundwater Dependent Ecosystems. What will the procedures be to form this group and how will their consultation be properly addressed during construction of policy? These should be clearly identified in the final prepared documents because this group is in important oversight and communication piece of the full plan.

RESPONSE: BWD is comfortable leaving this decision up to the Watermaster Board to decide, after receiving community input.

5. #13: Watermaster Board does not function as a "local agency" under Government Code section 54951, and that compliance with the Brown Act is thus determined by the Court. A public agency for the purposes of the Brown Act is one "be created by statute or Constitution." (McKee v. Los Angeles Interagency Metropolitan Police Apprehension Crime Task Force (2005) 134 Cal.App.4th 354, 359; Gov. Code § 54951.) Watermasters are created by statute, even when the specific water rights are adjudicated by a court. (Wat. Code §§ 4026, 4027.) Therefore, the Watermaster board is a public agency for the purposes of the Brown Act.

RESPONSE: The "watermaster service areas" referenced in Water Code sections 4026 and 4027 are unrelated to a watermaster created by a court via a water rights judgment. Here, the watermaster is created by the Judgment and the Court, not by statute or Constitution.

Rampdown/BPA

Comments/Questions & Response when Necessary:

1. #5: Requesting Confirmation of 294 AG-1 Water Credits for Parcel 1 of Viking Ranch:

RESPONSE: BWD agrees with the understanding of Water Credit issuance for this parcel. Such water credits will be converted to BPA under the Judgment, unless other arrangements are made by the water credit holder.

2. #13: The environmental water demand of the basin is not identified or provided for in the BPAs.

RESPONSE: BPAs are assigned to pumpers with water rights. But the WM and EWG will further research and develop appropriate programs to address environmental concerns as is necessary.

Miscellaneous

1. #4.1: I have been disheartened that the public process for discussing and shaping a water plan for Borrego in compliance with state law was abandoned in disdain of the kind of public participation that had begun in 2017. By early 2019, private talks with representatives of farmers and golf courses about their "water rights" were happening and they quickly ended up becoming private talks about all potentially controversial parts of a water plan. Plans for water reductions, water trading, fallowing, conservation, water quality and transfers of water within the basin (intrabasin transfers) were now the subject of private negotiations instead of being publicly discussed and decided.

RESPONSE: Water rights judgments are typically negotiated among water rights holders. In this case, BWD provided for an extended public review of the proposed Judgment and associated documents. Changes have been negotiated to the documents as a result of these comments, which have been very helpful. The Groundwater Management Plan (formerly the GSP) remains the foundation for the Subbasin physical solution that will be implemented as part of the Judgment.

2. #4.1: BWD and the County of San Diego formed a partnership in 2017 to address our critically over drafted basin and to hold a public process to create a Groundwater Sustainability Plan

for our water use. They received funds from the Department of Water Resources (DWR) to help with that public process. But when the farmers decided not to cooperate publicly, not to release data on their water use publicly, and in general not to agree to discuss issues publicly, that process was abandoned, and those of us volunteering our time and concern on the committee formed to create our water plan through a public process, were left with no decisions to discuss or make. Instead we became witnesses to presentations about hydrogeology and information about our basin setting—all important as documentation for and from experts about our basin—but not the same as the decision-making process we thought we had volunteered to join.

RESPONSE: See above response. Basin Hydrology and Project and Management actions developed as part of the GSP process were retained and included into the Stipulation. BWD negotiators made retaining the work done by BWD/County, Advisory Committee and Consultants within the GMP a top priority.

3. #4.2: BWD says it represents members of the community who buy water from it, but BWD has shut out community input during this process.

RESPONSE: Comment Received: By definition, the primary purpose of the 30-day Public Review Period was to solicit input during the process. BWD determined, based on advice of Counsel and common practice, the negotiations process had to be confidential with non-disclosures binding the parties. In this and other adjudication negotiations "including the public" can hamper resolution as private parties generally do not feel free to share information publicly. BWD provided periodic updates once the components of the possible judgment documents were being formalized during the negotiations. In addition, BWD required a 30-day public review process before making any decisions with the full intent to renegotiate terms, as deemed appropriate by BWD.

4. #8: The County is pleased that the GSP was used as the foundation for the Stipulation in substantially similar form.

RESPONSE: Comment Acknowledged

5. #8: The County requesting advanced notice and opportunity to review any proposed future changes to BWD Developers Policy.

RESPONSE: BWD will notify the County as needed in the future.

BORREGO WATER DISTRICT

BOARD OF DIRECTORS MEETING – JANUARY 7, 2020

AGENDA ITEM III.B

TO: Board of Directors, Borrego Water District

FROM: Steve Anderson, Legal Counsel

SUBJECT: Settlement Agreement to Resolve Borrego Springs Subbasin Water Rights and Critical

Overdraft Issues; Initiation of Adjudication Action; Submission of GSP Alternative to Department of Water Resources (DWR); Posting of CEQA Notice of Exemption

RECOMMENDED ACTIONS:

1. Authorize Board President, or designee, to execute Settlement Agreement

- 2. Authorize legal counsel to file Adjudication Action pursuant to the Settlement Agreement
- 3. Authorize staff to submit to DWR an alternative to a groundwater sustainability plan
- 4. Direct staff to file a Notice of Exemption with the clerk for the County of San Diego.

ITEM EXPLANATION:

The Sustainable Groundwater Management Act (SGMA) requires the Borrego Springs Subbasin (Basin) to be managed sustainably over the next twenty years and beyond. Because DWR has designated the Basin as critically overdrafted, there must be a groundwater sustainability plan (GSP), or alternative management plan, adopted and submitted to DWR by January 31, 2020.

SGMA does not allow for declarations or modifications of water rights, but management of the Basin, including necessary pumping reductions/rampdown, without a quantification and declaration of water rights may be difficult and/or lead to litigation. SGMA thus recognizes that legal actions to establish groundwater rights and manage basins, or "groundwater adjudications" may occur. These adjudications are governed by statutes enacted after SGMA and allow courts to enter judgments that manage groundwater basins sustainably. Further, SGMA allows that the management of a basin pursuant to a groundwater adjudication can serve as an alternative to a GSP, if DWR approves that management structure.

Accordingly, BWD has been negotiating with agricultural and resort community interests the potential terms of a "friendly" adjudication of water rights and management of the Basin. These negotiations have culminated in a proposed Settlement Agreement among BWD and other major pumpers and stakeholders in the Basin. The Settlement Agreement requires, among other things, that BWD file an Adjudication Action to manage the Basin and to submit as a GSP alternative the proposed Stipulated Judgment to be entered in the Adjudication Action for DWR to review for SGMA compliance.

1. Settlement Agreement

BWD proposes to enter into a Settlement Agreement with the significant groundwater pumpers in the Basin to resolve disputes regarding their respective groundwater rights. The Settlement Agreement provides terms for the parties to stipulate to a process that will result in a Stipulated Judgment and Physical Solution, including a Groundwater Management Plan (GMP), that will be entered in a

comprehensive groundwater adjudication to be filed by BWD (Adjudication Action). The Stipulated Judgment and Physical Solution in the Adjudication Action will comprehensively determine and adjudicate all rights to pump groundwater from and store groundwater in the Basin and will provide for the sustainable management of the Basin in compliance with SGMA and the California Constitution. The Physical Solution and GMP will achieve sustainable Basin management through water trading, water conservation, pumping reductions, water quality optimization, and intra-basin water transfers.

The Settlement Agreement provides that BWD intends to file the Adjudication Action by January 24, 2020 and that the parties will share certain costs of the Adjudication Action, including reimbursement to BWD for its preparation of the GSP. The parties agree that they will accept BWD's service of the Adjudication Action complaint and other required pleadings and will file an answer. The parties also agree to be bound by, and to ask the Court for a preliminary injunction to establish, interim Basin management measures pending the entry of the Stipulated Judgment, including the formal establishment of an interim Watermaster to manage the Basin, installation of meters by all parties, continuation of water quality monitoring, and funding of Basin management measures.

Additionally, the Settlement Agreement requires BWD to submit the Stipulated Judgment and Physical Solution to DWR for a determination that it complies with SGMA as an alternative to a GSP to manage the Basin. BWD will submit the GSP alternative before January 31, 2020. Once DWR determines that the Stipulated Judgment can serve as a GSP alternative in compliance with SGMA, the parties will sign a stipulation and ask the court to enter the Stipulated Judgment in the Adjudication Action.

Collectively, these actions are intended to resolve the Adjudication Action, establish groundwater rights in the Basin, and sustainably manage the Basin in perpetuity. However, it is possible that (1) non-parties to the Settlement Agreement may object to the Stipulated Judgment and Physical Solution; (2) DWR may seek to change the Stipulated Judgment; and/or (3) the court may not enter the Stipulated Judgment that the parties have agreed to. Any of these possibilities could lead to more protracted litigation regarding groundwater rights in the Basin and how to sustainably manage the Basin.

2. <u>Adjudication Action</u>

Because SGMA cannot establish or modify water rights, a court action (Adjudication Action) is necessary to set groundwater rights and to establish a physical solution to manage the Basin pursuant to the Settlement Agreement. SGMA and the groundwater adjudication statutes under the California Code of Civil Procedure¹ both establish procedures to litigate groundwater rights and basin management. For example, SGMA recognizes that adjudication actions will occur, but instructs they should not interfere with the development of sustainable groundwater management.² Furthermore, a court shall only approve a judgment in an adjudication action if it "finds that the judgment will not substantially impair the ability . . . to achieve sustainable groundwater management."³ Similarly, the groundwater adjudication statutes provide that its proceedings must be consistent with SGMA. Groundwater adjudications must be conducted "in a manner that is consistent with the achievement of groundwater sustainability within the timeframes" of SGMA.⁴

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January 2020

¹ Cal. Water Code §§ 10737-10737.8; Cal. Civ. Proc. Code §§ 830-852.

² Cal. Water Code § 10737.2.

³ Id. at § 10737.8.

⁴ Cal. Civ. Proc. Code § 830(b)(4).

While the recently enacted groundwater adjudication statutes seek to streamline the process, groundwater adjudications are typically long and expensive. However, the parties to the Settlement Agreement have negotiated the terms of a "friendly" Adjudication Action that seeks to avoid a long court battle over groundwater rights in the Basin and have already negotiated the terms of a Stipulated Judgment, Physical Solution, and GMP, which typically take years or decades to develop and establish. By the Stipulated Judgment, Physical Solution, and GMP to be entered in the Adjudication Action, the parties have already agreed to their respective groundwater rights and have agreed to measures necessary to reduce pumping from the Basin and to manage it sustainably in a manner that protects water rights and the Basin in compliance with SGMA and the California Constitution.

Additionally, the final judgment entered in the Adjudication Action will provide for the formation of a Watermaster, as an arm of the Superior Court, with five appointed board members, charged with administering the Judgment's terms. A Superior Court would have continuing jurisdiction over the Judgment and Watermaster, and the authority to modify the Judgment as necessary and to rule on disputes not resolved locally.

There is no guarantee that the Superior Court will enter the Stipulated Judgment that the parties request. But, due to the limited resources of and varied interests in the Basin, and due to SGMA's requirement that this critically overdrafted Basin be managed sustainably, litigation might otherwise occur. The proposed Adjudication Action and Stipulated Judgment seek to proactively manage this litigation risk. Accordingly, pursuant to the Settlement Agreement, BWD intends to file an Adjudication Action by January 24, 2020.

In addition, BWD circulated the proposed stipulated judgment for public review. The public review comment period ended December 20, 2019. As a result of the comments received, a number of changes have been made to the proposed judgment, including that the community representative to the Watermaster Board will be selected by the BWD Board of Directors.

3. GSP Alternative

To comply with SGMA, BWD, along with the County of San Diego, formed the Borrego Valley Groundwater Sustainability Agency and developed a GSP to sustainability manage the Basin. The GSP was prepared and submitted for public review in compliance with SGMA but was never formally adopted, and the County withdrew from the Borrego Valley Groundwater Sustainability Agency effective December 2019. SGMA allows that basin management pursuant to an adjudication action can serve as alternative to a GSP, if DWR approves the alternative.

Accordingly, to comply with SGMA and pursuant to the Settlement Agreement, by January 31, 2020, BWD will submit the proposed Stipulated Judgment, including its attached GMP, to DWR for review and approval to serve as an alternative to a GSP. BWD will also file with DWR, as appropriate, a "Coordination Document" or "checklist" that explains how the GMP and other documents satisfy SGMA's requirements to facilitate the DWR review process.

4. CEQA Analysis

In its capacity as lead agency, the Board of Directors is charged with exercising its independent judgment to determine whether the authorizations at issue constitute a "project" within the meaning of the California Environmental Quality Act (CEQA); and if they do constitute a project, whether they are exempt from CEQA review.

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Authorizing the Board President to execute the Settlement Agreement and the related documents; authorizing legal counsel to commence the Adjudication Action; and authorizing Staff to submit the GSP alternative to DWR does not constitute a "project" subject to CEQA because these are not activities that may cause either a direct or reasonably foreseeable indirect change in the environment. (Pub. Res. Code § 20165; CEQA Guidelines § 15378(a).) Further, the authorizations are not a project subject to CEQA because the Court will oversee and implement the Adjudication Action and Stipulated Judgment and CEQA does not apply to the courts of the state. (CEQA Guidelines § 15379.) CEQA only applies to specified actions taken by a "public agency" (Pub. Res. Code § 21065) and CEQA Guidelines section 15379 explicitly states that the term public agency "does not include the courts of the state." The authorizations are therefore not a project because the Adjudication Action and Stipulated Judgment will be approved, overseen and implemented by the Court and by the Watermaster, the Watermaster Technical Consultant, and the Technical Advisory Committee under the Court's supervision, and none of these are public agencies. (CEQA Guidelines § 15379; see Hillside Memorial Park & Mortuary v. Golden State Water Co. (2011) 205 Cal.App.4th 534, 550-51 (West Coast Basin); Calif. Am. Water v. City of Seaside (2010) 183 Cal.App.4th 471, 481-82 (Seaside Basin).)

Even if the authorizations discussed above are deemed a project subject to CEQA, they are exempt under California Water Code section 10728.6. Under section 10728.6. GSPs adopted pursuant to SGMA are exempt from CEQA. Because SGMA specifically authorizes GSP alternatives, the exemption applies to the authorizations described in this staff report. Finally, the authorizations are also exempt under the "common sense exemption." (CEQA Guidelines § 15061(b)(3).) The authorizations do not by themselves authorize or approve any project, development, or construction activity. Accordingly, it can be seen with certainty that the authorizations will not lead to any physical changes in the environment. There is no evidence that the authorizations involve any unusual circumstances that might cause a significant effect on the environment. (CEQA Guidelines § 15300.2.)

5. Conclusion

The Borrego Basin is critically overdrafted and must be sustainably managed under SGMA, but SGMA cannot declare or modify groundwater rights, so management under SGMA could lead to litigation. Here, stakeholders in the Basin, including BWD, seek to manage the Basin through a combination of a court-entered judgment and a DWR-approved groundwater management plan. This proposal intends to create greater certainly regarding groundwater rights in the Basin and to result in the sustainable management of the Basin in perpetuity as required by SGMA.

ATTACHMENTS:

DOCUMENTS CAN BE FOUND ON: www.BorregoWD.org (Home Page Bulletin Board)

RESOLUTION NO 2020-01-01 OF THE

BOARD OF DIRECTORS OF BORREGO WATER DISTRICT AUTHORIZING BOARD PRESIDENT TO EXECUTE SETTLEMENT AGREEMENT; AUTHORIZING LEGAL COUNSEL TO FILE ADJUDICATION ACTION; AUTHORIZING STAFF TO SUBMIT A GROUNDWATER SUSTAINABILITY PLAN ALTERNATIVE TO THE CALIFORNIA DEPARTMENT OF WATER RESOURCES; AND AUTHORIZING STAFF TO FILE NOTICE OF EXEMPTION

WHEREAS, in 2014, the State of California adopted the Sustainable Groundwater Management Act ("SGMA"), which took effect in 2015, and requires local agencies to manage groundwater basins designated as high or medium priority basins.

WHEREAS, the Borrego Springs Subbasin No. 7.024-01 ("Borrego Basin" or "Basin") was designated by the California Department of Water Resources (DWR) as high priority and critically overdrafted under SGMA.

WHEREAS, SGMA requires that a groundwater sustainability plan (GSP) or alternative must be adopted and submitted by a local agency by January 31, 2020 for basins such as Borrego Basin that have been designated as subject to conditions of critical overdraft.

WHEREAS, SGMA provides for the submission of a proposed stipulated judgment to

DWR for evaluation and assessment, as part of an adjudication action, as an alternative to a GSP.

WHEREAS, the Borrego Valley Groundwater Sustainability Agency, which comprised the District and the County of San Diego, developed a GSP for the Borrego Basin. The GSP has been repurposed as a Groundwater Management Plan (GMP), an integral part of a proposed Stipulated Judgment for the Borrego Basin (Stipulated Judgment), and the District believes it prudent to implement a "Physical Solution" as part of a forthcoming groundwater rights adjudication action, consistent with the requirements of SGMA (Adjudication Action).

WHEREAS, the District is a local agency that believes management pursuant to a proposed Stipulated Judgment approved as part of an Adjudication Action, including a proposed Physical Solution and GMP, will satisfy the objectives and requirements of SGMA to manage the Borrego Basin.

WHEREAS, the entry of the Stipulated Judgment requires the filing of an Adjudication Action to comprehensively determine rights to extract and store groundwater in the Borrego Basin pursuant to Code of Civil Procedure sections 830, et seq.

WHEREAS, the District and other Basin groundwater pumpers propose to enter into a

Settlement Agreement to resolve disputes they may have regarding their respective rights to pump groundwater from the Borrego Basin and to agree to a proposed Stipulated Judgment that will establish a Physical Solution, including a GMP, for the perpetual, sustainable management of the Borrego Basin as required by SGMA and the California Constitution.

WHEREAS, the Stipulated Judgment, GMP, and the Physical Solution have been developed through a process of stakeholder negotiations among the District, major water pumpers, and landowners in the Borrego Basin to serve as an alternative to a GSP and to constitute the functional equivalent of a GSP as permitted by SGMA and the California Code of Regulations.

WHEREAS, the Settlement Agreement provides that the District intends to file the Adjudication Action on or before January 24, 2020.

WHEREAS, the Settlement Agreement provides that the parties will share certain costs related to the Adjudication Action.

WHEREAS, the Settlement Agreement provides that the parties will seek to have the Stipulated Judgment attached thereto approved by DWR and entered by the court as the final judgment in the Adjudication Action.

WHEREAS, the parties to the Settlement Agreement agree to certain interim Basin management measures pending the entry of judgment in the Adjudication Action.

WHEREAS, the Settlement Agreement, Stipulated Judgment, Physical Solution, GMP, and supporting documents have been subject to a 30-day public review process.

WHEREAS, the execution of the Settlement Agreement, filing of the Adjudication Action, and entry of the Stipulated Judgment, including imposition of the Physical Solution and the GMP, are intended to comprehensively determine and adjudicate all groundwater rights in the Borrego Basin and to provide a physical solution for the perpetual, sustainable management of the Borrego Basin as required by SGMA and the California Constitution.

WHEREAS, authorizing the Board President to execute the Settlement Agreement and the related documents; authorizing legal counsel to commence the Adjudication Action; and authorizing Staff to submit the GSP alternative to DWR does not constitute a "project" subject to the California Environmental Quality Act (CEQA) because these are not activities that may cause either a direct or reasonably foreseeable indirect change in the environment. (Pub. Res. Code § 20165; CEQA Guidelines § 15378(a).) Further, the authorizations are not a project subject to CEQA because the Court will oversee and implement the Adjudication Action and Stipulated Judgment and CEQA does "not apply to the courts of the state." (CEQA Guidelines

§ 15379; Hillside Memorial Park & Mortuary v. Golden State Water Co. (2011) 205 Cal. App. 4th

534, 550-51 (West Coast Basin); Calif. Am. Water v. City of Seaside (2010) 183 Cal.App.4th 471, 481-82 (Seaside Basin).) Even if the authorizations are deemed a project subject to CEQA, they are exempt under California Water Code section 10728.6 as a statutorily-authorized GSP alternative. Finally, the authorizations are exempt under the "common sense exemption" because by themselves, they do not authorize or approve any project, development, or construction activity. (CEQA Guidelines § 15061(b)(3).) Accordingly, it can be seen with certainty that the authorizations will not lead to any adverse physical changes in the environment. There is no evidence that the authorizations involve any unusual circumstances that might cause a significant effect on the environment. (CEQA Guidelines § 15300.2.)

NOW, THEREFORE, be it resolved by the Board of Directors of the Borrego Water District, as follows:

- 1. The Board of Directors hereby authorizes the Board President or her designee to execute the Settlement Agreement, and all other related documents, attached hereto as Exhibit "A."
- 2. The Board of Directors hereby authorizes District legal counsel to file the Adjudication Action pursuant to the terms of the Settlement Agreement.
- 3. The Board of Directors further delegates to the District General Manager and District legal counsel authority to finalize for the Board President's execution the final form of the Settlement Agreement, including the Stipulated Judgment, Physical Solution, GMP, and other related documents.

- 4. The Board of Directors hereby authorizes District staff to submit the proposed Stipulated Judgment, including its attached GMP to DWR for review and approval to serve as an alternative to a Groundwater Sustainability Plan pursuant to SGMA. District staff is also directed to file with DWR, as appropriate, a "Coordination Document" and/or "checklist" that explains how the GMP and other documents satisfy SGMA's requirements.
- 5. The Board of Directors further delegates to the District General Manager and District legal counsel authority to finalize and submit the final form of Stipulated Judgment, GMP and other related documents to DWR for review and approval to serve as an alternative to a Groundwater Sustainability Plan pursuant to SGMA.

CEQA Compliance:

- a. For all the reasons stated in the above recitals and based upon substantial evidence in the record as a whole, the Board of Directors finds that authorizing the Board President to execute the Settlement Agreement and the related documents; authorizing legal counsel to commence the Adjudication Action; and authorizing Staff to submit the GSP alternative to DWR: (1) is not a "project" subject to CEQA because these are not activities that may cause either a direct or reasonably foreseeable indirect change in the environment (Pub. Res. Code § 20165; CEQA Guidelines § 15378(a).); (2) is not a project subject to CEQA because the Court will oversee and implement the Adjudication Action and Stipulated Judgment and CEQA does "not apply to the courts of the state" (CEQA Guidelines § 15379); (3) alternatively, is exempt under California Water Code section 10728.6 as a statutorily-authorized GSP alternative and under CEQA Guideline § 15061(b)(3)'s "common sense exemption"; and (4) none of the exceptions to the application of the common sense exemption exist under State CEQA Guidelines § 15300.2.
- b. The Board of Directors hereby directs that all documents and other materials constituting the record of proceedings related to this Resolution be maintained by the General Manager of the Borrego Water District, or his designee, on file at the Borrego Water District, 806 Palm Canyon Drive, Borrego Springs, California 92004.
 - c. The Board of Directors directs Staff to file a Notice of Exemption with the County Clerk for the County of San Diego.

PASSED AND ADOPTED at a regular meeting of the Board of Directors of the Borrego Water District held on the 7th day of January 2020, by the following vote:

Ayes:	
Noes:	
Absent:	
President	Secretary
Board of Directors of Borrego Water District	ATTEST

BORREGO WATER DISTRICT BOARD OF DIRECTORS MEETING JANUARY 7, 2020 AGENDA ITEM III.C

January 3, 2020

TO: Board of Directors

FROM: Geoffrey Poole, General Manager

SUBJECT: Schedule for Nominating and/or Selecting Water Master Board Community and Borrego Water District Representatives – Core Team

RECOMMENDED ACTION:

Discuss schedule for selection of WM Community and BWD Representatives for Water Master Board

ITEM EXPLANATION:

If the Stipulated Judgment is approved, Staff is requesting a Board discussion of possible meeting dates for the selection of the Community and Representatives on the WM Board.

The Committees who have been sked to provide nominees for the Community Rep position has been discussing this issue and Staff will have an update for the Board at the meeting on 1-7-20.

Staff's goal is to get both positions filled as soon as practical.

NEXT STEPS

Staff and CT implement Board direction on this issue

FISCAL IMPACT

N/A

ATTACHMENTS

None

BORREGO WATER DISTRICT BOARD OF DIRECTORS MEETING JANUARY 7, 2020 AGENDA ITEM III.D

January 3, 2020

TO: Board of Directors

FROM: Geoffrey Poole, General Manager

SUBJECT: Cancellation of Borrego Basin Groundwater Sustainability Plan Public Hearing - S

Anderson

RECOMMENDED ACTION:

If Stipulation is approved, cancel previously scheduled GSP Public Hearing

ITEM EXPLANATION:

The GSP process required submittal of the document by 1-31-20 and prior to that a Public Hearing is to be held. To facilitate successful negotiation of the Stipulation but also provide a safety net in the event negotiations are not successful, a Public Hearing was scheduled for January 14th.

NEXT STEPS

Do not hold Public Hearing

FISCAL IMPACT

N/A

ATTACHMENTS

None

Comment Letters Received During Public Review Period on Proposed SGMA Alternative to a GSP Stipulation Documents

BORREGO SPRINGS SUB BASIN STIPULATED JUDGMENT PUBLIC COMMENT FORM: Due 12-20-19 @ 4 PM

Borrego Springs Unified School District

NAME: by James L. Markman, Special Counsel (Required)

2281 Diegueno Road, Borrego Springs, CA

ADDRESS: Mail to: 1315 Palm Canyon Drive, Borrego Springs CA (Required)

CONTACT INFO (EMAIL/PHONE): jmarkman@rwglaw.com (Required)

714-990-0901

I have the following comments on the Proposed Stipulation and request consideration of the following changes in the documents: This comment on the proposed Stipulation and Judgment circulated by Borrego Springs Water District is made on behalf of Borrego Springs Unified School District ("the School District" hereinafter). On May 21, 2019, we addressed a letter to the County of San Diego Planning & Development Services Department on the Draft Sustainability Plan then being considered to achieve sustainability for the Borrego Springs Groundwater Basin. In that letter, we noted that the School District had been producing well water for a long period of time for irrigation on the site of the School District's elementary school. Accordingly, we also pointed out that the School District exercised a priority overlying right not subject to prescription during overdraft due to the provisions of California Civil Code section 1007. We suggested that if the SGMA Implementation Plan included a cutback or rampdown, the School District allocation be excluded from that program on the basis of Civil Code 1007. For that reason and because the School District and its elementary school recreational programs are a community asset and, particularly, are an asset of the economically disadvantaged community in Borrego Springs, the School District requests that its water production from its elementary school be treated in the same manner as the treatment afforded to the State Park in subsection III D of the proposed Judgment. The amount of water production requested to be so treated is the annual amount of 22 acre feet stated in the July 13, 2018 allocation letter provided to the School District by the San Diego County Planning & Development Services department.

(continued on page 2)

BORREGO SPRINGS SUB BASIN STIPULATED JUDGMENT PUBLIC COMMENT FORM: Due 12-20-19 @ 4 PM

NAME: Borrego Springs Unified School Distric(Required) By James L. Markman, Special Counsel	
ADDRESS:, Borrego Springs CA (Required)	
CONTACT INFO (EMAIL/PHONE):(Required)	
I have the following comments on the Proposed Stipulation and request consideration of the following	
changes in the documents: We would appreciate your including us as a recipient of	
your response to this comment in addition to providing the same directly to the	
School District. Our address is: Richards, Watson & Gershon, 1 Civic Center Circle,	
P.O. Box 1059, Brea, California 92822-1059. The email address is: jmarkman@rwglaw.com	n.
Thank you for your anticipated attention to this comment.	
Jan J. Monhum	
James L. Markman	
Special Counsel	
Borrego Springs Unified School District	

#2 GARY HALDEMAN

Section IV.B. Watermaster Board

1. Composition and Selection. The Watermaster Board will be comprised of five members, with each member having one vote, as follows: one representative and one alternate selected by BWD; one representative and one alternate selected by the County; one representative and one alternate selected by the San Diego County Farm Bureau; one representative and one alternate selected by the recreational sector Parties; one public/community representative and one alternate. The Parties within the recreational sector and the process for selecting the recreational and public/community representative are specified in Exhibit "7".

Not being an attorney, I will not be able to argue this point from a legal standpoint, but can certainly point out the inequity in this appointment process, an inequity that is clear to any lay reader of the above Watermaster Composition and Selection process. Four of the five members to the Waterboard self-select. The fifth member is to be selected by the above self-appointed members. Thus, the fifth member – the Community Representative – is set aside as a separate, non-equal member, whose appointment is to be determined by individuals with potentially differing interests in the Sub-basin's water future. The Community Representative, selected under this process, will be chosen by two individuals representing interests historically in conflict with his/hers, by another who has no knowledge of the dynamics that have defined the Sub-basin for decades, and by BWD (one of four votes) which does work for the ratepayer, but which has not always been in sync with the community's interests.

This process is, again by definition, unfair and inequitable.

The Community Representative must be selected by the community, whatever form this takes, and this must be the same process implemented by the other constituent entities of this Watermaster Board.

Unless determined following an identical process, any future decision-making as part of the Watermaster will be de facto tainted, and tainted in the eyes of all community members for the duration of the process.

#3

A RATEPAYORS COMMENTS ON

THE BORREGO SPRINGS SUB BASIN STIPULATION PROPOSAL

AS PRESENTED BY THE BORREGO WATER DISTRICT

From the desk of Bob Manthei

December 9, 2019

CONTACT INFO:

2005 St Vincent Drive

dsrborrego69@gmail.com

442 293 0431

GENERAL UNDERSTANDING

The proposal appears to support the "forceful acquisition of private water rights now afforded property owners as governed by their deeds of ownership. The proposal appears to differentiate between "stipulated parties" as defined as pumpers whose pump volumes exceed 2 acre feet per year and those who pump less than 2 acre feet per year. Yet, all would be sued as defendants. The proposal appears to exempt the latter class from "forced participation" yet, it is clear the relief of those individuals may require their participation to a limited degree with some financial cost, and there is no clear indication that the water rights of the latter class would be protected from confiscation. All property owners, large and small have water rights associated with their property.

A POTENTIALLY INSOLVENT BWD AND THE THINGS LAWYERS WILL NOT TELL YOU

The proposal is totally predicated on a single court judgment projected out an estimated 18 to 36 months from the final formulation of the proposal by BWD, yet it is claimed that ALL parcel owners are to be served with suit by the BWD as plaintiff in this matter. Presumably, this is because a law suit affecting a select group of landowners would not be binding in the court. Yet, the proposal differentiates between two groups based on pumping volume. The proposal exempts the "de minimis" pumper from the need to participate in the suit. Downstream, there is no guarantee that BWD will prevail in that court, yet ALL ratepayors will be indirectly obligated to pay much more for water services as a consequence of the BWD actions as plaintiff. Because of the sheer volume of defendents who may choose or are required to defend their water rights, I anticipate an overwhelming and unsustainable cost to BWD as a private entity. The legal process of service alone to all affected parties will represent formidable time and expense to BWD. An interum "water master" and staff operating without court approval represents

another cost. Any efforts to speed up due process will result in the loss of individual water rights. Courts exist to insure the rights of citizens and contrary to the proposal summary no single court operates in a vacuum. Appeals may occur. The projected time to judgment is more likely to be ten years as legal fees and court costs accumulate potentially threatening the finances of BWD. There is nothing in the proposal to protect the BWD ratepayor from (1) an insolvent BWD provider as the sole provider of water, or (2) untenable water rate increases which could drive real estate prices down and force some to loose their property. There is no provision in the proposal protecting the ratepayor from extended litigation as that litigation directly and indirectly governs the cost of water services afforded the ratepayor. There can be no blank check. As the BWD costs are passed to their customers, the participants in the law suits are no longer affected equally. BWD ratepayors will loose their water rights while also being subjected to an unregulated and increasing costs of a sole source of water. No doubt, the courts will not view this inequity with favor.

The proposal for a stipulated judgment must include assurances that the individual ratepayor will be able to drill a "de minimus" well in the future should there ever be a circumstance where the ratepayor is forced into an excalating cost of sole source water, or if BWD fails to exist.

SOCIAL DARWINISM VS. SOCIAL ENGINEERING

I happen to believe in all processes natural and further maintain social engineering efforts always fail.

Most of the time the least action taken is the best action taken. BWD should not take upon itself the burden of expensive litigation to force the balance of water overdraft and control. There are economic and social institutional forces at work which will solve the problem naturally over less time than it will likely take to initiate costly and tenative legal outcomes. For example, the value of fallowed land offers a new and exciting economic incentive for controlled growth to the basin with less water draw. If we as residents carefully provide stewardship to this opportunity so as to not allow uncontrolled population growth the water table will naturally, and over time adjust itself. Governing new metering requests is one way the BWD can exercise a measured and responsible "enforcement" action to insure future water availability. The BWD already has that authority without costly and protracted courts and attorney fees.

The BWD should solely exist in support of its ratepayors and do nothing that would threaten its financial stability. If BWD tends solely to the needs of its metered customers thereby keeping rates under control it will still have formidable challenges. It does not need to engineer water policy for the basin. Water policy for the basin should be defined and implemented by State and Federal agencies. If property and water rights are to be taken, BWD should advocate for and require the government agencies to adjudicate it. BWD should not act as a governing agency. It is not a public utility. It does not have the resources.

Public Comment Letter on the Lack of Public Participation in the Borrego Springs Subbasin Stipulation Judgment/Water Plan Rebecca Falk, 3260 Flying H Road, Borrego Springs, CA 92004 760-331-7526, rebfalk7@gmail.com

December 17, 2019

There are three sections below: General Comment, Specific Requested Changes, and Closing

General Comment

As someone who agreed to serve as the representative for our local land use planning group (Borrego Springs Community Sponsor Group) to the advisory committee for a Groundwater Sustainability Plan (GSP), I served from March 2017 to October 2019, attending long public meetings, reading and trying to follow relevant documents, attending BWD meetings, and in general trying to take my role seriously in providing a voice for the community in the shaping of our water plan. The thoughts that follow are my own as an individual, though of course informed by that experience.

I have been disheartened that the public process for discussing and shaping a water plan for Borrego in compliance with state law was abandoned in disdain of the kind of public participation that had begun in 2017. By early 2019, private talks with representatives of farmers and golf courses about their "water rights" were happening and they quickly ended up becoming private talks about all potentially controversial parts of a water plan. Plans for water reductions, water trading, fallowing, conservation, water quality and transfers of water within the basin (intrabasin transfers) were now the subject of private negotiations instead of being publicly discussed and decided.

BWD and the County of San Diego formed a partnership in 2017 to address our critically overdrafted basin and to hold a public process to create a Groundwater Sustainability Plan for our water use. They received funds from the Department of Water Resources (DWR) to help with that public process. But when the farmers decided not to cooperate publicly, not to release data on their water use publicly, and in general not to agree to discuss issues publicly, that process was abandoned, and those of us volunteering our time and concern on the committee formed to create our water plan through a public process, were left with no decisions to discuss or make. Instead we became witnesses to presentations about hydrogeology and information about our basin setting—all important as documentation for and from experts about our basin—but not the same as the decision-making process we thought we had volunteered to join. We were finally informed about the extent of these private negotiations in July of

this year, and we had only one meeting after that July meeting. The group was disbanded at the next, final meeting on October 4.

In a room with lawyers and representatives of AAWARE (the organization that represents farmers in the Valley), Rams Hill, La Casa, and BWD, decisions about how water will be assigned, traded, held, reduced, and how fallowing (cutting down trees of farms no longer in business) will occur, how related environmental issues will be handled, and more, have all been negotiated and decided by a handful of people with no public input. BWD says it represents members of the community who buy water from it, but BWD has shut out community input during this process.

Every time proposals have been made to include safeguards for Borrego in a water plan, we were told by this group of negotiators and their lawyers that there could be an expensive law suit if we press the matter, or that it would be difficult legally to follow those proposals. For instance, the idea of setting aside enough water for the town's residences and businesses before considering water reductions has been dismissed in this way. Substantial anti-hoarding and anti-monopoly provisions for water were not included, although there is some provision that prevents new investors in the Valley from acquiring water without also purchasing land, but this is a relatively weak provision given current land costs.

The public wasn't, in the end, at the table, and our water and therefore what happens in our town in the future, is to an uncomfortably large degree in the hands of the private negotiators and their lawyers. They seem to be already making agreements and plans to act on the knowledge they have that we haven't had—accumulation of water rights, lucrative sales of water rights, and plans to develop that might seem counterintuitive for a desert town with a sole-source aquifer that has to reduce its water use by 76% over the next twenty years.

Our town matters, not only the number of acre feet per year that is pumped from our aquifer. Do we as a town want to have 1/10th of the total water we can use in 2040 for the whole town go to one newly reestablished golf course at a development that already has a golf course? What happens to the existing golf courses, the communities built around them, the people that work there, and the school district that the attendance of those workers' children makes possible? Shouldn't community members' perspectives play a part in how water is traded, held and assigned (allocated) and who gets to accumulate control of the rights for big percentages of our water? The alreadynegotiated Stipulated Agreement decides the rules for water matters and we will be left scrambling to deal with its consequences.

I have heard of no process for altering the Agreement/Plan after public comments, except to return to the negotiators who already have had trouble coming to agreement

for the plan that is about to be released. The public comment period ends December 20, 2019 and the Borrego Water District will vote on the Stipulation Judgment on January 7, 2020, a very short window that includes Christmas and New Year holidays.

The window is closing for significant changes to the rules we'll have to follow going forward under a Stipulation Agreement once it is court approved—and evidently even in the two to three years before it is court approved. It is hard to think about the future development of the town, but it is important to consider at this time.

Specific Requested Changes

I would like to see an orderly decrease in water use as expected under the state sustainability law rather than an increased allowance for pumping in the first three years, because such increases encourage continued overpumping for three years followed by selling water rights before the overpumping needs to be made up within the first five years of the Plan by subsequent pumping of less water than allocated. This is a detrimental pattern for providing job transitions for residents. I would like to see the water plan protect the town, with protections centered on those who live here, giving attention to increasing options for work and time for transitions for the people who live here.

I would also like to see attention to keeping our water quality high, which means providing for environmental reviews for any intrabasin water transfers and for additional pumping allowed, especially in our Central Management Area, as these could affect water quality.

I would like to see an agreement to close the data gap and expand the Water Quality Monitoring Program into the northern and eastern parts of the Central Management Area. That monitoring needs to happen now in order to have adequate data in two or three years to know if there is any impact from the Northern Management Area where water quality is impacted from agricultural use, on water in the Central Management Area that serves most of the town. This is especially important during the time we are entering that will see changing patterns of water pumping in the valley.

In Closing

I would like to see a water plan that involves the community in these kinds of decisions about our future rather than giving power to determine those decisions to a handful of people or corporations who have been overpumping our water.

Public Comment Letter on the Proposed Watermaster Board in the Borrego Springs Subbasin Stipulation Judgment/Water Plan Rebecca Falk, 3260 Flying H Road, Borrego Springs, CA 92004 760-331-7526, rebfalk7@gmail.com

December 17, 2019

There are two sections below: General Comment, and Specific Points and Requested Changes

General Comment

The proposed Stipulation Judgment and associated documents will be our water plan (Plan) to make our water use sustainable by 2040 in accordance with state law. In general, carrying out the Plan for our water use will be managed by a Watermaster Board, although unresolved disputed matters can be appealed to the Court that will have authority to enforce the Plan and oversee its being carried out. The Stipulation documents describe a Watermaster Board that is composed of only five people, three of whom come from outside the basin. Two fifths of its votes are assigned to those who pump the most water now. They represent individuals or corporations whose investors are based elsewhere. The Stipulation Judgment that determines how water will be managed in our valley far into the future, was negotiated by lawyers representing these interests, and also the interests of BWD, which represented itself and its ratepayers, and will also have one out of the five votes. These three members will serve on the Watermaster Board as of February of 2020.

Another vote is reserved for the County but it is unclear if the County will choose to participate. If it does participate, it may be with a staff member or a political appointee, and that person won't be a Watermaster Board Member until July or so. Finally, there is one vote for a Community Watermaster Board Member, who we are told will be appointed in or before June of 2020.

The carrot in the Stipulation Judgment that brought the farmers to the negotiating table is that with the Plan they will have a marketable water asset, so that if their farms are no longer viable, they have a way to leave with substantial funds anyway. The Stipulation Judgment makes permanent the unchallengeable right to pump the assigned Baseline Pumping Allocations to the parties who negotiated it, now subject to rampdowns (reductions according to a schedule) and a total amount of water that can be pumped valley-wide by 2040 (although this amount likely will be challenged every five years of the reduction period and could be revised). It also determines that all Baseline Pumping Allocations are of equal priority, thereby giving up a potential for municipal water rights to be recognized as of higher priority than other water rights.

Whether this Plan works out over time to the benefit of the community or to its detriment is something we can't know at this point, although it does provide a path to meet the goal of sustainable water use by 2040. But citizens will need to keep an eye on the Watermaster Board. The rules are that it will meet publicly. The Stipulation Judgment provides for a minimum of quarterly meetings. How much will happen in the public view? There are regular meetings with 72 hours notice for agendas and Special meetings with 24 hours notice, and also the possibility of an Adjournment to a new location and time for a meeting with the notice put on the door of the meeting place within 24 hours of the Adjournment decision (all according to the published Stipulation documents). The Technical Advisory Committee that will be appointed by the Watermaster Board can meet by phone but still as a public meeting, publicly noticed. The Watermaster Technical Consultant, once appointed, may also be the Watermaster Board's Executive Director, and that person will track allocations, water use and trading, and issue reports that will be available to the public by request.

All Members but the Community Member of the Watermaster Board will have funds available to them from those they represent for such things as mediation, a court appeal on Watermaster Board actions or decisions, and the hiring of an expert, if these are needed. The Community Member doesn't have its own lawyer, as do the others. The Community Member, of course, also won't be contributing funds additional to BWD's contributions via pumping fees for operating the Watermaster Board. But because decisions of the Watermaster Board will have the greatest effect on those of us who live here, on our lives and families, on our property values, and on the viability of our town, the Community Watermaster Board Member's role is very important.

If all goes well, as the Stipulators have worked hard to make happen, we will have good water into the future. Many decisions that deeply affect our town will be out of our hands, although we will have one person who will have one fifth of the votes to represent us on the five person Board that will be managing our basin, and we will have BWD and its one fifth vote to watch out for water quality, delivery and for basin management. Maybe we can find a way to plan and shape our town without much say in who accumulates rights to the water in our basin, or over decisions about how water is managed in our basin. I'm guessing that is going to be an ongoing challenge, and we will need to be active participants in the way it plays out, using persuasion and public opinion where we don't have votes.

Specific Points and Requested Changes

1. It is important for the Community Member and Alternate Member to be appointed/selected and seated for the first meeting of the Watermaster Board. At the first Watermaster Board meeting each year, the Board will elect the Chair and Vice Chair, and also can appoint a non-member secretary and treasurer. Other possible

appointments are a Technical Advisory Committee and a Technical Consultant who can also be an Executive Director. Since the Watermaster Board budget is published by June 30 for the following year, if there is no Community Member until June, there will be no Community input for the 2020-2021 budget, which determines the year beginning in Oct of 2020, and all matters leading up to the setting of that budget. There will be no community input on setting up an Environmental Working Group and providing it with direction and a budget for that year as well.

- 2. Gary Haldeman, former GSP AC Member, raised an issue of concern at the December 10th community meeting that was held to present information about the Stipulation Judgment—that the only Watermaster Board Community Member and that person's Alternate will be voted on/selected by three Watermaster Board Members who represent Agriculture, Recreation/Golf, and BWD respectively. I think a more fair way to select that person would be to have the Sponsor Group, the BWD (GSP) Ratepayer Group, the Stewardship Council membership and the Park, in consultation with its scientific specialists and staff, vote on selecting the Community Member and Alternate from the list of nominees, with results reported back in time to seat the Community Watermaster Board Member at the first meeting in February.
- 3. In order to strengthen the position of the Community Member, there needs to be some amount of money available specifically to that Member for any needed funds in the case the Community Member needs to hire an expert on a given matter, needs to ask for mediation, or needs to bring a matter to the attention of the Court. Otherwise these options are available to other Watermaster Board Members, who have funds available to them, but not to the Community Member. Is \$10,000 enough for such a fund? \$20,000?
- 4 De Minimis pumpers (those pumping less than 2 acre feet per year, as is likely the case for a residence with its own well) need to be notified about the Dudek study about how their wells may be affected by pumping allowed in a water plan that reaches sustainable use over a twenty year period. A De Minimis pumper could replace the County Member if the County declines to participate.

#4.3

Public Comment Letter with Items of Concern in the Borrego Springs Subbasin Stipulation Judgment/Water Plan Rebecca Falk, 3260 Flying H Road, Borrego Springs, CA 92004760-331-7526, rebfalk7@gmail.com

Items of Concern

- 1. What provisions are there for environmental assessments prior to any intrabasin transfers and for ensuring that pumping after water trading doesn't impact one area more than another, or create new problems? Will there be an anti-degradation analysis for water use prior to such trades and transfers?
- 2. Proposed Stip Judgment p. 26-27: "c. Transfers of BPA Excluded from Conveyance of Parcel. Upon written notice to the Watermaster, a Party may transfer all or any portion of that Party's BPA excluded from the conveyance in accordance with Section III.I(9)(b) to any other parcel or portion thereof overlying the Basin owned by that Party or its affiliate provided that such notice identifies the BPA Parcel(s) and well(s) to which the BPA is to be assigned."
 - I understand that this type of transfer could happen with a pumper who owns multiple parcels in the same Management Area, especially if they are adjacent parcels. And I see that the party accepting the transfer has to have a BPA parcel already. But shouldn't there be a provision to limit this transfer of water rights to parcel(s) in the same management area as the original parcel, unless environmental assessments and degradation analyses as mentioned in item #1 above are conducted prior to the transfer being approved?
- 3. Is the Community Watermaster Board Member is a "party" in the following passage? (Same question of the County Watermaster Board Member, if the County chooses to participate). The following passage also raises the related question: Is the Community Member (County Member) of the Watermaster Board a "party" in the sense that he or she can appeal to a court, request mediation for an unresolved issue, and hire a specialist? Or indeed, can these Members participate in Article II, 2.10 of the Rules and Regs? See the definition of "Party (Parties) that follows. The Community Member of the

Watermaster Board should have equal powers with regard to management as other Members.

- 1. Section 2.62 of Rules and Regs for the WM Board, p. 4 provides for Watermaster Consultant removal and replacement with notice to the parties, and removal can also happen immediately with unanimous vote of the parties. From Definitions, Proposed Stipulation Judgment:
- "40. Party (Parties). Any Person(s) that has (have) been named and served or otherwise properly joined, or has (have) become subject to this Judgment of this Court and all their respective heirs, successors-in-interest and assigns." Also from Rules and Regs, same definition: "1.3.15 Party (Parties). Any Person(s) that has (have) been named and served or otherwise properly joined, or has (have) become subject to this Judgment of this Court and all their respective heirs, successors-in-interest and assigns."
- 4. Prior County fallowing standards included leaving .95 acre foot per parcel so that the fallowed land could be used for a residence with landscaping in the future. The fallowing standard in the Plan does not provide for revegetation or restoration of the land. Is there any water right being left with fallowed land that can be used for restoration at some point? If not, please consider doing this.
- There should be a mechanism for the Watermaster Board Membership or weight of votes to shift over time to accommodate major changes in the percentages of water rights held by the participating sectors.

December 15, 2019

Lundberg Family Trust c/o Mr. Lance Lundberg 6 Fraser Road Westport, CT 08880

Dear Lance:

This letter is in response to your request regarding your water credits issued pursuant to the Borrego Water District's former water credit policy and the "Demand Offset Mitigation Water Credits Policy," which was in effect in 2013 and subsequently amended in June 2014. The following facts remain true and correct as of the date of this letter:

- Lundavid LLC, a Connecticut limited liability company ("Lundavid"), and the Borrego Water
 District (the "District") entered into that certain Bargin Sale and Donation Agreement, dated
 October 22, 2010, as amended by First, Second, and Third Amendments, respectively dated
 November 23, 2010, July 8, 2011, and September 24, 2014 (as amended, the "Agreement"). A
 copy of the Agreement is available upon request.
- 2. The Agreement provides, among other items, that Lundavid will sell certain real property and water credits to the District for Parcel 2 (as defined therein), and that the District will issue certain water credits to Lundavid for Parcel 1 (as defined below) and Lundavid will donate such Parcel 1 without water credits to the District, in each case after fallowing activities are completed on former citrus acreage in Borrego Springs.
- 3. Parcel 2 was sold to the District, along with all water credits related to Parcel 2, in accordance with the Agreement.
- 4. Parcel 1 includes real property at the former citrus farm located at APN 140-030-03, DiGiorgio Road, Borrego Springs, as more specifically described and shown on Exhibit A ("Parcel 1").
- 5. Pursuant to the Agreement, Lundavid and the District agreed that the water credits for Parcel 1 and Parcel 2 would be 294 AG-1 water credits per parcel. (See the Third Amendment)
- 6. Pursuant to the Agreement, Lundavid assigned its rights to the 294 AG-1 water credits for Parcel 1 (the "Parcel 1 Water Credits") to Lundberg Family Trust. (See the Third Amendment.)
- 8. The Parcel 1 Water Credits are based on that certain Grant of Groundwater Easement to the Borrego Water District between Lundavid LLC and the District, dated September 24, 2014, and recorded in the real property records of San Diego County as document number ______ (the "Easement"). A copy of the Easement is attached as Exhibit C.
- 9. All requirements for fallowing were met for the Parcel 1 Water Credits, as acknowledged by the District in the Third Amendment to the Agreement and as evidenced by the recording of the Easement. Specifically, the following minimum requirements or better were met for Parcel 1:
 - a. All agricultural tree crops were destroyed.

- b. All land where the crops were destroyed was stabilized. Dust abatement has been established and completed.
- c. All above ground irrigation lines/piping has been permanently removed.
- d. All hazardous materials (e.g., drums of used oil) have been removed from the fallowed site.

Further, the Borrego Water District knows of no reason why the Parcel 1 Water Credits would not be converted to Baseline Pumping Allocation of approximately [377] acre-feet in accordance with Exhibit "4" to the stipulated judgment that is expected to be filed in a San Diego County court in January, 2020. This letter may be assigned by the addressed party in connection with a transaction for the Parcel 1 Water Credits, and this letter will benefit such future holder of the Parcel 1 Water Credits as well as the addressed party.

Sincerely,

Geoff Poole General Manager

Exhibit A to Estoppel

Parcel 1 Legal Description and Survey Exhibit

See attached.

Exhibit B to Estoppel

Borrego Water District Water Credit Certificate

[to be provided by BWD]

Exhibit C to Estoppel

Grant of Groundwater Easement

[recorded copy to be provided by BWD]



Comments about the Borrego Springs Sub Basin Proposed Stipulated Judgment:

My comments are about the governance and governing body (WaterMaster Board) that will be created to oversee the implementation of the plan. It appears to me that the representative of the small ratepayers and customers (Community Representative) is not given the independent representation they need and should have.

First, the provision that the other members should select the Community Representative is not right. The Community Rep must be selected by the community they are meant to represent. The large commercial water users, agriculture and recreational, should not have a say in the selection of this representative. Perhaps the best way to do this is for the BWD to publicly solicit applicants for that position, and have each fill out an application with resume and reasons for wanting to be on the W/M Board. The public should have time to comment on those applicants, to the BWD. After reviewing the applications and recommendations from the community, the BWD should select the Community Representative. Only in that way can the public have any say in the selections of the Community Rep, whose job will be to represent us, the small ratepayers and customers. That representative should be selected at the time the others are selected, so there are no discussions or decisions without the Community Representative taking part. No meetings or business should be enacted by the W/M Board until that representative is selected.

There also needs to be some provision to provide staff and/or support for that representative equivalent to the staff and support the other members will have.

In other words, all efforts must be made to give us, the small ratepayers, a voice on the W/M Board.

Yours Selden McKee 3193 Club Circle West

BORREGO SPRINGS SUB BASIN STIPULATED JUDGMENT PUBLIC COMMENT FORM

Date:

December 18, 2019

NAME:

Judy Haldeman

ADDRESS:

3142 Duffer Court, B.S., CA 92004

CONTACT E-MAIL:

gary@garybaldy.com

I have the following comments on the Proposed Stipulation and request consideration of the following changes in the documents:

Re: "Ownership of one acre of land in the basin for each 5 AF of BPA"

Land in the basin is very inexpensive – 20 acres could be found for \$20,000, which would make 100 AF of water very easy to acquire. If this is to be a deterrent to speculation, once acre for 5 AF of water is not good enough to inhibit speculation.



County of San Diego

MARK WARDLAW DIRECTOR PLANNING & DEVELOPMENT SERVICES
5510 OVERLAND AVENUE, SUITE 310, SAN DIEGO, CA 92123
(858) 505-6445 General • (858) 694-2705 Codes • (858) 565-5920 Building Services
www.SDCPDS.org

KATHLEEN A. FLANNERY
ASSISTANT DIRECTOR

December 19, 2019

Geoff Poole General Manager Borrego Water District PO Box 1870 806 Palm Canyon Drive Borrego Springs, CA 92004

Delivery via E-Mail (geoff@borregowd.org)

Comments on Proposed Borrego Springs Subbasin Stipulation

Dear Mr. Poole:

The County of San Diego (County) has reviewed the draft Borrego Springs Subbasin (Basin) Stipulation documents that were provided for public review by Borrego Water District (BWD) on November 19, 2019. It is understood that the public comment period ends on December 20, 2019 and BWD intends on filing the Stipulation with the Superior Court of California (Court) prior to January 31, 2020. Once approved by the Court and the California Department of Water Resources (DWR), this Stipulation would provide a comprehensive determination of groundwater rights, establish a Watermaster to manage groundwater resources in the Basin, and be considered an Alternative Submittal in accordance with the Sustainable Groundwater Management Act [California Water Code (CWC) § 10733.6(b)(2)].

Given the substantial public outreach involved in developing the Groundwater Sustainability Plan (GSP) for the Basin, the County is pleased that the GSP was used as the foundation for the Stipulation in substantially similar form. The County acknowledges the significance of reaching agreement in the Stipulation and also recognizes the requirement to satisfy the objectives of SGMA (CWC §§ 10727.2 and 10727.4) while maintaining consistency of water rights (California Code of Civil Procedure (CCP) § 850(a)). Based on this, County staff have prepared the following comments on the draft Stipulation documents:

 Overview of Proposed Stipulated Judgment. The overview references BWD's Developer's Policy. The County requests that BWD provide advanced notice and

- an opportunity for County review of any proposed revisions to BWD's Policy for Water and Sewer Service to New Developments.
- 2. **Draft Stipulated Judgment. III. B. Carryover.** County staff recommend revising the Carryover provision in the Stipulation. Similar to other Stipulated Judgments in California, Carryover could be limited to the following year as in the West Coast Basin; or an allocation percentage carried over with a five-year expiration date similar to Oxnard and Pleasant Valley Groundwater Basins. As proposed in the Stipulation, the only limitation placed on Carryover is that accrual cannot exceed two times the amount of a pumper's allocation. Without further limitations to account for the inclusion of water credits as additional allocation, the Stipulation may not satisfy DWR requirements of achieving sustainability within 20 years (CWC § 10727.2(b)(1)).
- 3. Draft Stipulated Judgment. III. H. De Minimis Pumpers. The Stipulation exempts groundwater users who use 2 acre-feet per year (afy) or less for domestic purposes [emphasis added]. The GSP exempted from regulation all groundwater users who use 2 afy or less. County staff recommend removing 'for domestic purposes' and exempting all users who use 2 afy or less since they would not have a material effect on the groundwater rights of other parties. This is consistent with CCP § 833 (d).
- 4. Draft Stipulated Judgment. III. I. 1. Good Standing and Intervention Requirements. The Stipulation states that, '[a] transferee who is not already a Party must intervene as a Party as a condition of completing any Lease or Permanent Transfer." It is unclear if property owners must sign on to the Stipulation in order to participate. Note that a Party is defined as "Any Person(s) that has (have) been named and served or otherwise properly joined, or has (have) become subject to this Judgment of this Court and all their respective heirs, successors-in-interest and assigns."
- 5. Draft Stipulated Judgment. III. I. 2. Anti-Speculation Provision. The Stipulation states that only a property owner can purchase water rights. County staff recommend that for discretionary permits approved by the County, only a property owner or project applicant/developer (with consent from the property owner) should have the ability to purchase needed water rights. BWD and the County are excepted from this provision.
- 6. Draft Stipulated Judgment. IV. B. Watermaster Board. The Stipulation currently lists the County as a proposed member of the Watermaster Board. While it is understood that the Court will need to appoint members to the Watermaster Board, the County's participation would require approval by the County Board of Supervisors at a future hearing. Staff recommends including

Borrego Stipulation Comments December 19, 2019 Page 3

- language to that effect in the Stipulation and consideration of an alternative if the County Board of Supervisors declines to participate on the Watermaster Board.
- 7. Draft Stipulated Judgment. Exhibit 3. Minimum Fallowing Standards. The Stipulation requires all agricultural tree crops be destroyed (e.g., chipped or burned). County staff recommend adding clarifying language stating that a fire department burn permit and Smoke Management Plan approved by County Air Pollution Control District may be required for agricultural burning.

Thank you for the opportunity to provide comments. Should you have any questions or need additional information, please contact Jim Bennett, Water Resources Manager, at 858-694-3820 or iim.bennett@sdcounty.ca.gov.

Sincerely,

MARK WARDLAW, Director Planning & Development Services

CC.

Steven Anderson Best Best & Krieger LLP 3390 University Ave., 5th Floor Riverside, CA 92501

Jim Bennett, Water Resources Manager Planning & Development Services County of San Diego 5510 Overland Avenue, Suite 310 San Diego, CA 92123

Tub Canyon Landowners Association 230 W. Palm St. San Diego, CA 92103

December 20, 2019

Geoff Poole General Manager, BWD Borrego Springs, CA 92004

Dear Geoff,

I am writing in my capacity as President of the Tub (sic) Canyon Landowners Association, which is a non-profit mutual benefit water corporation that operates a well and provides water to four seasonal residences in the Tubb Canyon neighborhood. This well, which is within the boundaries of the Borrego Basin, has been in operation for approximately 50 years.

My understanding is that our well will be designated a <u>de minimis</u> pumper under the draft Groundwater Sustainability Plan (GSP) created by the Borrego Basin Groundwater Sustainability Agency (GSA) and published in late 2019. I say this is my "understanding" because neither I nor the association I represent have been notified of any of the proceedings of the GSA.

It is with concern that I inform you that not only has my organization not been notified of any of the proceedings which will determine our water future, but it appears <u>de minimis</u> pumpers such as my organization are to have no representation on the Watermaster Board as proposed in the Stipulated Agreement.

I understand that <u>de minimis</u> pumpers are explicitly "not a part of the plan" nor are <u>de minimis</u> pumpers regulated by the plan. Nevertheless, the management actions of the Watermaster Board will have existential consequences for everyone whose survival is <u>dependent upon the amount and quality of water in the Borrego Basin, including <u>de minimis</u> pumpers. For this reason and from the perspective of my water association, it is unacceptable that <u>de minimis</u> pumpers will have no representation on the Watermaster Board.</u>

Representation is particularly critical from the standpoint of my association which has seen its water level decline by 4 feet/year for the 12 years ending in 2017. Our water consumption has not changed in that period of time, and if anything, has decreased. Thus, the decline in the water table that we are witnessing at our well is attributable to the decline of the Borrego Basin aquifer. At the current rate of decline our well will run dry within a decade, which

we would view as an unacceptable consequence of the Stipulated Agreement and Groundwater Management Plan.

The survival of the homes and families who have lived in the Tubb Canyon neighborhood for more than 50 years is at stake and will be impacted by the decisions of the Watermaster Board. I understand that our survival is threatened by the current conditions that the Stipulated Agreement and Groundwater Management Plan are designed to address. Nevertheless, there are many routes to sustainability, some of which would lead to the drying up of our well, and others which would not. For this reason, it is imperative that deminimis pumpers have input into the management decisions that will get us to sustainability.

Therefore, I propose that <u>de minimis</u> pumpers be allotted one seat on the proposed Water Master Board and that this representative be selected by, and from among, the owners of <u>de</u> minimis wells.

Thank you,

J. David Garmon, M.D. President, TCLA



December 20, 2019

Geoff Poole General Manager, BWD Borrego Springs, CA 92004

Dear Mr. Poole,

Thank you for your herculean efforts to bring our basin into sustainability.

I am writing today in response to the publication of the proposed Stipulated Agreement, and in particular would like to address the selection, seating, and funding of the proposed Community Representative to the Watermaster Board. If the implementation of the Stipulated Agreement is to have the support of the community, it is imperative that the community have the right to select its own representative, and that the Community Representative be fully empowered to carry out his/her obligations to the community. As currently envisioned, the Stipulated Agreement falls far short of meeting these requirements. I offer the following paragraphs as descriptions of the shortcomings and suggestions for cure.

Selection of the Community Representative

As currently written, four community groups are to nominate three candidates for the Community Representative position, and the school district is to nominate one. I submit there is no reason that serves the interests of the community to give more "nominating power" to the school district than to the other four community organizations—the Anza-Borrego Desert State Park (that manages the entire watershed), the Sponsor Group, the Ratepayer Group, and the Stewardship Council.

Greatly compounding the arbitrary and indefensible nature of the nominating process, as currently proposed, is the fact that the Agricultural and Recreational Representatives to the Watermaster Board would then select the "community representative" from among the four nominees. I submit that this selection process would serve no purpose but to transform the "community representative" into the

8899 University Center Lane, Suite 170, San Diego, CA 92122 Phone 858 535-9121 Fax 858 535-9156 creature of those entities doing the final selection—Agriculture and Recreation—thereby depriving the community of unfettered, unbeholden representation. Despite the good intentions of all parties, allowing the Agriculture and Recreation Representatives to select the Community Representative does not pass the appearance test nor the smell test.

I suggest that the two flaws outlined above can be cured with the following change to the selection of the Community Representative to the Watermaster Board: representatives, as currently defined, of the State Park, the Sponsor Group, the Stewardship Council, the Ratepayer Group, and the School District elect the Community Representative. Period. This group of five people, four of whom served on the Advisory Council, plus a school board representative will nominate, vet, and elect the community representative.

This solution avoids the appearance of excessive and undue influence on the Community Representative by other members of the Watermaster Board.

Seating of the Community Representative

As currently envisioned, the Community Representative would not be seated until mid-2020. Thus, the Community Representative would not be seated until after the seating of the Agricultural Representative, the Recreational Representative, the BWD Representative, and perhaps the County Representatives. Thus, the Community Representative would not be seated until after critical decisions have been made, at a minimum about the 2020-2012 budget.

Is this delay in seating the Community Representative because the Community Representative is not really important to the process? Is it because the Community Representative would have nothing of importance to contribute the initial, formative decisions of the Watermaster Board? Is it because the Community Representative is just an afterthought that can be attended to when there is time to address details of secondary importance? I offer these questions to illuminate the optics of delaying the seating of the Community Representative.

I am aware of no justifiable reason as to why the seating of the Community Representative should be delayed, thereby leaving the community out of the seminal decision-making processes that may define the course of the Waterboard for years, if not decades, to come.

The cure for this procedural problem is to seat the Community Representative at the same time as the other Representatives to the Watermaster Board. To do otherwise would be to send a message to the Borrego community that their input is not needed until after the important, foundational decisions have been made.

8899 University Center Lane, Suite 170, San Diego, CA 92122 Phone 858 535-9121 Fax 858 535-9156 Delaying the seating of the Community Representative is not a recipe for garnering public support for what will be a long and arduous process.

Funding of the Community Representative

The Representatives to the Watermaster Board will be empowered to hire advisors to the Technical Advisory Committee and the Environmental Advisory Committee. They will be empowered to negotiate and bring suit on behalf of their constituencies. All of these critically important prerogatives and activities require funding. Four of the Representatives to the Watermaster Board will have deep pockets—Agriculture, Recreation, BWD, and the County of San Diego—that can fund these critical activities. The Community Representative will not.

As currently envisioned the Community Representative will have no available source of funding for any of the important activities listed above. If the Community Representative is to be a fully empowered, credible representative of community interests, the Community Representative must have access to a source of funding that would be sufficient to hire technical advisors and legal advisors on par with the other members of the Watermaster Board. If the Community Representative does not have access to such funding, s/he would have only the power of suasion—a not insignificant power, but a power that struggles mightily against those with financial resources.

I suggest a cure for this inequity would be to make sufficient funding available to the Community Representative through the BWD or the GSA as to put the Community Representative on equal footing with the other members of the Watermaster Board.

Thank you for your consideration.

J. David Garmon, M.D. President, TCDC

Davie Dex

8899 University Center Lane, Suite 170, San Diego, CA 92122 Phone 858 535-9121 Fax 858 535-9156

Tub Canyon Landowners Association 230 W. Palm St. San Diego, CA 92103

December 20, 2019

Geoff Poole General Manager, BWD Borrego Springs, CA 92004

Dear Geoff.

I am writing in my capacity as President of the Tub (sic) Canyon Landowners
Association, which is a non-profit mutual benefit water corporation that operates a well and
provides water to four seasonal residences in the Tubb Canyon neighborhood. This well, which
is within the boundaries of the Borrego Basin, has been in operation for approximately 50 years.

My understanding is that our well will be designated a <u>de minimis</u> pumper under the draft Groundwater Sustainability Plan (GSP) created by the Borrego Basin Groundwater Sustainability Agency (GSA) and published in late 2019. I say this is my "understanding" because neither I nor the association I represent have been notified of any of the proceedings of the GSA.

It is with concern that I inform you that not only has my organization not been notified of any of the proceedings which will determine our water future, but it appears <u>de minimis</u> pumpers such as my organization are to have no representation on the Watermaster Board as proposed in the Stipulated Agreement.

I understand that <u>de minimis</u> pumpers are explicitly "not a part of the plan" nor are <u>de minimis</u> pumpers regulated by the plan. Nevertheless, the management actions of the Watermaster Board will have existential consequences for everyone whose survival is dependent upon the amount and quality of water in the Borrego Basin, including <u>de minimis</u> pumpers. For this reason and from the perspective of my water association, it is unacceptable that <u>de minimis</u> pumpers will have no representation on the Watermaster Board.

Representation is particularly critical from the standpoint of my association which has seen its water level decline by 4 feet/year for the 12 years ending in 2017. Our water consumption has not changed in that period of time, and if anything, has decreased. Thus, the decline in the water table that we are witnessing at our well is attributable to the decline of the Borrego Basin aquifer. At the current rate of decline our well will run dry within a decade, which

we would view as an unacceptable consequence of the Stipulated Agreement and Groundwater Management Plan.

The survival of the homes and families who have lived in the Tubb Canyon neighborhood for more than 50 years is at stake and will be impacted by the decisions of the Watermaster Board. I understand that our survival is threatened by the current conditions that the Stipulated Agreement and Groundwater Management Plan are designed to address. Nevertheless, there are many routes to sustainability, some of which would lead to the drying up of our well, and others which would not. For this reason, it is imperative that deminimis pumpers have input into the management decisions that will get us to sustainability.

Therefore, I propose that <u>de minimis</u> pumpers be allotted one seat on the proposed Water Master Board and that this representative be selected by, and from among, the owners of <u>de</u> minimis wells.

Thank you,

J. David Garmon, M.D. President, TCLA

BORREGO SPRINGS SUB BASIN STIPULATED JUDGMENT PUBLIC COMMENT FORM: Due 12-20-19 @ 4PM

NAME: Jim Peugh

ADDRESS: San Diego Audubon Society, San Diego, CA

CONTACT INFO (EMAIL/PHONE): peugh@cox.net and meyer@sandiegoaudubon.org

San Diego Audubon Society has the following comments of the proposed stipulation and request consideration of the following changes in the documents: We commented on the GSP under the SGMA on 5/17/2019, and follow up with comments here on the stipulated judgment.

There are 3 issues, starting with the makeup of the Watermaster Board of Directors. There is a lack of environmental representation on the Board. There is one seat to be filled, that is to be chosen from four nominees picked by BWD Ratepayers, Borrego Springs Community Sponsor Group, Anza-Borrego Desert State Park, Borrego Valley Stewardship Council, and Borrego Springs Unified School District. Then the other four members already appointed to the Board choose the nominee. There is no timetable disclosed to the duration of Board member's appointment. Environmental issues might never get the attention they deserve to be addressed or discussed with a Board composed and appointed in this way. There should be a permanent seat on the Board of Directors for an Environmental Representative due to the sensitive nature of water in the Borrego Springs ecosystem. At the very least, there should be a dedicated rotation of appointees representing the interests of the groups mentioned above outside the influence of the other members already sitting on the Board. This will allow critical issues to be acknowledged and addressed before the Board.

Secondly, more information is desired on the Environmental Group that will advise the Watermaster on Groundwater Dependent Ecosystems. What will the procedures be to form this group and how will their consultation be properly addressed during construction of policy? These should be clearly identified in the final prepared documents because this group is in important oversight and communication piece of the full plan.

Lastly, all CEQA related review of implementation of the Physical Solution has been removed from the Stipulated Judgment. There should be a full discussion presented in the final report on why there was an exemption of CEQA oversight and under what circumstances. We would appreciate notice upon this letter being received and express thanks for the opportunity to provide input. We look forward to seeing these issues addressed in the final report.

Sincerely,

James A. Peugh

Conservation Chair

San Diego Audubon Society

Sames Cl. Paryl



DEPARTMENT OF PARKS AND RECREATION

Gavin Newsom, Governor Lisa Ann L. Mangat, Director

COLORADO DESERT DISTRICT 200 PALM CANYON DRIVE **BORREGO SPRINGS, CA 92004** 760-767-4037

December 20, 2019

Geoff Poole General Manager Borrego Water District 896 Palm Canyon Drive Borrego Springs, CA 92004

RE: Draft Borrego Springs Subbasin Stipulated Judgment

E-mail: geoff@borregowd.org

Thank you for the opportunity to comment on the Proposed Stipulation Documents. Anza-Borrego Desert State Park® ("ABDSP") is approximately 1,000 square miles and surrounds the approximate 98 square mile Borrego Springs Subbasin ("Subbasin"). ABDSP continues to grow. Currently ABDSP anticipates receiving an additional 331 parcels totaling 17.598 acres from its partner, Anza-Borrego Foundation ("ABF"). There will likely be other acquisitions in the future through ABF. See further details in State Parks' letter to San Diego County, dated May 21, 2019, attached.

State Parks has several comments, primarily seeking clarification of several of the terms in the Proposed Stipulated Judgment ("Judgment").

1. I.A.9. and III.D. The allocation of 20 acre feet to State Parks for its purposes should not be impacted by future State Parks fee title transfers.

Because State Parks' allocation under the Judgment does not appear to be connected to any parcel, and ABDSP is comprised of many parcels, the Judgment should clarify that the term BPA Parcel (I.A.9.) does not include the parcels in State Parks' ownership at the time of filing the Complaint. Should State Parks acquire parcels in the future that qualify as BPA Parcels, State Parks may acquire the BPA pursuant to the terms of the Judgment.

Instead of applying the default rule identified in paragraph II.I.6. to State Parks' allocation, subsection III.D. should clarify that State Parks' allocation of 20 acre feet would not be impacted by any transfer of parcels in or out of ABDSP's jurisdiction.

Geoff Poole December 20, 2019 Page 2 of 2

2. **III.D.** The allocation of 20 acre feet should clarify whether the allocation includes the *de minimis* groundwater pumping at Vern Whitaker Horse Camp ("Horse Camp").

Under the draft Groundwater Sustainability Plan, the Horse Camp was considered a *de minimis* pumper, and not included in State Parks' baseline pumping allocation. See attached letters from San Diego County Planning & Development Services. The Judgment does not clarify whether pumping from the Horse Camp is still considered *de minimis*.

3. **IV.E.10.** and **VI.B.2**. The Entry Agreement should include cost recovery for State Parks should the Watermaster's entry onto State Parks' property require State Parks employees to conduct environmental or cultural resource review.

Pursuant to the State Administrative Manual section 8752, State Parks requires full cost recovery for provision of goods or services except where statutes so prohibit. The Entry Agreement provides for expansive activities beyond entry upon property to conduct water quality testing. If the activities the Watermaster intends to engage in on ABDSP land require environmental or cultural resource review, the Entry Agreement should provide for cost recovery to State Parks.

- 4. **IV.G.** The Judgment should elaborate its description regarding the Environmental Working Group. How is the group formed and who determines its members?
- 5. V.A.2. The Judgment should clarify whether there will be any exemptions to the overproduction penalty assessment, such as water pumped for firefighting purposes or used during declared natural disasters.

Sincerely, Emma Sivosers

Ray Lennox

District Superintendent

Colorado Desert District

Enclosures

Lisa Ann L. Mangat, Director



DEPARTMENT OF PARKS AND RECREATION COLORADO DESERT DISTRICT 200 PALM CANYON DRIVE BORREGO SPRINGS, CA 92004 760-767-4037

December 20, 2019

Geoff Poole General Manager Borrego Water District 896 Palm Canyon Drive Borrego Springs, CA 92004

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Geoff Poole December 20, 2019 Page 2 of 2

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Sincerely, Comma Sivosers for

Ray Lennox

District Superintendent

Colorado Desert District

Enclosures





Leaders for Livable Communities

December 20, 2019

Geoff Poole, General Manager Borrego Water District

Re: Comments on draft Stipulated Judgement for Borrego Groundwater Basin (7-024.01)

Dear Mr. Poole,

On behalf of Clean Water Action and the Local Government Commission, we would like to make the following comments on the draft stipulated judgement for the Borrego groundwater basin. Our organizations are strong advocates for sustainable groundwater management and appreciate the intent of the plan to reach sustainability within the time period mandated by the Sustainable Groundwater Management Act. However, we do have some concerns about the extent to which disadvantaged communities and the environment are protected in this proposal. Our concerns and suggested remedies are outlined below.

 The Proposed Adjusted Pumping Allocation, as applied to residential uses, does not comply with state law and disproportionately burdens a severely disadvantaged community.

California State Law says that "the use of water for domestic purposes is the highest use of water." Yet the proposed judgement requires a specific level of water use reduction for residents of both public water systems and state small water systems - 76% - without regard to the actual amount required for human consumption. While we agree that water waste needs to be minimized and that significant reductions, possibly as great as the 76% reduction called for, can be achieved, we are concerned that setting a specific floor could result in the Borrego Water District and other small water systems in the basin being forced to compete with private

California Water Code §106 "It is hereby declared to be the established policy of this State that the use of water for domestic purposes is the highest use of water and that the next highest use is for irrigation."

interests to purchase water to meet minimum health and safety requirements. As your own Groundwater Management Plan identifies, Borrego Springs is a severely disadvantaged community and its ability to raise rates is limited by the community's ability to pay. By effectively forcing Borrego Water District to compete for additional groundwater shares, likely to the detriment of affordable water rates, the GSA is setting itself up to be in conflict with the Human Right to Water². While the Human Right to Water does not apply directly to GSAs, it does apply to the Department of Water Resources, which must take the state policy into consideration while reviewing Groundwater Sustainability Plans.

The Borrego Water District is already required to comply with the "Conservation as a Way of Life" legislation passed in 2018. Regulations to implement that legislation are currently in development.

Recommendation: We propose that disadvantaged community water systems like Borrego Water District be exempt from mandatory reductions under the stipulated judgement, and instead be allowed to comply with laws and regulations that regulate residential water use, as they may be updated³. The Watermaster Board should work with the District on measures that would allow the District to reduce groundwater usage in a way that does not result in unaffordable water rates. For other residential systems, we recommend that minimum usage be set at a level based on actual human needs and incorporating current best practices and available technology for water conservation.

II. The Water Master Board, as proposed, lacks sufficient transparency and oversight

We have several concerns with the Water Board makeup and function and recommend the following changes to address those concerns.

- The supermajority requirement of 80% to take certain actions seems high, and appears to be a function of the size of the Watermaster Board. We think an increase in size to 7 members would allow a less onerous supermajority of 5
- At the same time, the language in the stipulated judgement could allow as few as 2 members to make decisions on some issues. This is because majority decisions are made based on members present rather than the total number of seats. We recommend using the latter count to make decisions to avoid the potential of allowing a minority of members to make decisions.
- > We recommend that two members should be added to the Watermaster Board; one representing de minimis users and one representing environmental concerns.

²California Water Code §106.3

³ The State Water Board has identified 55 gallons of water per capita per day as the conservation goal for indoor use (Resolution 2016-0010), while the Model Water Efficient Landscape Ordinance, which is currently being updated, sets standards for determining outdoor water use.

- O While the draft judgement currently excludes de minimis pumpers from oversight, that decision can be reversed. Additionally, while these users are not subject to pumping restrictions, the continued groundwater overdraft will impact their ability to use groundwater. These interests have a legal right to participate in the adjudication process; we strongly recommend that clear arrangements be made to accommodate those rights. The appointment can be made by a coalition of those pumpers
- While agricultural and recreational interests have seats on the board, the interests of the environment do not. This seems incongruous in a basin surrounded by a state park that is an economic driver in the community. Further, this is an economic driver that will be minimally impacted by the pumping reductions required to meet groundwater sustainability requirements. If, as many local residents believe, eco-tourism has the potential to play an important role in the future of the valley, it should also play a role on the Watermaster Board. We think the current Borrego Stewardship Council could make this appointment.
- We also recommend that the selection process for the community member already identified for the Watermaster Board be made independently of the other Board members. It seems inappropriate for Board members to select their colleague when that process is not used for the other appointments. It exacerbates a power imbalance that unfortunately already exists.
- We disagree with the assertion on Page 31 of the stipulated judgement that the Watermaster Board does not function as a "local agency" under Government Code section 54951, and that compliance with the Brown Act is thus determined by the Court. A public agency for the purposes of the Brown Act is one "be created by statute or Constitution." (McKee v. Los Angeles Interagency Metropolitan Police Apprehension Crime Task Force (2005) 134 Cal.App.4th 354, 359; Gov. Code § 54951.) Watermasters are created by statute, even when the specific water rights are adjudicated by a court. (Wat. Code §§ 4026, 4027.) Therefore, the Watermaster board is a public agency for the purposes of the Brown Act.
- We're concerned that representatives on the technical advisory committee are restricted to those holding Basin Pumping Allowances (BPAs). This effectively bans expertise representing the environment and de minimis pumpers and has a strong potential of generating recommendations that are not in the public interest
- The Environmental Working Group is created by the judgement, but provided with no required membership, qualifications, or direction. We strongly urge that additional thought be put into this proposed group, including what its role and authority will be, what expertise might be needed and how its recommendations will be approved, funding and implemented.

III. The Propose Transfer Program does not adequately protect communities or the environment

While we appreciate the opportunity to comment on this document, we're troubled by the secretive process under which it was developed. Specifically, the proposed judgement lacks sufficient protections for communities and the environment, even though these uses form a very small portion of overall water use.

- First, while we agree that all users should be required to conserve water, residential users should be guaranteed a basic level of safe drinking water, as noted above.
- > Second, the document identifies de minimis users as not having an impact on the basin, but reserves the right to change that finding in future. At the same time, the potential impact of the proposed BPAs on de minimis users are not considered. This means that de minimis users have no rights, but are subject to impacts and future regulation
- The environmental water demand of the basin is not identified or provided for in the BPAs.
- ➤ The water demand of land fallowing is not considered. Exhibit 3 includes minimal requirements for permanent land fallowing that are inadequate to prevent negative impacts including blight. At minimum, sufficient water should remain with the land to ensure proper dust mitigation, including cover cropping and/or spraying. Additionally, these requirements are not applied to temporary transfers, even if those transfers span multiple years. Given the severe local climate, we fear that dust mitigation could be required even for single-year transfers. We strongly recommend that these standards be made more protective of public health and applicable to both temporary and permanent transfers.⁴

Thank you for considering these comments. We are happy to schedule a meeting to discuss these concerns.

Sincerely,

Jennifer Clary

Water Program Manager

Clean Water Action

Danielle Dolan

Water Program Director

Local Government Commission

Danille Dolan

⁴ The Imperial Irrigation District recently adopted a robust dust mitigation program, which can be found at <a href="https://www.iid.com/water/library/gsa-water-transfer/mitigation-implementation/air-quality-mitigation-implementatio

