

# **Borrego Springs Watermaster Board Special Meeting May 28, 2020 @ 5:30 p.m.**

Borrego Water District:  
806 Palm Canyon Drive  
Borrego Springs, CA 92004

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## **I. OPENING PROCEDURES**

- a. Call to Order:
- b. Pledge of Allegiance
- c. Roll Call
- d. Approval of Agenda
- e. Approval of Minutes:  
April 16, 2020 (3-6)
- f. Comments from the Public & Requests for Future Agenda Items (may be limited to 3 min)
- g. Comments from Directors
- h. Correspondence Received from the Public: None

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

- a. Confirmation of List of Responsive Firms for Executive Director/Technical Consultant - Poole (7)
- b. Selection of Legal Counsel. Executive Director/Technical Consultant: Next Steps - Poole (8-9)
- c. Public Comments Received on the Alternative and Next Steps for the Stipulating Parties to Respond and Consider an Addendum – M Staples, AAWARE (10)
- d. Pending action by County of San Diego Supervisors re: Declining Board Seat – Poole (11)
- e. Clarification of Request from May 14 WM Board Meeting re: Meter Installations – Director Duncan (12)

## **III. STAFF REPORTS**

- a. Financial Reports: None
- b. Water Use Reports: None
- c. Executive Director Report: None

- IV. **CLOSED SESSION: PUBLIC EMPLOYEE APPOINTMENT:** Appointment of Watermaster Legal Counsel (LC) pursuant to subdivision (b)(1) of Government Code Section 54957
- V. **CLOSED SESSION: PUBLIC EMPLOYEE APPOINTMENT:** Appointment of Watermaster Technical Consultant / Executive Director pursuant to subdivision (b)(1) of Government Code Section 54957
- VI. **CLOSING PROCEDURE:** The next Board Meeting has yet to be scheduled at Borrego Water District, 806 Palm Canyon Drive, Borrego Springs, CA 92004

AGENDA: May 28, 2020 All Documents for public review on file with the Watermaster temporarily located at 806 Palm Canyon Drive, Borrego Springs CA 92004 Any public record provided to a majority of the Board of Directors less than 72 hours prior to the meeting, regarding any item on the open session portion of this agenda, is available for public inspection during normal business hours at the Office of the Board Secretary, located at 806 Palm Canyon Drive, Borrego Springs CA 92004. The Borrego Springs Watermaster complies with the Americans with Disabilities Act. Persons with special needs should call Geoff Poole – at (760) 767 – 5806 at least 48 hours in advance of the start of this meeting, in order to enable the District to make reasonable arrangements to ensure accessibility. If you challenge any action of the Board of Directors in court, you may be limited to raising only those issues you or someone else raised at the public hearing, or in written correspondence delivered to the Board of Directors (c/o the Board Secretary) at, or prior to, the public hearing.

**Borrego Springs Watermaster Board**  
**MINUTES**  
**Special Meeting**  
**April 16, 2020 @ 5:30 p.m.**  
**Borrego Water District Office:**  
**806 Palm Canyon Drive, Borrego Springs, CA 92004**

**I. OPENING PROCEDURES**

**A. Call to Order:** Borrego Water District General Manager Geoff Poole called the meeting to order at 5:30 p.m.

**B. Pledge of Allegiance:** Those present stood for the Pledge of Allegiance.

**C. Roll Call:      Directors:      Present:      Dave Duncan, Mark Jorgensen, Mike Seley, Shannon Smith**

**Staff:              Geoff Poole, BWD  
Steve Anderson, Best Best & Krieger  
Russell McGlothlin, O'Melveny  
Michele Staples, Jackson Tidus  
Esmeralda Garcia, BWD  
Wendy Quinn, Recording Secretary**

**Public:              Harry Ehrlich                      Rebecca Falk  
Rich Pinel                      Trey Driscoll, Dudek  
Tim Ross, DWR                  Cathy Milkey, Rams**

**Bill Carpenter                      Hill  
Phyllis Stanin                      Kathy Dice, BWD  
Martha Deichler, BSUSD      Bruce Mortazavi  
Lyle Brecht, BWD                  Diane Johnson, BWD**

**D. Approval of Agenda: *MSC: Smith/Seley approving the Agenda as written. The roll call vote was unanimous.***

**E. Approval of Minutes – Special Meeting March 31, 2020: *MSC: Jorgensen/Seley approving the Minutes of the Special Meeting of March 31, 2020 as corrected (Item II.A, second paragraph, add “acre-feet-per-year” after the figures “20,028” and “17,366;” and “acre-feet” after “30,482”).***

**F. Comments from the Public on Items not on the Agenda:** Rebecca Falk expressed concern regarding a suggestion from the last meeting that the WMB legal counsel need not be a water law specialist. Russell McGlothlin explained that he was not recommending that the WMB *not* hire a water law specialist, which would be ideal. There are about 20 of these on the list for consideration, as well as public law attorneys. He just didn't want the search limited to only water law attorneys, if there is an outstanding public law specialist.

**G. Comments from Directors:** Director Smith reported that he had discussed the County's participation in the WMB with County staff and encouraged them to join. He provided some information on the County's liability concerns associated with serving on the WMB.

**H. Correspondence Received from the Public:** None

**I. Initial Comments from Legal Counsel re Conflict of Interest Issues:** Steve Anderson reiterated that he is the General Counsel for BWD, and he is helping the WMB, along with Mr. McGlothlin and Michele Staples, until a WMB counsel is appointed. His fiduciary duty is to BWD, as is the others to their clients.

**J. Initial Comments from Legal Counsel re Watermaster Governance Documents and Voting:** Mr. Anderson noted that the governing documents (Judgment and Rules and Regulations regarding voting structure) do not require a super majority vote on anything before the Board today. Should

one arise in the future, such as appointment of the Executive Director and Counsel, he recommended proceeding on a consensus basis.

## II. ITEMS FOR BOARD CONSIDERATION AND POSSIBLE ACTION

A. Request for Qualification for Selection of Executive Director/Technical Consultant: Mr. Poole referred to the Board's action at its last meeting to circulate an RFQ, offering the option to combine the Executive Director and Technical Consultant positions. Mr. Anderson sought Board direction on the review process once responses to the RFQ are received. Ms. Staples reported that the attorneys had worked together to revise the original RFP into an RFQ. Applicants can apply for either position separately or both together. She noted that the draft RFQ in the Board package refers to a "Technical Advisor," whereas the Stipulation uses "Technical Consultant." She will make the change. She added that the Stipulated Judgment requires input from the Technical Advisory Committee in the selection of the Technical Consultant, so that Committee will need to be formed.

Director Smith suggested that in section 1.B of the RFQ, second indented paragraph, the word "monitoring" be substituted for "ensuring" compliance. It is the WMB's role to ensure compliance with the Stipulation provisions. Ms. Staples concurred. Director Duncan recommended that section 2.A, first paragraph, after "data collection and analysis," "assist in preparation of DWR annual reports and five-year reviews" be added. The Executive Director prepares these reports, and the duty will be added to the ED section. Ms. Staples referred to section 1.B, listing one of the Executive Director's duties as "attending all meetings of the Watermaster Board and hearings before the overseeing Court." She questioned whether the provision should specify "in person," or could he/she attend remotely. Mr. Poole suggested not specifying "in person," and Director Duncan concurred. Cathy Milkey suggested leaving it in the discretion of the Board; in the future, the WMB or ED might want to require in-person attendance. Ms. Staples will add, "in person or electronically, as conditions warrant" to the duties for both ED and TC. As for another proposed duty, "managing work in regional and inter-agency affairs and working on Basin-wide and Statewide water issues," Director Smith questioned whether that might be beyond what is required by the Stipulated Agreement. Mr. Anderson recommended it be deleted. Ms. Staples agreed to delete it from both the Executive Director's and Technical Consultant's duties.

The due date for RFQ responses was extended from May 15 to May 22. Mr. Poole will receive, open and distribute them. After discussion, it was agreed to consult with the TAC; post submittals on the WM and/or BWD website without economic information (applicants will be asked to submit that separately); and interview finalists in an open WMB meeting. Alternates may review the submittals. Ms. Staples will compose a subject line for submittal e-mails. Applicants for ED or TC alone are limited to 10 pages; those applying for a combined position may have 15. Ms. Staples will explain in the cover letter that the ED/TC position(s) are not interim. The RFQ title, "Executive Director and/or Technical Advisor to Interim Borrego Springs Watermaster," could be misleading. It is the WMB that is interim. Mr. Poole will discuss distribution with Trey Driscoll and Phyllis Stanin.

*MSC: Smith/Duncan instructing Mr. Poole and the three attorneys to make the changes to the RFQ discussed, post it on the BWD website and circulate it to prospective applicants as recommended by the technical advisors. The roll call vote was unanimous.* Mr. Driscoll offered to send a list of potential consultants from ACWA to the WMB members.

B. Set Interim Principal Office of the Watermaster:

C. Continued "Staff" Support from BWD prior to Ex. Dir. Selection:

The WMB had authorized the use of the BWD office as their address of record, which will be changed once an Executive Director and office are acquired. Correspondents will be asked to address mail to the WMB c/o BWD. Mr. Poole asked whether the Board wanted him to open the

mail. Director Smith recommended that Mr. Poole open it, scan it and send it to each of the Directors and Alternates. Mr. Poole will encourage the use of e-mail. He noted that the BWD Board had authorized the interim support for 90 days.

### III. STAFF REPORT

#### A. Informational Items:

##### 1. Upcoming Deadlines from the Settlement Agreement/Judgment.

a. BPA Fee Collection Schedule. Director Smith reported that invoices for Settlement Agreement costs would be going out to the stipulating pumpers tomorrow. A second payment will be requested in June.

b. Other Upcoming Dates. Mr. Anderson requested that each Board member have their technical consultants e-mail their names to Mr. Poole so a Technical Advisory Committee can be convened in the next four to six weeks and a roster can be established. The TAC will have a role in reviewing responses to the RFQ.

Director Seley reported he would have an updated status report on agricultural meter installation for the next meeting. He will also create a list of who has what type of meter, to be turned over to the permanent WM staff upon selection for maintenance of the meter list. Director Smith will do the same for the stipulating pumpers in the recreation sector.

Ms. Staples announced that May 15 is the deadline for comments to DWR on the Stipulated Judgment Alternative.

2. Status of April 2020, DWR Annual Report Filing. Mr. Anderson reported that he had made the changes to the DWR Annual Report requested by the Board at its last meeting, submitted it by the April 1 deadline and posted it on the BWD website. Tim Ross reviewed the submittal. So far the only comment received on the Stipulated Judgment Alternative has been from the Borrego Air Ranch.

3. Status Update on Request for Proposal for Legal Counsel. Mr. Poole reported that the RFP for Legal Counsel had been posted in ACWA News, the Brown and Caldwell website and the BWD website. Upon receipt of proposals, he will distribute them to the WMB and post them on the BWD website without economic information.

4. Status of BWD letter to Watermaster confirming status of existing Water Credits. Mr. Poole reported that BWD had changed its water credit policy in March, and he was working with Mr. Anderson to notify holders. He is working on a letter to the WMB confirmed the existing credits and their effect on the BPAs, which should be complete next week. Ms. Milkey expressed concern regarding the fallowing requirements, and requested direction. Mr. Poole confirmed that all fallowing requirements had been met by all parties, and he will include that information in his letter to the WMB. Director Smith noted that some were concerned about environmental waste and wanted to make sure that issue was resolved. Mr. McGlothlin pointed out that the Judgment provides that the WM must issue a letter within six months of its formation regarding the ability to exercise and transfer water credits based on fallowing compliance. The WM needs to issue that letter, informing water credit/BPA holders that they are free to transfer. Mr. Poole confirmed that all waste material had been removed.

5. Status of Watermaster/Informational Website. Mr. Anderson reported he had received a cost estimate from the company that will be helping with the adjudication by serving notice on the landowners in the Borrego Valley. This consultant will also organize and maintain the WMB websote until an ED is hired and that function can be transferred to WM staff.

6. Update on Future Establishment of Watermaster Bank Account. Mr. Poole recommended waiting for employment of an ED before establishing a WM bank account.

7. Update on Public Review of SGMA Alternative Submitted to DWR. Ms. Staples reported that only one comment has been received to date, from the Borrego Air Ranch. A

conference call between attorneys for BWD, AAWARE, the State Water Resources Control Board and the Air Ranch is scheduled for Monday, and she will report on it at the next WMB meeting.

8. Update on Interim Watermaster Budget. Director Smith reported there have been no disbursements. A sum of \$106,000 needs to be reimbursed to parties who are obligated to make advances or who have made them. There are no changes to the budget on the BWD website. Director Duncan reminded the Board that BWD had paid its pumping fee, and he encouraged other parties to do so.

**B. BROWN ACT PRESENTATION:** Mr. Anderson narrated a slide presentation regarding the Ralph M. Brown Act. Under the Judgment and related documents, the WM is voluntarily subject to the Brown Act. An overview of the Act included the history, purpose and applications of the Brown Act; serial meetings; governing rules; teleconferencing; closed sessions; remedies and cure; Alternate Board Members; and COVID-19 responses.

The Brown Act was adopted in 1953, and provides that when public officials are doing public agency business, it should be done in the public eye. A meeting includes any gathering of a majority of the Board, when they are discussing any matter under their jurisdiction. Exemptions include individual contacts, conferences, seminars, committee meetings, social or ceremonial occasions and meetings with other legislative bodies.

Mr. Anderson reiterated the prohibition against serial meetings, i.e. information passed from one Board member to another to another either directly or through an intermediary. However, a non-Board member such as the Executive Director may contact each Board member, but they may not communicate the information with one another; or the Board may communicate with one another to schedule a special meeting.

Closed sessions may be held under specified circumstances (real property, litigation, personnel, labor, threats to public service), but even if the entire meeting is scheduled for closed session, it must be opened initially for public comment before going into the closed session. Action taken during closed session must be announced in public following the session.

Agendas for regular meetings must be posted 72 hours in advance, and the materials must be available in ADA format. Special meetings require a 24-hour notice. The Board can remove any member of the public deemed to be disruptive, and the Chair can clear the room, except for the media. Records and recordings of meetings must be available to the public upon request. If a member of the public brings up something not on the Agenda, the Board may not discuss it, other than making a brief direction to staff.

For teleconferencing, normally, at least a quorum of the Board must be within the boundaries of the local agency, but the Judgment provides an exception to state that at least two Board members must be physically in Borrego during a meeting. During the COVID pandemic, teleconferences may be held without a meeting room if a dial-in number is provided.

Rebecca Falk inquired about applicability of the Brown Act to communications among attorneys the WMB members. Mr. Anderson explained that when the attorneys meet, it is without their WMB clients, and they are not making decisions. It does not constitute a meeting within the purview of the Brown Act. Mr. McGlothlin added that any recommendation made by the attorneys has to be approved by the WMB. Martha Deichler asked whether Alternates could attend closed sessions, and Mr. Anderson replied that they could, only if their regular Board member was absent. Violations of the Brown Act can result in disciplinary action, referral to the Grand Jury or invalidation of the action in question.

#### **IV. CLOSING PROCEDURE**

The next Board Meeting is scheduled for May 28, 2020 to be available online. There being no further business, the Board adjourned at 8:00 p.m.

BORREGO SPRINGS BASIN WATERMASTER  
BOARD OF DIRECTORS MEETING  
MAY 28, 2020  
AGENDA ITEM II.a

May 25, 2020

TO: Board of Directors

FROM: Geoffrey Poole

SUBJECT: Confirmation of List of Responsive Consultants for Executive Director/Technical Consultant

**ITEM EXPLANATION:** The deadline for Executive Director/Technical Consultant was May 21st and 4 Responses were received:

1. Stetson Engineers
2. Water Resources Engineers
3. Brian J Brady and Associates
4. Wildermuth Environmental

Staff is presenting this list to the Board to publicly identify those under consideration.

**NEXT STEPS**

Discuss Process/Schedule (next item on Agenda).

**FISCAL IMPACT**

The TOTAL Watermaster Budget for these expense categories thru July 2021 is as follows. The actual amount expended for each of the Consultants has not yet been determined:

<u>EXPENSE</u>	<u>19-20</u>	<u>20-21</u>
Start Up Administrative	\$165,000	\$297,000
Start UP Engineering	20,700	27,600
Start Up Legal	47,250	63,000

**ATTACHMENTS**

1. None

BORREGO SPRINGS BASIN WATERMASTER  
BOARD OF DIRECTORS MEETING  
MAY 28, 2020  
AGENDA ITEM II.b

May 25, 2020

TO: Board of Directors

FROM: Geoffrey Poole

SUBJECT: Selection of Legal Counsel. Executive Director/Technical Consultant: Next Steps - Poole

**RECOMMENDED ACTION**

Discuss and develop selection process and schedule, one possibility follows. The schedule below is just one option and the Board obviously can agree upon any process/schedule.

**ITEM EXPLANATION:**

Now that the Responses have been received for all of the key positions, the process for selection needs to be created. A Closed Session has been added to the Agenda to provide the Board an opportunity to discuss any aspect of the selection process if it desires.

Following is a possible selection schedule:

**LEGAL COUNSEL:**

May 28: Create Short-List: Each Board Member bring its Top 3 choices for Legal Counsel to the meeting for discussion in Closed Session. Once the results are shared, the Board would develop a short list. The exact number of candidates would be flexible based on the results of the disclosure of each Board Members' top 3.

June 11: Conduct Interviews and Make Selection: Each of the firms on the short list would be interviewed by the Board in Closed Session and a selection made in open session at the same meeting.

**EXECUTIVE DIRECTOR/TECHNICAL CONSULTANT**

June 11: Create Short-List: Each Board Member bring its Top 2 choices for Executive Director / Technical Consultant to the June 25 meeting for discussion in Closed Session. Once the results are shared, the Board would develop a short list. The exact number of candidates to interview would be flexible based on the results of the disclosure of each Board Members' top 2.

June 25: Conduct Interviews and Make Selection: Each of the firms on the short list would be interviewed by the Board in Closed Session and a selection made in open session at the same meeting.

**NEXT STEPS**

Discuss Legal Counsel Short List in Closed Session

**FISCAL IMPACT**

The TOTAL Watermaster Budget for these expense categories thru July 2021 are as follows. The actual amount expended for each of the Consultants has not yet been determined:

<u>EXPENSE</u>	<u>19-20</u>	<u>20-21</u>
Start Up Administrative	\$165,000	\$297,000
Start UP Engineering	20,700	27,600
Start Up Legal	47,250	63,000

**ATTACHMENTS**

1. None

BORREGO SPRINGS BASIN WATERMASTER  
BOARD OF DIRECTORS MEETING  
MAY 28, 2020  
AGENDA ITEM II.c

May 25, 2020

TO: Board of Directors

FROM: Geoffrey Poole

SUBJECT: Public Comments Received on the Alternative and Next Steps for the Stipulating Parties to Respond and Consider an Addendum – M Staples, AAWARE

**RECOMMENDED ACTION**

Discuss and direct Staff as deemed appropriate

**ITEM EXPLANATION:** The Public Comment Period has recently ended on BWD's submittal of the Groundwater Management Plan. Michele Staples, AAWARE Legal Counsel, has been monitoring this issue closely and will provide the Board with an update on the following:

1. Comments Received Overview
2. Possible Next Steps
3. Need for an Addendum to Stipulated Judgment and/or Settlement Agreement
4. Related Issues

**NEXT STEPS**

TBD

**FISCAL IMPACT**

TBD

**ATTACHMENTS**

1. None

BORREGO SPRINGS BASIN WATERMASTER  
BOARD OF DIRECTORS MEETING  
MAY 28, 2020  
AGENDA ITEM II.d

May 25, 2020

TO: Board of Directors

FROM: Geoffrey Poole

SUBJECT: Pending action by County of San Diego Supervisors re: Declining Board Seat – Poole

**RECOMMENDED ACTION**

Discuss and direct Staff as deemed appropriate

**ITEM EXPLANATION:** BWD and other pumpers have been informed by County Staff it will be recommending to the Board of Supervisors on June 3rd to not accept the position on the BS Watermaster Board. Staff would like to discuss a response, if any, to this pending action this briefly described below.

*On June 3, 2020 at 9 a.m., the County Board of Supervisors will be considering staff's recommendation for County of San Diego participation in groundwater management of the Borrego Valley Groundwater Basin. Here's an excerpt from the legal ad you can read which summarizes staff's recommendation: Staff recommends that the County attend the Watermaster Board meetings as a community participant, and also recommends technical staff with subject matter expertise sit on the Technical Advisory Committee (TAC). Participation at this level will ensure the integration of groundwater sustainability measures with the County's existing land use and well-permitting responsibilities. Since the County is not a water manager or supplier in the Basin, staff is not recommending the County participate in the Watermaster Board as a formal member. This item is a request for the BOS to authorize staff to notify the stipulating parties of the County's intent not to serve on the Watermaster Board for the Basin, but reiterate the County's commitment to the participation in the program overall, through regular staff level attendance at Watermaster Board meetings and participation on the TAC.*

**NEXT STEPS**

TBD

**FISCAL IMPACT**

TBD

**ATTACHMENTS**

1, None

BORREGO SPRINGS BASIN WATERMASTER  
BOARD OF DIRECTORS MEETING  
MAY 28, 2020  
AGENDA ITEM II.e

May 25, 2020

TO: Board of Directors  
FROM: Geoffrey Poole  
SUBJECT: Clarification of Request from May 14 WM Board Meeting re: Meter Installations – Director Duncan

RECOMMENDED ACTION

Discuss and direct Staff as deemed appropriate

ITEM EXPLANATION: At the May 14 Watermaster Board Meeting, Director Duncan had to leave the meeting and did not get a chance to explain his thoughts on the issue of metering. I did not capture all of his ideas on this issue, so I asked Director Duncan to do it again on May 28 and he agreed to do so. In summary, Director Duncan wants to make sure the meters are ready, installed within required guidelines and data transmission confirmed.

FISCAL IMPACT

The TOTAL Watermaster Budget for the startup data management system through July 2021 is as follows. The actual amount expended for these costs has not yet been determined:

EXPENSE	19-20	20-21
Start Up Data Management System	\$165,000	\$297,000

NEXT STEPS

TBD

FISCAL IMPACT

TBD

ATTACHMENTS

1. None