

MINUTES
BORREGO SPRINGS WATERMASTER BOARD MEETING
Conducted Virtually via GoToMeeting
Thursday July 14, 2022, 4:30 p.m.

I. Opening Procedures

- A. Chair Duncan called the meeting to order at 4:30 PM
- B. Chair Duncan led the meeting participants in the Pledge of Allegiance.
- C. Samantha Adams, Executive Director (ED) called roll and confirmed that a quorum of four members of the Board were present. Director Jorgensen arrived at 4:33 pm, bringing the count to all five Directors present. The following individuals were present at the meeting:

Directors Present	Chair Dave Duncan – Borrego Water District (BWD)
	Vice Chair* Shannon Smith – Recreational Sector
	Tyler Bilyk, Board Alternate – Agricultural Sector
	Jim Bennett – County of San Diego
	Mark Jorgensen – Community Representative (arrived at 4:33)
Watermaster Staff Present	Samantha Adams, Executive Director, West Yost
	Andrew Malone, Lead Technical Consultant, West Yost
	James M. Markman, Legal Counsel
Others Present	Cathy Milkey, representing Rams Hill
	Geoff Poole, General Manager, BWD
	Jim Dax
	Kathy Dice, Board Alternate – BWD
	Leanne Crow, Board Alternate – County of San Diego
	Leonardo Urrego-Vallowe, WBE, representing AAWARE
	Michael Wells
	Michele Staples, Jackson Tidus, representing AAWARE
	Rich Pinel, Board Alternate – Recreational Sector
	Steve Anderson, BBK, representing BWD
	Tammy Baker, BWD Board Member
	Trey Driscoll, representing BWD
	Tyler Bilyk, Board Alternate - Agricultural Sector

**Vice Chair Smith also serves as the Secretary and Treasurer of the Board*

- D. Approval of Agenda.

Motion: Motioned by Director Smith, seconded by Director Bennett to approve the agenda. *Motion carried by majority voice vote (5-0-0).*

II. Public Correspondence

- A. Correspondence Received. Geoff Poole provided a brief overview of the BWD letter included in the agenda package regarding recommendations for Watermaster priorities in FY 2022-23.
- B. Public Comments. Chair Duncan called for public comments:

- Rich Pinel inquired if the Watermaster will send mid-year pumping status reports to the Parties as was done in WY 2021. ED Adams noted they would be sent out with status of pumping through June 30, 2022.

III. Consent Calendar. Chair Duncan called for any discussion on the Consent Calendar items included in the July 14, 2022 agenda package. Director Smith called for Item III.B to be considered separately from Items III.A and III.C.

Item III.A – Approval of Minutes of Regular Meeting – June 13, 2022

Item III.C – Approval of June 2022 Financial Report

Motion: Motioned by Director Jorgensen, seconded by Director Smit to approve Consent Calendar items III.A and III.C. *Motion carried unanimously by roll-call vote (5-0-0).*

Item III.B – Resolution No. 22-01 – Adopting a Code of Conduct to Govern Watermaster Activities Required to Manage and Sustain Borrego Water Resources.

Chair Duncan called for public comment, followed by Board discussion. Public comment was made by Michele Staples. The key points of discussion included:

- The Code of Conduct requires further edits to refine the language.
- Most of the additional requested changes can easily be resolved, but Counsel Markman does not agree with all of them.
- Director Smith and Michele Staples will provide the language suggested to Counsel Markman in writing following the meeting and he will incorporate the items he noted could be changed. The final edit will be brought back for consideration of approval at the next Watermaster Board meeting

No Board action was taken.

IV. Items for Board Consideration and Possible Action

A. *DWR Prop 68 Grant Update.* ED Adams gave a brief update to the Board on the status of the award of the grant by DWR. At the conclusion of the presentation, Chair Duncan opened the floor to public comment, followed by Board discussion. There were no public comments. The key points of discussion included:

- Watermaster staff received a draft of the proposed sub-grantee agreement between BWD and Watermaster. Counsel Markman has reviewed the draft and sent preliminary questions and suggestions to BWD for consideration.
- Much of the sub-grantee agreement is based on the prime requirements of the primary grant agreement between DWR and BWD, thus some provisions may not be able to be revised.
- The Board formed a subcommittee consisting of Directors Smith and Bilyk to support the review and finalization of the sub-grantee agreement with BWD.
- ED Adams will coordinate a meeting of the sub-committee with Counsel Markman and will circulate the draft sub-grantee agreement in support of the meeting

No Board action was taken.

B. *Consideration of Approval of the Water Year 2023 Budget.* ED Adams provided a detailed presentation of the third draft of the Water Year 2023 Budget, focusing on the monthly financial model prepared to support development of delayed payment terms with West Yost and Land IQ, which both vendors have agreed to provide once the grant agreement is in place. At the conclusion of the presentation, Chair Duncan opened the floor to public comment, followed by Board discussion. Public comment was made by Michele Staples. The key points of discussion included:

- Vice Chair Smith provided context for supporting the use of payment terms with West Yost and Land IQ, noting he did a detailed review of the financial model and supported the development of the terms with West Yost's CEO.

Motion: Motioned by Director Smith, seconded by Director Jorgensen, to approve the Water Year 2023 Budget as defined in the July 13, 2022 Board memo. *Motion carried unanimously by roll-call vote (5-0-0).*

C. *Consideration of Approval of Amendment to Water Year 2022 Budget to Begin Grant Related Efforts in July 2022.* Given that the DWR grant agreement with BWD, nor the Watermaster/BWD sub-grantee agreement are in place, this item was deferred for consideration in August, if the agreements are in place in time. The key points of Board discussion included:

- The scope of work for the TSS grant still needs to proceed. ED Adams noted that this could be done under the as-needed technical services line item of the existing scope of work. The work will result in a budget overage of that specific task, however other tasks within West Yost's scope of work will be under budget and can cover the overage created by the TSS work. The overall West Yost administrative and technical services budget is projected to be under budget in WY 2022.
- The financial model and WY 2023 budget presented by Staff assumed that work on certain grant items would begin in July 2022. Thus, once the grant is awarded staff will need to prepare a new projection of expenditures to:
 - Update the financial model to ensure that the planned spending stays within the limits of the payment terms provided by the Vendors
 - Update the WY 2023 Budget to reflect the adjustment to planned spending.

No Board action was taken.

D. *Consideration of Approval of a Process to Respond to Requests for Watermaster Data and Information.* Mr. Malone gave an overview of the agenda packet materials to the Board. At the conclusion of the presentation, Chair Duncan opened the floor to public comment, followed by Board discussion. Public comment was made by Michele Staples and Steve Anderson. The key points of Board discussion included:

- The RFI and instructions should be made available on Watermaster's website.
- Maximum transparency is important for Judgment compliance.

- There should be a distinction between data requests made by Parties vs. non-Parties. The proposal allows for a minimum level of staff effort to not be reimbursed, but non-Parties should have to pay for data requests no matter what.

Motion: Motioned by Director Smith, seconded by Director Bennett, to approve the process for responding to data requests described in the July 11, 2022 Board memo, with the modification to require that non-Parties to the Judgment always pay for costs incurred in responding to data requests. *Motion carried unanimously by roll-call vote (5-0-0).*

E. *Meeting Agenda for August 2022 Technical Advisory Committee.* Mr. Malone gave an overview of the proposed TAC agenda to the Board. At the conclusion of the presentation, Chair Duncan opened the floor to public comment, followed by Board discussion. There were no public comments.

Motion: Motioned by Director Jorgensen, seconded by Director Bilyk, to approve the TAC Agenda. *Motion carried unanimously by roll-call vote (5-0-0).*

F. *Consideration of Action on an Application for New De Minimis Pumping.* Mr. Malone gave a detailed presentation on his technical recommendation to deny the *De Minimis* well application, including the use of the TAC review process and an overview of the various recommendations since TAC consensus was not achieved. Each TAC members recommendation was documented in the staff report for this agenda item, along with supporting reasons. The staff report was authored by Watermaster staff and subject to multiple rounds of review and edit by the TAC members to refine their recommendations. The recommended action for the *De Minimis* permit, as documented in the memo were:

Jim Bennett (representing County of San Diego – Approve

Tom Watson (representing T2 Borrego, LLC) - Approve

Trey Driscoll (representing BWD) – Deny

Bob Wagner and Leonardo Urrego-Vallowe (representing AAWARE) - Deny

Mr. Malone gave any TAC members present an opportunity to speak to their recommendations. Representatives from the County, AAWARE, and BWD provided additional comments regarding their recommendations regarding the *De Minimis* well application. At the conclusion of the presentation, Chair Duncan opened the floor to public comment, followed by Board discussion. Public comment was made by Cathy Milkey, Rich Pinel, Tammy Baker, Michele Staples, and Kathy Dice. The key points of Board discussion covered the following topics:

- The potential for legal challenge of Board decision on this matter. The Judgment provides a process for review and challenge of all Watermaster decisions (Section VII.A.I)
- The ability to condition the approval of the well, or provide explanation of reasons for denial if the application is not approved.
- The cost of implementing the remedies that would be required for Mr. Malone to recommend approval of the application (e.g., to change the proposed construction to address the concerns raised).

- The TAC review process for this recommendation.
- The TAC review process generally and how to report out decisions to the Board.
- Clarifying questions related to the details of Mr. Malone’s recommendation and how it was made.
- The level of analysis typically performed by the County in considering a well application.
- Board provided direction to Staff to provide an opportunity for all TAC members to submit supplemental reports of their recommendations to the Board as part of the TAC process.

Motion: Motioned by Director Bilyk, seconded by Director Smith, to approve the subject application for a new *De Minimis* well based on lack of evidence to support denial of the application. *Motion carried with four out of five roll-call votes (4-1-0). Chair Duncan opposed the motion.*

V. Reports.

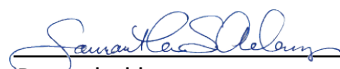
- A. Legal Counsel Report. Counsel Markman reported on the outcomes of the July Court proceedings.
- B. Executive Director Report. NONE
- C. Chairperson’s Report. NONE

VI. Board Member Comments. Chair Duncan called for comments. No comments were made.

VII. Next Meetings of the Borrego Springs Watermaster. Chair Duncan reviewed the future meeting dates.

VIII. Adjournment

- A. Chair Duncan adjourned the meeting at 7:20 PM.


 Recorded by:
 Samantha Adams, Executive Director


 Attest:
 Shannon Smith, Vice Chairperson, Secretary, and
 Treasurer of the Board