

MINUTES
BORREGO SPRINGS WATERMASTER BOARD MEETING
Conducted Virtually via GoToMeeting
Thursday, November 10, 2022, 4:30 p.m.

The following individuals were present at the meeting:

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| Directors Present | Chair Dave Duncan – Borrego Water District (BWD) |
| | Vice Chair* Shannon Smith – Recreational Sector |
| | Tyler Bilyk – Agricultural Sector |
| | Martha Deichler, Board Alternate – Community Representative |
| | Jim Bennett – County of San Diego |
| Watermaster Staff Present | James M. Markman, Legal Counsel |
| | Samantha Adams, Executive Director, West Yost |
| | Andrew Malone, Lead Technical Consultant, West Yost |
| | Lauren Salberg, Staff Geologist, West Yost |
| Others Present | Cathy Milkey, T2 Borrego LLC |
| | Diane Johnson, BWD Board Member |
| | Geoff Poole, General Manager, BWD |
| | Jim Dax |
| | John Peterson, Environmental Working Group Member |
| | Kathy Dice, BWD Board Member |
| | Laurel Brigham |
| | Leanne Crow, Board Alternate – County of San Diego |
| | Michele Staples, Jackson Tidus, representing AAWARE |
| | Rebecca Falk |
| | Rich Pinel, Board Alternate – Recreational Sector |
| | Travis Huxman |
| | Trey Driscoll, Intera, representing BWD |

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

I. Opening Procedures

- Chair Duncan called the meeting to order at 4:30 PM; meeting recording began at 4:30PM.
- Chair Duncan led the meeting participants in the Pledge of Allegiance.
- Samantha Adams, Executive Director (ED) called roll and confirmed that all members of the Board were present.
- Approval of Agenda.

Motion: Motioned by Vice Chair Smith, seconded by Director Bilyk to approve the Agenda with the modification to add starting the meeting recording to the Opening Procedures of the Agenda.
Motion carried unanimously by voice vote (5-0-0).

II. Public Correspondence

- Correspondence Received. ED Adams referenced the correspondence included in the agenda package.

- Public Comments. Chair Duncan called for public comments. The following comments were made:
 - John Peterson addressed the Board on the topic of the recent approval of an application for a new De Minimis well.

III. Consent Calendar. Chair Duncan called for any discussion or public comment on the Consent Calendar items included in the November 10, 2022 agenda package. There were no comments or Board discussion.

Motion: Motioned by Director Deichler, seconded by Vice Chair Smith to approve the Consent Calendar. *Motion carried unanimously by roll-call vote (5-0-0).*

IV. Items for Board Consideration and Possible Action

- *Consideration of Approval of Subgrantee Agreement with Borrego Water District to Receive Prop 68 DWR Grant Funding.* ED Adams provided an overview of the information in the Staff memo included in the November 10 Agenda Package, noting that Geoff Poole (BWD) had reported that the master Prop 66 DWR Grant Agreement had arrived on November 10, 2022. 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:

- The Subgrantee agreement included in the agenda package has yet to be formally approved by the BWD Board, but it is not expected to substantially change before approval
- Subgrantees each review their own individual Subgrantee agreements. Today’s Board action will only impact the Watermaster subgrantee agreement.
- The agreement with the DWR is a financial contract and obligation and the Watermaster should take caution in incurring costs that may not be reimbursed by the DWR.
- Legal Counsel’s review of the final subgrantee agreement will ensure that if significant changes are made to the agreement included in the agenda package, that the agreement will return to the Watermaster for further review.
- The master BWD/DWR agreement will be approved during a special meeting held on November 15, 2022.

Motion: Motioned by Vice Chair Smith, seconded by Director Deichler to approve the execution of the *Agreement for the Sustainable Groundwater Management Grant Program between Borrego Water District and Borrego Springs Watermaster*, pending a review of the final agreement by Legal Counsel to confirm no substantial changes have been made to the agreement. *Motion carried unanimously by roll-call vote (5-0-0).*

- *Consideration of Approval of Amendment No. 6 to the Borrego Springs Watermaster Professional Services Agreement with West Yost.* Mr. Markman provided a summary of Amendment 6, which provides the Watermaster with a financing mechanism for covering grant-related expenses prior to receiving the grant funding and extends the expiration date through December 2025. At the conclusion of the presentation, Chair Duncan opened the floor to public comment, followed by Board discussion. Public comment was made by John Peterson and Rebecca Falk.

The key points of discussion included:

- The Rules and Regulations contains limits on borrowing and the mechanism for the Payment Terms in the Amendment fits withing the Rules and Regulations..
- The contract extension should require a performance review of Watermaster Staff prior to approval.
- The potential for approval of a temporary extension, which would allow the Board to have a closed session prior to approving a three-year extension.
- The Amendment still allows the Board to take appropriate actions, including the termination of services, but specifies that West Yost must be paid for its services prior to these changes.
- The terms included in Amendment No. 6 were developed over several meetings during the budgeting process.
- The Board directed Staff to include a closed session in a future Board meeting, in early 2023, to conduct a staff performance review.

Motion: Motioned by Vice Chair Smith, seconded by Director Deichler, to approve Amendment No. 6 to the Borrego Springs Watermaster Professional Services Agreement with West Yost. *Motion carried unanimously by roll-call vote (5-0-0).*

- *Final Water Year 2022 Water Rights Accounting.* ED Adams summarized the Staff Report included in the November 10 agenda packet and presented the final water rights accounting results to determine the Pumping Assessment rate for the Water Year 2023 assessment. At the conclusion of the presentation, Chair Duncan opened the floor to public comment, followed by Board discussion. Public comment was made by Diane Johnson.

The key points of discussion included:

- This is the second year of performing water rights accounting and the process was a little easier now that the accounting calculations are better understood.
- The two parties that engaged in Overproduction above their maximum limit in WY 2022 resolved the Overproduction through transfers and no Overproduction Penalty Assessments will be issued.
- If Overproduction Penalty Assessments are issued in the future, it is the responsibility of the Watermaster to use the funds collected to resolve the Overproduction through transfers.
- Parties who have engaged in Overproduction in excess of their Maximum Overproduction Limits in WY 2022 will be contacted on the options for remedying the over-production by October 31, 2023.
- Any overproduction that occurs in Water Years 2021 through 2023 can be remedied by September 2025. Starting in Water Year 2024, Parties that overproduce will only have one year to resolve the overproduction, in accordance with the Judgement.
- The proportion of total pumping that is “estimated” has declined since WY 2021 accounting due to nearly full metering compliance by the Parties and is expected to be further improved in WY 2023. The increase in metered pumping is considered a key success of the Judgement.

No Board action was taken.

- *November 2022 Technical Advisory Committee Report.* Mr. Malone summarized the TAC meeting held on November 2nd, 2022 and summarized the TAC Report in the agenda packet. At the conclusion of the presentation, Chair Duncan opened the floor to public comment, followed by Board discussion. Public comment was made by Jim Dax, Jim Peterson, Leanne Crow, Diane Johnson, Rebecca Falk, Cathy Milkey, and Rich Pinel.

The key points of discussion included:

- Using findings from the extension of the Borrego Valley Hydrologic Model (BVHM) in Water Year 2022, the TAC will be recommending a revised scope of work and cost estimate for redetermining the Sustainable Yield in Water Year 2025 for the Board's consideration. Board discussion regarding the BVHM and future scope of work included:
 - An increase in the cost to upgrade the BVHM is concerning. The TAC is cognizant of costs and best management practices and will balance these in the proposed scope of work and cost estimate.
 - Redetermining the Sustainable Yield is a grant eligible project and there may be opportunities to use Prop 68 DWR Grant funding to cover the cost of the proposed scope of work if the scope of other grant funded items is reduced.
 - The balance between having the best possible model vs. a model that's appropriate for sustainably managing the Basin. It may not be necessary to perfect the BVHM in order to redetermine a Sustainable Yield for 2025.
 - The schedule for completing the redetermination of the Sustainable Yield by January 1, 2025 may limit the efforts that can be taken.
 - The Sustainable Yield will be redetermined again in 2030 and every five years after, improvements to the BVHM can be iterative and use the lessons learned from prior work to inform future efforts
 - Since errors in the BVHM are now known and documented, they should be addressed prior to model recalibration and redetermining the Sustainable Yield.
 - The redetermined Sustainable Yield informs the rate of Rampdown, not the occurrence of Rampdown. The Judgement specifies that Rampdown will continue through 2040 regardless of the redetermined Sustainable Yield.
 - If the TAC cannot reach consensus on the revised scope of work, Staff will prepare a report that documents the different opinions of the TAC members and a proposed recommendation, as specified in the Judgement.
- A draft TM titled *Groundwater Monitoring Gap Analysis* was reviewed with to the TAC. The Board discussion on this report included:
 - Too many data gaps were identified in the draft TM and addressing all the identified data gaps would be expensive. Mr. Malone clarified that the intent of the draft TM is not identify where new wells should be constructed to fill every data gap, but rather to present an overview of where data gaps exist so the TAC can prioritize which data gaps in the Basin should be filled with either existing or new wells.
 - Existing wells should be prioritized for filling data gaps rather than constructing new wells.

- The data gap analysis should rely on the previous work documented in the Groundwater Management Plan.
- Due to groundwater quality concerns in the North Management Area, filling data gaps in this area should be prioritized.
- Groundwater quality is a concern Basin-wide.
- The BWD monitors groundwater-quality. Additional constituents of concern should not be included in the Groundwater Management Plan since these are the responsibility of the BWD.
- The draft TM should reference both SGMA and the Judgement as the motivation for performing the data gap analysis and preparing a Groundwater Monitoring Plan. Because water quality is a sustainability indicator specified in SGMA, SGMA is inherently referenced.
- The storage change calculation for Spring 2021 to 2022 is underway and results will be shared with the TAC for review via email and the draft findings presented to the Board during the December 8, 2022 meeting.
- Coordination with the DWR is ongoing regarding the potential well design for the well funded through the TSS Program.

No Board action was taken.

- *BWD Annual Town Hall Meeting Agenda November 15, 2022.* Chair Duncan provided details for the upcoming town hall meeting, which will be held in-person and via GoTO meeting. 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:

- Mr. Markman specified that the Watermaster will be required to notice a Special Meeting and the Chair will need to convene the meeting prior to all Board members participating in the Town Hall discussion.
- A translator will be available for Spanish speakers.

No Board action was taken.

V. Reports.

- A. Legal Counsel Report. NONE
- B. Technical Consultant Report. NONE
- C. Executive Director Reports were deferred. ED Adams reported that the following items will be discussed during a future meeting and provided a brief overview of the discussion:
 - Metering Program Overview.
 - WY 2021 Year-End Budget Summary.
- D. Chairperson's Report. NONE

VI. Board Member Comments. Chair Duncan called for comments.


- Director Bennett informed the Board that the San Diego County Department of Environmental Health and Quality (DEHQ) issued warnings to owners of abandoned wells in February 2022. He noted that the Prop 68 DWR Grant funding can be used to properly destroy these abandoned wells or incorporate these wells into the monitoring program. Director Bennett has asked the DEHQ to continue notifying him when a Notice of Abandonment (NOBs) is issued in the Basin. ED Adams requested the location of the NOBs.
- Vice Chair Smith:
 - Commented on a previous discussion regarding temporary fallowing of agricultural land, stating that the cycles of fallowing and irrigation are appropriate as long as over-production isn't occurring.
 - Applauded the preparation of the Water Year 2022 Water Rights Accounting and thanked ED Adams for her efforts.
 - Requested to agendaize a closed session for staff performance reviews.
 - Referenced the status conference with the Court that will be held on November 18th.
- Director Bilyk requested the TAC to consider other sources of potential groundwater contamination in the Basin, such as septic tanks or the BWD's wastewater drying beds, as they develop the water quality monitoring program.
- Chair Duncan noted that the Judgment states the Board and the TAC meet semi-annually and asked ED Adams to review the requirement and ensure this is happening.

VII. **Next Meetings of the Borrego Springs Watermaster.** Chair Duncan reviewed the meeting dates for the next Board meetings listed in the agenda package. The next meetings are:


- Special Meeting at BWD Town Hall – Tuesday, November 15, 2022 at 5:30pm.
- Watermaster Open House – Thursday, December 8, 2022 at 1:30pm.
- Regular Board Meeting – Thursday, December 8, 2022 at 4:30pm.

VIII. **Adjournment**

- Chair Duncan adjourned the meeting at 6:38 PM.



 Recorded by:
 Lauren Salberg, West Yost



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