

MINUTES
BORREGO SPRINGS WATERMASTER BOARD MEETING
Conducted In-Person at the Borrego Springs Library and Virtually via GoToMeeting
Thursday, November 9, 2023, 4:30 p.m.

The following individuals were present at the meeting:

Directors Present	Chair Dave Duncan – Borrego Water District (BWD)
	Vice Chair Tyler Bilyk – Agricultural Sector
	Secretary and Treasurer Shannon Smith – Recreational Sector
	Mark Jorgensen – 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	Diane Johnson, BWD Board Member
	Geoff Poole, BWD General Manager
	Gina Moran, BWD Board Member
	Jessica Clabaugh, BWD Finance Officer
	Kathy Dice, Board Alternate - BWD
	Mark Stevens, BSUSD
	Rich Pinel, Board Alternate – Recreational Sector
	Rodney Bruce, Rams Hill
	Steve Anderson, BB&K, representing BWD
	Tammy Baker, BWD Board Member
	Trey Driscoll, Intera, TAC Member representing BWD
	William Bauer

Please visit the [Watermaster's Website](https://borregospringswatermaster.com/past-watermaster-meetings/)¹ to access the Agenda Packet, recording, and presentation for the November 9, 2023 Meeting.

I. Opening Procedures

- A. Chair Duncan called the meeting to order at 4:31 PM at which time the meeting recording was started.
- 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 all members of the Board were present.
- D. Approval of Agenda.

Motion: Motioned by Vice Chair Bilyk, seconded by Director Jorgensen to approve the Agenda.
Motion carried unanimously by voice vote (5-0-0).

II. Public Correspondence

- A. Correspondence Received. No public correspondence was received.

¹ <https://borregospringswatermaster.com/past-watermaster-meetings/>

B. Public Comments. Chair Duncan called for public comments. There were no public comments.

III. **Consent Calendar.** Chair Duncan called for any discussion on the Consent Calendar items included in the November 9, 2023 agenda package. Discussion included:

- Director Smith should be identified as “Director Smith” not “Vice Chair Smith” in the October 12, 2023 meeting minutes.
- On page 6 of 145 of the Agenda package, the consideration and conversation regarding the size of the accounting firm, C.J. Brown & Company, CPAs, should be memorialized in the October 12, 2023 meeting minutes.
- Request for staff to obtain additional detail on the work performed to support the expense of \$6,509.80 invoiced by UCI in Land IQ’s July 2023 invoice (and all invoices going forward).
- Geoff Poole (Borrego Water District [BWD]) provided an update on the DWR Prop 68 grant, informing the Board that BWD had received, signed, and returned a DocuSign document to DWR that triggers release of payment. BWD is awaiting payment, which is understood to take about one month. Mr. Poole stated he would inform the Board when payment is expected.

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

IV. **Items for Board Consideration and Possible Action**

A. *Review Water Rights Transfers Policy.* ED Adams provided a summary of the memo included in the Agenda package and described a meeting held between Watermaster staff and legal counsel, and legal counsel to Parties (including BWD, T2 Borrego, LLC, and AAWARE). The overview included the policy points discussed, policy questions left to be resolved, and potential solutions. Mr. Markman provided the Board his legal opinion on the policy issues related to the Water Rights Transfer policy and identified specific provisions in the Judgment related to the topic. At the conclusion of the presentation, Chair Duncan opened the floor to public comment, followed by Board discussion. Public comment was made by Steve Anderson, Tammy Baker, Rich Pinel, Kathy Dice, and Rodney Bruce.

The key points of discussion included:

- An overview and history of the development of Carryover. As specified in the Judgment, Carryover is limited to two times (2x) Baseline Pumping Allocation (BPA), is tethered to a parcel, does not expire, and is the first water pumped each water year (WY).
- The assumptions used for the WY 2023 Water Rights Accounting process were made with the intent of honoring the intent of the Parties and to limit the amount of Carryover held by BWD. It attempted to recognize that the Board may direct an alternative approach to finalizing the Water Rights Accounting.
- Steve Anderson, legal counsel to BWD, provided his legal opinion on the water rights transfers and reported out from the discussion that occurred during the November 9, 2023 BWD Board Meeting, which included:
 - BWD and W. Bauer reached an agreement for BWD to purchase W. Bauer’s Carryover to resolve the issue of W. Bauer retaining Carryover water with no BPA or

- BPA Parcel. The purchase has not been finalized, but if this is an amenable solution for the Watermaster Board, BWD will move forward.
- BWD agrees that Carryover should be limited to 2x BPA.
 - BWD is in favor of keeping Carryover associated with BPA in order to avoid creating a system where a non-Party could hold Carryover.
 - The Judgment contains vague language related to Carryover. For example, the Judgment states that Carryover can be Leased, but does not specify who can Lease Carryover.
 - The Judgment does not require the Watermaster Board to be informed of a sale of land or property and BWD does not believe that the Board should be noticed prior to any sale because it is not practical to do so.
 - BWD is in favor of resolving the water rights transfer issues with an amendment to the Judgment rather than adopting a policy. A Judgment amendment could resolve the vague language and is a more robust solution.
- Tammy Baker and Kathy Dice also reported out from the November 9, 2023 BWD Board meeting discussion related to water rights transfers, emphasizing similar points as Mr. Anderson.
 - Clarification that Watermaster legal counsel is not recommending that any new policy be applied retroactively to the BWD/W. Bauer transaction; however, this was an option discussed by legal counsel representatives, but ultimately was not recommended.
 - The Borrego Unified School District (BSUSD) and Anza Borrego Desert State Park are not Exhibit 4 BPA holders and cannot elect or retain Carryover. However, these Parties are allowed to purchase Carryover to remedy Overproduction. It was recommended that this mechanism of allowing non-Exhibit 4 BPA holders to purchase Carryover to remedy Overproduction be included in any policy for clarity.
 - Director Smith explained that his preferred resolution to the issue of the W. Bauer Carryover water was for Watermaster to recognize the transaction that occurred between BWD and W. Bauer as BWD purchasing both the BPA rights and Carryover water from W. Bauer, as was described in the transaction deed. To the extent that BWD and W. Bauer have an agreement that W. Bauer has an economic stake in the Carryover water is between BWD and W. Bauer, and not subject to Watermaster oversight. For the purposes of Watermaster business, all transactions of Carryover water for the former W. Bauer parcel would be done by BWD and not W. Bauer. As such, BWD could simply issue a transfer form from BWD to BSUSD as the formal documentation of the Carryover transfer.
 - Mr. Markman provided his advice on the issues related to water rights transfers, which are:
 - He is not in favor of an amendment to the Judgment, due to the likely higher cost relative to developing a policy.
 - The easiest solution for BWD is to purchase the W. Bauer Carryover, as approved by the BWD Board.
 - Opinions given by Mr. Anderson and Mr. Markman that Judgment language regarding Carryover is vague.
 - Agreement that BSUSD should not be subject to Overproduction fees in this situation and that the Water Rights Accounting can be finalized presuming the issue will be sufficiently resolved based on the solutions discussed.

- Recommendation for BWD to purchase Carryover from W. Bauer and allow the Board time to decide the appropriate path forward on the subject of water rights transfers.

Following the discussion, the Board directed Watermaster Staff to i) finalize the WY 2023 Water Rights Accounting for BWD, W. Bauer, and BSUSD based on Board discussion, and ii) provide the cost of an amendment to the Judgment vs. developing a new policy.

B. Consideration of approval to receive and file five pending transfers of Water Rights. ED Adams described the five pending transfers of water rights. At the conclusion of the presentation, Chair Duncan opened the floor to public comment, followed by Board discussion. Public comment was made by Steve Anderson and Tammy Baker.

The key points of discussion included:

- Mr. Markman described the unique situation involving the permanent Transfer of BPA from John Doljanin to T2 Palms, LLC. T2 Palms, LLC will intervene into the Judgment to become a Party. BPA was acquired by T2 Palms, LLC through a foreclosure process of the BPA Parcels and John Doljanin was not in good standing with the Watermaster due to outstanding assessments. The Judgment does not provide guidance on how a Transferee must address the debt associated with the purchase of BPA and Mr. Markman stated he has made no official legal opinion on the subject.
- Mr. Markman provided anecdotal context for property laws related to foreclosure that could be evaluated further.
- Clarification on the definition of being in “good standing” with the Watermaster – which is all assessments and fees have been paid -- and that a Party must be in good standing to exercise water rights.
- Director Smith, who represents T2 Palms, LLC, expressed the intent of T2 Palms, LLC to pay the balance of John Doljanin’s outstanding assessments to ensure being in good standing with the Watermaster and set the appropriate precedent that the owner must be in good standing to exercise their water rights. Payment of the balance will be made once T2 Palms, LLC status as a Party to the Judgment is approved by the Court.
- Recommendation to amend the Judgment to clarify the language about being in good standing with the Watermaster and the involuntary transfer of BPA/property.

Following the discussion on the John Doljanin/T2 Palms, LLC Transfer, the Board directed Watermaster legal counsel to evaluate how to amend the Judgment to clarify the description of being “in good standing” with the Watermaster.

ED Adams then continued describing the additional Transfers of Carryover water, included in the Agenda package. Discussion included:

- The approval of the permanent Transfer of BPA between John Doljanin and T2 Palms, LLC is contingent on Court approval of T2 Palms, LLC intervening as a Party to the Judgment.
- The Transfer of Carryover between W. Bauer to BSUSD will be re-issued as a Transfer between BWD to BSUSD.

Motion: Motioned by Director Jorgensen, seconded by Vice Chair Bilyk, to approve the five pending Transfers of water rights with the following conditions: 1) Transfer of Carryover from W. Bauer to BSUSD will be reissued as a transfer from BWD to BSUSD, 2) acknowledgement of the disclaimer that the Transfer of BPA between John Doljanin and T2 Palms, LLC is subject to Court approval, and 3) the WY 2023 Water Rights Accounting be finalized to reflect that John Doljanin's outstanding WY 223 assessments will be paid by T2 Palms, LLC. *Motion carried unanimously by roll-call vote (5-0-0).*

C. *Review of Final Water Year 2023 Water Rights Accounting.* ED Adams summarized the memo included in the Agenda package and described adjustments to the final WY 2023 Water Rights Accounting based on the conversations from Agenda Items IV.A and IV.B. At the conclusion of the presentation, Chair Duncan opened the floor to public comment, followed by Board discussion. Public comment was made by Tammy Baker.

The key points of discussion included:

- ED Adams described adjustments to the final WY 2023 Water Rights Accounting based on conversations from Agenda Items IV.B and IV.C, which include:
 - T2 Palms, LLC will cover the outstanding assessment balance due by John Doljanin, which will result in slight changes to the WY 2024 Pumping Assessment, but the change will have a minor impact to the assessment amount (anticipated to change it by less than one dollar per acre-foot).
 - The water rights transaction between W. Bauer and BWD, will be shown as a transfer of BPA and all Carryover water, such that W. Bauer balance at the end of WY 2023 will be equal to zero (0) acre-feet.
 - BWD's maximum allowable Carryover will be revised to 2x BPA in the final WY 2023 Water Rights Accounting to account for accounting of W. Bauer's Carryover as part of the water rights transaction.
- The three Parties with outstanding invoices have not responded to Watermaster Staff's outreach attempts. Watermaster Staff expressed that the outreach efforts to make contact with these Parties is more expensive than the amount owed by these Parties and has not initiated other approaches to obtain payment.

Following the discussion, the Board directed staff to proceed with the proposed changes to the WY 2023 Water Rights Accounting and proceed with next steps to issue the WY 2024 Pumping Assessment to Parties. Staff committed to send out a final, amended WY 2023 Water Rights Accounting memo to the Board once the changes are completed.

D. *Consideration of Approval of the Agenda for the Next Technical Advisory Committee Meeting.* Andy Malone presented the proposed agenda for the upcoming TAC meeting being scheduled for early to mid-December 2023. At the conclusion of the presentation, Chair Duncan opened the floor to public comment, followed by Board discussion. Public comment was made by Kathy Dice and Tammy Baker.

The key points of discussion included:

- The 5-year assessment of the Groundwater Management Plan (GMP) will include the assessment of groundwater quality through the review of groundwater quality monitoring

data, the Measurable Objectives and Minimum Thresholds established, and revisiting Program and Management Actions.

- The 5-year assessment of the GMP will also address DWR's comments on the GMP, once they are available.
- Clarification that if there is not time to discuss the time permitting agenda item on the expansion of the Groundwater Monitoring Program at the next TAC meeting, it will not impede progress on this effort.
- Chair Duncan noted that DWR has frequently recommended corrective actions on groundwater quality.

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

E. *Final Water Year 2023 Budget Review.* ED Adams summarized the year-end accounting of the revenues, expenditures, and cash reserves for WY 2023 presented in the Agenda package. 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, Rich Pinel, and Geoff Poole.

The key points of discussion included:

- The DWR finding that removal of irrigation lines is not grant reimbursable under the Prop 68 grant for the Biological Restoration of Fallowed Lands project will not impact the budget because the budget did not account for the need to remove irrigation lines at any of the properties used for the fallowing experiments. See Item V.B for additional discussion.
- Staff's recommendation that the remaining unused WY 2023 budget for the Redetermination of Sustainable Yield and Biological Restoration of Fallowed Lands projects be carried forward for use in WY 2024 as a budget amendment. These are grant reimbursement eligible projects and carrying forward the budget will not increase the amount of assessments needed as the work was assessed in WY 2023.
- Staff will bring a draft WY 2024 Budget amendment to account for the carry forward amounts for review and consideration at the December Board meeting.

No Board action was taken.

V. Reports.

A. Legal Counsel Report. NONE

B. Technical Consultant Report. Mr. Malone reported on the following items included in the Agenda package (see Board presentation slides). Discussion included:

- The DWR informed Land IQ that the expense associated with removing irrigation lines is not grant reimbursable.
- Land IQ's scope of work did not identify which parcels the study would be performed on, as the lands available for the study were not yet identified. The number of parcels planned for the study are not expected to change the cost or delay the schedule of the project.
- David Bauer has begun the process of fallowing the land purchased by BWD. Mr. Bauer presented the fallowing process at the BWD's recent Board meeting.

- A contractor that meets DWR grant requirements will need to be hired to remove materials, such as trees, from the parcels participating in the study.
- Concern regarding the timing of results and the remaining 16-months of the project schedule.
- Concern regarding the disruptiveness, long-term maintenance, and aesthetic of the sand fence designs.
- Watermaster Staff committed to providing the Board with an update on Land IQ's scope of work, schedule, and process for bidding out the work related to the Sand Fence Study at the December Board meeting.

C. Executive Director Reports. ED Adams reported on the following items:

- The first grant reimbursement check is expected from DWR in late November or December.
- DWR has received the second grant reimbursement report and the third report is in progress and will be submitted to DWR by November 30, 2023.

D. Chairperson's Report. NONE

VI. Approval of Agenda Items for December 14, 2023 Board Meeting. ED Adams reviewed the staff recommended agenda items for the next Board meetings listed in the agenda package. The Board discussed items to be included on the December 14, 2023 Board meeting agenda, in addition to items listed in the Agenda package. Discussion included:

- The redetermination of the Sustainable Yield by 2025 will be discussed during the January 2024 Regular Board meeting.
- The results from the fall 2023 Semi-Annual Monitoring report will be presented during the February 2024 Board meeting. Director Smith requested that any concerns in the data be flagged and presented at an earlier Watermaster Board meeting.
- ED Adams updated the proposed Agenda for the December 14, 2023 meeting on the meeting screen based on discussion (see slide 55 of the meeting presentation²), noting it now includes the following items:
 - A project and budget status update on the Land IQ project
 - Continuation on the discussion on the water rights transfer policy and/or Judgment amendment

Motion: Motioned by Vice Chair Bilyk seconded by Director Bennett, to approve the December 14, 2023 agenda presented. *Motion carried unanimously by roll-call vote (5-0-0).*

VII. Board Member Comments. Chair Duncan called for comments, which included:

- Vice Chair Bilyk expressed that he enjoyed the positive conversations held at the Stakeholder Open House held by Watermaster staff earlier in the day.
- Vice Chair Bilyk posed several financial questions regarding the proper distribution of cash in account and FDIC insurance limits. Director Smith noted he already presented these

² Available on the Watermaster's website at: https://borregospringswatermaster.com/wp-content/uploads/2023/11/20231109-Board-Presentation_final.pdf

questions to Watermaster Staff to inquire with the bank. Once answers from the bank are received, Watermaster Staff will present this information to Director Smith.

- Director Bennett thanked the Parties involved with resolving outstanding issues related to the WY 2023 Water Rights Accounting, such as BWD and T2 Borrego, LLC. He also expressed gratitude for all Parties for reducing pumping in the Basin, which is evident in significantly less pumping in WY 2023 compared to historical pumping.

VIII. Next Meetings of the Borrego Springs Watermaster. Chair Duncan reviewed the meetings listed in the agenda package.

- Regular Board Meeting – Thursday, December 14, 2023 at 4:30 pm
- Regular Board Meeting – Thursday, January 11, 2023 at 4:30 pm

IX. Adjournment

A. Chair Duncan adjourned the meeting at 7:37 PM.



Recorded by:
Lauren Salberg, Staff Geologist, West Yost



Attest:
Shannon Smith, Secretary and Treasurer of the Board