

BORREGO SPRINGS WATERMASTER**POLICY REGARDING THE USE OF BEST AVAILABLE SCIENCE****I. PURPOSE**

This Policy delineates how the Borrego Springs Watermaster employs the concept of “best available science” when administering and enforcing the Judgment. Consistent with state law, “best available science” is a standard used in service of policy decisions made by the Watermaster to ensure the quality and relevance of the technical information and data that inform those choices. Compliance with this policy will ensure the efficient use of the Watermaster’s limited resources and that technical information and data will be evaluated in a manner that is impartial, and without favor or prejudice to any Pumper or Party.

II. BACKGROUND

Best Available Science Under SGMA. The concept of “best available science” as it applies to the Watermaster is derived from the Sustainable Groundwater Management Act (SGMA), in which the Legislature declared:

“It is the policy of the state that groundwater resources be managed sustainably for long-term reliability and multiple economic, social, and environmental benefits for current and future beneficial uses. Sustainable groundwater management is best achieved locally through the development, implementation, and updating of plans and programs based on ***the best available science.***” (Water Code § 113, emphasis added.)

“Best available science” in the SGMA context means:

“...the use of sufficient and credible information and data, ***specific to the decision being made and the time frame available for making that decision,*** that is consistent with scientific and engineering professional standards of practice.” (23 C.C.R. § 351, emphasis added.)

Use of Best of Available Science by the Watermaster. The Judgment provides for the perpetual management of the Basin consistent with the substantive objectives of SGMA, and requires the Watermaster to use and rely on the best available science when exercising its duties:

“The ***Watermaster shall use,*** among other available data, BVHM runs and ***best available records and data to support the implementation of this Judgment.*** Where actual records of data are not available, Watermaster shall rely on and use sound scientific and engineering estimates for the BVHM runs. Watermaster may use preliminary records of measurements, and, if revisions are subsequently made, Watermaster may reflect such revisions in subsequent accounting.” (Judgment § IV.E.9, emphasis added.)

The Rules and Regulations of the Borrego Springs Watermaster (Rules & Regs.) similarly provide:

“The Watermaster shall carry out its duties, powers, and responsibilities in an impartial manner without favor or prejudice to any Management Area, Party, or purpose of use. In carrying out its charge, the Watermaster shall as required segregate and separately exercise in all respects the Watermaster powers delegated by the Court under the Judgment. In exercising its powers and fulfilling its duties, ***the Watermaster shall rely on and use the best available science, records, and data to implement the Judgment*** and these Rules and Regulations, consistent with the provisions of Section IV.E(9) of the Judgment.” (Rules & Regs. § 2.6.1, emphasis added.)

Use of Best Available Science by the TAC. The Judgment established the Technical Advisory Committee (TAC) to advise the Watermaster on technical matters and charges the TAC with:

“...making recommendations ***based on best science*** and data collected regarding the Water Budget and the avoidance of Undesirable Result, determined by the TAC based on best available data, including without limitation information generated from BVHM model runs.” (Judgment § IV.G.2, emphasis added.)

The Rules and Regulations provide that the TAC is charged with making its recommendations “based on best science” regarding “the matters described in the Judgment and other matters as directed by the Watermaster.” (Rules & Regs. § 3.5.3.)

Regarding the TAC’s decision-making process, the Judgment states:

“The Technical Advisory Committee will endeavor to decide all matters by consensus. If consensus cannot be achieved, the Technical Advisory Committee will present a report to the Watermaster describing the differences of opinion and arguments in support thereof, with a draft of the report circulated for comment and input by all Technical Advisory Committee members prior to submission of the report to Watermaster.” (Judgment § IV.G.1.)

Use of Best Available Science by the Watermaster Staff. The Judgment also authorizes the Watermaster to employ consultants as technical advisors to advise the Watermaster and the TAC (Judgment § IV.C). This includes the Watermaster Technical Consultant, who may also serve as Executive Director and is required to rely on and use the best available science.

“In exercising its powers and fulfilling its duties, the Watermaster Technical Consultant shall rely on and ***use the best available science***, records, and data to support the implementation of the Judgment and these Rules and Regulations.” (Rules & Regs. § 4.2.1, emphasis added.)

“The Watermaster Technical Consultant shall rely on and ***use the best available science***, records, and data to support the implementation of the Judgment, including BVHM model runs. Where actual records of data are not available, the Watermaster Technical Consultant shall rely on and use sound scientific and engineering estimates. The Watermaster Technical Consultant may use preliminary records of measurements and, if revisions are subsequently made, may reflect such revisions in subsequent accounting.” (Rules & Regs. § 4.2.7, emphasis added.)

The Watermaster Technical Consultant and all other technical advisors employed by the Watermaster must be independent of any Party to the Judgment.

“In order to avoid a potential conflict of interest, the Watermaster Technical Consultant (interim or otherwise) must be independent (not under contract with any Party) and selected by the Watermaster with input from the Technical Advisory Committee through an arms-length RFP process, unless otherwise agreed to by a Supermajority Vote of the Watermaster. ***Any technical advisor, attorney, executive director, or similar employee or contractor performing services that concern technical or policy matters must be independent (not under contract with any Party) and selected by the Watermaster*** (and if a technical advisor, following input from the Technical Advisory Committee) through an arms-length RFP process unless otherwise agreed by a Supermajority Vote. Any other Watermaster employee or contractor may be employed by, or under contract with a Party, provided that he or she abides by any relevant Court orders, Watermaster determines that the employee or contractor will not be issuing technical or policy recommendations to Watermaster, and the retention of the employee or contractor is appropriate to perform services to Watermaster in the most effective and cost-efficient manner.” (Judgment § IV.C.)

III. POLICY

1. All technical issues relevant to the Watermaster’s administration and enforcement of the Judgment must be resolved through the application of the best available science.
2. Consistent with SGMA, technical information and data shall constitute the “best available science” only if it is:
 - a. Relevant to the decision being made by the Watermaster;
 - b. Available to the Watermaster within a reasonable time in advance of the Watermaster’s decision; and
 - ~~b-c.~~ Consistent with scientific and engineering professional standards of practice.

3. Any new technical information, data or analysis submitted to Watermaster staff shall be placed on the next Watermaster Board meeting agenda under the "Public Correspondence - Correspondence received" item. Consistent with Board policy, the Board has discretion to place or not place consideration of such information, data or analysis on a future Board agenda, or refer the information, data or analysis to Watermaster staff, the TAC, the Environmental Working Group (EWG), or any combination of the three.
- 3-4. In the event any Party or member of the public requests the Watermaster to adopt a new policy or take action based on technical information or data newly brought to the attention of the Watermaster, the Watermaster may direct the TAC, the Watermaster Technical Consultant, the EWG, or both any combination of these three entities to conduct ~~their~~ its own independent review of the information or data before ~~considering~~ the Board considers the request.
- 4-5. Technical information and data need not be generated by the TAC or the Watermaster's Technical Consultant to constitute the best available science, but the Watermaster shall not, unless otherwise directed by the Watermaster Board, rely on or use any technical information or data generated by or for a Party or member of the public without an independent review and recommendation from the TAC, the Watermaster's Technical Consultant, EWG, or both any combination of these three entities.
- 5-6. To ensure efficient use of the Watermaster's limited resources, neither the TAC nor the Watermaster Technical Consultant shall take up any technical matter unrelated to a decision previously made or under consideration by the Watermaster absent direction from the Watermaster Board. Provided, however, that if the TAC, EWG or the Watermaster Technical Consultant become aware of new technical information, data or analysis that could, absent prompt consideration and potential action, lead to Undesirable Results, such information, data or analysis shall be placed on the Watermaster Board agenda so that the Watermaster may provide direction regarding how to handle the issue.
- 6-7. If the TAC fails in a given case to reach a consensus regarding whether any technical information or data constitutes ~~the best available science~~, the Watermaster shall be informed in writing of the nature and basis of the disagreement.
- 7-8. The Watermaster shall consider the recommendations of the TAC, EWG and the Watermaster's Technical Consultant regarding the use of any technical information and data, but the Watermaster ~~shall exercise its own independent judgement as to whether such information and data constitutes the best available science~~ retains discretion to exercise its independent judgment regarding any actions within its authority under the Judgment.