

**MINUTES**  
**BORREGO SPRINGS WATERMASTER BOARD MEETING**  
**Conducted Virtually via GoToMeeting**  
**Thursday, December 14, 2023, 4:30 p.m.**

The following individuals were present at the meeting:

<b>Directors Present</b>	Chair Dave Duncan – Borrego Water District (BWD)
	Vice Chair Tyler Bilyk – Agricultural Sector
	Secretary and Treasurer Shannon Smith – Recreational Sector
	Jim Dax – Alt. Community Representative (4:30 to 4:34 pm) Mark Jorgensen – Community Representative (4:34 pm to end)
	Jim Bennett – County of San Diego
<b>Watermaster Staff Present</b>	James M. Markman, Legal Counsel
	Samantha Adams, Executive Director, West Yost
	Andrew Malone, Lead Technical Consultant, West Yost
	Lauren Salberg, Staff Geologist, West Yost
<b>Others Present</b>	Anita Regmi, DWR
	Diane Johnson, BWD Board Member
	Ethan Steiner, County of San Diego
	Geoff Poole, BWD General Manager
	Gina Moran, BWD Board Member
	Jim Dax, Board Alternate – Community Representative
	Jim Dax, Board Alternate – Community Representative
	Kathy Dice, Board Alternate - BWD
	Leanne Crow, Board Alternate – County of San Diego
	Miles Krieger
	Rich Pinel, Board Alternate – Recreational Sector
	Rodney Bruce, Rams Hill
	Steve Anderson, BB&K, representing BWD
	Tammy Baker, BWD Board Member
	Travis Brooks, Land IQ
	Trey Driscoll, Intera, TAC Member representing BWD

Please visit the [Watermaster’s Website](https://borregospringswatermaster.com/past-watermaster-meetings/)<sup>1</sup> to access the Agenda Packet, recording, and presentation for the December 14, 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. Note that during the roll call, Alternate Community

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

Representative Jim Dax was present and sat in for Director Jorgensen until 4:34 pm, at which time Director Jorgensen took his place.

D. Approval of Agenda.

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

II. **Public Correspondence**

- A. Correspondence Received. No public correspondence was received.
- 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 December 14, 2023 agenda package. Discussion included:

- On page 3 of 8 of the November 9, 2023 Meeting Minutes, the statement that “general agreement” was reached regarding the idea that the Carryover language in the Judgment is vague should be revised to reflect that the idea was discussed only.
- On page 4 of 8 in the November 9, 2023 meeting minutes, “precedence” should be corrected to “precedent”.
- Director Smith highlighted the balance sheet on page 12 of 101 of the Agenda package and noted that without the DWR’s reimbursement request the total liabilities are greater than the total cash balance.

**Motion:** Motioned by Director Bennett, seconded by Vice Chair Bilyk to approve the Consent Calendar with the noted amendments to the meeting minutes. *Motion carried unanimously by roll-call vote (5-0-0).*

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

- A. *Consideration of Judgment Amendments (or other treatment) on Carryover Transfers, Involuntary Transfers and Public Representative on Watermaster Appointment of Member of TAC.* Chair Duncan led the discussion by reading the meeting minutes from the September 14, 2023 Board meeting regarding the specifics of the Board’s direction to Legal Counsel to draft a motion to amend the Judgment to allow a community representative on the TAC and that further discussion may not be needed since the direction was clear and specific.

Mr. Markman then proceeded to present the information in the Board memo. 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, Kathy Dice, Tammy Baker, Steve Anderson, Diane Johnson, and Rich Pinel.

The key points of discussion included:

- The next Status Conference with the Judge will be held on December 15, 2023. This will be the first Status Conference with the new Judge, Judge Melissa McCormick.
- A Judgment amendment could not be submitted for inclusion with the December 15, 2023 Status Conference. A Judgment amendment requires a formal hearing after filing the motion to amend to allow Parties time to review and comment on the amendment. The hearing

date is likely to be at least two months out from the time the motion is filed. The last motion was filed with the Court in November (for a T2 Palms to intervene in the Judgment) was given a hearing date in January 2024.

- Discussion on the responsibility for paying the community representative on the TAC. Chair Duncan expressed agreement that the community representative should serve pro bono or at no cost no to the Watermaster. Rich Pinel also expressed support that Pumpers should not have to pay for the community representative, noting that the Roadrunner Club appointed John Peterson as their representative on the TAC, who is serving pro bono. Mr. Markman clarified that the proposed language specifies that any costs associated with a community representative on the TAC will not be “borne directly or indirectly” by the Watermaster.
- Clarification that a Party is always allowed to elect to purchase less Carryover than allowable (*i.e.*, less than 2x Baseline Pumping Allocation [BPA]), but Carryover is always limited to a maximum of 2x BPA.
- Discussion on the ability of the Watermaster to lien property in the event of unpaid pumping assessments.
- Confirmation that a full transfer of BPA occurs automatically as part of a sale of the full BPA property, unless water rights restrictive covenants are filed. However, the new owner must become a Party to the Judgment and the Party must be “in good standing” with the Watermaster to exercise (pump) their Water Rights. “In good standing” includes paying all outstanding fees owed in relation to the BPA.
- Mr. Markman recommended that no action is needed to amend the language in the Judgment to require a Party to be “in good standing” to exercise water rights. This
- Discussion of potential edits to Mr. Markman’s proposed language clarifying Carryover rules.
- Mr. Markman indicated that a Judgment amendment to allow a community representative on the TAC would be efficient and inexpensive, even if done separate from an amendment related to Carryover.

Following the discussion, the Board directed Legal Counsel to i) proceed with a Judgment amendment to allow a community representative on the TAC as directed in September 2023, and ii) consult with the legal counsel for the Settling Parties (Anderson, McGlothlin, and Staples) to discuss the potential amendments to Carryover language in the Judgment.

*B. Consideration of Approval of Amendment to WY 2024 Budget.* ED Adams summarized the proposed amendment to the WY 2024 as described in the Agenda package. At the conclusion of the presentation, Chair Duncan opened the floor to public comment, followed by Board discussion. No public comment was made.

The key points of discussion included:

- Director Smith stated that he appreciated the clarification that the WY 2023 budget was under-budget due to being behind schedule and that the exact amount under-budget for each causation factor was specified in the Agenda package.

**Motion:** Motioned by Director Smith, seconded by Director Jorgensen, to approve the amendment to the WY 2024 Budget. *Motion carried unanimously by roll-call vote (5-0-0).*

- C. *Review Draft Resolution to Address Third-Party Requests for Watermaster Resources.* ED Adams provided an overview of the draft resolution included in the Agenda Package. 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:

- Chair Duncan stated recommended that additional time would be needed to consider the resolution since it was submitted the morning of the Board meeting.
- Concern that a resolution/policy was being established around a singular request and may unintentionally increase bureaucracy.
- Concern that this resolution will imply that Watermaster Staff are available to perform other services.
- Support for the development of this resolution because it 1) creates a policy consistent with the existing policy for requesting data and information, and 2) prepares the Watermaster to consistently respond to future requests.
- Confirmation that the Watermaster is not strictly subject to the Brown Act and therefore would not be required to comply with a Public Records Act Requests.

Following the discussion, the Board directed staff to postpone the development of this resolution until further notice. No Board action was taken.

- D. *Review change in Groundwater Storage Calculation - Spring 2022 to Spring 2023.* Lauren Salberg presented the change in groundwater storage calculation for Spring 2022 to Spring 2023. 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, Rich Pinel, and Diane Johnson.

The key points of discussion included:

- Recommendation to compare the change in storage starting at the beginning of the Groundwater Management Plan (GMP) implementation period (spring 2020 instead of spring 2015) to be consistent with the GMP and the Minimum Threshold associated with the reduction of groundwater in storage.
- The method used to calculate the change in storage was approved by the TAC. This method is not the same as the method used to calculate the change in storage in the GMP and set the sustainable management criteria, which used results from the Borrego Valley Hydrologic Model (BVHM).
- Although the current method used to calculate the change in storage may not be the same as using the BVHM, it is an indicator of progress towards achieving sustainability in the Basin.
- The TAC has discussed the results of the change in groundwater storage for Spring 2022 to Spring 2023. No further TAC input will be requested prior to publishing the draft Annual Report.

- The classification of a “wet year” is based on precipitation. There are multiple rain gauges are installed throughout the Basin.
- The reduction in groundwater in storage is not a permanent loss of aquifer storage.
- Director Bennett expressed optimism at the results reflecting a reduced rate of decline in in storage, highlighting how it tracks the reduction in groundwater pumping since 2016.

No Board action was taken.

## V. Reports.

- A. Legal Counsel Report. Mr. Markman reported that the next Status Conference will be held on December 15, 2023. The Status Conference report is larger than usual because it includes background information on the Basin for the new judge, Judge McCormick, to review. Chair Duncan stated he understood that the Borrego Water District (BWD) and Watermaster Board members are invited to attend the Status Conference, but the Status Conference will be closed to the public. Steve Anderson volunteered to forward a link to the Status Conference to the Board members, which would allow them to attend virtually.
- B. Technical Consultant Report.
- Mr. Malone gave a status update on the expansion of the Groundwater Monitoring Program and Borrego Days. Discussion included:
    - West Yost Staff canvassed a total of 17 wells in November 2023 during the regular semi-annual monitoring event. It is not expected that all 17 wells will be incorporated into the monitoring network. There is more work to do to determine which wells will be added to the network.
    - The costs associated with the expansion of the Groundwater Monitoring Program are documented in the Watermaster’s Groundwater Monitoring Plan<sup>2</sup>.
  - Travis Brooks (Land IQ) provided a status update on the Biological Restoration of Fallowed Lands project. Discussion included:
    - Land IQ will need to prepare a Request for Proposal (RFP) to hire a contractor to build the sand fences. Mr. Brooks expects the construction to be completed quickly once contracted.
    - DWR has not published guidance on the restoration of fallowed lands.
    - The project is focused on restoring the land to its natural state. Evaluation of installing solar facilities has not been considered, nor is it part of the scope of this project.
- C. Executive Director Reports. ED Adams reported on the following items:

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<sup>2</sup> Available on the Watermaster’s website at: [borregospringswatermaster.com/wp-content/uploads/2023/04/R-BSW-Groundwater-Monitoring-Program-FINAL-20230411.pdf](https://borregospringswatermaster.com/wp-content/uploads/2023/04/R-BSW-Groundwater-Monitoring-Program-FINAL-20230411.pdf)

- Prop 68 Grant Update – Geoff Poole (BWD) was notified that DWR has received approval to release and send the grant reimbursement check. The check is anticipated by the end of the month (December 2023).
- West Yost has offered to pay for a courier to travel to/from Borrego Springs to exchange the checks between BWD and Watermaster to ensure timely payment of vendors.
- DWR will issue one check to BWD and BWD will then issue checks to each subgrantee.
- DWR has reviewed the second reimbursement report and submitted questions to BWD. ED Adams will follow-up on DWR’s status of their review and report back in January.

D. Chairperson’s Report.

- Chair Duncan reported that he had a conference call discussing a professor at UCI who expressed interest in serving as the community representative on the TAC with ED Adams and Mr. Markman. During this call, it was suggested that this potential representative could submit their CV to West Yost, and if deemed qualified, could participate in upcoming TAC meetings in anticipation of Court approval of the Judgment amendment. Jim Dax clarified that the potential representative, Russ Detwiler, has been attending TAC meetings as member of the public over the last year. Chair Duncan asked if there was any opposition to Dr. Detwiler starting to participate as a TAC member prior to approval of the Judgment Amendment, subject to the approval of his qualifications. There was no opposition.
- Chair Duncan directed Director Jorgensen to submit Dr. Detwiler’s CV to West Yost to review if he meets TAC member qualifications so he could begin to participate at subsequent TAC meetings.

VI. **Approval of Agenda Items for January 11, 2024 Board Meeting.** Chair Duncan reviewed the potential agenda items for the next Board meetings listed in the agenda package. The Board discussed items to be included on the January 11, 2024 Board meeting agenda. Discussion included:

- A request by Director Jorgensen to include the BWD’s Groundwater Quality Risk Assessment Report on the Watermaster’s website under the “Documents and Reports” page. BWD agreed to post the Report to BWD’s website. It was determined that because the report is not published by the Watermaster and has not yet been vetted, it should not be listed as a technical reference at this time. Director Bennett noted that the report is available to the public as part of the TAC agenda from November 2023.
- ED Adams updated the proposed Agenda for the January 11, 2024 meeting on the presentation screen based on discussion (see slide #56 in the [meeting presentation](#)), noting it now includes the following items:
  - Review WY 2023 Annual Report status
  - Q1 WY 2024 Budget Status Review
  - Status update on the redetermination of the Sustainable Yield
  - Status update on the 5-year assessment of the GMP

**Motion:** Motioned by Vice Chair Bilyk seconded by Director Smith, to approve the January 11, 2024 agenda presented. *Motion carried unanimously by roll-call vote (5-0-0).*

VII. **Board Member Comments.** Chair Duncan called for comments. There were no Board comments.

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

IX. **Adjournment**

A. Chair Duncan adjourned the meeting at 7:35 PM.



Recorded by:

Lauren Salberg, Staff Geologist, West Yost



Attest:

Shannon Smith, Secretary and Treasurer of the Board