

**Borrego Springs Watermaster
Board of Directors Meeting
July 16, 2025
AGENDA ITEM V.E**

To: Board of Directors
From: Samantha Adams, Executive Director
Date: July 15, 2025
Subject: Addressing DWR Comments on the Judgment/GMP: RCA #7 – Judgment vs. GMP

<input checked="" type="checkbox"/> Recommended Action	<input type="checkbox"/> Provide Direction to Staff	<input checked="" type="checkbox"/> Information and Discussion
<input type="checkbox"/> Fiscal Impact	<input type="checkbox"/> Cost Estimate: \$	

Recommended Actions

- Appoint a replacement member to the GMP/DWR Communications Committee
- Board discussion to provide input and feedback on Staff’s recommended approach to address RCA No. 7

Fiscal Impact: None. Board has allocated available budget to address RCAs

Background

In February 2025, the California Department of Water Resources (DWR) issued a Staff Report approving the Borrego Springs Subbasin Alternative with seven Recommended Corrective Actions (RCAs) to improve the use of the Judgment and Groundwater Management Plan (GMP) as an alternative to a SGMA-compliant Groundwater Sustainability Plan. The [DWR Staff letter](#) can be accessed on the Borrego Springs Watermaster Website¹.

Watermaster’s plan to address each RCAs will be reported in the 5-Year Assessment of the GMP (Periodic Evaluation), which is due to the DWR by June 2026. This memo provides details and a proposed approach for responding to DWR RCA No. 7 and seeks Board input for next steps.

RCA No. 7

Although the DWR approved the Borrego Springs Judgment and GMP as an Alternative plan under SGMA, they identified uncertainty about role and use of the GMP within the adjudicated management framework. This concern is requested to be addressed through RCA No. 7. The full text of RCA No. 7 is listed on page 40 of 42 of the DWR Staff Report, and reads as follows:

“Eliminate inconsistencies or ambiguities between the Stipulated Judgment and GMP, and resolve or clarify the intended role of the GMP in Subbasin management and make appropriate

¹ Available at: https://borregospringswatermaster.com/wp-content/uploads/2025/03/DWR_BorregoSprings_GSP2025_Determination.pdf

amendments to the GMP and/or Stipulated Judgment (as needed) to clearly and expressly reflect (and enforce) that intent, especially, but not limited to the following issues detailed in Section 6 of this assessment:

- a) Application and use of the GMP's sustainable management criteria to calculate the sustainable yield and making management decisions to avoid undesirable results within the Subbasin.
- b) Reconcile or explain the inconsistencies between the process and factors considered for making the periodic five-year calculations of sustainable yield and those for adjustments to sustainable yield in between the five-year periods.
- c) Reconsider and clarify the role of the GMP in guiding Watermaster and Court decisions in implementing the Borrego Alternative and managing groundwater in the Subbasin.
- d) Include in all annual reports and periodic evaluations submitted to the Department a description of Watermaster or court decisions (e.g., sustainable yield calculations, amended or new judgments other orders of consequence, etc.) that impact basin management."

Generally speaking, DWR lacks a full understanding of the Judgment and GMP that could be resolved by providing additional information and explanation. Thus, Staff recommends preparing a written response to DWR, to be included in the 5-Year Assessment Report that explains the role of the Judgment and GMP. We recommend the written response should focus on addressing the specific feedback provided by DWR throughout Section 6 of the DWR Staff Report – not just the points summarized in RCA No. 7. The Section 6 detail is summarized below, with notes on what the scope of the response might be to address the issues raised by DWR.

Summary of DWR's Feedback on the Relationship of the Judgment/GMP (RCA No. 7)

Section 6 of the DWR Staff Report (pages 30-37) provides the detailed basis for RCA No. 7. The specific issues raised in Section 6 can be grouped into five topics as follows:

1. Uncertainty about the Authority of the GMP
2. Disconnect Between Sustainable Yield and Sustainable Management Criteria
3. Unclear Process for Adjusting Pumping
4. No Evidentiary Weight for GMP in Judicial Review
5. Vague Role of GMP in Water Quality Management

Relevant excerpts from the DWR letter demonstrating these key concerns are included below.

1. Uncertainty About the GMP's Authority

The following excerpts from Section 6 of the DWR Staff Report highlight the DWR uncertainty about the authority of the GMP:

"Where the GMP and Stipulated Judgment apply different criterion to the same aspects of basin management, the ability of Department staff to determine whether the Borrego

Alternative is consistent with SGMA is complicated or impaired.” (Section 6.1, p. 31)

“Language in the Stipulated Judgment creates some uncertainty about the ability of Department staff to rely on the GMP as defining the technical parameters of that management. Because SGMA defines this kind of alternative as ‘management under an adjudication action,’ Department staff believe that the explanation of that management would benefit from a clarification of the role of the GMP in the Physical Solution.” (Section 6.2, p. 32)

“The Stipulated Judgment does not require the Watermaster to implement the management process described in the GMP. Instead, the Stipulated Judgment requires the Watermaster to consider several factors other than the GMP and does not specifically mention the GMP. This leaves the role of the GMP’s sustainable management criteria in determining the Subbasin’s sustainable yield and making any related pumping adjustments uncertain.” (Section 6.2.1, p. 34)

Department staff conclude that although there appears to be an intent to use the GMP as the technical ‘roadmap’ for management of the Subbasin, there are uncertainties and inconsistencies in the express provisions of the Stipulated Judgment and the GMP that cast confusion or doubt as to whether this is actually how the Borrego Alternative (i.e., ‘management under an adjudication action’) will be implemented in the Subbasin. While flexibility under the rubric of adaptive management is desirable in a groundwater management program, at this time Department staff cannot assume or predict with sufficient certainty how the GMP will influence management decisions under the Borrego Alternative. This issue should be addressed to ensure that Department staff will be able to quantitatively track whether implementation of the Borrego Alternative is meeting the Subbasin’s sustainability goal and the objectives of SGMA.” (Section 6.3, p. 37)

Addressing this concern should include a detailed description of how and when the Watermaster relies on the GMP for various actions/decisions. It would be useful to create a listing of the typical decisions being made by Watermaster, what the Judgment says, and how the GMP informs the decision process for each item. Examples of Watermaster decisions include: approval of new De Minimis Wells, approval of Permanent Transfers, and assessment of Carryover.

This would be an appropriate item for Staff to lead in preparing a draft response, with help from legal counsel, as needed.

2. Disconnect Between Sustainable Yield and Sustainable Management Criteria

The following are the relevant excerpts from Section 6 of the DWR Staff Report:

“The Stipulated Judgment incorporates SGMA’s general statutory definitions for sustainable yield and undesirable results, but it does not include locally established quantitative descriptions of conditions for this Subbasin that would constitute or indicate the potential for undesirable results to occur, or conditions or indicators to maintain in the Subbasin to avoid undesirable results (i.e., sustainable management criteria).” (Section 6.2.1, p. 33)

“The Stipulated Judgment’s process for calculating sustainable yield does not appear to reference or incorporate the GMP’s minimum thresholds for groundwater elevations, or the previously discussed commitment in the GMP to adjust the Subbasin’s management regime based on an evaluation of actual groundwater level conditions in the Subbasin.” (Section 6.2.1, p. 35)

“The term ‘consider’ does not indicate that the Watermaster would, or must, follow the GMP’s sustainable management criteria, even if they were among the other data considered.” (Section 6.2.1, p. 35)

In context, we interpret their concern to be a belief that:

- The Judgment’s process for calculating sustainable yield is based on:
 - Model runs (BVHM)
 - Hydrologic inputs and outputs
 - Technical committee input
- The GMP’s process is based on:
 - Avoiding undesirable results
 - Measured groundwater conditions
 - Adaptive management using SMCs
- The Judgment does not:
 - Explicitly require the Watermaster to use the GMP’s SMCs when calculating sustainable yield.
 - Reference the GMP’s minimum thresholds or measurable objectives in its sustainable yield framework.

To address this concern, it would be necessary to describe the technical process for how the GMP framework is applied in setting the Sustainable Yield. It should be noted that the process relied on for 2025 did not explicitly consider SMC outcomes in establishing the Sustainable Yield, though this is currently being addressed through model simulations of future pumping. It may be worth considering an adjustment to the approach for 2030 to analyze the model results of future pumping outcomes before finalizing the Sustainable Yield.

This would be an appropriate item for Staff to lead in preparing a draft response, with help from legal counsel, as needed.

3. Inconsistent Processes for Adjusting Pumping

The following are the relevant excerpts from Section 6 of the DWR Staff Report:

“The process described above appears potentially inconsistent with the process established in the Stipulated Judgment for the Borrego Alternative’s periodic evaluation, which is required by SGMA and the GSP Regulations to occur at least every five years. The rationale for having

two different processes associated with establishing pumping allocations is unclear, and no technical explanation seems to be provided.” (Section 6.2.2, p. 35)

“Like the five-year increment process, the interim adjustment process to define pumping allocations also does not appear to depend on the sustainable management criteria established in the GMP when calculating sustainable yield or the necessary pumping rampdown to achieve sustainability and thus lacks quantitative standards required by the GSP Regulations.” (Section 6.2.2, p. 36)

“Third, it does not appear that the Watermaster is authorized to invoke provision F.12, as referenced above, to adjust the ‘Rampdown’ rate at times between the five-year increments, but that this process must be initiated either by the Court or by a motion of any Party, a term that is defined in the Stipulated Judgment but does not include the Watermaster. Department staff believe this situation could create the potential that interim management adjustments that may be necessary to avoid undesirable results or achieve interim milestones may not be implemented, even if the Watermaster believes such actions are necessary.” (Section 6.2.2, pp. 35–36)

In context, the DWR is confused about when and how a change to the Sustainable Yield would be made in between the required five year updates, and Watermaster’s authority to do this. There is a concern that the structure may not meet SGMA’s expectations for timely, adaptive management based on real-time data that might indicate Undesirable Results are occurring.

This would be an appropriate item for legal counsel to lead in preparing a draft response, with help from Staff, as needed.

4. No Evidentiary Weight for GMP in Judicial Review

The following are the relevant excerpts from Section 6 of the DWR Staff Report:

“The Court review shall be de novo, without evidentiary weight to the Watermaster action or decision.” (Section 6.2.3, p. 36)

“If the GMP is intended to provide the ‘technical approach’ or ‘roadmap’ for Subbasin management, as is indicated in one provision of the Stipulated Judgment and as stated in the GMP, it seems that management decisions consistent with or required by the GMP should generally be upheld by the Court or at least afforded some evidentiary weight.” (Section 6.2.3, p. 36)

In context:

- If a party challenges a Watermaster decision in court, the judge will not give any special weight or deference to the Watermaster’s technical findings or reasoning.
- The court will independently evaluate the facts and arguments and make its own determination.
- Even if the Watermaster followed the GMP exactly, the court is not required to uphold that decision or treat it as presumptively valid.

In sum, DWR likely sees this as a weakening of the GMP's authority, such that if the GMP is supposed to be the technical roadmap for managing the basin, then decisions based on it should carry some evidentiary weight. Without that, DWR is unsure whether the GMP will actually guide basin management in a meaningful or enforceable way.

This would be an appropriate item for legal counsel to lead in preparing a draft response.

5. Uncertain Role of GMP in Water Quality Management

The following are the relevant excerpts from Section 6 of the DWR Staff Report:

"The Stipulated Judgment appears to establish an open-ended, subjective process for the Watermaster to determine whether a certain amount of water quality degradation constitutes an undesirable result." (Section 6.2.4, p. 37)

"This provision in the Stipulated Judgment does not reference or incorporate the parts of the GMP that discuss and establish sustainable management criteria for degraded water quality, or the projects and management actions intended to prevent undesirable results in the Subbasin from occurring." (Section 6.2.4, p. 37)

To address this it, it will be necessary to explain in detail Watermaster's intended process for collecting water quality data, analyzing data, determining when there is an unreasonable impact that should be assessed for cause, and what steps would be taken if a Watermaster action is the cause. This may necessitate an update to the GMP and its Water Quality PM for clarity. This will be a subject a future workshop.

This would be an appropriate item for Staff to lead in preparing a draft response, with help from legal counsel, as needed.

Recommended Approach to Respond to RCA No. 7

Staff recommends preparing a written response to DWR that address all of the above noted DWR concerns. We do not recommend that any changes to the Judgment be considered at this time. However, it may be prudent to propose clarifying edits to the GMP to provide ultimate clarity to the DWR. The proposed response would address each statement of confusion or concern outlined in the RCA and the detail in Section 6 of the DWR Staff Report, for comprehensiveness.

To accomplish this we propose the following approach:

- Staff drafts responses to items 1, 2 and 5, with support from Staff as needed.
- Legal counsel drafts responses to topics 3 and 4, with support from Staff as needed.
- Watermaster Committee on DWR/GMP Communications reviews and edits the draft responses. The Committee could also request review by the authors of the Judgment (e.g. legal counsels for BWD, T2, and AAWARE).
- The revised draft responses are presented to the Board for review and edit, and eventual approval.
- The approved responses are incorporated into the 5-Year Assessment Report and changes to the GMP (if any) incorporated as redline.

It may be necessary to cover all the items over multiple meetings (one or more topics at a time). Content would likely be presented for finalization and approval from September through December 2025. This will enable approved responses to make it into the draft 5-Year Assessment Report by February 2026.

With regard to the recommendation to work with the DWR/GMP Communications Committee, it will be prudent to appoint one new member to the Committee. The Committee appointees were Directors Shannon Smith and Dave Duncan. With Dave's departure from the Board, a new member is needed.

Next Steps

Staff is seeking the following next steps at the Board meeting:

- Board discussion at the meeting to:
 - Refine the proposed approach to address RCA No. 7, such as the proposed responsibilities for preparing draft responses
 - Provide any specific input/requests/feedback to staff for consideration in developing the responses to any topic
- Appoint a new member to the DWR/GMP Communications Committee.
- Provide direction to staff to request DWR/GMP Communications Committee to review the draft responses as they are developed.

Based on Board direction, Staff will take next steps to coordinate the draft responses to RCA No. 7.