

**MINUTES**  
**BORREGO SPRINGS WATERMASTER BOARD MEETING**  
**Conducted Virtually via GoToMeeting**  
**Thursday, August 12, 2021, 4:30 p.m.**

**I. Opening Procedures**

- A. Chairman Duncan called the meeting to order at 4:43 PM
- B. Chairman Duncan led the meeting participants in the Pledge of Allegiance.
- C. Samantha Adams (Executive Director) called roll and confirmed that all members of the Board were present. The following individuals were present at the meeting:

<b>Directors Present</b>	Chairman Dave Duncan – Borrego Water District (BWD)
	Vice Chairman Shannon Smith – Recreational Sector
	Jim Bennett – County of San Diego
	Mike Seley – Agricultural Sector
	Mark Jorgensen – Community Representative
<b>Watermaster Staff Present</b>	James M. Markman, Legal Counsel
	Samantha Adams, Executive Director, West Yost
	Andrew Malone, Lead Technical Consultant, West Yost
	Lauren Sather, Staff Scientist, West Yost
<b>Others Present</b>	Cathy Milkey, T2 Borrego LLC
	Lyle Brecht, BWD Director
	Trey Driscoll, Dudek, representing BWD
	Diane Johnson, BWD Director
	Michele Staples, Jackson Tidus, representing AAWARE
	Steven Anderson, BBK, representing BWD
	Tyler Bilyk, Board Alternate – Agricultural Sector
	Rich Pinel, Board Alternate – Recreational Sector

- D. Approval of Agenda.

**Motion:** Motioned by Vice Chairman Smith, seconded by Director Seley to approve the Agenda.  
*Motion carried unanimously (5-0-0).*

**II. Public Correspondence**

- A. Correspondence Received. Executive Director (ED) Adams noted the correspondence letters received.
- B. Public Comments. Chairman Duncan called for public comments. The following comments were made:
  - Rich Pinel commented on the need for identifying grant funding for implementing water conservation incentives.

- III. Consent Calendar.** Chairman Duncan called for any discussion on the Consent Calendar items included in the August 12, 2021 agenda package. Vice Chairman Smith inquired about the past due invoice payments to RWG Law. ED Adams explained that Watermaster Staff had fallen behind on the approval process for payment of invoices but is now caught up.

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

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

A. *Consideration of directing legal counsel and staff to seek recordable Court orders (Markman).* Mr. Markman summarized the memo in the agenda package. At the conclusion of the presentation, Director Duncan opened the floor to public comment, followed by Board discussion. Public comment was made by Cathy Milkey. The key points of discussion included:

- Cathy Milkey reported that a recent property for sale in Borrego Springs had a natural hazard disclosure report (NHD) that included information on how Borrego Springs was in critical overdraft and noted that perhaps this could become a standard reporting item in all NHD reports. The Chairman directed Ms. Milkey to send the report to Mr. Markman so he can investigate further.
- It is important to have a multi-faceted approach to alerting the public about the Judgment, including:
  1. Alerting potential buyers before a property is purchased through recordation of the Judgment and through outreach to local drillers and realtors.
  2. Collaborate with the County to notify anyone who applies for a permit to drill a well about the Judgment.

Although there is a high, up-front cost to the recordation process, it is prudent to get ahead of the issue now to maximize communication of the Judgment requirements and prevent potential unauthorized pumping and future conflict.

**Motion:** Motioned by Vice Chairman Smith, seconded by Director Jorgensen, directing legal counsel to proceed with the proposed recordation process. *Motion carried unanimously by roll-call vote (5-0-0).*

B. *Resolution of Unpaid Watermaster (Adams/Markman).* Mr. Markman and ED Adams summarized the status of unpaid Watermaster assessments as presented in the agenda package. At the conclusion of the presentation, Director Duncan opened the floor to public comment, followed by Board discussion. Vice Chairman Smith recused himself from the discussion and requested Alternate Director Pinel to represent the Recreational Sector. Public comment was made by Cathy Milkey. The key points of discussion included:

- The staff memo did not list three Parties that are under a payment plan worked out with Watermaster staff, all of whom have made initial payments in good faith. The outstanding balance on payment plans is \$32,675.
- John Doljanin was offered a payment plan but did not respond to the offer. One more attempt should be made to offer a payment plan.
- To maintain a collaborative environment, it would be prudent for Watermaster staff to make one more attempt to collect time-certain payment from the delinquent parties via demand letter from Watermaster's legal counsel before taking any motion to court. The Board will consider further action on delinquent payments after this final attempt.

**Motion:** Motioned by Director Jorgensen, seconded by Director Bennett, to direct Legal Counsel to make one more attempt to collect the delinquent assessments time-certain, including offer of a payment plan. *Motion carried unanimously by roll-call vote (5-0-0), with Alternate Director Pinel voting for the Recreational Sector.*

C. *Process to Review and Approve Applications for De Minimis Pumping (Malone).* Mr. Malone summarized the memo included in the agenda package. At the conclusion of the presentation, Chairman Duncan opened the floor to public comment, followed by Board discussion. Public comments were made by Steve Anderson, Lyle Brecht, Diane Johnson, and Michelle Staples.

The key points of discussion included:

- Given that every landowner is already a party to the Judgment, intervention as part of the process is not necessary.
- There are likely to be few applicants based on the number of past De Minimis Pumpers, which could mean that a simple process is sufficient.
- A new De Minimis Pumper applicant should be required to cover the entire cost associated with the application process.
- De Minimis Pumpers are exempted from the provisions of the Judgment and should not be required to purchase a BPA until and unless there is a finding based on technical merit that De Minimis pumping is causing undesirable results.
- It might be helpful to involve the Borrego Water District for applications made within their service area.
- While the Judgment does not require it, it would be prudent that all De Minimis Pumpers be required to meter their wells as a condition of approval.
- The County is seeking internal agreement on how best to collaborate with Watermaster and will report back to Staff with additional information as soon as they are able.

Following the discussion, the Board directed staff to refine the De Minimis application process based on the discussion and to continue to work with the County on a collaborative approach. No action was taken.

D. *Process to Respond to Requests for Watermaster Data and Information (Malone).* Mr. Malone summarized the staff memo contained in the agenda package. At the conclusion of the presentation, Chairman Duncan opened the floor to public comment, followed by Board discussion. Public comment was made by Michele Staples. The key points of discussion included:

- Watermaster is not a public entity and the Board has the ability to refuse information requests.
- It is important to consider who is requesting the information and how it will be used before the request is approved.
- West Yost has many examples of information request forms and standard releases that can be utilized in developing a process for Watermaster. These will be provided to Markman to review.

- The requestor should cover the cost of responding to the request. This could be assessed on a case-by-case basis.

Following the discussion, the Board directed staff to formalize a process to respond to request for information. No Board action was taken.

*E. Consideration of Approval of Statement of Work No. 3 for West Yost Services for Water Year 2022 (Adams).* ED Adams summarized the Statement of Work No. 3 for West Yost Services for Water Year 2022. At the conclusion of the presentation, Chairman Duncan opened the floor to public comment, followed by Board discussion. There were no public comments. The key points of discussion included:

- SOW No. 3 will replace SOW No. 1 and No. 2 as of October 1, 2021. Any remaining unspent budget from SOW No. 1 and No. 2 will not be available to West Yost.

**Motion:** Motioned by Vice Chairman Smith, seconded by Director Jorgensen, to approve the attached amendment to Exhibit A of the Borrego Springs Watermaster Professional Services Agreement with West Yost to include Statement of Work No. 3 and its associated budget of \$506,353. Motion carried unanimously by roll-call vote (5-0-0).

*F. Improperly Abandoned Wells (Adams).* ED Adams summarized the staff memo included in the agenda package. At the conclusion of the presentation, Chairman Duncan opened the floor to public comment, followed by Board discussion. Public comment was made by Diane Johnson. The key points of discussion included:

- There are formal definitions of abandoned wells and requirements for proper abandonment, but no enforcement.
- DWR expressly states that the County is the authority in regulating abandoned wells.
- Anyone can report a nuisance, but there must be reasonable cause to investigate.
- The County does not have an ad-hoc inspection process because there is no legal authority to enter a property unless a complaint can clearly demonstrate a threat to public health. And, even with cause, it can be difficult to prove and obtain access. This is not a challenge unique to the County of San Diego.
- Previously, the BWD identified four wells with reasonable cause to believe they posed a threat to water quality and reported them to the County. They were then dealt with by the County.
- In addition to the four wells noted above, BWD has identified numerous other wells that might be abandoned. It was suggested that Watermaster could send letters to those identified to determine if the wells are active or not. It was suggested that Watermaster follow up with the Regional Water Quality Control Board to find out if there is a regulatory mechanism by which they can address improperly abandoned wells.

Following the discussion, the Board directed staff to write to discuss improperly abandoned wells with DWR and the Regional Water Quality Control Board to determine if there are potential avenues to address them. No Board action was taken.

**V. Reports.**

- A. Executive Director Reports. ED Adams reported on the following items:
  - The Borrego Springs Judgment is still under review by the DWR as an Alternative to a GSP.
- B. Legal Counsel Report. NONE
- C. Chairperson's Report. NONE

**VI. Board Member Comments.** Chairman Duncan called for comments. Vice Chairman Smith noted he looks forward to when the Watermaster can meet in person, but recognizes that it is not the time for in person meetings yet.

**VII. Next Meetings of the Borrego Springs Watermaster.** Chairman Duncan reviewed the potential agenda items for the next Board meetings included in the agenda package. The next meetings are:

- A. Regular Board Meeting – Thursday, September 9, 2021 at 4:30 pm.
- B. Regular Board Meeting – Thursday, October 14, 2021 at 4:30 pm.

**VIII. Adjournment**

- A. Chairman Duncan adjourned the meeting at 7:06 PM.



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Recorded by:  
Lauren Sather, West Yost



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