

Borrego Springs Watermaster Board Meeting

August 12, 2021

Opening Procedures

- A. Call to Order
- B. Pledge of Allegiance
- C. Roll Call
- D. Approval of Agenda



Public Correspondence

- Letter from Borrego Water District
- Note from Lyle Brecht:

Instructions for Public Comment

The public may address the Board on items within the Watermaster's Jurisdiction that are included or not included on the meeting agenda.

To address the Board on items that are not included on the meeting agenda, the public may request to speak during ***Agenda Item II – Public Correspondence***. Comments may be limited to three minutes per speaker.

To address the Board on items that are included on the meeting agenda, the Board Chairperson will call for public comments immediately following the agenda item's staff report presentation and prior to Board discussion.

Consent Calendar

- A. Approval of Minutes – July 8, 2021
- B. Approval of July 2021 Financial Report
- C. Receive and File Staff Invoices: April 2021
- D. Receive and File Staff Invoices: May 2021
- E. Receive and File Staff Invoices: June 2021

IV.A – Consideration of directing legal counsel and staff to seek recordable Court orders

Recommended Action: Provide direction to legal counsel and staff whether to proceed to seek the Court orders that can be recorded with the County of San Diego which will provide notice to purchasers of property in the Basin that no water may be produced from the Basin by any purchaser of property unless the production is authorized by and in accordance with the Judgment.

Fiscal Impact: Estimated to be up to \$10,000. Of this, \$3,000 to \$5,000 is for recording fees that would be paid directly by Watermaster to the County (from administrative budget). Additional costs for legal counsel time would be covered by the approved budget for legal counsel for Water Years 2020 to 2021.

Next Steps:

- Coordinate with legal counsel to the Settling Parties to obtain parcel/APN data
- File a motion with the Court requesting the Court's assistance to provide this additional notice
- Work with the County to file and record the Court notice

IV.B – Resolution of Unpaid Watermaster Assessments

Recommended Action: Direct Legal Counsel to file a motion with the Court to enforce the April 8, 2021 Court Order requiring payment of the Watermaster Assessments and reimbursement to Settling Parties for fees paid to prepare the Groundwater Sustainability Plan

Fiscal Impact: None.

IV.B – Resolution of Unpaid Watermaster Assessments

Table 1. Total Assessments Issued by and Owed to the Borrego Springs Watermaster

Assessment Type	Total Assessment Amount <i>(after credits applied)</i>
Watermaster Budget Assessment	\$1,159,488.75
Reimbursement to Settling Parties	\$10,816.63

As of August 9, 2021:

- Two Parties have submitted proof of payment to the State of California to receive credit against assessment owed
- Three parties have made partial payments on the assessments owed and have made time-certain commitments to Watermaster staff to issue the final amounts owed (**they owe \$32,675.24**)
- Seven Parties have failed to make any payment on the assessments owed
- All other parties have paid in full

IV.B – Resolution of Unpaid Watermaster Assessments

Table 2. List of Parties with Unpaid Watermaster Assessments as of August 8, 2021

Party Name	BPA, acre-feet	Settling Party?	Assessments Owed
John Doljanin, West Coast Trees	887	Yes	\$42,576.00
Robert Larkins	2	No	\$105.31
Doug & Patricia Munson	1	No	\$52.66
Manuel & Araceli C. Navarro	14	No	\$737.20
Jose G. & Maria E. Sanchez	4	No	\$210.63
Brian Siefker	3	No	\$157.97
Max Siefker	2	No	\$105.31
Total	913		\$44,038.22

IV.C – Process to Review and Approve Applications for New De Minimis Pumping

Background

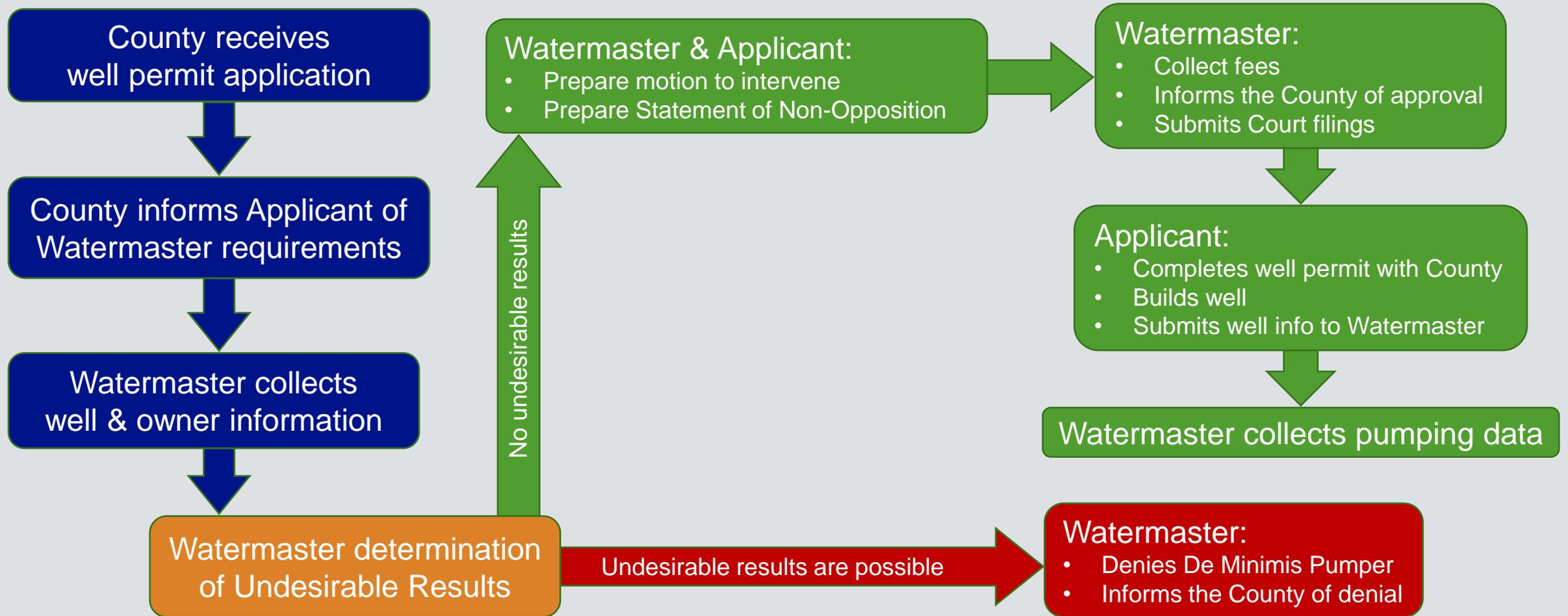
- *De Minimis Pumper*: Any Party who Pumps two (2) acre-feet per year or less for use on real property in the Basin.
- New *De Minimis Pumpers* shall submit an application to the Watermaster.
- Watermaster shall determine whether the proposed de minimis pumping will contribute to or threaten to contribute to Undesirable Results or other interest related to the Basin.
- The application shall be denied if it contributes to or threatens to contribute to Undesirable Results or other interest related to the Basin.
- At the July Board meeting, the Board directed staff to develop a proposal for a De Minimis Pumping application process and associated fee schedule.

IV.C – Process to Review and Approve Applications for De Minimis Pumping

Research and Findings

- Well permitting starts at the County of San Diego
 - Application is submitted by prospective well owner
 - Permit fee is \$633
- Watermaster Legal Counsel believes De Minimis Pumpers should intervene
- Other Watermasters have requirements for De Minimis Pumpers
 - Intervention into the Judgment
 - Fees for water replenishment, Court filings, etc.
 - Meter installation and providing data/information

Recommended Process to Review and Approve Applications for De Minimis Pumping



IV.C – Process to Review and Approve Applications for De Minimis Pumping

Other Considerations:

- Should new De Minimis Pumpers be required to obtain BPA rights?
- What is the optimal relationship with the County in issuing new well permits?
- What costs should the Watermaster recover from the Applicant?
 - Court fees
 - Costs for technical and legal services
 - Costs for meter reading

IV.C – Process to Review and Approve Applications for De Minimis Pumping

Recommended Action: Direct Watermaster Staff to work with Legal Counsel on:

- A template for the standard motion to intervene in the Judgment.
- A template for the Statement of Watermaster Non-Opposition to the Application for Intervention as a De Minimis Pumper.
- The fee schedules for preparing the standard motion to intervene in the Judgment and an annual fee for meter reading.

IV.D – Process to Respond to Requests for Watermaster Data and Information

Background

- Watermaster Staff recently received a request for a copy of the most recent version of the Borrego Valley Hydrologic Model.
- Watermaster should expect to receive similar Requests for Information (RFI) in the future for:
 - Data
 - Model files for model information
 - Technical services or legal opinions
- Watermaster should develop a standard process for responding to RFIs.

IV.D – Process to Respond to Requests for Watermaster Data and Information

Objectives

- Define the types of data and information that the Watermaster will (or will not) release to requesting entities.
- Establish a standard and efficient process respond to RFIs.
- Establish a process to recover costs to respond to RFIs (or not).
- Limit the Watermaster’s legal exposure and liability associated with the subsequent use of data/information/models.

IV.D – Process to Respond to Requests for Watermaster Data and Information

Considerations

- Should the Watermaster charge a fee to recover costs in responding to RFIs?
- What types of data/information should be considered publicly available?
- What types of data/information should be considered private and confidential?

IV.D – Process to Respond to Requests for Watermaster Data and Information

Recommended Action: Direct Watermaster Staff to work with Legal Counsel on:

- A form for an entity to submit an RFI to Watermaster.
- A standard release that the requesting entity would sign that describes the conditions and limitations on the use of data/information from the Watermaster's databases and models, and indemnifies the Watermaster from claims, liabilities, expenses, or damages arising out of the use of data or models provided by the Watermaster.
- A written description of the step-by-step process that Watermaster Staff, Legal Counsel, and Board will take in responding to RFIs.

IV.E – Consideration of Approval of Statement of Work No. 3 for West Yost Services for WY 2022

Recommended Action: 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.

Fiscal Impact: None – the Watermaster budget for WY 2022, which was approved by the Board on July 8, 2021 regular Board meeting, includes the funding to cover the activities in Statement of Work No 3

IV.F – Abandoned Wells

Background

- The Borrego Water District and members of the public have previously expressed concerns to the Watermaster Board regarding improperly abandoned wells in the Borrego Springs Subbasin (Basin) and their potential threat to groundwater quality.
- With regard to abandoned wells, Section X.B1 of the Judgment states that:

The Parties and Watermaster agree to cooperate with the County in the enforcement of the County's well abandonment ordinance in effect in the Basin as improperly abandoned wells have the potential to provide a migration pathway of contaminants into the Basin.

IV.F – Abandoned Wells

- The County's well abandonment ordinance is contained within the San Diego County Code of Regulatory Ordinances under Title 6, Division 7, Chapter 4, Article 4 – Nuisances states, in part, that:
 - *The Director may, upon reasonable cause to believe that an abandoned well or other well is causing a nuisance by polluting or contaminating ground water, or constitutes a safety hazard, investigate the situation to determine whether such nuisance does in fact exist*
 - *The property owner or responsible party shall take the necessary actions to repair, reconstruct or destroy a well that is a nuisance*
 - *Whenever the Director determines that an abandoned or other well is causing a nuisance by polluting or contaminating ground water, or constitutes a safety hazard, the Director may issue a written order*

IV.F – Abandoned Wells

- The County has indicated to Watermaster staff that:
 - The County's role is to review and respond to reports of improperly abandoned wells that provide credible evidence that a well is causing a nuisance.
 - The County does not have the budget, resources, nor the authority to seek out and identify improperly abandoned wells on private property.
 - Is willing to cooperate with the Borrego Springs Watermaster to support the implementation of the Judgment on issues within the County's authority.

IV.F – Abandoned Wells

- The Judgment also addresses abandoned wells in the case of any permanent transfer of BPA that occurs by way of permanently following any portion of a Party's irrigated tree crop, including BPA that was assigned as a conversion from BWD water credits. Such form of BPA transfers must meet the Minimum Following Standards described in Exhibit 3 to the Judgment. Exhibit 3 requires, among other provisions, that:

All irrigation wells not used for irrigation of other property, for monitoring or for other allowable purposes shall be properly abandoned, converted to monitoring wells, or otherwise exempted under applicable County standards