

ATTACHMENT

For Item

#10

Wednesday,
October 16, 2019

PUBLIC COMMUNICATION RECEIVED BY THE
CLERK OF THE BOARD

DISTRIBUTED 10/15/19

From: Cox, Greg
Sent: Tuesday, October 15, 2019 9:01 AM
To: FGG-DL, LSDOCS
Subject: FW: Support our Borrego Springs Farmers

From: Beth Edwards <edwrdsgrfx@aol.com>
Sent: Monday, October 14, 2019 6:08 PM
To: Cox, Greg <Greg.Cox@sdcounty.ca.gov>; Jacob, Dianne <Dianne.Jacob@sdcounty.ca.gov>; Gaspar, Kristin <Kristin.Gaspar@sdcounty.ca.gov>; Fletcher, Nathan (BOS) <Nathan.Fletcher@sdcounty.ca.gov>; Desmond, Jim <Jim.Desmond@sdcounty.ca.gov>
Subject: Support our Borrego Springs Farmers

Dear Supervisors,

Please Oppose Agenda Item #10 on your regular Board Agenda for this Wednesday.
Don't abandon agriculture in Borrego Springs!

Thank you,
Beth Edwards

Beth Edwards
edwrdsgrfx@aol.com
760-705-0728 cell

From: Desmond, Jim
Sent: Tuesday, October 15, 2019 11:54 AM
To: geoff@borregowd.org
Cc: FGG-DL, LSDOCS; Mills, Benjamin
Subject: RE: BWD Position on GSA Agenda Item
Attachments: DOC390.pdf

Dear Geoff,

Thank you for your email and letter. I appreciate you sharing your thoughts on this matter. When this item comes before the Board of Supervisors, I will consider your input and all other input before making a decision.

Again, I appreciate you contacting my office.

Sincerely,

Jim Desmond
County of San Diego
Supervisor, 5th District

From: geoff@borregowd.org <geoff@borregowd.org>
Sent: Tuesday, October 15, 2019 9:11 AM
To: Desmond, Jim <Jim.Desmond@sdcounty.ca.gov>; ben.mills@sdcounty.ca.gov
Subject: BWD Position on GSA Agenda Item

Good Morning Jim/Ben

Attached is the BWD letter on the upcoming GSA Agenda Item.

In summary, we are requesting consideration in the future for continued County involvement in the planned WaterMaster Board and financial assistance to help BWD meet its long term supply needs.

Thanks
Geoff

G

Geoff Poole,
General Manager
Borrego Water District
760/767-5806

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For Board Members:

"Brown Act Precaution:

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----- Original Message -----

Subject: Letter with Signature
From: <esmeralda@borregowd.org>
Date: Fri, October 11, 2019 12:37 pm
To: geoff@borregowd.org

Esmeralda Garcia
Administrative Assistant
Borrego Water District
806 Palm Canyon Drive
Borrego Springs, CA 92004
760-767-5806
760-767-5994 (fax)
esmeralda@borregowd.org

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BORREGO WATER DISTRICT

October 11, 2019

County of San Diego
Board of Supervisors
1600 Pacific Highway
San Diego, CA 92101

Re: Borrego Springs GSA

Dear County Board Of Supervisors:

The Board of Directors of the Borrego Water District greatly appreciates the County of San Diego's participation in the development of the groundwater sustainability plan (GSP) as required under California's Sustainable Groundwater Management Act (SGMA) for the critically overdrafted Borrego Springs Subbasin (Subbasin). The County's efforts have been crucial to the success of the SGMA process.

The County's consistent labors have also helped to promote negotiations among the major pumpers of groundwater in the Subbasin regarding a potential stipulated "friendly" adjudication, a SGMA alternative to the GSP. As these negotiations draw to a completion, one fundamental aspect of the friendly adjudication is the creation of a "Watermaster" to oversee administration of the stipulated judgment, including implementation of the judgment's groundwater management plan that is based in principal on the draft final GSP developed by the County and the Borrego Water District (BWD).

The parties have negotiated that the Watermaster will be governed by a five-member Watermaster Board of Directors. That board will be comprised of members/appointees from five sectors: Borrego's public water agency (BWD), the community, recreation, agriculture, and the County. As the land use agency for the Borrego Valley overlying the Subbasin respected by all parties, and due to County staff's expertise in local water issues, the negotiating parties unanimously believe it is absolutely critical for the County to continue to participate in the Borrego's stipulated agreement for meeting SGMA mandates.

The negotiating parties are aware that continued participation might be viewed by the County as one with associated, potential ongoing liability. We wish to assure the County that ongoing liability should not be a concern.

Watermasters are regularly appointed by courts to oversee implementation of water rights judgments. Indeed, watermasters have been appointed in nearly every adjudication approved in

the last 50 years across California. Because a watermaster is formed by approved judgment, the Watermaster serves as an arm of the Superior Court. (See Water Replenishment Dist. of So. Cal. v. City of Cerritos (2012) 202 Cal.App.4th 1063, 1072.) As explained by the judge overseeing the Chino Basin Judgment:

"Watermaster's legal existence emanates from the Judgment. All of Watermaster's enumerated powers originate within and arise from the Judgment. It is not a public agency or private entity that has been formed under some general or special law. Its duty is 'to administer and to enforce the provisions of this Judgment and any subsequent instructions or orders of the Court hereunder.' [Citation.] As all special masters, Watermaster operates as an extension of the Court and to meet the needs of the Court in carrying out its obligations under the Judgment and Article X, Section 2 of the California Constitution." (*Chino Basin Municipal Water Dist. v. City of Chino*, San Bernardino Sup. Ct. Case No. RCV 51010, Order Concerning Motion for Approval of Peace II Documents (Dec. 21, 2007), p. 4 (Chino Basin Adjudication).

Because Watermasters serve as arms of the Superior Court, it follows that Watermaster Board members are entitled to the same absolute immunity from lawsuits enjoyed by judges and other subordinate judicial officers. (See *Singer v. Bogen* (1957) 147 Cal.App.2d 515, 523-524; *Tagliavia v. County of Los Angeles*, 112 Cal.App.3d at 759, 763.) The Watermaster's role is similar to a court-appointed special master or referee, both of whom receive absolute immunity. (See *Park Plaza, Ltd. v. Pietz* (1987) 193 Cal.App.3d 1414, 1419.) Thus, there should be no question that Watermaster Board members enjoy immunity from lawsuits.

Under the terms of the friendly adjudication for Borrego Springs, Watermaster decisions will be subject to review only through noticed motion to the Superior Court judge with continuing jurisdiction over the water rights judgment, and not through a new lawsuit. The legal and other costs for the Watermaster to defend any of its actions before the court will be borne by the Watermaster itself. The expenses of the Watermaster will be paid entirely by pumping fees assessed on Subbasin pumpers. Thus, the County would not need to participate in any such suit, nor pay any of the associated costs, regardless of how the County appointee to the Watermaster Board may vote on any particular matter.

By way of the judgment, all Watermaster Board members will be subject to the Brown Act. However, the judgment will also explicitly allow up to three Watermaster Board members to participate in Watermaster Board meetings by teleconference or video conference. This should help limit the travel time and time commitment for any County appointee to the Watermaster Board.

In summary, for the reasons outlined above, BWD desires the continued County participation in the Borrego Spring Subbasin Watermaster Board and believes such involvement is critical to success. The BWD Board encourages the County Board of Supervisors to take this deeply felt sentiment into consideration when this item is brought back following completion of the Stipulation negotiations and court judgment.

Once the Stipulation has been approved by the court, any County assistance on developing a financial solution to proposed reductions would also be greatly appreciated. Under the terms of the stipulation agreement, BWD will be subject to the same approximately 75% reduction target as other pumpers in the basin to reach sustainable yield of the Subbasin. Thus, BWD will need to purchase additional water supply to serve its existing and future municipal customers' water demand. Borrego Springs is classified as a Severely Disadvantaged Community (SDAC), which means that BWD customer will bear the hardship of these additional costs. We hope the county will look favorably in assisting the district with this difficult issue as it unfolds.

Sincerely,



Kathy Dice
Board President
Borrego Water District