

RESOLUTION NO 2020-01-01 OF THE
BOARD OF DIRECTORS OF BORREGO WATER DISTRICT AUTHORIZING BOARD
PRESIDENT TO EXECUTE SETTLEMENT AGREEMENT; AUTHORIZING LEGAL
COUNSEL TO FILE ADJUDICATION ACTION; AUTHORIZING STAFF TO SUBMIT A
GROUNDWATER SUSTAINABILITY PLAN ALTERNATIVE TO THE CALIFORNIA
DEPARTMENT OF WATER RESOURCES; AND AUTHORIZING STAFF TO FILE
NOTICE OF EXEMPTION

WHEREAS, in 2014, the State of California adopted the Sustainable Groundwater Management Act ("SGMA"), which took effect in 2015, and requires local agencies to manage groundwater basins designated as high or medium priority basins.

WHEREAS, the Borrego Springs Subbasin No. 7.024-01 ("Borrego Basin" or "Basin") was designated by the California Department of Water Resources (DWR) as high priority and critically overdrafted under SGMA.

WHEREAS, SGMA requires that a groundwater sustainability plan (GSP) or alternative must be adopted and submitted by a local agency by January 31, 2020 for basins such as Borrego Basin that have been designated as subject to conditions of critical overdraft.

WHEREAS, SGMA provides for the submission of a proposed stipulated judgment to DWR for evaluation and assessment, as part of an adjudication action, as an alternative to a GSP.

WHEREAS, the Borrego Valley Groundwater Sustainability Agency, which comprised the District and the County of San Diego, developed a GSP for the Borrego Basin. The GSP has been repurposed as a Groundwater Management Plan (GMP), an integral part of a proposed Stipulated Judgment for the Borrego Basin (Stipulated Judgment), and the District believes it prudent to implement a "Physical Solution" as part of a forthcoming groundwater rights adjudication action, consistent with the requirements of SGMA (Adjudication Action).

WHEREAS, the District is a local agency that believes management pursuant to a proposed Stipulated Judgment approved as part of an Adjudication Action, including a proposed Physical Solution and GMP, will satisfy the objectives and requirements of SGMA to manage the Borrego Basin.

WHEREAS, the entry of the Stipulated Judgment requires the filing of an Adjudication Action to comprehensively determine rights to extract and store groundwater in the Borrego Basin pursuant to Code of Civil Procedure sections 830, et seq.

WHEREAS, the District and other Basin groundwater pumpers propose to enter into a Settlement Agreement to resolve disputes they may have regarding their respective rights to pump groundwater from the Borrego Basin and to agree to a proposed Stipulated Judgment that will establish a Physical Solution, including a GMP, for the perpetual, sustainable management of the Borrego Basin as required by SGMA and the California Constitution.

WHEREAS, the Stipulated Judgment, GMP, and the Physical Solution have been developed through a process of stakeholder negotiations among the District, major water pumpers, and landowners in the Borrego Basin to serve as an alternative to a GSP and to constitute the functional equivalent of a GSP as permitted by SGMA and the California Code of Regulations.

WHEREAS, the Settlement Agreement provides that the District intends to file the Adjudication Action on or before January 24, 2020.

WHEREAS, the Settlement Agreement provides that the parties will share certain costs related to the Adjudication Action.

WHEREAS, the Settlement Agreement provides that the parties will seek to have the Stipulated Judgment attached thereto approved by DWR and entered by the court as the final judgment in the Adjudication Action.

WHEREAS, the parties to the Settlement Agreement agree to certain interim Basin management measures pending the entry of judgment in the Adjudication Action.

WHEREAS, the Settlement Agreement, Stipulated Judgment, Physical Solution, GMP, and supporting documents have been subject to a 30-day public review process.

WHEREAS, the execution of the Settlement Agreement, filing of the Adjudication Action, and entry of the Stipulated Judgment, including imposition of the Physical Solution and the GMP, are intended to comprehensively determine and adjudicate all groundwater rights in the Borrego Basin and to provide a physical solution for the perpetual, sustainable management of the Borrego Basin as required by SGMA and the California Constitution.

WHEREAS, authorizing the Board President to execute the Settlement Agreement and the related documents; authorizing legal counsel to commence the Adjudication Action; and authorizing Staff to submit the GSP alternative to DWR does not constitute a "project" subject to the California Environmental Quality Act (CEQA) because these are not activities that may cause either a direct or reasonably foreseeable indirect change in the environment. (Pub. Res. Code § 20165; CEQA Guidelines § 15378(a).) Further, the authorizations are not a project subject to CEQA because the Court will oversee and implement the Adjudication Action and Stipulated Judgment and CEQA does "not apply to the courts of the state." (CEQA Guidelines § 15379; *Hillside Memorial Park & Mortuary v. Golden State Water Co.* (2011) 205 Cal.App.4th 534, 550-51 (West Coast Basin); *Calif. Am. Water v. City of Seaside* (2010) 183 Cal.App.4th 471, 481-82 (Seaside Basin).) Even if the authorizations are deemed a project subject to CEQA, they are exempt under California Water Code section 10728.6 as a statutorily-authorized GSP alternative. Finally, the authorizations are exempt under the "common sense exemption" because by themselves, they do not authorize or approve any project, development, or construction activity. (CEQA Guidelines § 15061(b)(3).) Accordingly, it can be seen with certainty that the authorizations will not lead to any adverse physical changes in the environment. There is no evidence that the authorizations involve any unusual circumstances that might cause a significant effect on the environment. (CEQA Guidelines § 15300.2.)

NOW, THEREFORE, be it resolved by the Board of Directors of the Borrego Water District, as follows:

1. The Board of Directors hereby authorizes the Board President or her designee to execute the Settlement Agreement, and all other related documents, attached hereto as Exhibit "A."

2. The Board of Directors hereby authorizes District legal counsel to file the Adjudication Action pursuant to the terms of the Settlement Agreement.

3. The Board of Directors further delegates to the District General Manager and District legal counsel authority to finalize for the Board President's execution the final form of the Settlement Agreement, including the Stipulated Judgment, Physical Solution, GMP, and other related documents.

4. The Board of Directors hereby authorizes District staff to submit the proposed Stipulated Judgment, including its attached GMP to DWR for review and approval to serve as an alternative to a Groundwater Sustainability Plan pursuant to SGMA. District staff is also directed to file with DWR, as appropriate, a "Coordination Document" and/or "checklist" that explains how the GMP and other documents satisfy SGMA's requirements.

5. The Board of Directors further delegates to the District General Manager and District legal counsel authority to finalize and submit the final form of Stipulated Judgment, GMP and other related documents to DWR for review and approval to serve as an alternative to a Groundwater Sustainability Plan pursuant to SGMA.

6. CEQA Compliance:

a. For all the reasons stated in the above recitals and based upon substantial evidence in the record as a whole, the Board of Directors finds that authorizing the Board President to execute the Settlement Agreement and the related documents; authorizing legal counsel to commence the Adjudication Action; and authorizing Staff to submit the GSP alternative to DWR: (1) is not a "project" subject to CEQA because these are not activities that may cause either a direct or reasonably foreseeable indirect change in the environment (Pub. Res. Code § 20165; CEQA Guidelines § 15378(a).); (2) is not a project subject to CEQA because the Court will oversee and implement the Adjudication Action and Stipulated Judgment and CEQA does "not apply to the courts of the state" (CEQA Guidelines § 15379); (3) alternatively, is exempt under California Water Code section 10728.6 as a statutorily-authorized GSP alternative and under CEQA Guideline § 15061(b)(3)'s "common sense exemption"; and (4) none of the exceptions to the application of the common sense exemption exist under State CEQA Guidelines § 15300.2.

b. The Board of Directors hereby directs that all documents and other materials constituting the record of proceedings related to this Resolution be maintained by the General

Manager of the Borrego Water District, or his designee, on file at the Borrego Water District, 806 Palm Canyon Drive, Borrego Springs, California 92004.

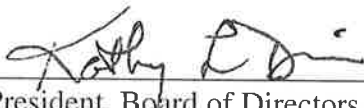
c. The Board of Directors directs Staff to file a Notice of Exemption with the County Clerk for the County of San Diego.

PASSED AND ADOPTED at a regular meeting of the Board of Directors of the Borrego Water District held on the 7th day of January 2020, by the following vote:

Ayes: Dice, Brecht, Delahay, Duncan and Johnson

Noes:

Absent:



President, Board of Directors of
Borrego Water District

ATTEST:



Secretary of the Board of Directors of
Borrego Water District