

May 21, 2019

Borrego Valley Groundwater Sustainability Agency
C/O County of San Diego Planning & Development Services
Jim Bennett
5510 Overland Avenue Suite 310
San Diego, CA 92123

Via E-mail: PDS.LUEGGroundWater@sdcounty.ca.gov

Re: Comments on Draft GSP Regarding Conversion of Water Credits to BPA

As part of the Borrego Water District's water credit program, the Borrego Water District and the County of San Diego have issued water credits to property owners overlying the basin who have voluntarily fallowed their land. The purpose of the water credit program is to encourage voluntary cessation of water use in exchange for "water credits" that may be applied to future development. The draft Groundwater Sustainability Plan released on March 21, 2019 ("GSP") for the Borrego Springs Subbasin ("Basin") provides that existing water credits associated with the water credit program *may* be converted *at some time in the future* to a program using Baseline Pumping Allocation ("BPA") applying the groundwater consumptive use factors developed by the groundwater sustainability agency ("GSA"). As a holder of water credits in the Basin, we urge the GSA to modify the GSP to explicitly provide for (a) the conversion of water credits to BPA using the same consumptive use factors applied to calculate BPA for agricultural acreage during the baseline period, and (b) the issuance of BPA to water credit holders at the same time that BPAs are issued for all pumpers in the Basin. Without such modifications, the undersigned object to the GSP as inequitable and unlawful.

Although the Sustainable Groundwater Management Act provides that it is not intended to alter groundwater rights, nor is an allocation issued pursuant to a GSP to be deemed a determination of water rights,¹ the proposed management actions concerning BPA (i.e., Pumping Reduction Program) (PMA No. 3 in the GSP) and the Water Trading Program (PMA No. 1 in the GSP) will effectively determine and control all opportunities afforded by a water right. This includes the amount of groundwater that may be pumped, the cost of pumping, how and when groundwater rights may be transferred, etc. Thus, to remain equitable, lawful, and immune from successful legal challenge, BPA *must* be granted to water credit holders on the same terms (consumptive use factors) established to set BPA for existing irrigators and issued at the same time as all BPAs. Doing so will treat all similar pumpers equally and will avoid disadvantaging land owners who voluntarily reduced water usage early in an effort to help the Basin.

¹ See Water Code sections 10720.5(b), 10726.4(a)(2), and 10726.8(b).

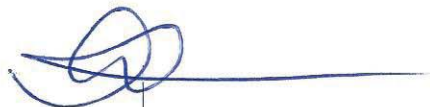
Conversion of water credits to BPA will also streamline management of the Basin by applying a single "currency" of water rights. For example, the BWD could develop a policy that requires a dedication to the BWD of BPA in exchange for extension of service for new developments (or an equivalent payment in lieu of BPA dedication). This would thereby avoid applying two BWD programs--one for water credit holders and one for BPA holders--that may result in disparate and unfair treatment of those pumpers that voluntarily worked with the BWD to advance water management in comparison to those that have not.² Without such conversion, other pumpers who are granted BPA would be afforded greater water use opportunities and advantages, including opportunities to accrue carryover, lease of allocation, and transfer and use of allocation to support groundwater production on different parcels, as compared to similarly-situated pumpers that were granted water credits. Such disparate treatment would render the Pumping Reduction Program ripe for legal challenge pursuant to a groundwater basin adjudication³ or other litigation.

This concern can be readily remedied by modifying the GSP to provide for the conversion of water credits to BPA for all water credit holders pursuant to the same consumptive use factors set forth in Appendix F, the elimination of the existing water credits program, and the issuance of such BPA when all BPAs are issued. The GSP could explain that the BWD would soon develop a new dedication program for extension of new water service based exclusively on BPA.

Pursuant to such changes to the GSP and a new BWD dedication program, we agree that the water credits-to-BPA conversion satisfies all obligations of the BWD pursuant to the water credits program such that the BWD would not bear any potential liability for breach of contract, or otherwise, relating to the water credits program.

Thank you for the opportunity to comment on the draft GSP.

Sincerely,



RUDY MOWICA

5/21/19

² The BPA calculation methodology set forth in Appendix F would result in a grant of more BPA per acre than has been granted in water credits for the same crop grown with the same method of irrigation and during the same time period. Thus, to deny a conversion of water credits to BPA at the same consumptive use factors would result in disparate treatment unless the BWD were to maintain two dedication programs with different dedication ratios respective of BPA and water credits, which would be unnecessarily complex.

³ See Code of Civil Procedure sections 830 et seq.