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RE: Draft Groundwater Sustainability Plan for the Borrego Valley Groundwater Basin

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Thank you for the opportunity to comment on the Draft Groundwater Sustainability Plan for the Borrego Valley Groundwater Basin (“GSP”). Anza-Borrego Desert State Park® (“ABDSP”) is approximately 1,000 square miles and surrounds the approximate 98 square mile Borrego Springs Subbasin (“Subbasin”). Since March 2017, a representative from the California Department of Parks and Recreation (“State Parks”) has voluntarily been a member of the Borrego Springs Subbasin Advisory Committee. State Parks takes the opportunity to participate in the committee seriously because ABDSP surrounds the community of Borrego Springs (GSP Figure 2.1-3) and supplies the majority of the natural groundwater recharge to the Subbasin (GSP Figure 2.2-1). Additionally, ABDSP is a Borrego Water District ratepayer, and ABDSP operates a public water system permitted since 2004 by the State Water Resources Control Board, Division of Drinking Water.

State Parks believes that the reduction requirements should be adjusted under the Pumping Reduction Program (GSP 4.4.1) using considerations other than a 74% reduction for each non-*de minimis* pumper.¹ This approach does not take advantage of the flexibility the Sustainable Groundwater Management Act (“SGMA”) provides the local agencies. (Water Code § 10725 (b).) The draft GSP gives a great history and description of the Plan Area (GSP, Chapter 2), but does not apply that history to its Pumping Reduction Program.

This letter recommends the Groundwater Sustainability Agency (“GSA”) adjust the current shares of the estimated sustainable yield by considering proportion of land ownership, historic beneficial use, and feasibility of further reduction of water use. State Parks is not suggesting that the GSA use any one of these considerations as the sole

¹ The term “*de minimis*” is used in this letter in reference to the GSP’s use of the term. (See, e.g., GSP 4.2.1 and 4.4.1.)

consideration, but that it apply a more nuanced approach using these considerations collectively. In this way, the GSA should be able to take advantage of the flexibility SGMA intended to provide the local agency.

Proportion of Land Ownership

The draft GSP does not take into account the proportion of land each non-*de minimis* pumper services in the Subbasin. Instead, it focuses only on prior use over a five year period. (GSP 3.3.2.1.) According to the draft GSP, ABDSP covers 27% of the land subject to the GSP. (GSP Table 2.1-2.) The draft GSP also identifies that Anza-Borrego Foundation owns an additional 5% that will be transferred to ABDSP. (GSP Table 2.1-2.) In other words, State Parks has, or will have, the responsibility of stewardship over 32% of the land that is subject to this GSP, but its water use consists of less than .07% of the total baseline pumping allocation.² Yet under the draft GSP, it is still responsible for reducing its water use by 74%.

Whereas State Parks is responsible for a large portion of the land and minimal water use, the agriculture sector's responsibility and use is the opposite. According to the draft GSP, the agriculture sector comprises 4.2% of the Subbasin's surface area of 62,776 acres and uses 70% of the pumped water. (GSP Table 2.1-1; GSP 2.1.1; and GSP 3.1.4.) Because recent usage data is the only method the GSA used to determine shares of the estimated sustainable yield, the agriculture sector is also being allocated around 71.7% of the total baseline pumping allocation. (GSP Table 2.1-7; and GSP Table 3-6.)

The draft GSP states that two pumping-related depressions have been found to exist in the Subbasin: one in agricultural areas, and one north of Ram's Hill Country Club. (GSP 2.2.2.1.) The draft GSP also states that since the late 1970's when citrus cultivation gained presence in the valley, the groundwater levels have been dropping "at a relatively constant rate." (GSP 2.2.2.1.) By considering only past recent use for determining allocations and reduction responsibilities, the Pumping Reduction Plan does not address the existing spatial patterns of groundwater extraction. (See Green Nylén, Nell, Michael Kiparsky, Kelly Archer, Kurt Schnier, and Holly Doremus. 2017. *Trading Sustainably: Critical Considerations for local Groundwater Markets Under the Sustainable Groundwater Management Act* ("Trading Sustainably"), p. 28. Center for Law, Energy & the Environment, UC Berkeley School of Law, Berkeley, C. 90 pp. law.berkeley.edu/trading-sustainably.)

State Parks' responsibility of keeping ABDSP open to the public inextricably includes housing employees to provide safety and resource access, and providing water to the public for day use and overnight use so that the public can continue to enjoy this

² Calculated by the GSA's determination of State Parks' baseline pumping allocation of 15 acre feet per year, out of the total 21,938 acre feet. (See GSP Table 3-6; But see GSP 3.1.4 ("a total pumping allowance of 21,936 acre-feet per year . . ."; and GSP Table 2.1-7 ("Baseline Pumping Allocation" column does not add up to 21,938 or 21,936).)

tremendous resource. The amount of water State Parks pumps from the groundwater basin is already incredibly minimal, especially given the amount of land that small amount of water supplies. By failing to give any consideration to the amount of land sustained by each pumper's use, the GSP assigns a significant burden to ABDSP that may be impossible without shutting down the park or portions thereof, with diminishing returns for the Subbasin's primary goal of sustainability. The 74% reduction is an ineffective method of obtaining sustainability, particularly where the current use is known to be concentrated in agricultural areas and the agriculture sector will be maintaining its 70% of the water use.

SGMA does not prohibit the GSA from taking proportion of land ownership into account. Ownership is a concrete metric that State Parks believes could be used in conjunction with other considerations such as past use and purpose of use. (Green Nysten, et al. *Trading Sustainably*, p. 14.) State Parks recommends making some adjustment to the current shares of the estimated sustainable yield according to proportionate land ownership.

Historic Beneficial Use

1. Public Water System and Human Right to Water

The GSP also does not consider the type of use in establishing the current shares of the estimated sustainable yield. California law establishes the use of water for domestic purposes as the highest use of water. (Water Code § 106.) "Domestic purpose" includes uses such as "auto camps or resorts." (*Prather v. Hoberg* (1944) 24 Cal.2d 549.)

There are multiple historic and current purposes for State Parks' water use at ABDSP, including domestic use. The Anza Borrego State Park Palm Canyon public water system conveys water to the Borrego Palm Canyon area of ABDSP. Currently, the system supplies water for 10 employee residences, 6 employee trailer pads, the Borrego Palm Canyon Campground, and the ABDSP maintenance shop. Of the 117 campsites, there are 52 RV sites with both potable water and sanitary sewer hookups and 65 tent sites without hookups. There are also 9 group campsites. Both the tent and group sites have dispersed potable water, flush toilets, and showers.

In 2012, the State of California added section 106.3 to the California Water Code that is known as the human right to water: "It is hereby declared to be the established policy of the state that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes."

Because it supplies water to residents and visitors, the ABDSP Palm Canyon public water system is subject to the human right to water, which is not accounted for in the

draft GSP. Applying the GSA's draft Policy for Human Right to Water ("Draft Policy"),³ State Parks should be allocated more than double the water it is currently being allocated. (<https://www.sandiegocounty.gov/content/dam/sdc/pds/SGMA/Human-Right-To-Water-Presentation.pdf>.) During the March 29, 2018 Advisory Committee meeting, a formula was provided to calculate the Human Right to Water for Borrego Water District by using the annual average sewage flows to the Ram's Hill Wastewater Treatment Facility. To show the difference between what the draft GSP allocated and what State Parks could be allocated if the GSA had applied the human right to water policy to domestic users that are not within the Borrego Water District, here is an example calculation:

Under the Draft Policy, the annual sewage generation is 126 gallons per day per equivalent dwelling unit ("EDU"). Using ABDSP's 52 RV sites, 10 employee residences, and 6 employee trailer pads, we have 68 EDU's in Borrego Palm Canyon Campground that are eligible for the human right to water. Multiplying 68 existing EDU by the annual sewage generation per EDU (126 gallons per day) results in a Borrego Palm Canyon right to water of 9.6 acre feet per year.

(See <https://www.sandiegocounty.gov/content/dam/sdc/pds/SGMA/Human-Right-To-Water-Presentation-Notes.pdf>.)

Per the GSP, the baseline pumping allocation for the Palm Canyon system is 15 acre feet per year. This allocation was determined from metered data. Page 4-21 of the GSP requires a 74% reduction in each non-*de minimis* pumper's baseline allocation over 20 years. This reduction results in an allocation of 4 acre feet for ABDSP Palm Canyon public water system. However, using the human right to water calculation for employee residences and RV sites, State Parks could require up to 9.6 acre feet per year for the RV's and employee residences alone. State Parks recommends adjusting the current shares of the estimated sustainable yield to provide for the statutory human right to water.

2. Other Critical Beneficial Uses at Anza-Borrego Desert State Park

Borrego Palm Canyon is a critical area that annually averages approximately 30,000 visitors for daily hikes and approximately 120,000 visitors for overnight camping. As

³ The draft GSP does not discuss whether the Draft Policy will be implemented. In the minutes for the August 30, 2018 Subbasin's Advisory Committee Public Meeting, the Core Team was still considering the Human Right to Water allocation to Borrego Water District. (<https://www.sandiegocounty.gov/content/dam/sdc/pds/SGMA/AC-MINUTES-Aug-18-vFinal.pdf>.) However, it is unclear whether any further decision was documented regarding the Draft Policy, as the hyperlink for the January 31, 2019 meeting minutes directs website visitors to the August 30, 2018 meeting minutes. (<https://www.sandiegocounty.gov/content/sdc/pds/SGMA/borrego-valley.html>) (Last visited May 20, 2019.)

noted on page 2-6 of the GSP, the estimated revenue to the region generated by visitation to ABDSP is approximately \$40 million annually.

ABDSP also provides critical environmental habitat for endangered species. In addition to supplying water subject to the human right to water statute, ABDSP's public water system supplies water to a lined pond that is a refuge for the federally and state endangered Desert Pupfish and is also a water source for the federally and state endangered Peninsular Bighorn Sheep. The pond is a refuge listed under the September 1993 Desert Pupfish Recovery Plan. The Peninsular Bighorn Sheep have increasingly used the pond, which is adjacent to the Borrego Palm Canyon trailhead parking lot, as a water source. (Colby, Janene, and Randy Botta, California Department of Fish and Wildlife Peninsular Bighorn Sheep Annual Report 2017-18, p. 22.) State Parks is obligated to provide this habitat for both species.

State Parks recommends adjusting the current shares of the estimated sustainable yield according to respective beneficial uses.

Consideration of Prior Conservation Efforts

State Parks, in fulfilling its obligations as a state entity, already contributes to the reduction of water use in the Subbasin. As stated in State Parks' previous comment letter sent to the GSA on August 15, 2018, water use at ABDSP has already been subject to Executive Order (B-18-12) requiring a 20% reduction of water usage in state facilities by 2020. Therefore, State Parks has already implemented water conservation methods, the benefits of which are reflected in the metered data used for the ABDSP baseline pumping.

Throughout the last decade, ABDSP has equipped its campground with low flow pay showers thereby reducing the amount of water used by each ABDSP visitor. ABDSP has also removed most landscaping, antiquated irrigation systems, replaced corroded galvanized water distribution lines with PVC pipe, and replaced non-operating shut off valves. As funding allows, low flow bathroom fixtures have been installed.

The GSP indicates that the Borrego Water District, some golf courses, and agricultural users have implemented conservation methods. (GSP 3.1.4.) In establishing its baseline pumping allocations, the GSP states that it includes "allocations for water credits issued in conjunction with the County/[Borrego Water District] program for sites fallowed prior to adoption of the GSP, municipal water use previously reduced through end use efficiency and conservation efforts, and recreation use curtailed prior to GSP

adoption.” (GSP 3.3.1.4.)⁴ The GSP does not state that it included allocations for State Parks’ state-mandated conservation efforts.⁵

State Parks intends to make every effort to continue to implement any water conservation measures as appropriations allow. However, State Parks recommends making some adjustment to the current shares of the estimated sustainable yield according to conservation methods implemented due to state mandate, since those conservation methods were not considered in determining State Parks’ baseline pumping allocation. Because it already has considered other conservation measures, it should also consider State Parks’ conservation measures.

Consequences of 74% Reduction at ABDSP

ABDSP strives to balance the visitor experience while conserving our precious natural resources and being stewards of the land. A potential reduction to 4 acre feet per year at Borrego Palm Canyon in conjunction with the water conservation measures already in place would require ABDSP to close campground operations and would not meet the statutory human right to water for the Palm Canyon public water system.

State Parks would be required to limit the occupation of employee residences and thus limit the operation of the ABDSP Visitor Center, limit an important educational experience for the school children of Borrego Springs, and limit the number of State Parks employees staffed to protect the park resources and visitors. ABDSP would not be able to provide the high quality recreational experience that it has provided over the last several decades. Therefore, State Parks recommends that the GSA apply a more nuanced approach than this 74% reduction plan by applying other considerations, such as those mentioned in this letter.

General GSP Comments

State Parks supports the immediate implementation upon GSP approval of the mandatory metering program as detailed in Appendix E of the GSP.

There are data gaps in the water quality monitoring particularly in the North Management Area. Wells now in the process of being secured for water quality monitoring will not yield usable initial data for years. The GSP should explicitly specify mandatory water quality monitoring of any major wells in the Subbasin. As water quality

⁴ The GSP also states that water credits “are currently not included in the Baseline Pumping Allocation but may be converted to Baseline Pumping Allocation during GSP implementation.” (GSP 3.3.1.4, FN 8.)

⁵ In its January 18, 2019 letter to the ABDSP, the County of San Diego described how it calculated baseline pumping allocations and gave State Parks until February 8, 2019 to comment before the GSA finalized the baseline pumping allocations on March 1, 2019. State Parks’ allocation is based solely on metered use. However, the letter did not indicate that in establishing the users’ respective baseline pumping allocations it was considering previous municipal conservation efforts. Therefore, State Parks is commenting on this in response to the draft GSP, rather than in response to the January 18, 2019 letter.

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degrades and additional treatment is required, the cost for ratepayers, including ABDSP, will increase. The GSP should identify Ratepayers as stakeholders in the development of a Water Trading Program because pumped water in Borrego Springs is a matter of public concern about a public resource.

While the Water Trading Program is referred to as an economic incentive that will lead to more water conservation (GSP 4.1), the Water Trading Program is not necessarily the key to water reduction.

Any consideration of the fallowing of agricultural land must include the removal of invasive weed species. There are two highly invasive weed species that threaten native habitats, wildflowers, and native species in ABDSP: Egyptian knapweed (*Volutaria tubuliflora*) and Sahara mustard (*Brassica tournefortii*). Currently, there are fallowed agricultural fields that host these species. State Parks devotes staff time and resources to remove and control these species in the Coyote Canyon area of ABDSP which borders the North Management Area.

State Parks recognizes the complexity of the GSA's task and appreciates the extensive work that the GSA has completed thus far. However, without further consideration of the historic and beneficial uses, proportion of land ownership, and pumpers' feasibility of reducing use (i.e. conservation methods accounted for in the historical data), the GSA is not taking advantage of the maximum degree of flexibility SGMA has provided it in order to achieve SGMA's goal of preserving water rights to the greatest extent possible while achieving sustainability. State Parks looks forward to continuing to work with you on this challenging and significant plan.

Sincerely,



Gina Moran
District Superintendent
Colorado Desert District