

**Borrego Springs Interim Watermaster Board  
Special Meeting  
June 25, 2020 @ 3:00 p.m.  
OPEN SESSION ITEMS TO BE HEARD AT 5:30  
Borrego Water District: 806 Palm Canyon Drive  
Borrego Springs, CA 92004**

June 25, 2020 Watermaster Board Meeting  
Thu, Jun 25, 2020 3:00 PM - 8:00 PM (PDT)  
Please join my meeting from your computer, tablet or smartphone.  
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**I. OPENING PROCEDURES**

- A.** Call to Order:
- B.** Pledge of Allegiance
- C.** Roll Call
- D.** Approval of Agenda
- E.** Approval of Minutes
  - May 14, 2020 Watermaster Board Special Meeting (3 - 5)
  - May 28, 2020 Watermaster Board Special Meeting (6 - 8)
- F.** Comments from the Public & Requests for Future Agenda Items (may be limited to 3 min)
- G.** Comments from Directors
- H.** Correspondence Received from the Public: None

**II. CLOSED SESSION: PUBLIC EMPLOYEE APPOINTMENT:** Appointment of Watermaster Legal Counsel (LC) pursuant to subdivision (b)(1) of Government Code Section 54957 V.

**III. CLOSED SESSION: PUBLIC EMPLOYEE APPOINTMENT:** Appointment of Watermaster Technical Consultant / Executive Director pursuant to subdivision (b)(1) of Government Code Section 54957

AGENDA: June 11, 2020 All Documents for public review on file with the Watermaster temporarily located at 806 Palm Canyon Drive, Borrego Springs CA 92004 Any public record provided to a majority of the Board of Directors less than 72 hours prior to the meeting, regarding any item on the open session portion of this agenda, is available for public inspection during normal business hours at the Office of the Board Secretary, located at 806 Palm Canyon Drive, Borrego Springs CA 92004. The Borrego Springs Watermaster complies with the Americans with Disabilities Act. Persons with special needs should call Geoff Poole at (760) 767 – 5806 at least 48 hours in advance of the start of this meeting, in order to enable the District to make reasonable arrangements to ensure accessibility. If you challenge any action of the Board of Directors in court, you may be limited to raising only those issues you or someone else raised at the public hearing, or in written correspondence delivered to the Board of Directors (c/o the Board Secretary) at, or prior to, the public hearing.

- IV. **ITEMS FOR BOARD CONSIDERATION AND POSSIBLE ACTION (WILL NOT BE HEARD PRIOR TO 5:30 pm)**
  - A. Agreement with Richards Watson Gershon to serve as Watermaster Legal Counsel – Anderson (9-28)
  - B. Meter Reading Options – Smith (29)
  
- V. **STAFF REPORT**
  - A. Financial Reports: None
  - B. Water Use Reports: None
  - C. Executive Directors Report: None
  
- VI. **CLOSING PROCEDURE:** The next Board Meeting is scheduled for July 16, <sup>2020</sup> at Borrego Water District 806 Palm Canyon Dr, Borrego Springs, CA 92004

AGENDA: June 22, 2020 All Documents for public review on file with the Watermaster temporarily located at 806 Palm Canyon Drive, Borrego Springs CA 92004 Any public record provided to a majority of the Board of Directors less than 72 hours prior to the meeting, regarding any item on the open session portion of this agenda, is available for public inspection during normal business hours at the Office of the Board Secretary, located at 806 Palm Canyon Drive, Borrego Springs CA 92004. The Borrego Springs Watermaster complies with the Americans with Disabilities Act. Persons with special needs should call Geoff Poole at (760) 767 – 5806 at least 48 hours in advance of the start of this meeting, in order to enable the District to make reasonable arrangements to ensure accessibility. If you challenge any action of the Board of Directors in court, you may be limited to raising only those issues you or someone else raised at the public hearing, or in written correspondence delivered to the Board of Directors (c/o the Board Secretary) at, or prior to, the public hearing

**Borrego Springs Watermaster Board**  
**MINUTES**  
**Special Meeting**  
**May 14, 2020 @ 5:30 p.m.**  
**Borrego Water District Office:**  
**806 Palm Canyon Drive, Borrego Springs, CA 92004**

**I. OPENING PROCEDURES**

**A. Call to Order:** Borrego Water District General Manager Geoff Poole called the meeting to order at 5:30 p.m.

**B. Pledge of Allegiance:** Those present stood for the Pledge of Allegiance.

**C. Roll Call:**     **Directors:**     **Present:**     Nick Bosik, Dave Duncan, Mark Jorgensen, Shannon Smith

**Staff:**             Geoff Poole, BWD  
  Steve Anderson, Best Best & Krieger  
  Russell McGlothlin, O’Melveny  
  Michele Staples, Jackson Tidus  
  Esmeralda Garcia, BWD

**Public:**             Rebecca Falk                     Kathy Dice, BWD  
  Martha Deichler, BSUSD     Rich Pinel

**D. Approval of Agenda:** *MSC: Jorgensen/Duncan approving the Agenda as written. The roll call vote was unanimous.*

**E. Approval of Minutes:** None

**F. Comments from the Public on Items not on the Agenda:** None

**G. Comments from Directors:** None

**H. Correspondence Received from the Public:** Steve Anderson reported that a comment was submitted today on the alternative sustainability plan from the Tubb Canyon Desert Conservancy and is on the DWR website.

**II. ITEMS FOR BOARD CONSIDERATION AND POSSIBLE ACTION**

**A. Confirmation of List of Responsive Firms to Watermaster Legal Counsel RFQ:** Mr. Poole reported that nine proposals were received in response to the RFQ for Legal Counsel. Eight of the nine were submitted on time, but the last, from Downey Brand, was 25 hours late. Public contract law requires its automatic rejection, but the WMB is not bound by that, so he asked for input from the Board. After discussion, the Board agreed to include Downey Brand for consideration, noting that the late submittal could have a bearing on the decision.

**B. Determination of Process for Selecting Legal Counsel and Executive Director/Technical Consultant:** Mr. Poole referred to the Board’s prior direction to publish the RFQ responses, minus the financial information. Subsequently, he heard from a potential respondent expressing concern that applicants would know how others responded. Steve Anderson noted that most of his colleagues considered the responses in closed session, then interviewed the “short list” candidates in closed session, and finally the WMB would announce its selection in open session and finalize the contract. One way to handle it would be to share the proposals with the participating pumpers, the WMB and Alternates. Once the selection is made, all proposals would become public. The Board concurred. Director Duncan asked whether he could share the proposals with the BWD Board in closed session, as well as other WMB decisions, and Mr. Anderson suggested that should be a question for the new WMB Counsel. Rebecca Falk asked whether the public could see a video or live statements by the final candidates before a decision is made. After discussion, the Board decided to consider this at the next meeting.

**C. Addendum #1 to Executive Director/Technical Consultant RFQ re: CA Driver's License:** Mr. Poole explained that the RFQ contained a requirement that candidates have a California driver's license, but one of the applying firms has a member who has an Arizona driver's license. Mr. Poole proposed an addendum removing "California" from the requirement. ***MSC: Smith/Jorgensen approving Addendum #1 to Executive Director/Technical Consultant RFQ re: CA Driver's License. The roll call vote was unanimous.***

**D. External Communications Policy:** Mr. Poole invited the Board's attention to the draft External Communications Policy in the Board package. Director Smith explained that Ms. Falk had requested this item to assist with her newspaper column. How does the WMB want to interface with the media? Director Smith had discussed the policy with Mr. Anderson, who provided a template for the Policy for Director Smith's adaptation. It differentiates between a Board member's personal opinion and that of the WMB. WMB communications would be handled by the Executive Director.

Director Jorgensen pointed out that Borrego Springs is a small town, and a lot of people depend on the local newspaper. Several of the WMB members have already been interviewed, and the questions are usually posed to them as WMB members. His additional concern was how long it would take for the new Executive Director to come up to speed on local issues, should the inquiries be passed on to him or her. Mr. Anderson explained that when a Board member says, "as a WMB member this is my opinion," it is unclear whether it is a personal opinion or that of a majority of the Board. That is why most Policies provide for referral to staff.

Ms. Falk suggested including a disclaimer stating whatever is said by a WMB member the opinion of that member, not of the Board. She noted that the County refers media inquiries to their Media Communications Office, and if individual Board of Supervisors members speak, they make clear it is a personal opinion. Martha Deichler stated that based on her experience, a single person handling media questions was welcome. Ms. Falk felt the requirement in the Policy that sensitive issues be immediately referred to the Executive Director was too loose. Director Smith noted there had been some revisions in a second draft. He felt the disclaimer would solve the problem of confusion over personal opinions versus those of the Board, and Directors could identify themselves as Board members so long as the disclaimer was provided. Mr. Poole agreed to bring back a final draft at the next meeting.

**E. Payment of Invoices:** Rich Pinel expressed his appreciation for the invoice information and spread sheets. He was interested in a receivables report indicating which pumpers had paid their invoices and any that might be in arrears. Mr. Anderson noted that nonpayment could come under the jurisdiction of the judge and subject the pumper to fines and/or loss of BPAs. Ms. Falk asked whether the payment information would be public, and Director Smith replied that the WMB budget was on the BWD website and also attached to the Stipulation documents.

**F. Update on Installation of Meters:** This item was requested by Director Duncan, who had to leave for another commitment. Alternate Director Dice replaced him for the remainder of the meeting. Director Bosik reported that 10 out of 11 agricultural pumpers were working with approved vendors on meter installation. Eight out of eleven have completed installation or recalibration, and four have upgraded to telemetry. Director Smith reported that for the recreational pumpers, Borrego Springs Resort, Roadrunner and Rams Hill have upgraded their meters. De Anza did not sign the Stipulation and was unavailable for comment. Ms. Falk asked when all meters were expected to be installed, and Director Bosik predicted by the end of the month.

**G. Collection/Use of Metering Data:** Mr. Poole explained that the water year begins in October, and Director Duncan wanted to know if there was anything that should be done now to capture and retain metering data between now and then. Mr. Anderson pointed out that it is important to insure that the meters are working properly before October. Mr. Poole will update Director Duncan on today's meeting and see if it needs to go on the next Agenda.

### **III. STAFF REPORT**

- A. Financial Reports: None
- B. Water Use Reports: None
- C. Executive Director's Report: None

### **IV. CLOSING PROCEDURE**

Mr. Anderson asked that the pumpers provide the names of their technical consultants to Mr. Poole so a roster can be compiled for the WMB Technical Advisory Committee. TAC input is required in the selection of staff. The next Board Meeting is scheduled for May 28, 2020 to be available online. There being no further business, the Board adjourned at 6:40 p.m.

**Borrego Springs Watermaster Board**  
**MINUTES**  
**Special Meeting**  
**May 28, 2020 @ 5:30 p.m.**  
**Borrego Water District:**  
**806 Palm Canyon Drive, Borrego Springs, CA 92004**

**I. OPENING PROCEDURES**

- a. Call to Order: Borrego Water District General Manager Geoff Poole called the meeting to order at 5:30 p.m.
- b. Pledge of Allegiance: Those present stood for the Pledge of Allegiance.
- c. Roll Call:     Directors:     Present:     Dave Duncan, Mark Jorgensen, Mike Seley, Shannon Smith  
  
                          Staff:             Geoff Poole, BWD  
  Russell McGlothlin, O’Melveny  
  Esmeralda Garcia, BWD  
  Wendy Quinn, Recording Secretary  
  
                          Public:             Cathy Milkey, Rams Hill     Bruce Mortazavi  
  Martha Deichler, BSUSD     Rich Pinel  
  Wesley Miliband, AALRR
- d. Approval of Agenda: *MSC: Duncan/Jorgensen approving the Agenda as written. The roll call vote was unanimous.*
- e. Approval of Minutes: April 16, 2020. *MSC: Smith/Seley approving the Minutes of April 16, 2020 as amended (add a fourth sentence to Item III.B, last paragraph, “However, the attorneys do have to avoid sequential communication with multiple Board members that would constitute a violation of the Brown Act”).*
- f. Comments from the Public on Items not on the Agenda: Martha Deichler requested a future Agenda item, guidance from legal counsel on how Alternate Directors relate to the Brown Act.
- g. Comments from Directors: None
- h. Correspondence Received from the Public: None

**II. ITEMS FOR BOARD CONSIDERATION AND POSSIBLE ACTION**

- a. Confirmation of List of Responsive Firms for Executive Director/Technical Consultant: Mr. Poole reported that the deadline for Executive Director/Technical Consultant applicants was May 14. Four firms responded within the deadline, and they were included in the Board package. Staff is reviewing them.
- b. Selection of Legal Counsel, Executive Director/Technical Consultant: Next Steps: Mr. Poole invited the Board’s attention to Board package pages 8 and 9, outlining a proposed procedure for selection of Legal Counsel and Executive Director/Technical Consultant. Further discussion is scheduled for closed session today, including creation of a short list of Legal Counsel candidates who will be invited for interviews on June 11. ED/TC interviews will take place two weeks later. Rebecca Falk asked whether candidates would be available for questions from the public, and Director Smith replied that questions from the public could be submitted to the WMB, but a public question and answer session was not planned. Wes Miliband of Atkinson Anderson Loya Ruud & Romo stated that he would welcome the opportunity to serve as the WMB Legal Counsel.
- c. Public Comments Received on the Alternative and Next Steps for the Stipulating Parties to Respond and Consider an Addendum: Russ McGlothlin reported on the comments received by DWR on the Stipulated Judgment. Flood Management was concerned about potential effects on the flood control infrastructure. The Plan notes that it has not been

substantial, and it will be continually monitored. The California Department of Fish and Wildlife had concerns about safe yield under the Stipulated Judgment and penalties for those who over-pump. Provisions were included in the Stipulated Judgment, including enforcement by the Court and oversight by the TAC. Another concern was the effects on GDEs, and there are provisions to protect them in the Judgment. Rebecca Falk was concerned about the WMB parties' lawyers' communications, the draft external communications policy, and groundwater oversight by the State as a public resource. The Tubb Canyon Desert Conservancy thought the 20-year period to reach sustainability was too long, suggested improved metrics for water quality, and a structure for fallowing. The Borrego Springs Air Ranch, which is outside BWD's jurisdiction, commented on the State's designation as an unmanaged basin. Discussion is continuing among the pumpers and their attorneys.

Director Duncan noted that DWR had made it clear that they would only review issues related to SGMA. Ms. Falk pointed out that the WMB member representing the community does not have an attorney, while the other pumper groups do. She recommended establishing a budget to employ counsel.

**d.** Pending action by County of San Diego Supervisors re: Declining Board Seat: Mr. Poole reported that Jim Bennett called him two weeks ago to inform him that the Board of Supervisors would consider the County's participation as a member of the WMB on June 3. The Stipulation documents had contemplated a County representative as the fifth member, and there have been discussions among counsel for WMB members and County Counsel, assuring them that liability is not a factor or at least very limited. However, County staff is recommending that the County not participate as a member of the WMB, but attend meetings and perhaps participate on the Technical Advisory Committee. BWD is working on a letter to the Board of Supervisors expressing the District's desire to have the County participate on the WMB, but supporting their participation on the TAC or other role and welcoming help with well permitting and abandonment issues.

Mr. Poole pointed out that should the County opt out, the stipulating parties will need to discuss alternative governance systems and report back to the WMB. He added that Ben Mills of Supervisor Desmond's staff had expressed hope that BWD would support the County having a seat on the WMB. Discussion followed regarding possible endorsement of the BWD letter by the WMB, but there were concerns about the Brown Act. Mr. Poole suggested he share it with interested individuals, including the WMB members, and request comments. Director Smith requested an opportunity to review the letter and call a special WMB meeting if necessary. Mr. Poole will contact the WMB members after distribution of the letter to discuss endorsement and/or a special meeting.

**e.** Clarification of Request from May 15 WM Board Meeting re: Meter Installations: Director Duncan recommended establishing a system to track metering results, and insuring staff is available to read the meters. This should be the first order of business for the new ED/TC. There is also a provision in the Stipulation about third party verification, which needs to be implemented. Director Smith asked the Board members to review the Stipulation to refresh their understanding prior to the next meeting, and place it on the Agenda.

### **III. STAFF REPORT**

- A.** Financial Reports: None
- B.** Water Use Reports: None
- C.** Executive Director's Report: None

**IV. CLOSED SESSION: PUBLIC EMPLOYEE APPOINTMENT:** Appointment of Watermaster Legal Counsel (LC) pursuant to subdivision (b)(1) of Government Code Section 54957.

**V. CLOSED SESSION: PUBIC EMPLOYEE APPOINTMENT:** Appointment of Watermaster Technical Consultant/Executive Director pursuant to subdivision (b)(1) of Government Code Section 54957.

The Board adjourned to closed session at 6:35 p.m. Thereafter, the open session was reconvened. There was no reportable action.

**VI. CLOSING PROCEDURE**

The next Board Meeting has yet to be scheduled at Borrego Water District, 806 Palm Canyon Drive, Borrego Springs, CA 92004. There being no further business, the meeting was adjourned.



BORREGO SPRINGS BASIN WATERMASTER  
BOARD OF DIRECTORS MEETING  
JUNE 25, 2020  
AGENDA ITEM II.A

June 25, 2020

TO: Board of Directors

FROM: Geoffrey Poole

SUBJECT: Agreement with Richards Watson Gershon to serve as Watermaster Legal Counsel – Anderson

**RECOMMENDED ACTION:**

Approve proposed Contract selecting James Markman as WM Legal Counsel

**ITEM EXPLANATION:**

Following an interview process and deliberation, the Watermaster Board requested staff to negotiate an Agreement for James Markman from Richards Watson Gershon to serve as Legal Counsel. Mr Markman has extensive experience in California Water Law as shown in the attached Response.

**NEXT STEPS**

Execute Agreement

**FISCAL IMPACT**

N/A

**ATTACHMENTS**

1. Response from RWG
2. Proposed Agreement



James L. Markman

T 714.990.0901  
F 714.990.6230  
E jmarkman@rwglaw.com

1 Civic Center Circle, PO Box 1059  
Brea, California 92822-1059  
rwglaw.com

June 22, 2020

Borrego Springs Watermaster  
c/o Geoff Poole  
General Manager  
Borrego Water District  
806 Palm Canyon Drive  
Borrego Springs, California 92004

Re: Legal Services Agreement - Borrego Springs Watermaster General Counsel

Dear Geoff:

We are very pleased to have the opportunity to provide services to the Borrego Springs Watermaster ("Watermaster"). Those services will include performing legal tasks related to the completion of the legal action filed in San Diego Superior Court entitled "*Borrego Water District v. All Persons etc.*". The services also include all services commonly performed by General Counsel both before and after the Judgment is entered including water and water rights issues, administrative hearings, court appearances, advice to the staff and Board on all Watermaster functions and on general advice customarily provided to public entities including open meeting law issues, records disclosure issues, conflicts of interest matters, and attendance at Watermaster meetings in person or virtually as requested by the Watermaster Board or staff. In Section 1 of this letter, we write to set forth the terms upon which our firm will provide legal services to the Watermaster, and the basis upon which we will bill for our services and expenses. In Section 2 of this letter, we confirm in writing our disclosure of a certain relationship with another party affected by the adjudication.

Section 1 – Terms of Representation:

I will have primary responsibility for your representation. We may also use other attorneys, legal assistants and other law firm personnel as may be helpful in representing the Watermaster's interests.

We will bill the Watermaster for fees on a monthly basis. When a bill is to be sent, we will review it before it is issued to ensure that the amount charged is appropriate and accurately reflects the services rendered.

Our time will be charged at the following rates:

James L. Markman - \$350 per hour;  
B. Tilden Kim and other firm shareholders, of counsel attorneys and senior attorneys - \$325 per hour;  
Nicholas Ghirelli and other firm associate attorneys - \$275 per hour; and  
All firm paralegals - \$165 per hour.

In addition, we will bill the Watermaster for costs in connection with its representation. Such costs include long distance telephone charges, driving mileage at the then current I.R.S. rate, court fees, litigation costs, messenger and delivery services, and other similar costs. Such costs frequently are billed to the firm from third-party vendors. Therefore, there sometimes will be a delay between the time such costs are incurred and the time when they appear on your bill.

The nature of legal representation makes it impossible for us to accurately estimate the total amount of fees and costs that may be incurred over time. We will keep the Watermaster informed of significant developments in the matter, including those that might have a substantial effect on the cost of this representation. Please feel free to inquire at any time about expected future costs.

Naturally, we expect the Watermaster Board and staff to ask us about the likely results of our work. We will respond as best we can, but cannot and do not guarantee any particular result. We can make no promises about the outcome of litigation or negotiations and any opinions about likely outcomes are not intended to constitute a guarantee.

We rarely have fee disputes with clients. Nevertheless, the Watermaster should be aware that it is entitled to require that any fee dispute be resolved through the mandatory fee arbitration provisions of the California Business & Professions Code. One such program is operated under the auspices of the Los Angeles County Bar Association. Many other local bar associations have similar programs.

In the unlikely event that such a dispute occurs and the Watermaster chooses not to utilize the County Bar arbitration procedures, the Watermaster agrees that all fee disputes between us shall be submitted to binding arbitration in Los Angeles to be conducted by the American Arbitration Association, in accordance with its commercial arbitration rules.

The Watermaster has the right to terminate our representation at any time. We have the same right, subject to our obligation to provide the Watermaster with reasonable notice to arrange alternative representation. In either circumstance, the Watermaster agrees to secure new counsel to represent it as quickly as possible and to cooperate fully in the substitution of the new counsel as counsel of record in any litigation in which we may be involved. In the event of termination by either party, we will be paid all fees and costs incurred prior to the termination within 30 days after delivery of a final bill for services.

We are also required to inform the Watermaster that we currently maintain professional liability insurance.

Our legal relationship and the terms of this agreement will be governed by the substantive laws of the State of California.

Section 2 – Disclosure:

As we have discussed, Richards, Watson & Gershon specializes in the representation of public entities and especially municipalities and public and private entities who deal with water issues. For the purpose of analyzing the potential for professional conflicts, we will review a list of all parties subject to the Judgment once it is entered. Please advise if there are any additional parties that you believe we should review. The effectiveness of this letter agreement is contingent on our firm having no relationship to any party to the Judgment which ethically prevents us from providing legal services to the Watermaster. We do not expect to discover such an impediment.

The list of parties to the adjudication is significant and we will perform a thorough analysis as quickly as possible. We will continue to review our records and, if necessary, will make additional disclosures to the Watermaster in the future.

As we informed you, we did represent Borrego Springs Unified School District in relation to the adjudication, the SGMA process and concerning a water rights lease with Borrego Water District. That representation is completed and we have notified the school district of our engagement as Watermaster counsel precluding us from providing services to the school district on any water issue.

The relationship between the Watermaster and Borrego Springs Unified School District raises an issue for discussion under the Rules of Professional Conduct of the State Bar of California (“Rules”). Initially, Rule 3-310(B) provides for disclosure of current or past relationships with certain parties potentially affected by the representation. That rule provides, in pertinent part, as follows:

“(B) A member [of the State Bar] shall not accept or continue representation of a client without providing written disclosure to the client where:

- (1) The member has a legal, business, financial, professional, or personal relationship with a party or witness in the same matter; or

- (2) The member knows or reasonably should know that:
  - (a) the member previously had a legal, business, financial, professional, or personal relationship with a party or witness in the same matter; and
  - (b) the previous relationship would substantially affect the member's representation; or
- (3) The member has or had a legal, business, financial, professional, or personal relationship with another person or entity the member knows or reasonably should know would be affected substantially by resolution of the matter; ..."

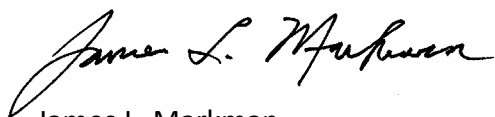
The relationship between the Watermaster and the school district, a party with allocated water rights is not a typical relationship of opposing parties. Nonetheless, we feel the best practice is to confirm in writing for your consideration our past relationship with the school district set forth above. This letter will serve as written disclosure of our relationship with the school district. While highly unlikely to come up, we need to inform you about our ethical obligations prescribed in State of California Bar Rule 1.9 dealing with Duties to Former Clients. That rule precludes our representing you as Watermaster on any matter or issue in which the interests of the school district are materially adverse to the interests of the Watermaster unless we obtain the consent of the school district to do so. We also are precluded from using confidential information received from the school district while we represented that district in providing legal services to the Watermaster. At present, we are not aware of any such information which would be relevant to a future Watermaster issue or action.

Conclusion:

I apologize for the formal tone of this letter required to discharge our ethical obligations. We do look forward to representing you and aiding the Watermaster from its inception.

We have enclosed a return envelope for your convenience in returning to us an executed Acceptance of Terms of Representation reflected in this letter agreement.

Very truly yours,



James L. Markman

Enclosure



James L. Markman

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E jmarkman@rwglaw.com

1 Civic Center Circle, PO Box 1059  
Brea, California 92822-1059  
rwglaw.com

ACCEPTANCE OF TERMS OF REPRESENTATION

On behalf of the Borrego Springs Watermaster, I hereby confirm acceptance of the terms of representation as set forth in Section 1 above.

Borrego Springs Watermaster

By: \_\_\_\_\_  
\_\_\_\_\_ (Chair)

Date: \_\_\_\_\_

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## Borrego Water District

Proposal for Legal Counsel to  
Interim Borrego Springs Watermaster

April 28, 2020

### James Markman

1 Civic Center Circle, PO Box 1059

Brea, California 92822-1059

Phone: 714.990.0901

Fax: 714.990.6230

E-mail: [jmarkman@rwglaw.com](mailto:jmarkman@rwglaw.com)



In Your Community  
By Your Side

April 28, 2020

Geoff Poole  
General Manager  
Borrego Basin Watermaster  
c/o Borrego Water District  
806 Palm Canyon Drive  
Borrego Springs, California 92004

**Reference:** *Request for Proposal for Legal Counsel to Interim Borrego Springs Watermaster*

Dear Mr. Poole:

Richards, Watson & Gershon (RWG) is pleased to submit this Proposal for Legal Counsel to Interim Borrego Springs Watermaster to the Borrego Water District.

To handle the different facets of the District's legal services, we are proposing a diverse team of highly accomplished attorneys. Our team members will be: James Markman as Lead Counsel and point of contact, B. Tilden Kim as primary back-up, and Nicholas Ghirelli as additional support.

Jim will be responsible for the primary communication with the District regarding this RFP. Jim and I can be reached as follows:

**Richards, Watson & Gershon,  
A Professional Corporation**  
1 Civic Center Circle, PO Box 1059  
Brea, California 92822-1059  
Phone: 714.990.0901  
Fax: 714.990.6230

350 South Grand Avenue, 37th Floor  
Los Angeles, California 90071  
Main: 213.626.8484  
Fax: 213.626.0078

**James Markman**  
Phone: 714.990.0901  
Email: [jmarkman@rwglaw.com](mailto:jmarkman@rwglaw.com)

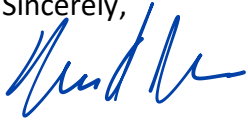
**Kayser Sume**  
Phone: 213.626.8484  
Email: [ksume@rwglaw.com](mailto:ksume@rwglaw.com)

The attorneys at RWG are leaders in California with highly specialized skills in transactional and litigation work on behalf of public agencies. Our proposed team, backed by the extensive resources of RWG, would provide excellent representation to the District and we appreciate being considered for this opportunity.



We look forward to discussing our qualifications with you. In the meantime, if you have any questions or comments, please do not hesitate to contact Jim or me.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Kayser O. Sume'.

Kayser O. Sume  
Chairman, Board of Directors

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## Firm Overview

### Background and Expertise

Founded in 1954, RWG specializes in the representation of public agencies of all types. Our attorneys deliver practical, solutions-oriented advice tailored to the particular needs of each client. We have built a reputation as the lawyers of choice for public agencies seeking reliable, efficient, and effective legal counsel to achieve their goals.

In addition to its water law expertise, RWG delivers a full spectrum of legal services with a specialized focus on public agency law, including:

- Administrative Law and Government Regulation
- Affordable Housing
- Appellate Law
- California Coastal Act
- California Environmental Quality Act (CEQA) / National Environmental Protection Act (NEPA)
- Civil Rights and Constitutional Law
- Conflicts of Interest
- Hazardous Materials
- Labor and Employment
- Land Use and Planning
- Litigation
- Municipal Taxation
- Municipal Torts
- Ordinances and Resolutions
- Police and Fire Practices
- Political Reform Act
- Public Finance
- Public Works, Construction, and Contracting
- Real Estate
- Telecommunications
- Tort Defense
- Transportation
- Utilities and Franchising
- Writs and Appeals

## Firm Experience

### Qualifications

James Markman is recognized as one of California's leading experts and professionals in water law. He is backed up by the attorneys in our Water Rights and Water Law Practice Group.

The Water Rights and Water Law Practice Group has extensive civil trial and appellate experience, which encompasses litigation in the state and federal courts, including the California Supreme Court.

We regularly assist water districts, municipalities, industry, landowners, and others requiring water rights advice in all aspects of water law, including but not limited to:

- California Environmental Quality Act
- Groundwater Adjudications
- Groundwater Contamination
- Kuehl-Costa Water Supply Certifications
- Project Construction
- Reclaimed and Recycled Water
- Urban Water Management Plans
- Water Transfers

Our attorneys have expertise in all aspects of land use law, including CEQA and NEPA compliance. We are well-versed in the procedural intricacies of planning and zoning law, ensuring that the approval or denial of a project will have a solid administrative record. Our Firm has extensive experience in negotiating complex development agreements for large development projects and drafting conditions of approval for projects of all sizes. We often are called upon to draft innovative zoning ordinances and to provide advice on novel regulatory questions. In each of these instances, environmental review and compliance is critical.

RWG's attorneys have been advising public entities concerning CEQA compliance since the statute was enacted in 1970. As described above, the proposed team of attorneys is well-versed in the details of CEQA, including the use of subsequent and supplemental environmental documents, addenda, and the ever-changing criteria for the study of various environmental topics such as traffic, air quality, climate change, historical resources, public services, cumulative impacts, and tribal cultural resources. We often work closely with lead agencies' CEQA consultants and planners to ensure that the EIR or mitigated negative declaration for a project will withstand legal scrutiny. We have a long record of successfully creating records that withstand CEQA challenges.

B. Tilden Kim assists public agencies with procuring services necessary to construct facilities for the benefit of the public, including water transmission facilities, sewers, storm drains, and many other types of public works. In addition to the Public Contract Code's rigorous procurement process, public works projects are also subject to comprehensive California Labor Code requirements. Navigating the comprehensive rules governing procurement of contractors, administering construction projects, resolving contractor disputes, as well as dealing with bid protests and subcontractor claims that arise all too often, and ensuring compliance with the Labor Code requirements, necessitates having guidance by attorneys experienced in all aspects of delivery of public works projects. Tilden has many years of experience in assisting public agencies with their public works projects, from the conceptual stage through successful project completion, including resolution of any disputes and claims.

Tilden is also very sensitive to the fact that services provided by consultants and other contractors on a public agency's property have the potential for causing injury or financial loss for which the agency may be held responsible. Therefore, in contracting for such services, it is critical that contracts are drafted and/or reviewed by attorneys having experience in allocating risk to such consultants or contractors through appropriate indemnification provisions and further ensuring financial responsibility to back up such indemnities with comprehensive insurance requirements. Whether a consultant or contractor will be performing for a week or a year, or the contract is minimal or substantial in amount, there will always be the risk of injury or loss and resulting damages for which an agency might be responsible in the absence of appropriate contract terms written by an attorney experienced in drafting such contracts.

## Team

### Team Members

To handle the different facets of the District's legal services, we are proposing a diverse team of highly qualified attorneys. James Markman will be the Lead Counsel and point of contact. He will be supported by Tilden Kim and Nicholas Ghirelli. All of our team members will be available to serve the District through the term of the contract.

### Resumes



#### James Markman | Lead Counsel

1 Civic Center Circle, PO Box 1059  
Brea, California 92822-1059  
Phone: 714.990.0901  
Fax: 714.990.6230  
Email: [jmarkman@rwglaw.com](mailto:jmarkman@rwglaw.com)

Jim is a leading expert in California water rights and water law and one of the most experienced city attorneys in California. In his more than 40 years as an advocate for and advisor to public agencies, he has handled virtually every facet of being a public lawyer. The sampling below illustrates Jim's experience and qualifications:

- Jim serves as General and Special Counsel to numerous public agencies and companies on a variety of water law issues. Jim is General Counsel for the Antelope Valley-East Kern Water Agency, the Beaumont-Cherry Valley Water District, and the Central Basin Water Rights Panel which provides Watermaster functions in the adjudicated Central Basin of Los Angeles County. Jim also serves as Special Counsel for the Nipomo Community Services District in reference to groundwater basin management, water supply verification, and adjudication issues and to the Indian Wells Valley Groundwater Sustainability Agency, the SGMA entity located in Ridgecrest. He also represents private parties concerning water rights transfer and water rate issues and a group of approximately 800 landowners in litigation concerning tribal reserved rights to Anza Basin water. He has represented Pajaro Valley Water Management Agency pertaining to the validity of its augmentation fee and its compliance with Prop. 218 and has represented Marina Coast Water District for a number of years on water rights issues, including its Regional Desalinization Project. He also represents the Cities of La Mirada and Rancho Cucamonga as City Attorney.
- Jim has been involved in many significant groundwater adjudications that have occurred since 1969, including the Chino Basin, Cummings Basin, Mojave River Basin, Six Basins, Upper San Gabriel Basin, Santa Maria Basin, and the ongoing Antelope Valley adjudication.

- Jim was a principal trial counsel and represented numerous public agencies in the Court of Appeal and the California Supreme Court in the successful second effort to adjudicate and bring management to the water resources of the Mojave River Basin. He also appeared in the Court of Appeals and successfully argued the validity of the Santa Maria Adjudication Judgment on behalf of Nipomo Community Services District. He now represents public agencies involved in active water negotiations and related matters in Los Angeles, San Bernardino, Orange, Riverside, Santa Barbara, and San Luis Obispo Counties.
- Jim personally represented numerous California Regional Water Quality Control Boards and, in that capacity, instituted the first four civil suits brought under the Porter-Cologne Water Quality Control Act, which cases were related to the pollution of Monterey Bay.
- Jim served as Deputy Attorney General for the State of California from 1968 through 1970, where he specialized in water rights and pollution matters. While with the Attorney General's office, he also solely handled 53 cases in the appellate courts of this state, including three before the California Supreme Court.
- Jim is an active member of the Association of California Water Agencies (ACWA). He regularly attends ACWA meetings, conferences, and seminars where he has been a frequent seminar speaker on a variety of water law and water rights issues.



**B. Tilden Kim | Primary Back-up**

350 South Grand Avenue, 37th Floor  
Los Angeles, California 90071  
Phone: 213.626.8484  
Email: [tkim@rwglaw.com](mailto:tkim@rwglaw.com)

Tilden specializes in representing public entities in public works and infrastructure matters. As counsel to numerous Public Works Departments, Tilden has broad experience helping public entities manage their bidding and construction process. A former Chair of RWG's Litigation Department, he regularly represents RWG clients in the array of disputes that can arise from public projects.

Tilden also is a member of RWG's Water Rights and Water Law focus group. He has significant experience in groundwater management and related litigation, including recent adjudications in the Santa Maria Valley and Anza Valley. Presently, he is part of the RWG working group that is helping Nipomo Community Services District and Marina Coast Water District comply with statutory obligations under the Sustainable Groundwater Management Act.

A key aspect of Tilden’s practice is his experience representing clients before California’s numerous administrative agencies. He has successfully represented clients before the Public Utilities Commission, Cal-OSHA, and the Department of Industrial Relations. For example, Tilden has successfully prevented a major transmission line (Valley Rainbow) from bisecting the Temecula Valley Wine Country. Tilden also successfully opposed the Riverside Transmission Reliability Project before the California Public Utilities Commission on behalf of the City of Jurupa Valley, and caused the undergrounding of this major infrastructure rather than the above-ground transmission lines sought by the utility. Tilden also regularly works on water-rate cases for many of our public agencies.

The sampling below illustrates Tilden’s experience and qualifications:

- Tilden advises many of RWG’s water-related clients, including but not limited to Antelope Valley-East Kern Water Agency, Nipomo Community Service District, Marina Coast Water District, and Beaumont Cherry Valley Water District.
- Tilden advises most of the RWG’s Public Works Departments, including the Cities of Agoura Hills, Beverly Hills, Fairfield, La Mirada, Mill Valley, Palmdale, Rancho Cucamonga, Seal Beach, Temecula, and Westlake Village.
- Tilden regularly works with Public Works staff in establishing a sufficient record for finding bidders to be nonresponsive when they fail to submit a proper bid, thereby minimizing the potential for a lawsuit with a disgruntled bidder. Tilden also works with Public Works staff on payment, performance, and warranty bond issues, and has successfully prosecuted several multi-million dollar recoveries against performance bond sureties and general contractors. Tilden successfully extricates many public entity clients from mechanics liens and other contractor/subcontractor disputes in an economical manner.



**Nicholas Ghirelli | Associate**

350 South Grand Avenue, 37th Floor  
Los Angeles, California 90071  
Phone: 213.626.8484  
Email: [nghirelli@rwglaw.com](mailto:nghirelli@rwglaw.com)

Nick has represented numerous public entities in a wide range of matters and currently serves as General Counsel for the Gateway Integrated Regional Water Management Joint Powers Authority and Southeast Water Coalition and is Assistant City Attorney for the Cities of Rancho Cucamonga, Indio, Moorpark, and Agoura Hills.



- Nick Regularly assists the Firm’s water agency clients, including the Antelope Valley-East Kern Water Agency with Board governance matters, ethics compliance, and contracting and environmental compliance matters.
- Nick concentrates on the representation of government agencies in public law issues, including land use, planning, contracts, development fees, public works projects, the Brown Act, the Public Records Act, the Subdivision Map Act, and CEQA.
- Nick has substantial experience representing municipal clients on stormwater (MS4) regulation and compliance matters relating to the Clean Water Act and Porter-Cologne Water Quality Control Act. He currently represents a diverse group of 20 cities in Los Angeles County in litigation involving the 2012 Los Angeles County Stormwater Permit.
- In his capacity as General Counsel for the Gateway Water Management Authority, Nick regularly drafts and negotiates cooperative agreements among the Authority’s members, other permittees, and private entities to assist them in the implementation of NPDES permits.
- Nick has been involved in drafting and negotiating agreements for major development and public works projects.

## References

| Name and Contact Information   | Name and Contact Information  |
|--|---|
| Mario Iglesias<br>General Manager<br><b>Nipomo Community Services District</b><br>148 South Wilson Street<br>Nipomo, California 93444-0326<br>Phone: 805.929.1133<br>E-mail: miglesias@ncsd.ca.gov | Dwayne Chisam<br>General Manager<br><b>Antelope Valley-East Kern Water Agency</b><br>6450 West Avenue N<br>Palmdale, California 93551<br>Phone: 661.943.3201<br>Email: dchisam@avek.org       |
| Dan Jagers<br>District Manager<br><b>Beaumont-Cherry Valley Water District</b><br>560 Magnolia Avenue<br>Beaumont, California 92223<br>Phone: 951.845.9581<br>E-mail: dan.jagers@bcvwd.org         | John Gillison<br>City Manager<br><b>City of Rancho Cucamonga</b><br>10500 Civic Center Drive<br>Rancho Cucamonga, California 91730<br>Phone: 909.477.2700<br>Email: john.gillison@cityofrc.us |



## Sample Projects

### Nipomo Community Services District - Jim Markman, Lead Attorney

Supplemental Water Project: Legal Counsel on a Supplemental Water Project to bring 2,500 AFY from City of Santa Maria to NCS D; from 2005 to present time; Project Cost is not yet fixed.

Contact Information: Mario Iglesias  
General Manager  
**Nipomo Community Services District**  
148 South Wilson Street  
Nipomo, California 93444-0326  
Phone: 805.929.1133  
E-mail: miglesias@ncsd.ca.gov

### City of Brea - Jim Markman, Lead Attorney

Water Infrastructure Projects: Legal Counsel for all water infrastructure projects in the City from 1978 to the present time. Approximate cost of projects: \$200 million.

Contact Information: Bill Gallardos  
City Manager  
**City of Brea**  
1 Civic Center Circle  
Brea, California 92821  
Phone: 714.990.7710  
E-mail: billga@ci.brea.ca.us

### Beaumont Cherry Valley Water District - Jim Markman, Lead Attorney

Legal Counsel on \$10 million of percolating ponds and reclaimed water projects for the District in 2015.

Contact Information: Dan Jagers  
District Manager  
**Beaumont-Cherry Valley Water District**  
560 Magnolia Avenue  
Beaumont, California 92223  
Phone: 951.845.9581  
E-mail: dan.jagers@bcvwd.org

### City of Beverly Hills - Jim Markman, Lead Attorney

Legal Counsel on \$4 million project involving Central Basin Fringe Area Water Projects for the City.

Contact Information: Shana Epstein  
Director of Public Works  
**City of Beverly Hills**  
345 Foothill Road  
Beverly Hills, California 90210  
Phone: 310.285.2494  
Email: sepstein@beverlyhills.org

### Marina Coast Water District - Jim Markman, Lead Attorney

Lead Counsel on Litigation involving \$400 million Regional Desalination Project involving Marina Coast Water District; California American Water District; and Monterey County Water Resources Agency.

Contact Information: Keith Van Der Maaten  
District Manager  
**Marina Coast Water District**  
11 Reservation Road  
Marina, California 93943  
Phone: 831.384.6131  
Email: KVanDerMaaten@mcwd.org

### City of Santa Paula - Firm

We assisted the City in putting together an innovative public/private partnership to build their new wastewater treatment plant with minimal capital investment by the City. RWG drafted an agreement whereby a third party entity, Santa Paula Water (a joint venture of PERC, the company that contracted for facility design, construction and operations, and an infrastructure investment fund managed by Alinda Capital Partners LLC, which financed the construction of the new water recycling facility) would design, build, finance, and operate a state-of-the-art water recycling facility to meet the City's current and future wastewater treatment needs. The construction was completed on schedule.

## Conflicts

We have conducted a conflict review, and we currently are unaware of any current or anticipated matters where our relationships or legal representation would create an actual conflict of interest with the proposed representation of the District.

## Fee Schedule

### Hourly Rates/Fees

Time incurred in providing legal services will be billed in increments of one-tenth of an hour. Our invoices provide detailed explanations of tasks performed, dates of work, and the name of the attorney that performed the work. Bills are submitted to the client monthly with payment due during the following 30 days.

### Fee Schedule

The proposed hourly billing rates for the core team members are as follows:

| NAME              | RATE  |
|-------------------|-------|
| James Markman     | \$350 |
| B. Tilden Kim     | \$325 |
| Nicholas Ghirelli | \$275 |

To the extent that the services of other Firm attorneys are utilized, such services would be billed at a rate of \$325 per hour for shareholders, of counsel and senior attorneys, \$275 per hour for associates, and \$165 for paralegals.

### Reimbursable Costs

Mileage will be billed at the standard rate established by the IRS for deducting the operating expenses of an automobile used for business purposes. Copying costs will be charged at 5 cents per page. All other costs, such as long distance telephone charges, travel, messenger and delivery services, and legal research services will be charged at RWG's actual out-of-pocket expenses. RWG will not charge for word processing and similar clerical tasks.

### Adjustments

Commencing July 1, 2022, and annually thereafter, the hourly rates set forth shall automatically increase by the percentage change in the Consumer Price Index (All Urban Consumers for the Western Region). The calculation shall be made using the month of April over the month of April in the prior year. Any such annual adjustment that equals or exceeds three percent (3%), and any other adjustments in the rates, shall require prior written approval of the District Board.

# RICHARDS WATSON GERSHON

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BORREGO SPRINGS BASIN WATERMASTER  
BOARD OF DIRECTORS MEETING  
JUNE 25, 2020  
AGENDA ITEM II.B

June 25, 2020

TO: Board of Directors  
FROM: Geoffrey Poole  
SUBJECT: Meter Reading Options

**RECOMMENDED ACTION:**

Receive Report and Direct Staff as Deemed Appropriate.

**ITEM EXPLANATION:**

Director Smith contacted Staff to request this item be placed on the Agenda. The Stipulation includes an option for pumpers to either fund their own remote read meter or pay for manual meter reading. The Borrego Water District is the natural source to perform the manual reads, but prior to developing an estimate the number and location of the subject meters is needed. Staff is requesting each pumping sector return to the next Board meeting with the necessary information (number and location of manual reads)

**NEXT STEPS**

Forward information received at the next Watermaster Meeting to BWD for a meter reading quotation.

**FISCAL IMPACT**

N/A

**ATTACHMENTS**

1. None