

**BORREGO WATER  
DISTRICT**

**NEW DEVELOPMENT POLICY**  
**STATEMENT**

SUBJECT: Policy on New Development

NO. 2005-6-1  
ADOPTED: June 22, 2005  
AMENDED: December 27, 2006  
AMENDED: February 20, 2013  
AMENDED: March 23, 2016  
AMENDED: March 14, 2017  
AMENDED: April 27, 2021

**Background:** As a general objective, the Borrego Water District (BWD) requires new development to pay its fair share for new connections to BWD's existing water, sewer, and wastewater infrastructure capacity. The developer would also be responsible to pay for the proportional use of any additional system capacity that would necessarily be added to the BWD system as the result of the new development

Sometimes, however, for economic development, public health or environmental protection, and/or social equity reasons, a public-private partnership with the developer would be advantageous in realizing the community's vision for the future.<sup>1</sup> For example, BWD may desire to extend a water or sewer line at its own cost whenever the result will be an improvement to the overall system resulting in cost containment for both existing and new customers. This developer policy's objective, most of all, is to provide a tool for establishing equity between past and new investments in community development and to provide BWD with an effective tool for strategic infrastructure planning.

**Policy:** BWD encourages responsible development by requiring developers to install water and sewer infrastructure at the developer's expense. In addition, developers shall be charged for each new connection to pay for any required improvements to the existing BWD system and the new development's proposed use of existing system capacity. Participation in costs by BWD will occur only when such participation will add further benefit to BWD's capability to provide services to existing and future customers.

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<sup>1</sup> Proposition 218 largely prohibits BWD from using water and/or sewer revenues to fund projects with these community-based broader objectives. Thus, prior to entering into any public-private partnership with a developer to accomplish such objectives, BWD must first identify if any unrestricted funds are available to contribute to the partnership and/or whether there may be a direct benefit to some existing and/or future BWD customers.

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## POLICY FOR WATER AND SEWER SERVICE TO NEW DEVELOPMENTS

April 27, 2021

This Policy outlines the procedures and obligations for developers, contractors, and owners (hereinafter "developers") to obtain water and sewer service from the Borrego Water District (hereinafter "BWD") to serve a new development and establishes the fees, exactions, and charges for the new development. The Policy also applies to new construction of residential homes on existing platted lots within BWD's service area. The term "new development" is defined as any residential or commercial development or service requirement that increases the demand on BWD's water supply and/or distribution system and/or its sewer collection and treatment system whether by increasing the intensity of use or by altering the use of land.

### 1. Application of Policy

This Policy governs the procedures for BWD to handle requests for a commitment for water and sewer service for new developments and sets forth the obligations of the developer to obtain such written commitment. All commitments are conditioned upon County approval of the development. When a developer requests a commitment for water and sewer service for a larger new development, for example, a "major subdivision," as defined in the San Diego County Code of Regulatory Ordinances at section 81.102(y) as "a subdivision creating five or more lots or units" that may substantially impact BWD's existing water supply capacity and/or sewer treatment capacity or that may require major improvements to BWD's water distribution system and/or to BWD's sewer treatment plant or collection system, such requests shall be considered on a case-by-case basis. This Policy shall serve as a guideline for the consideration of the request for water and sewer service for a larger new development, but BWD may modify or add to the provisions of this Policy.

### 2. Application for Water and Sewer Service

(a) The developer must obtain an Application for Water and Sewer Service from BWD. With the Application the developer shall submit a preliminary plat of the development which shall include the number of lots to be served, the type of units to be built within the development, the size of the lots in the development, the estimated build-out water/sewer demands of the new development and any other information that will assist BWD in determining/confirming the water and sewer needs of the new development.

(b) The developer must return the completed Application to BWD with the information requested in subsection (a). The developer shall provide any other information requested by BWD that BWD deems necessary to determine the availability of water and sewer service for the development.

(c) When the Application requests water and sewer service for a larger new development, the developer shall pay a Application Fee as set by BWD's General Manager at the time the Application is submitted. The Application Fee is non-refundable and shall be credited toward the Administrative Deposit set forth in Section 6(a) of this Policy.

(d) The developer must timely notify BWD of any changes in the information submitted with the Application.

(e) When the Application is complete and any Application Fee is paid, BWD's District Engineer with assistance from outside experts, as needed, will determine whether the water and sewer service requested is available. In addition, a determination will be made whether any off-site water and sewer system improvements must be made to properly serve the new development and maintain the current level of water and sewer service to BWD's existing customers.

(f) When BWD has completed its review, the developer will be notified of the preliminary conclusions as to the feasibility of the water and sewer service requested. BWD may then issue a Water and Sewer Availability Letter to the developer, or request additional information/time before reaching the final determination. The Water and Sewer Availability Letter will automatically terminate after seven hundred twenty (720) days unless either (a) extended by BWD, or (b) the developer enters into a service contract with BWD and pays all fees associated with the Will Serve Letter within seven hundred twenty (720) days of the date of the Water and Sewer Availability Letter.

3. Conditions on Availability of Water and Sewer Service

(a) In determining whether water and sewer service is available, BWD shall require the developer to provide an accurate projection of the water demand and sewer treatment needs, by a registered engineer, for the entire development upon the Application for the first section or phase of the development.

(b) BWD may issue its Water and Sewer Availability Letter with limitations on the maximum amount of water that can be provided to the new development and the maximum amount of wastewater that can be collected and treated for the development as determined by constraints of the BWD system infrastructure, permitting limitations, and any regulatory limitations. Any maximum limits on water and sewer service for the development shall be included in the water service contract with the developer under Section 4. As described below, Developer shall be responsible for acquiring and conveying to BWD the required BPA needed to serve the development with water, in amounts determined by BWD. Developer shall also be required to pay BWD sewer fees, as also described below.

4. Water and Sewer Service Contract

(a) Before improvements are installed for the new developments of over five (5) Equivalent Dwelling Units (EDUs) or new developments less than five (5) EDUs at BWD's discretion, BWD shall prepare, at developer's cost, a contract under which water and sewer service will be provided to the development.

(b) BWD may incorporate in the water and sewer service contract the maximum amount of water that can be furnished and the maximum amount of wastewater that can be collected and treated by BWD. In the event the developer's demand for water and sewer service exceeds the developer's projection of demand during the build out of the development, BWD shall have no obligation to furnish water or provide wastewater collection and treatment in excess of the amounts set forth in the water and sewer service contract. Any request for water and sewer service in excess of the amounts projected by the developer and included in the Water and Sewer Service Contract may be treated as a new request for water and sewer service under this Policy.

(c) A Water and Sewer Service Contract cannot be assigned to any successor in interest of the developer without the express written consent of BWD, which consent will not be unreasonably withheld.

5. Installation of Improvements

(a) Cost of Installation. At its own expense and at no cost and expense to BWD, the Developer shall furnish, install, and construct all on-site and off-site water and sewer system improvements, including all labor and material, as required by BWD to be installed to serve the development, to not impede the current level of water and sewer service to existing customers and to meet BWD's objectives for the level of system service reliability that is currently available in the general area of the development. The construction and installation of the water and sewer system improvements shall be in strict accordance with the plans, specifications and requirements approved by BWD and performed by a Licensed Contractor. In addition, the developer shall indemnify BWD from any loss or damage that may directly or indirectly result from the installation of water and sewer system improvements by the developer.

(b) Notification of Construction. BWD shall be notified at least forty-eight (48) hours before construction is to begin on installation of improvements. Thereafter, the developer shall notify BWD every day during which construction will be in progress in order for BWD's inspector to be on the job site during construction.

(c) Inspections. All water and sewer system improvement projects shall be subject to inspection during construction and upon completion of construction by an authorized representative of BWD. Inspection may consist of full-time resident inspection or part-time inspection at the sole discretion of BWD. The presence or absence of an inspector during construction does not relieve the developer from adherence to approved plans and specifications. Materials and workmanship found not meeting the requirements of approved plans and specifications shall be immediately brought into conformity with said plans and specifications at the developer's expense.

(d) Final Inspection. An authorized representative of BWD shall make a final inspection of the water and sewer system improvements for the development after completion to determine acceptability of the work. Before this final inspection can be made, the owner, developer or engineer responsible for the project shall notify BWD's General Manager in writing that the work has been completed in accordance with approved plans and specifications.

(e) Final Acceptance. When the water and sewer system improvements pass BWD's final inspection, it will accept ownership of the completed improvements. The developer shall be responsible for ensuring that "as-built" drawings are timely furnished to BWD at the end of each phase of water and sewer system construction and prior to final acceptance of water and sewer system improvements by BWD. The date of final acceptance shall be that date on which the developer has fulfilled all conditions necessary for final acceptance, including passing a final inspection, submitting "as-built" drawings, payment of all fees due, and the placing of all water and sewer system improvements into service by BWD. BWD will notify the developer in writing of the date of its acceptance of the completed facilities.

(f) "As-Built" Plans. The developer shall provide BWD "as-built" plans, by a registered engineer, which shall be drawn at a scale approved by the District Engineer and which shall indicate the location and size of all water and sewer system improvements installed for the development. The location of all water and sewer system improvements must be referenced off of two (2) permanent points such as power poles, right-of-way markers, concrete monuments, iron pins at property corners, drainage culverts, and building corners. The water and sewer system improvements shall also be shown in relationship to the edge of all paved surfaces and all other utilities located within 15 feet of either side of the improvements. All utility easements shall be shown in relationship to the improvements. In the event the actual construction differs from the recorded plat of the development, the developer will prepare and record in the Register's Office of San Diego County a revised plat showing the actual construction with the design features stated above clearly shown. BWD may delay water and sewer service until this requirement has been met.

(g) Warranty. The developer shall guarantee all work on the water and sewer system improvements it installs for a period of one (1) year from the date of final acceptance and shall immediately correct any deficiencies in the work due to material or workmanship that occurs during the one-year period. The warranty shall be insured by a maintenance bond in the amount specified by BWD secured by an irrevocable bank letter of credit or such similar collateral as approved by BWD. When a defect is discovered in any water or sewer system improvement under warranty by the developer, the cost of repairing the defect when performed by BWD and the damages caused by the defect will be billed to the developer.

(h) Conveyance of Water and Sewer System Improvements. Upon completion of the construction of the water and sewer improvements, upon final approval by BWD, and upon the water and sewer system improvements being placed into service, the improvements shall immediately become the property of BWD regardless of whether or not a formal written conveyance has been made. The developer and any other persons paying the cost of constructing such improvements shall execute all written instruments requested by BWD necessary to provide evidence of BWD's title to such improvements, including obtaining any lien releases from the material suppliers and subcontractors of the developer and/or its contractor. The water and sewer system improvements shall become the property of BWD free and clear of the claims of any persons, firms, or corporations.

6. Assessments and Collection of Deposits, Fees and Charges:

(a) New Development Deposits. The developer shall pay BWD a Deposit to cover the administrative, inspection, engineering, legal, construction (if performed) and other actual costs incurred by BWD ("Actual Costs") related to making water and sewer service available to the new development. The Deposit shall be paid by the developer and collected by BWD as an initial deposit on or before the execution of the Water Service Agreement and Sewer Service Agreement with the intent for BWD to recover Actual Costs. If it is determined that the initial deposit is insufficient to recover Actual Costs, the BWD project manager will scope the work remaining on the project and calculate an additional subsequent deposit(s). The subsequent deposit(s) shall be calculated based on factors identified during the initial project analysis, established processing time standards, standard hourly rates and key project stages. Subsequent deposits may be required by the General Manager of BWD. Subsequent deposits shall be paid in the amount

calculated by BWD and collected with the intent to recover Actual Costs by key milestones. Subsequent deposits shall be paid and collected prior to completion of key milestones. An applicant who has paid the applicable Deposit(s) may withdraw the application prior to completion by submitting a written request to the General Manger of BWD. BWD shall discontinue work on such application within one working day from the receipt of said request. At the completion of all tasks associated with an application and after all final documents and review are completed, any surplus between the deposited amount and the Actual Costs shall be refunded to the applicant within 60 days or if a deficit, paid to BWD by the applicant within 60 days. For developments which request water and sewer service for a larger new development, the application fee paid under Section 2(c) shall be credited toward the New Development Deposit, but is non-refundable in any case.

(b) New Development Water Supply Charge (Water Supply Charge). A Water Supply Charge is a one-time charge paid by the developer to BWD to compensate BWD for the additional groundwater supply from the Borrego Springs Subbasin (Subbasin) of the Borrego Valley Groundwater Basin required to supply the new connection with potable water for the expected life of the new development. A developer shall convey to BWD to pay the Water Supply Charge Baseline Production Allocations (BPAs) in amounts sufficient to serve the development as calculated by BWD in its sole discretion. A Water Supply Charge shall be submitted to BWD for every new connection to BWD's municipal water supply system and also by customers who change their meter size to a larger meter to accommodate additional demand, which shall be considered a new connection. An exception is for pre-existing customers who wish to upsize to a 1-inch meter for the sole purpose of meeting San Diego County fire-flow code requirements. A pre-existing customer with a single-family County permitted lot with an existing BWD water meter shall be exempt from this charge when developed.

(c) New Development Impact Charge for Water Service (Water Service Capacity Charge). A Water Service Capacity Charge shall be paid on all new connections to BWD's existing water service system and also by pre-existing customers who change their meter size to a larger meter, to accommodate additional demand, which shall be considered a new connection. An exception is for pre-existing customers who wish to upsize to a 1-inch meter for the sole purpose of meeting San Diego County fire-flow code requirements. Water Service Capacity Charges are one-time charges assessed for new water customers to recover a proportional share of the capital required to provide continuous service capacity to BWD customers. The Water Service Capacity Charge shall be paid on or before the execution of the Water Service Agreement. A pre-existing customer with a single-family County permitted lot with an existing BWD water meter shall be exempt from this charge when developed.

(d) New Development Impact Charge for Sewer and Wastewater Treatment Infrastructure (Sewer Capacity Charge). A Sewer Capacity Charge shall be paid on all new connections to BWD's sewer system. Sewer Capacity Charges are one-time charges assessed for new sewer customers to recover a proportional share of the capital costs required to provide service capacity to BWD customers. These charges shall be reserved to fund sewer system infrastructure improvement costs reasonably related to future new development. The Sewer Capacity Charge shall be paid on or before the execution of the Sewer Service Agreement.

(e) New Development Connection Fee (Water Connection Fee). The Connection Fee is based

on the actual cost required for a new service lateral, when needed. The Connection Fee shall be paid prior to the time actual water and sewer service is established to each new connection. Residential connections using 3/4" or 1" meters shall pay a standard Connection Fee that includes allocated, per connection, direct labor costs, materials, supplies, and equipment expenses and an allowance for indirect costs. All other connections using larger size meters will pay a custom Connection Fee based on the direct and indirect costs and expenses particular to that connection. If a customer changes to a smaller meter, no credit for any Connection Fee previously paid will be provided for a smaller meter. The Connection Fee for commercial connections shall be based on the Equivalent Dwelling Units (EDUs) as calculated by BWD in its reasonable discretion.

(f) Schedule of Fees and Charges. A published schedule, as amended from time-to-time by BWD, shall be used to inform developers of the deposits, fees, charges, and EDU conversion factors assessed for/to each new development. At the completion of all tasks associated with an application and after all final documents and review are completed, any surplus between the deposited amount and the Actual Costs shall be refunded to the applicant within 60 days or if a deficit, paid to BWD by the applicant within 60 days.

7. Approval of Final Plat

BWD will not formally accept and sign off on a certificate of occupancy or other BWD-required final approval for a development until the water and sewer system improvements for the development have been constructed, inspected and accepted for use by BWD or until a performance bond secured by an irrevocable bank letter of credit issued by a bank with offices in San Diego County, California, or secured by other security specifically approved by the BWD Board of Directors has been posted equal to the estimated cost of all necessary improvements and in favor of BWD, the Water and Sewer Service Contract has been fully executed, and all applicable fees have been paid. If the development is not a subdivision, the applicable fees must be paid at the time the contract for water and sewer service is signed.

8. Easements

(a) All water and sewer lines that are to become the property of BWD are to be located inside the public right-of-way. Any proposed exceptions to this requirement are to be specifically approved by the Board of Directors or its delegatee. In all such cases where the Board of Directors or its delegatee approves water or sewer line construction within an exclusive easement on private property, the developer shall convey an exclusive easement to BWD a minimum twenty (20) feet wide for water and sewer main maintenance and construction. BWD may require an exclusive easement of greater than twenty (20) feet wide depending on the needs of BWD.

(b) The expenses of obtaining, preparing and recording easements needed for water and sewer system improvements for the new development will be paid by the developer, including but without limitation, the consideration paid to the landowner if the landowner is not the developer. In the event BWD must exercise its power of eminent domain to acquire any such easement, the developer will pay all costs, expenses, appraisal fees, expert fees and damage awards for which BWD becomes liable, on demand, including its reasonable attorney's fees.

(c) The easement must be in such form, terms, and content as approved by BWD.

(d) The developer is responsible for acquiring all such easements for both on-site and off-site water and sewer system improvement construction prior to the commencement of water and sewer system improvement construction.

9. Real Property Acquisition

In the event real property must be acquired for the installation of a water storage tank, a sewer treatment system, a pumping station or other water or sewer system improvement for or benefitting the development, the expenses of obtaining and preparing and recording the real property documents will be paid by the developer, including, but without limitation, the consideration paid to the land owner. In the event BWD must exercise its power of eminent domain to acquire any such real property, the developer will pay all costs, expenses, appraisal fees, expert fees and damage awards for which BWD becomes liable, on demand, including its reasonable attorney's fees.

10. Meters

(a) The number (master meter and/or individual) and location of meters needed to serve a development is at the discretion of BWD. The developer shall pay for all water meters in the development. The water meter shall include the lateral, corp stop, water meter, fittings, customer side shut off valve and water meter box. The water meter shall be per the specifications of BWD and preapproved by BWD prior to installation. At BWD's discretion, the developer may be asked to install such water meters, unless an agreement is made for BWD to install the meters at the expense of the developer.

(b) Each family residence or each duplex or other property shall be served with a separate water meter not smaller than three-quarter ( $\frac{3}{4}$ ) inch in size, except where prior arrangements have been made with BWD for apartment complexes, other types of multi-family dwellings, or businesses. In the event an existing water meter serves an apartment complex and/or other business property with units owned and/or occupied by more than one individual, firm, or corporation, the same shall be separated so as to have a meter for each ownership or occupant.

11. Permits

Before beginning construction, the developer or its contractor shall obtain all necessary permits as required by law. Such permits include, but are not limited to, those from State of California and the county highway department in which the development is located.

12. Resolution of Disputes

Any controversy or claim arising out of or relating to this Policy or the Water and Sewer Service Contract, or the breach thereof, shall be submitted to the Board of Directors, which may appoint a subcommittee of the Board to negotiate the controversy or claim. If the Board is unable to resolve the dispute by negotiation, the dispute shall be submitted to a mutually acceptable mediator. Mediation shall be required before either party may proceed to any other method of dispute resolution. Costs for mediation shall be shared equally between the parties. The decision of the mediator shall not be final or binding unless agreed to in writing by the parties. All mediation proceedings, results and documentation, shall be non-binding and inadmissible for any purpose in any



legal proceeding (pursuant to California Evidence Code sections 1115 through 1128) unless such admission is otherwise agreed to in writing by both parties.

