

Borrego Water District Board of Directors
Regular Meeting
April 12, 2022 @ 9:00 a.m.
806 Palm Canyon Drive
Borrego Springs, CA 92004

COVID-19 UPDATE: The Borrego Water District Board of Directors meeting as scheduled in an electronic format. BWD will be providing public access to the Meeting thru electronic means only to minimize the spread of the COVID-19 virus, based upon direction from the California Department of Public Health, the California Governor's Office and the County Public Health Office. Anyone who wants to listen to or participate in the meeting is encouraged to observe the GO TO MEETING at:

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. Directors' Roll Call: President Dice, Vice President Baker, Directors Duncan, Johnson and Rosenboom
- D. Approval of Agenda
- E. Approval of Minutes - None
- 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. ITEMS FOR BOARD CONSIDERATION AND POSSIBLE ACTION -

- A. Lease Agreement with California State Parks for Twin Tanks Site – G Poole
- B. Ocotillo Wells Solar Revenues - G Poole
- C. Town Hall Date and Format – G Poole
- D. Borrego Springs Subbasin Watermaster Board – VERBAL D Duncan/K Dice/T Driscoll
 - i. Update on Board Activities
 - ii. Update on Technical Advisory Committee Activities

AGENDA: April 12, 2022

All Documents for public review on file with the District's secretary 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 Water District complies with the Americans with Disabilities Act. Persons with special needs should call Geoff Poole – Board Secretary 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.

III. BOARD COMMITTEE REPORTS, IF NEEDED

STANDING:

- A. Operations and Infrastructure: Duncan/Rosenboom
- B. Budget and Audit: Dice/Rosenboom
- C. ACWA/JPIA insurance: Dice/Johnson

AD HOC:

- A. Prop 68: Baker/Johnson
- B. Public Outreach: Dice/Johnson
- C. Grants: Dice/Johnson
- D. Cyber Security/Risk Management: Baker/Rosenboom
- E. Pilot Water Program/Developer's Policy: Baker/Duncan
- F. Finance: Baker/Rosenboom

IV. STAFF REPORTS

- A. Water and Sewer Revenue – J Clabaugh
- B. Budget Schedule Update – J Clabaugh
- C. BPA Sales Update – D Del Bono
- D. Governors' Executive Order Regarding Well Construction Coordination – D Johnson/G Poole

V. CLOSED SESSION:

- A. Conference with Legal Counsel - Significant exposure to litigation pursuant to paragraph (3) of subdivision (d) of Section 54956.9: (One (1) potential case)
- B. Property Negotiations – BWD and US Gypsum Corporation Property Negotiations – Conference with Real Property Negotiators (Gov. Code §Section 54956.8) Property APN: 140-303-0900 & 140-303-1100, 150 acres Negotiating Parties: Geoff Poole, BWD General Manager and USG as potential buyer: Price and Terms of Payment Property Negotiations: Viking Ranch

VI. CLOSING PROCEDURE: The next Board Meeting is scheduled for 9:00 AM April 26, 2022, to be available online. See Board Agenda at BorregoWD.org for details, Agenda information available at least 72 hours before the meeting.

AGENDA: April 12, 2022

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BORREGO WATER DISTRICT
BOARD OF DIRECTORS MEETING
APRIL 12, 2022
AGENDA ITEM II. A

April 7, 2022

TO: Board of Directors
FROM: Geoffrey Poole, General Manager
SUBJECT: Lease Agreement with California State Parks for Twin Tanks Site

RECOMMENDED ACTION:
Approve Lease Agreement

ITEM EXPLANATION:
Staff and Legal Counsel have been working with State Parks in Sacramento and ABDSP on resolving the issue of BWDs Twin Tanks being constructed originally on Park property. The permanent solution to this situation is a formal land swap and that process takes up to 30 months. Staff would like to proceed with construction and Parks has agreed to enter into a Lease Agreement to allow for replacement on the Twin Tanks in 2022. BWD and Parks will continue to work on a formal Land Swap and once complete, BWD will apply for Grant reimbursement from DWR (est 24-30 months). BBK Legal is conducting a final review and Staff will present any suggested revisions.

FISCAL IMPACT:
N/A

NEXT STEPS:
Proceed with bidding of Project

ATTACHMENTS
1. Lease Agreement

Twin Water Tank Replacement Anza-Borrego Desert SP, 633 San Diego County
California Department of Parks and Recreation

STATE GROUND LEASE

State Lease No.: 940-2022-052

Lessee: Borrego Water District, A California Water District

This lease (the Lease), dated _____, is made by and between the State of California, acting by and through California Department of Parks and Recreation, hereinafter referred to as STATE, and Borrego Water District, a California Water District, hereinafter referred to as LESSEE. (STATE and LESSEE may hereinafter be referred to as a Party, or collectively the Parties.

RECITALS

WHEREAS, Pursuant to Section 5003.17 of the Public Resources Code, STATE may lease real property acquired for state park system purposes for a period not to exceed 10 years; and

WHEREAS, STATE has under its jurisdiction certain real property in the County of San Diego, State of California, commonly referred to as the Anza-Borrego Desert SP (633), hereinafter referred to the Lease Area; and

WHEREAS, LESSEE desires to lease from State a portion of the property at Anza-Borrego Desert SP (633) for the purpose of replacing twin water tanks; and

WHEREAS, the STATE’s director finds that LESSEE’s proposed use would be compatible with the use of the real property as a unit or part of a unit of the state park system and with the sound management and conservation of resources within the unit;

NOW THEREFORE, in consideration of the above recitals, which are herein incorporated, and the mutual promises contained herein, the parties agree to the following terms and conditions:

- PROPERTY DESCRIPTION** 1. STATE does hereby lease to LESSEE and LESSEE does hereby hire from STATE, hereinafter referred to as the "Lease Area", located in Anza Borrego SP, in the County of San Diego, State of California, described as follows in the attached Exhibit "A" and as shown on "Exhibit B", which is by this reference incorporated herein and made a part hereof:

- USE** 2. The Lease Area shall be used by LESSEE during the term hereof, or any holdover or extension, solely for the purpose of operating in, on and upon the Lease Area water tanks and an underground water pipeline:

- TERM** 3. (a) The term of this Lease shall be five (5) years, commencing on _____ and terminating on _____, with such rights of termination as may be herein expressly set forth.

RENT The first rent payment shall be due concurrently with the commencement of this Lease and thereafter shall be due and payable annually in advance during the remaining term of this Lease. LESSEE's payments shall display STATE Lease Number 940-2022-052. Rent shall include a 5% yearly increase and shall be payable as follows:

BASE RENT SCHEDULE

<u>Year</u>	<u>Period</u>	<u>Due Date</u>	<u>Payable to STATE</u>
1	_____ to _____	_____	\$ 600.00 per year
2	_____ to _____	_____	\$ 662.00 per year
3	_____ to _____	_____	\$ 695.00 per year
4	_____ to _____	_____	\$ 730.00 per year
5	_____ to _____	_____	\$ 767.00 per year

Rent payments to STATE shall be made payable to:

California Department of Parks and Recreation

Rent payments shall be sent to:

California Department of Parks and Recreation
Colorado Desert District
200 Palm Canyon Drive
Borrego Springs, CA 92004

Rent shall be due and payable to STATE whether or not an actual invoice is sent by STATE or received by LESSEE.

- HOLDING OVER** 4. (a) Any holding over by LESSEE with the express or implied consent of STATE after expiration of this Lease shall constitute a month-to-month tenancy with the rent payable monthly in advance and subject to automatic five percent (5%) annual increases, beginning with the first month. The tenancy shall otherwise be subject to all other terms and conditions contained in this Lease.
- (b) LESSEE acknowledges and accepts that STATE offers no assurance that the Lease Area or any other comparable space or facilities will be made available to LESSEE beyond the term stated above or upon termination of this Lease for any reason.
- ACCESS** 5. (a) LESSEE shall access the Lease Area solely by the access route designated by STATE as shown on attached "Exhibit C". Only the LESSEE, its authorized agents, employees, contractors, and servants shall have the right of ingress to and egress from the Lease Area. Access to the Lease Area shall be limited to that which is reasonably necessary to exercise the rights herein granted. LESSEE shall not permit the public to access or use the Lease Area or designated access route, and shall not permit any other persons or entities to occupy the Lease Area, except as expressly approved in writing by STATE.
- (b) STATE makes no representation regarding the condition of the access road that serves the Lease Area. By use of the access road, LESSEE accepts such use of the road in its "as-is" condition.
- (c) LESSEE shall use said road at its sole risk. LESSEE shall avoid traveling upon it to the greatest extent practicable whenever weather conditions are such that excessive damage to the road surface may result from such use; and further, LESSEE shall, at its own expense, promptly repair any road damage caused by its use, including such road surface protective features as water drains, berms, or culverts, after obtaining the written approval of STATE for any proposed repair work.

**DISPOSITION
OF IMPROVE-
MENTS**

6. (a) Should the LESSEE not obtain all rights to the property by means of a deed issued by the STATE prior to the to the expiration of this lease, all improvements and appurtenances constructed or placed on the Lease Area by or for LESSEE during the term of this Lease, and all equipment and other personal property of LESSEE, shall remain the property of LESSEE. LESSEE shall, at its sole cost and expense, remove all of its improvements, appurtenances and personal property prior to expiration date of this Lease or within sixty (60) days after a termination of this Lease that occurs prior to the expiration date, and shall restore the entire Lease Area as near as possible to the condition it was in immediately prior to the execution of this Lease; provided, however, upon said expiration or termination of LESSEE's tenancy, LESSEE may, with the prior written consent of STATE, abandon in place all or a portion of said improvements and appurtenances, whereupon title to such improvements and appurtenances shall vest in STATE. LESSEE's obligation to remove its property and restore the Lease Area to its original condition shall survive the termination of this Lease.

(b) For any improvements and appurtenances that will abandoned in place and become the property of the STATE, LESSEE shall provide STATE with a complete set of "as-built" plans in a format reasonably acceptable to STATE. LESSEE shall also provide STATE with a verified report showing that such property is in full compliance with all state and federal accessibility laws, including, but not limited to, the Americans with Disabilities Act of 1990, if applicable.

(c) Should LESSEE fail to remove its property and restore the Lease Area as required herein, STATE may do so at the risk of LESSEE, and all cost and expense of such removal and restoration shall be paid by LESSEE to STATE within ten (10) days of receipt of a written demand from STATE.

NOTICES

7. (a) All notices or other communications required or permitted hereunder shall be in writing with STATE Lease Number 940-2022-052 prominently displayed, and shall be personally delivered (including by means of professional messenger service) or sent by overnight courier, or sent by registered or certified mail, postage prepaid, return receipt requested, to the addresses set forth below.

(b) All such notices or other communications shall be deemed received (1) if personally delivered or sent by overnight courier, on the date of delivery to the address of the person to receive such notice, or (2) if mailed as provided above, on the date of receipt or rejection, if the date is Monday through Friday between 6:00 a.m. and 5:00 p.m. Pacific Time, so long as such day is not a state or federal holiday, in which case it shall be deemed received on the next business day.

TO STATE:

California Department of Parks and Recreation
Colorado Desert District
200 Palm Canyon Drive
Borrego Springs, CA 92004
760-767-4037

With a copy to:

California Department of Parks and Recreation
Acquisition and Real Property Services Division (Insert Lease No.)
One Capitol Mall, Ste. 410
Sacramento, CA 95814

TO LESSEE:

Borrego Water District
806 Palm Canyon Drive
Borrego Springs, CA 92004

760-767-5806

Notice of change of address or telephone shall be given by written notice in the manner described in this Section.

LESSEE shall send notices to all STATE offices listed above and the failure to provide notice to all STATE offices shall be deemed to constitute a lack of notice.

LIENS

- 8. (a) During the term of this Lease or any extension or holding over by LESSEE, LESSEE shall keep the Lease Area free from any liens or encumbrances arising out of any work performed, materials furnished, or obligations incurred by LESSEE, its agents, contractors or subcontractors. LESSEE shall indemnify, hold harmless and defend STATE from and against any such liens and encumbrances that may arise as a result of LESSEE's failure to do so. STATE shall not be responsible or liable for any work or materials furnished to LESSEE,

its contractors or subcontractors on credit, and no mechanic's or other liens for any such work or materials shall attach to or affect STATE's interest in the Lease Area. LESSEE shall within thirty (30) days after being furnished notice of the filing of any such lien take any necessary action, including, but not limited to, paying the amount owned, bonding or otherwise, to discharge or satisfy any such lien. A failure of LESSEE to remove or satisfy such lien within thirty (30) days after receiving notice of the lien from State or the lien holder, whichever comes first, shall constitute a default of this Lease by LESSEE, notwithstanding any other provision of this Lease.

(b) STATE shall have the right at all times to post and keep posted on the Lease Area any notices permitted or required by law to be posted, or that STATE deems proper for its protection or the protection of the Lease Area and STATE from liens. Nevertheless, if any lien is recorded against STATE's property as a result of LESSEE's acts or omissions and LESSEE fails within thirty (30) days after written notice from STATE or the lien holder, whichever comes first, to pay, settle, or otherwise effectuate release of such lien, or deposit into escrow with a reputable bank or trust company in California a sum sufficient to satisfy such lien in full, or in the event of litigation related to such lien, then upon the failure of LESSEE to satisfy such lien, STATE may pay or otherwise dispose of said lien, or defend, settle, or compromise any lawsuit brought to foreclose the same, in its sole discretion, and all amounts so paid by STATE and any other loss sustained by STATE on that account, including its attorney's fees and other costs, shall be repaid to STATE by LESSEE within ten (10) days upon written demand by STATE and shall be in addition to any other payment obligations of LESSEE under the terms of this Lease.

**STATE'S RIGHT
TO ENTER**

- 9.**
- (a)** During continuance in force of this Lease, STATE and its authorized agents shall have the right at all reasonable times to go upon the Lease Area for survey, inspection or any other lawful STATE purposes.
- (b)** STATE shall provide LESSEE with written notice of intent to enter the Lease Area at least twenty-four (24) hours prior to the entry, except in the event of an emergency. In the event of an emergency, as reasonably determined by the STATE, STATE shall notify LESSEE as soon as practicable.
- (c)** LESSEE shall provide to STATE any and all new keys, codes and/or lock combinations that will be required for access to the Lease Area prior to LESSEE making any changes to the existing security measures. LESSEE shall deliver a copy of any such key, code and/or lock combinations to STATE's Colorado Desert District Superintendent.

SIGNAGE

10. LESSEE shall not affix, display, inscribe, paint or otherwise post any signs, billboards, placards or other displays on the Lease Area without the prior written approval of STATE. Approval shall be granted only when such signs, billboards, placards or other displays are related to the purpose of this Lease and consistent with protecting the visual resources of Anza Borrego State Desert State Park, state park principles, the characteristics of the park, and the general plan of the park unit, or they are required by law to be posted. STATE may consider such factors as, but not limited to, their size, color, and location.

**PROTECTION
OF LEASE
AREA;
RESTRICT-
IONS**

- 11.**
- (a)** LESSEE shall not remove soil from, or dump refuse on, the Lease Area or any portion of the Anza Borrego Desert State Park State Park except with the prior written approval of STATE.
 - (b)** LESSEE shall not commit, suffer to be committed, maintain or permit any waste or nuisance on the Lease Area or other STATE property and shall not use or permit the use of the Lease Area for any illegal purposes or activities.
 - (c)** LESSEE shall maintain the Lease Area, including all improvements, in a weed-free condition and in good repair, and shall operate the Lease Area and the improvements on it in a clean, safe and sanitary condition, free of trash and garbage or obstructions, and in a businesslike, lawful manner.
 - (d)** LESSEE shall at all times exercise due diligence in the protection of the Lease Area and Anza Borrego Desert State Park against damage or destruction by fire or any other causes.
 - (e)** No article or material that is contraband shall be brought onto the Lease Area. Contraband includes, but is not limited to, illegal narcotics, firearms, edged weapons, and explosives.
 - (f)** LESSEE shall maintain the Lease Area, including all improvements, in a weed-free condition and in good repair, and shall operate the Lease Area and the improvements on it in a clean, safe and sanitary condition, free of trash and garbage or obstructions, and in a businesslike, lawful manner.
 - (g)** LESSEE expressly covenants and agrees to repair at LESSEE's own expense any damage done to any water pipe, or pavement on the Lease Area.

(h) LESSEE shall not remove any fixtures, machinery, equipment or other property owned by STATE from the Lease Area without STATE's prior written consent.

(i) Except as otherwise provided herein, LESSEE shall refrain from interfering with the public's use and STATE's operation of Anza Borrego Desert State Park and shall comply with all state park regulations.

- MINERAL RIGHTS** 12. LESSEE shall not interfere in any way with the interests of any person or persons who may presently, or in the future, hold oil, gas, or other mineral interests upon or under said Lease Area, nor shall LESSEE in any way interfere with the rights of ingress and egress of said interest holders.
- EASEMENTS** 13. This Lease is subject to all existing easements and rights of way. STATE further reserves the right to grant additional public utility easements as may be necessary and LESSEE hereby consents to the granting of any such easements. The public utility will be required to reimburse LESSEE for any damage or loss suffered by LESSEE as a result of the public utility's construction work within the Lease Area.
- FENCING** 14. STATE does not warrant the existence of fences in and around the Lease Area. Any existing fences, corrals, and cross fences may not be the property of STATE and STATE does not warrant their availability for LESSEE's use. LESSEE may, with prior written approval of STATE, and at LESSEE's sole cost and expense, provide other fencing not inconsistent with STATE's use of adjoining lands. Such other fences installed by LESSEE shall remain the property of LESSEE, shall be maintained by LESSEE at LESSEE's sole cost and expense, and shall be removed by LESSEE, and the land restored to the condition it was in prior to installation of the fence, upon expiration or termination of this Lease; provided, however, with written approval of STATE, such fences may be left in place at the expiration or termination of this Lease and shall thereupon become the property of STATE.
- PERMITS AND APPROVALS** 15. LESSEE shall be responsible for obtaining all of the certificates, permits, licenses, and other approvals that may be required by any third party in connection with LESSEE's use of, or activities in, the Lease Area.
- FEES** 16. LESSEE shall pay STATE an administration/technical review fee to reimburse STATE for STATE's administrative costs related to any action initiated by LESSEE requiring lease administration or technical review by STATE staff or consultants, such as, but not limited to, assignment of this Lease, any amendment of this Lease, review of plans for construction of improvements, and any matters requiring consultation with or approval by the California Department of General Services (DGS). To initiate such services, LESSEE shall submit a written request to STATE. The administration fee shall be charged by STATE based on the anticipated staff time, materials and any other costs. LESSEE shall remit the administration/technical review fee to the STATE prior to the review. At STATE's discretion, fees charged by DGS may be billed directly to LESSEE and paid by LESSEE to DGS.

DEFAULT

17. The occurrence of any of the following shall constitute a material breach and default of this Lease by LESSEE.

- (a) Any failure by LESSEE to pay rent or any other monetary sums required to be paid hereunder when due, where such failure continues for fifteen (15) days after written notice thereof has been given by STATE to LESSEE.
- (b) Failure of LESSEE to occupy and operate the Lease Area for the purposes stated herein for a period of three (3) consecutive months or more where such failure is not cured within thirty (30) days after notice of such abandonment is given by STATE to LESSEE.
- (c) A failure by LESSEE to comply with any other provision, obligation or requirement of this Lease applicable to LESSEE, where such failure continues for thirty (30) days after written notice thereof by STATE to LESSEE; provided, however, that if the nature of such default is such that it cannot be reasonably cured within said thirty (30) day period, LESSEE shall not be deemed to be in default if LESSEE shall within such period commence such cure and thereafter diligently prosecute the same to completion.
- (d) LESSEE becomes insolvent or makes any general assignment or general arrangement for the benefit of creditors; the filing by or against LESSEE of a petition to have LESSEE adjudged bankrupt or of a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against LESSEE the same is dismissed within sixty (60) days); the appointment of a trustee or receiver to take possession of substantially all of LESSEE's assets, where possession is not restored to LESSEE within forty-five (45) days; or the attachment, execution or other judicial seizure of substantially all of LESSEE's assets, where such seizure is not discharged within thirty (30) days.

REMEDIES

18. **STATE's Remedies**

- (a) In the event of any material default or breach by LESSEE, STATE may at any time thereafter, without limiting STATE in the exercise of any right of remedy at law or in equity which STATE may have by reason of such default or breach:
- i. Maintain this Lease in full force and effect and recover the rent and other monetary charges as they become due, without terminating LESSEE's right to possession, irrespective of whether LESSEE shall have abandoned the Lease Area. STATE has the

remedy described in California Civil Code Section 1951.4 (STATE may continue the lease in effect after LESSEE's breach and abandonment and recover rent as it becomes due, if LESSEE has the right to sublet or assign, subject only to reasonable limitations). In the event STATE elects not to terminate the Lease, STATE shall have the right to attempt to re-let the Lease Area at such rent and upon such conditions and for such a term, and to do all acts necessary to maintain or preserve the Lease Area as STATE deems reasonable and necessary without being deemed to have elected to terminate the Lease, including removal of all persons and property from the Lease Area; such property may be removed and stored in a public warehouse or elsewhere at the cost of and for the account of LESSEE. In the event any such re-letting occurs, this Lease shall terminate automatically upon the new LESSEE taking possession of the Lease Area. Notwithstanding that STATE fails to elect to terminate the Lease initially under this sub-section, STATE at any time during the term of this Lease may elect to terminate this Lease by virtue of such previous default of LESSEE.

ii. Terminate LESSEE's right to possession by any lawful means, in which case this Lease shall immediately terminate and LESSEE shall immediately surrender possession of the Lease Area to STATE. In such event, STATE shall be entitled to recover from LESSEE all damages incurred by STATE by reason of LESSEE's default including, but not limited to, the following:

(A) The amount of the rent LESSEE would have paid for the balance of the term had the Lease not been terminated, plus interest accrued up to the time of the award, minus any rental amount paid to STATE from re-letting the Lease Area to another lessee during the balance of the term; and

(B) Any amount necessary to compensate STATE for all the detriment proximately caused by LESSEE's failure to perform its obligations under this Lease or which in the ordinary course of events would be likely to result therefrom; and

(C) At STATE's election, such other amounts in addition to or in lieu of the foregoing as may be permitted by applicable state law.

(b) Upon any re-entry to Lease Area, STATE shall have the right to make any reasonable repairs, alterations or modifications to the Lease Area which STATE in its sole discretion deems reasonable and necessary.

(c) In the event STATE terminates this Lease pursuant to this Section, STATE shall not be required to pay LESSEE any sum or sums whatsoever.

- INTEREST DUE** 19. STATE may charge interest on any amount due to STATE but not paid when due, at a rate equal to the annual maximum rate allowable by law from the due date.
- ASSIGNMENT, SUBLETTING** 20. LESSEE shall not transfer or assign this Lease, and shall not sublet, license, permit or suffer any use by third parties of the Lease Area or any part thereof, or lease space in any building or structure constructed on the Lease Area, or provide communications or other equipment for the use of others, without first obtaining the prior written consent of STATE, which shall not be unreasonably withheld. "Assign" shall include any transfer of any interest in the Lease by LESSEE or any partner, principal, or controlling stockholder of LESSEE, as the case may be, to any other person, corporation, partnership or other entity.
- RIGHTS RESERVED BY STATE** 21. (a) STATE reserves the right to use the Lease Area, including, but not limited to, the right to construct, place, maintain, use, operate, repair, replace, alter and move pipelines, conduits, culverts, ducts, fences, poles, electrical energy, power and communication lines, roads, bridges, subways, sidewalks, and the continuous right of ingress to and egress from any portion or portions of said real property; provided, however, such use shall be done in a manner that does not unreasonably interfere with the exercise of the rights granted to LESSEE.
- (b) Any grant to LESSEE herein is subject to all valid and existing contracts, leases, licenses, easements, encumbrances and claims of title which may affect said Lease Area.
- (c) Right to Reclaim: State reserves the right to reclaim and reoccupy the Lease Area when necessitated due to National or State Emergency. State will not be responsible for any adverse effects, losses, damages or liability suffered by LESSEE as a result of STATE's reclaiming and re-occupying the Lease Area in such circumstances.
- FIRE AND CASUALTY** 22. STATE shall not be responsible for insuring improvements which are owned, constructed or installed by LESSEE under the provisions of this Lease against fire or casualty, and LESSEE shall make no claim of any nature against STATE by reason of any damage to the business or property, including personal property and equipment, of LESSEE in the event of damage or destruction by fire or other cause.
- HAZARDOUS MATERIALS** 23. (a) LESSEE shall not keep, store, possess, sell, purchase, generate, release, transport or dispose of any merchandise or materials that are in any way explosive or hazardous; provided, however, LESSEE may use or keep on the Lease Area such materials, supplies, equipment and machinery as are necessary and customary in the implementation of the purposes for which this Lease is executed, and for proper maintenance and protection of the Lease Area. Gasoline, oils and other materials considered under law or otherwise to be hazardous shall be stored, handled and dispensed in compliance with all applicable laws.

(b) LESSEE shall be solely responsible for obtaining all applicable authorizations necessary to enjoy this Lease and shall comply with all applicable laws, including, but not limited to, all local, state and federal environmental laws, and all laws and government orders applicable to the use, storage, possession, sale, purchase, generation, release, transportation and disposal of any hazardous substance, as that term is defined in such applicable law. The release of non-pesticide petrochemicals on the Lease Area or state park lands is prohibited. All refueling operations shall have a spill plan signed by a registered engineer and shall use a liner in the secondary container design. LESSEE shall immediately notify State in writing in the event of any spill or other incident involving hazardous substance contamination or a violation of law, and shall undertake the appropriate remedial actions.

(c) In the event STATE, its officers, employees, and/or agents should incur any loss, damages, claims, demands, liability, fines, penalties, costs, or expenses, including attorney's fees and costs, as a result of the LESSEE's illegal or alleged illegal use, storage, release, generation, sale, purchase, possession, transportation, or disposal of any hazardous substance, including any petroleum derivative, the LESSEE shall indemnify, defend, save and hold harmless the STATE, its officers, employees and/or agents against such loss, damages, claims, demands, liability, fines, penalties, costs and expenses.

(d) Where the LESSEE is found to be in breach of this Section due to the issuance of a government order directing the LESSEE to cease and desist any action, or to take any action, in connection with a hazardous substance, or to remediate a contaminated condition caused by the LESSEE, its agent, contractor, or any other person acting on behalf of LESSEE or under LESSEE's authority or direction, LESSEE shall be responsible for all costs and expenses of complying with such order, including any and all expenses imposed on or incurred by STATE in connection with or in response to such government order.

**PEST
CONTROL**

- 24.** All pest control activities, chemical or non-chemical, shall be approved by the STATE in writing prior to any such action being performed by the LESSEE, its employees, agents, or contractors. The LESSEE, or a licensed pest control contractor acting on behalf of the LESSEE, shall submit a pest control recommendation on a form approved by the STATE to the STATE's (Insert district name) District Superintendent for approval. The STATE shall approve or deny the request within fourteen (14) days (this can be modified if needed). LESSEE, or the pest control contractor acting on behalf of the LESSEE, shall submit a report of completed work for each pest management action to the District Superintendent no later than seven (7) days after performance of the work. LESSEE and all of LESSEE's employees, agents, and contractors shall take all actions necessary to prevent the inadvertent transport of pest species into or out of the Lease Area or the surrounding areas.

LESSEE shall have a written training program for LESSEE's employees who handle pesticides. This program shall comply with California Code of Regulations Title 3, Section 6724. LESSEE and/or any pest control contractor hired by the LESSEE shall comply with all applicable laws and regulations.

CONDITION OF LEASE AREA **25.** **(a)** LESSEE is aware of the current condition of the Lease Area and accepts the Lease Area in its "as is" condition, with all faults and defects, known or unknown, if any. LESSEE has inspected the Lease Area and by use of the Lease Area accepts and acknowledges the Lease Area as being in good order, condition and repair.

(b) STATE shall not be obligated to make any repairs or improvements on the Lease Area. LESSEE shall keep the Lease Area in good order and safe condition at its own expense.

VACATING THE LEASE AREA **26.** LESSEE shall, upon expiration or termination of this Lease, peaceably leave, surrender, and yield up to STATE the Lease Area and shall restore the Lease Area as provided in Section 6 of this Lease.

RECOVERY OF LEGAL FEES **27.** If action is brought by STATE for the recovery of any rent due under the provisions hereof or for any breach hereof, or to restrain the breach of any agreement contained herein, or for the recovery of possession of said Lease Area, or to protect any rights given to STATE against LESSEE, and if STATE will prevail in such action, the LESSEE shall pay to STATE such amount in attorney's fees in said action as the court shall determine to be reasonable, which shall be fixed by the court as part of the costs of said action.

TAXES AND ASSESS-ENTS **28.** LESSEE agrees to pay all lawful taxes, or charges that at any time may be levied upon its interest in this Lease or the Lease Area. LESSEE understands that this Lease may create a possessory interest subject to property taxation and LESSEE may be subject to the payment of taxes levied on such interest. STATE may require LESSEE to reimburse STATE for any assessment or portion of an assessment levied on the STATE property that benefits the Lease Area, and LESSEE shall pay such reimbursement within thirty (30) days of receiving an invoice from STATE.

NON-DISCRIMINATION **29.** **(a)** In the performance of this Lease, the LESSEE shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability (including HIV and AIDS), mental disability, medical condition, age (over 40), marital status, sex, sexual orientation, or use of family care leave. LESSEE shall ensure that the evaluation and treatment of its employees and applicants for employment are free from such discrimination and harassment.

(b) Such prohibition shall apply to, but not be limited to, actions related to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

(c) LESSEE shall comply with the provisions of the Fair Employment and Housing Act (including Government Code Section 12990) and the applicable regulations promulgated to implement such law. The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Lease by reference and made a part thereof as if set forth in full. LESSEE shall give written notice of its obligations under this Clause to any labor organizations with which LESSEE has a collective bargaining or other agreement. LESSEE shall include the non-discrimination and compliance provisions of this clause in all contracts or subcontracts to perform work under this Lease.

(d) Remedies for violations:

(1) STATE may determine a violation of the Fair Employment Practices provision to have occurred upon the receipt of a final judgment having that effect from a court in an action to which LESSEE was a party, or upon receipt of a written notice from the Fair Employment Practices Commission that it has investigated and determined that the LESSEE has violated the Fair Employment Practices Act and has issued an order pursuant to the appropriate provisions of the Government Code.

(2) STATE shall have the right to terminate this Lease, and any loss or damage sustained by STATE by reason of the termination shall be borne and paid for by the LESSEE.

INSURANCE

30. LESSEE shall provide to STATE a certificate of insurance with STATE Lease Number 940-2022-052 indicated on the face of said certificate, issued to STATE with evidence of insurance as follows:

COMMERCIAL GENERAL LIABILITY

LESSEE shall maintain general liability with limits of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate for bodily injury and property damage liability. The policy shall include coverage for liabilities arising out of the Lease Area, operations, independent contractors, products, completed operations, personal & advertising injury, and liability assumed under an insured contract. This insurance shall apply separately to each insured against whom claim is made or suit is brought subject to LESSEE's limit of liability.

The policy must include the State of California, Department of Parks and Recreation, their

officers, employees and agents as additional insureds, at no cost to STATE, with respect to activities performed under the Lease. The additional insured endorsement must be provided with the certificate of insurance.

AUTOMOBILE LIABILITY

LESSEE shall maintain motor vehicle liability with limits of not less than \$1,000,000 per accident for bodily injury and property damage. The policy must include the State of California, Department of Parks and Recreation, their officers, employees and agents as additional insured, at no cost to STATE, with respect to liability arising out of all vehicles owned, hired and non-owned. The additional insured endorsement must be provided with the certificate of insurance.

WORKERS' COMPENSATION

LESSEE shall maintain statutory workers' compensation and employer's liability coverage for all its employees who will be engaged in the performance of the Lease, including special coverage extensions where applicable. Employer's liability limits of \$1,000,000 shall be required, and the policy shall include a waiver of subrogation in favor of the State of California. The waiver of subrogation endorsement must be provided with the certificate of insurance.

GENERAL REQUIREMENTS

LESSEE shall ensure that the following general requirements are met:

- (a)** Insurance Companies must be with an AM Best rating of A- VII or higher.
- (b)** LESSEE shall provide STATE with certificates of insurance for all insurance policies and a copy of all endorsements. Any required endorsement must be physically attached to all requested certificates of insurance and not substituted by referring to such coverage on the certificate of insurance. This endorsement shall be supplied in a form acceptable to the California Department of General Services Office of Risk and Insurance Management.
- (c)** Coverage shall be in force at all times for the complete term of this Lease and any option period or holdover. If an insurance policy expires during the term of the Lease, an option period or a holdover, a new certificate showing evidence of coverage, plus copies of any required endorsements, must be received by the STATE at least ten (10) days prior to the expiration date of the expiring policy. This new insurance must still meet the terms of

this Lease.

(d) Lessee shall notify the State within five (5) days of Lessee’s receipt of any notice of cancellation or non-renewal of any insurance required by this Lease. Evidence of replacement insurance must show no interruption of the required insurance coverage.

(e) LESSEE is responsible for any deductible or self-insured retention contained within the insurance program.

(f) Notwithstanding any other provision of this Lease, in the event LESSEE fails to keep in effect at all times the specified insurance coverage required herein, the STATE may, in addition to any other remedies it may have, immediately terminate this Lease upon the occurrence of such event.

(g) Any insurance required to be carried shall be primary, and not excess, to any other insurance carried by the STATE.

(h) If LESSEE is self-insured in whole or in part as to any of the above-described types and levels of insurance coverage, LESSEE shall provide STATE with written acknowledgment of this fact at the time of the execution of this Lease. The STATE may require financial information to justify LESSEE’s self-insured status. If, at any time after the execution of this Lease, LESSEE abandons its self-insured status, LESSEE shall immediately notify STATE of this fact and shall comply with all of the terms and conditions of this Section pertaining to required policies of insurance.

It is agreed that STATE shall not be liable for the payment of any premiums or other charges or assessments on the required insurance coverage.

**HOLD
HARMLESS
INDEMNIFI-
CATION**

31. LESSEE waives all claims and demands against STATE, its officers, agents, and/or employees for any and all loss, injury, death or damage caused by, arising out of, or in any way connected with this Lease, the Lease Area or any access route to the Lease Area, LESSEE’s use of the Lease Area or any access route, or LESSEE’s implementation or exercise of the rights granted by this Lease, even if STATE is negligent. LESSEE shall protect, save, hold harmless, indemnify, and defend STATE, its officers, agents, and/or employees, from and against any and all loss, damage, claims, demands, liability, costs, recoveries, settlements, penalties, fines and expenses, including, without limitation, all legal fees, attorney fees, accounting fees, expert witness fees, consultant fees, interest and expenses related to the response to, settlement, and/or defense of any claims, legal actions, or liability, which may

be suffered or incurred by STATE, its officers, agents and/or employees, caused by, arising out of, or in any way connected with this Lease, the Lease Area or any access route to the Lease Area, LESSEE's use of the Lease Area or any access route, LESSEE's implementation or exercise of the rights hereby granted, LESSEE's violation of any Environmental Law, as defined in Section 18(g) below, and/or LESSEE's violation of any other law, except those arising out of the sole active negligence or willful misconduct of STATE. Further, LESSEE shall cause such indemnification and waiver of claims in favor of the State to be inserted in each contract LESSEE executes in connection with LESSEE's exercise of the rights granted herein. The waiver and obligations contained in this Section shall survive termination of this Lease.

- LOSSES** **32.** STATE shall not be responsible for losses or damage to personal property, equipment or materials of LESSEE from any causes whatsoever.
- DEBT
LIABILITY
DISCLAIMER** **33.** STATE, including but not limited to, the STATE's General Fund or any special self-insurance programs, is not liable for any debts, liabilities, settlements, liens, contract obligations or any other obligations of the LESSEE or its heirs, successors or assigns. The STATE and its agencies, departments and divisions shall not be liable for, and shall be held harmless by LESSEE for, any claims or damages associated with any contract, tort, act or omission, error in judgment, act of negligence, intentional tort, or mistakes by the LESSEE, its employees, agents, servants, invitees, guests or anyone acting in concert with or on behalf of the LESSEE. The STATE shall have no obligation to defend or undertake the defense on behalf of the LESSEE or its heirs, successors or assigns.
- WAIVER OF
RELOCATION
PAYMENTS
AND CLAIMS** **34.** **(a)** In the event that STATE terminates this Lease pursuant to its terms, LESSEE acknowledges and agrees that LESSEE shall have no claim against the STATE for Relocation Payments, Relocation Advisory Assistance, or costs pursuant to the Government Code sections 7260 et seq., or any regulations implementing or interpreting such sections and hereby expressly waives any right to make such claims. LESSEE further agrees that it has no claim in either law or equity against the STATE for damages or other relief should the Lease be terminated, and LESSEE waives any such claims it may have.
- (b)** In the event LESSEE subleases the Lease Area under the terms of this Lease, LESSEE shall incorporate this waiver of relocation payments or assistance into the sublease. Failure to do so may obligate LESSEE for damages and costs resulting from claims for relocation payments by the sublessee.
- SMOKING
RESTRIC-
TIONS** **35.** Smoking shall not be allowed inside any building, or within 20 feet of any entrance or operable window of any building, or as may be prohibited by any applicable law.
- RECORDING** **36.** LESSEE shall not record this Lease or a short form memorandum thereof or any other document memorializing or noticing the Lease. Any such recordation will, at the option of STATE, constitute a non-curable default by LESSEE hereunder.

- AUTHORITY TO CONTRACT** 37. **(a)** Each individual executing this Lease on behalf of LESSEE shall provide evidence, acceptable to STATE, showing that he/she is duly authorized to execute and deliver this Lease on behalf of said LESSEE and shall, when applicable, provide a certified copy of a duly adopted resolution of the Board of Directors or other governing body of LESSEE authorizing or ratifying the execution of this Lease in accordance with its terms.
- (b)** If LESSEE is a public, private or non-profit corporation, prior to the execution of this Lease, LESSEE shall provide STATE with a copy of LESSEE's current bylaws and corporate filing status as filed with the California Secretary of State.
- PARTNERSHIP DISCLAIMER** 38. LESSEE its agents and employees shall act in an independent capacity and not as agents or employees of STATE. Nothing herein contained will be construed as constituting the parties herein as partners.
- CEQA** 39. Any physical changes made by LESSEE or its agents to the Lease Area or any existing improvements shall comply with all applicable environmental laws, including the California Environmental Quality Act (CEQA).
- BANKRUPTCY** 40. In no event shall this Lease or the leasehold estate become an asset of LESSEE in bankruptcy, receivership or other judicial proceedings.
- AMENDMENTS AND MODIFICATIONS** 41. No amendment, modification, or supplement to this Lease shall be binding unless it is by written mutual consent of LESSEE and STATE.
- MUTUAL CONSENT** 42. This Lease may be terminated by written mutual consent of the LESSEE and STATE.
- FORCE MAJEURE** 43. If either Party will be delayed or prevented from the performance of any act required hereunder due to causes or an event not reasonably foreseeable, not caused by that Party, and beyond the reasonable control of that Party, and which occur despite all reasonable attempts of that Party to avoid, mitigate or remedy such cause or event, including acts of God such as flood, fire, earthquake, storm or other natural disaster, and civil war, rebellion, insurrection, terrorist activities, governmental restrictions, regulations or controls (except those reasonably foreseeable in connection with the uses contemplated by this Lease), performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay; provided however, that this Section shall not be applied to permit any delay or time extension due to shortage of funds, or excuse any nonpayment or delay in payment of rent, taxes, insurance or any other monetary amount required to be paid by LESSEE under this Lease, except as may be expressly provided in this Lease. The Party delayed in or

prevented from meeting its obligations as provided in this Section shall immediately notify the other Party in writing and take all steps necessary to mitigate the effects of the cause or event preventing performance. If performance is delayed or prevented for a period of thirty (30) days or more, either Party may thereafter terminate this Lease by giving the other Party thirty (30) days written notice.

- WAIVER** **44.** If STATE waives the performance of any term, covenant or condition contained in this Lease, such waiver shall not be deemed to be a waiver of that or any subsequent term, covenant or condition. Failure by STATE to enforce any of the terms, covenants or conditions of this Lease for any length of time shall not be deemed to waive STATE's right to insist thereafter upon strict performance by LESSEE. Waiver by STATE of any term, covenant, or condition contained in this Lease shall only be made by a written document properly signed by an authorized STATE representative.
- ENTIRE AGREEMENT** **45.** This Lease and its exhibits constitute the entire agreement between STATE and LESSEE. No prior, contemporaneous or subsequent oral promises or representations shall be binding. This Lease supersedes and voids any prior license, lease or agreement between STATE and LESSEE with regard to the Lease Area.
- CLAUSE HEADINGS** **46.** All Section headings contained herein are for convenience of reference only and are not intended to define or limit the scope of any provision of this Lease.
- SEVERABILITY** **47.** If any term, covenant, condition, or provision of this Lease or any application thereof is found invalid, void, or unenforceable to any extent by a court of competent jurisdiction, the remainder of this Lease shall not be affected thereby, and shall be valid and enforceable to the fullest extent permitted by law.
- BINDING** **48.** The terms of this Lease and covenants and agreements herein contained shall apply to and shall bind and inure to the benefit of the parties, their heirs, representatives, assigns.
- ESSENCE OF TIME** **49.** Time is of the essence for each and all of the provisions, covenants and conditions of this Lease.
- DAMAGES** **50.** Notwithstanding anything to the contrary in this Lease, STATE shall not be liable to the LESSEE for, and LESSEE hereby waives the right to recover, incidental or consequential damages, (including, but not limited to, lost profits, loss of use or loss of business opportunity), punitive, exemplary and similar damages.
- COUNTER-PARTS** **51.** This Lease may be executed in separate counterparts, each of which when so executed shall be deemed to be an original. Such counterparts shall, together, constitute and be one and the same instrument.

- 52.** It is agreed and understood between the parties that this lease is granted for the time period indicated in the lease, unless a land exchange takes place prior to the term of the lease at which time this lease will become null and void.
- 53.** It is further agreed and understood between the parties that both parties wish to enter into a land exchange where the Water District will receive the leased area in fee from the State and the Water District will deed to the State an exchange property acceptable to the State, within the State Park boundary, and which is equal in value.
- 54.** The Water District will be responsible for all costs incurred for the land exchange including recording, appraisal, surveying and any other costs, as well as any state personnel hours including those incurred by State Park Personnel and by other state agencies outside of the Department of Parks and Recreation.

DRAFT

IN WITNESS WHEREOF, this Lease has been executed by the Parties hereto as of the date of signature of the last Party signing below.

STATE OF CALIFORNIA

LESSEE

DIRECTOR OF DEPARTMENT OF
PARKS AND RECREATION

BORREGO WATER DISTRICT
A California Water District

By: _____

By: _____

BRIAN DEWEY, Assistant Deputy Director
Facilities and Development

Kathy Dice
President

Date Executed

Date Signed

APPROVAL RECOMMENDED:

By: _____

Sandy Triphan
Senior Land Agent

I hereby certify that all conditions for exemption have been complied with and this document is exempt from the Department of General Services approval.

By: _____

BRIAN DEWEY, Assistant Deputy Director
Facilities and Development

BORREGO WATER DISTRICT
BOARD OF DIRECTORS MEETING
APRIL 12, 2022
AGENDA ITEM II. B

April 7, 2022

TO: Board of Directors
FROM: Geoffrey Poole, General Manager
SUBJECT: Ocotillo Wells Solar Revenues - G Poole

RECOMMENDED ACTION:
Receive Staff update and take action deemed appropriate

ITEM EXPLANATION:

BWD and the Developers of the Ocotillo Wells Solar Project entered into an Agreement to provide construction water. An estimated 40-acre feet will be sold at a total cost of approximately \$200,000 due to high commodity rates and one-time payments. The overdrafted status of our Basin has prompted the public to question this Agreement, and staff feels its important to take action and formally commit on how the money will be spent. Staff feels dedicating the revenue to future water right purchase is most appropriate in this case. The logic is this one-time sale of a relatively small amount of water will technically increases the overdraft. However, if that money were to be put to use by acquiring water rights in the future, the benefits would be permanent. BWDs new Tier 3 water rate was also created for this purpose (est \$300 k/yr) so technically the OW Solar revenues would be added to that internal fund.

FISCAL IMPACT:
\$200,000

NEXT STEPS:
Add OW revenue to Tier 3/BPA acquisition fund

ATTACHMENTS
1. None

BORREGO WATER DISTRICT
BOARD OF DIRECTORS MEETING
APRIL 12, 2022
AGENDA ITEM II. C

April 7, 2022

TO: Board of Directors

FROM: Geoffrey Poole, General Manager

SUBJECT: Town Hall Date and Format – G Poole

RECOMMENDED ACTION:

Receive recommendation and direct staff as deemed appropriate

ITEM EXPLANATION:

Staff is recommending scheduling the Town Hall 2022 after the summer season with an unofficial goal to have a face to face (and online) meeting. The goal would be to include the Watermaster Board and Staff on the Agenda. Specific issues TBD. Staff would like to discuss this idea and options at the Meeting.

FISCAL IMPACT:

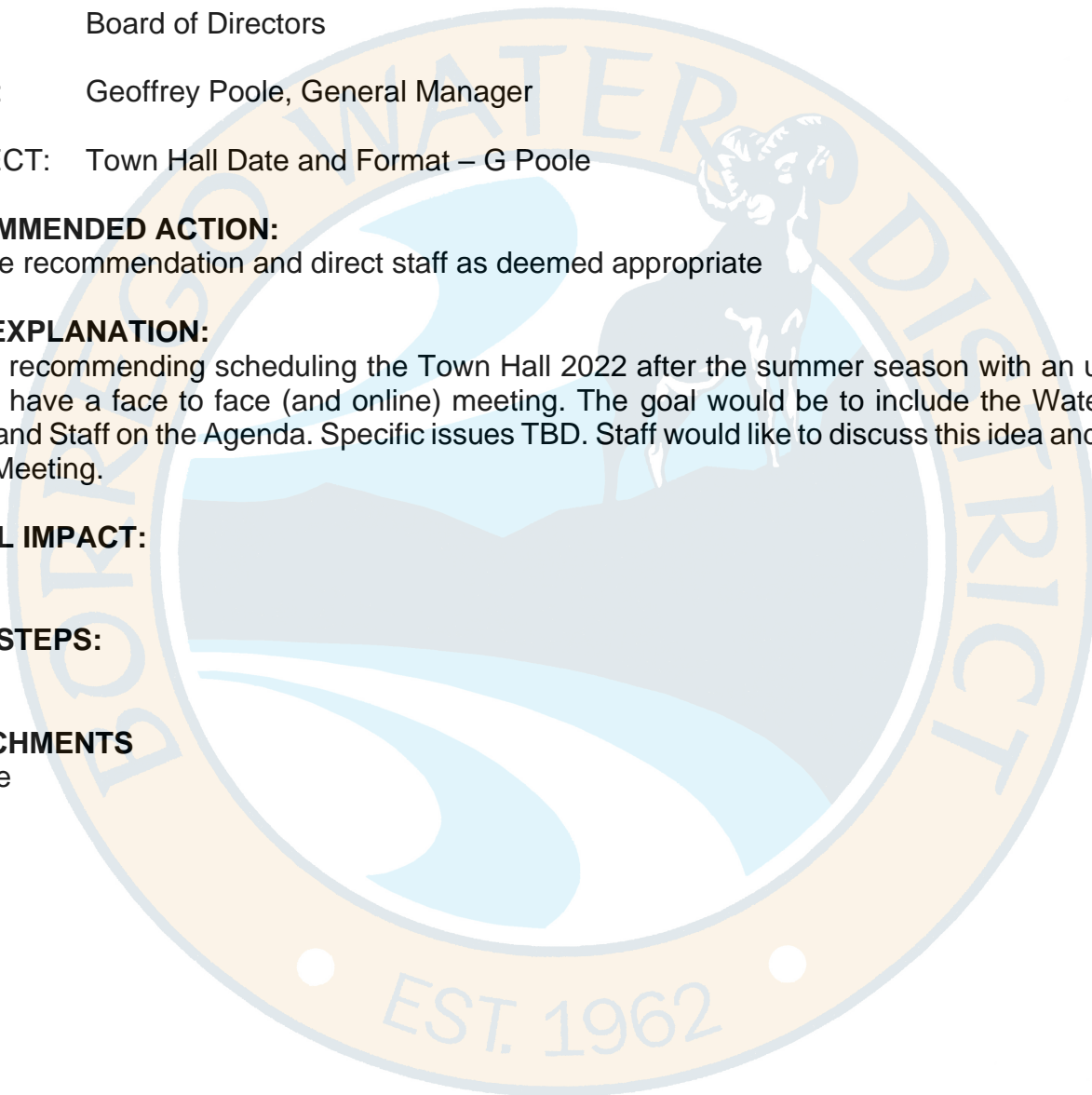
N/A

NEXT STEPS:

TBD

ATTACHMENTS

1. None



BORREGO WATER DISTRICT
BOARD OF DIRECTORS MEETING
APRIL 12, 2022
AGENDA ITEM II. D. 1 & 2

March 16, 2022

TO: Board of Directors

FROM: Geoffrey Poole, General Manager

SUBJECT: Borrego Springs Subbasin Watermaster Board – VERBAL D Duncan/K Dice
i. AAWARE Comments to Annual Report – D Johnson/T Driscoll
ii. Update on Board Activities
iii. Update on Technical Advisory Committee Activities - T Driscoll

RECOMMENDED ACTION:

Receive Verbal Report from Representatives

ITEM EXPLANATION:

VERBAL REPORT

FISCAL IMPACT:

TBD

NEXT STEPS:

TBD

ATTACHMENTS:

1. None

