

# **BORREGO WATER DISTRICT**

## **DEMAND OFFSET MITIGATION WATER CREDITS POLICY**

*(revised –January 30, March 25, 2013, June 26, 2013, 1.22.14, 6.25.14, 5.19.15)*

### **1. PURPOSE**

Groundwater basin studies by the United States Geological Survey (USGS) demonstrate the need for improved management of the Borrego Valley Groundwater Basin (“BVGB”). The 2013 results of the United States Geological Survey (USGS) BVGB study indicates that the overdraft has continued to grow since the USGS study of the BVGB in 1982 and presently represents a serious economic, social, and environmental threat to the Borrego Valley.

It is the desire of the Borrego Water District (“BWD”, “the District”) to encourage the voluntary immediate cessation and/or reduction of measurable water uses through, but not limited to, a permanent removal of turf and/or a permanent fallowing of Irrigated Agricultural Land (“Water Activity”) as one means to mitigate the current overdraft of the BVGB.

The objectives of this Policy include, but are not limited to, the following: (a) to reduce the demand on the upper groundwater aquifer that underlies the Borrego Valley; (b) to provide a mechanism by which new water demands are mitigated in compliance with the California Environmental Quality Act (“CEQA”); and (c) to create economic incentives for property owners engaged in high water demand activities to cease or reduce their groundwater demands consistent with the objectives of the BWD Groundwater Management Plan (GMP) as adopted by the District in 2001, and as subsequently amended and updated.

New groundwater demands shall conform with the Groundwater Mitigation Ordinance of the San Diego County Department of Planning and Development Services (“the County”) as revised from time to time and the most current Memorandum of Agreement (“MOA”) between BWD and the County Regarding Water Credits dated January 30, 2013.

Finally, this Policy establishes the administrative and technical procedures by which Water Credits are issued by the District, and provides for the ongoing administrative functions for controlling, monitoring and enforcing this Policy. Projects located out of the District boundary or not making application for water service from the District are not subject to this policy.

### **2. DEFINITIONS**

A. AFY: acre-feet of water use per year

B. Applicant: the owner of real property who applies for more than one Water Credit pursuant to this Policy.

- C. Application: the document by which an Applicant applies for more than one Water Credit pursuant to this Policy.
- D. BVGB: Borrego Valley Groundwater Basin
- E. BWD or District: the Borrego Water District.
- F. Certificate Holder: Rightful owner of the BWD issued valid Water Credit.
- G. CEQA: California Environmental Quality Act.
- H. Conditional Water Credit Certificate: a document issued by the BWD identifying the number of Water Credits an Applicant will receive upon compliance with any and all conditions set forth therein and/or in this Policy, which certificate shall remain valid so long as this Policy remains in effect.
- I. Consumptive Use: the amount of water lost from the groundwater resource due to evapotranspiration (plant use).
- J. County: the government of San Diego County.
- K. Desertscape: Landscape requiring no irrigation of any kind after an initial period not to exceed two (2) years of watering to establish any planting(s).
- L. Developers and/or their Successors in Interest: Persons or entities seeking to commence an activity within the boundaries of the BWD that will create new or increased water demand on the BWD system, including, but not limited to, new residential or commercial development and/or expansion of existing uses/developments (“Development”).
- M. PDS: San Diego County Department of Planning and Development Services.
- N. Easement: a legal restriction on the land to be followed that completely eliminates the extraction, use, storage, distribution or diversion of groundwater on the land subject to the easement in perpetuity, unless the project meets the exemptions of section 4A.
- O. EDU or Equivalent Dwelling Unit: As of the adoption of this Policy, one EDU equals 1.0 acre foot per year (AFY) and may be recalculated by the District Manager upon direction of the Board of Directors.
- P. Irrigated Agricultural Land: Land that is currently irrigated for active agricultural use. For purposes of this Policy, “currently irrigated” shall mean irrigated for agricultural use during the preceding twelve (12) month period -immediately preceding the date of the Application.

Q. Mitigation Policy: The BWD policy regarding mitigation of impacts of new developments on the Borrego aquifer adopted June 22, 2005 and thereafter amended and further amended and restated in Section 3 hereof.

R. MOA: Memorandum of Agreement between the Borrego Water District and the County of San Diego Regarding Water Credits dated January 30, 2013, as amended.

S. Property: the real property owned by the Applicant and to be restricted pursuant to this Policy.

T. Water Activity: one or more measurable water uses, including, but not limited to, irrigated turf and irrigated farmland.

U. Water Credit: the term “water credit” means an entitlement created under the Water Credit and Mitigation Policy of BWD as published on BWD’s website. The purpose of issuing a water credit is to recognize the fallowing of actively irrigated land located in the Borrego Valley Groundwater Basin (BVGB). A water credit may be used in the future to offset the groundwater use of a proposed development. A water credit does not convey, and shall not be construed to convey, water rights, nor is it a guarantee by BWD of the future availability of water from the BVGB. It should be noted that a water credit is not a guarantee that a proposed development, for which a water credit will be used as an offset, can or will be approved by the County. Each water credit shall be equal to one-acre foot of water per year. Water credit calculations that end with .50 to .99 acre-feet shall be rounded up to the next acre-foot, and calculations that end with .01 to .49 acre-feet shall be rounded down to the previous full acre-foot. As further defined in Section 4B & C below, several classes of credits shall be available pursuant to this Policy.

V. Water Credit Certificate: a document issued by the BWD certifying the issuance to an Applicant of one or more Water Credits in conformance with this Policy.

### **3. MITIGATION POLICY**

Persons or entities seeking to commence an activity within the District that will create a new or increased water demand on the BWD system (“Developers”) must provide one (1) Water Credit for every one (1) EDU demand of the proposed use as calculated by the District’s General Manager, consistent with the provisions hereof. Conformance with the District’s Mitigation Policy must be demonstrated prior to the District providing water service and/or a water meter to the Development proposed by the Developer, or its successor in interest.

### **4. WATER CREDITS**

Upon compliance with the procedural requirements set forth in Section 5. hereof, the District will issue Water Credits to an Applicant in accordance with the following:

A. Easement. The water credits shall be issued in exchange for an easement granted to BWD. The easement shall include the following provisions:

1.. The easement shall permanently and completely eliminate the extraction, use, storage, distribution or diversion of groundwater on the land subject to the easement, except for the following uses:

a.. One-acre foot of groundwater per year to serve a single-family dwelling; or

b. A project that would require discretionary approval by the County if groundwater use reduction measures are implemented that fully offset the amount of groundwater that the project would use. Groundwater use reduction measures that may be used include measures listed in County Code sections 67.720.B.1 and 67.720.B.2 (County Groundwater Ordinance).

2. The easement shall designate the County as a third-party beneficiary with the right, but not the obligation to enforce the easement. The easement shall give the County the same right of access for purposes of monitoring compliance with the easement and the same options for enforcing the easement as the easement gives to BWD. A copy of the draft easement shall be submitted to the Director of Planning and Development for review and approval.

3. Water Credits AG-2 and AG-1 submitted for AG-2 purposes, 3 & 4 or T-2 & 3 may be acceptable for District purposes only where County mitigation has already been satisfied. These credits will be issued at the sole discretion of the District and the County does not need to be included as a third-party beneficiary.

B. Eligible Land. Contiguous irrigated land with an associated consumptive water use of ten (10) acre feet per year and meeting the criteria set forth below is eligible to participate in the program established by this Policy. Based upon the type of Water Credit sought (as defined in Section 4.B., below), either (i) all irrigation of the Property shall be eliminated or (ii) the Applicant shall cause permanent, quantifiable and verifiable reductions of water use on the Property as a condition precedent to issuance of Water Credits.

1. Agricultural Land. To be eligible, the Applicant must establish that agricultural land was utilized for legal agricultural operation at the Property prior to April 9, 2003. Property on which agricultural production commenced after April 9, 2003 may be considered eligible if the Applicant establishes that the agricultural use was approved by the DPDS or is otherwise demonstrated to have been legally conducted.

2. Turf. To be eligible, the Applicant must establish that the Property was irrigated with live turf as of January 1, 2008 and as of the date of Application.

3. Tamarisk. To be eligible, the Applicant must establish that tamarisk or other high water use windbreak trees were planted on the Property as of January 1, 2008 and such trees remain alive as of the date of Application.

4. Special. To be eligible, the Applicant must establish that the high water use water activity existed on the Property as of January 1, 2008.

C. Water Credit Types. The following types of Water Credits shall be issued upon compliance with all requirements of this Policy:

1. Agricultural Credits. Four types of Agricultural Credits are available under this Policy upon full compliance with all its requirements. The Applicant shall remove any and all tamarisk trees or other high water use windbreak trees located on Property for which an Applicant seeks Agricultural Credits at the time the agricultural use is followed.

(a) Agricultural-1 (“AG-1 Credits - Standing Crop”) AG-1 Credits will be issued for Irrigated Agricultural Land that currently irrigates a live standing crop, agrees to completely remove the crop pursuant to this Policy and further agrees to place a permanent restriction on all forms of irrigation. AG-1 Credits will be issued at a rate of 1.0 x the applicable number of credits designated in Exhibit B of the County MOA.

(b) Agricultural-2 (“AG-2 Credits - Recent Standing Crop”). AG-2 Credits will be issued for Property that is legally entitled to initiate farming within the constraints of existing permits and policies of the DPDS, and/or other regulatory entities with jurisdiction over agricultural activity on the subject Property, but does not currently irrigate a live standing crop. To qualify for AG-2 Credits, the Applicant must:

(i) Establish that as of July 1, 2008, the Property held all necessary approvals to operate an agricultural operation thereon; AND

(ii) Submit an executed Water Credits Agreement to the District within ninety (90) days following adoption of this Policy; AND

(iii) Execute and record with the County Recorder an Exclusive Groundwater Easement (“Easement”) in favor of the District and further complete all actions required pursuant to the Water Credits Agreement within one hundred eighty (180) days of adoption of this Policy. The Easement shall meet the requirements set forth in the most current MOA between BWD and the County of San Diego, including but not limited to designating the County as a third party beneficiary with the right to enforce the easement

(iv) AG-2 Credits will be issued at a rate of 1.0 x the applicable number of credits designated in Exhibit B of the County MOA. AG-1 Credits may be substituted for AG-2 credits by a ratio of 1.33 AG-1 credits per 1 AG-2 Credit.

(c) Agricultural-3 (“AG-3 Credits - Crop to Desertscape”). AG-3 Credits will be issued for Irrigated Agricultural Land that is permanently restricted to Desertscape as defined herein. AG-3 Credits will be issued at a rate of 1.0 x the applicable number of credits designated in Exhibit B of the County MOA. Eligible projects are required to submit annual water usage reporting, verified with well flow meter records, to the District. Water Credit Certificates for AG-3 Credits will be issued in two phases. A portion of the Water Credit Certificates will issue at the time the Property is converted to Desertscape. The balance of the Water Credit Certificates will issue at the time the Applicant ceases all irrigation on the Property. The District’s General Manager shall determine the apportionment of credits allocated to each such phase.

(d) Agricultural-4 (“AG-4 Credits - Reduced Water Use Crop”). AG-4 Credits will be issued for Irrigated Agricultural Land that is permanently restricted to a lower water use crop type(s). AG-4 Credits will be issued at a rate to be determined by the District’s General Manager based on the Consumptive Use differential between the use existing at the time of the Application and the use to which the Property will be restricted pursuant to this Policy. Eligible properties must provide verified well flow data records for the previous five years and require annual water usage reporting, verified with well flow meter records, submitted to the District.

2. Turf: Three types of Turf credits are available under this Policy upon full compliance with all its terms.

(a) Turf-1 (“T-1 Credits - Turf Removed”). T-1 Credits will be issued for Property that currently irrigates live turf and, pursuant to this Policy, removes all turf and agrees to place a permanent restriction on all forms of irrigation. T-1 Credits will be issued at a rate of 1.0 x the applicable number of credits designated in Exhibit B of the County MOA.

(b) Turf-2 (“T-2 Credits Turf to Desertscape”) T-2 Credits will be issued for Property that is currently irrigated with live turf and, pursuant to this Policy, is permanently restricted to Desertscape as defined herein. Eligible projects are required to submit annual water usage reporting, verified with well flow meter records, to the District. Water Credit Certificates for T-2 Credits will be issued in two phases. A

portion of the Water Credit Certificates will issue at the time the Property is converted to Desertscape. The balance of the Water Credit Certificates will issue at the time the Applicant ceases all irrigation on the Property. The District's General Manager shall determine the apportionment of credits allocated to each such phase.

(c) Turf-3 ("T-3 Credits - Reduced Water Usage Landscape"). T-3 Credits will be issued for Property that is currently irrigated with live turf and, pursuant to this Policy, is permanently restricted to quantifiable and verifiable lower water use landscape than the existing use at the time of the Application for Water Credits. T-3 Credits will be issued at a rate to be determined by the District's General Manager based on the Consumptive Use differential between the use existing at the time of the Application and the use to which the Property will be restricted pursuant to this Policy. Eligible properties must provide verified well flow data records for the previous five years and require annual water usage reporting, verified with well flow meter records, submitted to the District.

3. Tamarisk.

(a) Tamarisk ("TK Credits"). TK Credits will be issued for Property (i) on which live Tamarisk or other high water use windbreaks greater than one (1) foot in diameter are removed and (ii) that is permanently restricted from all forms of irrigation. Tamarisk credits will be addressed on a case-by case basis.

4. Special. Special Credits will be assigned to any quantifiable, verifiable and permanent reduction in water use that is confirmed by historic records and determined by the District's General Manager to meet the standards of this Policy.

D. Number of Credits. The number of water credits issued for all vegetation types shall be based on the water use as determined on the chart attached to the MOA as Exhibit A. The water use shall be calculated based on the vegetation types, vegetation area being actively irrigated and corresponding annual groundwater consumptive use as specified in Exhibit A. The assumptions used to calculate the water offset credits are included in Exhibit B of the MOA.

**PROCEDURE**

E. The Applicant shall make a written application ("Application") to the District's General Manager for issuance of Water Credit Certificates. The Application shall be as set forth in BWD Form 100 and shall be accompanied by:

1. A title report and/or other documentation reasonably acceptable to the BWD evidencing that the Application has been signed by all record owners of the Property, that the water rights in the Property have not been transferred, conveyed or otherwise encumbered and that the condition of title to the Property is not detrimental to

the achievement of the purposes of this Policy. A property survey by a professional land survey may be required at the request of the General Manager.

2. A legal description of the Property in a form reasonably acceptable to the BWD.

3. A Right of Entry Agreement (BWD Form 103) permitting the BWD access to the Property to confirm the ongoing, legal, measurable Water Activity and:

(a) Where any Well(s) serving the Property also serve other property held by the Applicant, which other property the Applicant does not intend to restrict,

(i) Access to any and all Well(s) on the Property and/or serving the Property for monitoring, metering, testing and/or investigating groundwater levels, quality and related matters;

(ii) Access to the Property to confirm the destruction or removal of any crops, turf or other Water Activity on the Property pursuant to this Policy;

(iii) Access to the Property to confirm compliance with the terms and requirements of this Policy; and/or

(iv) Such other provisions as the BWD may reasonably require.

(b) Where the Well(s) serving the Property do not serve any property the Applicant does not intend to restrict,

(i) Access to the Property to install, operate, access and maintain a monitoring well in place of any existing well(s) on the Property;

(ii) Access to the Property to cap, seal or otherwise render inoperable existing well(s) on the Property;

(iii) Access to the Property to confirm the destruction of any crops, turf or other Water Activity on the Property pursuant to this Policy;

(iv) Access to the Property to confirm compliance with the terms and requirements of this Policy; and/or

(v) Such other provisions as the BWD may reasonably require.



4. Submit following plan for vegetation removal. Trees and other vegetation that are available to be replanted must be mulched or removed from Borrego Valley Groundwater basin.

5. A signed Water Credits Agreement. (BWD Form 101).

6. A certification and administration deposit fee of \$1,000 for each Application by the Developer to be used for verifiable expenses.

F. The BWD shall review the Application and confirm the existence of active, ongoing, legal, measurable Water Activity on the Property. Upon such confirmation, the BWD will issue Conditional Water Credit Certificate(s) setting forth the number of Water Credits to which the Applicant will be entitled upon compliance with this Policy as well as any additional conditions or requirements reasonably imposed by the BWD and identified in the Conditional Water Credit Certificate(s).

G. To convert the Conditional Water Credit Certificates to Water Credit Certificates, the Applicant shall:

(i) Sign and submit to the BWD a Grant of Exclusive Groundwater Easement (BWD Form 102), disengage the pump(s) or otherwise render inoperable any and all well(s) located on the Property, if applicable;

(ii) Complete all crop destruction, turf removal or other action to permanently cease and/or reduce the Water Activity on the Property, as applicable, and notify the BWD in writing of the same;

(iii) Provide a certificate by a licensed land surveyor certifying the net acreage under irrigation on the Property (net acreage shall, for Agricultural land, include roads and exclude buildings);

(iv) Submit Form 104 accompanied with, a notarized written request by the Applicant stating the name(s) in which the Water Credit Certificate(s) should be issued and the amounts allocated to each identified person (not to exceed the aggregate total amount awardable pursuant to Exhibit B of the County MOA. hereof for the Property); and

Upon the BWD's verification of the completion of the permanent cessation of the Water Activity and the pump disengagement or otherwise rendering inoperable any and all well(s) located on the Property (where applicable), the BWD shall issue raised-sealed and numbered Water Credit Certificates to the Applicant in amounts pursuant to Exhibit B of the County MOA hereof.

2. Transfer of Certificates. Upon (i) notarized written request by the recipient of Water Credit Certificates previously issued by the BWD ("Certificate Holder"), (ii) submission of the original Water Credit Certificates to the BWD, and (iii) payment of an administrative fee of \$500 per transaction, the BWD will re-issue

Water Credit Certificates to such persons or entities and in such amounts (not to exceed the aggregate total amount of the Water Credit Certificates submitted to the BWD by the Certificate Holder) as may be designated by the Certificate Holder. The request must list the actual sale price of the water credit(s) being transferred.

**5. MISCELLANEOUS**

A. The BWD recognizes all Water Credit types set forth in Section 4.B. and C. in satisfaction of the BWD's Mitigation Policy. The County of San Diego may recognize some or none of the Water Credit types.

B. The BWD may purchase Water Credits for its own account from time to time, as it deems necessary to create a bank of Water Credits for developments that must comply with the provisions of this Policy. The Board of Directors shall set the price of the Water Credits at the time that the Water Credits are sold.

C. The BWD shall be responsible to monitor and enforce this Policy, including, but not limited to, regularly monitoring meters on wells located on Property subject to a Water Credit Agreement, regularly inspecting Property enrolled in the program established by this Policy to ensure compliance with the terms of all requirements to maintain the Water Credits, and providing updates to the County, and/or the District's board as to the status of Water Credits issued to the Developer, as may be required.

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President of the Board of Directors of  
Borrego Water District

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Secretary of the Board of Directors of  
Borrego Water District

## WATER CREDIT TIMELINE

### A. ISSUANCE OF CERTIFICATES

<u>Timeframe</u>	<u>Activity</u>
(1) At Applicant's discretion	Applicant submits Application Package, including: <ul style="list-style-type: none"><li>• Application (BWD Form 100)</li><li>• Water Credits Agreement (BWD Form 101)</li><li>• Right of Entry Agreement (BWD Form 103)</li><li>• Title report</li><li>• Administrative fee</li></ul>
(2) 30 days (or more as needed) after (1)	BWD reviews Application Package and confirms active, legal, ongoing, measurable Water Activity and determines whether/what removal or destruction of Water Activity will be required.
(3) Upon Completion of 2	The BWD shall determine the number and type of water credits available if the property is fallowed or, when applicable, shall submit its findings to San Diego County for a determination as to the number of water credits available under the County/BWD MOA. Once the District and/or County has determined the number and type of water credits available, the BWD will issue a Conditional Water Credit Certificate..
(4) Upon Completion of (3)	BWD, issues Conditional Water Credit Certificates and notifies Applicant of any special requirements reasonably imposed by BWD and to be met prior to issuance of Water Credit Certificates.

	<u>Timeframe</u>	<u>Activity</u>
(5)	At Applicant's discretion	<p>Applicant signs and submits Grant of Exclusive Groundwater Easement (BWD Form 102) to the BWD.</p> <p>Applicant disengages well(s), as applicable.</p> <p>Applicant removes/destroys Water Activity.</p> <p>Applicant complies with other requirements identified by BWD.</p>
(6)		Applicant pays administrator fee.
(7)	Upon confirmation of actions under (4)	BWD issues Water Credit Certificates to Applicant or Applicant's designee identified in a notarized writing ("Certificate Holder"), accompanied by Form 104.

#### B. TRANSFER OF CERTIFICATES

	<u>Timeframe</u>	<u>Activity</u>
(8)	At Certificate Holder's discretion	Certificate Holder submits original Water Credit Certificates along with administrative fee and notarized written request to the BWD to reissue the Water Credit Certificates to such persons and in such amounts (not to exceed the aggregate total amount of the Water Credit Certificates submitted to the BWD by Certificate Holder) as designated by Certificate Holder.
(9)	10 days (or more as needed)	BWD verifies prior issuance of Water Credit Certificates to Certificate Holder, voids the same and prepares new Water Credit Certificates per the Certificate Holder's written request.

### C. REDEMPTION OF CERTIFICATES

	<u>Timeframe</u>	<u>Activity</u>
(10)	At Certificate Holder's discretion and not less than 30 days prior to County issuance of building permits.	Certificate Holder submits original Water Credit Certificates along with written request to the BWD to redeem the Water Credit Certificates as mitigation for the development specified in the Certificate Holder's written request.
(11)	10 days (or more as needed)	BWD verifies prior issuance of Water Credit Certificates to Certificate Holder, marks the Water Credit Certificates "REDEEMED," notes the same on the Water Credit Certificate Log and issues a letter to the County identifying the quantity of acre-feet per year redeemed by the Certificate Holder.

**APPLICATION FOR WATER CREDIT CERTIFICATE**  
(BWD Form 100)

Borrego Water District  
Board of Directors  
PO Box 1870  
Borrego Springs, CA 92004  
ATTENTION: General Manager

Name: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

\_\_\_\_\_

Phone Number: \_\_\_\_\_

Assessor's Parcel Number: \_\_\_\_\_ Acreage: \_\_\_\_\_

Address of Property: \_\_\_\_\_  
(if applicable)

Crop cultivation:

Date Cultivation Commenced (must be prior to 4/9/03)	Water Activity (crop, turf, etc.)	Area	<b>For BWD Use Only</b>  Water Entitlement Quantity

I declare under penalty of perjury under the laws of the State of California that the foregoing statements are true and correct of my own personal knowledge.

\_\_\_\_\_  
Name of Applicant\*/Agent\*

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name of Applicant/Agent\*

\_\_\_\_\_  
Date

\* All legal owners of the property must sign