

Borrego Water District Draft Policy on New Developments

Introduction

The “Borrego Water District Policy on New Development” is a significant step in dealing with our long-standing overdraft. However, there are now three separate policies for mitigating groundwater use from three separate entities. While welcome, they represent an embarrassment of riches given that, to be effective, they must somehow be reconciled and a practical strategy for implementation devised and put in place.

The Policies

The draft “**DPLU¹ Policy Regarding CEQA² Cumulative Impact³ Analysis For Borrego valley Groundwater Use**” reads in pertinent part as follows:

- 1. Applicants for projects using groundwater resources In Borrego Valley are encouraged to include with their projects, offsetting groundwater use reduction measures which will make up for the project’s proposed groundwater use and result in “no net gain” in the overall rate or amount of extraction of groundwater.**

The applicant would have to propose a legally enforceable mechanism for achieving the reduction on the other land. The offsetting groundwater use reduction measures must save an amount of water at least equivalent to the project’s demand amount elsewhere in Borrego Valley such that there is “no net gain” in the overall groundwater extraction in the Valley.

- 2. For projects where offsetting groundwater use reduction measures are not proposed as part of the project, [with some limited exceptions] an Environmental Impact Report (EIR) will generally be required to analyze the significance of cumulative impacts to groundwater resources, to propose mitigation measures, and to consider project alternatives.**

If the impacts to groundwater cannot be mitigated or avoided, the County would be required to deny the project unless the County determines that the economic, legal, social, technological, or other benefits of the proposed project outweigh its unavoidable, environmental impacts.

¹ “DPLU” is the County of San Diego Department of Planning and Land Use

² “CEQA” is the California Environmental Quality Act

³ “Cumulative impact” means the incremental effects of a project when viewed in connection with the effects of past, other current, and probable future projects taking the existing overdraft condition into consideration.

What the DPLU policy describes, simply put, is a straight one to one mitigation ratio such that if a project will require X acre feet of groundwater, then applicant must propose a means to reduce demand on groundwater in the Borrego Valley by at least X acre feet. The policy would apply only to projects that require a discretionary permit from the DPLU. It would not apply to construction on an existing lot or parcel that is consistent with the density assigned to that lot or parcel and where no discretionary permit is required.

The **Borrego Springs Community Sponsor Group Policy on New Projects** in its entirety reads as follows:

“It is the policy of the Borrego Springs Community Sponsor Group (BSCSG) that:

- a. Proposed land developments in the Borrego Valley that are consistent with the density in the adopted general plan will be required to mitigate their water use at a ratio of one to one.
- b. Projects that propose a density greater than allowed by the general plan will have a fee imposed that will permit mitigation at a ratio of three to one for the additional density.”

In the BSCSG policy above, paragraph a. is consistent with the DPLU policy. Paragraph b., however, is more stringent than the DPLU policy for projects that involve an increase in existing density for the property involved. Again, the policy would apply only to projects that require a discretionary permit from the DPLU.

The **Borrego Water District Policy on New Development** reads in pertinent part as follows (paragraph numbers are from the BWD’s draft policy):

- 3) The Borrego Water District will continue to install new services for single family homes on existing lots with connection fees that include the estimated cost of Groundwater Management.
- 5) The Borrego Water District will approve water service to new land developments (lot splits, subdivisions and any other new water use) only if the developer provides an acceptable new water source or arranges for acquisition of agricultural lands, which have been pumping groundwater for five years or more that will be followed.
- 6) All following efforts in order to be acceptable must provide mitigation on a 3 to 1 ratio. The Borrego Water District will not consider any proposed annexation to its service area until it has been assured that the area of the proposed annexation will provide an acceptable new water source or follow the mitigation method described in paragraph 5 above.

The BWD policy is similar to the BSCSG policy. It does not impose a specific mitigation requirement “for single family homes on existing lots,” but does impose “connection fees that include the estimated cost of Groundwater Management.” Depending on the amount of these fees dedicated to groundwater management, that may or may not amount to the same thing. The mitigation requirement, as such, however, would again apply only to projects that require a discretionary permit from the DPLU; i.e. “lot splits, subdivisions and any other new water use.”

Although not identical, these three policies are substantially similar.

Analysis

The DPLU policy is enforceable irrespective of any other policies that may exist at the local level; but it merely provides a baseline. The BSCSG and the BWD can impose more stringent requirements. The BSCSG, which is merely an advisory body to the County Board, cannot enforce its policies; but it can make recommendations to DPLU based on those policies that DPLU is then free to accept or not at its discretion. The BWD, on the other hand, is an autonomous, political entity and can, within reason, both make and enforce policies that may be more, but presumably not less, stringent than DPLU's.

The policies of the BWD and the BSCSG are virtually the same and neither conflicts with DPLU's policy. The only material difference may be in the details of the way in which they would treat projects that do not involve change in the underlying density of the parcel in question; i.e., the project site.

Inasmuch as there is a significant advantage to be gained by both the BWD and the BSCSG, not to mention the general public, in having a common policy for the District and the Desert Sub-Region of the county, I urge you to press ahead with deliberate speed in completing and adopting your draft policy.

Implementation Strategy

There is, however, one glaring omission from all three of the policies referenced above. There is no specific language in any of them describing a practical mechanism for actually implementing the mitigation requirements they lay down.

The DPLU policy simply encourages applicants “to include with their projects, offsetting groundwater use reduction measures which will result in ‘no net gain’ in the overall rate or amount of extraction of groundwater.” In addition, it requires that applicant “propose a legally enforceable

mechanism for achieving the reduction.” The only guidance it provides for accomplishing this, however, is by way of example and is vague, non-specific and impractical.

The BSCSG policy is intentionally silent with respect to implementation because the BSCSG does not have the power to implement or enforce it. The policy merely requires applicants “to mitigate their water use at a ratio of one to one” if no change in the underlying density is involved, or “have a fee imposed that will permit mitigation at a ratio of three to one for the additional density” in order to receive a positive recommendation from the BSCSG. The BSCSG policy provides no guidance whatsoever as to how this can or will be achieved and suggests no mechanisms for accomplishing it.

Finally, the BWD policy requires that “the developer provides an acceptable new water source or arranges for acquisition of agricultural lands, which have been pumping groundwater for five years or more that will be fallowed.” Again, no specifics with respect to implementation mechanisms are provided.

It seems intuitively clear that expecting applicants to purchase and fallow small parcels of agricultural land in the Valley directly is highly impractical and will simply not work. Acquiring a parcel of irrigated land from a golf course and repair or upgrade irrigation systems to off set project water use is even less likely to be successful.

In the first instance, agricultural land is rarely, if ever, available in parcels of less than forty acres. Even that amount of agricultural land would provide an offset far larger than the most ambitious project imaginable in Borrego. If smaller parcels should occasionally come available, there is still the issue of timing; i.e. there would likely not be a willing seller at the time a project might need to purchase it. Because of these and other difficulties of implementation, the policy itself would likely be attacked and resisted much more vigorously than if some relatively easy and straightforward means of meeting the mitigation requirements were provided along with the policy; i.e. an implementation mechanism.

The best, easiest, and probably only way of implementing the policy would be for one of the three agencies involved to collect the requisite fees from applicants and apply these to mitigation of new water uses. This could be accomplished in one of at least three ways:

1. an agency might front the money to purchase parcels of land when they are on offer and then recoup the purchase price and appropriate interest from fees paid to the agency by applicants over time;

2. the reverse of this; i.e. an agency might collect mitigation fees based on the prevailing market price of agricultural land in the Valley and place it in a dedicated account at interest until sufficient funds accumulated to buy land suitable for mitigation;
3. some combination of the foregoing whereby an agency would begin collecting mitigation fees as described in the paragraph above, but would begin purchasing land suitable for mitigation as soon as the opportunity to do so at favorable terms presented itself. This would necessitate advancing the funds necessary and then recouping the purchase price and appropriate interest from fees paid by applicants over time.

The BSCSG has no mandate to act as a collection agent for mitigation fees and no infrastructure to support such an effort in any case. The DPLU would face significant bureaucratic obstacles and lengthy delays in doing so if it is even within their purview. The BWD, therefore, is the default agency to implement such a mechanism in a timely manner and must therefore, include implementing language with the Borrego Water District Policy on New Development that specifies a simple, specific, straightforward, and structured mechanism for satisfying the mitigation requirements of your otherwise good policy.

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