

Borrego Water District
MINUTES
Meeting of the Board of Directors
Wednesday, March 12, 2008
9:00 AM
806 Palm Canyon Drive
Borrego Springs, CA 92004

I. OPENING PROCEDURES

- A.** Call to Order: President Mendenhall called the meeting to order at 9:00 a.m.
- B.** Pledge of Allegiance: Those present stood for the Pledge of Allegiance.
- C.** Roll Call: Directors: Present: President Mendenhall, Vice-President King, Secretary/Treasurer Andersen, Shimeall, Smiley
Staff: Richard Williamson, General Manager
Allison Burns, Stradling, Yocca, Carlson & Rauth
Jerry Rolwing, Operations Manager
Kim Pitman, HR/Finance Specialist
Wendy Quinn, Recording Secretary
Public: Jim Engelke, Lundberg Ronald Del Guercio
Judy Meier, *Borrego Sun* Mary Mitts
Rudy Monica Bob McKee
Betty McKee Beth Hart
Bill Garmon Ken Hallard
Don Pachuta Barry Ashworth
Betty Strandberg Meredith Ashworth
Ann Rasmussen Maggie Schneider
Richard Russell Becky Sanders
Greg Stumpf Willie Sanders
Lane Sharman, BWX Dennis Dickinson
Randi Sharman, BWX Rebecca Falk

D. Approval of Agenda: *MSC: King/Andersen approving the Agenda as written.*

E. Comments from the Public and Requests for Future Agenda Items: Jim Braden spoke in favor of giving to the community rather than taking away, citing his work with the Wolcott Committee, Rotary, Boys and Girls Club and Kiwanis and the money raised for the Health Foundation, assisted living facility and pharmacy. He felt the money which would be paid for tiered rates might otherwise go to these causes.

Bill Garmon, a resident and retailer, read a letter he had previously submitted to the District opining that the tiered rates would be harmful and would turn Borrego Springs into a ghost town. He suggested tiered rate decreases for those who conserve water. Mr. Garmon believed the proposed rates would hurt everyone, particularly those who stay in the summer, and would discourage people from moving here.

Ron DelGuercio felt the tiered rates were draconian, and noted that most water is used by agriculture, golf courses and commercial landscaping. Comparatively, tiered residential rates would save only a small amount of water and do not consider varying lot sizes and family sizes. Mr. DelGuercio took issue with the idea that tiered rates were necessary for the District to qualify for grants. He submitted a written report and requested it be included in the Minutes. It is attached and

incorporated by this reference.

Bob McKee summarized a written financial breakdown indicating a total of \$121,000 divided by 1,880 meters for an annual cost of \$64.36 per ratepayer. He cited projected savings of 6.8 acre feet, or enough for 6.8 new homes at a water cost of \$17,794.11. He also presented statistics regarding the potential sewer system expansion at a cost of \$7,410,000 or \$3,941.48 per ratepayer, plus annual operating costs of \$1,090,000 or \$579.78 per year per ratepayer, most of whom do not use the sewer system.

Richard Russell distributed copies of a written report and expressed the opinion that tiered rates would not save water. He blamed citrus farming for the decline in the aquifer.

Rich Williamson announced the town hall meeting scheduled for March 19 at 4:00 p.m. at the Performing Arts Center, which will include a public hearing on tiered rates and a status report on the Groundwater Management Plan.

Will Sanders inquired about the format of the town hall meeting. Mr. Williamson replied that it would be taped, and Minutes would be taken. The meeting will be conducted in accordance with applicable California Code sections and District policy. Speakers will be limited to three minutes, and written comments will be included in the Minutes.

Beth Hart asked how staff arrived at the estimates of water savings for the various conservation investment subsidies. Jerry Rolwing explained that turf removal was based on the use of four acre feet per acre per year, and the low flow toilets and washers came from information on the Internet. Mr. Rolwing agreed to provide Ms. Hart with the website he used.

Greg Stumpf asked when the sewer would be expanded. Mr. Williamson replied that the District is presently in compliance with State requirements, so there are no immediate plans to expand or upgrade the sewer. In the future, depending on growth, plans will begin. Mr. Stumpf inquired about use of reclaimed water, and Mr. Williamson explained that the flows were insufficient for reuse. Mr. Stumpf asked why sewer expansion was part of the tiered rate plan. Director Smiley replied that it is an element of the Groundwater Management Plan, and Director Shimeall added that the District is required to return any profits from tiered rates to the community in some way.

Mr. Williamson pointed out that most desert communities have tiered rates that are higher than those proposed in Borrego Springs. Economic incentives to conserve water now will protect property values down the road. He explained that the only long-term solution to the overdraft is to import water, and federal assistance will not be offered unless the District is making efforts to conserve.

Margaret Lacey Schneider felt the tiered rates were punitive and urged the District to seek voluntary conservation and educate the ratepayers before imposing the new rates. Director Andersen noted she had proposed higher tiers for summer and now felt the proposal was fair and reasonable.

Betty McKee stated she had three acres of trees which she would have to remove or let die if the tiered rates were imposed.

Ms. Hart cited the recent letter from the District to all customers, which states the proposed rates are based on increased costs to provide water to large users. Director Smiley explained that large users tax the aquifer and the infrastructure and may necessitate deepening our wells or drilling new ones. Ms. Hart inquired when the District plans to apply for an importation grant, and Mr. Williamson replied that advance planning is required to ensure the most cost effective solution. A meeting was held last week with the Corps of Engineers, Congressman Hunter's staff and the District's lobbyists toward this end. Although ratepayers would contribute to the cost of any importation, Water Resources Development Act funding is available for up to 75 percent.

Mr. Stumpf suggested making the tiers higher, and Mr. Williamson invited anyone with an alternate proposal to present it at one of the public hearings (March 19 or April 9).

Mr. McKee asked how many protests had been received. Kim Pitman replied she had

received 635, 86 without Assessor's Parcel Numbers, but had not yet verified that they were District ratepayers.

Don McKelvey questioned whether the public comments would make a difference to the Board, and why new meters were being issued during a water shortage.

Don Pachuta inquired about plans for agriculture and golf courses, and suggested including a ballot in the water bills. Mr. Williamson explained that most golf courses and farmers have their own wells and can pump as much as they want under State law. The District has no regulatory powers over them.

Ms. Hart suggested adjudicated water rights, but the Board agreed the chances were slim. Director Smiley pointed out that farmers are motivated to conserve water because pumping costs cut into their profits.

Ms. Schneider suggested postponing action on tiered rates and enforcing irrigation efficiency audits.

Dennis Dickinson spoke in support of tiered rates, noting that unlike some years ago, everyone now recognizes we have a water problem and that it will cost money to fix it. The cost of not fixing it is much higher. He encouraged everyone to work together and to consider the cost of not addressing the issue, noting that at least half the residents will see no change in their water bills. Director Andersen urged Mr. Dickinson to put his comments on his website. Director Smiley suggested revisiting the basin wide assessment which was defeated in 2006.

It was suggested that the County and State be asked to assist in limitations on private wells in view of our water shortage. Allison Burns explained that this would require a Constitutional amendment.

F. Comments from Directors and Requests for Future Agenda Items: None

G. Correspondence:

Mr. Williamson reported that all items of correspondence would be addressed elsewhere in the Agenda.

President Mendenhall declared a recess at 10:40 a.m., and the Board reconvened at 10:55 a.m.

II. CURRENT BUSINESS MATTERS

A. Consideration of the Board to give a 30 day written notice of cancellation of the Memorandum of Understanding, BWX Permanent Water Credits, to Borrego Water Exchange:

Mr. Williamson explained that the Board had entered into a Memorandum of Understanding with the Borrego Water Exchange in 2006. Concerns have been raised, no reflection on how it has been implemented or what has been accomplished and the District wants water credits to continue, but an MOU is not the proper format. MOUs are typically between two governmental entities, and a contract with a private enterprise is more appropriate. Moreover, the District/County fallowing policy is in a state of flux. In the interim, he suggested fallowing be addressed on a case-by-case basis, and in the future, operating on a contractual basis. He recommended giving BWX a 30-day notice of termination and directing staff to bring back an outline of how to deal with the issue in the future. ***A motion was made by Director Shimeall and seconded by Director King to approve the General Manager's recommendation.*** Lane Sharman requested that the motion be tabled for 30, 60 or 90 days to give him an opportunity to meet with Mr. Williamson and redraft the agreement. Mr. Sharman perceived the MOU termination as a "taking," depriving him of his agreement with the District and the opportunity for those wishing to fallow. He pointed out that BWX has assisted in fallowing 50 acres, 40 of which were purchased by the District. Twenty-five of those acres are under contract with a developer, who is happy with the arrangement. Mr. Sharman further opined that the proposed action was an injury to the confidence of the public, who have seen the success of the arrangement, and that it would reduce efficiency. He cited intellectual property laws and the potential harm to his business. Ms. Burns pointed

out that the MOU provides for cancellation upon 30 days' notice, negating the "taking of economic interest" claim, and intellectual property rights were not addressed in the MOU. Director Smiley asked whether termination of the MOU would subject the District to legal liability, and if not, he didn't see any risk to the District and felt continuation of the MOU would facilitate the transition from high water use agriculture to lower water use. Director Andersen pointed out that having the MOU with BWX in place gives the impression that Mr. Sharman has an exclusive right to broker water rights for the District. Director Smiley expressed concern that cancellation of the MOU would give the impression the District was not satisfied with Mr. Sharman's service. Ms. Burns confirmed that the MOU is not illegal. Mr. Williamson explained that structuring relationships with outside parties, as well as the public perception thereof, is important. He recommended an umbrella policy dealing with water credits, under which individual contracts would be arranged. Jim Engelke cited his pending projects for five clients, awaiting Ms. Burns' negotiations with the County. Rebecca Falk, a realtor, supported the opportunity to fallow agricultural land and commended Mr. Sharman's educational efforts. She urged that the MOU not be terminated until there is an agreement negotiated to replace it. Rudy Monica stated he has a development project which will require water credits and had used Mr. Sharman's service in the past with the understanding BWX was sanctioned by the District. He was very satisfied with BWX's service and urged its continuation. Mr. Williamson thanked Messrs. Sharman and Monica for their assistance in acquainting him with the District issues, and assured them he did not intend to be punitive but to act appropriately as a government entity. He expressed concern regarding the public perception that the District sanctions one entity to perform services. There should be a policy under which the District enters into individual contracts. Mr. Dickinson suggested that the District hire an agent on retainer to handle the matter and table the matter until Messrs. Williamson and Sharman can develop a replacement policy. ***Directors Shimeall and King amended their motion and second to provide that the MOU will be terminated in 60 days, and concurrently a policy will be brought forward for the Board's consideration continuing the concept brought forward in the MOU in the form of a policy; and District staff will work with interested parties in the community and Mr. Sharman and his clients to develop that policy. The amendment carried unanimously. The amended motion carried by roll call vote: AYES – Shimeall, King, Andersen, Mendenhall; NO – Smiley.***

B. Consideration of the Board to approve changing the second Wednesday of the month Board meeting time to 9:15 a.m. instead of 9:00 a.m.: MSC: King/Andersen changing the second Wednesday of the month Board meeting time to 9:15 a.m.

C. Consideration of the Board to add "District Engineer" to the General Manager's title: Mr. Williamson pointed out that the proposed title change would not include additional salary. It is important for the District to have a designated engineer to sign certain documents, and he is a licensed civil engineer in California and Arizona and a licensed surveyor in California. MSC: Andersen/Smiley adding "District Engineer" to the General Manager's title.

D. Report and Discussion of public input on the proposed Tiered Rate Plan. Mr. Williamson reiterated the plans for the town hall meeting on March 19, updating the Groundwater Management Plan and conducting a public hearing on tiered rates. Slips will be available to be completed by those wishing to speak. A follow-up hearing is scheduled for April 9. Under State law during the March meeting the Board will listen to public testimony, thereafter review comments and consider them at the April meeting. President Mendenhall asked whether Proposition 218 procedures would have to be repeated if the tiered rate proposal is changed. Ms. Burns explained that it depends on the change. If you impose higher rates or implement them sooner or reduce the tiers, the procedures would need to be repeated. Ms. Hart inquired about procedures for counting protests. Ms. Burns replied that currently no external agency was involved; it will be handled by District staff. The protests are retained in a secure manner. Counting and verification will begin following the April 9 hearing, at the District office. Ms. Burns agreed to discuss the issue of public witness of the counting with Mr. Williamson and address it at

the town hall meeting.

III. GROUNDWATER MANAGEMENT

Mr. Rolwing reported there are seven agricultural wells with meters, one of which has since been fallowed. Of the six remaining, only two can currently be read accurately, yielding 6.2 acre feet per acre per year and 6.07, respectively. This is in the anticipated range.

IV. GENERAL MANAGER'S REPORT

Mr. Williamson distributed his written report, noting he had engaged software consultants to evaluate customers' monthly bills and determine if the tiered rates would affect them. In February, 11 percent were in Tier 2, with about half of those into Tier 3. In August, there were 22 percent in Tier 2, also with half into Tier 3. He hoped to have results for the entire year at the March 19 meeting.

Two new development projects are currently under review. A meeting with the County Department of Land Use and Planning is being scheduled to coordinate water and land use planning in the Borrego Valley. Bill Mills has submitted a proposal to update the groundwater model. Mr. Williamson planned to meet with the General Manager of the Imperial Irrigation District to explore a wheeling agreement to transport imported water into the Borrego system.

Mr. Williamson reported that during recent Conservation Committee meetings the public had expressed concern about the effect of tiered rates on Christmas Circle. Christmas Circle has now been designated as a commercial use, so their rates will be based on historical usage for the last four years. Jim Wilson has been informed, and the Christmas Circle Board will work with the District to conserve water. Mr. Monica inquired about the possibility of paving the perimeter, and Mr. Williamson replied the Circle Board agreed to consider it in the future. Ms. Hart inquired about the effect of the change to commercial designation on the Proposition 218 proceedings, and Ms. Burns explained that the proposed rates had not changed; the Board just obtained new information regarding the park's activities, which include commercial uses. She assured the group that the Board was adhering to the requirements of Proposition 218.

Mr. Williamson further reported that a draft budget will be available in May, final in June. The Contracts Committee is reviewing current contracts, and trying to rotate local vendors with whom the District does business. The Negotiating Committee met with the Community Services District yesterday to discuss annexation, which is being accelerated. The CSD grant application may be cancelled.

V. ATTORNEY'S REPORT

Ms. Burns reported she spoke with County staff yesterday, and they are continuing internal negotiations regarding the following policy.

VI. INFORMATIONAL ITEMS None

VII. ADJOURNMENT

A. The Annual Groundwater Management Meeting will be held on Wednesday, March 19, 2008 @ 4:00 p.m. in the Performing Arts Center: President Mendenhall reminded everyone of the March 19 meeting.

B. The next Regular Board Meeting of the Board of Directors is scheduled for Wednesday, March 26, 2008, in the District's Board Room: There being no further business, the meeting adjourned at 12:20 p.m. to Wednesday, March 19, 2008, 4:00 p.m. in the Performing Arts Center.