

**Borrego Water District
MINUTES
Regular Meeting of the
Board of Directors
Wednesday, March 26, 2008
9:15 AM
806 Palm Canyon Drive
Borrego Springs, CA 92004**

I. OPENING PROCEDURES

- A.** Call to Order: President Mendenhall called the meeting to order at 9:15 a.m.
B. Pledge of Allegiance: Those present stood for the Pledge of Allegiance.
C. Roll Call: Directors: President Mendenhall, Vice-President King, Secretary/Treasurer Andersen, Shimeall, Smiley

Staff: Richard Williamson, General Manager
Jerry Rolwing, Operations Manager
Kim Pitman, HR/Finance Specialist
Allison Burns, Stradling, Yocca, Carlson & Rauth
Wendy Quinn, Recording Secretary

Public: Bob McKee Judy Meier, *Borrego Sun*
Rudy Monica William Sanders
Greg Stumpf Harry Anderson
Betty McKee Rebecca Falk
Ron Del Guercio

D. Approval of Agenda: Rich Williamson requested that his General Manager's report be moved to the beginning of the Agenda so that he could address items of concern to the audience, primarily an update to the conservation program tiered rate proposal. He noted that one public hearing has been held and another is scheduled for April 9. The overwhelming majority that have commented have concerns regarding the program as it is now proposed, and the verified protest signatures are nearing 700. Mr. Williamson explained that the most important part of the proposal is to provide a building block to acquire potable water. Conservation efforts by domestic water users will not solve the aquifer overdraft, but a conservation program is an important element to obtain funding for future importation of water into our basin. Without importation our home values and businesses will be at risk.

Mr. Williamson reported that he met yesterday with opponents of the tiered rates and they agreed on modifications to address the public concerns. He suggested phasing in the new rates at a later date, and beginning the conservation investment subsidies first. Education will be provided, and hardship cases will be considered. Mr. Williamson pointed out that the opponents could achieve the 51 percent protest level required to scrap the rate proposal, or even if they did not reach 51 percent there was enough opposition that they might contest the rates via the initiative or recall process.

Mr. Williamson asked President Mendenhall to appoint a Negotiating Committee to negotiate a revised program with the concerned citizens and resolve outstanding issues prior to May 28. President Mendenhall pointed out that a Negotiating Committee is already in place, consisting of him and Director Smiley. Director Smiley recommended trying to conclude the negotiations as soon as possible so the process does not last into the summer. Mr. Williamson explained that his proposal was to make the tiered rates effective in July 2009.

Ron Del Guercio noted that this is an opportunity to get the community involved, expressed support for the new proposal and urged the District to proceed.

Bob McKee inquired about notice and hearing requirements should the proposal be changed. President Mendenhall explained that the rates could basically be reduced without repeating the procedure, but not increased. Rebecca Falk pointed out that the Conservation Committee has succeeded in raising awareness of water issues.

Director Smiley offered to recuse himself from the Negotiating Committee based on public controversy regarding his employment in the agricultural industry. A member of the public commented he was an appropriate Committee member. After discussion, it was agreed to leave the Negotiating Committee as constituted and call a meeting for March 27 at 10:00 a.m.

Harry Anderson referred to his letter to the District suggesting another approach to the water problem. He referred to the 2001 Groundwater Management Plan, citing its contention that the overdraft was not an immediate problem and the aquifer would last another 100 years at the current level of use. The Plan suggested limiting farmland and eventual fallowing. President Mendenhall recalled that tiered rates were added later as another option.

Betty McKee inquired as to the number of people who had filed protests to the tiered rates. Kim Pitman reported there were 698 confirmed, 887 received. Mr. McKee asked whether the protest period would be extended if the public notice/hearing process is extended, and Mr. Williamson replied that it would be.

Mr. Williamson distributed the balance of his written General Manager's Report, noting that communities throughout the southwest are working hard to commit available water rights, so time is of the essence, and the conservation program is a key component in acquiring these rights. Borrego Springs currently uses twice the local average water and three times as much as some communities in Arizona. He hoped to reduce it by ten percent in three to five years.

William Sanders asked whether the purchase of water rights is risky, and Mr. Williamson replied he felt it was never risky for a water district. We need to identify availability and pricing and determine the best approach.

President Mendenhall inquired about a recent meeting with the County Department of Planning and Land Use. Mr. Williamson reported on his discussions regarding the need to coordinate water resource management and land use decisions. He urged the County to zone agricultural land so that it will be attractive to developers and encourage farmers to fallow. Density requirements need to be changed via a specific plan amendment, remaining sensitive to the environment. Director Smiley and the agricultural community will also be involved in these negotiations. Mr. Williamson noted that conversion of agricultural land to development will also increase the tax base for the community and help finance the importation of water.

MSC: King/Shimeall approving the Agenda as amended.

E. Approval of Minutes:

1. Regular Meeting of February 27, 2008. ***MSC: Shimeall/King approving the Minutes of February 27, 2008 as written.***

2. Regular Adjourned Meeting of March 12, 2008. Director Smiley referred to Agenda package page 13 at the top, quoting his question whether termination of the MOU with the Borrego Water Exchange would subject the BWD to legal liability. He clarified that his concern was whether the MOU legally obligated BWD to deal exclusively with BWX regarding mitigation credits. ***MSC: Shimeall/King approving the Minutes of February 13, 2008 as amended.***

F. Comments from the Public and Requests for Future Agenda Items: Mr. Anderson asked whether the public hearing on April 9 would be held at the District office. Mr. Williamson explained that under the California Code, the District cannot change the meeting location without a 45-day notice, so it will be at the District office. President Mendenhall requested that the public

hearing be scheduled first on the Agenda, and noted that overflow attendees could listen to the meeting outside the Board Room on the speakers.

G. Comments from Directors and Requests for Future Agenda Items: Director King reported that many attendees at the town hall meeting had inquired whether water conservation was being taught in the schools. She supported the idea and suggested the Conservation Committee address it. Jerry Rolwing noted that a couple of years ago there was a contest for students to write essays, draw pictures or compose songs encouraging conservation. Director King urged an ongoing program. Director Smiley suggested that the students could be taught irrigation conservation for their vegetable gardens. Mr. Rolwing agreed to put the issue on the next Conservation Committee Agenda. Judy Meier suggested the students could collect empty milk cartons and attach them together to show a daily use resulting in 30 units per month of water for use in conservation program presentations. Mr. Williamson referred to Project WET (Water Education for Teachers), a nationwide program for which the District might provide scholarships to local teachers. Mr. Rolwing agreed to invite Superintendent Connie Smith to the next Conservation Committee meeting.

H. Correspondence:

1. Written letters of protest. Mr. Williamson invited the attendees' attention to the copies of written protests in the Agenda Packet. The tally is approximately nine to one opposed to the tiered rate proposal. Those with questions were invited to call the District or stop by.

2. Written letter of Request – Mr. Daoust. Allison Burns reported that Dennis Daoust had requested that Director Smiley recuse himself from decisions on the tiered rates based on his employment in agriculture. President Mendenhall pointed out that Ms. Burns had already ruled that Director Smiley has no conflict of interest.

II. CURRENT BUSINESS MATTERS

A. Public Hearing on the revision of *ORDINANCE NO. 08-03 AMENDING SECTION 3.7.1 OF THE ADMINISTRATION CODE OF THE BORREGO WATER DISTRICT:* MSC: King/Andersen dispensing with the reading of the Ordinance. President Mendenhall opened the public hearing at 10:19 a.m. and explained that the Ordinance amendment would relieve the President of the duty of acting as General Manager in the absence of the General Manager. Hearing no further comments, President Mendenhall closed the public hearing at 10:20 a.m.

B. Consideration of the Board to approve *ORDINANCE NO. 08-03 AMENDING SECTION 3.7.1 OF THE ADMINISTRATION CODE OF THE BORREGO WATER DISTRICT:* MSC: King/Andersen adopting Ordinance No. 08-03 amending Section 3.7.1 of the Administration Code of the Borrego Water District. RC: AYES – King, Andersen, Shimeall, Smiley, Mendenhall.

C. Consideration of the Board to approve *RESOLUTION NO. 2008-3-1 AUTHORIZING STAFF TO TAKE CERTAIN ACTIONS RELATED TO THE DISTRICT'S SERIES 1997 AND SERIES 1998 CERTIFICATES OF PARTICIPATION FOR IMPROVEMENT DISTRICT NO. 4, AND APPROVING THE ENGAGEMENT OF CERTAIN CONSULTANTS IN CONNECTION THEREWITH:* MSC: King/Andersen authorizing staff to take certain actions related to the District's Series 1997 and Series 1998 certificates of participation for Improvement District No. 4, and approving the engagement of certain consultants in connection therewith. RC: AYES – King, Andersen, Shimeall, Smiley, Mendenhall.

D. Review Sutter Securities TERM SHEET for Borrego Water District Improvement District No. 4 Refunding Certificates of Participation, Series 2008: Mr. Williamson invited the Board's attention to the last paragraph on Agenda Package page 58, noting that a section in the COP's official statements regarding the adequacy of Borrego's water supply needs to be revised. Director Shimeall inquired about the Board's legal liability for failure to supply adequate water, and Ms. Burns explained that issue should be discussed in closed session or discussed privately with Director Shimeall.

E. Consideration of approval by the Board for the Assignment of 8 EDUs from The Copley Press, Inc. to Desert Anza Borrego Properties, LLC: *MSC: King/Shimeall approving assignment of 8 EDUs from The Copley Press, Inc. to Desert Anza Borrego Properties, LLC.*

F. Discussion on moving the Public Hearing from the BWD Board room to the Performing Arts Center: This item was addressed previously.

III. COMMITTEE REPORTS & PROPOSALS

A. Ad Hoc Committees:

1. Review of grant opportunities. President Mendenhall inquired about the status of the De Anza flood control project and possible recharge basin. Mr. Rolwing replied he had not received a status report since the recent meeting. Mr. Williamson is seeking support from local politicians.

2. Personnel. No report.

3. Budget and Finance. Mr. Williamson reported that staff will be working on the budget in April, should have a draft and schedule a meeting with the Budget Committee in May, and following comment, prepare the final budget for consideration at the June 25, 2008 Board Meeting for adoption prior to July 1.

4. BSPCSD. Mr. Williamson reported that a revised MOU between the Borrego Springs Park Community Services District and BWD has been prepared for consideration by both Boards. BWD will consider it at its next meeting. An annexation resolution has also been drafted for adoption by both Boards and forwarding to LAFCO. He hoped for action in two to three months. BWD has been assisting the CSD in addressing its recent "boil water" order and leak repair. CSD has received approval for a \$600,000 loan and a \$600,000 grant, but will need a bond issue to pay their local share. The funded improvements may not benefit BWD after annexation, but provides a backup plan should the merger fail. Work is proceeding on the intertie between the two Districts. Mr. McKee asked whether the CSD would be subject to tiered rates following annexation, and Mr. Williamson replied that they would. They would be charged at ID #4 rates for the first year, then a new ID will be formed and rates set according to obligations.

5. Contract labor review. No report.

6. Negotiating. No report.

7. Town Center Sewer. No report.

B. Standing Committees:

Conservation. Director Shimeall invited the Board's attention to the Minutes of the last Conservation Committee meeting and offered to answer questions. The tiered rates protest tally was included in the Agenda Packet. Ms. Pitman presented an update: 887 total, 189 disqualified, 4 with no Assessor's Parcel Number, 18 not in the District, 55 duplicates, 10 from mobile home parks, 44 don't match APN of owner or tenant, 23 with no address, 22 with no meters, and 13 for which addresses cannot be found. There are a total of 698 currently verified.

Director Smiley reported that the California Irrigation Management Information System (CIMIS) station has been installed and connected to the phone line. Mr. Rolwing added that the station is not yet on line, but should be shortly. Director Smiley urged the *Borrego Sun* to photograph the station once it is fully operational, and Director King suggested inviting high school science students.

IV. CONSENT AGENDA: The Consent Agenda includes reports that are distributed with the Agenda packet and are submitted for filing following Board approval. At the first Board meeting of each quarter, **Jan./April/July/October**, these items will be discussed in full. Any member of the Board, staff or public may request items from the Consent Agenda be removed for discussion. Items

so removed shall be acted upon separately immediately following approval of items remaining on the Consent Agenda.

A. Water and Wastewater Operations Report (February, 2008):

B. Water Production/Use Records (February, 2008):

C. Financial Reports:

February, 2008

1. Disbursements & Claims Report.
2. Financial Statement for Period Ending.
3. Treasurer's Report.
4. Expenditures on groundwater management
5. BWD-BSPCSD Intertie Accounting
6. Expenses for Board Consideration and Approval

Director Shimeall pulled Item IV.C.4 (Expenditures on groundwater management) from the Consent Calendar. Director Smiley pulled Item IV.B (Water Production/Use Records). President Mendenhall pulled Item IV.C.1 (Disbursements & Claims Report). ***MSC: Shimeall/Smiley approving the balance of the Consent Calendar.***

Director Shimeall questioned Bill Mills' invoice for \$39,000 for eight months and asked staff to investigate.

President Mendenhall withdrew his comment.

Director Smiley pointed out that the domestic water use nearly doubled from 2002 to the present. President Mendenhall noted over half the increase was at Montesoro. Director Smiley observed that agricultural use has declined during the same period due to fallowing and irrigation improvements. He suggested another survey of agricultural use, perhaps including golf courses. Mr. Rolwing reminded the group that the District would pay to install a meter on agricultural wells. Director Shimeall cited the need to educate the public regarding "water loss" statistics, which means "unaccounted for" largely due to old meters.

MSC: King/Andersen approving the pulled Consent Calendar items.

President Mendenhall declared a recess at 11:00 a.m., and the Board reconvened at 11:10 a.m.

V. STAFF REPORTS

A. Manager's Report: The Manager's Report was presented at the beginning of the meeting.

B. Engineer's Report: Mr. Williamson summarized Kim Post's written report. The District has filed an assessment of its system with the Environmental Protection Agency, certifying compliance with disinfection requirements. Mr. Post also provided a status report on development projects at Montesoro, where he is working with the County on certain liens. Mr. Williamson explained he and Mr. Post had agreed that it was not necessary for Mr. Post to attend Board meetings unless requested to do so for a specific item. The Contracts Committee is working to identify two or three engineering firms which can provide services as needed.

C. Operations Report: Mr. Rolwing reported that staff had been working with a vendor to repair the liner on Reclaim Tank #2. Repaving is scheduled on DiGiorgio, Club Circle, Palm Canyon and Christmas Circle.

VI. ATTORNEY'S REPORT

Ms. Burns reported she was still awaiting a response from the County on the following policy and will continue to follow up. She hoped to have a report soon.

Director Smiley asked whether the public assertion that proposed commercial tiered rates versus residential were inequitable could present legal problems. Ms. Burns felt the District was on firm grounds, but reiterated that legal liability should not be discussed in open session.

VII. INFORMATIONAL ITEMS

None

VIII. CLOSED SESSION

None

VIII. CLOSING PROCEDURE

Adjournment: There being no further business, the meeting adjourned at 11:30 a.m. to April 9, 2008. The meeting will also include the second Public Hearing on the proposed tiered rate plan. The next Regular Meeting of the Board of Directors is scheduled for April 23, 2008.