

**Borrego Water District**  
**MINUTES**  
**Meeting of the Board of Directors**  
**Wednesday, December 16, 2009**  
**9:15 AM**  
**806 Palm Canyon Drive**  
**Borrego Springs, CA 92004**

**I. OPENING PROCEDURES**

- A.** Call to Order: President King 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: Present: President King, Vice-President Smiley, Secretary/Treasurer Andersen, Mendenhall, Shimeall
- Staff: Richard Williamson, General Manager  
Jerry Rolwing, Operations Manager  
Kim Pitman, Administration Manager  
Diana Del Bono, Administrative Assistant  
Allison Burns, Stradling, Yocca, Carlson & Rauth  
Wendy Quinn, Recording Secretary
- Public: Judy Meier, *Borrego Sun* Kathleen Gugg  
Jim Engelke, Lundberg Grace Preston  
Bob McKee Dennis Dickinsen  
Lucy Larsen Gwenn Marie  
Paul Nordman Lynn Smith  
Clare Hagan Dick Wilkes  
Suzanne Schmidt Grace Clark  
Lee Parravaro, Diehl Evans Harvey Schroeder, Diehl Evans  
Mary Mossay Carolyn Shinabarger  
Abby King Norman Shinabarger  
Judy Haldeman Bob Barton  
Dennis Nourse Mary Delaney

**D.** Approval of Agenda: *MSC: Shimeall/Smiley approving the Agenda as written.*

**E.** Approval of Minutes:

Regular Meeting of November 18, 2009. Director Andersen pointed out that her motion to table the proposed contract for the General Manager (Agenda package page 7) had been seconded by President King, not Director Smiley. Allison Burns and Director Shimeall noted typographical errors on pages 5 ("First Chief" should be "Fire Chief"), 8 ("Present King" should be "President King") and 4 ("the Judy Meier" should be "that Judy Meier"). *MSC: Shimeall/Mendenhall approving the Minutes of November 18, 2009 as corrected.*

Special Meeting of November 30, 2009. *MSC: Shimeall/Andersen approving the Minutes of November 30, 1009 as written.*

**F.** Comments from the Public and Requests for Future Agenda Items: Lynn Smith read a letter from Dennis Russell, opining that although Rich Williamson had withdrawn his request for a new employment contract, it was time to review his salary and benefits. He asked that this item be placed on the next Agenda and that a survey of comparable size districts be conducted.

Dennis Dickinsen objected to the fact that Mr. Williamson allegedly works three days per week and asked that an immediately change to five days be placed on the next Agenda. He further

recommended that Mr. Williamson personally bear the cost of preparation of the proposed (withdrawn) new contract by District counsel.

In response to questions from Bob Barton, President King confirmed that Ms. Burns had prepared the proposed contract and that the Board and counsel have a fiduciary responsibility to the District's rate payers.

Kathleen Dodd expressed her opinion that Mr. Williamson had shown contempt for Borrego Springs by residing in another state and asked that the Board initiate a residency requirement for all management personnel.

Gwenn Marie spoke in support of Mr. Williamson, noting that she had worked closely with him on the community plan. She pointed out that Borrego Springs faces important issues such as energy and water and needs credible and knowledgeable leadership. She saw no harm in his working part of the week from home. Dennis Nourse and Abby King agreed with Ms. Marie.

Bob McKee read a proposed resolution and requested that it be placed on the January Agenda. The resolution stated that the Directors, General Manager and Counsel had wasted taxpayers' money on resolutions designed to restrict the public's right to participate and insisted that those officers be truthful in their statements to the public and press. He requested a second Agenda item for January, review of the Directors' benefits, which he understood was to be done after six months and one year following implementation.

Lucy Larson suggested that the Contracts Committee draw up an alternative proposed contract, to be considered at the January meeting.

Mary Delaney commended Directors Andersen and Smiley for opposing the new contract and urged the Board to concentrate on saving the aquifer.

Ms. Dodd asked how many people in Borrego Springs pay for water, and Jerry Rolwing replied there are 2,035 meters.

Mr. Dickinsen noted that the three residents who spoke in support of Mr. Williamson came from large industry, while BWD is a small, public water district.

President King observed that Mr. Williamson has done an outstanding job in the last two years toward saving water. He does work at home some and does have a home in Borrego Springs. She pointed out that he serves as General Manager and District Engineer, and his salary is less than the combined salaries of the former General Manager plus the consulting District Engineer.

Mr. Barton inquired about other terms of the proposed (withdrawn) new contract, and Ms. Burns pointed out that the document is a public record. President King added that it was not approved, but referred to committee and subsequently withdrawn by Mr. Williamson.

Carolyn Shinabarger pointed out that she didn't question the fact that Mr. Williamson has done a good job, but thought his salary was out of proportion to the small population of our community.

Director Smiley explained that the ratio of salary to number of rate payers is not the issue, but the magnitude of the problems that Borrego Springs faces and the type of experience required.

Ms. Shinabarger asked whether the Directors' health insurance was paid by the District, and President King replied that it was, since last year. Mr. Williamson added that the option was approved in 2003 but only implemented last year. Director Shimeall noted that most water districts provide this benefit for Directors. Mr. Dickinsen requested statistical data, and Mr. Williamson invited him to submit a public records request.

Mr. Barton asked whether the District has legal jurisdiction to enact a groundwater sustainability ordinance including the aquifer. Ms. Burns replied that the issue is complicated, but the short answer is "no." Mr. Williamson noted that the District's water credit mitigation policy is in place and available for public review.

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

**H. Correspondence:** Mr. Williamson reported that Tim Ross from the Department of Water Resources had submitted his monthly report on Task #2 of the USGS/DWR groundwater study. They are continuing to gather data and have hired an additional staff member to ensure timely completion.

Rebecca Falk of Roadrunner Realty submitted questions regarding a right of entry agreement in the Clark Lake area, and Mr. Williamson will respond, working with Ms. Burns.

Two e-mails to the webmaster dealt with issues brought up during a prior public comment period. Charles Hagan opposed Mr. Williamson's new contract and requested his resignation, and Nancy Bartusch felt his salary was excessive for three days in the District office.

Ms. Larson had requested information on the cost of the District's health care plan and the number of rate payers. She understood the inquiry had been referred to Ms. Burns and felt the information should be available without incurring legal costs. Ms. Burns explained that the request was in conformance with the Public Records Act and requires a written response, which she transmitted on November 25; Ms. Larson is welcome to review the District records. Ms. Larson stated she had not received it, and Ms. Burns promised to resend.

Mr. McKee asked why copies of the correspondence were not included in the Agenda packet, and President King agreed to investigate.

## **II. CURRENT BUSINESS MATTERS**

**A. Presentation of FYE 2009 by Diehl Evans and acceptance of same by the Board of Directors:** Harvey Schroeder summarized the findings of the District audit for the year ending June 30, 2009. The report included a management discussion and analysis, followed by financial statements. Net assets were \$16,204,135 at the beginning of the fiscal year and \$16,761,856 at year end. The statement of cash flow was prepared on an accrual basis and showed the District's various revenue sources.

Mr. Schroeder responded to questions previously submitted, the first relating to the defined benefit plan. He explained that the required contribution of \$131,669 was actuarially calculated and verified by PERS. Another inquiry concerned the discrepancy in the water operations budget reflected in the management discussion and analysis (\$1,337,750 expended versus \$895,964 budgeted). Mr. Schroeder explained that the conservation rebate program had been listed as a capital item and subsequently reclassified as an expense. There were also extraordinary expenses arising from the merger with the Community Services District and general administration.

Mr. Williamson referred to page 3 of the audit report (Agenda packet page 15), noting that several items had been capitalized because water saved is water we don't have to import. Shifting them to expenses increased them by approximately \$175,000. He further invited attention to the note at the bottom of the page regarding the District's potential grants and loans. Mr. Williamson further pointed out that the \$532,096 loss before capital contributions (under nonoperating revenues (expenses), report page 11/Agenda page 23) includes depreciation, a non-cash item. The budget was actually within \$2,000 of the projected income, and the cash flow showed a positive \$142,021.

Director Shimeall asked what would happen to the Wilcox and Indian Head Reservoirs and the Wilcox Lift Station if the I-Bank loan and the USDA grant/loan are not approved. Mr. Williamson replied that the projects would be ready to go when other funding becomes available.

### ***MSC: Mendenhall/Smiley accepting the audit report.***

**B. Consideration of preparing a Strategic Plan for future District Objectives and authorization for the General Manager to enter into agreement with a Strategic Planning consultant not to exceed \$35,000:** Mr. Williamson summarized his idea to develop a District strategic plan and vision for the next two years. A proposal from a consultant was included in the Agenda at a maximum cost of \$35,000. Mr. Williamson requested input as to whether to retain a consultant or rely on in-house and community resources. Community involvement is envisioned in any event. Director Mendenhall suggested referring the matter to a committee, and Director Smiley suggested waiting until completion

of the financial plan by Reiter & Associates. Mr. Williamson felt the two plans should be developed simultaneously, so we can identify costs associated with our goals. *MSC: Smiley/Shimeall tabling the item. Director Mendenhall voted no, and all other Directors voted aye.*

C. Assignment of the Services Committee to examine the District's role and powers relative to electrical generation and return to Board a recommendation for future actions: Mr. Williamson recommended investigating options for the District's involvement in solar power, hopefully replacing existing citrus groves. *MSC: Mendenhall/Shimeall assigning the Services Committee to examine the District's role and powers relative to electrical generation and return to the Board a recommendation for future actions.*

President King declared a recess at 10:30 a.m., and the Board reconvened at 10:50 a.m.

D. RESOLUTION 2009-12-01 OF THE BOARD OF DIRECTORS OF THE BORREGO WATER DISTRICT AUTHORIZING THE GENERAL MANAGER TO APPLY FOR A PROPOSITION 84 FUNDING PROGRAM GRANT: Mr. Rolwing proposed that the District apply for funding from the Department of Public Health Services to reduce man-made contaminants affecting water quality. Our proposal would be to acquire an easement over approximately 100 acres of agricultural land adjacent to Well 18 and fallow it, thereby reducing nitrates which are being introduced into the groundwater. *MSC: Mendenhall/Smiley adopting Resolution 2009-12-01 of the Board of Directors of the Borrego Water District Authorizing the General Manager to Apply for a Proposition 84 Funding Program Grant. RC: AYES – Mendenhall, Smiley, Shimeall, King; ABSTAINED – Andersen.*

E. RESOLUTION 2009-12-02 AUTHORIZING SIGNATURE OF A FUNDING AGREEMENT AND RELATED DOCUMENTS FOR FUNDING UNDER THE SAFE DRINKING WATER, WATER QUALITY AND SUPPLY, FLOOD CONTROL, RIVER AND COASTAL PROTECTION BOND ACT OF 2006 (PROPOSITION 84): Mr. Williamson explained that the proposed Resolution is the next step in the Proposition 84 funding application process just authorized. It would authorize him as District Engineer to certify costs, provide required information and approve claims for reimbursement. Ms. Burns added that Mr. Williamson could execute documents, submit claims for reimbursement and execute expenditure summaries and final release documents. However, he would not be authorized to spend the funds; that would be done by the Board and then he could disburse them. Director Smiley asked whether the District would buy the mitigation credits from the fallowed land, and Mr. Williamson replied that it would. It would be up to the Board whether to extinguish them. *MSC: Mendenhall/Shimeall adopting Resolution 2009-12-02 Authorizing Signature of a Funding Agreement and Related Documents for Funding Under the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006 (Proposition 84). RC: AYES – Mendenhall, Shimeall, Smiley, King; ABSTAINED – Andersen.*

F. Review and consideration of approval of Policy Statement 2009-12-01, Public Access to Board Packages: Mr. Williamson referred to the discussion at the last meeting regarding public access to Agendas and Board packages. A proposed policy was presented to ensure compliance with the Brown Act and get the information to the public as easily as possible. The Board would review the package and upon approval, it would be available on the District website by noon the Monday before the meeting.

Mr. McKee noted that in addition to posting the Agenda at the District office, it had been posted at the Center Market and the Post Office. It is no longer displayed at the Market, and in November, the copy at the Post Office was folded in half and then disappeared. Mr. Williamson explained that the Agendas were often removed from the Market bulletin board. He directed staff to continue to post them at the Post Office, although noted the District has no direct control over their bulletin board.

Dennis Dickinsen requested that the Agenda package be available as early as possible on Monday.

In response to Mr. McKee, Mr. Williamson confirmed that the public would still be able to pick up copies of the Agenda package at the District office on Tuesday.

**MSC: Smiley/Mendenhall approving Policy Statement 2009-12-01, Public Access to Board Packages. RC: AYES – Smiley, Mendenhall, Andersen, Shimeall, King.**

### **III. COMMITTEE REPORTS & PROPOSALS**

#### **A. Ad Hoc Committees:**

1. Personnel. Director Smiley reported that the Personnel Committee had met to discuss Mr. Williamson's proposed contract prior to his withdrawal.
2. Budget/Finance/Contract/Grants. No report.
3. Services Committee. Director Mendenhall reported that the Services Committee met and discussed trash pickup and the Club Circle golf course. Mr. Williamson reported that the golf course was not generating sufficient revenue to cover expenses. President King suggested the Camerons might donate the golf course for park land and then BWD could convert it to a target course. However, the Camerons have not been receptive. Director Mendenhall pointed out that they could get mitigation credits for turf removal. Mr. Williamson explained that the District could not improve the course without ownership or a long-term lease, or it would be considered a gift of public funds.

#### **Director Andersen left the meeting at 11:35 a.m.**

4. Negotiating. No report for open session.
5. Sewer. No report.
6. Capital Projects. No report.

#### **B. Standing Committees:**

1. Conservation. Director Shimeall invited the Board's attention to the Conservation Committee Agenda and Minutes and the 2010 Conservation Budget Summary, included in the Agenda. Jim Engelke requested that the landscaping and irrigation improvements at the Palm Canyon Resort be included on the next Agenda. He suggested the Committee might consider some type of recognition for the Resort's achievements in conservation.

2. GWM. Director Mendenhall reported that the Groundwater Management Committee had discussed the Viking Ranch with Mr. Engelke. Mr. Engelke stated that he was working with the property owner, Lance Lundberg, who was available by speaker phone if the Board wished. Mr. Lundberg wants to fallow his citrus grove, half of which will be used for County mitigation and the other half he would like BWD to acquire over time. The fallowed property, which is near the State Park, Coyote Canyon and the flower fields, could be used for a campground on an interim basis. A recharge basin is also contemplated. Mr. Engelke asked that the Negotiating Committee consider the proposal, and President King referred the matter to them.

Director Shimeall pointed out that the second page of the November 11 Groundwater Management Committee Minutes (Agenda page 56), paragraph 5, should reflect that the aquifer has been reduced by 500,000 to 600,000 *acre* feet.

**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 – November 2009.**

**B. Water Production/Use Records – November 2009.**

**C. Financial Reports – November, 2009.**

1. Disbursements & Claims Report.
2. Financial Statement for Period Ending 11/30/09.
3. Treasurer's Report.
4. Water Conservation Program Accounting.

**MSC: Shimeall/Smiley approving the Consent Agenda.**

## **V. STAFF REPORTS**

**A. Manager's/Engineer's Report:** Mr. Williamson offered to answer questions on his written report, which was included in the Agenda. Surveys of various District properties, including the Nels property, Clark Lake property and Wilcox and Indianhead Reservoir sites, are being conducted and will be available for public review. Mr. Dickinsen inquired about right-of-way issues with the State Park as to the Clark Lake property. Mr. Williamson replied that the District has been negotiating and is close to obtaining the necessary easements.

**B. Operations Report:** Mr. Rolwing reported that the Verbena pipeline is nearing completion. Well 10 is back in service after repair and is doing well. Work will begin soon on Well 4.

## **VI. ATTORNEY'S REPORT**

No report for open session.

## **VII. CLOSED SESSION**

**A. CONFERENCE WITH REAL PROPERTY NEGOTIATOR – Reference Government Code section 54956.8:**

Property: 140-280-13  
District Negotiator: Richard Williamson  
Negotiating Parties: Steve & Gail Van Camp  
Under Negotiation: Consideration for real property and terms of same.

**B. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION – Reference Government Code section 54956.9(b) three potential cases:**

**C. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION – Reference Government Code section 54956.9(a) Burzell v. Borrego Water District (SDSC Case No. 87-2008-0057104-CU-OE-NC):**

The Board adjourned to closed session at 12:10 p.m., and the open session reconvened at 1:00 p.m. Ms. Burns announced that the Board had authorized the General Manager to continue negotiating on Item VII.A.

## **VIII. CLOSING PROCEDURE**

**Adjournment.** There being no further business, the meeting adjourned at 1:00 p.m. The next regular meeting of the Board of Directors is scheduled for January 27, 2010 at the Borrego Water District.