

**Borrego Water District
CORRECTED MINUTES
Meeting of the Board of Directors
Wednesday, November 18, 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* Marshal Brecht
Jim Engelke Beth Hart
Bob McKee Dennis Dickinson
Lucy Larsen

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

- E.** Approval of Minutes:

Regular Meeting of October 21, 2009. Wendy Quinn noted a typographical error in the report of the approval of the September 16 Minutes. Although the heading was correct, the motion read "Minutes of August 4" rather than September 16. *MSC: Shimeall/Smiley approving the Minutes of October 21, 2009 as corrected.*

- F.** Comments from the Public and Requests for Future Agenda Items: None

G. Comments from Directors and Requests for Future Agenda Items: Director Andersen asked if Item IX.A (Consideration and approval of proposed employee contract between the District and the General Manager) could be considered prior to the closed session or continued to a future meeting. Allison Burns advised that when we get to that item, a motion could be considered to table it.

- H.** Correspondence:

a. CSU, Northridge – California water usage. Rich Williamson referred to a memo from Cal State Northridge encouraging water consideration and outlining the steps they are taking, through the Associated Student Body, to save water. Director Shimeall suggested writing a letter of support to the University and perhaps sending their letter to ACWA.

b. Frugal Coyote. Mr. Williamson further reported he had received a letter from the Frugal Coyote thrift shop expressing concern for Donna Hands, who donates fruit from her orchard and is impacted by tiered rates. Jerry Rolwing explained that he and one of the irrigation auditors visited Ms. Hands' property and recommended several improvements, which she is implementing. Her water bill has declined significantly. Director Mendenhall asked that the Conservation Committee continue to monitor the situation.

c. ACWA "Summary of Appellate Cases." Mr. Williamson announced that a copy of ACWA's new publication, "Summary of Appellate Cases," is available in Diana Del Bono's office for review by Directors and public.

II. CURRENT BUSINESS MATTERS

A. Authorization for General Manager to negotiate an agreement for provision of soil analysis and design and foundation for Wilcox Reservoir not to exceed \$12,000: Mr. Williamson explained that soil analysis involves considerable liability. He obtained bids from two contractors, Earth Systems Southwest for \$7,500 and Petra for \$17,430. The services are comparable, so he recommended Earth Systems. ***A motion was made by Director Shimeall and seconded by Director Mendenhall to authorize the General Manager to negotiate an agreement for provision of soil analysis and design and foundation for Wilcox Reservoir with Earth Systems Southwest, not to exceed \$7,500.*** Director Andersen asked why the "not-to-exceed" amount was so much higher than the bid, and why the matter was not brought to the Contracts Committee. Mr. Williamson explained that \$12,000 is the upper limit, and such matters are not routinely brought to the Committee. The expense was approved as part of the capital budget, and it is reimbursable via the I-bank loan. ***The motion carried, with Director Andersen abstaining and all other Directors voting aye.***

B. Legal counsel discussion of Brown Act provisions: Allison Burns referred to an issue that came up at the last Board meeting, provision of electronic copies of the Board Agenda and communication with Board members. She explained that the District is required to provide hard copies of the Agenda to the public, but not electronic copies. However, the Board may change the current policy (hard copies only). As far as communication to the Board from the public, she recommended that if all Board members receive the communication, they not respond. The Brown Act allows the public to address elected officials, but deliberation outside a noticed, public meeting is prohibited.

Mr. Williamson explained that e-mail distribution of the Agenda had been tested, but some material not appropriate for public review was inadvertently included. He suggested e-mailing the Agenda to the Board members the Friday before the meeting, and absent any corrections over the weekend, putting it on the District website on Monday for public review. Ms. Burns suggested that a hard copy be available at the District office for review beginning Friday. Discussion followed regarding the fact that Judy Meier, pursuant to her annual request, receives an e-mail version of the Agenda. President King asked that the issue be placed on the next Agenda, and Mr. Williamson noted that until then, the current procedure will be followed. Dennis Dickinson objected, and Mr. Williamson promised the entire practice would be on the next Agenda. Until then, the Board and Ms. Meier will receive the Agenda via e-mail and it will be e-mailed to those requesting it on Monday and posted on the website. Director Andersen urged that all attachments be included in the draft Agenda distributed on Friday. Ms. Hart asked if this matter would be considered at the Special Meeting on November 30, and Mr. Williamson replied that it would not. That is a special meeting for one CEQA item only. The reconsideration will take place on December 16.

Ms. Hart inquired again how the public may address all Board members simultaneously. Ms. Burns explained that if the communication is outside a Board meeting, the Directors will not necessarily know what others got the message. Therefore, she recommends not responding but placing it on the next Agenda if they so choose. She explained that there is a conflict in the Brown Act, which allows the public to address Board members but prohibits "wheeling." The Attorney General has addressed the issue, but it has not been tested by case law. Ms. Hart requested a copy of the Attorney General's opinion. Director Andersen inquired as to the Directors' discretion when it comes to responding to a member of the public. Ms. Burns explained that they are to exercise independent judgment when taking action during meetings, but as far as outside communication with the public, they should go through the General Manager.

C. Consideration and approval of Resolution #2009-11-1 pertaining to the establishment of commercial water mitigation calculations and charges related thereto: Mr. Williamson explained that the proposed Resolution clarifies the requirements for water mitigation by commercial facilities based on fixtures units, as set forth in the Uniform Plumbing Code. ***MSC: Mendenhall/Smiley adopting Resolution #2009-11-1 pertaining to the establishment of commercial water mitigation calculations and charges related thereto. RC: AYES – Mendenhall, Smiley, Andersen, Shimeall, King.***

D. Discussion of Fire Department role in new development approval process: Mr. Williamson reported he had discussed with the Fire Chief the fact that the DPLU will not authorize him to sign will-serve letters in an area over five minutes' response time from the Fire Station. Large developments (over five units) are not approved even within that area. The two districts have decided to form a joint committee to explore opportunities for cooperation. Jim Engelke opined that the will-serve letter should be tied to the building permit or certificate of occupancy. The mere approval of a subdivision does not require fire protection. Mr. Williamson assured Mr. Engelke that he and other members of the public would be invited to participate in the joint committee.

E. Authorization for General Manager to enter into an agreement for provision of testing services on the backfill of the Lift Station and pipeline on Borrego Valley Road, not to exceed \$6,000: ***A motion was made by Director Shimeall and seconded by Director Smiley to authorize the General Manager to enter into an agreement for provision of testing services on the backfill of the Lift Station and pipeline on Borrego Valley Road, not to exceed \$6,000.*** Mr. Williamson reported that the contract for testing services on the backfill of the Lift Station and pipeline on Borrego Valley Road is currently out to bid. Earth Systems Southwest has submitted a bid of \$5,778. ***Mr. Williamson requested an amendment to the motion regarding the provision in Earth Systems' proposed contract that risk can only be assigned equivalent to their aggregate fees, or not to exceed \$15,000. Mr. Williamson insists that they carry at least \$1 million in liability, standard for public works. The motion carried as amended, adding the authorization for the General Manager to negotiate and enter into an agreement.***

President King declared a recess at 10:35 a.m., and the meeting reconvened at 10:45 a.m.

III. COMMITTEE REPORTS & PROPOSALS

A. Ad Hoc Committees:

1. Personnel. No report.
2. Budget/Finance/Contract/Grants. No report.
3. Services Committee. Director Mendenhall reported that the Services Committee met and discussed trash pickup. Mr. Williamson added that a meeting was scheduled with three trash service providers, and two attended (Palo Verde and Allied Waste). The vendors did not provide specific price information, as it varies with the level of service. Mr. Williamson proposed to circulate a questionnaire among the District customers and then hold a town hall meeting.

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 Minutes, included in the Agenda packet, as well as Agenda pages 75 and 76, summarizing incentive rebates to date. Mr. Williamson reported there had been a lot of positive feedback regarding the landscaping changes at Palm Canyon Resort.

2. GWM. Director Smiley explained that a citrus farmer wants to fallow 125 acres but has no immediate market for the credits, nor does he need them for his own project at this time. The County has tentatively agreed that he may fallow half the acreage and they will reserve his credits for

use at a later date. Director Mendenhall added that he wants the District to buy the remainder. Mr. Williamson noted that District staff will be meeting with the landowner (Viking Ranch) in December to discuss options.

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 – October 2009.**
- B. Water Production/Use Records – October 2009.**
- C. Financial Reports – October, 2009.**
 - 1. Disbursements & Claims Report.
 - 2. Financial Statement for Period Ending 9/30/09.
 - 3. Treasurer's Report.
 - 4. Water Conservation Program Accounting.

MSC: Shimeall/Mendenhall approving the Consent Agenda.

V. STAFF REPORTS

A. Manager's/Engineer's Report: Mr. Williamson reported that the first meeting of the Regional Water Management Planning group will be held tomorrow. BWD is the lead agency, and the region includes all watersheds south of here to the Mexican border. Other member agencies are the County of San Diego and the San Diego County Resource Conservation District. The Groundwater Management Committee will serve as interface between the planning group and BWD. Membership means the District is now eligible for Proposition 84 funding, once we amend our Water Resources Management Plan to include the regional aspect.

Mr. Williamson explained how our aquifer overdraft may become an asset, in that it creates storage space which can be sold or leased to other agencies for water banking. The storing entity would be required to treat the water for its own use and BWD's.

Mr. Williamson reported that several Clark Lake property owners have agreed to right-of-entry agreements so the District can explore possible wells in the area. More will be discussed in closed session.

The groundwater study is proceeding, and we hope to have a report at the town hall meeting in March or April.

The design of the southeast transmission line is nearly complete. Other capital projects include the Borrego Valley Road lift station and a monitor well for the Montesoro wastewater treatment plant. A water line extension on Verbena is underway. A new control valve was installed in the primary irrigation lake at Montesoro.

Mr. Williamson reported that the I-bank staff report is nearly complete and should be on the agenda for December 15 for final approval. They suggest that our legal counsel attend, and Dennis Ciocca from Sutter Securities will also be there.

An operations and maintenance budget report was attached to Mr. Williamson's written report. To date, revenue exceeds expenses by \$41,000. A report from Wells Fargo on the District's investments was also included.

The mezzanine of the District's warehouse has been modified.

- B. Operations Report:** Mr. Rolwing's report was included in the General Manager's.

VI. ATTORNEY'S REPORT

No report for open session.

VII. INFORMATIONAL ITEMS

None

VIII. 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 – EXISTING LITIGATION – Reference Government Code section 54956.9(a) Burzell v. Borrego Water District (SDSC Case No. 87-2008-0057104-CU-OE-NC).

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

Property: 120-020-07
District Negotiator: Richard Williamson
Negotiating Parties: Decker
Under Negotiation: Price and terms of payment

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

Property: 198-051-02: 2473 Stirrup Road
District Negotiator: Richard Williamson
Negotiating Parties: Carlos Lugo
Under Negotiation: Price and terms of payment

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

F. Employee review of General Manager and performance evaluation – Reference Government Code section 54957.

The Board adjourned to closed session at 11:30 a.m., and the open session reconvened at 12:55 p.m. There was no reportable action.

IX. ADDITIONAL CURRENT BUSINESS MATTERS

A. Consideration and approval of proposed employee contract between the District and the General Manager. A motion was made by Director Andersen and seconded by Director King to table this item until next month. Both indicated they wanted additional time to review the proposed contract. *The motion failed. RC: AYES – Andersen, Smiley. NOES – Mendenhall, Shimeall, King. A motion was made by Director Mendenhall and seconded by Director Shimeall to approve the proposed employee contract between the District and the General Manager.* Mr. Williamson explained that the proposed contract memorializes the relationship between him and the District and provides benefits for both parties. The agreement would be for six years with automatic three-year renewals. Duties of the General Manager and District Engineer are outlined. Base salary would be adjusted annually pursuant to the CPI. There are no mandatory merit increases. The Board has the right to terminate his services, as is presently the case. If he voluntarily resigns he waives rights to severance pay and must give two months' notice. If terminated, the agreement provides for severance of 15 months at current base pay

plus health insurance. Other provisions covered hours of work, auto usage, life insurance and retirement.

Ms. Burns referred to Section 1.D on page 2 of the agreement, providing for a six-year term and successive three-year renewals. However, if the Board does not provide for automatic renewal, that is considered termination and the severance package would apply. She further pointed out that section 3.C provides for salary increases based on the CPI, but the base salary remains the same. Section 4.E provides for a lump sum payment of the 15 months' severance pay. The termination and severance provisions do not include provisions eliminating them in the event of malfeasance. They would still apply.

Director Smiley stated he was not comfortable with the agreement, feeling the severance payments continued for too long and there should be a provision in case of malfeasance. Mr. Williamson pointed out that the severance package applies as long as he is willing and able to serve, which he could not do were he to be indicted or convicted of a crime. As far as the term of the payments, an executive of his age can expect to take at least 12 months to obtain employment. President King agreed she would like to see the agreement address malfeasance. Director Andersen felt a six-year contract was too long. Director Mendenhall disagreed, feeling the term was to the Board's advantage and would provide security against actions by future Boards that may not be in our best interest.

Mr. Williamson reiterated his intention to serve the District for at least 15 years, and pointed out the contract under consideration is typical. Mr. Dickinson felt it was not typical for a small town such as Borrego Springs, and Ms. Hart noted that some residents believed he only intended to stay five years.

Director Andersen expressed concern regarding the provision for a three-day workweek, as she was under the impression the arrangement was temporary. Mr. Williamson replied that it is in the discretion of the Board, but he typically works at home two days a week.

Ms. Hart expressed concern regarding the length of the contract, the duration of the severance pay and its applicability to "for cause" termination. She further questioned the provision for compensatory time off to an individual in a management position. Ms. Burns pointed out that the provision is for *discretionary* time off, which is different. Ms. Hart noted that she had not seen a contract provision as set forth in Section 10, crediting vacation and sick leave for prior public service.

Directors Mendenhall and Shimeall amended their motion and second to refer the contract to the Personnel Committee for study, amendment and recommendation. MSC: Mendenhall/Shimeall amending the motion and adopting the amended motion.

X. CLOSING PROCEDURE

Adjournment. There being no further business, the meeting adjourned at 1:45 p.m. The next special meeting of the Board of Directors is scheduled for November 30, 2009, and the next regular meeting of the Board of Directors is scheduled for December 18, 2009. Both are at the Borrego Water District.