

Borrego Water District
MINUTES
Meeting of the Board of Directors
AND
Special Meeting of the Community Facilities District No. 2007-1
of the Borrego Water District
Wednesday, January 27, 2010
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, Secretary/Treasurer Andersen, Mendenhall, Shimeall

Absent: Vice-President Smiley

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* Fred Guillot
Jim Engelke, Lundberg Dennis Russell
Bob McKee Dennis Dickinsen
Lucy Larsen Duane Young
Paul Nordman Lynn Smith
Clare Hagan Mark Remy
Marshal Brecht Lane Sharman, BWX
Beth Hart Rebecca Falk
Andrea Roess, Taussig & Assoc.

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

- E.** Approval of Minutes:

Regular Meeting of December 16, 2009. Jerry Rolwing corrected the name of a public speaker which appeared twice in the December Minutes (Agenda package page 6). It should be Kathleen Gugg, not Dodd. ***MSC: Mendenhall/Shimeall approving the Minutes of December 16, 2009 as corrected.***

F. Comments from the Public and Requests for Future Agenda Items: Dennis Dickinsen noted that President King had requested that consideration of funds expended for legal counsel to prepare a proposed contract for the General Manager be included on the Agenda. He asked that staff do so for the next meeting.

Lynn Smith spoke regarding governance, stating it is important for the community to have new leadership at the Board level and asking those present to consider running in the next election. She requested that the present Directors resign and refrain from seeking reelection at the end of their terms. On another topic, Ms. Smith addressed water law. She opined that water law favors the domestic

user, who is entitled to the concept of economic certainty with respect to water and protection from overuse of any basin. She cited adjudication as a typical way to resolve issues and noted that a sustainability ordinance had been proposed in 2007. She had written material available upon request.

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

H. Correspondence:

- Lucy Larson letter

Rich Williamson read Lucy Larson's January 19 letter (Agenda package page 11), referring to the recent bond default and inquiring whether BWD could end up owning Montesoro or Borrego Ranch, could they foreclose on homeowners, and are there really 50 to 100 years left in the aquifer. Lastly, she commended the District for working with agriculture to reduce water usage. Mr. Williamson explained that the District would not own Montesoro or Borrego Ranch. The lien holder is the Community Facilities District, and they would not end up owning these entities either. The District can foreclose on anyone who is delinquent on property taxes, and thus bond payments. But the property in default is vacant or golf course property. As to the years remaining in the aquifer, the 50 to 100 years had been the general opinion so far, but consultants are working to update the information and their findings will be presented at the next town hall meeting.

- Email from Beth Hart

Mr. Williamson referred to several Emails between Beth Hart and him regarding her request to meet with the Board and his response regarding Brown Act constraints. Ms. Hart explained that she had sent the message to the wrong group and did not require a meeting.

- Letter from AECOM regarding water usage at The Springs

Mr. Williamson reported that AECOM, an engineering firm which performs annual groundwater monitoring for The Springs, had determined they used only 127 acre-feet per year in 2009, although their limit is 294.

II. **JOINT MEETING OF BORREGO WATER DISTRICT COMMUNITY FACILITIES DISTRICT NO. 2007-1 AND BORREGO WATER DISTRICT**

A. Call to Order: President King called the meeting to order at 9:29 a.m.

B. Roll Call: Directors: Present: President King, Secretary/Treasurer Andersen, Mendenhall, Shimeall

Absent: Vice-President Smiley

III. **CLOSED SESSION OF BORREGO WATER DISTRICT COMMUNITY FACILITIES DISTRICT NO. 2007-1 AND BORREGO WATER DISTRICT**

A. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION – Reference Government Code section 54956.9(b) eight potential cases: The Board adjourned to closed session at 9:30 a.m., and the public session reconvened at 9:45 a.m. Allison Burns announced there was no reportable action.

IV. **CURRENT BUSINESS MATTERS BEFORE THE JOINT MEETING OF BORREGO WATER DISTRICT COMMUNITY FACILITIES DISTRICT AND BORREGO WATER DISTRICT**

A. **CONSIDERATION AND ADOPTION OF RESOLUTION 2010-01-01 OF THE BOARD OF DIRECTORS OF THE BORREGO WATER DISTRICT ACTING AS THE LEGISLATIVE BODY OF COMMUNITY FACILITIES DISTRICT NO. 2007-1 OF THE BORREGO WATER DISTRICT ORDERING JUDICIAL FORECLOSURE OF DELINQUENT SPECIAL TAXES PURSUANT TO THE MELLO-ROOS COMMUNITY FACILITIES ACT OF 1982, AND ORDERING THAT THE TAX COLLECTOR BE CREDITED WITH THOSE SPECIAL**

TAXES: President King recused herself from this item because she lives in Montesorro and sells property there. Director Andersen recused herself because she has a listing there. Ms. Burns explained that a coin toss would determine which Board member will not be recused, so that there will be a quorum. President King called "heads," which came up; therefore, Director Andersen was recused and left the meeting.

A motion was made by Director Mendenhall and seconded by Director Shimeall to adopt Resolution 2010-01-01 of the Board of Directors of the Borrego Water District Acting as the Legislative Body of Community Facilities District No. 2007-1 of the Borrego Water District Ordering Judicial Foreclosure of Delinquent Special Taxes Pursuant to the Mello-Roos Community Facilities Act of 1982, and Ordering that the Tax Collector be Credited with Those Special Taxes. Ms. Burns explained that the proposed action is by the CFD Board, so any expenses associated with the foreclosure would be borne by the CFD, not the Water District. Funds have been set aside for this possibility. There are eight owners affected, with costs ranging from \$12,680 to \$16,787 (\$100,000 to \$135,000 total). If they pay prior to the CFD filing suit, the cost would drop dramatically and may be entirely covered by the proceeds.

Andrea Roess of Taussig & Associates explained that the CFD levied taxes in the amount of approximately \$683,000 to pay debt service on bonds. There is now an 87.8 percent delinquency rate, just over \$300,000. A special tax fund held by the Trustee has \$56,000 available and there is also a reserve fund (current balance \$759,812). An interest payment of \$273,988 is due in February. Ms. Roess estimated the CFD would need approximately \$217,000 from the reserve fund to pay this interest, leaving \$540,000. There is also an administrative expense fund of \$51,000 and a surplus fund of \$181,000. All CFD administrative expenses should be covered.

Ms. Roess explained that upon adoption of the proposed Resolution, Ms. Burns will write to the delinquent property owners giving them an opportunity to pay their Mello-Roos taxes only without paying the entire property tax bill.

The motion to adopt Resolution 2010-01-01 carried. RC: AYES – Shimeall, Mendenhall, King; RECUSED – Andersen; ABSENT – Smiley.

V. ADJOURNMENT OF MEETING OF BOARD OF DIRECTORS OF BORREGO WATER DISTRICT COMMUNITY FACILITIES DISTRICT NO. 2001-0

There being no further business to come before the CFD, the meeting was adjourned at 10:00 a.m. Director Andersen rejoined the meeting.

VI. CURRENT BUSINESS MATTERS BEFORE THE BOARD OF DIRECTORS OF THE BORREGO WATER DISTRICT

A. Direction of Board regarding agenda item requests from public during comment period from December 16, 2009 meeting:

1. Dennis Russell – Review of General Manager salary and benefits.
2. Dennis Dickinsen – Change of workweek for General Manager.
3. Kathleen Gugg – Institution of a residency requirement for all management personnel.
6. Lucy Larson – Contracts Committee to draw up an alternative proposed contract for the General Manager.

A motion was made by Director Shimeall and seconded by Director Mendenhall to proceed with Items No. 1, 2, 3 and 6 and place them on the next Agenda. President King noted that the General Manager's salary and benefits were reviewed in November, and no change was made. Mr. Williamson's annual salary is \$185,000, whereas previously the District paid \$83,000 to the General Manager and \$173,000 plus \$54,000 to consulting engineers, for a total of \$310,000 annually. Mr. Dickinsen pointed out that the District still uses the services of consulting engineers, so this should be

considered for a valid comparison. Mr. Williamson disagreed, explaining that former consultant Kim Post was paid to review plans, prepare documents and submit State certifications, now handled in house. Since Mr. Williamson joined the District, outside engineering services have consisted of surveys for capital improvements, which were not occurring during Mr. Post's tenure. Dennis Russell asked Mr. Williamson if he had performed all tasks previously handled by Mr. Post, and Mr. Williamson replied that he had, upon Board direction. Mr. Dickinsen suggested a salary comparison with other similar districts. Mr. Williamson replied that a survey of general managers' and chief engineers' salaries among ACWA members had been conducted, and his is below the median. He reminded those present that backup data relative to this conversation is available via Public Records Act request.

In response to Lucy Larson's inquiry, President King stated that the Contracts Committee had not discussed an alternative proposed contract for the General Manager.

Mr. Dickinsen inquired about Mr. Williamson's workweek. President King replied that he is in the office three days a week, has no other employment and generally works additional days at home or on business travel.

The motion to proceed with Items No. 1, 2, 3 and 6 failed. RC: AYE – Andersen; NOES – Mendenhall, Shimeall, King; ABSENT – Smiley.

4. Bob McKee – Direction to legal counsel to prepare a resolution pursuant to the request of Bob McKee. ***A motion was made by Director Mendenhall and seconded by Director Andersen to discuss the resolution proposed by Mr. McKee.*** The resolution required seven individuals to always tell the truth, correct any previous lies and sign the resolution. President King asked which seven individuals, and Mr. McKee replied it would be the Board members, General Manager and legal counsel. In response to the statement in the resolution that the District can no longer waste money, Director Shimeall pointed out that we have not increased rates and are under budget. Mr. McKee felt the Public Records Act requirements were excessive, and objected to required review by Ms. Burns. Discussion followed regarding Grand Jury requests, and Ms. Burns confirmed that there had been no subpoenas, and that was the question she had been asked. She further pointed out that the oath of office essentially covers the requirements of the resolution regarding truthfulness. ***Substitute MSC: Mendenhall/Andersen withdrawing consideration of the proposed resolution***

5. Bob McKee – Directors' benefit review. Mr. Williamson pointed out that Directors benefits had been reviewed on June 24, 2009, six months after implementation. The Board elected to keep them as is. Monthly reports are submitted, and the cost is in the current budget. Changes can be made during open enrollment. Mr. McKee understood the benefits were to be paid for from the parcel tax, which has not yet been implemented. Mr. Williamson suggested he address the issue in late March, when budget preparation begins. Committee meetings are posted on the District website, and public participation is welcomed. Those wishing Email notification should so indicate on the meeting sign-in sheet. Further consideration was referred to the Budget Committee.

B. Amendment of policy number 83-2 to allow board members to be compensated at the hourly rate contained in said policy for time spent attending meetings and legal proceedings pertaining to District business commencing January 1, 2009: Ms. Burns distributed an updated Policy Statement regarding compensation and expense reimbursement for members of the Board and staff. ***A motion was made by Director Mendenhall and seconded by Director Shimeall to amend Policy No. 83-2 as proposed.*** Ms. Burns noted a change to paragraph 2, "Definition of Activities," to delete 2.c and add subparagraphs i. through iii. to 2.b. The phrase, "except as set forth above" was added to paragraph 3.

Director Andersen asked why reimbursement for other meetings and/or legal proceedings pertaining to District business was limited to four hours per day. She pointed out that a meeting in San Diego required four hours just in commute time.

Mr. McKee cited California Water Code section 20201 as providing that compensation shall not exceed \$100 per day, and section 20202 providing compensation shall not increase by more than five percent per calendar year. He pointed out that the policy statement is retroactive to January

2009. He further objected to Directors being deemed as employees, although the Brown Act provides that elected officers are not employees. Ms. Burns explained that section 20201 applies to county water districts, which BWD is not. Further, the rate change is a redefinition, not an increase. The "directors as employees" issue was decided by the IRS in 2003. Discussion followed regarding the first paragraph in section 2, providing for an annual cost of living adjustment. Ms. Burns noted that it had never been implemented. *Directors Mendenhall and Shimeall withdrew their motion and second, then made and seconded a substitute motion to amend the Policy as proposed with the deletion of the first paragraph of section 2.*

A second substitute motion was made by Director Andersen and seconded by Director Mendenhall to adopt Policy No. 83-2 as proposed with the deletion of the first paragraph of section 2 and the amendment of the rate for other meetings and/or legal proceedings pertaining to District business to read, "\$40.00/hour portal to portal." Director Mendenhall suggested the effective date in section 1 be changed to January 27, 2010. Director Andersen explained that she requested the retroactive date because there were some unpaid invoices for last year. *Directors Mendenhall, Shimeall and Andersen withdrew all prior motions and seconds. MSC: Mendenhall/Shimeall tabling the item and requesting that it be brought back to a future meeting.*

Director Shimeall asked if we could go back to having two Board meetings a month, or in the alternative, be paid for two meetings if the session goes past noon. As it is, the Board and staff often have to work through lunch. Ms. Burns stated the matter was being addressed in committee.

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

C. Approval of Notice of Exemption from CEQA requirement relative to purchase of property located at 2473 Stirrup Road: Ms. Burns announced there would be no environmental impacts from the change of title to 2473 Stirrup Road into District ownership. The use remains exactly the same. *MSC: Mendenhall/Andersen approving Notice of Exemption from CEQA requirement relative to purchase of property located at 2473 Stirrup Road. RC: AYES – Mendenhall, Andersen, Shimeall, King; ABSENT – Smiley.*

D. Authorization for the General Manager to procure award plaques to convey to the top commercial and residential water conservation efforts in the District as determined by the Water Conservation Committee: *A motion was made by Director Andersen and seconded by Director Mendenhall to authorize the General Manager to procure award plaques to convey to the top commercial and residential water conservation efforts in the District as determined by the Water Conservation Committee.* Mr. Williamson reported that the Conservation Committee recommends approval. The funds would come from their public relations account, which totals between \$15,000 and \$20,000 a year. The plaques are expected to cost under \$100 each. *The motion carried unanimously.*

E. Authorization of the General Manager to accept the proposal by James McConnell for FY2011 – Federal Financing Lobbying efforts: *A motion was made by Director Mendenhall to authorize the General Manager to accept the proposal by James McConnell for FY2011, federal financing lobbying efforts. The motion failed for lack of a second.* Mr. Williamson explained that the current proposal is similar to the previous one. He noted that the deadline to request federal funding through Senator Feinstein is February 5, and through Representative Hunter, February 22. Mr. McConnell would not be paid unless his efforts are successful. The Contracts Committee limited his funding to a maximum of 20 percent if the grant is less than \$15,000. Travel and business expenses are limited to \$3,000. *A motion was made by Director Shimeall and seconded by Director Mendenhall to authorize the General Manager to accept the proposal by James McConnell for FY2011, federal financing lobbying efforts, with stipulations.* Mr. Williamson clarified the stipulations: Page 2, line six, change 33% to 20%; and in the first sentence of the last paragraph, change \$5000 to \$3000. Director Mendenhall asked Mr. Williamson to write to Mr. McConnell regarding the Board's action.

Director Andersen expressed concern that Mr. McConnell was paid prior to receipt of funds from the last STAG grant. Mr. Williamson suggested changing the word "secures" in the fourth line on page 2 to "receives."

Mr. Dickinsen asked what the potential grant funds would be used for. Mr. Williamson replied the most likely project would be completion of testing wells in the north area of Clark Lake and a monitoring program to complete CEQA requirements.

The motion carried, including the three stipulations (20%, \$3000 and "receives"). RC: AYES – Shimeall, Mendenhall, Andersen, King; ABSENT – Smiley.

F. Authorization for the General Manager to execute all necessary contract documents for construction of Borrego Water District Lift Station No. 1, based upon MSA Consulting Inc. determination of the most responsible, responsive, low bidder, based on bids to be opened on January 26, 2010, further documentation and information will be provided at the Board meeting: Mr. Williamson distributed a bid tabulation sheet for construction of Lift Station No. 1. Seven bids were opened yesterday. The engineer's estimate was \$488,677, and the low bid from Dexcavation was \$445,093. The budget is \$500,000. President King expressed concern that Dexcavation did not submit references and did not list pipe and manhole supplies among its equipment. Mr. Williamson noted that there may be a bid protest. Mr. Rolwing noted that the second low bidder, TC Construction Co., had done some prior work for the District. ***A motion was made by Director Mendenhall and seconded by Director Shimeall to find the low bidder nonresponsive and authorize the General Manager to execute necessary contract document for construction of Lift Station No. 1 to TC Construction Co.*** Mr. Williamson noted that award would be subject to reference checks. ***The motion carried. RC: AYES – Mendenhall, Shimeall, Andersen, King; ABSENT – Smiley.***

G. Presentation of the Site plans for the Wilcox and Indianhead reservoirs being considered for I-Bank funding: Mr. Williamson presented site plans for the Indianhead and Wilcox reservoirs. We are currently in the CEQA review process with a mitigated Negative Declaration and will come back to the Board for approval at the next meeting.

VII. COMMITTEE REPORTS & PROPOSALS

A. Ad Hoc Committees:

1. Personnel. No report.
2. Budget/Finance/Contract/Grants. Mr. Williamson reported that the Budget/Finance/Contract/Grants Committee met yesterday.
3. Services Committee. President King reported that the Services Committee had discussed the Club Circle Golf Course and solar energy opportunities. In this month's water bills there will be a questionnaire regarding interest in trash collection, parks, a parcel tax for fallowing agricultural lands, a cemetery and solar energy. Responses will be reviewed by the Services Committee.
4. Negotiating. No report for open session.
5. Sewer. No report.
6. Capital Projects. No report.
7. Legal Affairs. 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. She noted that section 3 of the Minutes (Agenda packet page 43) should reflect that SB 7X will be before the voters in November. Director Shimeall commended Mr. Rolwing and Judy Meier on the recent ads in the *Borrego Sun*. Mr. Rolwing announced that the Committee would discuss possible adjustments to the tiered rates at its next meeting, February 3. The public is welcome. Mr. McKee inquired about the status of the Best Management Practices for commercial customers. Further discussion was continued to the next Conservation Committee meeting.

2. GWM. Director Mendenhall reported that the Groundwater Management Committee had discussed the Viking Ranch with Mr. Engelke and his client, Lance Lundberg. Further discussion was continued to closed session. Mr. Williamson reported that the GWM Committee has been looking at solar power opportunities in conjunction with agricultural fallowing. He had been working with solar providers, Supervisor Horn's office and SDG&E on this issue. The District could purchase agricultural land using a bond issue, then fallow it, lease it to a solar provider and use the lease revenue to offset the bond payments. Some day, the land may be used for storage in connection with water banking.

IV. NON-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 – December 2009. Mr. Rolwing reported that water and wastewater operations were normal for this time of year.

B. Water Production/Use Records – December 2009. Mr. Rolwing referred to Agenda package page 50, noting we are using a bit less water than last year. The water loss varies. The Well 16 meter failed and a new one has been installed.

C. Financial Reports – December, 2009.

1. Disbursements & Claims Report. Mr. McKee inquired about an expenditure of \$7,100 for 20 tons of gravel at Palm Canyon Resort. Mr. Williamson explained that the District purchased 14 water mitigation credits and we are disbursing payments as construction is completed.

2. Financial Statement for Period Ending 12/31/09.

3. Treasurer's Report.

4. Water Conservation Program Accounting.

5. Year to Date Meter Installations.

6. Meter Installation History.

Kim Pitman offered to answer questions regarding the Financial Reports. There were no questions and no additional discussion.

MSC: Andersen/Shimeall approving the Quarterly Reports.

IX. STAFF REPORTS

A. Manager's/Engineer's Report: Mr. Williamson offered to answer questions on his written report, which was included in the Agenda. Mr. McKee requested a copy of the questionnaire referenced in the report. Mr. Williamson replied that it would be in his next water bill, and he would leave an additional copy for him at the front desk.

B. Operations Report: Mr. Rolwing reported that Well 4 is back in service and doing well.

X. ATTORNEY'S REPORT

Ms. Burns announced that the FPPC ethics compliance training is due and available via link from the District website. Two hours are required every two years. Ms. Pitman has records of the last training.

XII. 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) two 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):

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

Property: 140-030-03
District Negotiator: Richard Williamson
Negotiating Parties: Lance Lundberg
Under Negotiation: Consideration of restrictive water use easement and terms of same

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

Property: 199-080-21
District Negotiator: Richard Williamson
Negotiating Parties: Cameron Bros. Construction Company, L.P.
Under Negotiation: Lease of Club Circle Golf Course

The Board adjourned to closed session at 12:40 p.m., and the open session reconvened at 1:40 p.m. Ms. Burns announced there was no reportable action.

XII. ADDITIONAL CURRENT BUSINESS MATTERS

A. Authorization for General Manager to advertise and receive bids from qualified contractors for the maintenance of the Club Circle Golf Course: *MSC: Authorizing the General Manager to advertise and receive bids from qualified contractors for the maintenance of the Club Circle Golf Course.*

XIII. CLOSING PROCEDURE

Adjournment. There being no further business, the meeting adjourned at 1:50 p.m. The next regular meeting of the Board of Directors is scheduled for February 24, 2010 at the Borrego Water District.