

Borrego Water District
MINUTES
Meeting of the Board of Directors
Wednesday, May 26, 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, Vice-President Smiley,
Mendenhall, Shimeall

Absent: Secretary/Treasurer Andersen

Staff: Richard Williamson, General Manager
Jerry Rolwing, Operations Manager
Allison Burns, Stradling, Yocca, Carlson & Rauth
Wendy Quinn, Recording Secretary

Public: Judy Meier, *Borrego Sun* Paul Nordman
Jim Engelke, Lundberg Bob McKee
Lane Sharman, BWX Chris Gadomski

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

E. Comments from the Public and Requests for Future Agenda Items: Bob McKee referred to a recent news article regarding the Grand Jury's investigation of the District, which indicated interested members of the public were allowed to testify. He would have liked to testify, but was told by representatives of the District that there was no investigation. He had a packet of information for the Grand Jury and wanted to know where it should be directed. Allison Burns pointed out that he had asked her whether a document request had been submitted to the District by the Grand Jury, and at the time he asked the question, the answer was "no." She added that during the investigation, those called to testify were prohibited by law from discussing it. It was up to the Grand Jury whom they wanted to call. Ms. Burns provided Mr. McKee the Grand Jury address.

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

- G.** Correspondence: None

- H.** Approval of Minutes

Regular Meeting of April 28, 2010

MSC: Shimeall/Smiley approving the Minutes of April 28, 2010 as written.

II. CONSENT AGENDA: The Consent Agenda includes reports that are distributed with the Agenda packet and are submitted for filing following Board approval. 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 – April 2010.**

- B. Water Production/Use Records – April 2010.**

- C. Financial Reports – April 2010.**

1. Disbursements & Claims Report.
2. Financial Statement for Period Ending 4/30/10.

3. Treasurer's Report.
4. Water Conservation Program Accounting.

MSC: Smiley/Mendenhall approving the Consent Agenda.

III. CURRENT BUSINESS MATTERS

A. Presentation of awards for School Water Conservation contest: Director Shimeall announced the winners in the Water Conservation Poster/Essay/Power Point Contest: First grade, Daniela Carmona; second grade, Sarah Painter; third grade, Michelle Maytorena; fourth grade, Luis Arias. In the fifth grade, the first place winner was Tyler Westphal, second place Michelle Delgadillo, third place Leyssa Garcia. High school winners were Hicxel Esquivel and Javier Rodarte, first place; Tiffany Hebets, second place; and Chastin Rauh, third place.

B. Presentation by Lane Sharman regarding the 2007 purchase of a restricted water credit easement from Rudy Monica: Lane Sharman stated he hoped for a settlement of the Monica issue which would eliminate the potential for confrontation in court. He noted that when the District purchased a restricted water credit easement from Mr. Monica in 2007, the agreed-upon water usage by citrus was 3.8 acre feet per acre per year. It was also agreed that the property covered approximately 50 acres. It was later discovered there had been a four percent error in the acreage. One hundred ninety credits were issued, 150 purchased by the District and 40 retained by Mr. Monica. Subsequently, the water usage by citrus was recalculated to 5.0 acre feet per acre per year.

Ms. Burns recommended that further discussion take place in closed session due to the potential for litigation. Mr. Sharman noted that Mr. Monica had sold 25 of his 40 credits to a developer and had 15 remaining. Rich Williamson asked if Mr. Monica would sign a release of all future claims against the District if we were to purchase the remaining 15 credits. Ms. Burns pointed out that only 14 credits would be purchased, since Mr. Monica had retained the use of one acre foot per acre per year. Mr. Sharman agreed to recommend such a release to Mr. Monica.

C. Introduction of and discussion with Chris Gadomski, the District's Solar Energy Consultant, regarding solar energy issues in the Borrego Valley – Consideration of forming an Ad Hoc committee to investigate solar power proposals: Mr. Williamson reported that several solar energy providers had submitted proposals to the Community Sponsor Group. BWD hopes the facilities will be located on fallowed agricultural land. Solar providers are exempt from property tax so often contribute to the communities in which they locate instead. Chris Gadomski, the District's solar energy consultant, outlined his background in the field since the 1980s, including consulting and publication. Discussion followed regarding his estimate of a one percent contribution to the community from the successful solar provider. Mr. Gadomski explained that there are three major revenue drivers for solar companies, investment tax credits, utility incentives and the sale of electricity. The District would have a stronger position in negotiations if we knew the price the solar provider was getting from San Diego Gas and Electric. Mr. Gadomski noted that there are environmental incentives for using fallowed farmland. There is a Payment In Lieu Of Taxes (PILOT) program through which community compensation is negotiated, and there are lawyers who specialize in the field. Mr. Williamson pointed out that the tax credits for solar providers may expire soon, so we need to begin negotiations with the County through the Special Use Permit Process and show a nexus between agricultural fallowing and the goals of the solar providers. The School District may become involved due to their reliance on property taxes. Mr. Williamson recommended extending Mr. Gadomski's services, and it was agreed to refer the matter to the Services Committee.

D. Review of recommendations from Grand Jury:

- a. 10-12: Increase the retention time for audio recordings of all public meetings to 120 days.
- b. 10-13: Assure that the District's financial records are available to any citizen to facilitate transparency of the District's economic status.

c. 10-14: Develop internal control procedures to ensure that all employees, consultants, and Board Members adhere to all statement of Economic Interest (Form 700) filing requirements.

d. 10-15: Change the auditing firm at a maximum of every five years, as a better business practice.

Ms. Burns noted that the Grand Jury report had been forwarded to each Board member. The Grand Jury confirmed there were no violations by the District, but made a few recommendations regarding administrative practices. The District is required to respond within 90 days, stating whether we will comply, if so when, and if not why. The item was agendaized for discussion today and action by resolution at the next meeting. Ms. Burns recommended compliance.

President King questioned Recommendation 10-15, changing the auditing firm every five years. She pointed out it was difficult to get a new organization up to speed. Discussion followed regarding the pros and cons of this recommendation. The possibility of retaining our existing auditors (Diehl Evans) and soliciting a second opinion every five years was discussed. Mr. Williamson recommended retaining Diehl Evans for ongoing accounting support and retaining a new auditor.

Mr. Williamson offered an explanation regarding Recommendation 10-14. Last year the Board adopted a policy whereby the General Manager would decide which consultants required an Economic Interest filing and sign a statement memorializing the decision.

Ms. Burns opined that Recommendation 10-12 was not an issue, easily complied with. We are already in compliance with Recommendation 10-13 and will convey that to the Grand Jury.

Director Shimeall clarified that she had met with the Grand Jury, but it was not recorded. Ms. Burns explained that she met with the Grand Jury accounting staff, not the Grand Jury itself.

Mr. Williamson suggested a resolution indicating the District will increase its retention of audio recordings to 120 days, continue its practice of making financial records available to any citizen, ensure that the General Manager will determine and sign the determination as to which consultants require an Economic Interest filing, and engage a new auditing firm at the conclusion of its current contract with Diehl Evans. The Board concurred.

President King declared a recess at 11:05 a.m., and the Board reconvened at 11:25 a.m.

E. Presentation of FYE 2011 O&M and Capital Budget: Mr. Williamson reported there had been two Budget Committee meetings and a Special Board meeting to discuss the new budget. A slight increase in revenue is projected due to water mitigation credit administration fees. Maintenance costs will decrease due to the diversion of District staff to the I-Bank loan projects, postponing some routine maintenance. Professional services will decline with the conclusion of the Grand Jury investigation. The Contra Account, which transferred Operations and Maintenance staff time into Capital, has been eliminated. Depreciation will increase due to the transfer of some capital into fixed assets.

Director Mendenhall inquired where the reimbursement for previous staff time from the I-Bank loan was memorialized. Mr. Williamson explained that it shows up in the capital budget at year end as income.

Mr. Williamson pointed out that the Capital budget does not need to be adopted every year, as it is contingent upon receipt of funding. The conservation incentive program will be terminated, with the exception of the irrigation audits, which will be funded out of Operations and Maintenance. The total proposed Capital budget is \$986,000.

Director Shimeall expressed support for the Special Board Meeting budget workshop, and Mr. Williamson commended Kim Pitman and her staff.

V. COMMITTEE REPORTS & PROPOSALS

A. Ad Hoc Committees:

1. Personnel. No report.
2. Budget/Contract/Grants. Already covered.
3. Services Committee. No report.
4. Negotiating. No report.
5. Sewer. No report.
6. Capital Projects. Director Smiley reported that the Capital Projects Committee met last week and reviewed the budget.

7. Finance. President King reported she attended a Community Sponsor Group Park Services Committee meeting. They are still trying to develop a park on the new site in the church area. She emphasized the need to conserve water.

B. Standing Committees:

1. Conservation. Director Shimeall invited the Board's attention to the Conservation Committee Agenda, Minutes and budget summary, included in the Agenda.

2. GWM. Director Smiley invited the Board's attention to the Groundwater Management Committee Minutes, included in the Agenda.

V. STAFF REPORTS

A. Manager's/Engineer's Report: Mr. Williamson referred to a letter from Brian Baca, Chief of the County Department of Planning and Land Use, indicating the County's opposition to BWD's proposal to encourage location of solar facilities on fallowed farmland. Jim Engelke noted that Mr. Baca was no longer employed by the County. Also included in the Agenda packet was a letter from Mr. Williamson to Abby King, Chairman of the Community Sponsor Group, outlining BWD's position on the solar energy location. The draft ACWA Strategic Framework for Sustainable Groundwater Management in California was also included in Mr. Williamson's written report, and he welcomed comments.

B. Operations Report: Mr. Rolwing reported that operations were moving along smoothly.

VI. ATTORNEY'S REPORT

To be presented following the closed session.

VII. CLOSED SESSION

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

Property: 141-030-24
District Negotiator: Richard Williamson
Negotiating Parties: Dennis Avery
Under Negotiation: Consideration for real property and terms of same.

B. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION – Reference Government Code section 54956.9(b) one potential case:

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

Property: 140-030-03, 140-030-05
District Negotiator: Richard Williamson
Negotiating Parties: Lance Lundberg
Under Negotiation: Consideration of restrictive water use easement and terms of same.

D. 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

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

Property: Interest in real property known as: 140-070-24
District Negotiator: Richard Williamson
Negotiating Parties: Borrego Sunshine Farms, LLC
Under Negotiation: Consideration for interest in real property and terms of same

The Board adjourned to closed session at 12:20 p.m., and the open session reconvened at 12:40 p.m. Ms. Burns reported that the Board gave direction to the District Negotiator and Legal Counsel regarding Items VII.A through E.

VI. ATTORNEY'S REPORT (continued)

Ms. Burns reported that the Government Code provides for a vacancy to occur when a Board member fails to discharge his or her duties of office for three consecutive months without reporting a medical condition or prior approval for absence. This has occurred with respect to Director Rita Andersen. Once the Board makes the finding and declares a vacancy, it must be posted in three conspicuous locations for at least 15 days, and then an appointment can be made. President King suggested posting at the District office, Post Office and Center Market. The appointee would hold office until November and then run as an appointed incumbent.

Discussion followed regarding the appointment procedure. The appointment must be made in open session by majority vote of the remaining Board members. It was suggested that after hearing from all candidates, all Directors write the name of their choice simultaneously, then show their selections and vote on the top choice or top two choices. The Code provides for a coin toss in the case of repeated tie votes.

A special meeting was called for Friday, May 28 at 2:00 p.m. for the purpose of making the finding and declaration of a vacancy on the Board. The selection will be made at the Regular June meeting.

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 June 23, 2010 at the Borrego Water District.