

Borrego Water District
AGENDA
Special Meeting of the
Board of Directors
February 15, 2011
9:00 A.M. – 10:30 A.M.
806 Palm Canyon Drive
Borrego Springs, CA 92004

I. OPENING PROCEDURES

- A. Call to Order
- B. Pledge of Allegiance
- C. Roll Call
- D. Comments from the Public and Requests for Future Agenda Items (comments will be limited to 3 minutes)
- E. Comments from Directors and Requests for Future Agenda Items

II. CURRENT BUSINESS MATTERS

- A. Briefing by Jack Simes of the U.S. Bureau of Reclamation on the Southeast California Regional Basin Study (page 2-29)
- B. Discussion and possible action on agreements with William Mills
- C. Discussion and possible action regarding staff report and Due Diligence Committee report on forecasted cash flow of district, line of credit availability, and margin-of-safety reserve requirements. (page 30)
- D. Discussion and possible action regarding Capital Allocation Committee report on auditor's special report of cash expenditures of district.
- E. Discussion and possible action regarding Professional Advisory Committee report on RFP and RFQ processes. (page 31-44)
- F. Discussion of and possible action regarding MOTION 2011-02-01: regarding a vote to authorize the Professional Advisory Committee to retain advisors to assess and clarify the economic and California water law aspects of the district's present land/water credits purchase program and strategy to address the overdraft. (page 45-46)
- G. Discussion of and possible action regarding MOTION 2011-02-02: regarding a vote to enable the Professional Advisory Committee to retain advisors for the purpose of developing a plan to address the district's present financial situation. (page 47)
- H. Discussion of policy 2003-5-1, as amended 01/12/11: directors and officers responsibilities and limitations.
- I. Discussion of agenda items for Board regular meeting scheduled for February 23, 2011
- J. Consideration and approval of RESOLUTION 2011-02-01 *Resolution of the Board of Directors of the Borrego Water District revising the schedule of regular meetings.* (page 48-49)

III. CLOSING PROCEDURE

- A. **Adjournment** The next Regular Meeting of the Board of Directors is scheduled for February 23, 2011.

AGREEMENT
BETWEEN
Borrego Water District
AND
Bureau of Reclamation, Department of the Interior
for the
SOUTHEAST CALIFORNIA REGIONAL BASIN STUDY

THIS AGREEMENT for the Southeast California Regional Basin Study (Study) is made and entered into this ____ day of _____ 201_, by the Borrego Water District (BWD) and the United States Department of the Interior, Bureau of Reclamation (Reclamation) Southern California Area Office (SCAO), hereinafter collectively referred to as the “**Partners.**”

I. Purpose of the Agreement:

The Partners agree to work collaboratively to perform the Study. This Agreement establishes the terms for funding the Study and the terms and conditions that will help guide the performance of the Study.

II. Definitions:

- A. Reclamation means the United States Department of the Interior, Bureau of Reclamation.
- B. LC Region means the Lower Colorado Region of the Bureau of Reclamation.
- C. SCAO means the Southern California Area Office, Bureau of Reclamation.
- D. BWD means the Borrego Water District (or the District) who contributes monetary value and/or in-kind services during the course of this study.
- E. Partners mean Reclamation and the District, also referred collectively as the parties.
- F. Parties mean either Reclamation or the District.
- G. Stakeholder means any entity that is not Reclamation or another water agency that may provide input, data, comments, or participate in the public involvement process related to the Study. Reclamation and the District may invite Stakeholders to study-related meetings where their input and/or expertise are desired.
- H. Confidential Information means trade secrets or commercial or financial information that is privileged or confidential under the meaning of 5 U.S.C. §552(b)(4). However, this

Agreement and the documents that are shared pursuant to this Agreement must comply with relevant Freedom of Information Act (FOIA) and State open records act laws.

- I. Term of Agreement means that period set forth under Section X, Article A.
- J. Subject Invention means any invention or discovery, which is or may be patentable under Title 35 of the United States Code, conceived or first actually reduced to practice in the performance of work under this Agreement.
- K. Project Team provides expertise, experience, and knowledge that relate to the Study's scope and objectives. Members include staff from Reclamation's SCAO, LC Region, Technical Services Center (TSC), and the District and other water agencies staff who may be contacted to provide specific information, knowledge, and/or support.

III. Purpose of the Study:

Reclamation's SCAO collaborated with the District and three other cooperating regional water districts – Imperial Irrigation District (IID), Coachella Valley Water District (CVWD), and San Diego County Water Authority (SDCWA) – to develop a proposal that was submitted in June 2010 to the Basin Study Program. Additional stakeholders provided letters of support. This proposed study approach incorporates the following:

- Assess past and present regional and local planning studies within the Borrego, Coachella and Imperial Valleys and any relative basin west of the Borrego Valley in southeast California (within San Diego County);
- Conduct a “bottom-up” approach to regional water and related resources planning that integrates and engages partner collaboration;
- Expand collaborative outreach to major water users and stakeholders within the designated watersheds; and
- Use advanced science and technology regarding climate change scenario and greenhouse emissions modeling, and watershed adaptation planning.

The District acknowledges that Reclamation may utilize this Study to meet portions of the Secure Water Act (42U.S.C. §10363).

IV. Study Approach, Expected Outcomes and Deliverables:

- A. The Study will be technically oriented, incorporating information from the latest science, engineering technology, climate models, and innovations. The level of analysis of the strategies and options will be similar to an appraisal-level study. The Study will take a collaborative approach and foster Stakeholder participation and input throughout the Study process.

B. Management of the Study will be accomplished through the designation of Co-Study Managers:

1. One Co-Study Manager will be designated from Reclamation and one from the District. The Co-Study Managers will comprise the Study Steering Team.
2. The Study Steering Team will guide the study efforts such that the objectives are met in an effective and efficient manner and within both financial and time constraints.
3. The Project Team will ensure that the five major tasks and related sub-tasks in this Study are completed in a cost-effective, timely manner and are technically sound. Members of the Project Team may provide expertise, experience, and/or knowledge that relates to the Study's scope and objectives, or they may form workgroups with other water and related agency staff or other interested entities that may be contracted to provide specific information, knowledge, and/or support. The Co-Study Managers will lead the Project Team.

C. The primary products of this Study will be an interim written reports to be integrated into a final report that will include the following key task elements, they will:

- Assess optimal water utilization, conveyance and storage alternatives that address southeastern California issues;
- Characterize current regional water supply and demand, and conveyance and storage alternatives in southeastern California;
- Assess risk(s) to southeastern California water supplies though historical climate change variability, and future climate change and scenario modeling projections;
- Identify potential strategies and options to resolve southeastern California water supply and demand imbalances including;
- Identify potential legal and regulatory constraints and analysis of potential impacts to water users and southeastern California resources for the strategies and options considered; and
- Prioritize identified strategies and options and recommendations for potential future actions, including an engineering and economic feasibility study, Congressional authorization, environmental compliance activities, demonstration programs, and/or implementation as appropriate.

V. Plan of Study

The Plan of Study (POS) is attached hereto and incorporated herein as Exhibit B. All Parties acknowledge that as the Study progresses, additional detailed tasks and/or sub-tasks may be determined by the Project Team and must be approved by the Steering Team. If the Project

Team determines that substantial changes or modifications to the POS are necessary, the Parties may amend Exhibit B by mutual written agreement.

VI. Study Cost and Funding

- A. The total estimated cost of this Study is approximately \$850,000 and will be cost-shared equally (50/50) between the Parties, each contributing half, or \$425,000 respectively. Note: In the event that Tasks 4 & 5 in the Plan of Study that's attached at Exhibit B requires additional funds to complete them, a projected estimate will be generated and shared with parties and they will be responsible for half of that cost.
- B. No later than July 11, 2011, the District shall contribute to this study with an approved 'in-kind services' listing; and no later than October 11, 2011 the sum of \$12,000 'in cash' will be provided to Reclamation. In addition, by the expiration date of this Agreement, the District will contribute the balance of their financial obligation as cash or in-kind services by performing concurrent studies to provide information and data integral to this Study's objective. All cash funds contributed by the District will be deposited within a designated Reclamation study cost account.
- C. In the event that any funds advanced to Reclamation by the District are not required to complete the work under the Study, such excess funds shall be returned by Reclamation without interest upon completion of the work defined by the Study provided, however, that in the event the Parties agree on additional work consistent with the direction of this Agreement, such excess funds may be retained by Reclamation.

VII. Authorities

- A. Nothing in this Agreement alters the statutory authorities or any other authorities of Reclamation or the District. This Agreement is intended to facilitate cooperative efforts for mutual provision of services and support and technical assistance by both Parties in the conduct of meeting the objectives and scope of the Study. This Agreement does not supersede or void existing agreements between Reclamation and the District.
- B. Reclamation's authority to enter into this Agreement:
 - 1. Reclamation Act of June 17, 1902 (Ch. 1093, 32 Stat. 388; 43 U.S.C. §372, et seq.) and acts amendatory thereof and supplementary thereto.
 - 2. The Sundry Civil Expenses Appropriations Act, March 4, 1921, 43 U.S.C. §395 (Contributed Funds Act).
- C. The District's authority to enter into this Agreement:
 - 1. The Borrego Water District (District) is a public agency;

2. The District has legal authority to construct, operate, maintain and rehabilitate projects for irrigation, municipal, and/or industrial water supplies pursuant to; and
3. The District has legal authority to enter into agreement and participate as a full partner with Reclamation under the WaterSMART's Basin Study Program.

VIII. Anti-Deficiency Act:

The expenditure or contribution of any funds for the performance of any obligation of any Party under this Agreement shall be contingent upon appropriation or allotment of funds for the payment of such obligation. No liability shall accrue to any Party in case funds are not appropriated or allotted. No provision herein shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. §1341.

IX. Reports:

- A. Freedom of Information Act (FOIA), 5 U.S.C. §552, Disclosures: The Parties understand and agree that all communications, including this Agreement, may be disclosed to the public in accordance with the FOIA process unless protected under any FOIA exemption. And, similarly, there is a State open records act in California (Code §§ 6250-6276.48) that may require the Parties to disclosure to the public in accordance with State law, unless protected by exemption.
- B. Final Reports: The results of this Agreement and the science, engineering, and technology data that are collected, compiled, and evaluated under this Agreement shall be shared and mutually interchanged by the District and Reclamation. A final report summarizing all data and findings shall be prepared by Reclamation and the District. Reclamation and the District shall have 60-days to review the manuscript prior to submission for publication. The report shall acknowledge this Agreement and the contribution of each Party's personnel and any Stakeholders contributions that are requested by Reclamation and/or the District. The final content of the Report will be determined by Reclamation and the District.

X. Term and Termination:

- A. Term: This Agreement shall take effect upon the approval of the Parties and, unless earlier terminated by the Parties, will expire on January 31, 2012, unless amended.
- B. Amendment: If any Party desires to modify this Agreement, all Parties shall confer in good faith to determine the desirability of such modification. Such modification shall not be effective until a written amendment is signed by all Parties.
- C. Withdrawal: Either Party may withdraw from this Agreement at any time, with or without cause, and without incurring liability or obligation to the other Party by providing notice to the other Party at least ninety (90) calendar days prior to withdrawing from this Agreement. Notwithstanding the above, if the District withdraws from this Agreement it

shall forfeit any funds provided to Reclamation under this Agreement prior to the date of withdrawal.

XI. Key Personnel:

- A. Each Party shall designate key personnel for receipt of notices and other purposes under this Agreement (Key Personnel). The Key Personnel for each Party are listed in Exhibit A, which is attached hereto and incorporated herein.
- B. Should a Party designate new Key Personnel during the term of this Agreement, the Party shall provide the other Parties with notice of the name of its new designated Key Personnel in accordance with Section XII.
- C. The Key Personnel are not authorized to change or interpret with authority the terms and conditions of this Agreement.

XII. Notices:

Notices, requests, demands, or other communications between the Parties under this Agreement, including copies of any correspondence among the scientific and/or technical representatives of each Party that interpret or may have a bearing on the legal effect of this Agreement's terms and conditions, shall be sent to the Key Personnel listed in Exhibit A. Notice will be sufficiently given for all purposes as follows:

- A. Personal Delivery: When delivered to the recipient, notice is effective upon delivery.
- B. United States Mail: When mailed, postage prepaid, by first class mail, notice is effective three business days after the date the notice is mailed by the sender. When mailed, postage prepaid, by certified mail, return receipt requested, notice is effective on receipt, if a return receipt confirms delivery.
- C. Overnight Delivery: When delivered by an overnight delivery service such as Federal Express, charges prepaid or charged to the sender's account, notice is effective on delivery, if delivery is confirmed by the delivery service.

XIII. General Provisions:

- A. Limitations: This Agreement sets out the Parties' intentions and objectives and does not direct or apply to any person besides the District and Reclamation. This Agreement is not intended to, and does not create, any right, benefit, and/or trust responsibility, substantive or procedural, enforceable at law or equity, by anyone against the United States, its agencies, its officers, or any person.
- B. Subcontracting Approval: A Party hereto desiring to obtain and use the services of a third party via contract or otherwise shall give prior notice to the other Parties, including

details of the contract or other arrangement. This requirement is to assure that confidentiality is not breached and rights in Subject Inventions are not compromised.

- C. Assignment: No Party has the right to assign this Agreement or any of its responsibilities hereunder.
- D. Endorsement: This Agreement and/or the results of the Study funded under this Agreement are not to be construed as an endorsement of the results of the Study by the Federal government or BWD, except as may be explicitly stated by an authorized representative of the Federal government or by an authorized representative of the District.
- E. Disputes: Any dispute arising under this Agreement, which cannot be readily resolved, shall be submitted jointly to the Key Personnel, identified in Exhibit A, Key Personnel. Each Party agrees to seek in good faith to resolve the issue through negotiation or other forms of nonbinding dispute resolution processes mutually acceptable to the Parties. Pending the resolution of any dispute or claim, each Party agrees that performance of all obligations shall be pursued diligently.
- F. Force Majeure: No Party shall be liable for any unforeseeable event beyond its reasonable control not caused by the fault or negligence of such Party:
 - 1. Which causes the Party to be unable to perform its obligations under this Agreement; and
 - 2. Which it has been unable to overcome by the exercise of due diligence.
 - 3. This includes, but is not limited to, flood, drought, earthquake, storm, fire, pestilence, lightning and other natural catastrophes, epidemic, war, riot, civil disturbance or disobedience, strikes, labor dispute, failure or sabotage of any Party's facilities or any order or injunction made by a court or public agency.
- G. Governing Law: The construction, validity, performance, and effect of this entire Agreement shall be governed by the laws applicable to the Government of the United States of America in accordance with applicable Federal Law as interpreted by Federal Courts.
- H. Waiver: The failure of any Party to enforce any term hereof shall not be deemed a waiver of any rights contained herein.
- I. Severability: In the event any provision of this Agreement is determined to be invalid or unenforceable under any controlling law, the invalidity or unenforceability of that provision shall not in any way affect the validity or enforceability of the remaining provisions of this Agreement.
- J. Counterparts: This Agreement may be executed in duplicate and each original shall be equally effective.

- K. Sovereign Immunity: The Parties do not waive their sovereign immunity by entering into this Agreement, and each fully retains all immunities and defenses provided by law with respect to any action based on or occurring as a result of this Agreement.
- L. Third Party Beneficiary Rights: The Parties do not intend to create in any other individual or entity the status of third party beneficiary. The rights, duties, and obligations contained in this Agreement shall operate only among the Parties and shall inure solely to the benefit of the Parties to this Agreement.
- M. All contractors shall strictly comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.
- N. Drafting Considerations: Each Party has participated fully in the drafting, review and revision of this Agreement, each of whom is sophisticated in the matters to which this Agreement pertains, and no Party shall be considered to be the sole drafter of this Agreement.
- O. Officials Not To Benefit: No Member of or Delegate to the Congress, or Resident Commissioner, shall benefit from this Agreement other than as a water user or landowner in the same manner as other water users or landowners.
- P. Entire Agreement: The terms and conditions contained in this Agreement constitute the entire Agreement and understanding by and among the Parties and shall supersede all other communications, negotiations, arrangements and agreements either oral or written, with respect to the subject matter herein.

IN WITNESS WHEREOF, the Partners hereto have caused this Agreement to be executed.

Approved as to form: **Borrego Water District**

By _____
Jerry Rolwing, Acting General Manager Date

Approved as to form: **Bureau of Reclamation**

By _____
William J. Steele, Area Manager Date

SOUTHEAST CALIFORNIA REGIONAL BASIN STUDY

**Exhibit A
Key Personnel:**

Organization	Primary Contact	Contact Information
Borrego Water District (BWD)	Jerry Rolwing	Engineering & Operations Manager 760-767-5806 jerry@borregowd.org

Reclamation Key Personnel

Region	Primary Contact	Contact Information
SCAO	Bill Steele	Area Manager 951-695-5310 ext. 13 wsteele@usbr.gov
SCAO	Greg Krzys	Water Resources Planner 951-695-5310 ext. 19 gkrzys@usbr.gov

Exhibit B.

**Southeast California Basin Study
Plan of Study (Attached)**

Exhibit C

**Southeast California Basin Study
Public Involvement Plan (Attached)**

RECLAMATION

Managing Water in the West

Plan of Study for the Southeast California Regional Basin Study

A Water Supply, Conveyance and Storage Assessment



U.S. Department of the Interior
Bureau of Reclamation

December 2010

Agenda page 13

Contents

	Page
Introduction	1
Study Purpose & Objectives	2
Study Management	3
Study Schedule, Phases, & Products	3
Schedule	3
Study Milestones	4
Tasks	4
Budget	6
Products	6
Appendix A – References	1
Appendix B – Location Map	1

Introduction

The Bureau of Reclamation (Reclamation) completed a series of Inland Basins Project reports from 1965-1972. The reports inventoried the land and water resources in a region, development levels, and potential future water needs. In 1968, an interim report in this series was completed for the Borrego Valley area. Two report sections have strong implications for the southeast California region of today. The first section was the expected population, agricultural and industrial growth in the Borrego Valley, which would place more demand on the sole source of water supply – groundwater – resulting in overdraft. The second report section detailed three (3) potential sources of water and the possible conveyance routes to deliver the water to the Borrego area. These sources and routes included seawater desalination or import through the San Diego County Water Authority (SDCWA) system delivered via Pauma Valley and Lake Henshaw; brackish groundwater, import or treated agricultural return flows from Coachella Valley Water District (CVWD) delivered along the northwest side of the Salton Sea; and seawater/brackish groundwater desalination, treated agricultural return flows or import from Imperial Irrigation District (IID) delivered along southwest side of the Salton Sea.

Today, all three sectors – population, agriculture and industry – have expanded since the 1960's along with their water demands placing the Borrego Valley aquifer in an overdraft of 15,000 acre-feet per year (AFY). The USGS estimates that the upper aquifer may be depleted in as little as 50 years. Just as in Borrego, water supply demands have grown throughout the southeast California region. The San Diego, Riverside and Imperial county areas identified in 1968 as possible water supply sources for the Borrego Valley now face their own supply challenges. Reclamation proposes to work with a broad range of stakeholders including the Borrego Water District (BWD), IID, CVWD and SDCWA to update the 1968 reconnaissance report to an appraisal level evaluating a range of water supply, storage and conveyance alternatives including the 1968 sources that could be a regional benefit to all parties. The study area will be eastern Riverside County, and all of Imperial and San Diego counties.

Issues that will be addressed in the study include Borrego Valley aquifer overdraft and potential storage capabilities; IID's Colorado River entitlement over/under-runs and storage alternatives; CVWD's Colorado River entitlement over/under-runs and storage alternatives, and supply delivery alternatives to the Salton City area; treatment and storage alternatives of IID and CVWD agricultural return flows and perched groundwater; alternative delivery and storage options for SDCWA's Colorado River allotment; and maintaining a no adverse effect on the Salton Sea and/or associated archaeological-cultural resources and biological resources.

Study Purpose & Objectives

Reclamation's Southern California Area Office (SCAO) in partnership with the Borrego Water District collaborated with three regional water districts – Imperial Irrigation District, Coachella Valley Water District, and San Diego County Water Authority – to develop a proposal that was submitted in June 2010 to Reclamation's Basins Study Program (Program). Additional stakeholders in this Region provided letters of support. In September 2010, the study was selected for partial funding to develop a plan of study. If that plan is approved by Reclamation then additional Federal funds will be available to match the District's cost share.

The primary goals of this study are to develop and analyze alternative solutions to improve southeast California's regional water supply utilization, storage and conveyance capabilities. This study will also coordinate with other regional planning efforts (e.g., California's Integrated Regional Water Management Planning efforts, and the Colorado River Basin Study), and other federal agencies (USGS) working on water related issues.

The study will assess optimal water utilization, conveyance and storage alternatives that address southeastern California issues through:

- Characterize current regional water supply and demand, and conveyance and storage alternatives in southeastern California;
- Assess risk(s) to southeastern California water supplies through historical climate change variability, and future climate change and scenario modeling projections;
- Identify potential strategies and options to resolve southeastern California water supply and demand imbalances including:
 - Modifications to the operating guidelines or procedures of water supply systems;
 - Modifications to existing facilities and development of new facilities;
 - Modifications to existing water conservation and management programs and development of new programs;
 - Modifications to existing water supply enhancement programs and development of new programs; and
 - Other structural and non-structural solutions.
- Identification of potential legal and regulatory constraints and analysis of potential impacts to water users and southeastern California resources for the strategies and options considered; and
- Prioritization of identified strategies and options and the recommendation for potential future actions, including an engineering and economic feasibility study, Congressional authorization, environmental compliance activities, demonstration programs, and/or implementation as appropriate.

Study Management

One Co-Study Manager will be designated from Reclamation and Borrego Water District. The Co-Study Managers will sit on and lead the Steering Team. The Steering Team will consist of technical representatives from Reclamation, BWD, CVWD, IID, and SDCWA. Other technical members may be appointed to the Steering Team if needed. Team members will collaborate and ensure all the Study tasks are completed in a cost-effective, timely manner, and are technically sound. Members of the Steering Team provide the expertise, experience, and knowledge that relate to the Study's scope and objectives.

Study Schedule, Phases, & Products

The proposed Study will upgrade the 1968 reconnaissance investigation to an appraisal-level analysis. The Study will be broken out into five tasks with corresponding subtasks that address three major phases: Water Supply and Demand Assessment, Climate Change and Scenario Modeling Analysis, and Strategies, Options and Appraisal Level Analysis.

Schedule

The Study will be conducted over a two year period beginning in January 2011.

Phase	2011				2012			
	Jan- Mar	Apr- Jun	Jul- Sep	Oct- Dec	Jan- Mar	Apr- Jun	Jul- Sep	Oct- Dec
Characterize water supply & demand ¹								
Climate change & scenario modeling ²								
Options & appraisal level analysis								
Identify strategies & Options ³								
Identify legal & regulatory constraints ⁴								
Prioritize strategies & options ⁵								

See last footnote⁶

¹ These tasks were covered in the original June 2010 Basin Study proposal under Tasks 1 and 5

² This task was covered in the original proposal under Task 2

³ This task was covered in the original proposal under Task 3 & 4

⁴ This task was covered in the original proposal under Tasks 1, 3 and 7

⁵ This task was covered in the original proposal under Tasks 6 and 7

⁶ Task 8 in the original proposal is addressed throughout current Tasks 1-5

Study Milestones

Milestone:	Deliverable Description:
Dec 10	Update Plan of Study, Define Scope of Work
Jun 11	Water supply and demand assessment report
Dec11	Draft climate change and scenario modeling report
Mar 12	Draft report on study strategies and options
Jun 12	Draft report on legal and regulatory constraints
Sep 12	Draft final report and appendices
Dec 12	Final Study report and appendices

Tasks

Task 1 Water Supply Assessment:
1.1 Review & Select Methods to Estimate Current Supply: <ul style="list-style-type: none"> 1.1.1 Historic Observed Record 1.1.2 Paleo Record 1.2 Review & Select Methods to Project Future Supply <ul style="list-style-type: none"> 1.3 Conduct Assessment of Current Supply 1.4 Conduct Assessment of Future Supply
Task 2 Water Demand Assessment:
2.1 Review & Select Methods to Estimate Current Demands <ul style="list-style-type: none"> 2.2 Review & Select Methods to Project Future Demands 2.3 Conduct Assessment of Current Demands 2.4 Conduct Assessment of Future Demands
Task 3 Water Supply and Demand Assessment Report:
3.1 Prepare Draft Interim Report <ul style="list-style-type: none"> 3.2 Peer Review Report 3.3 Prepare & Publish Interim Report
Task 4 Climate Change and Scenario Modeling:
4.1 Coordinate BCM-climate change modeling efforts with local and regional stakeholders <ul style="list-style-type: none"> 4.1.1 Enhance, modeling capability as needed to incorporate methods to project future supply 4.1.2 Conduct sensitivity analysis of selected methods to project future supply 4.2 Develop range of 3-5 future demand scenarios for residential, agricultural and industrial demands <ul style="list-style-type: none"> 4.2.1 Develop model parameters to incorporate methods to project future demands 4.3 Determine Baseline System Reliability <ul style="list-style-type: none"> 4.3.1 Determine Baseline Scenario Modeling Assumptions 4.3.2 Prepare Model to Simulate Baseline Scenario 4.3.3 Perform Model Simulations 4.3.4 Synthesize & Analyze Model Results

- 4.3.5 Summarize Model Results
- 4.4 Project Future System Reliability
 - 4.4.1 Determine Future Scenario Modeling Assumptions
 - 4.4.2 Prepare Model to Simulate Future Scenarios
 - 4.4.3 Perform Model Simulations
 - 4.4.4 Synthesize & Analyze Model Results
 - 4.4.5 Determine Modeling Assumptions for Supply/Demand Opportunities
 - 4.4.6 Prepare Model to Simulate Future Conditions Under Supply/Demand Opportunities
 - 4.4.7 Perform Model Simulations with Supply/Demand Opportunities
 - 4.4.8 Synthesize & Analyze Model Results
- 4.5 Prepare Draft Interim Report
- 4.6 Peer Review Report
- 4.7 Prepare & Publish Interim Report

Task 5 Strategies, Options and Appraisal Level Analysis:

- 5.1 Develop Opportunities:
 - 5.1.1 Identify Opportunities
 - 5.1.2 Determine Preliminary Opportunities for Evaluation
 - 5.1.3 Analyze Opportunities (Preliminary)
- 5.2 Evaluate & Refine Opportunities:
 - 5.2.1 Technical & Economic Feasibility
 - 5.2.2 Uniform Cost Comparison
 - 5.2.3 Environmental Impacts/Permitting Requirements
(e.g., Salton Sea, Environmental Justice, ESA)
 - 5.2.4 Economic and Socioeconomic Impacts
 - 5.2.5 Legal and Public Policy Considerations
(e.g., Law of the River, QSA)
 - 5.2.6 Risk and Uncertainty
 - 5.2.7 Others
 - 5.2.8 Assessment of Effectiveness
 - 5.2.9 Potential Yield
 - 5.2.10 Timeframe for Implementation
 - 5.2.11 Agreements or Partnerships Needed
 - 5.2.12 Cost Allocation
 - 5.2.13 Sitting
- 5.3 Finalize Opportunities:
 - 5.3.1 Determine Ability of Opportunities to Resolve Imbalances
- 5.4 Prepare Draft Interim Report
- 5.5 Peer Review Report
- 5.6 Prepare & Publish Interim Report

Budget

Task	Role / Responsibility	Estimated Cost
Task 1	Study Team	\$57,270.00
Task 2	Study Team	\$40,050.00
Task 3	Study Team	\$10,500.00
Task 4	Reclamation	\$254,000.00
Task 5	Study Team	\$395,391.00
	Subtotal	\$757,211.00
	Study Management (10%)	\$832,932.10
	Total	\$832,932.10
Note: In Task 4 & 5 additional funding may be requested to complete these actions		

Products

The primary products produced in this Study will be interim written reports to be integrated into a final report that will include the following elements:

- Characterization of current and projected water supply and demand;
- Characterization of climate change impacts on supply and demand;
- Assessment of future residential, agricultural and industrial demand scenarios;
- Development and evaluation of options for balancing supply and demand;
- Description of methods and research processes, including assumptions, models and data used in the Study; and
- Description of stakeholder involvement.

Appendix A – References

Borrego Valley:

Borrego Water District, *Groundwater Management Plan*, September 2002.

_____, *Groundwater Management Plan*, September 2002. U.S. Geological Survey Open-File Report 87-4199.

_____, *Water Use Survey, 2008*. Rolwing, J.R.

_____, *Integrated Water Resources Management Plan, March, 2009*.

California Department of Water Resources, *Borrego Valley Water Management Plan*, 1984.

_____, Southern District, *Canvass of Wells in Borrego Springs area*, in progress.

_____, Southern District, *Groundwater Basin Assessment, 2002*.

_____, Southern District, *Groundwater Basin Assessment, 2004*

_____, *California's Groundwater, Update 2003*, Bulletin 118, October 2003.

_____, *Special Report for the XXVI Border Governors Conference*, July, 2008.

_____, *Water & border area climate change, an introduction*, July, 2008.

Ellis, D. and M. Ross. 2007. An Interpretation of Geologic Materials Encountered in the Boring of Borrego Water District Monitoring Well MW-5. Technical Information Record SD-07-02.
Henderson, T.W., *Hydrogeology and Numerical Modeling of the Borrego Valley Aquifer System*, Master's Thesis, San Diego State University, Fall 2001.

Mills, W.R. 2009. Borrego Water District Integrated Water Resources Management Plan.

Moyle, Jr., W.R., *Water Resources of Borrego Valley and Vicinity, California, Phase 1— Definition of Geologic and Hydrologic Characteristics of Basin*. U.S. Geological Survey Open-File Report 82-855, 1982.

_____, *Water Resources of Borrego Valley and Vicinity, California, Phase 2— Development of Ground-Water Model*. U.S. Geological Survey Open-File Report 87-4199.

Netto, Steven, *Water Resources of the Borrego Valley, San Diego County, California*.

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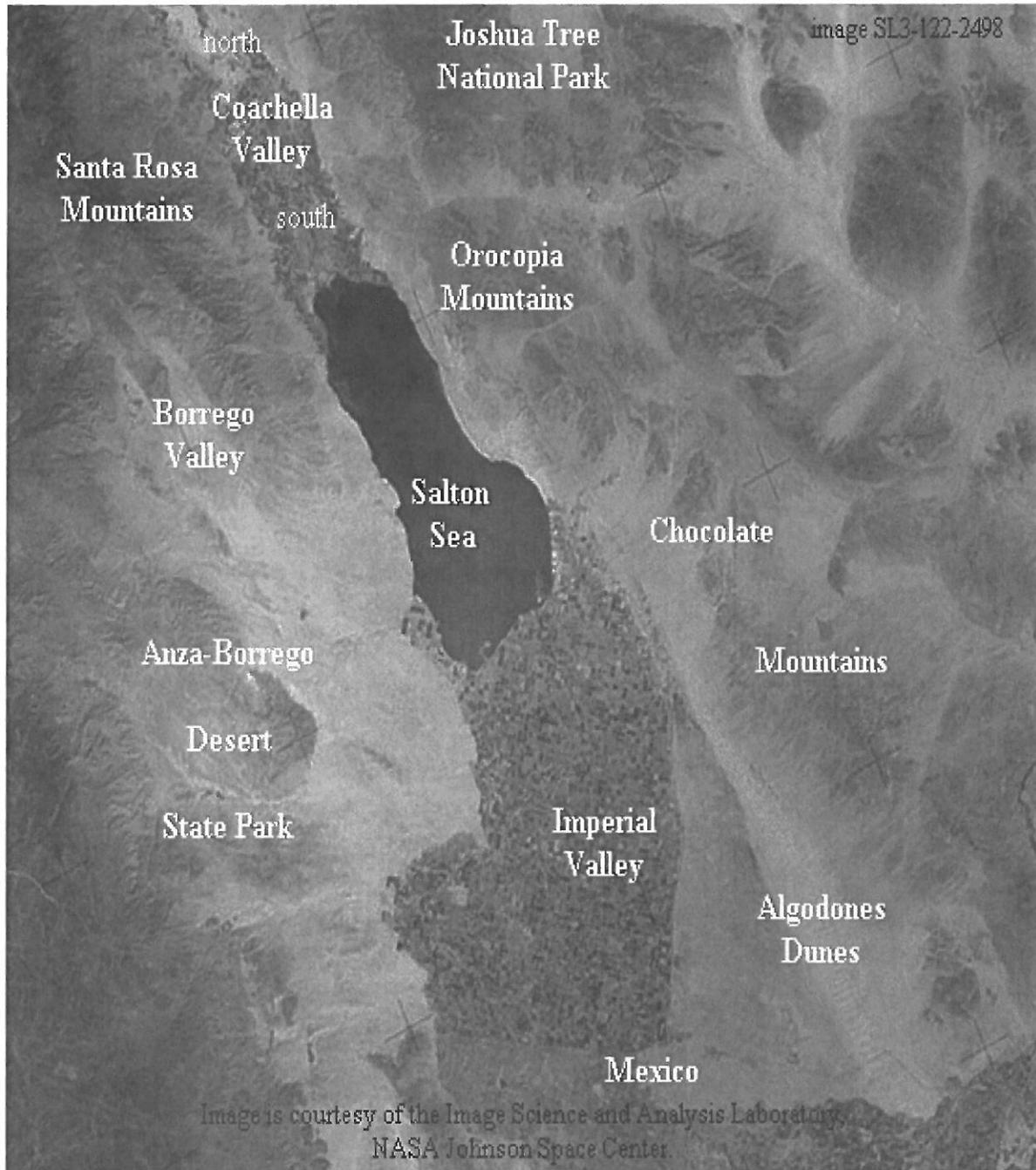
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Appendix B – Location Map



Hi Jerry,

Below is a set of somewhat more complete questions that I have for the BoR presentation on the 15th:

- 1) In the draft BoR Memorandum of Understanding (MOU), I noticed there was no mention of the recognition of the in-kind services contributed by BWD for its portion of the cost of the study. Only the \$12,500 cash contribution for up-front planning costs was mentioned. Is it possible, as part of the MOU, to explicitly recognize the in-kind contributions from BWD and to specify that BoR will not require any additional cash contributions from BWD for the completion of this study?
- 2) Depending on which water resources or legal water law expert one talks to, the range of probabilities of finding dependable, potable supplies of excess Colorado River water in the region and piping this water for recharge or water banking to the Borrego Valley Groundwater Basin range from 1.00 (certainty) to zero (implausible and improbable). That such a wide range of expert opinion exists recommends the BoR study. What data do you already possess that suggests a probability of locating excess regional supply that can be economically transported to the Valley's basin to augment its supply?
- 3) Locating a regional supply of water for supply augmentation to BWD is only the first part of a long process. If such supply was located in the region through the conclusion of this study in 2012/13, how long do you estimate it might take to complete the engineering, legal and economic analyses and permitting and political processes necessary before the first drop of water was ever received into the basin?
- 4) Locating a regional supply of water for supply augmentation to BWD is only the first part of a long process. If such supply was located in the region through the conclusion of this study in 2012/13, how much do you estimate it might cost to complete the engineering, legal and economic analyses and permitting and political processes necessary before the first drop of water was ever received into the basin?
- 5) Do you have any data as to the engineering, planning, and construction costs of building a pipeline to the basin (e.g cost per mile), say from IID or from SDCWA for storage? Do you have any examples of such pipelines in California that have been built without Federal grants or low-cost financing from the State? That is, do you have any documented case studies of water districts that have financed such projects without Federal or State grants or financing sources?

6) Do you have data as to the annual or life cycle O&M costs of a completed pipeline, one that traverses one of the most active earthquake regions in the United States?

7) Does the BoR have the hydrological data to project how long it would take for the first drop of water for recharge or for water banking to reach the upper aquifer of the basin, once a pipeline to transport this supply is constructed and water starts flowing?

8) Does the BoR have available or does it know of any documents pertaining to California water law as it relates to recharge basins or basins that are used for water banking where water is stored for use by another water district or appropriator.

9) In my discussions with California water law experts and with other water districts in California that are either recharging their basins with supply from outside the basin or storing water for another appropriators use, my understanding is that in each case, some form of court-mediated rights determination is required for all pumpers of the basin as each pumper must pay their proportionate share of the costs for recharge or storage for withdrawals in excess of what they have a determined right to withdraw. Is this also your understanding?

10) My understanding from some of these conversations is also that for financing to build the pipelines necessary to transport water from outside the basin for the purposes of recharge or storage, that prior to the approval of any such financing, rights to withdrawals by pumpers of the receiving basin must be determined so as to ascertain proportionate share of the project costs. Is this also your understanding?

11) If you were an elected director of the BWD, would you place the location of water supply in the region that could be economically transported to the Valley's basin for recharge or for storage purposes, the ability to go through the permitting and political processes for approvals of a pipeline, the ability to secure financing, in a reasonable time before the basin's upper aquifer is dewatered w/in 50-years, as a slam-dunk - that is, 100% assured and therefore should be considered the foundational element of a strategy to address the overdraft of the Borrego Valley Groundwater basin?

--

Lyle Brecht

Statement of Cash Position - BWD as of 01/03/11

Cash on Hand as of 01/03/11	\$901,926
Less: FY'11 Cash Obligations not in budget	
Lift Station	\$227,605
Montezuma Pipeline Replacement	\$40,000
Brian Polley	\$49,700
Viking Ranch Purchase - Execution	\$25,000
Viking Ranch Purchase - Closing	\$50,000
Club Circle Golf Course (estimated loses)	\$49,317
Montesoro Well Purchase	\$70,000
USGS Study	\$135,000
Land purchases legal expenses	\$20,000
Total FY'11 Cash Obligations as of 01/03/11	\$666,622
Cash on Hand Less Total Cash Obligations for FY'11	\$235,304
Cash Available from Operations if FY'11 (Kim's estimate)	\$229,059
Estimated Unrestricted Cash on Hand at Year End June 30, 2011	\$464,363

BORREGO WATER DISTRICT REQUEST FOR PROPOSAL (RFP)
FOR A DUE DILIGENCE STUDY

The Borrego Water District (“BWD”) is a small public water and wastewater district serving approximately 2,000 customers located in Borrego Springs, California. BWD is the only appropriator that withdraws water from the unjudicated Borrego Valley Groundwater Basin, which is in overdraft. The USGS estimates that average annual recharge is 4,000 af/y and average annual withdrawals are 20,000 af/y (2010 estimates). BWD withdraws less than 15% of this total; three overlyers use approximately 15% of these withdrawals for recreational purposes (golf courses); and overlyers use about 70% of these withdrawals for agricultural purposes.

In the past few years, BWD has been paying agricultural users to fallow farmland in exchange for “water credits.” To date, it has agreed to purchase or is contemplating purchasing with Cocopah, water credits that represent the fallowing of approximately 2,136 af/y of overdraft withdrawals from the basin for about \$4,900,000, not including interest expense (\$750K Rudy Monica property; \$1.5M Viking Ranch; \$2.5M. Cocopah). The district plans to recoup the economic cost of this program through the sale of water credits to developers at a profit (e.g. if water credits were sold @ \$5,500/credit, Cocopah would return \$6,957,500 to the district for a cost of \$2,500,000 (plus interest expense).

The Board of BWD would like advice regarding three due diligence questions:

- Are there compelling economic or other arguments why the district should complete the Cocopah Nurseries purchase? [Note: the district presently has a 6-month option that expires on May 29, 2011 to purchase water credits representing 1,265 af/y withdrawals, 230 acres, and 2 deep wells for \$2.5M.]
- Should the district continue with its present water credits purchase program?
- If so, with any modifications; if not, what are the alternatives?

Study Deliverable: A brief that outlines: (1) your initial findings; (2) recommendations to the board regarding the three questions we want answered at this time; (3) the economic and other analyses you used to reach these conclusions; and (4) additional questions/ issues that you believe may need more study for addressing the overdraft of the basin.

RFP Response: Please respond with a proposal that outlines (a) your due diligence process; (b) the documents you require from us; (c) how quickly you can provide an initial assessment; and (d) an estimated not-to-exceed cost for your services.

Proposal Due Date: The proposal is due no later than 2:00 PM Pacific Time, Friday, February 4, 2011 via email to [diana\[at\]borregowd\[dot\]org](mailto:diana[at]borregowd[dot]org).

Proposal Selection Process: The board has established a committee to oversee the selection process and to make a recommendation of advisor. The board wishes to start immediately after selecting an advisor and to complete the deliverable as soon as possible. Any questions should be addressed to Director Lyle Brecht at 410.963.8680 (cell) or [LBrecht\[at\]gmail\[dot\]com](mailto:LBrecht[at]gmail[dot]com).

SUPPLEMENTARY INFORMATION THAT MAY BE HELPFUL FOR RESPONDING TO RFP
FOR A DUE DILIGENCE STUDY ON THE PROPOSED COCOPAH NURSERIES
WATER CREDITS PURCHASE BY THE BORREGO WATER DISTRICT

In November 2010, a new majority of the Borrego Water District (BWD) board was elected. Two weeks before this new board took over, in Special Meetings closed to the public, the old board and the its then general manager (GM) agreed to two agricultural land water credits deals. The first transaction involved purchasing land and water credits from the Viking Ranch. The first the public learned of this transaction was through a press release: http://www.borregowd.org/uploads/PRESS_RELEASE_11.2010.pdf. When a newly elected member of the board asked if he could review the due diligence file, he was told by the GM who negotiated the deal (and who has subsequently left the district) that “no due diligence was needed as the district was getting valuable water credits and the land came along for free.”

The second land and water credits transaction was to pay \$150,000 for an option to purchase land and water credits from Cocopah Nurseries for \$2,500,000. A summary description of this transaction is contained in the RFP: http://www.borregowd.org/uploads/Cocopah_due_diligence_RFP.pdf. When a member of the new board inquired as to the business case for this transaction, he was told: “if water credits were sold to developers @ \$5,500/credit, Cocopah would return \$6,957,500 to the district for a cost of the \$2,500,000 purchase price.”

The creation and purchase of water credits is part of a strategy to deal with the overdraft developed by the previous board and its GM. The strategy and its financial cost to the district over the past three years is outlined in a live RFQ that seeks advisors to the District, including California Water law attorneys who can assist the new board with some of the general legal questions concerning the overdraft contained in the RFQ that impact on strategy and the cost for developing a plan to address the overdraft. You may also wish to consider submitting a proposal for this: http://www.borregowd.org/uploads/Borrego_Water_District_Advisors_RFQ.pdf.

The Cocopah Nurseries land and water credits purchase is problematical just on the basis of its cost to the district, given the district’s current financial situation. However, the Cocopah deal offers the opportunity to better understand some of the water law issues that may also affect this transaction. For example, below are hypotheses regarding water credits that may need to be affirmed or falsified:

- Water credits may be a potentially useful bankable means to satisfy San Diego County’s requirement for mitigation. For example, they appear to be a useful means to move small development projects to high water use agricultural lands. Also, claims are that the

SUPPLEMENTARY INFORMATION THAT MAY BE HELPFUL FOR RESPONDING TO RFP
FOR A DUE DILIGENCE STUDY ON THE PROPOSED COCOPAH NURSERIES
WATER CREDITS PURCHASE BY THE BORREGO WATER DISTRICT

County may not adequately enforce its Mitigation program. The district's water credits program is enforced so following of agricultural lands actually occurs;

- It is unlikely that involving the district in land purchase transactions to create water credits as a means of demand management to extend the life of the aquifer is an economically advantageous means for the district to accomplish this end. Originally, the special water district was formed to prevent exportation of the basin's water to agricultural users outside the Borrego Valley. Additionally, San Diego County's present mitigation policy makes it difficult for new pumpers to enter the basin. Despite these barriers, some claim that as long as the basin remains unjudicated with unmetered wells, there is some economic risk associated with the district's water credits program and the assumption that the life of the aquifer can be extended for a reasonable cost. For example, under the district's water credits program, ratepayers, who are responsible for less than 15% of annual withdrawals, are being asked to pay 100% of the upfront costs for extending the life of the aquifer for the other users who withdraw 85% of the water;
- Purchasing water credits for supply augmentation is a failed strategy for the district. That is because no defined water rights are conveyed with the purchase transaction of overlying land and the creation of water credits.

P R O F E S S I O N A L A D V I S O R Y C O M M I T T E E N O T E S

Committee Meeting: Tuesday, February 1, 2011, 9:00AM - 10:30AM

Attendees: Directors Beth Hart and Lyle Brecht; Jim Melvin, Ray Delahay, Interim GM Jerry Rolwing, Dennis Dickinson, Rebecca Falk, James Rickard.

DISCUSSION ITEMS for Professional Advisory Committee ("PAC")

A. For implementing Motion to seek advisors for the district approved by the Board 01/26/11

ACTION ITEMS:

The committee discussed and approved the draft RFQ, with modifications, to go live on the district's website http://www.borregowd.org/uploads/Borrego_Water_District_Advisors_RFQ.pdf.

NOTES:

- Dennis Ciocca the district's investment banker from Stern Brothers (<http://www.sternbrothers.com/>) put us in touch w/ Doug Dove, President of Bartle & Wells (<http://www.bartlewells.com/>) considered one of the top financial advisory firms for water districts in the state of CA. They were actually BWD's financial advisors in the 1980's for a bond issue then. We sent Doug a draft of the Management Consulting RFQ. The next day we spent an hour discussing the present predicament of the district, potential steps forward, and whether his firm would be interested in responding to the RFQ. In summary:
 - The RFQ as written was perceived as an attractive mechanism to generate interest in assisting the district. His firm will respond;
 - The district must make immediate decisions to live w/in its present revenues to be able to make a viable case for higher rates;
 - The Viking Ranch debt for water credits purchase alone may require higher rates. This transaction may be problematic for the voters agreeing to a rate increase;
 - The district must move w/ speed to determine water rights for pumpers of the basin, but not before it gets its own house in order and has the finances to pursue this necessary strategy. Even if the district ultimately imports water, it must establish who has rights to withdraw a determined amount of water from the basin. All water users must pay for the solution, not just the district's ratepayers.

- We spoke w/ Sanjay Gaur from Raftelis Financial Consulting (Pasadena local office). Raftelis Financial Consulting (<http://www.raftelis.com/>) is considered one of the premier financial advisors providing financial models and rate studies for water districts nationally:
 - Based on the draft RFQ, he would like to assist the district w/ its challenges;
 - The first order of business of the new board should be to seek outside legal advice as to whether the district can cancel any of the agreements that were made by the old board & GM in the last few weeks before the new board took over;
 - The district needs to do a financial model ASAP to get a handle on where to make cuts in its present O&M budget to reduce expenses to match revenues and to project out how much rates need to rise and over what time period;
 - As soon as the district gets its finances in order and has access to the public credit markets again, it must enter a process to determine who has what rights to withdraw specific amounts of water from the basin and develop a plan to address the overdraft;
 - A strategy of doing nothing or relying entirely on importation schemes is too risky. The district should look at a water budget rate structure analysis to see if it is possible to live w/in the basin's recharge rate.
- Professor Joseph Sax (<http://www.law.berkeley.edu/php-programs/faculty/facultyProfile.php?facID=141>), considered one of the top water law experts in CA was provided some basic information about water use in the basin and asked the nine legal questions in the draft Management RFQ. His advice is as follows:
 - What agriculture is doing in their overdraft of your basin is illegal under existing CA state law as it abridges the rights of all other pumpers. However, the state regulatory apparatus refuses to enforce its own laws. The only remedy is to use the courts to determine water rights or to just import water for the district's use and let the basin become dewatered;
 - It is highly unlikely that a prudent strategy for the district would be to rely on the importation of an over allotment of Colorado River water to recharge the basin. It is unlikely this would be a dependable source of water in the future;

- Everyone using water from the basin must be required to share in the cost of maintaining the basin. This is not something the district's ratepayers can do on their own. A court process to determine water rights addresses this requirement for equal cost-sharing among all users.
- "I don't think my consulting work is in your range. I charge \$750/hr with a \$10,000 minimum." He recommended two water law attorneys in Sacramento that he thought we might be able to afford.
- Andrew (Andy) Schlange (former GM of Chino Basin Municipal Water District [<http://www.ieua.org/>], The Santa Ana Watershed Project Authority [<http://www.sawpa.org/>] and the Eastern Municipal Water District [<http://www.emwd.org/>]) put us in touch w/ Mark Wildermuth, President of Wildermuth Environmental (<http://www.wildermuthenvironmental.com/>) who are considered one of the most knowledgeable consultants in southern CA regarding water rights, water credits, and groundwater management planning. Mark, in turn, put us in touch w/ two attorney's specialized in CA water law that he works with. Mark was also familiar w/ the water credits purchase program here in Borrego. In summary, from a number of conversations with these sources:
 - Water credits may be a potentially useful bankable means to satisfy the County's requirement for mitigation. For example, they appear to be a useful means to move small development projects to high water use agricultural lands;
 - It is unlikely that involving the district in land purchase transactions to create water credits as a means of demand management to extend the life of the aquifer is an economically advantageous means for the district to accomplish this end;
 - Purchasing water credits for supply augmentation is a failed strategy for the district. That is because no defined water rights are conveyed with the purchase transaction of overlying land and the creation of water credits.
- Andrew (Andy) Schlange also put us in touch w/ Michael (Mike) O'Connor, President of Michael O'Connor & Associates. Mike is presently the Executive Director of the Salton Sea Authority (<http://www.saltonsea.ca.gov/>), a five agency Joint Powers Agency (Riverside and Imperial Counties, Coachella Valley Water District, Imperial Irrigation District and the Torres Martinez Indian Tribe) that is responsible for the restoration of the Salton Sea and has

served as City Manager for Ontario (<http://www.ci.ontario.ca.us/>), Coachella (<http://www.coachella.org/>) and Lomita (<http://www.lomita.com/cityhall/>):

- The district is in serious financial trouble. The credit markets will cut the district off from issuing new debt (this was before the Stern Brothers report was sent to the board) and without acting quickly to get its use of cash under control will lose credibility with the public. This situation must be addressed and quickly. I can help you.
- The Due Diligence Committee had a half-hour teleconference with Glenn Reiter, President of Glenn M. Reiter & Associates (<http://www.gmrfinance.com/>). Glenn Reiter & Associates have had three successive contracts to provide financial advice to the district for FY2009, FY 2010, and FY2011 (YTD). To date, the district has been billed \$40,000 for this advice. Presently, there is approximately \$39,000 left on the live contracts and no rate study has yet been completed:
 - The primary real cost driver for the district is currently the overdraft situation of the basin. The district must come up with a plan that addresses the overdraft, include the cost of this plan in its capital budget, and sell the plan to the community;
 - Without a workable plan to address the overdraft that can be funded and implemented, property values in the Valley will plummet. A workable plan that has funding can increase property values quickly. The economics for any plan and the alternatives must be done;
 - The ratepayers must not be asked to pay the entire cost of any plan to address the overdraft. Reiter recommends a special tax on all undeveloped parcels of land to help pay for this cost;
 - Having a good 5-year CIP will be required to assess the district's need for a rate increase;
 - Having a better handle on the O&M budget is necessary to assess the district's need for a rate increase;
 - Reiter, as the district's auditors and investment banker also claim, may not have been kept fully in the loop about the district's current financial situation.
- The Due Diligence Committee is working w/ Jerry & staff to develop an 18-month cash flow forecast that hopefully will be available to discuss for the February 15th board meeting.

P R O F E S S I O N A L A D V I S O R Y C O M M I T T E E N O T E S

Committee Meeting: Tuesday, February 8, 2011, 9:00AM - 10:30AM

ATTENDEES: Directors Beth Hart and Lyle Brecht; Jim Melvin, Ray Delahay, Dennis Dickinson, James Rickard, Richard Walker, Ray Schindler.

DISCUSSION ITEMS: Implementing Motions to seek advisors approved by the Board 01/26/11

ACTION ITEMS: (a) To chunk questions that require legal advice and ask the best qualified legal counsel to provide answers to each set of questions rather than picking only one attorney to provide all the advice at this juncture; (b) Submit a motion for the board's February 15, 2011 Special meeting for retaining necessary legal advice.

NOTES: The following proposing respondents were provided the RFP approved by the board January 26, 2011 (http://www.borregowd.org/uploads/Cocopah_due_diligence_RFP.pdf); Supplementary Information to the Cocopah RFP dated February 2, 2011 (see pdf), and the RFQ (http://www.borregowd.org/uploads/Borrego_Water_District_Advisors_RFQ.pdf) approved by the Professional Advisory Committee February 1, 2011 that was initiated by the board approved motion on January 26, 2011 for the PAC to gather data from potential advisors:

Referred by Professor Joseph Sax (see PAC notes_2013111.pdf): Stuart Somach, Somach Simmons & Dunn (Sacramento). David Aladjem, Downey Brand (Sacramento).

Referred by Mark Wildermuth of Wildermuth Environmental (see PAC notes_2013111.pdf): Jill Willis, Best Best & Krieger (Los Angeles). Tom Bunn, Lagerlof Senecal Gosney & Kruse (Pasadena).

Referred by John Delaney (John referred us to David Osias. Jan is his partner) Jan Driscoll, Allen Matkins (San Diego).

In summary, based on written proposals and phone conferences with respondents:

The Cocopah land/water credits transaction may be problematical: (a) without an economically and legally vetted plan to address the overdraft there is no direct way to determine whether this transaction has a strategic value for the district; (b) some of the assumptions the transaction is based on are not valid or cannot be shown to be valid without additional research regarding California water law, data about the basin, information regarding overlayers and their land use, etc; (c) the district acting as market maker for the purchase and resale of water credits for a profit may not be a legally sanctioned use of ratepayer funds;

The USGS study process is too important for the district to treat the engagement as an engineering black box. The district should actively ensure that the relationship provides reliable data necessary to make decisions regarding a plan to address the overdraft;

Relying on importation as the plan to address the overdraft may be too risky, both economically and legally. Even if importation was accomplishable, this may still require rights for withdrawals to be established for basin pumpers as all users would be required to pay their proportionate share to replenish of the basin;

The district must decide on whether withdrawals from the Clark Lake aquifer for its use are either practicable and economical once and for all, rather than leaving this strategic element an unknown in its plan to address the overdraft.

Some of the legal questions necessary to formulate good policy include the following:

- Does California State law prohibit the overdraft of a basin and if so, who is empowered to enforce the state statute?
- Are there any state or federal agencies that oversee the overdraft of a basin and what if any power do they have to correct the matter?
- Are there any public rights or other doctrines that can be pressed to restrict over-drafting? Do pumpers with water rights have an unobstructed right to withdrawal any amount of water when a basin is in overdraft?
- Is there any regulation(s) requiring that overlyers be metered? By what process would a local water district require all basin pumpers be metered?
- Who can apply a pump tax or replenishment fee and by what authority?
- Is adjudication, voluntary or court ordered, the best solution to the overdraft of a basin with a small number of pumpers?
- Does the State Park, which surrounds and is part of the basin, have any power to control overdraft if it adversely affects the flora and fauna within the Park's boundaries?
- There is some possibility in the future to import water to the basin. What are the legal consequences of becoming a replenishment basin?
- Are there statutory or regulatory considerations if the basin were used for storage of water for another entity?

REQUEST FOR QUOTATION (RFQ) FOR ADVICE
TO THE BORREGO WATER DISTRICT

Purpose of RFQ: The purpose of this RFQ is to identify professionals including: legal advisors (district counsel and California water law attorneys), auditors, financial advisors, strategy and planning advisors, and management consultants who are capable and willing to provide ongoing advice to the Borrego Water District.

Background: The Borrego Water District (“BWD”) is a small public water and wastewater district serving approximately 2,000 customers in beautiful Borrego Springs, California, a retirement and resort community located about 70 miles NE of San Diego and surrounded by the Anza-Borrego Desert State Park.

In FY2010, the district’s revenues were approximately \$3,000,000 and its O&M budgeted expenses were about \$3,800,000, of which depreciation was over \$600,000. Water and sewer rates have remained stable for the past 10-years and are lower than those of surrounding communities. Present rates are based on service area/ improvement district (SA/ID) basis. Only ID #4 has COP’s outstanding that are exclusively a pledge of that ID’s revenues.

BWD is the only appropriator of groundwater from the unjudicated Borrego Valley Groundwater Basin, which has been in overdraft since 1945. Present overdraft is estimated at more than 16,000 acre-feet/year (AF/y), if the natural annual recharge is around 4,000 AF/y. BWD accounts for about 3,000 AF/y or less than 15% of annual withdrawals. Unmetered recreational use by overlyers (3 golf courses) annually account for about 15% of the annual withdrawals and unmetered agricultural use by overlyers accounts for about 70% of annual withdrawals. Preliminary results from current USGS models project a complete dewatering of the upper aquifer within 50-years. Presently, there is uncertainty whether economically extractable potable water will be available from the middle and lower aquifers once the upper aquifer is dewatered.

Strategy to Address the Overdraft: In 2002, the district’s plan to address the overdraft based on the assumption that “*obtaining water from state projects and transporting it to the Borrego Valley was prohibitively expensive and much more expensive than following agricultural lands.*”¹ In 2008 a new strategy was developed that assumed that following

¹ See BWD “Groundwater Management Plan” (October 18, 2002), III.

REQUEST FOR QUOTATION (RFQ) FOR ADVICE
TO THE BORREGO WATER DISTRICT

agricultural lands was insufficient and building a pipeline to import water to the Valley to ameliorate the overdraft problem is required. Under this new strategy, the following elements were initiated:

- The United States Geological Survey (USGS) was asked to develop a model that can predict various fallowing and importation schemes' estimated affect water table levels in the basin. This requires the USGS to: (a) estimate present levels of overdraft; (b) estimate the natural annual recharge rate for the basin's watershed; (c) determine the best locations for new wells; and (d) provide a tool for selling storage space in the aquifer. This three-year half-million dollar study will be completed in October 2011 and results from the study will be published in 2012-13 (BWD's cost for this study is approximately \$350,000);
- The Bureau of Reclamation (BoR) was asked to perform a study to determine whether sufficient water is available regionally for importation to establish a recharge basin. This almost million dollar two-year study should be completed in 2012-13 (BWD's cost for this study is in-kind services);
- Efforts were made to secure federal funding to investigate the potential viability of the importation of water from the nearby Clark Lake aquifer for augmenting BWD's water supply;
- The 2002 Groundwater Management Plan's directive to fallow agricultural lands was implemented through a fallowing through water credits purchase program to extend the life of the aquifer beyond its projected life.

Concerns with Strategy: Some public concerns regarding the above strategy include:

- (a) In 1982 the USGS projected 500-years of water in the aquifer, now it projects the aquifer will be dewatered in about 50-years. Why should the public believe the USGS now?
- (b) The BoR study, if any dependable regional water source is available to replenish the basin, assumes that some water authority other than the district is willing to pay for a pipeline to store water in the basin;

REQUEST FOR QUOTATION (RFQ) FOR ADVICE
TO THE BORREGO WATER DISTRICT

- (c) The quantity and quality of the water in the Clark Lake aquifer is still not fully known, a pipeline and water treatment plant may not be economically feasible, and this pipeline may need to cross State Park land; and
- (d) Acting as market maker for the following for water credits purchase program may not be economically fair for ratepayers. Ratepayers' share of use of the aquifer is less than 15% of annual withdrawals but they are being asked to pay 100% of the upfront costs of the district being a market maker for the water credit purchase program.

Present Situation: In November 2010, three new board directors were elected. Of concern is the apparent immediate cost of the present strategy to the district and affect its finances. Historically, the district has produced operating surpluses with its present rate structure (e.g. 2005 +\$387,412, 2006 +\$594,534, 2007 +\$315,031, 2008 + \$112,460). However, in FY2009 and FY2010 collectively, the district produced a \$1,100,000 operating loss under this strategy and related capital spending decisions. The district presently anticipates a \$400,000 operating loss for FY2011.

During the past three years, the district consumed, through December 31, 2010, approximately \$6,400,000 of the \$7,400,000 cash reserves available at the beginning of FY2008, and projects cash consumption for the remaining FY2011 of more than \$600,000 that may leave less than \$400,000 cash available to the district at year-end on June 30, 2011. Also, future cash requirements for two of the capital projects may cost the district an additional \$3,000,000 or so in cash (e.g. 10 annual payments of \$70,000 to complete purchase of well #12 at Montesoro in FY'09 and approximately \$2.5M P&I payments over life of the loan to complete purchase of Viking Ranch water credits in FY'10).

Recently, the district's long-term investment banker has indicated that the district is not presently able to raise funds in the private capital markets. Both its investment banker and its auditors have recommended that the district hold up on a rate study until some decisions are made as to: (a) how it allocates G&A to its operating activities; (b) how it intends to build its rate structure (e.g. based on water and sewer or on SA/ID); and (c) establishes a capital improvements plan that more adequately and clearly projects its near and medium term capital needs over the next 5 to 10-years:

REQUEST FOR QUOTATION (RFQ) FOR ADVICE
TO THE BORREGO WATER DISTRICT

Some Questions Regarding Developing A Strategy to Address the Overdraft:

- Does California State law prohibit the overdraft of a basin and if so, who is empowered to enforce the state statute?
- Are there any state or federal agencies that oversee the overdraft of a basin and what if any power do they have to correct the matter?
- Are there any public rights or other doctrines that can be pressed to restrict overdrafting? Do pumpers with water rights have an unobstructed right to withdrawal any amount of water when a basin is in overdraft?
- Is there any regulation(s) requiring that overlyers be metered? By what process would a local water district require all basin pumpers be metered?
- Who can apply a pump tax or replenishment fee and by what authority?
- Is adjudication, voluntary or court ordered, the best solution to the overdraft of a basin with a small number of pumpers?
- Does the State Park, which surrounds and is part of the basin, have any power to control overdraft if it adversely affects the flora and fauna within the Park's boundaries?
- There is some possibility in the future to import water to the basin. What are the legal consequences of becoming a replenishment basin?
- Are there statutory or regulatory considerations if the basin were used for storage of water for another entity?
- **Advice Requested:** The district seeks timely advice regarding the immediate challenge of a potential cash crunch in the near term. However, without an economically-based strategy to address the overdraft, improving cash flow through tightening operations and a rate hike, etc., may provide only short-term relief. A few questions that the Professional Advisory Committee seeks advice regarding include the following:

REQUEST FOR QUOTATION (RFQ) FOR ADVICE
TO THE BORREGO WATER DISTRICT

- What actions do you recommend that the district consider to improve cash flow to not experience a cash crunch in the near term and to be able to continue with a Proposition 218 process successfully;
- What actions do you recommend that the district consider to improve cash flow to be creditworthy to obtain reasonable cost financing for future capital projects in the near and middle term?
- What amount of cash reserves is reasonable for a district our size for: (a) repair and replacement of physical infrastructure (Borrego lies in the most active earthquake zone in the United States); (b) rate stabilization reserve; and (c) working capital reserve?
- What strategic approaches do you recommend that the district explore, and their potential cost, to more affordably address the overdraft of the basin?

RFQ Response: Please respond with: (a) a 1-3 pp. (not including exhibits e.g. of resume or capabilities statement, etc.) cost proposal for providing advice to the district on any one or more of the above “advice requested” questions; (b) an optional additional cost for you to provide any additional advice you deem important for the district to consider at this time; (c) a list of any documents and need for access to district staff time that you may require in order to develop this timely advice; and (d) an estimate of the date by which your advice can be delivered to the district in draft form for discussion purposes.

RFQ Due Date: Your response is due by 2:00 PM Pacific Time, Friday, February 11, 2011, by email to [diana\[at\]borregowd\[dot\]org](mailto:diana@borregowd.org).

Selection Process: The Professional Advisory Committee has been tasked with overseeing the identification and recommendation of advisors to the district. Any questions should be addressed to Director Lyle Brecht at 410.963.8680 (cell) or [LBrecht\[at\]gmail\[dot\]com](mailto:LBrecht@gmail.com).

Motion 2011-02-01: For the board to authorize the Professional Advisory Committee (PAC) to retain outside counsel, auditors, and other qualified advisors for the purposes of developing due diligence related to the district's water credits purchase program and how this program may be improved to meet the development needs of Valley. The board further authorizes the PAC to spend not-more-than \$_____ on this endeavor without additional board approval.

Rationale: To date, the district has spent more than \$948,000 in cash reserves for the purchase of water credits and has either obligated or is contemplating the expenditure of another \$6,500,000 in principal and interest payments for the purchase of agricultural lands for the purpose of creating water credits that would be purchased by developers to obtain connections to the BWD system.¹ Presently BWD no longer has the funds to purchase agricultural lands for the purpose of creating water credits that can be purchased by developers. This puts an automatic, but unanticipated and unintended constraint on future development in the Valley. Since FY 2007, the district has spent approximately \$675,267 in payments to Stradling, Yocca, Carlson, Rauth, the district's counsel. Yet, despite all this legal work for the district, many of the substantive California water law questions that impact the district's strategy to address overdraft of the basin and that pertain to underlying assumptions related to the use of water credits for development in the Valley appear to have not been sufficiently answered. For example, the district, through its water credits purchase program has put itself in the middle of providing the necessary water credits for use by developers. Thus, development in the Valley is limited by the district's ability to consummate the purchase of farmland for the creation of new water credits. Some legal questions related to improving the current water credits purchase program (e.g. paygo program) include, but are not limited to the following:

- Does California State law prohibit the overdraft of a basin and if so, who is empowered to enforce the state statute?
- Are there any state or federal agencies that oversee the overdraft of a basin and what if any power do they have to correct the matter?
- Are there any public rights or other doctrines that can be pressed to restrict over-drafting? Do pumpers with water rights have an unobstructed right to withdrawal any amount of water when a basin is in overdraft?
- Is there any regulation(s) requiring that overlyers be metered? By what process would a local water district require all basin pumpers be metered?

¹ Principal and interest of approximately \$2.5 million over the term of the Viking Ranch agreement and an estimated \$4.0 million over the term of the Cocopah agreement, assuming this is funded with debt financing.

- Who can apply a pump tax or replenishment fee and by what authority?
- Is a court-determined rights determination process, voluntary or court ordered, the best solution to the overdraft of a basin with a small number of pumpers?
- Does the State Park, which surrounds and is part of the basin, have any power to control overdraft if it adversely affects the flora and fauna within the Park's boundaries?
- There is some possibility in the future to import water to the basin. What are the legal consequences of becoming a replenishment basin?
- Are there statutory or regulatory considerations if the basin were used for storage of water for another entity?

Additionally, respondents to the Cocopah due diligence RFP authorized by the board at its January 26, 2011 meeting and to the RFQ approved by the PAC on February 1, 2011 in response to board direction at its January 26, 2011 meeting, have identified additional due diligence requirements related to the district's water credits purchase program including, but not limited to the following economic and legal questions:

- Has adequate accounting for where the cash came from for purchasing land i.e. either water or sewer reserves and ID/SA fund to create water credits been completed?
- Were requirements for public notice of a potential rate increase followed for the purchase of land to create water credits requiring obligations of outside debt on the part of the district?
- Is the purchase of land to bank water credits by the district for its own account for resale at a profit allowable under California law? That is, can or should the district be a market maker for what may appear to be a speculative financial instrument if it is held for future resale?
- Is the purchase of agricultural land by the district for the purpose of fallowing and the creation of water credits consistent with California water law in an overdraft basin where water rights for withdrawals have not been established?
- Does the purchase of agricultural land by the district for the purpose of fallowing and the creation of water credits consistent with an economically and legally-based strategy for dealing with the overdraft of the basin and encouraging development in the Valley?

In summary, the advice the district has received in its RFP and RFQ processes to date is that the district, due to economic and legal considerations, must answer the above questions in a timely fashion before continuing with its present policy of addressing the overdraft through a land purchase program for the purpose of creating water credits needed by developers in the Valley to obtain connections to the BWD system.

Motion 2011-02-02: For the board to authorize the Professional Advisory Committee (PAC) to retain financial, management, engineering, and other qualified advisors, as well as advice from outside counsel and the district's auditors, for the purposes of developing a financial model and funding strategy to address the district's present financial condition and timely need for additional funds for capital projects. The board further authorizes the PAC to spend not-more-than \$_____ on this endeavor without additional board approval.

Rationale: To date, the district appears to have spent or will have spent by FY 2011 ending June 30, 2011 approximately \$7,000,000 of its \$7,400,000 cash reserves available at the start of FY 2008 on expenditures proposed by the previous general manager (GM), and authorized by the previous board.¹ Additionally, the district has been either obligated or is contemplating the expenditure of another \$7,500,000 in principal and interest payments and potential operating losses from decisions made by the previous GM and board.²

It appears that this expenditure of the district's cash reserves and potential future obligations of the district are presently unfunded. That is, under the district's present operating cost structure it is unlikely that reserves for repair and replacement of infrastructure, rate stabilization, and working capital needs can be replaced in a timely fashion or that future anticipated debt obligations can be sufficiently funded from cash flow from operating revenues.

In stark contrast to the financial condition of the district at the start of FY 2008, the district is also no longer creditworthy for borrowings from the public capital markets and no longer has a margin of safety in sufficient reserves for operations.³ The only recourse for the district, given its present financial condition, is to explore additional revenue sources, including but not limited to: increases in water and sewer rates, a special tax on undeveloped parcels, a surcharge for energy costs, a parks fee for all property owners, etc. Such financial modeling must also include a thorough revue of the O&M budget, a detailed CIP budget that includes a 5-10-year capital improvements needs, necessary capital for basin overdraft planning, and projections of adequate cash flow to cover additional debt required by the proposed capital program.

¹ Based on current the cash flow forecast regarding expenditures approved by the past board and its GM through FY 2011 year ending June 30, 2011. Payments to the previous GM during this period include approximately \$603,321 salary; \$114,237 pension; and \$40,068 medical, totaling \$757,626 for period.

² This figure includes: (a) principal and interest of approximately \$2.5 million over the term of the Viking Ranch agreement and an estimated \$4.0 million over the term of the Cocopah Nurseries agreement, assuming this is funded with debt financing, and (b) an estimated \$1,000,000 in operating losses from the 20-year lease agreement for the district's involvement with the Club Circle golf course.

³ See Memorandum dated 01/19/11 and email to the district dated 01/25/11 from Dennis Ciocca at Stern Brothers, the district's investment bankers.

RESOLUTION NO. 2011-02-01

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE
BORREGO WATER DISTRICT REVISING THE SCHEDULE
OF REGULAR MEETINGS**

WHEREAS, on June 14, 1983, this Board of Directors adopted Ordinance No. 83-1 establishing the Administrative Code of the Borrego Water District (“Administrative Code”) pursuant to the specific and implied grants of authority in Division 13, commencing with Section 34000, of the Water Code of the State of California to serve in part as the Bylaws of the Borrego Water District as required by Section 35300 et seq. of the Water Code; and

WHEREAS, Section 4.1.1 of the Administrative Code as adopted by Ordinance No. 83-1 established a schedule of the regular meetings of the Board of Directors; and

WHEREAS, on February 28, 2007 the Board of Directors adopted Ordinance No. 07-1 amending Section 4.1.1 of the Administrative Code governing the date and time of regular meetings of the Board of Directors to read: “4.1.1 Regular Meetings. Regular meetings of the Board shall be held pursuant to such schedule as the Board may adopt by Resolution from time to time. In the event the regular meeting date falls on a holiday designated in Section 6700 of the Government Code, a regular meeting of the Board of the cancellation of a regular meeting or meetings may be made by a majority vote of the members of the Board at least fifteen (15) days prior to the change or cancellation. A determination to change or cancel a regular meeting must be made at a regular or special meeting of the Board;” and

WHEREAS, the Board of Directors adopted Resolution 2007-2-1 on February 28, 2007 setting its regular board meetings at 9:00 a.m. on the second and fourth Wednesday of each month.

WHEREAS, the Board of Directors Adopted Resolution 2008-9-03 on September 24, 2008 setting its regular board meetings at 9:15 a.m. on the fourth Wednesday of every month.

WHEREAS, the Board of Directors adopted Resolution 2009-09-03 on September 16, 2009 setting its regular meetings for the months of October, November and December 2009 on the third Wednesday of such months.

WHEREAS, pursuant to Ordinance 07-1, the Board of Directors desires to revise the schedule for its regular meetings.

NOW, THEREFORE, the Board of Directors of the Borrego Water District does hereby resolve, determine and order as follows:

Section 1. The Board of Directors of the Borrego Water District shall hold its regular meetings at 9:00 a.m. on the fourth Wednesday of each month.

ADOPTED, SIGNED AND APPROVED this 15th day of February, 2011.

President of the Board of Directors of Borrego Water
District

