

**Borrego Water District**  
**MINUTES**  
**Regular Meeting of the Board of Directors**  
**Wednesday, February 23, 2011**  
**9:00 AM**  
**806 Palm Canyon Drive**  
**Borrego Springs, CA 92004**

**I. OPENING PROCEDURES**

- A.** Call to Order: President Hart called the meeting to order at 9:00 a.m.
- B.** Pledge of Allegiance: Those present stood for the Pledge of Allegiance.
- C.** Roll Call: Directors: Present: President Hart, Vice-President Lyle Brecht, Secretary/Treasurer Marshal Brecht, Shimeall
- Staff: Jerry Rolwing, Interim General Manager/Operations Manager  
Allison Burns, Stradling, Yocca, Carlson & Rauth (available via teleconference)  
Wendy Quinn, Recording Secretary
- Public: Judy Meier, *Borrego Sun* Sue Salt  
Jim Engelke, Lundberg Ray Delahay  
Dennis Dickinson Dick Walker  
Ray Shindler Lucy Larson  
Kathy Johnston Lee Estep  
Clark Shimeall Julian Peabody  
Jim Jordan Bob Lorch  
Don McKelvey

**D.** Approval of Agenda: Jerry Rolwing announced that Allison Burns had requested that her Attorney's Report (I.J) be moved to the end of the open session (following V). Director Lyle Brecht requested that the Financial Reports (IV.C) be moved to between Items II.A and B; and that discussion of Policy 2003-5-1 (II.E) be moved to the end of the Current Business Matters (following II.H). Mr. Rolwing requested that consideration of the BOR MOU (II.C) be tabled. **MSC: M.Brecht/L.Brecht approving the Agenda as amended.**

**E.** Approval of Minutes:

Regular meeting of January 26, 2011

Mr. Rolwing requested that the Water and Wastewater Operations Report (IV.A) be corrected to indicate that the main break on Montezuma Road was repaired immediately, and service would resume the following week. **MSC: L.Brecht/M.Brecht approving the Minutes of the Regular Meeting of January 26, 2011 as amended.**

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

**G.** Comments from the Public and Requests for Future Agenda Items: Julian Peabody requested an opportunity to speak in favor of Dennis Dickinson's candidacy for the Board. His comments were continued to Item II.A.

Lucy Larson thanked the Board for its work during the past two months.

**H.** Correspondence: Mr. Rolwing reported that Clark Shimeall had written to the Board requesting a briefing at the town hall meeting as to the direction they will be taking.

The Dotys, who play golf at Club Circle, had written to complain about the condition of the course. Mr. Rolwing had not yet had an opportunity to respond, but noted that there is now only one greenskeeper and he is doing his best.

Lisa Spoon, a member of the Sahara Mustard Weed Eradication Task Force, had asked for the District's assistance in clearing the mustard from the BWD right-of-way at the end of Santa Fe Trail. President Hart pointed out that this is a public right-of-way, and any park volunteer or member of the public is free to enter it and remove the mustard. She asked Mr. Rolwing to inform Ms. Spoon of this. Director Shimeall felt that the District should volunteer to remove the mustard from this and its other sites, and if necessary pay the crew to do so. She asked that this be placed on a future agenda. Mr. Rolwing pointed out that we have approximately 40 of these flushes throughout the Valley.

**I. Staff Reports:**

**A. Manager/Operations Report**

Mr. Rolwing offered to answer questions on his written report. He distributed a letter from David Dale concurring with the proposed Capital Improvement Program for the next ten years and its estimated costs, as requested by Director Lyle Brecht. Director Marshal Brecht referred to Jim Bennett's letter regarding the County's Groundwater Ordinance Amendment, which is related to our mitigation credit program, and asked when it might be approved. Mr. Rolwing predicted it would be at least a month, but agreed to confirm this.

**II. CURRENT BUSINESS MATTERS**

**A. Discussion and possible appointment of new Director:** Jim Jordan stated that he had 50 years' business experience, including management of three companies. He made a good profit and believes in conservative fiscal policies. Director Lyle Brecht inquired about his opinion of the District's cash flow. Mr. Jordan felt it could be much better and needed work. He was appalled at the expenditure of \$6 million in reserves in a relatively short time period. President Hart asked what he thought the new Board should do to return the District to fiscal solvency. Mr. Jordan recommended, if legally feasible, canceling the two recent acquisitions of agricultural land, which he understood would have been fallowed regardless of the District's purchase.

Lee Estep stated that he is a retired attorney and member of both the California and Arizona Bars. He served on the Board of the Borrego Springs Park Community Services District prior to its merger with BWD, and would like to serve the community by joining the BWD Board. He has been a Borrego Springs homeowner since 1963. President Hart asked if he was experienced in water law. Mr. Estep replied that he was a trial attorney, but took college courses in water law and was familiar with it. In response to Director Marshal Brecht, he confirmed that he is a registered voter in Borrego Springs. Director Lyle Brecht inquired about his opinion of the District's cash flow report. Mr. Estep felt there were many things to be taken care of, and he was distressed at some of the past actions. Director Marshal Brecht asked how long he had served on the CSD Board, and Mr. Estep replied he had served one three-year term.

Dennis Dickinson stated that he is a retired academic librarian and has been a full-time Borrego resident and registered voter here for 11 years. He has been active in District affairs, and founded the Save Our Aquifer Coalition (SOAC) in 2002. He also started an internet list server for over 50 people interested in water and manages a website which provides information on the District and water issues. Mr. Dickinson had published opinion pieces in both the *Borrego Sun* and the *Union Tribune*. He hoped to serve on the Board to address the financial problems and the aquifer overdraft. In response to Director Lyle Brecht's question about the cash flow, he expressed concern about the negative cash flow and lack of borrowing ability.

Mr. Peabody referred to his January 12 letter endorsing Mr. Dickinson based on his support for mitigating the overdraft, professionalism and efforts toward stabilization of our water supply.

Dick Walker felt all three candidates were outstanding, but supported Mr. Dickinson, citing the tremendous amount of time he has spent on water issues.

Director Lyle Brecht asked all candidates if they would apply again should another vacancy occur on the Board, and they all said they would.

***Director Shimeall nominated Lee Estep to the Board, and he was unanimously elected by roll call vote.***

**President Hart declared a recess at 9:40 a.m., and the Board reconvened at 9:55 a.m.**

President Hart administered the oath of office to newly elected Director Estep, and he took his seat on the Board.

#### **IV. STAFF REPORTS**

**C. Financial Reports – January 2011:** Director Marshal Brecht invited the Board's attention to Kim Pitman's written report in the Agenda packet. He noted that page 54 shows a net cash revenue/(expense) of (\$39,700), but it should be (\$5,900). Ms. Pitman is making the correction.

Discussion followed regarding the anticipated income upon the sale of Montesoro and the impact on the District if it does not. Assuming the sale, the District is in a "break even" position. Director Lyle Brecht explained that we would have to look at ways to enhance revenue without the sale, including a possible USDA loan. Ray Shindler urged the Board to make its situation clear to the public in the event a rate increase is considered.

#### **II. CURRENT BUSINESS MATTERS (continued)**

**B. Consideration of the District paying LAFCO annexation fee of \$4,000 for Lorch annexation into the District:** Mr. Rolwing explained that the previous owner of Bob Lorch's property had granted the District an easement to connect Well 16 to the reservoir system in exchange for a free water connection upon annexation of the property to the District. Now that Mr. Lorch owns the property, he requested annexation and the Board agreed. LAFCO is now requesting a \$4,050 fee, and Mr. Lorch has asked the District to pay it. Mr. Rolwing noted that when the Wilcox reservoir is completed, an enlarged or additional easement will be required.

Mr. Lorch questioned whether the existing easement was legal, since the original proceeding didn't go through LAFCO. He had made his original annexation request four years ago, but action was delayed due to difficulty in locating the original records. They have now been located. President Hart asked whether he needed the water service now. Mr. Lorch replied that he did not, but wanted it arranged before he is ready to build. Mr. Rolwing explained that former District Engineer Lin Burzell had determined that the District could sell water outside its boundaries, but legal counsel subsequently concluded we could only do so if we have surplus water. Director Estep questioned this conclusion and asked to see a written legal opinion.

Mr. Lorch suggested that perhaps 20 years ago, when the original agreement was reached, LAFCO did not charge a fee and he could be "grandfathered in."

***MSC: Estep/L.Brecht assigning Director Shimeall and Mr. Rolwing to address Director Estep's request; and if annexation is necessary, creating a line item in the 2012 budget to pay for the LAFCO annexation fee for Mr. Lorch's property.***

**C. Consideration and possible action of Bureau of Reclamation MOU and side agreement:** This item was tabled.

**D. Consideration and possible action of USDA loan application status update:** Mr. Rolwing suggested applying for a USDA loan for construction of the Wilcox reservoir. Most of the engineering has been completed, and we could recoup the cost by using it as our in-kind contribution. The new reservoir would enhance system operations and alleviate pressure concerns. The cost estimate is \$4.5 million. Director Lyle Brecht asked the cost of the application, and Mr. Rolwing agreed to prepare an estimate. Director Lyle Brecht requested written assurance from the State Park that they were agreeable

to the project, and Mr. Rolwing agreed to contact them. Director Lyle Brecht suggested asking David Dale whether the new reservoir would reduce operations and maintenance expenses, and if not, whether any other potential projects would do so. Mr. Rolwing stated that the Borrego Springs pipeline would reduce O&M expenses, but would require considerable engineering work before we could apply for a grant. Mr. Rolwing will invite Mr. Dale to the March 15 special meeting/workshop to address these issues. President Hart suggested also asking him about health and safety issues for both projects, since they are important in establishing grant funding priorities.

**F. Discussion and possible action regarding recommendations from Due Diligence Committee Report:** Director Lyle Brecht reported that the Due Diligence Committee (he, Director Marshal Brecht and Mr. Rolwing) had met four times to look at costs and strategies to address the overdraft. ***MSC: L.Brecht/Shimeall (1) forming an ad hoc Strategic Planning Committee consisting of Director Lyle Brecht and President Hart, whose first duty would be to work with Mr. Rolwing to plan the town hall meeting, and disbanding the Professional Advisory Committee; (2) allocating additional budget from the audit account to create separate balance sheets for water and sewer and to account for the sources of cash reserves and how they were used; (3) allocating \$30,000 for legal and financial assistance (consultants to be selected by the Professional Advisory Committee), in analyzing the District's water mitigation credit program; (4) creating a USGS Citizens Advisory Committee to meet with the USGS prior to the town hall meeting and explain issues of interest to the public; (5) authorizing the Professional Advisory Committee to retain John Peterson Environmental Services to assist with a decision as to whether to pursue the Clark Lake project; and (6) requesting the Due Diligence Committee to prepare two draft handouts for the town hall meeting regarding the overdraft strategy and the financial situation. RC: AYES – L. Brecht, Shimeall, M. Brecht, Estep, Hart.***

**G. Consideration of approval of American Red Cross agreement for the use of facility for storage of mass care supplies:** Mr. Rolwing reported that during the last two years, District representatives had been meeting with an emergency preparedness group and providing information to the public. The Red Cross needs a local storage facility for emergency supplies, and we suggested the former Borrego Pipe and Supply building, which the District has purchased. The Red Cross would take care of everything at no cost to the District. In the event our grant application for a water education center is approved, we can work around the supply storage area. ***MSC: Estep/M. Brecht approving the agreement with the American Red Cross for mass care supplies storage.***

**H. Board to consider new signers for Bank account:** ***MSC: Estep/L.Brecht removing Jeanne Fredericks, Marlene Engebretson, Kathy King, Bob Mendenhall, Rita Andersen and Rich Williamson as signatories from the District's Borrego Springs Bank account; and adding Lyle Brecht, Marshall Brecht, Beth Hart, Lee Estep, Jerry Rolwing and Diana Del Bono.***

**E. Discussion of policy 2003-5-1, as amended 1/12/11: Directors and Officers Responsibilities and Limitations, as requested by Director Shimeall:** Director Shimeall referred to Item 1)a)ii)4) of amended Policy 2003-5-1, which gives Directors the right to request information from any source including professionals hired or under consideration for hire by the District. She cautioned anyone exercising this right to keep Mr. Rolwing informed of their actions.

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

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

1. Due-diligence. This report was covered under Item II.F.
2. Professional Advisory. Director Shimeall pointed out that the action taken under Item II.F had disbanded the Professional Advisory Committee. However, later in the motion it was assigned two tasks (parts (3) and (5)). President Hart suggested retaining the PAC until these have been completed. President Hart reported that the Committee met on February 22. They recommend that the Board select any necessary legal advisors. As to other consultants, they suggested Diehl Evans for

accounting, David Dale for the capital improvement plan, and Wildermuth Environmental for the overdraft plan. All these efforts will contribute to creation of a financial model. Additionally, once the BOR determines the feasibility of importing water, the Committee recommended Peterson Environmental Services to prepare a brief on the proposed Clark Lake pipeline. In the future, Raftelis Financial Consultants were suggested for a rate analysis.

Don McKelvey expressed concern that the consultants were not selected through a formal bid process and that the RFQ and RFP were available only through the internet. He agreed to investigate the legal requirements. Director Lyle Brecht pointed out that there were several responses to most of the tasks, and the Committee had legal advice. Mr. Rolwing added that the District has typically sought competitive bids for larger projects.

3. Capital Allocation Review. President Hart referred to the Committee's written report in the Agenda. She noted that labor costs had been removed from the schedules of expenditures and capital projects. Summaries for years 2008 through 2011 were provided, showing cash reserved of \$5,992,599 in 2008, \$764,991 as of 12/31/10 and a current -\$4,308 remainder. A line item summary for each year was included to show exactly how the deficit occurred. Now that this report has been completed, President Hart recommended that the Committee be disbanded. Director Shimeall concurred.

#### **IV. STAFF REPORTS**

A. Water and Wastewater Operations Report – January 2011: Mr. Rolwing invited the Board's attention to his written report in the Agenda packet. Operations for the past month were normal.

B. Water Production/Use Records – January 2011: Mr. Rolwing reported that the water loss during the past month was less than usual.

#### **V. INFORMATIONAL ITEMS**

Mr. Shindler reported that the Assembly Water Committee is considering a bill introduced by Assemblyman Huffman that relates to diminishing aquifers. He spoke with a Committee staff person who felt Borrego's situation was exactly the type of example they were looking for. He suggested following the bill and perhaps writing a letter. Director Shimeall urged attendance at ACWA meetings, where information on pertinent legislation is provided.

Mr. Rolwing noted that former Director Andersen is still listed as the District's JPIA representative. This is typically a function of the Secretary/Treasurer, and Director Marshal Brecht agreed to assume the role.

#### **I. OPENING PROCEDURES (continued)**

J. Attorney's Report: Ms. Burns joined the meeting via teleconference and reported that the Montesoro litigation is ongoing and there will be a conference call this afternoon relative to attorney's fees.

#### **VI. CLOSED SESSION**

A. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION – Reference Government Code section 54956.9(b) two potential cases: The closed session matters were addressed during the earlier Special Meeting.

#### **VII. CLOSING PROCEDURE**

Adjournment. There being no further business, the meeting adjourned at 11:45 a.m. The next regular meeting of the Board of Directors is scheduled for March 23, 2011 at the Borrego Water District.