

Borrego Water District
AGENDA
Board of Directors
Special Meeting
April 20, 2011
9:00 AM
806 Palm Canyon Drive
Borrego Springs, CA 92004

I. OPENING PROCEDURES

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

II. CURRENT BUSINESS MATTERS

- A. Discussion and possible action regarding Resolution 2011-04-01, *Resolution of the Board of Directors of the Borrego Water District regarding retention of auditing firm in response to May 6, 2010 Grand jury report and reversing in part, Resolution no. 2010-06-11*, to retain Diehl Evans as FY 2012 auditors. (page 3-4)
- B. Discussion and possible action regarding a Memorandum Of Understanding with the Bureau of Reclamation for the Southeast California Regional Basin Study. (page 5-16)
- C. Discussion and possible action regarding the Engagement Agreement with Brian Brady and Task Order #2 to provide advice regarding a review of the District's water credits policy to determine whether the District's present policy constitutes a reasoned business use of ratepayer funds. (page 17-22)
- D. Discussion and possible action regarding cash reserves policy for the District. (page 23-30)
- E. Discussion and possible action regarding groundwater management (GWM) implementation plan and ABD-IRWM plan cost estimate from Wildermuth Environmental, Inc. (page 31-33)
- F. Discussion and possible action regarding establishing an Ad Hoc committee comprised of Jerry Rolwing, Kim Pitman, Brian Brady, and Marshal Brecht to develop recommendations for expenditure changes to the FY 2012 Operations and Management (O&M) budget. (page 35-44)
- G. Discussion and possible action regarding creation of an Ad Hoc committee consisting of Beth Hart and Marshal Brecht for the purposes of addressing human resource matters.
- H. Discussion and possible action regarding a date for a workshop to discuss the financial model developed by Raftelis Financial Consulting (RFC) for the District and recommendations to improve the District's financial situation.
- I. Discussion and possible action regarding approval of Agreement for Consulting Services for David Taussig & Associates. (page 45-60)
- J. Discussion and possible action regarding approval of Agreement for the Construction of Water Facilities, Mesquite Trails. (page 61-78)

- K. Discussion and possible action regarding approval of water availability form for US Solar Project.
- L. Update on Montesorro sale negotiations
- M. Discussion and Consideration by the Board to authorize Interim General Manager to write a letter of support on behalf of Board of Directors to support Senate Bills, SB 11 and SB120. *(page 79-81)*
- N. Presentation of Stag Grant by Jerry Rolwing

III. CLOSED SESSION

- A. Discussion regarding advice from legal counsel and advisor Dr. Brian Brady regarding the Viking Ranch purchase agreement subject to Gov.Code section 54956.9 (b) and (c) and for the purpose of giving direction to the District's negotiators under Gov. Code section 54956.8 related to the real property known as the Viking Ranch with negotiators Lee Estep, Beth Hart, and Jerry Rolwing for the District in preparation for negotiating with Lance Lundberg from the Viking Ranch.
- B. Discussion for the purpose of giving direction to the District's negotiators under Gov. Code section 54956.8 related to the real property known as the Cocopah Nurseries with negotiators Lee Estep, Beth Hart, and Jerry Rolwing for the District.
- C. Discussion for the purpose of giving direction to the District's negotiators under Gov. Code section 54956.8 related to the lease of real property known as the Club Circle Golf Course with negotiator Lee Estep, Eleanor Shimeall and Jerry Rolwing for the District in preparations for discussions with Jack Cameron.
- D. Discussion for the purpose of giving direction to the District's negotiators under Gov. Code section 54956.8 related to the settlement terms on the real property know as Monica with negotiators Beth Hart and Jerry Rolwing for the District.
- E. Discussion for the purpose of giving direction to the District's negotiator, Lee Estep, and possible action regarding the selection of general counsel under Govt. Code section 54957.
- F. Discussion for the purpose of giving direction to the District's negotiator, Jerry Rolwing, and possible action regarding recommended changes to the District's employee benefits package for existing and new employees under Govt. Code section 54957.

IV. CLOSING PROCEDURE

Adjournment The next Regular Meeting of the Board of Directors is scheduled for April 27, 2011 at the Borrego Water District.

RESOLUTION NO. 2011-04-01

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE
BORREGO WATER DISTRICT REGARDING RETENTION
OF AUDITING FIRM IN RESPONSE TO MAY 6, 2010
GRAND JURY REPORT AND REVERSING IN PART,
RESOLUTION NO. 2010-06-11**

WHEREAS, on May 6, 2010 the San Diego Grand Jury (Grand Jury) issued a report entitled *Borrego Water District Report* (the "Report"), which report included the following recommendation:

No. 10-15: Change the auditing firm at a maximum of every five years, as a better business practice (collectively, the "Recommendation"); and

WHEREAS, the Board of Directors of the Borrego Water District responded to each Recommendation and Adopted, Signed and Approved on June 28, 2010 Resolution No. 2010-06-11; and

WHEREAS, Section 4 of the above name Resolution states as follows: "The District agrees with Grand Jury finding No. 10-15. At the conclusion of the existing contract with the District's auditing firm, which contract expire in 2011, the District will issue a request for proposals and retain a new consultant to perform auditing services for the District for Fiscal Years 2011-2012. The District will issue requests for proposals for auditing services every five years thereafter. At its discretion, the District may continue to contract with Diehl Evans, or any other accounting firm it may select, for accounting support services."; and

WHEREAS, the District must sort out complex financial issues created when \$5.7 million of the District's \$6.5 million in cash reserves was spent and the District was potentially obligated to pay an additional \$7.5 million in unfunded debt and since such difficult issues are best performed by the existing auditor and would be too costly to the District if performed by a new auditor.

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

To use Diehl Evans as its auditor for Fiscal Year 2012 and to thereafter review carefully its selection of a District auditor for Fiscal Years 2013 and beyond.

Adopted, signed and approved this ___ day of April, 2011.

President of the Board of Directors
Of Borrego Water District

ATTEST:

Secretary Treasurer of the Board of Directors
Of Borrego Water District

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN DIEGO)

I, _____, Secretary of the Board of Directors of the Borrego Water District, do hereby certify that the foregoing resolution was duly adopted by the Board of Directors of said District at a regular meeting held on the ____ day of April , 2011, and that it was so adopted by the following vote:

AYES: DIRECTORS:

NOES: DIRECTORS:

ABSENT: DIRECTORS:

ABSTAIN: DIRECTORS:

Secretary of the Board of Directors of Borrego
Water District

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN DIEGO)

I, _____, Secretary of the Board of Directors of the Borrego Water District, do hereby certify that the above and foregoing is a full, true and correct copy of RESOLUTION NO. 2011-04-01, of said Board, and that the same has not been amended or repealed.

Dated:

Secretary of the Board of Directors of Borrego
Water District

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 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;
- 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, or \$425,000 respectively, provided, however, that the District's cash contribution shall be no more than the sum as specified in paragraph VI. B. below. Borrego Water District will match its half of this cost-share with cash, in-kind services, and/or applied costs for acceptable work that contributes to this study. An approved list of acceptable work and costs will be documented and approved by the Area Manager and included with the Plan of Study.
- B. No later than July 11, 2011, the District shall contribute to this study with an approved 'in-kind' services and work list that's been or will be accomplished in support of this study; and then no later than October 11, 2011 the sum of \$12,000 'in cash' will be provided to Reclamation. Additionally, by the expiration date of this Agreement, the District will contribute any outstanding balance of their financial obligation as in-kind services pre-approved by Reclamation by performing concurrent studies to provide needed information and/or data that's 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; and
 - 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 December 31, 2013, 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;
 - 2. Which it has been unable to overcome by the exercise of due diligence; and
 - 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 _____ Date
Jerry Rolwing, Acting General Manager

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

By _____ Date
William J. Steele, Area Manager

SOUTHEAST CALIFORNIA REGIONAL BASIN STUDY

**Exhibit A
Key Personnel:**

Organization	Primary Contact	Contact Information
Borrego Water District (BWD) 806 Palm Canyon Drive Borrego Springs, CA 92004	Jerry Rolwing	Engineering & Operations Manager 760-767-5806 jerry@borregowd.org

Reclamation Key Personnel

Region	Primary Contact	Contact Information
SCAO 27708 Jefferson Ave, Suite 202 Temecula, CA 92590	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)**

**Appendix 1, Exhibit B (Plan of Study)
Southeast California Basin Study
Borrego Water District Study Cost-Share List
(of Cash, In-Kind Services, and/or Applied Costs of Acceptable Work)**

Exhibit C

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

AGREEMENT BETWEEN
BORREGO WATER DISTRICT
AND BRIAN J. BRADY & ASSOCIATES FOR AS-NEEDED SERVICES

THIS AGREEMENT is made as of this _____ day of _____, 2011, in Borrego Springs, California, between Borrego Water District ("DISTRICT") AND Brian J. Brady & Associates ("ADVISOR"), concerning as-needed services.

WITNESSETH:

WHEREAS, the DISTRICT desires to retain the services of ADVISOR on an as-needed basis;

WHEREAS, ADVISOR desires to perform as-need services requested by the DISTRICT on the terms and conditions set forth below; and

WHEREAS, the ADVISOR is duly qualified, and experienced to perform the services requested by the DISTRICT.

NOW, THEREFORE, the parties agree as follows:

1. Description of Work.

The work requested of ADVISOR by the DISTRICT shall be performed on a task order basis. Upon request by the DISTRICT, ADVISOR shall prepare a specific scope of work and budget for each task order. Each task order shall reference this Agreement, and include exhibits setting forth the scope of work and cost. Upon approval by the DISTRICT to proceed, the ADVISOR shall proceed with completion of the work under the applicable task order. Each task order shall be signed by the DISTRICT and ADVISOR and shall be subject to the Agreement and each of its terms.

ADVISOR shall provide all labor, equipment, material and supplies required or necessary to properly, competently, and completely perform the work or render the services under this Agreement. ADVISOR shall determine the method, details and means of doing the work or rendering the services, in cooperation with DISTRICT staff.

2. Compensation.

The total cost of the work described in each task order shall be specified in the task order, which total cost shall not be exceeded unless amended by the DISTRICT in writing. Compensation shall be on a time and materials basis. The task order cost information shall be summarized by primary work breakdown and deliverables.

3. Term of Agreement.

This Agreement shall become effective on the date first above-stated and will continue in effect for six months from such date, unless sooner terminated as provided in paragraph 9.

4. Payment for Services.

ADVISOR shall submit to the DISTRICT itemized bills for the services rendered. If the work is satisfactorily performed, the DISTRICT shall pay such bill within thirty (30) days after its receipt. Should the DISTRICT dispute any portion of any bill, the DISTRICT shall pay the undisputed portion within the time stated above, and at the same time, advise the ADVISOR in writing of the disputed portion.

5. Documents and Electronic File Deliverables.

All documents prepared by ADVISOR pursuant to this Agreement are instruments of service in connection with the specific task order for which they were prepared. They are not intended or represented to be suitable for reuse by DISTRICT or others for other than the task order services for which they were prepared. Any reuse without written verification or adaptation by ADVISOR for the specific purpose intended will be at DISTRICT's sole risk and without liability or legal exposure to ADVISOR; and DISTRICT shall indemnify and hold harmless ADVISOR against all claims, damages, losses, and expenses including attorney's fees arising out of or resulting from such reuse. All documents and electronic file deliverables, as listed and described in each Task Order, shall be provided to the DISTRICT in their most current version upon the request of the District, and in the event that either party exercises the termination rights under Paragraph 9.

6. Compliance with Laws.

ADVISOR agrees that it shall conduct its work and perform its services in compliance with all laws and regulations of the State of California, and any officer, department, or agency thereof, as well as other laws and regulations as may be applicable thereto.

7. General Insurance.

ADVISOR, at its sole cost and expense, shall procure and maintain for the duration of this Agreement the following types and limits of insurance:

<u>Type</u>	<u>Limits</u>
General liability	\$1,000,000 per occurrence
Automobile liability	\$1,000,000 per occurrence

8. Indemnification and Hold Harmless.

ADVISOR and DISTRICT each shall protect, indemnify and hold harmless the other party, including, its directors, officials, officers, employees, volunteers and agents, from and against any and all suits, actions, judgments, legal or administrative proceedings, arbitrations, claims, demands, causes of action, damages, liabilities, interest, attorney's fees, fines, penalties, losses, costs and expenses of whatsoever kind or nature, including but not limited to those arising out of injury to or death, which arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of its employees or sub-consultants (hereinafter collectively referred to as "Claims" or singularly referred to as a "Claim").

Neither termination of this Agreement nor completion of the acts to be performed under this Agreement shall release either party from its obligations to indemnify, as to any Claims, so long as the event upon which such Claim is predicated shall have occurred prior to the effective date of any such termination or completion and arose out of, pertained to, or related to performance or operations under this Agreement

9. Termination.

This Agreement may be terminated at any time and for any reason by either party upon fifteen (15) days advance written notice to the other party. In the event of such termination, ADVISOR is to be fairly compensated for all work performed to the date of termination as calculated by the DISTRICT based on paragraph 2 hereof and any task order issued hereunder; provided that such compensation shall not in any case exceed the maximum sum set forth in any such task order.

10. Attorney's Fees.

In the event that any arbitration, litigation or other action or proceeding of any nature between the DISTRICT and ADVISOR becomes necessary to enforce or interpret all or any portion of this Agreement or because of an alleged breach by either party of any of the terms hereof, it is mutually agreed that each party shall pay its own attorney's fees, costs, and expenses incurred in connection with the prosecution or defense of such action or proceeding.

11. Entire Agreement.

This writing constitutes the entire Agreement between the parties relative to the services specified herein, and no modifications hereof shall be effective unless and until such modification is evidenced by a writing signed by both parties to this Agreement. There are no understandings, agreements, conditions, representations, warranties, or promises with respect to the subject matter of this Agreement except those contained in or referred to in this writing.

12. Independent Contractor.

It is expressly understood and agreed by the parties hereto that ADVISOR's relationship to the DISTRICT is that of an independent contractor. All persons hired by ADVISOR and performing the work shall be ADVISOR's employees or agents. The DISTRICT shall not be obligated in any way to pay any wages or other claims by any such employees or agents or any other person by reason of this Agreement. ADVISOR shall be solely liable to such employees and agents for losses, costs, damages, or injuries by said employees or agents during the course of the work.

13. Successors and Assignment.

This Agreement shall be binding on the heirs, successors, executors, administrators, and assigns of the parties.

15. Severability.

If any provision of this Agreement is held to be unenforceable, the remainder of this Agreement shall be severable and not affected thereby.

16. Waiver of Rights.

Any waiver at any time by either party hereto of its rights with respect to a breach or default, or any other matter arising in connection with this Agreement, shall not be deemed to be a waiver with respect to any other breach, default or matter.

17. Remedies not Exclusive.

The use by either party of any remedy specified herein for the enforcement of this Agreement is not exclusive and shall not deprive the party using such remedy of, or limit the application of, any other remedy provided by law.

18. Notices.

All notices, statements, reports, approvals, or requests or other communications that are required either expressly or by implication to be given by either party to the other under this Agreement shall be in writing and signed for each party by such officers as each may, from time to time, authorize in writing to so act. All such notices shall be deemed to have been received on the date of delivery if delivered personally or three (3) days after mailing if enclosed in a properly addressed and stamped envelope and deposited in a United States post office for delivery. Unless and until formally notified otherwise, all notices shall be addressed to the parties at their addresses shown below:

Borrego Water District
806 Palm Canyon Drive
Borrego Springs, CA 92004-3101

Brian J. Brady & Associates
37850 De Portola Road
Temecula, CA 92592

IN WITNESS WHEREOF, the parties execute this Agreement on the day and year first above written.

BORREGO WATER DISTRICT

By: _____
Name: _____
Its: _____

BRIAN J. BRADY & ASSOCIATES

By: _____
Name: _____
Its: _____

**AGREEMENT BETWEEN BORREGO WATER DISTRICT
AND BRIAN J. BRADY & ASSOCIATES FOR AS-NEEDED SERVICES
04/11/11**

TASK ORDER 2: THE BUSINESS OF WATER CREDITS

Objective: To provide advice regarding a Review of the District's water credits policy to determine whether or not the present direction of the District constitutes a reasoned business use of ratepayer funds.

Due Date: April 18, 2011 for brief with ongoing support, as requested until the Viking Ranch transaction is settled.

Activities and Deliverables:

- 1) Read all available and relevant documents related to the District's water credits policy and Viking Ranch purchase transaction;
- 2) Discuss with San Diego County Planning Department personnel their proposed update to the County's Groundwater Mitigation Ordinance for new development in the Borrego Valley;
- 3) Discuss with Beth Hart her negotiating strategy with Lance Lundberg regarding the Viking transaction;
- 4) Discuss with other advisors, as may be useful, their advice with respect to the District's water credits policy or the Viking transaction;
- 5) Prepare a brief that discusses a go-forward strategy for the District's water credits policy and the business case for allocating capital for this policy or defunding this policy;
- 6) Provide ongoing support, as may be helpful, to the District's Viking negotiating team.

Cost: Items 1 through 5, approximately 18 hours for a not-to-exceed cost of \$2700.00 plus incidental expenses. Item 6 will be billed at \$150 per hour as requested.

I. BACKGROUND AND INTRODUCTION

Reserves are needed because of risk. Water and sewer operations are inherently risky, given the potential liability associated with repairing and replacing infrastructure necessary for maintaining 24x7 critical infrastructure necessary for supplying water and sewer services to the homes and businesses of Borrego. In addition, water operations has risk associated with the volatility of revenue due to weather conditions. Reserves also assist in reducing rate shocks. Without them a water utility is exposed to rate instability. Rate instability increases the cost of borrowing. These days sometimes bond covenants require a rate stabilization reserve. Reserves allow the District to smooth out rate increases. In addition reserves help the District improve its credit rating, which translates into lower interest rates on debt and thus lower rates for the District customers.

Many utilities operate in a state of revenue deficiency, which means they either rely on existing reserves, skimp on funding reserves, or defer economically prudent repair and replacement of infrastructure to the distant future where much higher costs will be borne by ratepayers to repair or replace infrastructure that has failed catastrophically. Becoming revenue sufficient means that a utility can count on receiving adequate revenues to fully fund utility operations, including debt service obligations, capital improvements from rate revenues, and reserves. Reserve accounts are a vital part of every water system's financial health.

The District believes that operating with a revenue sufficiency is required, not only to remain creditworthy for future capital borrowing, but to replace depleted reserves necessary to operate most economically. For these reasons, the District will maintain reserve funds so as to provide working capital for operations; funds required by law, ordinance and bond covenant; and necessary cash for the scheduled and unscheduled repair and replacement of capital infrastructure; as well as funds set aside for groundwater management purposes.

Reserves are also necessary for the District to stabilize rates due to normal revenue and cost uncertainties, and to provide a prudent amount of insurance against economic downturns and emergencies. The efficient and discrete management of these cash reserves, when combined with their appropriate replacement as they are drawn down from time-to-time add additional assurance that the current levels of service reliability and quality that the District's ratepayers have grown to expect will continue into the future.

This reserve policy is based upon prudent financial management practices and those amounts required by legal, legislative and contractual obligations that are critical to the financial health of the District. This policy defines required fund types for segregation purposes and their funding levels that is based upon the District's unique operating, capital investment and financial plans.

II. TYPES OF RESERVES

The District's reserves will be separated into two basic categories: (a) Legally Restricted Reserves; and (b) Board Restricted Reserves.

Each of the District's reserves, to the extent possible, will be established utilizing the following criteria: (a) distinguish between legally restricted and board restricted cash reserves; (b) contain a defined and distinct purpose; (c) contain a target level or range with a minimum and maximum; (d) identify events or conditions that prompt the use of the reserve; and (e) specify periodic review dates for cash balances.

Balances shall be maintained in amounts sufficient to meet minimum reserve targets in cash and/or cash equivalents, and permitted investments.

III. LEGALLY RESTRICTED RESERVES. Legally Restricted Reserves are established and utilized for narrowly defined purposes and are protected by law or covenant. The District's Legally Restricted Reserves are:

A. Debt Reserves Cash reserves accounts for all debt instruments, not limited to bonds, SRF, etc., shall be fully funded in the timeline reflected in current and future bond covenants. The appropriate reserves shall be formally transferred and restricted in accordance with all legal requirements.

B. System Growth Reserves This fund aggregates all fees collected by the District from the charges levied against new growth in water and sewer connections to the District. This fund is used to offset capital projects or debt service related to new development in the District.

IV. BOARD RESTRICTED RESERVES

A. Operating Reserves. The purpose of the Operating Reserves is to ensure that operations can continue if there are events that impact cash flow.

1. Working Capital Reserves

Definition and Purpose – This fund reflects three sub-reserve funds: (a) Operations & Maintenance (O&M) reserves; (b) Capital Improvement Program (CIP) reserves; and (c) Contingency reserves. The purpose of each of these reserves is to cover temporary cash flow deficiencies caused by timing differences between revenues and expenditures.

Target Level – (a) O&M reserves shall be targeted at an amount equal to three (3) to six (6) months of the District's budgeted total operating expense, but not less than 150% to 200% of the maximum (projected) annual operating deficit. (b) CIP reserves

shall be targeted at twenty-five (25%) percent of the three-year average of CIP expenditures during that period. (c) Contingency reserves shall be targeted at one (1%) to ten (10%) percent of the District's total operating expenses. These levels should be increased as the level of economic uncertainty increases.

Events or Conditions Prompting the Use of the Reserves – This reserve may be routinely utilized by staff to cover temporary cash flow deficiencies caused by timing differences between revenue and expenses. These reserves can also be used to cover unanticipated cash operating expenses or lower than expected revenue collections.

Periodic Review Dates for Balances – Reserve balance and target level will be reviewed by District staff and the Board of Directors during the preparation and approval of the annual operating budget.

2. Rate Stabilization Fund

Definition and Purpose – The Rate Stabilization Fund is used to stabilize rates to the extent possible. For example, climatic variability is one of the biggest financial challenges to water districts. Years that are cooler and wetter than normal can lead to significantly reduced revenue, particularly when a district has a rate structure with a seasonal surcharge component.

Target Level – The reserve shall be maintained at level of thirty (30%) percent of the revenue generated from the commodity rate for water services and thirty (30%) percent of the total revenues from sewer services.

Events or Conditions Prompting the Use of the Reserves – This reserve is intended to be used to defray any temporary unforeseen and extraordinary increases in the cost of water supply or sewage treatment. The Board of Directors, on a case by case basis, will determine the amount and timing for any use of the reserve.

Periodic Review Dates for Balances – Reserve balances will be reviewed by District staff and the Board of Directors during the preparation and approval of the annual operating budget.

3. Emergency Reserves

Definition and Purpose – Earthquakes, windstorms, electrical outages, flooding, and vandalism are examples of unforeseen emergencies. Water systems must have adequate cash reserves available to pay the costs associated with emergencies, such as providing bottled water to customers and returning to normal operations and

covering costs not covered by the District's insurance policies or not reimbursable (fully covered) by the state or federal government programs.

Target Level – Funding shall be targeted at twenty-five (25%) percent of the replacement value of the District's critical assets as determined by the District's consulting engineering firm.

Events or Conditions Prompting the Use of the Reserves – The Board of Director's may designate use of this reserve after establishing that conditions exist as called out in the Definition and Purpose of the reserve.

Periodic Review Dates for Balances – Reserve balance and target level will be reviewed by District staff and the Board of Directors during the preparation and approval of the annual operating budget.

B. Capital Reserves

1. Asset Replacement Reserves

Definition and Purpose - It is the intent of the District to comply with GASBS 34 modified method the set a spending level on system replacement such that the District will be able to provide reliable service in perpetuity. It is doubtful that this reserve will be sufficient to fund the entire replacement of the District's infrastructure and that a combination of pay-as-you-go and future debt borrowings will be required. The minimum balance of this fund should be established based on the ability to provide ongoing reliable water and sewer service.

Target Level – Funding shall be targeted to equal the amortized value of the total future replacement costs of the infrastructure required to provide District services. This amount shall be determined by an asset management study developed for this purpose by the District's consulting engineering firm.

Events or Conditions Prompting the Use of the Reserves – Staff will recommend assets to be replaced during the annual budget preparation. By action of the Board of Directors funds will be appropriated from the reserves for the purchase or construction of replacements. If during the year emergency replacements are necessary, the Board may amend the budget and appropriate funds as necessary to accomplish the replacement or refurbishment.

Periodic Review Dates for Balances – Reserve balances and replacement requirements will be reviewed by District staff and the Board of Directors during the preparation and approval of the annual capital budget.

2. Groundwater Management Reserves

Definition and Purpose – Groundwater Management Plans (GWM) are prepared to ensure that groundwater resources in the Valley are managed in a fair, equitable and sustainable manner. The intent of this reserves is to accumulate the capital necessary to implement the District’s Ground Water Management Plan and to fund its portion of the Department of Water Resources (DWR) and Board-approved Anza-Borrego Desert Integrated Regional Water Management plan (ABD-IRWM).

Target Level – As determined by the Board-approved GWM plan that is in conformance with the DWR and Board-approved ABD-IRWM plan.

Events or Conditions Prompting the Use of the Reserves – For achieving the implementation of the GWM plan and its time schedule for deliverables and achieved objectives

Periodic Review Dates for Balances – Annually by District staff and the Board of Directors during the preparation and approval of the annual capital budget.

3. Water Supply Reliability Reserves

Definition and Purpose – For the acquisition of new potable water supply, maintaining existing quantity and quality of supply, and conserving existing and new potable supplies.

Target Level – TBD

Events or Conditions Prompting the Use of the Reserves – When the reliability of the District’s water supply is threatened, either in terms of quantity or quality, the Board may choose to expend funds from this reserve to correct the situation.

Periodic Review Dates for Balances – Annually by District staff and the Board of Directors during the preparation and approval of the annual capital budget.

C. Employee Benefits Reserves. The District shall keep on hand a prudent amount of cash required to fund annually accrued and unpaid employee benefit liabilities, including: vacation days, sick days, unemployment benefits, and annual medical benefits and annual pension benefits for current employees.

IV. OTHER RESERVE FUNDS. The District's Board may establish other cash reserve funds for specific needs that are over and above the reserves noted above as may be necessary from time to time.

<u>O&M</u>		
3 Months		\$ 685,794
6 Months		\$ 1,371,587
<u>CIP</u>		\$ 1,082,134
<u>Contingency</u>		
	1%	\$ 27,432
	10%	\$ 274,317
<u>Rate Stabilization</u>		\$ 623,159
<u>Emergency Reserves</u>		\$ 2,500,000
<u>Employee Benefits Reserves</u>		\$ 420,733
<u>Total</u>		
Minimum		\$ 5,339,252
Maximum		\$ 6,271,930
Annual Contribution to Asset Replacement		\$ 180,000

CASH RESERVES FUND TARGETS

ID - 1 and 3 Replacement Costs 2011 Dollars					
No.	Quantity	Unit	Description	Replacement Cost	Total
1 Construction Cost					
1.01	12,784	LF	4-Inch PVC Pipe (Replace with 8-inch Pipe)	\$ 72	920,448
1.02	31,142	LF	6-Inch PVC Pipe (Replace with 8-inch Pipe)	\$ 72	2,242,224
1.03	41,367	LF	8-Inch PVC Pipe	\$ 72	2,978,424
1.04	74,327	LF	10-Inch PVC Pipe	\$ 85	6,317,795
1.05	6,084	LF	12-Inch PVC Pipe	\$ 95	577,980
1.06	250	EA	Fire Hydrants	\$ 5,500	1,375,000
1.07	2	EA	Booster Station	\$ 55,000	110,000
1.08	1	EA	800 Tank	\$ 850,000	850,000
1.09	1	EA	R-1 Tank	\$ 625,000	625,000
1.10	1	EA	R-2 Tank	\$ 325,000	325,000
1.11	1	EA	Rams Hill Tank #1	\$ 175,000	175,000
1.12	1	EA	Rams Hill Tank #2	\$ 275,000	275,000
1.13	1	EA	ID 1-1 Well	\$ 175,000	175,000
1.14	1	EA	ID 1-2 Well	\$ 175,000	175,000
1.15	1	EA	ID 1-8 Well	\$ 210,000	210,000
1.16	1	EA	ID 1-10 Well	\$ 210,000	210,000
1.17	1	EA	ID 1-12 Well	\$ 275,000	275,000
1.18	1	EA	ID 1-16 Well	\$ 275,000	275,000
1.19	4	EA	Clay Valves	\$ 10,500	42,000
Total ID-4 and ID-5 Replacement Cost:					18,133,871

ID - 4 and 5 Replacement Costs 2011 Dollars					
No.	Quantity	Unit	Description	Replacement Cost	Total
1 Construction Cost					
1.01	43,193	LF	4-Inch PVC Pipe (Replace with 8-inch Pipe)	\$ 72	3,109,896
1.02	152,972	LF	6-Inch PVC Pipe (Replace with 8-inch Pipe)	\$ 72	11,013,984
1.03	85,488	LF	8-Inch PVC Pipe	\$ 72	6,155,136
1.04	28,954	LF	10-Inch PVC Pipe	\$ 85	2,461,090
1.05	270	EA	Fire Hydrants	\$ 5,500	1,485,000
1.06	4	EA	Clay Valves	\$ 10,500	42,000
1.07	1	EA	Booster Station	\$ 55,000	55,000
1.08	1	EA	1 Million Gallon Tank	\$ 850,000	850,000
1.09	1	EA	Twin Tanks	\$ 625,000	625,000
1.1	1	EA	Indian Head Tank	\$ 325,000	325,000
1.11	1	EA	ID 4-4 Well	\$ 175,000	175,000
1.12	1	EA	ID 4-11 Well	\$ 275,000	275,000
1.13	1	EA	ID 5-5 Well	\$ 275,000	275,000
1.14	1	EA	ID 4-18 Well	\$ 175,000	175,000
1.15	1	EA	Wastewater Pump Station	\$ 775,000	775,000
1.16	275	EA	Sewer Manholes	\$ 7,500	2,062,500
1.17	1	LS	Wastewater Treatment Plant	\$ 5,500,000	5,500,000
1.18	97,680	LF	Wastewater Collection System Pipe	\$ 95	9,279,600
Total ID-4 and ID-5 Replacement Cost:					44,639,206

Total Borrego Water District Estimated Water and Sewer Assets 2011 Dollars and Construction Costs					
No.	Quantity	Unit	Description	Replacement Cost	Total
1 Construction Cost					
1.01	55,977	LF	4-Inch PVC Pipe (Replace with 8-inch Pipe)	\$ 72	4,030,344
1.02	184,114	LF	6-Inch PVC Pipe (Replace with 8-inch Pipe)	\$ 72	13,256,208
1.03	126,855	LF	8-Inch PVC Pipe	\$ 72	9,133,560
1.04	103,281	LF	10-Inch PVC Pipe	\$ 85	8,778,885
1.05	6,084	LF	12-Inch PVC Pipe	\$ 85	517,140
1.06	520	EA	Fire Hydrants	\$ 5,500	2,860,000
1.07	8	EA	Clay Valves	\$ 10,500	84,000
1.08	3	EA	Booster Station	\$ 55,000	165,000
1.09	1	EA	1 Million Gallon Tank	\$ 850,000	850,000
1.10	1	EA	Twin Tanks	\$ 625,000	625,000
1.11	1	EA	Indian Head Tank	\$ 325,000	325,000
1.12	1	EA	ID 4-4 Well	\$ 175,000	175,000
1.13	1	EA	ID 4-11 Well	\$ 275,000	275,000
1.14	1	EA	ID 5-5 Well	\$ 275,000	275,000
1.15	1	EA	ID 4-18 Well	\$ 175,000	175,000
1.16	1	EA	800 Tank	\$ 850,000	850,000
1.17	1	EA	R-1 Tank	\$ 625,000	625,000
1.18	1	EA	R-2 Tank	\$ 325,000	325,000
1.19	1	EA	Rams Hill Tank #1	\$ 175,000	175,000
1.20	1	EA	Rams Hill Tank #2	\$ 275,000	275,000
1.21	1	EA	ID 1-1 Well	\$ 175,000	175,000
1.22	1	EA	ID 1-2 Well	\$ 175,000	175,000
1.23	1	EA	ID 1-8 Well	\$ 210,000	210,000
1.24	1	EA	ID 1-10 Well	\$ 210,000	210,000
1.25	1	EA	ID 1-12 Well	\$ 275,000	275,000
1.26	1	EA	ID 1-16 Well	\$ 275,000	275,000
1.27	1	EA	Wastewater Pump Station	\$ 775,000	775,000
1.28	275	EA	Sewer Manholes	\$ 7,500	2,062,500
1.29	1	LS	Wastewater Treatment Plant	\$ 5,500,000	5,500,000
1.30	97,680	LF	Wastewater Collection System Pipe	\$ 95	9,279,600
Total Replacement Cost:					62,712,237

ID - 1 and 3 Emergency Repairs Costs 2011 Dollars					
No.	Quantity	Unit	Description	Replacement Cost	Total
1	Construction Cost				
1.01	1,278	LF	4-Inch PVC Pipe (Replace with 8-inch Pipe)	\$ 72	92,045
1.02	3,114	LF	6-Inch PVC Pipe (Replace with 8-inch Pipe)	\$ 72	224,222
1.03	4,137	LF	8-Inch PVC Pipe	\$ 72	297,842
1.04	7,433	LF	10-Inch PVC Pipe	\$ 85	631,780
1.05	608	LF	12-Inch PVC Pipe	\$ 95	57,760
1.06	1	EA	Repair Booster Station	\$ 5,000	5,000
1.07	1	EA	Rams Hill Tank #1	\$ 75,000	75,000
1.08	1	EA	ID 1-12 Well	\$ 100,000	100,000
1.09	1	EA	ID 1-16 Well	\$ 100,000	100,000
Total ID-1 and ID-3 Replacement Cost:					1,583,649

ID - 4 and 5 Emergency Repairs Costs 2011 Dollars					
No.	Quantity	Unit	Description	Replacement Cost	Total
1	Construction Cost				
1.01	4,319	LF	4-Inch PVC Pipe (Replace with 8-inch Pipe)	\$ 72	310,990
1.02	15,297	LF	6-Inch PVC Pipe (Replace with 8-inch Pipe)	\$ 72	1,101,398
1.03	8,549	LF	8-Inch PVC Pipe	\$ 72	615,514
1.04	2,895	LF	10-Inch PVC Pipe	\$ 85	246,109
1.05	1	EA	Repair Booster Station	\$ 5,000	5,000
1.06	1	EA	1 Million Gallon Tank	\$ 125,000	125,000
1.07	1	EA	Twin Tanks	\$ 75,000	75,000
1.08	1	EA	ID 4-11 Well	\$ 100,000	100,000
1.09	1	EA	ID 5-5 Well	\$ 100,000	100,000
1.1	1	EA	Wastewater Pump Station	\$ 12,500	12,500
1.11	5	EA	Sewer Manholes	\$ 7,500	37,500
1.12	1	LS	Wastewater Treatment Plant	\$ 75,000	75,000
1.13	9,768	LF	Wastewater Collection System Pipe	\$ 95	927,960
Total ID-4 and ID-5 Replacement Cost:					3,731,971

Total Borrego Water District Estimated Water and Sewer Emergency Repairs 2011 Dollars and Construction Costs					
No.	Quantity	Unit	Description	Replacement Cost	Total
1	Construction Cost				
1.01	5,598	LF	4-Inch PVC Pipe (Replace with 8-inch Pipe)	\$ 72	403,034
1.02	18,411	LF	6-Inch PVC Pipe (Replace with 8-inch Pipe)	\$ 72	1,325,621
1.03	12,686	LF	8-Inch PVC Pipe	\$ 72	913,356
1.04	10,328	LF	10-Inch PVC Pipe	\$ 85	877,889
1.05	608	LF	12-Inch PVC Pipe	\$ 95	57,760
1.06	2	EA	Booster Station	\$ 5,000	10,000
1.07	1	EA	1 Million Gallon Tank	\$ 125,000	125,000
1.08	1	EA	Twin Tanks	\$ 75,000	75,000
1.09	1	EA	ID 4-11 Well	\$ 100,000	100,000
1.10	1	EA	ID 5-5 Well	\$ 100,000	100,000
1.11	1	EA	Rams Hill Tank #1	\$ 75,000	75,000
1.12	1	EA	ID 1-12 Well	\$ 100,000	100,000
1.13	1	EA	ID 1-16 Well	\$ 100,000	100,000
1.14	1	EA	Wastewater Pump Station	\$ 12,500	12,500
1.15	5	EA	Sewer Manholes	\$ 7,500	37,500
1.16	1	LS	Wastewater Treatment Plant Repairs	\$ 75,000	75,000
1.17	9,768	LF	Wastewater Collection System Pipe	\$ 95	927,960
Total Replacement Cost:					5,315,620



April 14, 2011

Borrego Water District
Attention: Board of Directors
806 Palm Canyon Drive
Borrego Springs, CA 92004-3101

Subject: Update of the Groundwater Management Plan and Anza Borrego Desert Integrated Regional Water Management Plan

Members of the Board:

Pursuant to Director Lyle Brecht's request, Wildermuth Environmental, Inc. (WEI) analyzed the *2009 Anza Borrego Desert Integrated Regional Water Management Plan* (ABD IRWMP) developed by Bill Mills and the *2002 Groundwater Management Plan* (GMP) and subsequently prepared a process description and cost estimate to update and synchronize those plans. Our observations regarding the *current situation on the ground* and past management plan efforts are listed below:

- The groundwater basin is in a serious state of overdraft, and the adverse economic consequences of overdraft are imminent. This is evident in the review of groundwater level and chemistry data and corroborated in the ongoing USGS studies in the basin where the hydrogeologic impacts of future pumping scenarios are being evaluated. It is highly unlikely that the overdraft and its attendant economic consequences will be self-correcting over time. What will be required is the active management of the basin to achieve an economically least-cost future for the Valley.
- The upper aquifer of the basin is deeper in the northern portion of the basin where agricultural production occurs and shallower in the southern portion of the basin where the District's production occurs. It is likely that the District's wells will go out of production long before any agricultural wells are threatened.
- In addition to these production problems, the District will most likely be required to treat groundwater, at great cost, prior to use as water quality deterioration is likely to be exacerbated as overdraft continues and the water levels of the upper aquifer drop towards the middle and lower aquifers. This requirement for advanced water treatment is common when withdrawals occur in older geologic sediments, which will occur in the basin as the water table in the upper aquifer drops further and withdrawals commence from the middle and lower aquifers.
- The Bureau of Reclamation is in the process of evaluating the importation of water into the ABD area; this work will be completed in the near future. The USGS investigation will also be completed in the near future. The implications of these two investigations will require updates to the GMP and the ABD IRWMP.

That said, the District and other Valley stakeholders will need to develop and implement a GMP now to ensure sustainable water use both for the purposes of using the basin for water banking and if importation is not economically feasible at this time.

- The 2002 GMP produced recommendations that would limit groundwater production to a yield that would be sustainable over time.
- The 2009 ABD IRWMP produced recommendations to augment local supplies with imported water and did not incorporate the recommendations of the 2002 GMP; at present, the two plans are neither consistent nor synchronized.
- These two plans need to be updated and synchronized to enable the District to be eligible for state grants under Proposition 84—the 2012 state water bond, should it be approved by the voters—and other future state grant programs.

We have observed and/or participated in the development of GMPs and IRWMPs, and based on our experience in these processes, we respectfully recommend that the District and the Valley's other stakeholders commence with the actions described below in a deliberate and expedited manner.

Develop an Implementable Groundwater Management Plan and ABD IRWMP with the Clear Objective of Establishing a Managed Borrego Valley Groundwater Basin

Scope. The tasks required to develop an implementable groundwater management plan and an ABD IRWMP that are mutually supportive of the objective to establish a managed Borrego Valley Groundwater Basin include the following:

1. Establish a stakeholder group that will be administered by the District.
2. Clearly articulate the objectives of the GMP and ABD IRWMP.
3. Clearly articulate current and planned water use in the Borrego Valley Groundwater Basin.
4. Clearly describe the state of the Basin based on existing and new data collected as part of the development of the GMP.
5. Develop two management plan alternatives: one based on no importing of supplemental water and the other based on importing supplemental water.
6. Develop preliminary implementation plans and costs for each groundwater management plan alternative. The implementation plans must include schedules and milestones to achieving sustainable groundwater production.
7. Develop financing alternatives for each groundwater management plan alternative.
8. Complete CEQA/NEPA processes for the GMP and ABD IRWMP.
9. Conduct a public process consistent with IRWMP and CEQA scoping requirements.
10. Revise the GMP to comport with the CEQA/NEPA process.

Cost and Time Required to Complete this Work. The estimated cost to complete these plans is about \$300,000 to \$400,000, exclusive of CEQA/NEPA process. This cost assumes that the Bureau and the USGS's ongoing work will be available for use in the GMP and ABD IRWMP. The cost of the CEQA/NEPA process will be largely driven by the imported water alternative; thus, its cost is difficult

to estimate. For planning purposes, the District should budget \$100,000 for the CEQ/NEPA effort. It is estimated that it will take about two years to complete this work.

Development of the Governance Structure and Rules to Implement the Groundwater Management Plan for the Borrego Valley Groundwater Basin Portion of the ABD IRWMP that Establishes a Managed Basin

The scope of this effort will be determined more precisely during the development of groundwater management implementation and the ABD IRWMP. Based on our experience in the Beaumont and Chino Basins, it could cost between \$1 million to \$4 million and take two to four years to develop and implement a governance structure for establishing a managed Borrego Valley Groundwater Basin. There may be additional costs borne by the other pumpers in the basin, and these costs may also be considerable.

Please call me if you have any questions regarding the above or need further assistance in scoping and developing these plans.

Very truly yours,

Wildermuth Environmental, Inc.

A handwritten signature in black ink, appearing to read "Mark J. Wildermuth". The signature is fluid and cursive, with a large, sweeping flourish at the end.

Mark Wildermuth, PE
President

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BORREGO WATER DISTRICT

REVIEW OF DISTRICT STAFFING AND BUDGETS

INITIAL FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

PREPARED BY:

BRIAN J. BRADY, P.E.

MARCH 28, 2011

PURPOSE

This study was conducted at the request of the Borrego Water District (BWD)'s Board of Directors to perform an independent review of District staffing and operating and maintenance budgets.

To complete this study, a site visit to BWD headquarters was arranged on March 23, 2011. Interviews of key personnel were conducted and a tour of office and warehouse facilities made. Both prior to and subsequent to the March 23rd meeting, District staff provided a wide range of technical and budgetary information. This information, together with the onsite interviews and observations, provide the basis for this review.

A reference list is included at the end of this report.

BACKGROUND

Borrego Water District is a community water system formed in 1962 by an election of the landowners in Borrego Valley as a public agency under the California Water District Act of the Water Code. The purpose of the agency is to provide water, sewer, and flood control services within its service area. The Borrego Water District is located in the city of Borrego Springs, CA in San Diego County. The physical address is 806 Palm Canyon Drive, Borrego Springs, CA 92004.

Borrego Water District acquired neighboring Borrego Springs Water Company in 1997 and in 2009 acquired Borrego Springs Park Community Services District. Borrego Water District is now comprised of 5 Improvement Districts.

Borrego Water District operates facilities in four pressure zones:

- 1) 800 feet – Served by ID3 and includes the Deep Well Trail subdivision, the Rancho Borrego area, and La Casa del Zorro Resort
- 2) 880 feet – Served by ID4 and includes the previous Borrego Springs Water Company, the majority of the Borrego Springs community, and the newly incorporated Borrego Springs Park Community Services District area
- 3) 900 feet – Served by ID1 and includes the Montesoro subdivision
- 4) 1,000 feet – Served by ID1 and includes the Montesoro subdivision

Borrego Water District has recently expanded its infrastructure due to the consolidation with Borrego Springs Park Community Services District. The improvements include a 10" pipeline intertie between the two systems, a booster pump installed on the 10" Intertie to deliver water from ID5-5 to Borrego Water District Country Club Reservoir, a 6" pressure reducing valve to deliver emergency water from Borrego Water District Country Club Reservoir to Borrego Park Community Services District, two inline water

meters to measure water quantity delivered from the booster pump to Borrego Water District Country Club Reservoir and from Borrego Water District Country Club Reservoir to Borrego Park Community Services District, and SCADA controls for operation of the entire system.

Borrego Water District does not treat or purchase any surface water. Groundwater supplies for Borrego Water District consists of agricultural and domestic wells.

The District currently provides the following services:

WATER SERVICE

- Serves 2,200 residential and commercial customers (permanent population of 3,300), an annual supply of 2,800 acre-feet of water from 12 wells
- Maintains 90 miles of transmission and pipe distribution lines
- Manages over four million acre-feet of reservoir storage
- Operates three water supply booster facilities
- Implements a Groundwater Management plan for the valley

SEWER SERVICE

- Maintains a waste water reclamation plant that serves the community and could provide non-potable reclaimed water for golf courses in the future
- Maintains trunk sewer lines to Montesorro (aka Rams Hill), Borrego Ranch, the Elementary School and seven miles along Palm Canyon Drive, serving the commercial center of Borrego Springs

FLOOD CONTROL SERVICES

- Has flood control authority, which is currently exercised only at Montesorro

GNAT CONTROL

- Maintains eye gnat control programs for the valley

TRASH

- Provides trash collection service to the ID-5 area (Club Circle)

PARKS

- Operates and maintains the Club Circle Golf Course
- Works with other community organizations regarding service area recreation opportunities

HEADQUARTERS FACILITIES

A brief tour of the general office building was conducted. This recently constructed (7 year old) building houses the administrative offices, board meeting room and District records. There are offices for six individuals, including the general manager, administrative manager, operations manager, customer service representatives and administrative assistant.

A tour of the warehousing and corporate yard operations was also conducted. The warehouse is stocked to respond to all likely construction and/or emergency repair needs. Facilities include a fueling station and portable emergency electrical generation equipment. The facilities are consistent with operating water and wastewater operations in a relatively remote setting.

STAFFING

The Borrego Water District serves retail customers through 2,200 potable water connections and 1,075 sewer connections over a 50 square mile service territory. The district has also recently taken over the Circle Club Golf Course operations. These services require staffing for the following tasks:

- Water system operations
- Water system pipeline construction
- Cross-connection protection
- Wastewater system operations
- Engineering
- AutoCAD
- Regulatory compliance
- Finance/treasury
- Safety training
- General management
- Customer service
- Billing
- Inventory control
- Purchasing
- Board interface
- Grounds and facilities maintenance

- Human resources
- Meter reading
- Public outreach
- Information technology
- Administration

Any efficiently operated public water district is compelled to analyze the benefits of either performing these functions in-house, or contracting for these services. Most districts use some combination of in-house and contracted resources. An obvious example of contracting out for a district of BWD's size is engineering services. An in-house engineering staff is less critical to day-to-day operations than, for example, certified water and wastewater operators and engineering technicians.

Of note with BWD is that the District's remote location changes the usual economics of operation. For example, construction of pipelines to extend to new customers or repair of damaged facilities is often contracted out by other Districts. However, maintaining construction crews in-house is more efficient and economical for BWD. Similarly, providing cross-connection certifications with BWD staff saves customers money.

Taken linearly, the BWD would staff as follows:

- 1 General manager
- 1 Administrative/human resources manager
- 2 Water system operators
- 2 Wastewater system operators
- 1 Cross-connection specialist
- 1 Regulatory compliance/safety officer
- 1 Purchasing agent/planner
- 1 Engineering technician
- 1 Board secretary
- 1 Water quality technician
- 1 Billing clerk
- 1 Meter reader/utility worker
- 1 Groundskeeper (golf course)
- 2 Field supervisors*
- 4 Utility workers*
- 1 Facility maintenance worker

- 22 Total staffing

*comprise two construction crews

The above staffing scenario is not sustainable financially for BWD, as it would result in a nearly 50 percent increase in labor costs. As well, by necessity, staff responsibilities in smaller water and wastewater operations reflect three requirements: 1) complimentary staff responsibilities are consolidated into one position, 2) supervisors must exercise a

wider span of control, and 3) a systematic process of cross-training is needed to back up critical positions.

CURRENT ORGANIZATION (15 positions):

- I General Manager (vacant)
 - A. Administrative assistant
 - B. Operation Manager
 - 1. Utility Services Supervisor (construction)
 - a. Utility workers (4)
 - 2. Waste Water Supervisor
 - 3. Water System Supervisor
 - a. Utility worker
 - b. Construction foreman
 - c. Golf course foreman
 - C. Administrative Manager
 - 1. Customer service representative (2)

A review of BWD job descriptions clearly demonstrates the concept of consolidating complementary duties into one position. A good example is the position of Water System Supervisor. Duties include not only all of the traditional administrative and field responsibilities, but also safety training, regulatory compliance, and technical support (AutoCAD, mapping, new development) as well.

Job descriptions also indicate a formal system of primary job duties plus either training requirements to qualify for additional responsibilities and/or duties that back up another employee.

Addressing the element of span of control, an opportunity for greater efficiency does exist by combining the general manager and operations manager positions, resulting in the following proposed organization:

- I General Manager/Operations Manager
 - A. Administrative Assistant
 - B. Administrative Manager
 - 1. Customer service representative (2)
 - C. Utility Services Supervisor (construction)

1. Utility worker (4)
- D. Waste Water Supervisor
- E. Water System Supervisor/Compliance Manager
 1. Utility worker
 2. Construction foreman
 3. Golf course foreman

The immediate annual budget savings with this consolidation is over \$200,000.

STAFFING COSTS

A review of BWD staffing costs was conducted, together with a benchmark comparison with southern California water agencies. For budget year 2010-2011 a total of 16 positions are included in the BWD operating budget, including the vacant general manager's billet. For this analysis, that vacant position has been deleted.

Total direct labor excluding part-time, overtime or miscellaneous charges is \$811,508. Part-time, overtime, miscellaneous add another \$62,400.

Annual CALPERS retirement contribution by the District is \$182,833 and net District medical benefit payments are \$237,733. Taken together, retirement and medical payments represent a 52 percent loading on direct labor. Of note, recently the District elected to enhance the CALPERS participation to the 3% at 60 risk pool.

To benchmark BWD salaries, 20 southern California agencies were surveyed and median salary ranges developed for comparison.

Each BWD position was matched with the appropriate benchmarked position. When the current base salaries of the 15 BWD staff positions, in aggregate, were compared to median base salaries of the 20 agency sample, on average, BWD salaries were 85 percent of the sample median levels. Expressed differently, BWD salary levels would have to be increased by nearly 18 percent to match sample median levels.

Benefit packages (medical and retirement) vary from agency to agency. A broad rule-of-thumb is: As a percentage of direct labor, benefits range from 40 to 60 percent. As previously noted, BWD benefits represent 52 percent of direct labor.

To compare more accurately with the 20 agency sample, an adjustment to compare against median salaries should be made, as well as an adjustment in CALPERS contribution (i.e. increasing by 17.6 percent.) Therefore, the CALPERS contribution is adjusted upward from \$182,833 to \$215,012. Medical benefit cost of \$237,733 remains the same, yielding a total BWD cost of \$452,745.

When this adjusted annual benefits cost is compared to the sample median salaries (\$931,404), benefits represent 49 percent of direct labor. This loading factor falls within the average for southern California water agencies.

BUDGET REVIEW

BWD annual budgets for 2009 and 2010 were reviewed against the District's audited year-end financials for June 30, 2010.

Operating losses for 2009 and 2010 were (\$526,511) and (\$792,489) respectively. Operating revenues remained relatively flat year over year with 2009 revenues at \$2,855,046 and 2010 revenues at \$2,922,996. And operating expenses rose year over year by 10%, from \$3,381,557 in 2009 to \$3,715,485 in 2010.

Initial observations regarding the budget performance:

- Revenue estimates, by category (water, sewer, assessments, other) showed significant variances from actuals. However, overall operating revenue tracked with actuals within five percent (under) on average for 2009 and 2010.
- Expense estimates, on the other hand, were consistently off the mark in both 2009 and 2010. Actual expenses in both years exceeded original budgets by 18 percent. This reflects a systemic flaw in the budgeting process and budget management.
- Budget categories worth examining more closely include:
 - Maintenance expense (up 31 percent, 2009 to 2010)
 - Accounting, legal and audit services (up 51 percent, 2009 to 2010)
 - Contingency fund (created in 2010)

CONCLUSIONS AND RECOMMENDATIONS

The BWD, from a physical plant and operating utility perspective, appears to be an efficiently run operation. Technical and field personnel are trained and certified for their respective job duties. Proper equipment and materials are provided to operate and maintain the water and wastewater systems. Appropriate technology systems such as supervisory control and data acquisition (SCADA) are in place.

Staffing levels are appropriate for the size, scope and geographic location of the District. Division of labor has been thoughtfully organized. Opportunity does exist to flatten the organization by combining the general manager and operations manager positions.

A comprehensive ten-year capital improvement plan has been developed with the assistance of an outside engineering consultant. And, annual construction projects are consistent with the plan recommendations.

Of concern, however, is the development, monitoring and active management of the District's annual operating budget. Expense projections in 2009 and 2010 were consistently overshot by more than \$500,000. In 2010 the variance was in spite of the insertion of a \$157,000 contingency line item.

Based upon the foregoing, the following recommendations are offered:

- Combine general manager and operations manager positions for annual savings of approximately \$200,000. Engineering services, previously provided by the former general manager, should be contracted out on an as-needed basis.
- Reassess providers of accounting, legal and audit services
- Institute active budget management practices, including the use of more realistic operating expense estimates, monthly tracking of all budget line items (with variance reporting to the Board of Directors) and budget revision recommendations to the Board on a quarterly basis. Consider additional memorandum accounting to track critical costs. Incorporate budget performance standards into employee evaluations.
- Establish operating, capital replacement and other financial reserve policies and incorporate into the annual budgeting process
- Recognize that recent years' budget shortfalls reflect an unsustainable financial future. Initiate a 218 process to increase annual operating revenue
- Retain a benefits analyst to assess the advisability of the District's continued participation in CALPERS 3% at 60 risk pool.

REFERENCES

Borrego Water District Organization Chart (June, 2009)

Borrego Water District Rates (July, 2004)

Borrego Water District Audited Financial Statements (June 30, 2010)

Borrego Water District Income Budgets (FYE 2009, 2010, 2011)

Borrego Water District Job Descriptions (13 total)

Borrego Water District Financial Situation (undated draft)

Borrego Water District Strategy to Address Overdraft (undated draft)

CALPERS Worksheet (FYE 2012)

General Ledger Trial Balance (February 28, 2011)

Health Benefits Analysis, Budget (FYE 2012)

Interview Notes with Borrego Water District Staff (March 23, 2011)

Salary/Wage Scale (FYE 2012) Salary Budget Worksheet

Staff Report – Borrego Water District, 5-10 year Capital Improvement Plan (CIP) Justification, Borrego Water District Board of Directors (February 15, 2010) Jerry Rolwing, David Dale

BORREGO WATER DISTRICT

PAID INVOICE HISTORY BY VENDOR
CHECK DATES: 07/01/09 - 03/31/11
VENDORS: #39-39

TODAY'S DATE: 04/01/11
PAGE 1

VENDOR NAME & NUMBER INVOICE# INV DATE P.O. NO. BATCH DESCRIPTION INVOICE AMOUNT DISCT TAKEN CK. DATE CHECK NUM

VENDOR NAME & NUMBER	INVOICE#	INV DATE	P.O. NO.	BATCH	DESCRIPTION	INVOICE AMOUNT	DISCT TAKEN	CK. DATE	CHECK NUM
DAVID TAUSSIG & ASSOCIATES, INC			#39						
9060376		06/30/09		2068	BORREGO WE/ADMIN FOR OTHER	2,563.37	0.00	07/20/09	15088
9080690		08/31/09		2099	BORREGO WD/ADMIN FOR OTHER	412.34	0.00	09/30/09	153
1068604		06/30/10		2171	PROFESSIONAL FEE	1,513.16	0.00	07/30/10	1628
1080072		08/31/10		2178	PROFESSIONAL	686.28	0.00	10/07/10	1648
1110033		11/30/10		2188	CFD 2007-1 ADMIN.	2,168.56	0.00	01/04/11	1665
1120041		12/31/10		2190	CONSULTING SERVICE	261.76	0.00	01/28/11	16792
					TOTAL FOR VENDOR	7,605.47	0.00		
					GRAND TOTAL FOR 6 INVOICES	7,605.47	0.00		

AGREEMENT FOR CONSULTING SERVICES

THIS AGREEMENT is made and entered into this ___ day of March 2011, by and between Borrego Water District at 806 Palm Canyon Drive, Borrego Springs, CA 92004, herein called "Client," and David Taussig and Associates, Inc. at 5000 Birch Street, Suite 6000, Newport Beach, CA 92660, herein after called "Consultant." The Client and the Consultant in consideration of the mutual promises and conditions herein contained agree as follows.

**ARTICLE I
TERM OF CONTRACT**

Section 1.1 This agreement shall become effective on the date stated above and will continue in effect until the earlier of (i) that day when the services provided for herein have been performed or (ii) until terminated as provided in Article 6 below.

**ARTICLE II
SERVICES TO BE PERFORMED BY CONSULTANT**

Section 2.1 Consultant agrees to perform the professional services for the Client and to deliver the work products to the Client as described in the Scope of Work statement attached as Exhibit "A" hereto. Such professional services and work products, as from time to time modified in accordance with Section 2.3 hereof, are collectively referred to as the "Consulting Services."

Section 2.2 Consultant will determine the method, details and means of performing the Consulting Services. Consultants may, at Consultants' own expense, employ such assistance as it deems necessary to perform the Consulting Services required by Client under this Agreement. Consultants shall conduct research and arrive at conclusions with respect to their rendition of information, advice, recommendation or counsel independent of the control and direction of the Client, other than normal contract monitoring. All computer software (including without limitation financial models, compilations of formulas and spreadsheet models), inventions, designs, programs, improvements, processes and methods (collectively, the "Proprietary Models") used or developed by DTA in performing its work is proprietary and shall remain property owned solely by, or licensed by a third party to DTA. Client acknowledges and agrees that the consideration paid by Client herein only entitles Client to a license to use the hard copy or electronically transmitted reports generated pursuant to the Consulting Services and that any Proprietary Model that Consultant uses to generate such reports is owned by, or is duly licensed from a third party to Consultant and is not being provided to Client hereunder. Client acknowledges that DTA may have used reports and analyses that DTA authored for other clients as base works or templates for the reports and analyses prepared for Client pursuant to this Agreement, and Client acknowledges and agrees that DTA has the right to use the reports and analyses that it authors pursuant to this Agreement as base works or templates for reports and analyses that DTA authors for DTA's other clients, provided, however that DTA shall

not use any confidential information provided by Client in such future reports and analyses. Client acknowledges and agrees that DTA has spend substantial time and effort in collection and compiling data and information (the "Data Compilations") in connection with the Consulting Services and that such Data Compilations may be used by DTA for its own purposes, including, without limitation, sale or distribution to third parties; provided, however, that DTA will not sell or distribute any of Client's confidential information that may be contained in such Data Compilations, unless such confidential information is used only on an aggregated and anonymous basis.

Section 2.3 Any proposed changes in the Consulting Services hereunder shall be submitted to the other party hereto, and any such changes agreed to by the parties shall be reflected in an amendment to Exhibit "A" in accordance with Section 7.2 hereto.

Section 2.4 Nothing in this Agreement shall give the Consultant possession of authority with respect to any Client decision beyond the rendition of information, advice, recommendation or counsel.

ARTICLE III **COMPENSATION**

Section 3.1 Client agrees to pay Consultant for its Consulting Services a professional fee computed according to the Fee Schedule attached as Exhibit "B" hereto.

Section 3.2 The Client shall reimburse the Consultant for Consultant's out-of-pocket expenses plus a 15% administrative charge. Expenses shall include all actual expenditures made by Consultant in the performance of any Consulting Services undertaken pursuant to the Agreement, including, without limitation, the following expenditures:

- (a) Cost of clerical assistance @ \$35.00 per hour, including typing, collation, printing and copying, plus copier and photography costs, including photographic reproduction of drawings and documents.
- (b) Transportation costs, including mileage for the use of personal automobiles at the prevailing IRS standard rate, rental vehicles, lodging and regularly scheduled commercial airline ticket costs.
- (c) Courier services, facsimile, and telephone expenses.

Section 3.3 On or about the first two weeks of each month during which Consulting Services are rendered hereunder, Consultant shall present to Client an invoice covering the current Consulting Services performed and the reimbursable expenses incurred pursuant to this Agreement and exhibits thereto. Such invoices shall be paid by Client within thirty (30) days of the date of each invoice. A 1.2% charge may be imposed against accounts which are not paid within 30 days of the date of each invoice.

Section 3.4 The maximum total fee amount set forth in Exhibit "B" may be increased as a result of any expansion of the Consulting Services to be rendered hereunder pursuant to Section 2.3 or as provided in Exhibit "A" hereto.

Section 3.5 Records of the Consultant's costs relating to (i) Consulting Services performed under this Agreement and (ii) reimbursable expenses shall be kept and be available to the Client or to Client's authorized representative at reasonable intervals during normal business hours.

ARTICLE IV **OTHER OBLIGATIONS OF CONSULTANT**

Section 4.1 Consultant agrees to perform the Consulting Services in accordance with Exhibit "A". Should any errors caused by Consultant's negligence be found in such services or products, Consultant will correct them at no additional charge by revising the work products called for in Exhibit "A" to eliminate the errors.

Section 4.2 Consultant will supply all tools and instrumentalities required to perform the Consulting Services under the Agreement.

Section 4.3 Neither this Agreement nor any duties or obligations under this Agreement may be assigned by Consultant without the prior written consent of Client. However, Consultant may subcontract portions of the work to be performed hereunder to other persons or concerns provided Consultant notifies Client of the name and address of said proposed subcontractor and Client either consents or fails to respond to notification with respect to the use of any particular proposed subcontractor.

Section 4.4 In the performance of its Consulting Service hereunder, Consultant is, and shall be deemed to be for all purposes, an independent contractor (and not an agent, officer, employee or representative of Client) under any and all laws, whether existing or future. Consultant is not authorized to make any representation, contract or commitment on behalf of Client.

Section 4.5 Neither this Agreement, any duties or obligations under this Agreement, nor the intentions or expectations of Client will cause the Consultant to be a "public official" as that term is used in Section 87100 of Title 9 of the California Government Code. Client and Consultant agree that Consultant is not a "public official" or "participating in governmental decision" as those terms are used in Section 87100. The Client and Consultant also agree that no actions and opinions necessary for the performance of duties under the Contract will cause the Consultant to be a "public official" or "participating in a governmental decision" as those terms are used in Section 87100.

ARTICLE V **OTHER OBLIGATIONS OF CLIENT**

Section 5.1 Client agrees to comply with all reasonable requests of Consultant and provide access to all documents reasonably necessary to the performance of Consultant's duties under this Agreement with the exception of those documents which Exhibit "A" calls upon the Consultant to prepare.

Section 5.2 Neither this Agreement nor any duties or obligations under this Agreement may be assigned by Client without the prior written consent of Consultant.

Section 5.3 Consultant frequently is retained by developers, landowners, and other persons and concerns interested in development projects which often eventually lead to the preparation on a

contract basis by Consultant of preliminary tax spread models for government agencies to determine tax rates and other matters necessary to accomplish various improvements to realty for financing under a Mello-Roos or other financing programs. In light of the foregoing, Client will determine whether or not it is appropriate to conduct a "significant substantive review" or a "significant intervening substantive review" of Consultant's activities conducted pursuant to this Agreement as such terms are defined in Section 18700(c)h of Title 2 of the California Administrative Code. Should Client elect to conduct such a substantive review, then Client shall determine whether it has sufficient expertise on staff to conduct such a review, and, if not, will retain an independent expert consultant to review Consultant's work. Thereafter, Client shall conduct such review, or cause such independent review to be conducted, prior to the making of any governmental decision relating to the matters contained within the Scope of Work described in Exhibit "A". The parties do not intend and nothing in this Section 5.3 is meant to imply that Consultant is a "public official," "participating in a governmental decision," or has a "financial interest" in the services provided as such terms are used in Section 87100 of Title 9 of the California Governmental Code.

Section 5.4 Client, public agencies, landowners, consultants and other parties dealing with Client or involved in the subject development project referred to in Exhibit "A" will be furnishing to Consultant various data, reports, studies, computer printouts and other information and representations as to the facts involved in the project which Client understands Consultant will be using and relying upon in preparing the reports, studies, computer printouts and other work products called for by Exhibit "A." Consultant shall not be obligated to establish or verify the accuracy of the information furnished by or on behalf of Client, nor shall Consultant be responsible for the impact or effect on its work products of the information furnished by or on behalf of Client, in the event that such information is in error and therefore introduces error into Consultant's work products.

Section 5.5 Client agrees to defend, indemnify and hold Consultant harmless from and against all obligations, losses, liabilities, damages, claims, attachments, executions, demands, actions and/or proceedings (collectively, "Claims") and all costs and expenses in connection therewith, including reasonable attorneys' fees, arising out of or connected with the performance of Consultant's Consulting Services under this Agreement, except as may arise from Consultant's willful misconduct or gross negligence. In that regard, Client will indemnify and hold Consultant harmless from any Claims arising from, growing out of, or in any way resulting from, errors contained in data or information furnished by Client or Client's designee to Consultant for use in carrying out the Consulting Services called for by this agreement. If for any reason the indemnification under this Section 5.5 is unavailable to Consultant or insufficient to hold it harmless, then the Client shall contribute to the amount paid or payable by Consultant as a result of such loss, liability, damage, claim, demand, action or proceeding in such proportion as is appropriate to reflect not only the relative benefits received by the Client on the one hand and Consultant on the other hand but also the relative fault of the Client and Consultant as well as any relevant equitable considerations; provided that Consultant's contribution obligations hereunder shall in no event exceed the amounts received by Consultant under this Agreement.

Section 5.6 In the event that court appearances, testimony or depositions are required of Consultant by Client in connection with the services rendered hereunder, Client shall compensate Consultant at a rate of \$250 per hour and shall reimburse Consultant for out-of-pocket expenses on a cost basis.

ARTICLE VI
TERMINATION OF AGREEMENT

Section 6.1 Either party may terminate or suspend this Agreement upon thirty (30) days written notice. Unless terminated as provided herein, this Agreement shall continue in force until the Consulting Services set forth in Exhibit "A" have been fully and completely performed and all proper invoices have been rendered and paid.

Section 6.2 Should either party default in the performance of this Agreement or materially breach any of its provisions, the other party at its option may terminate this Agreement by giving written notification to the defaulting party. Such termination shall be effective upon receipt by the defaulting party, provided that the defaulting party shall be allowed ten (10) days in which to cure any default following receipt of notice of same.

Section 6.3 The covenants contained in Sections 3.1, 3.2, 4.4, 5.3, 5.4, 5.5, 5.6 and all of Article VII shall survive the termination of this Agreement.

ARTICLE VII
GENERAL PROVISIONS

Section 7.1 Any notices to be given hereunder by either party to the other may be effected either by personal delivery in writing or by mail. Mailed notices shall be addressed to the parties at the addresses appearing in the introductory paragraph of this Agreement, but each party may change the address by written notice in accordance with the first sentence of this Section 7.1. Notices delivered personally will be deemed communicated as of actual receipt. Mailed notices will be deemed communicated as of two (2) days after mailing.

Section 7.2 This Agreement and exhibits hereto supersede any and all agreements, either oral or written, between the parties hereto with respect to the rendering of service by Consultant for Client and contains all of the covenants and agreements between the parties with respect to the rendering of such services. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement, or promise not contained in this Agreement shall be valid or binding. Any modification of this Agreement (including any exhibit hereto) will be effective if it is in writing and signed by the party against whom it is sought to be enforced.

Section 7.3 If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

Section 7.4 Any controversy between the parties hereto involving the construction or application of any of the terms, covenants, or conditions of this Agreement will, on the written request of one party served on the other, be submitted to binding arbitration in accordance with the commercial rules and regulations of the American Arbitration Association and the provisions of the California Arbitration Act (Sections 1280 through 1294.2 of the California Code of Civil Procedure). The arbitration shall take place in Newport Beach, California, or such other location mutually agreed to by the parties.

The arbitrator(s) shall be selected as follows: In the event that Consultant and Client agree on one arbitrator, the arbitration shall be conducted by such arbitrator. In the event Consultant and Client do not so agree, Consultant and Client shall each select an arbitrator and the two arbitrators so selected shall select the third arbitrator. If there is more than one arbitrator, the arbitrators shall act by majority vote. The parties may propose arbitrators from JAMS, ADR, ARC or any independent arbitrator/neutral for dispute resolution. The parties are not required to hire an AAA arbitrator for resolution of a dispute hereunder.

The decree or judgment of an award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

Section 7.5 The prevailing party in any arbitration or legal action brought by one party against the other and arising out of this Agreement shall be entitled, in addition to any other rights and remedies it may have, to reimbursement for its expenses, including court costs and reasonable attorneys' fees. The non-prevailing party shall be liable, to the extent allowable under law, for all fees and expenses of the arbitrator(s) and all costs of the arbitration.

Section 7.6 This Agreement will be governed by and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, this Agreement has been executed on the date and year first above written.

CONSULTANT:

CLIENT:

David Taussig & Associates, Inc.

Borrego Water District

By:


David Taussig, President

By: _____

Date:

3/29/11

Date: _____

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EXHIBIT A

ANNUAL ADMINISTRATION AND ARBITRAGE CALCULATION SERVICES OF THE BORREGO WATER DISTRICT

SCOPE OF WORK

David Taussig & Associates, Inc. ("Consultant") shall provide financial consulting services to assist the Borrego Water District (the "Client") in the annual administration of CFD No. 2007-1 and additional levies, including the following four charges: **i) Water Availability, ii) ID No. 1 Water, Sewer, and Flood Control, iii) Pest Control, and iv) ID No. 3 Water standby charges and assessments.** The intent of these services shall be to determine the tax rates, to facilitate the collection of the taxes, and to calculate the rebate liability of CFD No. 2007-1 for fiscal year 2011-12.

PHASE 1: CFD No. 2007-1

The specific activities and tasks to be performed under this Scope of Work for CFD No. 2007-1 include the following:

Task 1 Land Use Research

This task involves determining, gathering and organizing the land use data required to apportion and collect special taxes, and includes the following subtasks:

- 1.1 Subdivision Research:** Identify and obtain copies of all final tract or parcel maps recorded within CFD No. 2007-1.
- 1.2 Development Research:** Determine non-residential building permit activity as of January 1, 2011. Identify issuance date, building square footage and situs address for each new commercial building.
- 1.3 Assessor Parcel Research:** Review current Assessor Parcel Maps to compile a list of the Assessor's Parcels which will be valid for fiscal year 2011-12. Determine lot square footage of all parcels.
- 1.4 Database Management:** Create automated parcel database that will include information for all parcels. Data will include Assessor Parcel Number and corresponding tract, lot and unit number, acreage, building square footage, building permit issuance date and situs address.

Task 2 Classification of Property

This task involves application of the Amended and Restated Rate and Method of Apportionment of Special Taxes to determine the appropriate special tax classification for each parcel located in the CFD and includes the following subtasks:

- 2.1 **Exempt Property:** Identify all property owned by public agencies or entities otherwise exempt from the special tax and classify as exempt property.
- 2.2 **Taxable Property:** Identify all taxable properties and classify each as "Developed Property" or "Undeveloped Property." Assign each "Developed Property" to the appropriate special tax classification.

Task 3 Financial Analysis

This task involves calculating and apportioning the Special Tax Requirement and includes the following subtasks:

- 3.1 **Administrative Expense Budget:** Assist Client with the preparation of an administrative expense budget.
- 3.2 **Mello-Roos Special Pro Forma:** Prepare pro forma analysis comparing long term special tax revenues to long term financial obligations of CFD No. 2007-1 (i.e., debt service payments, administrative expenses, etc.). Compute the fiscal year 2011-12 special tax rates for all classifications of taxable property.

Task 4 Report Preparation

This task includes the preparation of an Annual Special Tax Report containing the findings of the financial analysis and an explanation of the methodology employed to apportion the special taxes. Included in the report is a list of special tax levy for each Assessor's Parcel.

Task 5 Enrollment of Special Taxes

This task involves submitting the special tax levy on or before August 10, or such other date specified by the County of San Diego to the Auditor-Controller, for inclusion on the consolidated property tax bills. The special tax levy will be submitted on magnetic tape or other media as specified by the County. If direct billing of Undeveloped Property is required, prepare special tax bills for mailing to the owners of Undeveloped Property.

Task 6 Delinquent Property Owner Reporting

This task involves the review and research of County records to determine which parcels are delinquent in the payment of property and special taxes, and includes the following subtasks:

- 6.1 **Semi-annual Delinquency Report:** Review special tax payment information from the County of San Diego. Determine which parcels are delinquent and the corresponding amount of delinquent special taxes. Prepare report summarizing the amount of delinquent special taxes.
- 6.2 **Collection of Delinquent Special Taxes:** Assist Client with the development of procedures to cure delinquent special taxes. Assist with the preparation of demand letters as necessary.

See Phase 2 for additional Delinquency Management Services.

Task 7 Roll Changes and Adjusted Property Tax Bills

This task involves monitoring any changes to the secured tax roll which necessitate new or adjusted property tax bills. This task includes the calculation of new or adjusted bills and the preparation of requests to the County to prepare such bills.

Task 8 Responses to Property Owner Questions

This task involves the provision of information to individuals and other interested parties regarding the amount and calculation of the special tax.

Task 9 Annual Reporting/Disclosure

This task involves assisting Client meet the annual reporting and special tax disclosure requirements as specified by the Continuing Disclosure Agreement, SB 1464, and the 1992 Mello-Roos Amendment Bill, and includes the following subtasks:

- 9.1 Assist Client in the preparation of the Annual Report required by the Continuing Disclosure Agreement.
- 9.2 Prepare and submit required data to the California Debt and Investment Advisory Commission each October in compliance with Section 53359.5 of the Government Code (as amended by SB 1464).
- 9.3 Assist Client in the preparation of special tax disclosure documents pursuant to Section 1102.6b of the Civil Code and Section 53340.2 of the Government Code (as amended by SB 1464).

Task 10 Meetings

Consultant will schedule up to one formal meeting with Client staff and/or the Board to review the pro forma of Mello-Roos special taxes and the Annual Special Tax Levy Report, including a discussion of the findings of the financial analysis. (This meeting will include a discussion of Phase 3 findings as well.)

Task 11 Rebate Calculation (to be completed by Bond Logistix, LLC)

This task entails the preparation of annual arbitrage rebate calculations, report preparation, and identification of rebate liabilities for CFD No. 2007-1, and includes the following subtasks:

- 11.1 **Background Research:** Review documents pertinent to the bonds including the official statement, bond indenture, arbitrage certificate, IRS form 8038-G, and fiscal agent bond fund/account statements.
- 11.2 **Bond Proceeds Deposit Confirmation:** Reconcile the deposits to the funds and accounts set forth in the bond indenture with the actual deposit of funds reflected by the fiscal agent account statements.

- 11.3 **Bond Yield Confirmation:** Prepare debt service table and calculate the bond yield. The resulting bond yield will be verified with that stated on the arbitrage certificate.
- 11.4 **Calculation of Rebate Liability:** Record all investment activity for the funds and accounts determined to be subject to rebate. Using the bond yield calculated under Task 11.3, compute the allowable arbitrage earnings and compare to the actual investment earnings.
- 11.5 **Adjustments for Rebate Exemptions:** Determine the rebate exemptions applicable to CFD No. 2007-1.
- 11.6 **Rebate Report:** Prepare written report containing the findings of the financial analysis and an explanation of the underlying methodology followed to compute the rebate liability, including a legal opinion.

PHASE 2: CFD NO. 2007-1 DELINQUENCY MANAGEMENT/BOND RESTRUCTURING

DTA will provide delinquency management services including, but not limited to, coordination with bond counsel to initiate and monitor foreclosure proceedings, coordination with County to amend and/or strip taxes from the roll, and ongoing manual delinquency research of all parcels in the CFD. DTA will also coordinate with District and finance team, undertake research and prepare analyses as requested, for the workout/bond restructuring

PHASE 3: ADDITIONAL LEVIES

The specific activities and tasks to be performed under this Scope of Work for all additional levies, including the following four charges: **i)** Water Availability, **ii)** ID No. 1 Water, Sewer, and Flood Control, **iii)** Pest Control, and **iv)** ID No. 3 Water standby charges and assessments, submitted by the Client include the following:

Task 1 Land Use Research

This task involves determining, gathering and organizing the land use data required to apportion and collect standby charges and assessments, and includes the following subtasks:

- 1.1 **Assessor Parcel Research:** DTA will obtain a database of the current valid Assessor Parcels from the County.
- 1.2 **Database Management:** Create automated parcel database that will include information for all parcels. Data will include Assessor Parcel Number and corresponding acreage, land use, and other pertinent information.

Task 2 Classification of Property

This task involves determining the appropriate classification for each parcel located in the Water District and includes the following subtasks:

- 2.1 **Exempt Property:** Identify all property owned by public agencies or entities otherwise exempt from standby charges and assessments and classify as exempt property.

- 2.2 Taxable Property:** Identify all taxable property and determine standby charges and assessments to apply to each property.

Task 3 Financial Analysis

This task involves obtaining and apportioning the operating budget requirements for the Water District and includes the following subtasks:

- 3.1 Operating Budget Requirements:** Obtain the operating budget for each standby charge and assessment from Client.
- 3.2 Calculate Standby Charge/Assessments:** Compute the fiscal year 2010-11 standby charges and assessments for taxable property.

Task 4 Summary Memo

This task includes the preparation of a summary memo. Included with the memo is a list of levies for each Assessor's Parcel.

Task 5 Enrollment of Taxes

This task involves submitting the standby charges and assessments on or before August 10, or such other date specified by the County of San Diego to the Auditor-Controller, for inclusion on the consolidated property tax bills. The tax levy will be submitted on magnetic tape or other media as specified by the County. If direct billing of property is required, prepare tax bills for mailing to the property owners.

Task 6 Roll Changes and Adjusted Property Tax Bills

This task involves monitoring any changes to the secured tax roll which necessitate new or adjusted property tax bills. This task includes the calculation of new or adjusted bills and the preparation of requests to the County to prepare such bills.

Task 7 Responses to Property Owner Questions

This task involves the provision of information to individuals and other interested parties regarding the amount and calculation of the standby charges and assessments.

Task 8 Meetings

Meetings are included under Phase 1 Scope of Work.

EXHIBIT B

ANNUAL ADMINISTRATION AND ARBITRAGE CALCULATION SERVICES OF THE BORREGO WATER DISTRICT

BUDGET

The proposed annual budget for Tasks 1 – 10 for Phase 1 in the Scope of Work is time and materials, not to exceed \$12,000. The proposed annual budget for Phase 2 Delinquency Management is time and materials not to exceed \$17,500. The proposed annual budget for Tasks 1 – 8 for Phase 3 in the Scope of Work is time and materials, not to exceed \$5,000. The budget shown above represents maximum amounts not to be exceeded for Phase 1, Phase 2 and Phase 3, subject to the limitations identified below, unless otherwise agreed upon by the Borrego Water District (the "Client"). The proposed annual budget for Task 11 of Phase 1 is explained in more detail in Exhibit C.

Consultant shall charge the following hourly rates for services related to the Scope of Work.

Managing Director	\$200/Hour
Vice President	\$190/Hour
Senior Manager	\$185/Hour
Manager	\$175/Hour
Senior Associate	\$155/Hour
Associate	\$140/Hour
Senior Analyst	\$125/Hour
Analyst	\$125/Hour
Research Assistant	\$100/Hour

Monthly progress payments will be made by Client upon presentation of invoice by Consultant providing details of services rendered and expenses incurred. At Client's request services in addition to those identified in the Scope of Work may be provided if the total fee to complete the Tasks selected is less than the associated budget. Alternatively, if the selected Tasks can be completed for less than the amount budgeted, only the hours actually expended will be billed.

In addition to fees for services, Client will reimburse Consultant for travel, photocopying, database services or materials, facsimile and telephone calls, clerical services, and other out-of-pocket expenses, in an amount not to exceed \$1,750 annually.

LIMITATIONS

Additional services other than those necessary to amend errors on the part of Consultant are not covered by the budgets listed above. As for Task 8 for CFD No. 2007-1 and Task 7 for standby charges and other assessments, detailed written responses or formal meetings with property owners to resolve disputes will be classified as Additional Work and billed at hourly rates listed above.

EXHIBIT C

**MELLO-ROOS SPECIAL TAX ADMINISTRATION AND
ARBITRAGE CALCULATION SERVICES
COMMUNITY FACILITIES DISTRICT NO. 2007-1
OF THE BORREGO WATER DISTRICT**

ARBITRAGE REBATE COMPLIANCE SERVICES

This letter is to confirm the engagement of David Taussig & Associates, Inc. ("DTA") by the Borrego Water District (the "Issuer") for the purpose of performing calculations relating to the rebate requirements contained in Section 148(f) of the Internal Revenue Code of 1986 (the "Code"). The calculations are to be performed with respect to the tax exempt obligation issues listed on Schedule A hereto (the "Bonds"), applying applicable federal tax rules.

The Issuer, by acknowledging this letter, consents to the engagement by DTA of Bond Logistix, LLP ("Bond Logistix") to provide certain legal services to assist in determining the amount of rebate liability with respect to the Bonds. The agreement between DTA and Bond Logistix which sets out the services to be provided by each is available upon request. While the Issuer may rely on the legal services performed by Bond Logistix, Bond Logistix will have no attorney-client relationship with the Issuer by virtue of the agreement, this letter, or such services.

The fee with respect to each report and opinion required by the Issuer is as set forth on Schedule B hereto. Additional Bond issues may be added, from time to time, to Schedule A hereto by the Issuer and DTA provided that the prior consent of Bond Logistix is obtained by DTA.

If this letter agreement is satisfactory, please have an authorized official acknowledge below and return one copy to the undersigned.

Very truly yours,

DAVID TAUSSIG & ASSOCIATES, INC.

By:  _____
David Taussig, President

Acknowledged:
BORREGO WATER DISTRICT

By: _____

Title: _____

Date: _____

SCHEDULE A

1. \$9,530,000 Borrego Water District Community Facilities District No. 2007-1
2007 Special Tax Bonds (San Diego County, California)

SCHEDULE B

Arbitrage Rebate Compliance Services

FEE SCHEDULE

The proposed budget for Task 11 is a flat fee of \$2,750 per bond issue for the initial calculation. The annual fees for subsequent years will be \$2,250 per bond issue per year; note, additional fees will be incurred for transferred proceeds analysis, final or five year report, or computation periods in excess of twelve months.

AGREEMENT FOR THE CONSTRUCTION OF WATER FACILITIES

THIS AGREEMENT FOR THE CONSTRUCTION OF WATER FACILITIES (this “Agreement”) is entered into by and among the **BORREGO WATER DISTRICT**, a California Water District organized and operating pursuant to California Water Code Section 34000 et seq. (the “District”), the **RAYMOND E. PLOTE LIVING TRUST** (the “Plote Living Trust”) and **BASARA LLC**, a [REDACTED] limited liability company (“Basara”) (the Plote Living Trust and Basara are collectively referred to herein as the “Developer”).

RECITALS

A. The Developer desires to improve certain real property commonly referred to as Mesquite Trails Ranch, which consists of approximately 310 acres that is currently improved with 480 recreational vehicle lots, 28 recreation or open space lots and 7 roads (the “Project”). The Project is located east of Borrego Valley Road at the intersection of Tilting “T” Drive in the community of Borrego Springs and is legally described in the Project Legal Description attached hereto as Exhibit “A” and incorporated herein.

B. The Project is within the District’s territorial boundaries and jurisdiction.

C. The Developer desires to provide domestic water service to the Project. The District has received and reviewed a hydraulic analysis (the “Analysis”) that was prepared or caused to be prepared by the Developer concerning the impact of the Project upon the District’s water system. Based upon the results and conclusions of the Analysis, the Developer has designed and will construct the water facilities described in Exhibit “B” attached hereto and incorporated herein (the “Water Facilities”). The Water Facilities will be dedicated to the District as a condition of the District providing domestic water service to the Project.

D. The Developer will construct and/or install the Water Facilities in more than one phase. The Developer has submitted to the District plans and specifications for the construction and installation of the initial phase of the Water Facilities, which initial phase consists of the off site water line construction along Tilting “T” Drive and the on site water line construction for phase 1 (the “Phase 1 Plans”). The Phase 1 Plans are attached hereto as Exhibit “C” and incorporated herein. The Developer shall prepare and submit to the District and the District shall have approved plans and specifications for the construction and installation of subsequent phases of the Water Facilities as set forth in this Agreement prior to the Developer commencing construction and/or installation of each such phase.

E. The Developer is required to construct the Water Facilities pursuant and subject to the plans and specifications approved by the District for each phase and is further required to comply with the terms and conditions of this Agreement.

NOW, THEREFORE, the District and the Developer hereby agree as follows:

1. District’s Provision of Water Service. The District shall provide water service to the Project pursuant and subject to all applicable federal, state and local laws and ordinances (including, without limitation, the District’s rules, regulations and policies) upon the Developer’s strict compliance with and satisfaction of each of the following conditions (each of which shall

constitute an express condition precedent to the District's obligation to provide water service to the Project):

1.1 Approved Hydraulic Analysis. The Analysis, as well as any amendment or supplement to the Analysis, shall be approved by the District's General Manager. All fees and costs directly or indirectly related to or associated with the Analysis shall be borne solely by the Developer.

1.2 Fees and Charges. The Developer shall pay all water service fees and charges as set forth in Exhibit "D" attached hereto and incorporated herein.

1.3 Environmental Review. The Developer shall provide to the District all environmental documents previously utilized to obtain approvals for the Project. All fees and costs directly or indirectly related to or associated with the environmental review of the Project, the approval or implementation of this Agreement and/or the construction of the Water Facilities has been and/or shall be borne solely by the Developer.

1.4 Approved Plans and Specifications. The Developer shall submit to the District the Phase 1 Plans, which shall be subject to the District's review and approval. The District's approval of the Phase 1 Plans, as well as the District's approval of the plans and specifications for subsequent phases, shall not relieve the Developer of liability based upon the design, construction or installation of the Water Facilities. Once approved by the District, the Phase 1 Plans, as well as the plans and specifications for each subsequent phase, shall be incorporated in and shall constitute a part of this Agreement.

2. Water Facilities. The Developer shall construct the Water Facilities required by this Agreement in strict compliance with the Phase 1 Plans and the plans and specifications approved by the District for each subsequent phase. All fees and costs of whatever type or nature necessary to design, build and dedicate the required Water Facilities to the District shall be borne solely by the Developer unless otherwise agreed by the District in writing (e.g., in the case of required upsizing to accommodate future service demands for downstream users).

3. Liability Insurance. Upon execution of this Agreement, Developer or Developer's contractor shall provide certificates of insurance and endorsements showing that Developer or Developer's contractor has liability insurance coverage with an insurance company authorized to do business in the State of California, and acceptable to the District, providing \$1,000,000 of coverage. The liability insurance coverage shall include each of the following types of insurance:

- A. General Liability
 - (1) Comprehensive Form
 - (2) Premises-Operations
 - (3) Explosion and Collapse Hazard
 - (4) Underground Hazard
 - (5) Products/Completed Operations Hazard

- (6) Contractual Insurance
- (7) Broad-form Property Damage, Including Completed Operations
- (8) Independent Contractors
- (9) Personal Liability

B. Auto Liability

- (1) Comprehensive Form, including Loading and Unloading
- (2) Owned
- (3) Hired
- (4) Non-owned

The Liability Insurance shall include as additional insureds the District, its directors, officers, agents, employees and consulting engineer. The insurance afforded to these additional insureds shall be primary insurance. If the additional insureds have other insurance, which might be applicable to any loss, the amount of the insurance provided under this section shall not be reduced or prorated by the existence of such other insurance.

Included in such insurance shall be contractual coverage sufficiently broad to insure matters set forth in Section 14 Agreement. All liability insurance shall include occurrence coverage with a deductible amount acceptable to the District. All such insurance coverage shall be submitted to the District on the approved certificate of insurance and endorsement form, which is attached hereto as Exhibit "F" and incorporated herein, or the functional equivalent satisfactory to the District. The endorsement shall be signed and notarized by an authorized agent/representative of the insurance carrier. The insurance certificate and endorsement shall be non-cancelable without thirty (30) days written notice to the District, other than cancellation for non-payment of premiums, with respect to which the certificate and endorsement shall be non-cancelable without ten (10) days written notice to the District.

4. Worker's Compensation Insurance. Upon execution of this Agreement, the Developer agrees to provide certificates of insurance showing that the contractor retained by the Developer has obtained, for the period of the contract, full worker's compensation insurance coverage for no less than the statutory limits covering all persons whom the Developer's contractor employs or may employ in carrying out the work under this Agreement. The Developer's contractor shall provide the District with certificates of workers compensation insurance and endorsements on the forms attached hereto as Exhibit "G" and incorporated herein or the functional equivalent satisfactory to the District. Upon execution of this Agreement, the Developer's contractor shall also, execute the "Certificate Regarding Worker's Compensation" which is attached hereto as Exhibit "H" and incorporated herein by reference.

5. Easement and Fee Sites. At the appropriate time, the district may order a preliminary title report covering all properties in which easements or fee interests are to be granted to the District. The costs of the preliminary title report shall be borne solely by the Developer. The Developer agrees to provide the District with such easements and fee sites as the District may require

for the Project, and as may be reasonably required for ingress and egress and maintenance of the Water Facilities, as determined by the District in its sole discretion. The Developer agrees that the District shall be entitled to reacquire an easement extending to the boundaries of the Developer's property and of a width satisfactory to the District as it may determine, in its sole discretion, as may be reasonably required for ingress and egress and maintenance of the Water Facilities to be dedicated to the District. All easements and fee sites shall be free and clear of all liens and encumbrances which affect title and shall have recorded subordination agreements for all trust deeds or other liens to insure that the District has prior rights in any easements or fee sites being conveyed to the District. The Developer shall procure a policy of title insurance in favor of the District covering easements and fee sites to be granted in amounts reasonably determined by the District, in its sole discretion, subject only to those conditions of record acceptable to the District. All fees and costs to procure easements or fee interests required by the District shall be borne solely by the Developer. Nothing in this Agreement shall obligate the District to exercise its condemnation authority to acquire any easement or fee interest determined necessary by the District. All easements and fee interests required by the District in accordance with this section shall be in recordable form, acceptable to the District, prior to the District's acceptance of the Water Facilities.

6. Certification from the Engineer. If and to the extent the Water Facilities, or any portion thereof, is to be constructed and/or installed in a roadway (either existing or planned), the Developer shall submit to the District prior to commencing construction and/or installation of such portion of the Water Facilities a sufficient survey or certification prepared by a qualified and licensed professional engineer evidencing the alignment and grades have been approved and conform to the applicable approved plans and specifications.

7. Construction of Water Facilities. Developer shall not commence construction of the Water Facilities, or any portion thereof, until Developer has received written authorization from the District to proceed. All work performed on the Water Facilities shall be: (1) in strict compliance with the plans and specifications approved by the District relative to such portion of the Water Facilities; (2) in a good and workmanlike manner as determined by the District; and (3) in accordance with District's current published standards and criteria for projects and standards and criteria which may be required by the District at any time, whether published or not, in the District's sole discretion. All work performed on the water facilities by Developer shall be subject to inspection by the District's designated representatives. The Developer shall comply with all reasonable instructions given by the District's representatives during construction of the Water Facilities. All fees and costs to construct, install, inspect and administer the construction of the Water Facilities shall be borne solely by Developer.

8. Completion Date. The Water Facilities shall be fully completed and accepted by the District prior to the Developer making application to the District for the provision of water service, prior to any obligation of the District to provide water service to the Project and pursuant and subject to the Schedule of Performance attached hereto as Exhibit "E" and incorporated herein.

9. Compliance with Applicable Law. The Developer shall insure that all work performed on the Project is performed in a manner which complies with all applicable federal, state, county, and local government rules and regulations, including all rules and regulations of the District as such rules and regulations may be modified or changed from time to time. The Developer shall be solely responsible for obtaining and paying for all permits, licenses, and approvals necessary to construct and/or install the Water Facilities. The Developer shall provide evidence that permits, licenses and approvals have been obtained promptly upon demand by the District. The Developer

shall comply with the contractor license requirements as provided by California Business and Professions Code Section 7059 as amended.

10. Prevailing Wages. The Developer has been alerted to the requirements of California Labor Code Section 1770 et seq., which would require the payment of prevailing wage rates and the performance of other requirements if it were determined that this Agreement constitutes a public works contract. The Developer has also been advised and understands that the Office of the Attorney General of the State of California has rendered an Opinion (No. 86-803) concluding that prevailing wages must be paid by a private developer where a public agency retains control over construction of the project and the facilities are ultimately dedicated to the public agency. The Developer has further been advised that the California Department of Industrial Relations presently disagrees with the position taken by the Office of the Attorney General in Opinion No. 86-803.

It shall be the sole responsibility of the Developer to determine whether to pay prevailing wages for any or all work required by this Agreement. As a material part of this Agreement, the Developer agrees to assume all risk of liability arising from any decision by the Developer or any contractor or subcontractor of Developer to not pay prevailing wages for work required by this Agreement. As a further material part of this Agreement, the Developer agrees to defend (with counsel of the District's choice), hold harmless and indemnify the District, its officers, employees, consultants, and agents (collectively, the "Indemnified Parties") from any and all claims, liability loss, costs, damages, expenses, fines and penalties, of whatever type or nature, including all costs of defense and attorney's fees, arising from any alleged failure of the Developer or the Developer's contractors to comply with the prevailing wage laws of the State of California. If the District or any of the Indemnified Parties are named as a party in any dispute arising from the failure of the Developer or the Developer's contractors to pay prevailing wages, the Developer agrees that the District and the other Indemnified Parties may appoint their own independent counsel, and the Developer agrees to pay all attorney's fees and defense costs of the District and the other Indemnified Parties as billed, in addition to all other damages, fines, penalties, and losses incurred by the District and the other Indemnified Parties as a result of the action.

11. Acceptance of Work. Upon completion of the Water Facilities (or individual phase thereof) to the reasonable satisfaction of the District, such Water Facilities (or individual phase thereof) shall be presented to the District's Board of Directors for acceptance. Upon the District's acceptance of the Water Facilities (or individual phase thereof), the District shall prepare and record a notice of completion as to the accepted phase of the Water Facilities. The District shall have no obligation to accept any portion or phase of the Water Facilities if the District determines, in its sole and absolute discretion, that the design and/or construction of such portion and/or phase of the Water Facilities fails to strictly comply with the applicable approved plans and specifications. The District will not prepare or record a notice of completion unless and until the Developer submits "as-built mylar drawings." The Developer understands and agrees that by recordation of the notice of completion, all right, title, ownership, and interest in and to the Water Facilities constructed under this Agreement are granted, conveyed, transferred, assigned and delivered to the District, its successors, and assigns. The Developer agrees to execute such transfer documents as the District may request to reflect title and ownership in the name of the District.

12. Liability for Work Prior to Formal Acceptance. Until the District has accepted the Water Facilities (or portion/phase thereof) pursuant to Section 11 of this Agreement, District shall not be responsible or liable for any damage to the Water Facilities (or portion/phase thereof) regardless of the cause.

13. Warranty. Developer shall and hereby does warrant the Water Facilities and materials for the Water Facilities to be free from all defects due to faulty materials or workmanship for a period of one (1) year from the date of acceptance of the Water Facilities (or portion/phase thereof). The Developer shall repair or remove and replace any and all such work, together with any other work which may be displaced in so doing, that is found to be defective in workmanship and/or materials within said one (1) year period, without any expense whatsoever to the District, ordinary wear and tear and unusual abuse or neglect by the District excepted. In the event the Developer fails to commence to cure any defects within one (1) week after being notified in writing, the District is hereby authorized to proceed to have the defects remedied and made good at the expense of Developer, who hereby agrees to pay the cost and charge thereof immediately upon demand. Such action by the District will not relieve the Developer of the warranty required by this section. This section does not in any way limit the liability of the Developer for any design defects or any defects in the work subsequently discovered by the District.

14. Indemnity. The Developer shall be solely responsible and liable for design defects or defects in work performed to construct the Water Facilities. This shall include liability and responsibility for injury or damage to the work itself. The Developer hereby agrees to hold harmless, indemnify, and defend the District and the other Indemnified Parties from any and all claims, suits, or actions of every name, kind, and description brought for or on account of injuries to or death of any person or damage to any property, occurring or resulting from action occurring prior to the acceptance of the Water Facilities by the District, and resulting from the Developer's negligence in the design or construction of the Water Facilities. This indemnity shall include claims by the District for damage arising from improper design or workmanship of the Water Facilities, except to the extent the injury or damage has been caused by the sole active gross negligence of the District or its representatives. In the event that any suit is instituted naming the District or any other Indemnified Parties as a defendant, the District or such other Indemnified Parties shall be entitled to appoint their own independent counsel to represent them, and the Developer agrees to pay all attorney's fees and litigation costs associated with this defense.

15. As-Built Mylar Drawings. Prior to the District's acceptance of the Water Facilities (or portion/phase thereof) and prior to a notice of completion being recorded, the Developer shall provide the District with one (1) mylar copy of the as-built drawings bearing the seal of the engineer and three (3) copies of as-built drawings with certification by a licensed engineer in the State of California as to the accuracy and completeness. The Developer shall be solely responsible and liable for insuring the completeness and accuracy of all as-built drawings.

16. Cash Deposits. The Developer shall pay all of the District inspection costs and any and all other costs associated with and/or related to the Water Facilities. Upon executing this Agreement, the Developer shall submit to the District a cash deposit in the amount of \$10,000 (the "Deposit"). The District shall utilize the Deposit to pay all of the District inspection costs and any and all other costs associated with and/or related to the Water Facilities as such costs are incurred. The District shall provide to the Developer a monthly statement that itemizes each disbursement of the Deposit made during such statement period and that indicates the current balance of the Deposit. The Developer shall replenish the Deposit within ten (10) days of the date of each monthly statement to extent necessary in order to maintain a minimum Deposit of at least \$3,000.

17. Personal Liability. No director, officer, employee, agent, consultant, engineer or architect of the District or the Developer shall be personally responsible for any, liability arising under or by virtue of this Agreement.

18. District Remedies for Breach. In the event the Developer fails to strictly comply with any term, covenant or condition of this Agreement or fails to complete performance of any matter specified in this Agreement on the date it is due, including payment of all fees and charges when due, then the District shall be entitled to elect any or all of the following remedies, at the District's option:

A. Unilaterally terminate this Agreement and/or all rights of the Developer to water service for the Project, excepting service to then existing third party homeowners (if any) and common area facilities (if any). The termination shall be effective one (1) week after the delivery of written notice of termination to the Developer unless the Developer has cured the default specified in the notice.

B. File suit against the Developer for damages arising from breach of this Agreement. Amounts payable to the District as specified in this Agreement (e.g., District inspection fees and charges), shall earn interest at the rate of one and one-half percent (1-1/2%) per month until paid in full.

19. Cumulative Rights and Remedies. The rights and remedies granted to the District pursuant to this Agreement shall be in addition to any rights or remedies granted to the District as a result of other agreements with the Developer. All such other agreements shall remain valid and enforceable as written and all such agreements shall be interpreted in a manner as to be consistent with each other and in a manner, which provides the greatest rights and remedies to the District.

20. Venue. In the event of any legal or equitable proceeding to enforce or interpret the terms or conditions of this Agreement, the parties agree that venue shall lie only in the federal or state courts in or nearest to the North County Judicial District, County of San Diego, State of California.

21. Modification. This Agreement may not be altered in whole or in part except by a written modification approved by the Board of Directors of the District and executed by all the parties to this Agreement.

22. Attorney's Fees. In the event any action of proceeding is initiated to challenge, invalidate, enforce or interpret any of the terms of this Agreement, the prevailing party shall be entitled to all reasonable attorney's fees and costs in addition to any other relief granted by law. This provision shall apply to the entire Agreement.

23. Entire Agreement. This Agreement, together with all exhibits attached hereto, contains all representations and the entire understanding between the parties with respect to the subject matter of this Agreement. Any prior correspondence, memoranda, or agreements, whether or not such correspondence, memoranda or agreements are in conflict with this Agreement, are intended to be replaced in total by this Agreement and its exhibits. The Developer warrants and represents that no District representative has made any oral representations or oral agreements not contained in this Agreement.

24. Assignment. The Developer shall not be entitled to assign or transfer all or any portion of its rights or obligations contained in this Agreement without obtaining the prior written consent of the District, which consent shall not be unreasonably withheld. Any purported assignment without the District's prior written consent shall be void.

25. **Binding Effect.** This Agreement shall inure to the benefit of and be binding upon the parties and their respective purchasers, successors, heirs and assigns.

26. **Unenforceable Provisions.** The terms, conditions and covenants of this Agreement shall be construed whenever possible as consistent with all applicable laws and regulations. To the extent that any provision of this Agreement, as so interpreted, is held to violate any applicable law or regulation, the remaining provisions nevertheless so remain enforceable to the extent that they effectuate the original intent of the parties.

27. **Representation of Capacity to Contract.** Each party to this Agreement represents and warrants that he/she has the authority to execute this Agreement on behalf of the entity represented by that individual.

28. **Opportunity to be Represented by Independent Counsel.** Each of the parties to this Agreement warrant and represent that they have been advised to consult independent legal counsel of their own choosing and have had a reasonable opportunity to do so prior to executing this Agreement.

29. **No Waiver.** The failure of either party to enforce any term, covenant, or condition of this Agreement on the dated it is to be performed shall not be construed as a waiver of that party's right to enforce this, or any other term, covenant or condition of the Agreement at any later date or as a waiver of any term, covenant or condition of this Agreement.

30. **Notices.** All letters, statements or notices required pursuant to this Agreement shall be deemed effective upon receipt when personally served or when sent certified mail, return receipt requested, to the following address:

To Plote Living Trust: Raymond E. Plote Living Trust
1141 E. Main Street, #100
East Dundee, IL 60118

To Basara: Basara LLC
10211 Frank Road
Algonquin, IL 60156

To District: Borrego Water District
P.O. Box 1870
Borrego Springs, CA 92004

31. **Special Conditions.** The special conditions set forth in Exhibit "D" attached hereto are incorporated herein.

32. **Effective Date.** The effective date of this Agreement executed in counterparts in the North County Judicial District, County of San Diego, State of California is _____, 2010.

[SIGNATURES BEGIN ON NEXT PAGE]

PLOTE LIVING TRUST:

RAYMOND E. PLOTE LIVING TRUST

By: _____
Its: _____

By: _____
Its: _____

BASARA:

BASARA LLC, a [redacted] limited liability company

By: _____
Its: _____

DISTRICT:

BORREGO WATER DISTRICT, a public corporation

By: _____
Its: _____

ATTEST:

District Secretary

APPROVED AS TO FORM:

Stradling Yocca Carlson & Rauth,
District General Counsel

EXHIBIT "A"

PROJECT LEGAL DESCRIPTION

[INSERT PROJECT LEGAL DESCRIPTION]

EXHIBIT "B"

DESCRIPTION OF WATER FACILITIES

[INSERT SCOPE OF WORK/DESCRIPTION OF WATER FACILITIES]

[INDICATE PHASES]

EXHIBIT "C"

PHASE 1 PLANS

[INSERT PHASE 1 PLANS]

EXHIBIT “D”

SPECIAL CONDITIONS

Mesquite Trails Ranch

1. Off site Main Extension - Tilting “T” Drive. The Developer shall furnish and install all necessary off site water facilities required to extend Borrego Water District water service to Borrego Valley Road and to service the Mesquite Trails Ranch development. The minimum requirements are:

(1) A 10” diameter pipeline along Tilting “T” Drive from sta. 20+92.43 to its end at Borrego Valley Road.

2. On site Main and Service Extension. The Developer shall furnish and install all necessary on site water facilities required to provide Borrego Water District water service to the TM5373RPL4 per the plans to be approved by the District.

3. Connection Fees. The Developer will pay the standard connection fees for the Improvement District which are based on the following formula:

Phase	Desc	Units	Capacity Fee	Connection Fee	Turn On Fee	Shut Off Valve
			(\$375)	(\$2,530)	(\$340)	(\$70)
1	1-74	74	\$27,750	\$187,220	\$25,160	\$5,180
2		107	\$40,125	\$270,710	\$36,380	\$7,490
3		82	\$30,750	\$207,460	\$27,880	\$5,740
4		73	\$27,375	\$184,690	\$24,820	\$5,110
5		55	\$20,620	\$139,150	\$18,700	\$3,850
6		89	\$33,375	\$225,170	\$30,260	\$6,230

Phase	Desc	Units	Capacity Fee	Connection Fee	Turn On Fee	Shut Off Valve
			(N/A)	(\$3,030)	(\$340)	(\$70)
Open	1-1/2 mtr	36	\$0	\$109,080	\$12,240	\$2,520

The total connection fee for RV lots will be $480 \times \$2,530 = \$1,214,400$ if paid at one time.

Payment of connection fee is required at the time service is requested for each phase of the project/completed spaces in increments of a minimum of 30 EDU's. Credit will be given for facilities paid for in advance as noted in Paragraph 1 hereof.

If in the future the District's connection fee is changed, the fee to be applied to any unpaid connection fees will be that which is in effect at the time service is requested.

Water credit price to be determined by market and availability. Payment of water credits due upon services being requested for each phase.

EXHIBIT “E”

SCHEDULE OF PERFORMANCE

General Note: Due to the dynamic nature of financing, development and construction, this schedule below is structured by milestones, requiring certain improvements prior to occupancies. The Developer is the responsible party for all items unless indicated herein.

Grow-in of landscape, and the associated demands for water will be completed prior to “first occupancy”. Open area and integral landscape irrigation will be accomplished using excess waters available as the proposed well is developed, and as demand for water permits.

Reasonable efforts will be made to manage water inside the irrigation system and open areas. Irrigation system can be deactivated during water availability emergencies, such as fires.

Milestone No. 1: Prior to Grading and infrastructure improvements

- Off-site transmission main extension along Tilting T to TM5373RPL4 easterly boundary

Milestone No. 2: Prior to Open Area Grow-in Period and Prior to occupancy of Phase 1

- On-site Phase 1 transmission main improvements with accompanying appurtenances.

Milestone No. 3: Prior to occupancy of Phase 2

- On-site Phase 2 transmission main improvements with accompanying appurtenances.

Milestone No. 4: Prior to occupancy of Phase 3

- On-site Phase 3 transmission main improvements with accompanying appurtenances.

Milestone No. 5: Prior to occupancy of Phase 4

- On-site Phase 4 transmission main improvements with accompanying appurtenances.

Milestone No. 6: Prior to occupancy of Phase 5

- On-site Phase 5 transmission main improvements with accompanying appurtenances.

Milestone No. 7: Prior to occupancy of Phase 6

- On-site Phase 6 transmission main improvements with accompanying appurtenances.

EXHIBIT "F"

CERTIFICATE OF INSURANCE

[INSERT CERTIFICATE OF INSURANCE]

EXHIBIT "G"

CERTIFICATE OF WORKERS COMPENSTION INSURANCE

[INSERT CERTIFICATE OF WORKERS COMPENSATION INSURANCE]

EXHIBIT “H”

CERTIFICATE REGARDING WORKERS COMPENSATION

[INSERT CERTIFICATE REGARDING WORKERS COMPENSATION]

Memo

To:**From:** Senator Joel Anderson**Date:** April 7, 2011**Re:** Senate Bills 11 & 120 – IOU Taxpayer Protection**SB 11 & SB 120 – Request for Letter of Support**

In 2009, I authored Assembly Bill 1506, "The Taxpayer Protection Act," which was designed to protect California citizens from the state's onerous IOUs. While this measure was unanimously approved by both the Senate and Assembly, and received over 3,000 letters of support from California elected officials, businesses and citizens from all walks of life, it was wrongly vetoed by Governor Schwarzenegger on the last day of the legislative session.

"State Treasurer Bill Lockyer warned Saturday that California could face the unwelcome prospect of issuing IOUs in April or May if legislators and Gov. Jerry Brown do not act quickly to solve the state's fiscal problems . . . 'We will run out of money to pay the bills.'" – Los Angeles Times, 1/22/11

Once again the state may start issuing IOUs to pay its bills. And once again, it's the taxpayers, not the bureaucrats that may be forced to take the brunt of the problem.

I have authored two measures to combat the unfairness of IOUs.

SB 11 would free up small businesses, non-profits, taxpayers and all who receive IOUs from suffering unfair late-payment charges or penalties on bills they owe because the state hasn't paid its bills.

Just like AB 1506, SB 120 would allow recipients of state-issued IOUs to endorse and return the IOUs to the state as payment for any obligations they owe to the state (state taxes, DMV fees, public university tuition, etc.).

For example, if you are a business with state contracts and you receive an IOU for \$50,000 from the state, and you also owe the state \$50,000 in payroll taxes, you may send the IOU to the Franchise Tax Board as payment for your tax obligation.

Both SB 11 and 120 face an upcoming vote in the Senate Governmental Organization Committee on April 26.

I am asking you to send me a letter of support for these two measures, to show the Legislature that California's taxpayers are watching.

For more information on these measures and other state issues, please visit my website at www.senate.ca.gov/anderson.

A fact sheet and sample letter of support are attached for your review.

Letters may be faxed, emailed or mailed to my office by April 20.

Thank you for your consideration.

SENATOR JOEL ANDERSON

THIRTY-SIXTH SENATE DISTRICT



FACT SHEET

Senate Bills 120 and 11 – IOU Taxpayer Protection

SUMMARY

Senate Bill 120 is a bi-partisan, time-sensitive bill that would direct a state agency to accept, from any entity, a registered warrant – commonly known as an IOU – endorsed by that payee, at full face value, for the payment of any obligations owed by that entity to that state agency. Survival of services and jobs is at stake. The state should accept its own IOUs.

This bill resoundingly passed the Legislature last year as AB 1506, with the support of every current member of the Assembly and Senate that was in office.

Senate Bill 11 is a companion measure that would free small businesses, non-profits, taxpayers, and all who receive IOUs from unfair late-payment charges or penalties incurred because of the state's forced borrowing upon its citizens.

ISSUE

Infamously, on June 24, 2009, the Sacramento Bee reported that the state's fiscal situation was desperate. "State controller John Chiang warned today that if legislators and Gov. Arnold Schwarzenegger fail to come up with a budget-balancing package in the next week, he would begin paying California's bills with IOUs on July 2."

Drama ensued, the state effectively denying vital payments owed to service providers, non-profit organizations, and taxpayers, CNN Money reported, "The state issued 449,241 warrants, totaling \$2.6 billion. If every one is cashed, the interest payments will total \$9.68 million. State Controller John Chiang said California owes 'a debt of gratitude' to the individuals and businesses that "were forced to bear the brunt of the State's chronic fiscal mismanagement."

Existing law already allows the state to distribute IOUs. According to Government Code section 17203, "Such registered warrants are acceptable and may be used as security for the faithful performance of any public or private trust or obligation or for the performance of any act, including the use of such registered warrants by banks and savings and loan associations as security for deposits of funds of any county, municipal or public corporation, district, political subdivision, or state agency." This reminds us of Wimpy's famous line, "I'd gladly pay you Tuesday for a hamburger today." The inequity is then imposed through the peoples' inability to use those instruments in a practical way... forced borrowing upon innocent Californians.

SOLUTION

Senate Bill 120 fixes that flaw in the system by making IOUs useful. It simply follows-up the code section mentioned above with the guarantee that a state agency shall accept from any entity a registered warrant endorsed by that payee, at full face value, for the payment of any obligations owed by that entity to that state agency. This is a fair allowance in order that citizens may make usual and necessary payments to the state, such as DMV registration, tax payments, and school tuition. As the Arc of California advocates in support of the bill, "SB 120 alleviates these problems by requiring



BORREGO WATER DISTRICT

March 30, 2011

Senator Joel Anderson
500 Fesler Street
Suite 201
El Cajon, CA 92020

Re: IOU Taxpayer Protection -Senate Bill 11 & Senate Bill 120 -Support

Both SB 11 and SB 120 fix serious flaws in the state's IOU system.

The concept is simple. If an individual or company has money due them from the state, but the state issues them an IOU, then: 1) the taxpayer should not be assessed a late fee if they owe the state money; and 2) the taxpayer should be able to use the state IOU as credit towards any payment owed to the state.

In the event of a fiscal crisis, your measures would save many businesses and individuals from severe financial hardships by stopping the State from charging taxes and fees while withholding payments.

Under current state law, the public is required to accept registered warrants, or IOUs, under certain emergency circumstances. However, the state itself will not accept such securities as payment. This is a double standard that harms those hardworking public employees, taxpayers and contracted businesses caught in the middle.

It also is not fair that the state will try to assess late fees/penalties on taxpayers that may owe the state a payment (such as DMV fees, etc.) yet preventing that taxpayer to use their IOU to help make their payment.

Not only does receiving an IOU create serious short term cash-flow problems, it also places an onerous tax burden on many individuals and companies. While issuing IOUs may become a painful necessity at some point, the problem should not be exacerbated by requiring taxes to be paid to the state on income that the state is simultaneously withholding.

With continuing economic uncertainty and erosion of state revenues, it is crucial for California to have a fair system of payment of its debts and obligations. Your two measures help do just that.

On behalf of the Board of Directors of the Borrego Water District, I am in support of SB 11 & SB 120.

Sincerely,

Jerry Rolwing
Interim General Manager
Borrego Water District