

**Borrego Water District  
CORRECTED MINUTES  
Regular Meeting of the Board of Directors  
Wednesday, February 27, 2013  
9:00 AM  
806 Palm Canyon Drive  
Borrego Springs, CA 92004**

**I. OPENING PROCEDURES**

**A. Call to Order:** President Hart called the meeting to order at 9:00 a.m.

**B. Pledge of Allegiance:** Those present stood for the Pledge of Allegiance.

**C. Roll Call:**     **Directors:**     **Present:** President Hart, Vice-President Lyle Brecht,  
Secretary/Treasurer Marshal Brecht, Delahay, Estep

**Staff:**             Jerry Rolwing, General Manager  
Greg Holloway, Operations Manager  
Kim Pitman, Administration Manager  
Diana Del Bono, Administrative Assistant  
Lisa Foster, McDougal Love Eckis Boehmer & Foley  
Wendy Quinn, Recording Secretary

**Public:**           Jim Engelke                     Ray Shindler  
Theresa Kallenach             Russ Miffin  
Gail Allen                     John Foxley  
Bonnie Byrne                 Sue McMillan  
Chris Duthie                 Don Blaikie  
Jack Kavanaugh               Malcolm Dyos  
Ginny O'Neel                 Marcia Anderson  
William Burton                Jack O'Neel  
Galen Panecho                Joe Tatusko  
Bill Berkley, Rams Hill       Pat Gleason  
Partners                     Jim Gleason  
Gene Noble                    Beth Noble  
Lane Sharman, BWX            Patrick Meehan, *Borrego Sun*  
Kathy Sage                    Peter Shapiro  
Gil Lombard                   Kate Mendenhall  
John Moony                    Leslie Emery  
Dick Emery                    Leslie Ochter  
Harry Wichter                Ray Bolanos  
Susan Moss                    H.G. Schuette  
Judy Schuette                 Nan Schwab  
Tom Pantich                   Jane Daniels  
Alice Toothmore               Julie Shelley  
Ted Gamble                    Russ McMillan

**D. Approval of Agenda:** *MSC: L.Brecht/Estep approving the Agenda as written.*

**E. Approval of Minutes:**

Special meeting of January 15, 2013

*MSC: L.Brecht/Estep approving the Minutes of the Special Meeting of January 15, 2013 as written.*

Regular meeting of January 23, 2013

*MSC: L.Brecht/Estep approving the Minutes of the Regular Meeting of January 23, 2013 as written.*

Special meeting of January 30, 2013

*MSC: L.Brecht/Delahay approving the Minutes of the Special Meeting of January 30, 2013 as written.*

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

**G. Comments from the Public and Requests for Future Agenda Items:** Lane Sharman asked whether the District would be interested in working with him to obtain a grant for water and energy sustainability. He announced he was holding a symposium on March 7 at the Borrego Springs Resort. Mr. Sharman noted that he was not proposing to serve as a volunteer. President Hart referred the matter to the Operations and Management Committee.

**H. Correspondence:** None

## **II. CURRENT BUSINESS MATTERS**

**A. Update on negotiations with Rams Hill:** President Hart explained that Bill Berkley, who is interested in reopening the Rams Hill Golf Course, is concerned about the cost of water to irrigate it. Water is currently available from the District at the same rate offered to the public and other businesses, but Mr. Berkley asked the District to help him identify a more affordable source. The District understands his concerns and is willing to help. District counsel has drafted an agreement with Mr. Berkley, which the Board has approved, providing for him to make a deposit to cover legal and engineering expenses associated with investigation into alternate water sources for Rams Hill. These are costs that cannot legally be born by the ratepayers.

Director Lyle Brecht noted that Mr. Berkley had requested to uniquely participate in the District's due diligence, which could call into question the validity and impartiality of the findings. There are also attorney-client privilege concerns. The developer also requested access to the District's CAD data, which raises security issues under State and federal regulations.

Jerry Rolwing explained that Well 12 was once owned jointly by BWD and Rams Hill, but BWD subsequently purchased Rams Hill's share. When three other wells failed, the District relied on Well 12 to serve its customers.

Lisa Foster reiterated the fact that the Board had approved the proposed agreement with Mr. Berkley and was ready to sign it today. She believed the terms were reasonable and allowed the developer more involvement than usual in the investigation. He is entitled to assist in identifying and prioritizing the issues to be addressed, and the results of the investigation will be released to the District and the developer simultaneously.

Joe Tatusko asked about Mr. Berkley's ability to write a statement of work for the engineers involved in the investigation. Ms. Foster replied that he would be contacted regarding the tasks and priorities and would receive reports of the results, except in cases where the information would compromise the security of the District's system.

Ted Gamble pointed out that when he purchased his home in Rams Hill he was told that 85 percent of the water from Well 12 was earmarked for Rams Hill in perpetuity. He questioned the purchase of that share by the District and asked whether the water could be sold to customers outside Rams Hill. Ms. Foster explained that the prior agreement has been superseded by a newer one. President Hart added that when Mr. Pearlman purchased Rams Hill, he and the District agreed to the sale.

Gene Noble expressed concern that the public was not informed of the change in the terms of the agreement between the District and Mr. Pearlman. He wondered if the situation

could be reversed. President Hart said it could be investigated once Mr. Berkley had made his deposit with the District to cover expenses associated with the study.

William Burton asked whether potable and non-potable water were charged at the same rate. President Hart replied that the District only sells potable water. If this changes, there will be a different rate for non-potable. Mr. Burton asked whether the agreement between the District and Mr. Pearlman that Rams Hill could not purchase water other than from the District was negotiable, and President Hart replied that it was.

Russ McMillan expressed concern that if Mr. Berkley was not involved in consultant selection, the consultants could be biased. Director Lyle Brecht pointed out that the Board was elected by the citizens, whereas a developer has a vested interest. A competitive bid process would be used to select the consultants.

Mr. Berkley pointed out that consultants selected by the District could be biased in favor of the District.

Gil Lombard, an SDG&E employee for 30 years, refuted an earlier comment that SDG&E did not cooperate with developers.

Don Blaikie explained that Mr. Berkley wants to co-write the instructions to be given to the consultants. Ms. Foster felt the District had gone as far as it could regarding developer participation. The consultants should be neutral, and she would not recommend that Mr. Berkley participate in their selection.

Jim Gleason opined that the parameters of the proposed agreement between the District and Mr. Berkley should have been discussed in public session.

Mr. Blaikie invited the Board's attention to his letter to the Board, General Manager and community, dated today. He pointed out that Rams Hill, Borrego Springs as a whole and the District would benefit by Mr. Berkley's purchase of Rams Hill. Mr. Berkley is willing to purchase the Cocopah Pivot Well, deed it to the District and pay for the necessary connecting pipeline. He urged the Board to give Mr. Berkley input on selection of the consultants.

Mr. Gleason added that Mr. Berkley planned to reduce the golf course water usage by 40 percent.

Ray Shindler challenged those present to attend District Board meetings regularly. Our priority is saving the aquifer. The previous Board spent all the reserves, and the current Board has been working to replenish them. He thanked the Board members for protecting the ratepayers.

Jack O'Neel stated he had heard that a Board member said Rams Hill would never get water from the District. None of the Directors recalled saying that.

Mr. Berkley explained that in the past he had used his consultants to prepare a proposal, then submitted it to the responsible agency with a deposit for review by their experts. He explained that he doesn't want to supervise the consultants, simply to observe them or have his consultants do so. He distributed an alternate agreement. Ms. Foster explained that some of the correspondence he wished to review could be subject to attorney-client privilege. The parties revisited the dispute concerning Mr. Berkley's review of the District's CAD files. Ms. Foster noted that the agreement could be amended as the investigation progresses.

After further discussion, it was agreed that the District will issue an RFQ for consulting engineers. The scope of work and the selection will be done in public meetings, and Mr. Berkley can participate. The Board will make the final decision and hire the consultant, so as a District consultant, he or she will have access to the CAD files.

**President Hart declared a recess at 11:15 a.m., and the Board reconvened at 11:30 a.m.**

**B. Discussion and possible approval of New Development Policy:** *MSC: L.Brecht/Estep approving the New Development Policy.* Mr. Rolwing reported he had sent the Policy to Dennis Bostad, former Sweetwater Authority General Manager, for comments. He had no significant input. The Board agreed to schedule the public hearing on the Policy for March 27, and upon approval, there is a 60-day waiting period before it is effective.

**C. Discussion of Town Hall meeting:** President Hart invited the Board's attention to the proposed Agenda and handouts in the Board package.

**D. Discussion of and possible approval of FY 2013-2015 Audit Agreement:** *MSC: L.Brecht/Delahay approving the 2013-2015 Audit Agreement between BWD and Hosaka, Rotherham & Company.*

**E. Consideration of approval of sewer transfer from Palm Canyon Properties to Borrego Water District:**

**F. Consideration of approval of sewer transfer from Anza Borrego Properties LLC to Borrego Water District:** Mr. Rolwing explained that when Palm Canyon Resort sold, the previous owners retained the unused EDUs but did not continue the payments. As for Anza Borrego Properties, they submitted a written request to return their EDUs to the District. *MSC: L.Brecht/M.Brecht approving sewer transfers from Palm Canyon Properties and Anza Borrego Properties LLC to Borrego Water District.*

### **III. STAFF REPORTS**

**A. Financial Reports - January 2013:** Kim Pitman explained that the lien properties had been reclassified from non-active accounts to active status. They will no longer accrue late fees, but will accrue standby meter fees..

**B. Manager/Operations Report:** Director Lyle Brecht requested that staff obtain information from the County regarding the jobs and revenue resulting from agriculture in the Borrego Valley. Mr. Rolwing noted he had offered to assist the Sponsor Group in their investigation into these issues.

Director Marshal Brecht inquired about the State Water Resources Control Board's offer to assist BWD. Mr. Rolwing explained that they may help us in writing grant applications. David Dale is preparing an outline for their review.

Greg Holloway reported we are still experiencing problems with Well 11. Most of the recent work has been under warranty.

Mr. Rolwing reported the District received a refund of \$9,174.17 from ACWA/JPIA insurance because of our excellent safety record.

**C. Water and Wastewater Operations Report - January 2013:**

**D. Water Production/Use Records - January 2013:**

These reports were included in the Board package.

### **IV. ATTORNEY'S REPORT**

None

### **V. COMMITTEE REPORTS & PROPOSALS**

#### **Ad Hoc Committees**

##### **1. Audit Committee**

Director Marshal Brecht reported that the Committee met last week and developed the agreement approved today.

##### **2. Due-Diligence**

No report.

### 3. Strategic Planning Committee/IRWM

President Hart reported that the Committee held a public meeting to plan for the Town Hall Meeting and will hold another. Director Lyle Brecht suggested that the Committee prepare the RFQ for the BWD/Berkley engineering consultants, and the Committee agreed to do so.

### 4. Executive Committee

No report.

### 5. Operations & Management Committee

Mr. Holloway reported that the Committee had received, signed and returned the Risk Transfer Agreement with Layfield relative to the tank liner and cover. Mr. Rolwing reported that the Committee had been working on the capital plan for next year. Ms. Pitman planned to have a proposed budget for the March workshop, and Director Lyle Brecht suggested that the Audit Committee review it first.

### 6. Parks Committee

No report.

### 7. Negotiating (Rams Hill)

Already discussed.

### 8. New Development Committee

Already discussed. Mr. Rolwing suggested changing the name to New Development/Water Credits Committee.

### 9. Asset Ad Hoc Committee

President Hart reported that the Anza Borrego Foundation had inquired about purchasing more of the District's real property. The Committee determined that most was needed for mitigation, tanks or pipelines, and the value of any potentially available property is currently so low it is not worth selling at this time.

## **VI. INFORMATION ITEMS**

Ms. Pitman reported that the Cal Fire work crew removed weeds surrounding the wastewater treatment plant.

Mr. Holloway reported he recently conducted a CPR class and would offer another once at least six people have expressed interest.

## **VII. CLOSING PROCEDURE**

There being no further business, the Board adjourned at 12:40 p.m. The next Special Meeting of the Board of Directors is scheduled for March 19, 2013 at the Borrego Water District. The next Regular Meeting of the Board of Directors is scheduled for March 27, 2013 at the Borrego Water District.