

**Borrego Water District  
MINUTES  
Regular Meeting of the Board of Directors  
Wednesday, September 23, 2015  
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 Brecht, Secretary/Treasurer Tatusko, Delahay, Estep  
**Staff:**             Jerry Rolwing, General Manager  
Greg Holloway, Operations Manager  
Kim Pitman, Administration Manager  
Diana Del Bono, Administrative Assistant  
Morgan Foley, McDougal Love Eckis Boehmer & Foley (via teleconference, Item H)  
Wendy Quinn, Recording Secretary

**Public:**           John Peterson                             Julie Taylor  
Emily Brooks                             Bob McKee  
Susan Percival, Club Circle East     Jeannie Beck, *Borrego Sun*  
Chris Thibodeau (via teleconference, Item V.1)

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

**E. Approval of Minutes:**  
Special meeting of July 14, 2015  
**MSC: Brecht/Estep approving the Minutes of the Special Meeting of July 14, 2015 as written.**

Regular meeting of July 22, 2015  
**MSC: Brecht/Estep approving the Minutes of the Regular Meeting of July 22, 2015 as corrected (Item V.2, replace "GWS" with "GSP").**

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

**G. Comments from the Public and Requests for Future Agenda Items:** Bob McKee reiterated his prior request for an Agenda item regarding a change in qualifications for District Directors. President Hart reminded him that Jerry Rolwing had already responded, explaining that the qualifications are mandated by State law.

**H. Correspondence:** Mr. Rolwing reported that Considine Borrego LLC dba Rams Hill Golf Course is working with the Community Association by modifying vegetation and irrigation to meet the 25 percent water use reduction goal. They are considering using nonpotable water for irrigation. Mr. Rolwing has been working with them toward implementing this idea at the clubhouse entrance, but the remainder of the system would require a total redesign because potable and nonpotable water lines are connected. Should Rams Hill elect to pursue this, they will submit their plans to the District.

**II. CURRENT BUSINESS MATTERS**

**A. Public Hearing to hear testimony regarding the proposed adoption of ordinances 15-01 and 15-02, for establishing administrative fines and penalties for violations of District ordinances; and establishing conservation enforcement measures for customers:** President Hart

opened the public hearing at 9:10 a.m. Julie Taylor asked whether the State had mandated the ordinances under consideration. Director Brecht explained that the State mandated an ordinance providing criminal penalties for actions contrary to Executive Order B-29-15. The ordinances before the Board today provide alternative administrative penalties. President Hart added that the District already has an ordinance authorizing criminal penalties, enacted in 1990.

Mr. Rolwing announced an error in his overall water use reduction report at the last meeting. The correct reductions were 16 percent in June, 26 in July and a 10 percent increase in August, for an overall savings of 14 percent. John Peterson asked whether golf course irrigation was included, and Mr. Rolwing replied that it was not. Bob McKee noted that even though the Rams Hill wells were not counted in calculating the water use reduction, they still contribute to the overdraft.

President Hart reported that Superintendent of Schools Martha Deichler was going to send another information packet home with all students, in English and Spanish, concerning the 25 percent water use reduction mandate. She also suggested redistributing excerpts from her previous letters on the subject. Mr. McKee felt the baseline water use should be calculated from longer ago, since most Borregans began saving water a year or more ago.

President Hart distributed an e-mail from Harry Ehrlich, suggesting that the rates for fines and penalties imposed pursuant to Ordinances 15-01 and 15-02 be set by ordinance, rather than resolution, requiring public notice and hearings.

Hearing no further comments, President Hart closed the public hearing at 9:20 a.m.

**B. Discussion and possible adoption of *ORDINANCE No. 15-01 OF THE BOARD OF DIRECTORS OF THE BORREGO WATER DISTRICT ESTABLISHING ADMINISTRATIVE FINES AND PENALTIES FOR VIOLATIONS OF DISTRICT ORDINANCES; ESTABLISHING ADMINISTRATIVE PROCEDURES GOVERNING THE IMPOSITION, ENFORCEMENT, COLLECTION, AND ADMINISTRATIVE REVIEW OF ADMINISTRATIVE FINES AND PENALTIES AND FOR VIOLATING OTHER WATER USE REGULATIONS AND RESTRICTIONS:*** The Board discussed the pros and cons of setting the fine and penalty rates by ordinance, rather than resolution as provided. It was the consensus to stay with the resolution to provide flexibility. *MSC: Estep/Brecht adopting Ordinance No. 15-01 of the Board of Directors of the Borrego Water District Establishing Administrative Fines and Penalties for Violations of District Ordinances; Establishing Administrative Procedures Governing the Imposition, Enforcement, Collection, and Administrative Review of Administrative Fines and Penalties and for Violating Other Water Use Regulations and Restrictions.*

**C. Discussion and possible adoption of *ORDINANCE No 15-02 ORDINANCE OF THE BOARD OF DIRECTORS OF THE BORREGO WATER DISTRICT ESTABLISHING CONSERVATION ENFORCEMENT MEASURES FOR CUSTOMERS; ESTABLISHING BASE USAGE CRITERIA; AND PROVIDING FOR FINES AND PENALTIES FOR CUSTOMERS EXCEEDING BASE USAGE ALLOCATIONS:*** *MSC: Estep/Brecht adopting Ordinance No. 15-02, Ordinance of the Board of Directors of the Borrego Water District Establishing Conservation Enforcement Measures for Customers; Establishing Base Usage Criteria; and Providing for Fines and Penalties for Customers Exceeding Base Usage Allocations.*

**D. Discussion and possible approval of Resolution 2015-9-1 *RESOLUTION OF THE BOARD OF DIRECTORS OF THE BORREGO WATER DISTRICT AUTHORIZING INVESTMENT OF MONIES IN THE LOCAL AGENCY INVESTMENT FUND:*** Kim Pitman explained that this Resolution would remove former Director Marshal Brecht from the list of authorized signatories for the LAIF account. *MSC: Brecht/Tatusko adopting Resolution 2015-9-1, Resolution of the Board of Directors of the Borrego Water District Authorizing Investment of Monies in the Local Agency Investment Fund.*

**E. Discussion and possible approval of Resolution 2015-09-02 AUTHORIZING SUBMITTING AN APPLICATION TO THE COUNTY OF SAN DIEGO NEIGHBORHOOD REINVESTMENT PROGRAM:** Director Tatusko explained that the resolution would authorize a grant application to defray the District's investment in UCI's air quality sensor facilities. *MSC: Brecht/Estep adopting Resolution 2015-09-02 Authorizing Submitting an Application to the County of San Diego Neighborhood Reinvestment Program.*

**F. Discussion of Groundwater Sustainability Agency (GSA) designation under the Sustainable Groundwater Management Act (SGMA) legislation mandate:** Director Brecht reported that San Diego County, Imperial County and BWD are the only potential GSAs in the Borrego Basin. Imperial County has already applied for GSA status, but only wants to regulate Imperial County. However, David Aladjem believes that this application starts a 90-day time period after which Imperial will be the sole GSA if no one else applies. Others agree with Mr. Aladjem, but San Diego County disagrees. Director Brecht recommended that BWD apply for GSA status, attaching a map of the portion of the basin for which BWD seeks to be responsible and a letter of agreement from Imperial County. President Hart asked Mr. Rowling to find out if Raftelis can complete its GSP development cost analysis within the next month. The Board concurred in Director Brecht's recommendation, and Mr. Rolwing and staff were requested to begin the GSA application process.

**G. Discussion of progress meeting the Executive Order B-29-15 requiring a 25% mandatory reduction in water use by the District and the potential necessity for Coachella Valley Water District (CVWD) type excessive water use penalties and water efficiency incentive program:** Director Brecht distributed a chart depicting the net increase/decrease in cash and cash equivalents for the District from 2007 to 2016 (estimated). He expressed concern that the cash and cash equivalents may be \$200,000 to \$300,000 short for 2016, and continued deferrals of repair and rehabilitation could be necessary. The water use reduction mandated by the Executive Order and the potential for claims against the District resulting from the prior tiered rates are factors. Options for dealing with the issue include future regulatory fees, earlier beginning of the 218 process for new rates, reduction of operations and maintenance expenses (risky), or sale of the Viking Ranch water credits and property. Director Brecht recommended asking the Operations and Management Committee to look at the current \$1 million operations and maintenance budget and see if it could be reduced by \$300,000 if necessary. Mr. Rolwing pointed out that approximately that much in Proposition 1 grant applications is in process. Director Estep recommended that before selling the Viking Ranch property, the District should investigate the feasibility of its use for a recharge basin.

**H. Discussion and possible approval of claim under Resolution 2015-06-01:** Morgan Foley joined the meeting via teleconference. President Hart explained that questions have arisen regarding the one-year period for filing a claim against the District pursuant to Resolution 2015-06-01 and its effect on potential claims arising from the former tiered rate system. Mr. Foley explained that the normal statute of limitation is three years, but State law allows districts to adopt other requirements in certain instances, such as refunds, which BWD has done.

President Hart pointed out that the income generated by tiered rate was used exclusively to reimburse the District for expenses associated with its conservation program (rebates for water saving appliances, turf removal, etc.) Mr. Rolwing noted that only about half the conservation program expenses were recouped through tiered rates.

Mr. Foley explained that the court decision in the San Juan Capistrano case invalidating tiered rates required that the cost of water service may only cover the cost to the District of providing the water. Providing water to an excessive user doesn't necessarily cost more than providing water to an efficient user. He suggested calculating the actual cost, but noted the District is only obligated to pay claims going back one year from the date of payment of the tiered rate.

Director Estep interpreted the law as allowing one year to file a claim, but upon filing the claimant may ask for a refund going back three years. Ms. Pitman inquired about notification to potential claimants, and Mr. Foley replied that notification was not required. Mr. Foley explained that the one-year filing period begins with the date of the claimant's last Tier 2 payment, and the three years would run from the date of filing the claim.

***MSC: Brecht/Estep authorizing a letter to customers who paid Tier 2 rates within the last three years, informing them they may have a claim against the District and notifying them of the deadline to do so.*** President Hart asked Mr. Foley and Ms. Pitman to work on the letter and the claim policy and form, and present it to the Executive Committee for review.

**I. Discussion of Prop 1 Funding update:** Director Tatusko reported that he, Mr. Rolwing and Greg Holloway met with Dudek staff and prepared Proposition 1 grant applications totaling approximately \$720,000, primarily for upgrades to the wastewater treatment plant. David Dale will review the applications prior to submittal.

**J. Discussion and possible approval for the District to absorb the cost of taking minutes for the Groundwater Sustainability Plan Process:** Mr. Rolwing reported that the State Facilitator for the GSP had indicated their services could be extended if taking minutes was not included. Mr. Rolwing tentatively offered to have the District absorb the cost of minutes, and suggested the GSP meetings be combined with the monthly workshops. Discussion followed regarding whether the District should absorb these costs before it is accepted as a GSA. ***MSC: Brecht/Delahay authorizing the District to fund some clerical expenses related to the GSP process prior to obtaining GSA status, not to exceed \$1,500. Director Estep abstained from the vote.***

**K. Review of planning calendar:** President Hart recommended that the last item under GSP (Implement GSP funding mechanism; start GSP development), listed for October, be moved forward.

### **III. STAFF REPORTS**

**A. Financial Reports – July and August 2015:** Kim Pitman reported that water use in July decreased by 16 percent. Maintenance expenses and electricity costs were low. Calpers was paid \$66,000 for annual unfunded liability. The District spent \$68,000 for training on the new computer system. In August, \$200,000 was paid for COP debt, and a \$35,000 Viking Ranch payment was made. Umpqua Bank has submitted a proposal to handle the District's banking at an annual savings of \$4,000.

**B. General Manager/Operations Report:** Mr. Rolwing reported that he had been working with the Bureau of Reclamation and USGS in an effort to obtain their reports. He also was working with the County on the proposed boundary adjustment. The fence at the wastewater treatment plant solar facility has been completed. Work with UCI continues regarding placement of the weather stations.

**C. Water and Wastewater Operations Report – June 2015:**

**D. Water Production/Use Records – June 2015:**

Mr. Holloway reported that there is still some water loss (unaccounted-for water). Staff is in the process of replacing older meters.

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

None

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

### Ad Hoc Committees

#### 1. Audit Committee

Auditor Chris Thibodeau joined the meeting via teleconference. He explained that Calpers had hired an outside actuary to evaluate pension liability costs, and BWD's was determined to be \$199,000. The liability must be recorded and adjusted annually.

Ms. Pitman inquired about the proposed devaluation of the Rudy Monica water credits. Mr. Thibodeau explained that he had calculated the difference between the value of the credits currently shown on the District's books and what credits are actually selling for at present.

President Hart brought up the potential liability for claims against the District arising from the former tiered rate system. Director Brecht replied that there are sufficient funds in reserve to cover it.

#### 2. Due-Diligence

No report.

#### 3. Strategic Planning Committee/IRWM

No report.

#### 4. Executive Committee

President Hart reported that the Committee would be reviewing information provided by Ms. Pitman and Mr. Foley regarding claims against the District.

#### 5. Operations & Management Committee

Director Delahay announced that the Committee would be meeting this Thursday at 2:00 p.m.

#### 6. Parks Committee

Director Estep reported that the Committee hoped to meet with representatives of Club Circle West to discuss the pending Borrego Springs Resort escrow and formulate future plans.

Mr. Rolwing reported that a meeting with County Parks and Recreation has been scheduled for October 22 to discuss a new park in the church area and the new library project.

#### 7. CFD Committee

Mr. Rolwing reported that Mr. Foley had drafted a letter to Allison Burns regarding her replacement as bond counsel, for President Hart's signature. President Hart had made some changes, and Mr. Rolwing will follow up with Mr. Foley.

#### 8. Conservation Committee

President Hart suggested using her July letter to heavy water users as a basis for the next distribution.

## **VI. INFORMATION ITEMS**

**A. Business of the Water District:** Director Brecht invited the Board's attention to information in the Board package which he had compiled in response to questions from John Peterson's committee.

## **VIII. CLOSING PROCEDURE**

There being no further business, the Board adjourned at 11:50 a.m. The next Special Meeting of the Board of Directors is scheduled for October 20, 2015 at the Borrego Water District. The next Regular Meeting of the Board of Directors is scheduled for October 28, 2015 at the Borrego Water District.