

AGENDA
Borrego Water District Board of Directors
Special Meeting
June 5, 2015 8:00 a.m.
806 Palm Canyon Drive
Borrego Springs, CA 92004

I. OPENING PROCEDURES

- A. Call to Order
- B. Pledge of Allegiance
- C. Roll Call
- D. 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 consider introduction 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, ENFORCMEENT, COLLECTION, AND ADMINISTRATIVE REVIEW OF ADMINISTRATIVE FINES AND PENALTIES AND FOR VIOLATING OTHER WATER USE REGULATIONS AND RESTRICTIONS***
- B. Discussion and consider introduction 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***

III. CLOSING PROCEDURE

The next Special Meeting of the Board of Directors is scheduled for June 16th, 2015 at the Borrego Water District.

The next Regular Meeting of the Board of Directors is scheduled for June 24th, 2015 at the Borrego Water District.

Teleconference sites:

7815 Rush Rose Drive #302, Carlsbad, CA 92009

300 West Beech St. #2106, San Diego, CA 92101

Ordinance No. 15-01

ORDINANCE 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, ENFORCMEENT, COLLECTION, AND ADMINISTRATIVE REVIEW OF ADMINISTRATIVE FINES AND PENALTIES AND FOR VIOLATING OTHER WATER USE REGULATIONS AND RESTRICTIONS

WHEREAS, the Borrego Water District (the “District”) is a California Water District created pursuant to the California Water District Law (Division 13 of the California Water Code, section 34000 *et seq.*), located in the County of San Diego, California, and is a local agency, as defined in section 54951 of the California Government Code; and

WHEREAS, California Government Code section 53069.4 provides that a local agency, as defined in California Government Code section 54951, may adopt an ordinance making any violation of any ordinance adopted by the District subject to an administrative fine or penalty, and establishing administrative procedures governing the imposition, enforcement, collection, and administrative review by the District for those administrative fines and penalties; and

WHEREAS, the District has adopted various ordinances regulating the use of water, and the disposal of sewer, and creating other restrictions on the use of water, and the disposal of sewer, within the District, and may adopt other regulations and restrictions in the future; and

WHEREAS, the Board of Directors (the “Board”) believes that establishing procedures for the imposition of fines and penalties, and establishing procedures for the administrative review of any administrative fines and penalties imposed for the violation of District ordinances, is in the best interest of the District and its residents and customers, and will allow the District to better correct violations of its ordinances.

NOW, THEREFORE, BE IT ORDAINED by the Board of Directors of the Borrego Water District, as follows:

Section 1. Purpose.

The Board of Directors finds there is a need for an alternative method to enforce violations of ordinances of the Borrego Water District. The Board of Directors further finds that an administrative fine and penalty program is an appropriate method of enforcing violations of the District’s ordinances. The administrative fine and penalty remedy provided in this ordinance is available in addition to any other remedy authorized by law.

Section 2. Definitions.

A. Administrative notice of violation. A written notice of violation of a provision of any District ordinance, which includes imposition of an administrative fine. The written notice may be in the manner of a penalty added to a customer’s account for a violation in the amounts set forth in the applicable ordinance.

B. Administrative fine; administrative penalty. A fine or penalty imposed on the responsible person as permitted by this ordinance, or as permitted by any other regulatory ordinance adopted by the Board of Directors.

C. Enforcement officer. The General Manager, the Operations Manager, and the Administrative Assistant, or any other person authorized by the General Manager to enforce the provisions of any District ordinance.

D. Hearing officer. The person designated by the General Manager to conduct administrative hearings pursuant to the provisions of this ordinance.

E. Responsible party; party responsible. Property owner(s) or such persons responsible for a violation of any District ordinance.

Section 3. Authority to enforce.

All authorized personnel shall be vested with the authority to determine whether a violation of a provision of a District ordinance exists and to issue an administrative fine or administrative penalty.

Section 4. Notice of violation.

A. Prior to issuing an administrative notice of violation, if a violation of a provision of the applicable District ordinance does not create an imminent danger to health or safety, the owner(s) and/or other responsible party, shall be informed of the violation, and provided a reasonable amount of time to correct, or otherwise remedy said violation. The time period provided to remedy such violation shall not exceed thirty (30) calendar days.

B. The procedures set forth in subsection A shall not be required for any violations of a District ordinance where a responsible party has exceeded established allocations of water or base level usage by a responsible party; further, the procedures set forth in subsection A shall not be required for violations of a District ordinance establishing water use regulations and restrictions.

Section 5. Administrative notice of violation.

A. Whenever an enforcement officer determines that a violation of a provision of a District ordinance has occurred, he or she shall have the authority to issue an administrative notice of violation to each responsible party for the violation.

B. Each notice of violation shall contain the following information:

1. Date of the violation;
2. Address or a definite description of the location where the violation occurred;
3. The section of the ordinance violated and a description of the violation;
4. The name of the owner or person responsible for the violation;
5. The amount of fine for the ordinance violation;

6. A description of the fine payment process, including a description of the time within which, and the place where the fine is to be paid;
7. An order requiring compliance with the District's ordinance;
8. A description of the administrative citation hearing process, including the time within which the administrative citation may be contested; and
9. The name and signature of the enforcement officer.

C. A separate administrative citation may be issued to each owner and party responsible for the violation, for each and every day, or portion thereof, during which a violation of any provision of ordinance is committed, maintained, continued, or permitted to exist.

Section 6. Service of an administrative notice of violation.

A. Service of an administrative notice of violation for violations subject to section 4(A) of this ordinance shall be by one of the following methods:

1. Personal service upon the owner or person responsible for the violation; or
2. Certified mail with return receipt requested; or
3. Posting the administrative citation in a conspicuous place on the property.

B. Service of an administrative notice of violation for violations subject to section 4(B) of this ordinance shall be by one of the following methods:

1. Personal service upon the owner or person responsible for the violation; or
2. Certified mail with return receipt requested; or
3. Posting the administrative citation in a conspicuous place on the property; or
4. Included in the responsible person's billing for water services immediately following the violation. The responsible person's billing shall also include the charge for the amount of the administrative penalty, which shall be due and payable along with the responsible person's water charges, subject to any right of review as set forth in section 10 of this ordinance.

C. Service to each property owner by certified mail shall be addressed to the address shown on the last available tax assessment roll, or as otherwise known. Service to each responsible party by certified mail, other than the property owner, shall be addressed to such person at his last known business or residence address as the same appears in the public records, or as otherwise known. Service to a responsible party by including in the party's billing for water services shall be by mailing the notice to the customer's address maintained in the District's records of accounts.

D. The failure of any owner or other person responsible for the violation to receive a properly addressed citation shall not affect the validity of the citation.

Section 7. Amount of fines.

The amount of administrative fine or penalty, which may be imposed for each separate violation of the same provision of the ordinance, shall be established by resolution of the Board of Directors or as set forth in the ordinance establishing the regulation that was violated. No fine or penalty may exceed two (2) times the amount of the responsible person's actual charges for water services for the billing where the penalty is imposed, if the administrative notice of violation is subject to section 4(B) of this ordinance.

Section 8. Payment of fine.

A. For those administrative notices of violation personally served, served by certified mail, or posted on the property, the payment of the administrative fine or penalty may be made in person or by mailing said sum, within ten (10) days of the date of service of the notice, to the Borrego Water District (Attention: General Manager), 590 Palm Canyon Drive, Borrego Springs, CA, 92004.

B. For those administrative notices of violation served by mail and included on the customer's water bill, the payment of the administrative fine or penalty may be included in the payment of that person's water bill.

C. Any administrative fine or penalty paid pursuant to subsections A or B shall be refunded if it is determined after a review (if timely requested), that the person charged in the administrative notice of violation was not responsible for the violation, or that there was no violation as charged in the notice of violation.

D. Payment of a fine under this ordinance shall not excuse or discharge the continuation or repeated occurrence of the violation that has been charged in the administrative notice of violation.

Section 9. Deferral of administrative citation fine deposit.

A. A person who has received an administrative notice of violation and requests an administrative review of the violation may request a deferral of the fine deposit required in section 10 of this ordinance, if he or she is financially unable to make the advance deposit.

B. Request for deferral of an administrative citation fine deposit based upon financial hardship shall be made on the form approved by the General Manager.

C. The General Manager shall determine whether deposit of the administrative fine amount shall be deferred due to financial hardship.

D. If a deferral of the deposit is granted and the hearing officer subsequently upholds the administrative citation, the recipient(s) of the citation shall be required to pay the amount of the fine or penalty within ten (10) days of the date the written decision of the hearing officer is mailed.

Section 10. Request for administrative hearing.

A. Any person receiving an administrative notice of violation may contest that there was a violation of the ordinance, or that he or she is the person responsible for the violation, by submitting a written request for a review hearing. Such a request must be submitted within ten (10) calendar days from the date the administrative citation is served and must be accompanied by the full amount of the fine (except as provided in section 9).

B. The person requesting the hearing shall be notified of the time and place set for the hearing at least ten (10) days prior to the date of the hearing.

C. If the enforcement officer submits an additional written report with respect to the administrative citation to the hearing officer for consideration at the hearing, then a copy of the report shall also be served on the person requesting the hearing at least five (5) days prior to the date of the hearing.

Section 11. Hearing procedure.

A. No hearing to contest an administrative citation before a hearing officer shall be held unless the fine has been deposited in advance in accordance with section 10, or deferred pursuant to section 9.

B. A hearing before the hearing officer shall be set for a date that is not less than ten (10) calendar days and not more than thirty (30) calendar days from the date that the request is filed in accordance with the provisions of this ordinance. Either party may continue the hearing for a period of not more than thirty (30) calendar days provided, however, that no hearing shall be held more than ninety (90) calendar days from the date of the request unless consented to by both parties, in writing.

C. The hearing officer may consolidate administrative notices of violation issued for violations of the same ordinance to the same owner or responsible party.

D. At the hearing, the party contesting the administrative notice of violation shall be given the opportunity to testify and present evidence concerning the violation.

E. The failure of any recipient of an administrative notice of violation to appear at the administrative review hearing shall constitute a forfeiture of the fine and a failure to exhaust their administrative remedies.

F. The administrative notice of violation and any additional report submitted by the enforcement officer shall constitute *prima facie* evidence of the respective facts stated therein.

G. The hearing officer may continue the hearing and request additional information from the enforcement officer or the recipient of the administrative citation prior to issuing a written decision.

H. The rules of evidence shall not be strictly applied; hearsay evidence shall be admissible provided, however, that the hearing officer shall give all evidence the weight that it deserves.

Section 12. Hearing officer's decision.

A. After considering all of the testimony and evidence submitted at the hearing, the hearing officer shall issue a written decision to either uphold, modify, or cancel the administrative notice or notices of violation and shall list the reasons for that conclusion in the decision. The decision of the hearing officer shall be final.

B. If the hearing officer determines that an administrative notice of violation should be upheld, the District shall retain the fine or penalty amount on deposit with the District.

C. If the hearing officer determines that an administrative notice of violation should be canceled and the fine or penalty was deposited with, or (in the case of a payment along with the responsible person's water bill) paid to the District, the District shall promptly refund the amount of the deposited fine or reflect a credit on the responsible person's next water bill.

D. The recipient of the administrative notice of violation shall be served with a copy of the hearing officer's written decision.

E. The employment, performance evaluation, compensation and benefits of the hearing officer shall not be directly or indirectly conditioned upon the number of administrative citation fines upheld by the hearing officer.

Section 13. Recovery of administrative fines, penalties, and costs.

Administrative fines or administrative penalties that are not paid within ten (10) days of the date the notice of violation is served, or, where an administrative hearing is held, within ten (10) days of the date the hearing officer mails the written decision upholding the violation, shall be subject to late payment penalties and administrative fees charged to cover the costs incurred by the District in enforcing the provisions of the ordinance. The District may collect any past due administrative fine, penalty, late penalty, or administrative fee by use of all available legal means.

Section 14. Administrative fine and penalty remedy not exclusive.

The administrative fine and penalty remedy provided in this ordinance is in addition to any existing remedy authorized by law, and is not to be construed as superseding or limiting any other remedies, civil or criminal. The administrative remedy herein provided shall be cumulative and not exclusive.

Section 15. Right to judicial review.

Any person aggrieved by an administrative decision of a hearing officer with respect to an administrative notice of violation may obtain judicial review by filing an appeal within twenty (20) days after the mailing or personal delivery of the hearing officer's final decision. The procedure

for appeal of the hearing officer's decision shall be as provided in California Government Code Section 53069.4.

Section 16. This ordinance shall be effective thirty days following its passage and adoption.

ADOPTED, SIGNED AND APPROVED this 5th day of June, 2015.

Beth Hart
President of the Board of Directors of Borrego Water
District

ATTEST:

Joseph Tatusko
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 foregoing ordinance was duly adopted by the Board of Directors of said District at a regular meeting held on the 5th day of June, 2015, and that it was so adopted by the following vote:

AYES: DIRECTORS:
NOES: DIRECTORS:
ABSENT: DIRECTORS:
ABSTAIN: DIRECTORS:

Joseph Tatusko
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 ORDINANCE NO. 15-01, of said Board, and that the same has not been amended or repealed.

Dated: June 5, 2015

Joseph Tatusko
Secretary of the Board of Directors of Borrego Water
District

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

WHEREAS, the Board of Directors (the “Board”) of the Borrego Water District (the “District”) recognizes that there is a need to develop alternative methods of encouraging water conservation to halt or mitigate the rate of increase in the existing aquifer overdraft situation, while at the same time finding ways to maintain sufficient revenues for the efficient and economical operation of the District’s water enterprise; and

WHEREAS, the Board has previously adopted Resolution No. 2009-4-1, a “Resolution of the Board of Directors of the Borrego Water District, San Diego County, California, Adopting in Principle Tiered Water Rates Subject to Subsequent Compliance With Proposition 218 and Adopting the BWD First Conservation Management Plan,” (the “Resolution”), with the intent of encouraging water conservation by its customers in the form of conservation and incentive measures through various options; and

WHEREAS, the conservation and incentive measures do not include incentives such as fines and penalties for excessive use of water by the District’s customers, but relies upon voluntary efforts of the customers, but contemplates reliance on established “tiers” of rates charged to its customers, which methodology may not be the most effective measures for encouraging conservation and protecting against overdraft of the aquifer; and

WHEREAS, the Board has determined that additional, alternative, measures are required in order to enhance efforts to encourage water conservation on the part of the District’s water utility customers, which alternative methods include the imposition of administrative fines and penalties for water utility customers exceeding an adopted base usage measurement of water consumed by each customer during a billing cycle; and

WHEREAS, in order to establish administrative fines and penalties the Board must first establish them by ordinance;

NOW, THEREFORE, BE IT ORDAINED by the Board of Directors of the Borrego Water District, as follows:

Section 1. Purpose.

The purpose of this ordinance is to establish the framework for identifiable administrative fines and penalties that may imposed by the District for customers of the District’s water utility customers whose consumption of water exceeds the amount allocated by the Board for the billing cycle being charged. Fines and penalties collected may be used for any governmental purpose of the District; however it is the intent of this ordinance that the use of the fines and penalties should be consistent with the District’s conservation measures as outlined in that certain “BWD First Conservation Management Plan,” as identified in the Resolution.

The imposition of the administrative fines and penalties are subject to those procedures established by ordinance, as amended from time to time, by the Board. The amount of administrative fines and penalties shall not exceed the amounts set forth in this ordinance, but because the District experiences varying degrees

of overdraft (due to, adversely, sustained drought conditions or, favorably, improvements in the aquifer as a result of successful conservation efforts and other conditions that might recharge the aquifer) they shall be based upon a determination of base level usage as set by resolution of the Board from time to time and consistent with this ordinance.

Section 2. Definitions.

In addition to those terms previously defined in this ordinance, for the purposes of this ordinance, and for the purpose of any resolution to implement this ordinance, the following definitions shall apply:

A. Administrative fine; administrative penalty. A fine or penalty imposed on the responsible person as permitted by this ordinance, in the amount as may be adopted by the Board of Directors by resolution.

B. Base level usage; water allocation. An amount of water that is fixed by resolution of the Board to be an allowable amount to be consumed by the customer during any billing cycle. In no event shall the maximum base level usage or water allocation for any billing cycle be less than 20 units for each month.

C. Billing cycle. The period of time that water is delivered to a customer through the District's water facilities. The billing cycle may be monthly, bi-monthly, or whatever period of time is established between the District and the customer by agreement. The billing cycle may be prorated based on the date of the opening or closing of account, including upon the termination of services following a "shut off" notice issued by the District.

D. Customer. The party responsible (whether person, persons, or entity) for the payment of charges for water delivered by the District to the residence, business, or property. The customer does not need to own the property where the water is delivered.

E. Enforcement officer. The General Manager, the Operations Manager, and the Administrative Assistant, or any other person authorized by the General Manager to enforce the provisions of any District ordinance.

F. Responsible party; party responsible. The customer, the property owner (if arrangements are made between the property owner and the District allowing a lien to attach to the property), or such persons responsible for payment of water charges for the account.

G. Unit of water. A unit of water is the equivalent of 748 gallons.

Section 3. Establishment of administrative fines and penalties.

A. It is a violation of any District customer to use, and it is a violation for any responsible party to allow to be used, more than the base level usage of water for any billing cycle on any account. Any customer whose use exceeds the base level usage of water shall be subject to an administrative fine, or administrative penalty, in the amount of \$ ____ for each unit of water, or portion thereof, in excess of the water allocation that is in effect at the time of the violation.

B. No administrative fine or administrative penalty shall exceed one hundred percent (100%) of the amount of the water charges for the billing cycle on the account for which the customer or the responsible party is determined in violation of this ordinance.

Section 4. Charge of administrative fines and penalties.

Upon a determination that an administrative fine or penalty is chargeable by this ordinance the enforcement officer shall determine the amount, provide notice of administrative fine or penalty, and charge it to the customer's account, and include the fine or penalty on the customer's bill for the next billing cycle.

Section 5. Failure to pay administrative fines or penalties.

Any administrative fines or penalties not paid, or not credited following any administrative review of the charge, shall continue to be charged to the responsible party until paid. No interest on the unpaid fines or penalties shall apply during any period of administrative review by the District. Upon a final determination of the amount of the fines or penalties payments on any account shall first be applied to the administrative fines or penalties outstanding, in the order by which they were first charged, and the balance of any payment, following the full payment of fines and penalties, shall be applied to the outstanding balance of the customer's account.

Section 6. Suspension of water allocation; administrative fines or penalties.

The District may suspend the maximum water allocation or base level usage regulation from time to time by resolution adopted by the Board.

Section 7. This ordinance shall be effective thirty days following its passage and adoption.

ADOPTED, SIGNED AND APPROVED this 5th day of June, 2015.

Beth Hart
President of the Board of Directors of Borrego Water
District

ATTEST:

Joseph Tatusko
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 foregoing ordinance was duly adopted by the Board of Directors of said District at a regular meeting held on the 5th day of June, 2015, and that it was so adopted by the following vote:

AYES: DIRECTORS:

NOES: DIRECTORS:

ABSENT: DIRECTORS:

ABSTAIN: DIRECTORS:

Joseph Tatusko
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 ORDINANCE NO. 15-02, of said Board, and that the same has not been amended or repealed.

Dated: June 5, 2015

Joseph Tatusko
Secretary of the Board of Directors of Borrego Water
District