

**AGENDA**  
**Borrego Water District Board of Directors**  
**Special Meeting**  
**July 14, 2015 9:00 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 possible approval of minimal financial assistance for purchasing four particulate monitors for UCI Steele Bernand Anza Borrego Desert Research Center's dust monitoring program for the Borrego Valley.
- B. Discussion of Change in Customer Class for Kennedy/Daoust landscaping meter
- C. Discussion 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*; and set a public hearing to consider adoption of the ordinance
- D. Discussion 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*; and set a public hearing to consider adoption of the ordinance
- E. Discussion of Executive Order B-29-15 regarding emergency twenty-five percent (25%) mandatory water use reductions for District total production from 2013 baseline production amid the current California drought including discussion of potential incentives and/or penalties to achieve water conservation targets by November 30, 2015.
- F. Discussion of application process for Groundwater Sustainability Agency
- G. Discussion of potential agenda items for July 22<sup>nd</sup> board meeting

**III. INFORMATIONAL ITEMS**

- A. Letter to State Water Resources Control Board

**IV. CLOSING PROCEDURE**

The next Regular Meeting of the Board of Directors is scheduled for July 22<sup>nd</sup>, 2015 at the Borrego Water District.

**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, ENFORCEMENT, 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, including the District’s ordinances and Administrative Code.

Section 2. Definitions.

A. Administrative Code. That certain code adopted by the District’s Board of Directors and on file with the District, as may be amended from time to time. The Administrative Code

contains additional, alternative, rules and regulations for the conduct of District policies and procedures.

B. 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.

C. 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.

D. Customer. The party responsible for the payment of rates, fees, or other charges against the property receiving a service from the District, regardless of property ownership.

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

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

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

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) 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, or such longer period of time as set forth in Articles VI or VII of the District's Administrative Code.

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 District's records, 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 fifteen (15) business 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. Hearing and administrative procedures.

The following procedures are in addition to, but not in lieu of, any procedures set forth in the District's Administrative Code, and shall apply only if the District seeks administrative fines or penalties for violations.



A. A customer may appeal a decision, enforcement of a policy or procedure, rate, fee, charge, or penalty by submitting a written appeal to the General Manager of the District. However, the appeal rights set forth in this section shall not apply to termination of service for nonpayment of a domestic water bill. An appeal must be made in writing and submitted to the General Manager within fifteen (15) business days of the effective date of service of the notice of termination (if for reasons other than nonpayment), or within thirty (30) calendar days of the effective date of any other enforcement action or decision. Any such appeal shall include the specific decision or policy, rate, charge, or penalty being challenged, a detailed description regarding the nature of the challenge, evidence supporting the challenge, the remedy requested and contact information including an email, cell phone number or other pertinent contact information.

B. A hearing on the customer's appeal will be conducted by the District's General Manager or his or her designated representative within fifteen (15) calendar days after receipt of the appeal, unless service has been terminated. If service has been terminated, the hearing will be held as soon as practicable but no later than five (5) business days of receipt of the written appeal. The customer shall be promptly notified of the date, time and place of the hearing. At the hearing, the customer shall be given a reasonable opportunity to present information in support of the customer's appeal. The customer may waive his or her right to a hearing within the time prescribed in this section by a continuance approved by the hearing officer.

C. A failure to file a timely appeal in accordance with this section shall be deemed a waiver of the right to appeal and will be considered a failure to exhaust administrative remedies which may impact any attempt by the customer for any judicial review.

Section 10. Suspension of enforcement. In the event a Customer submits an appeal under the procedures set forth in section 9, above, or section 11, below, enforcement of the violation shall be suspended until written notice of the decision by the General Manager or his or her designated representative has been submitted to the customer. The notice of the decision shall be deemed to be submitted to the customer upon the District depositing it in the U.S. mail, addressed to the customer's last known address, and first class postage prepaid. Termination for nonpayment of a water bill is not subject to appeal and as a result, such enforcement will not be suspended.

#### Section 11. Appeal to Board of Directors.

Any responsible party may appeal the decision of the hearing officer to the Board of Directors. The appeal must be submitted, in writing, to the General Manager within fifteen (15) days following the date the hearing officer's notice of decision is mailed. Unless continued by the responsible party and the General Manager, the hearing on any appeal to the Board of Directors shall be conducted not less than thirty (30) calendar days following the date that the notice of decision is mailed to the responsible party. The Secretary to the Board shall set the appeal hearing before the Board of Directors at its next regularly scheduled meeting or, if continued, at any meeting of the Board of Directors occurring after the next regularly scheduled meeting. The hearing before the Board shall be conducted consistent with the hearing procedures set forth in section 9, above; provided, however, that the appeal shall be limited to those issues appealed in the matter before the hearing officer. The Board's review shall be based

on the evidence presented to hearing officer as well as at the time of the hearing before the Board.

Section 12. 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, or (if appealed to the Board of Directors and the hearing officer's decision is upheld) within ten (10) days of the date that the Secretary to the Board deposits notice of the decision of the Board of Directors in the U.S. Mail, first class postage prepaid, addressed to the responsible party 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 13. 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 14. Right to judicial review.

Any person aggrieved by an administrative decision by the Board of Directors may obtain judicial review by filing an appeal within twenty (20) days after the mailing or personal delivery of the Board of Director'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 15. This ordinance shall be effective following its passage and adoption.

**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 use efficiency and conservation by its customers in the form of conservation and end use efficiency incentive measures through various options; and

**WHEREAS**, the conservation and end use efficiency incentive measures do not include incentives such as fines and penalties for excessive use of water by the District’s customers, relying instead upon voluntary efforts of the customers at the risk of consumption that would result in the incurrence of 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 in unusual or extreme cases such as severe drought or sudden water enterprise infrastructure failures; and

**WHEREAS**, the Board has determined that additional, alternative, measures are required in order to enhance efforts to encourage water conservation and investments in end use efficiency 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 class 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,” which is 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. Administrative review. The procedures for imposing administrative fines and penalties as set forth in Ordinance No. 15-01. Administrative review includes all procedures involving the appeal of the administrative fines or penalties charged provided, but shall not include any judicial review of a final decision.

C. Base level usage; allocated amount; 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.

D. 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.

E. 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.

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

G. 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.

H. 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 that shall be set by a resolution of the Board from time to time for exceeding 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, charge it to the customer's account, and include the fine or penalty on the customer's bill for the next billing cycle, all in accordance with Ordinance No. 15-01. The customer shall the right to the administrative review of any administrative fine or penalty as provided in Ordinance No. 15-01.

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 following its passage and adoption.



**BORREGO WATER  
DISTRICT**

6/25/15

State Water Resources Control Board

Division of Financial Assistance Section

[Meghan.Tosnev@waterboards.ca.gov](mailto:Meghan.Tosnev@waterboards.ca.gov)

[Connie.Mitterhofer@waterboards.ca.gov](mailto:Connie.Mitterhofer@waterboards.ca.gov)

[Lisa.Babcock@waterboards.ca.gov](mailto:Lisa.Babcock@waterboards.ca.gov)

[Daniel.Newton@waterboards.ca.gov](mailto:Daniel.Newton@waterboards.ca.gov)

[Robert.Reeves@waterboards.ca.gov](mailto:Robert.Reeves@waterboards.ca.gov)

[Dat.Tran@waterboards.ca.gov](mailto:Dat.Tran@waterboards.ca.gov)

[Brian.Kinney@waterboards.ca.gov](mailto:Brian.Kinney@waterboards.ca.gov)

Dear Ms. / Mr.

This letter of introduction is the result of the informative Prop. 1 California Water Boards funding workshops held in Riverside 3/26/15 and Perris 4/16/15 and the up-coming workshop in Riverside 6/29/15. Jerry Rolwing, Borrego Water District (BWD), General manager and I attended both early workshops and Jerry will attend the 6/29/15 workshop. We were impressed with the sense of urgency the Program Managers had in your presentations. I am a BWD Director, Secretary/Treasurer and also serve on the O&M ad hock committee.

Borrego Springs, CA is a small disadvantaged community in southern California according to the 2013 US Census Survey with a MHI of \$40,539. The BWD has about 2,200 connections. Our objective is to secure project funding to complete necessary WWTP and clean water transportation and storage projects with primarily grants or low interest long term loans.

We will be working with our BWD Engineer, David Dale together with the Dudek Staff of Jane Gray, Regional Planner/Funding Specialist and Trey Driscoll, Senior Hydrogeologist who are very familiar with Borrego Springs and also BWD during the FFAST application process. We became aware of the funding options through the workshops and Proposition 1 – Chapter 5, Section 79724. Page 24, Table 6 identifies Grant criteria for economically Distressed Areas.

We look forward to working with you and the SWRCB during this process and are available to meet with you to review our projects details.

Sincerely,

Jóseph Tatusko

BWD Director, Secretary/Treasurer

Copy:

Jerry Rolwing, Jane Gray, Trey Driscoll