

STRADLING YOCCA CARLSON & RAUTH

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

660 NEWPORT CENTER DRIVE, SUITE 1600

NEWPORT BEACH, CA 92660-6422

TELEPHONE (949) 725-4000

FACSIMILE (949) 725-4100

ORANGE COUNTY  
(949) 725-4000

SAN DIEGO  
(858) 720-2150

SAN FRANCISCO  
(415) 283-2240

SANTA BARBARA  
(805) 564-0065

SACRAMENTO  
(916) 449-2350

ALLISON E. BURNS  
DIRECT DIAL: (949) 725-4187  
ABURNS@SYCR.COM

RECEIVED

JUL 09 2010

RECEIVED  
JUL 13 2010  
SAN DIEGO  
COUNTY GRAND JURY

July 7, 2010

Presiding Judge Kevin A. Enright  
San Diego Superior Court  
Hall of Justice  
330 W. Broadway  
San Diego, CA 92101

*Re: Borrego Water District*

Dear Presiding Judge Kevin A. Enright:

This office is General Counsel to the Borrego Water District. This letter is in response to the Grand Jury Report entitled "Borrego Water District." Enclosed are Resolution Nos. 2010-06-11 and 2010-06-10 as well as amended Policy Nos. 2005-5-1 and 2009-09-01 responding to and implementing the recommendations of the Grand Jury.

If you should have any questions, please do not hesitate to contact the undersigned.

Very truly yours,

STRADLING YOCCA CARLSON & RAUTH

  
Allison E. Burns

Enclosures

cc: Richard S. Williamson

**RESOLUTION NO. 2010-06-11**

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE BORREGO WATER DISTRICT REGARDING PUBLIC AVAILABILITY OF FINANCIAL RECORDS, INTERNAL CONTROL PROCEDURES RE STATEMENTS OF ECONOMIC INTEREST AND RETENTION OF AUDITING FIRMS IN RESPONSE TO MAY 6, 2010 GRAND JURY REPORT**

**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 recommendations:

No. 10-12: Increase the retention time for audio recordings of all public meetings to 120 days;

No. 10-13: Assure that the District's financial records are available to any citizen to facilitate transparency of the District's economic status;

No. 10-14: Develop internal control procedures to ensure that all employees, consultants, and Board Members adhere to all Statement of Economic Interest (Form 700) filing requirements;

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

**WHEREAS**, Penal Code section 933.05 requires the Borrego Water District (“District”) to respond to each Recommendation by the Grand Jury; and

**WHEREAS**, the Board of Directors of the Borrego Water District desires to respond to each Recommendation by the Grand Jury;

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

**Section 1.** The District agrees with Grand Jury finding No. 10-12. Concurrently herewith, the Board of Directors of the Borrego Water District will consider Resolution No. 2010-06-10 amending its document retention policy with regard to the period of retention of audio recordings of all public meetings as well as Policy No. 2005-5-1 with regard to the period of retention of audio recordings of all public meetings.

**Section 2.** The District agrees with Grand Jury finding No. 10-13. As has been the practice since 2009, the District’s audited financial reports, adopted budget and monthly financial reports (collectively, “Financial Records”) shall each be posted to the District’s website, [www.borregowd.org](http://www.borregowd.org), within one week of adoption or approval thereof. The District shall further provide a copy of any and all Financial Records to any member of the public as soon as possible and within ten (10) days of any request therefor and payment of the applicable copy costs pursuant to then-existing District policy.

**Section 3.** The District agrees with Grand Jury finding No. 10-14. The District shall adhere to the following processes regarding Statement of Economic Interest ("Form 700") filing requirements:

a. Annual Reports – All Filers. On or before February 1 of each year, the District's Administrative Assistant shall transmit to each Board Member, consultant and/or employee who is required to fill out a Form 700 a notice advising them of the need to submit the same. The Administrative Assistant shall then track the responses received from each such individual and transmit reminders to each individual who has not yet responded on or before February 20, March 1, March 15 and March 28.

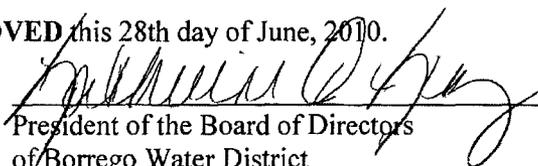
b. New Filers – Consultants. Upon executing or causing the execution of any contract with any consultant, the General Manager of the District shall execute a *Determination of General Manager Regarding Consultant Disclosure Requirements* form for each such consultant (attached hereto as Exhibit A) and transmit the same to the District's Administrative Assistant and Accounts Payable clerk. The Administrative Assistant shall, as appropriate, forward the Form 700 to each such consultant for execution. The Accounts Payable clerk shall not pay any District funds to any consultant who has not executed a required Form 700.

c. New Filers – Employees/Board Members. Upon a new Board Member taking office or a new employee taking a position that requires execution of a Form 700, the Administrative Assistant shall transmit the Form 700 to the employee or Board Member for execution and shall send bi-weekly reminders until such form is executed and returned.

d. Leaving Office Reports. Upon the conclusion of a consultant's contract, a Board Member leaving office or an employee leaving a position that requires execution of a Form 700, the Administrative Assistant shall transmit the Form 700 to the consultant, employee or Board Member for execution and shall send bi-weekly reminders until such form is executed and returned.

**Section 4.** 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 will 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.

**ADOPTED, SIGNED AND APPROVED** this 28th day of June, 2010.

  
\_\_\_\_\_  
President of the Board of Directors  
of Borrego Water District

ATTEST:

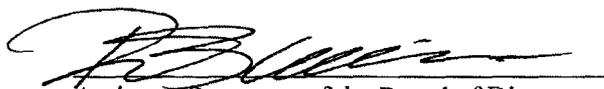
  
\_\_\_\_\_  
Assistant Secretary of the Board of Directors  
of Borrego Water District



Exhibit A

**DETERMINATION OF GENERAL MANAGER  
REGARDING CONSULTANT DISCLOSURE REQUIREMENTS  
UNDER BORREGO WATER DISTRICT CONFLICTS OF INTEREST CODE**

**[No Disclosure Requirement]**

Borrego Water District ("District") has hired \_\_\_\_\_ ("Consultant") to perform a range of duties which is limited in scope such that the Consultant is not included within the category of "Consultant" as defined in Title 2 Cal. Code Regs. section 18701(a)(2). The Consultant does not perform any of the following functions or duties for District:

- (A) Make a governmental decision whether to:
  - (i) Approve a rate, rule, or regulation;
  - (ii) Adopt or enforce a law;
  - (iii) Issue, deny, suspend, or revoke any permit, license, application, certificate, approval, order, or similar authorization or entitlement;
  - (iv) Authorize District to enter into, modify, or renew a contract provided it is the type of contract that requires District approval;
  - (v) Grant District approval to a contract that requires District approval and to which District is a party, or to the specifications for such a contract;
  - (vi) Grant District approval to a plan, design, report, study, or similar item;
  - (vii) Adopt, or grant District approval of, policies, standards, or guidelines for District; or
- (B) Serve in a staff capacity with District and in that capacity participate in making a governmental decision as defined in Title 2 Cal. Code Regs. section 18702.2 or perform the same or substantially all the same duties for District that would otherwise be performed by an individual holding a position specified in District's Conflict of Interest Code under Government Code section 87302.

District has hired the Consultant to perform the following duties: **[insert description of Consultant duties or attach scope of work or copy of the agreement (including scope of work) between Consultant and District]**

Based on the above description of the Consultant's duties and the fact that Consultant is not included in the definition of "Consultant" under Title 2 Cal. Code Regs. section 18701(a)(2), the Consultant shall have no disclosure requirements under the District Conflicts of Interest Code. This Determination constitutes a public record and shall be retained for public inspection at the office of the District, 806 Palm Canyon Drive, Borrego Springs, California, along with the District Conflicts of Interest Code.

\_\_\_\_\_  
District General Manager

\_\_\_\_\_  
Date

**DETERMINATION OF GENERAL MANAGER  
REGARDING CONSULTANT DISCLOSURE REQUIREMENTS  
UNDER BORREGO WATER DISTRICT CONFLICTS OF INTEREST CODE**

**[Limited Disclosure – No Disclosure of Real Property Interests]**

Borrego Water District (“District”) has hired \_\_\_\_\_ (“Consultant”) to perform a range of duties which is limited in scope such that the disclosure requirement set forth in the District Conflicts of Interest Code that the Consultant disclose pursuant to Disclosure Category 1 is not warranted.

District has hired the Consultant to perform the following duties: **[insert description of Consultant duties or attach scope of work or copy of the agreement (including scope of work) between Consultant and District]**

Although the Consultant is included as a “designated position” under the District Conflicts of Interest Code, based on the above description of the Consultant’s duties, the Consultant shall be required to disclose according to Disclosure Category 2 instead of Disclosure Category 1 (as described in Appendix B of the District Conflicts of Interest Code). This Determination constitutes a public record and shall be retained for public inspection at the office of the District, 806 Palm Canyon Drive, Borrego Springs, California, along with the District Conflicts of Interest Code.

\_\_\_\_\_  
District General Manager

\_\_\_\_\_  
Date

**RESOLUTION OF THE BOARD OF DIRECTORS  
OF THE BORREGO WATER DISTRICT, SAN DIEGO COUNTY, CALIFORNIA,  
AUTHORIZING THE ADOPTION OF A PUBLIC RECORDS POLICY AND A  
RECORDS RETENTION POLICY AND SCHEDULE FOR THE DISTRICT.**

**RESOLUTION 2010-06-10**

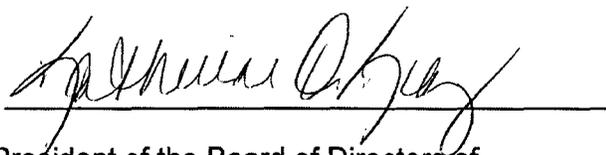
**WHEREAS**, the Borrego Water District is required by California law to retain certain documents for enumerated periods of time, which records, retained in the ordinary course of District business become public records subject to disclosure under the California Public Records Act unless otherwise exempted from disclosure under California law; and

**WHEREAS**, the District seeks to have its public records policy and records retention schedule comply with the most current legal requirements; and

**WHEREAS**, the Board of Directors of the District has found and determined that the adoption of a Record Retention Policy and establishment of a Record Retention schedule to establish an orderly procedure for the storage, reproduction and possible destruction of records on a continuing basis, is important and should provide for the protection of records vital to the District.

**NOW THEREFORE, BE IT RESOLVED** that the Board of Directors of the Borrego Water District hereby adopts the Public Record Policy and Record Retention Policy and Schedule.

**ADOPTED, SIGNED AND APPROVED** By the Board of Directors of the Borrego Water District, County of San Diego, State of California this 28th day of June, 2010.



President of the Board of Directors of  
Borrego Water District

**ATTEST:**



Assistant Secretary of the Board of Directors of  
Borrego Water District

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

I, Richard Williamson, Assistant 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 28<sup>th</sup> day of June, 2010, and that it was so adopted by the following vote:

AYES: DIRECTORS: King, Mendenhall, Shimeall

NOES: DIRECTORS:

ABSENT: DIRECTORS: Smiley

ABSTAIN: DIRECTORS:

  
Assistant Secretary of the Board of Directors of  
Borrego Water District

(SEAL)

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

I, Richard Williamson, Assistant 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. 2010-6-10, of said Board, and that the same has not been amended or repealed.

Dated: June 28, 2010

  
Assistant Secretary of the Board of Directors of  
Borrego Water District

(SEAL)

## **BORREGO WATER DISTRICT**

### **POLICY STATEMENT**

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**SUBJECT: PROPOSED POLICY ON DESTRUCTION SCHEDULE FOR BOARD MEETING RECORDINGS**

**NO: 2005-5-1**

**ADOPTED: May 25, 2005**

**REVISED: February 13, 2008, 6/28/2010**

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#### **PURPOSE**

The purpose of this policy shall be to establish guidelines for the erasure or destruction of recorded media of the Board of Directors meetings.

#### **BACKGROUND**

It has been the custom of the Board of Directors of the Borrego Water District to record the proceedings of all Board of Director's meetings in order to help facilitate the production of the formal minutes of the meetings. The meetings are currently recorded and saved on recordable audio compact disks.

There has never been any formal nor informal policy developed, which determines what period of time the District should maintain these recordings.

In reviewing the Brown Act, §549535(b) provides some guidance on this subject:

*Any tape or film record of an open and public meeting made for whatever purpose by or at the direction of the Local Agency shall be subject to inspection pursuant to the California Public Records Act (Chapter 3.5, commencing with §6250, of Division 7 of Title 1), but notwithstanding §34090, may be erased or destroyed 30 days after the taping or recording. Any inspection of a video or tape recording shall be provided without charge on a video or tape player made available by the agency.*

#### **POLICY**

The District will record all public meetings and maintain these recordings at the District's Administrative Office for a minimum period of 120 days after the date of the Boards approval of the minutes of the meeting, at which time the recordings will be destroyed or erased.

# BORREGO WATER DISTRICT

## *POLICY STATEMENT*

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**SUBJECT: PUBLIC RECORDS POLICY / RECORD RETENTION POLICY AND SCHEDULE**

**NO: 2009-09-01**

**ADOPTED: 2009-09-16**

**AMENDED: 2010-06-28**

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### **Purpose:**

To establish district policy and guidelines concerning accessibility of District Records according to the California Public Records Act, Government Code Section 6250 et seq. To establish guidelines for the retention of records and to identify those records which are no longer required for or important to District operations, and are therefore appropriate for destruction.

### **Goals:**

As per Section 6253 of the Government Code, it is the goal of the Borrego Water District to provide every person the right to inspect any public record except those specifically exempted by law.

### **Policy:**

Public records of the Borrego Water District shall be open to inspection during regular office hours of the District. "Public records" are all records of the District except those that are exempted from disclosure by the California Public Records Act (Government Code Sections 6275 et. seq.). This public records policy of the District shall at all times be subject to the California Public Records Act as it may be amended from time to time, and if there is any conflict between that act and this policy, the Act shall prevail.

### **DEFINITIONS**

#### **"Public records"**

Includes any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by the District regardless of physical form or characteristics

#### **"Writing"**

means any handwriting, typewriting, printing, Photostatting, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored.

## **Procedure:**

1. District staff shall provide a "Public Records Review (or ACT) Request" to each individual who requests the inspection or photocopying of District records and shall assist the individual in completing the form if requested.
2. All requests to view or photocopy District records other than typical billing and account information are to be forward to the District's Administrative Assistant for processing.
3. Upon receipt of a completed request, the District will, when appropriate:
  - (a) Indicate the place within which the inspection must be made, and the time limitation, if any, for return of the documents. Inspection of public records shall be made only in the District Office, and no document shall be removed therefrom. A representative of the District may be present during the inspection of any records.
  - (b) Supervise and assist the requestor in reviewing the records.
  - (c) Provide copies upon request and after payment of the appropriate fees.
4. The District may temporarily deny or restrict inspection of public records under the following circumstances:
  - (a) At the time of the request, the records are required by District staff in performing their duties
  - (b) Other persons are inspecting or are waiting to inspect the records
  - (c) The records need to be retrieved from storage
  - (d) At the time of the request, supervision of inspection of the records is not possible because of the unavailability of appropriate District personnel
  - (e) A question exists as to the possible exemption of the record from disclosure and the matter must be referred to legal counsel for determination
5. The District has 10 days after receipt of the request to determine if the requested record is subject to inspection. If it is uncertain whether the record is exempt from disclosure under the California Public Records Act, the District will consult with counsel. In "unusual" cases (request is "voluminous", records are off-site, or requires consultation with other agencies), the District may give itself an additional 14 days to respond. If this is the case, written notice must be given to the requestor outlining the reason for the extension and anticipated date of completion.

## **Electronic Mail (E-mail)**

E-mail messages are text documents which are created, stored, and delivered in an electronic format. As such, e-mail messages are similar to other forms of communicated messages, such as correspondence, memoranda, and circular letters. Generally, e-mail messages are

temporary communications which are non-vital and may be discarded routinely. However, depending on the content of the e-mail, it may be considered public record.

Messages and attachments should be reviewed at minimum every 15 days and, if they are determined to be records, printed fully (including time, date, sender and receiver) and retained in paper format.

E-mail records that are classified as official records are subject to the individual department's records retention schedules and must be retained for the same period of time as the records series that most closely matches the subject matter contained within the new e-mail message.

Transitory e-Mail consists of electronic messages that are created primarily for the communication of informal information as opposed to the perpetuation or formalization of knowledge. Destroy transitory e-mail when they have served their purpose.

#### **EXAMPLES OF E-MAILS THAT GENERALLY OR MAY CONSTITUTE PUBLIC RECORDS**

- E-mail created or received by District employees in connection with District business.
- E-mail that facilitates action, such as initiating, authorizing or completing a transaction in connection with District business.
- E-mail that provides substantive comments on an action taken by the District (i.e., comments add to a proper understanding of the execution of the final District action).
- E-mail providing documentation of significant official decisions and commitments reached orally and not otherwise documented in the District's files.

#### **Record Retention and Schedule**

- Different types of District records and a recommended retention period for those records are set forth on the attachment to this Policy. Although every effort has been made to provide a thorough list of the different types of District records, the attached list is not all inclusive, and there may be records which do not fall within one of the listed categories. In such case, the General Manager of the District is authorized to make a determination as to the appropriate retention period for that particular record.
- In accordance with Government Code 60201, the district may utilize alternative storage methods for those records which are not required to be maintained in their original form. District records may be photographed, recorded on optical disk, or any other medium with does not permit additions, deletions or changes to the original document.
- The General Manager shall oversee the process for destruction of District records in accordance with the guidelines attached to this Policy.
- The Records Retention Schedule will be reviewed annually.



**BORREGO WATER DISTRICT  
PUBLIC RECORDS  
COPY COST SCHEDULE**

COPY OF 8½ X 11", 8½ X 14", AND 11" X 17" \$0.10

COLOR COPY OF:  
8 ½ X 11" AND 8 ½ X 14" \$1.60  
11" X 17" \$2.80

ELECTRONIC RECORDS (CD) \$5.00

MAILING SERVICES

POSTAGE PER OUNCE  
CURRENT FIRST CLASS RATE PER USPS

# Record Retention Schedule

Department: Accounting

Description of Record	Retention of Original Record			Electronic Media Actions		Remarks
	In Office	In Archives (years)	Total Period (years)	Scan Version?	Scan Media Retention	
Accounts Payable: Check Register, Paid Invoices, Cancelled checks	Current year	6	7			
Accounts Receivable Folder: (Paid Misc., Accounts Receivable Billings, golf receipts)	Current Year	6	7			
Audit Reports	Current Year	Past years	Permanently			
Bank General Correspondence	Current Year	Past years	Retain file until service with bank is terminated plus 6 years			
Bank Reconciliation	Current	6	7			
Bank Statements	Current	6	7			
Banks- Borrego Springs Bank – Funds Transfer Authorization	Current	6	6 years plus current after document is superseded			
Banks-Contract for Banking Services	Current	7	7 years plus current after termination of contract			
Budgets	Current		Permanently			
Certificates of Insurance for Active & Inactive Vendors	Current		3 years from expiration date			
Certificates of Insurance for Agreements/Contracts	Current		Lifetime of agreement plus 7 years			
Certificates of Insurance for contractors for Repair jobs for District Equipment or Facilities	Current		7 years after exp. Date on certificate			
Certificate of Participation Statements	Current	6	7			
Credit Card (M/C, Visa) Monthly reports	Current	4	5			
Conflict of Interest – Code Files	Current		Permanently			

**Department: Accounting**

Conflict of Interest – Correspondence Files	Current		Permanently			
Conflict of Interest – (Form 700) Statement of Economic Interests	Current	7	8			
Daily Deposit slips	Current	2	3			
Election Files	Current		Permanently			
Electronic deposits/check retention	60 days	30 days	90 days			
Employees' Newsletters	Current		Permanently			
Employee's W-4 Forms	Current	3	4			
Financial – Investments, County Treasurer Corres., Reports	Current		Permanently			
Financial Transactions report to State Controller	Current		Permanently			
Financial – 1999 Cert. of Participation, Documents	Current		Permanently			
Insurance – Liability & Property Memorandum of Coverage	Current	7	7 years plus current from policy expiration date			
Insurance – Sick Pay Employer Reports	Current	7	8			
Investments – Local Agency Investment Funds (LAIF) (Statements & Correspondence)	Current		Permanently			
Investments- Trust Statements	Current		Permanently			
Invoices on Vehicles no longer owned by district			2 years plus current (go by date of replacement)			
Matured time Deposits Correspondence	Current		Permanently			
Work Orders	Current	2	Permanently			
Petty Cash Slips (paid)	Current	3	4			
Taxes – Federal Withholding Tax Quarterly Return 941	Current	7	8			
Taxes – State Withholding Tax Quarterly Return (DE6)	Current	7	8			
Treasure's Reports	Current		Permanently			
Water Rate Increase	Current		Permanently			
Water Rate Increase (Returned Mail)	1 year		1 year (can be destroyed after the			

				next rate increase mailing)				
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Department: Administration

Description of Record	Retention of Original Record			Electronic Media Actions		Remarks
	In Office	In Archives (years)	Total Period (years)	Scan Version?	Scan Media Retention	
Administrative Manual Revisions Files			Permanently			
Agreements/Contracts	1		Permanently			
Board Packages	Current		Permanently			
General Manager's Newsletters	Current		Permanently			
Legal Counsel General Correspondence	Current	7	8			
Legal Rulings / Opinions	Current		Until Superseded			
Legislative Activity	Current	4	5			
Minutes/Resolutions/Ordinances	Current		Permanently			
Policies & Procedures Files (P&P)	Current		Permanently			
Press Releases	Current		Permanently			
Public Relations	Current	2	3			
Audiotapes / CD's	120 days		Can be destroyed in 120 days after minutes are approved			

**Department: Customer Service**

Description of Record	Retention of Original Record			Electronic Media Actions		Remarks
	In Office	In Archives (years)	Total Period (years)	Scan Version?	Scan Media Retention	
Billing/Customer Records (Billing, correspondence, complaints)	Current	2	3			
General Correspondence	Current	2	3			
Meter installation Records	Current		Permanently			
Shut off slips	Current	4	5			
Utility Billing (Bill stubs for payments - in house)	Current	2	3			
Water Files	Current	4	5			
48 hour door hanger record	Current	2	3			
10 day tenant letter notice records	Current	2	3			

Department: Engineering

Description of Record	Retention of Original Record			Electronic Media Actions		Remarks
	In Office	In Archives (years)	Total Period (years)	Scan Version?	Scan Media Retention	
Boundary Changes - all files	Current		Permanently			
Equipment bids (successful)	Current	3	4			
Connection records (maps, water line connections)			Permanently			
Locations (Mains, valves, hydrants, wells)			Permanently			
Maintenance and Operations (work orders, inspection, repairs, cleaning, reports, complaints)	Current	2	3			
Maps (line location; easements)			Permanently			
Master Plans (copies)	Current	2	3			
Meter Operations (reader reports, orders, tests maintenance reports)	Current	2	3			
Service (work orders, entry cards, manholes, service to property owners)	Current	2	3			
State of Calif.- Dept. of Public Health, Water Supply Permit	Current		Permanently			
Well & Pumping (times operational, power used and quantity)	Current	2	3			

Department: Human Resources

Description of Record	Retention of Original Record			Electronic Media Actions		Remarks
	In Office	In Archives (years)	Total Period (years)	Scan Version?	Scan Media Retention	
DMV Driver Information Reports	Current		Until Superseded with more current version (typically 1 yr)			
Expense claim forms (directors & staff)	Current		5 years plus current - originals 1 year plus current - copies			
Insurance - Blue Cross / Delta Dental Invoice	Current	5	6			
Insurance - Liability ACWA/JPIA Correspondence	Current		15 years			
Job Descriptions - discontinued			Permanently			
Job Opening Postings	Current	10	11			
Payroll Folder: Payroll Worksheets, Misc. Payroll Change Doc., Overtime sheets	Current	7	8			
Payroll Recap	Current		Permanently			
Payroll Register	Current	7	8			
PERS Actuarial Valuation Report	Current		Permanently			
PERS Annual Statements	Current		Permanently			
PERS Correspondence & Board Reports	Current		Permanently			
PERS Payroll Listings	Current		Permanently			
PERS Summary Reports (Pink Sheets)	Current		Permanently			
Personnel - Accounting, Cost of Benefits Calculations	Current		Permanently			
Personnel Files (deceased retirees, no surviving spouses)			30 years from date of retirement, or date retiree & spouse are both deceased plus 2 yrs., whichever is later.			
Personnel Files (Board of Directors & District Counsel)	Current		Permanently			

**Department: Human Resources**

Personnel Files (Terminated Employees)			30 years after employment terminates			
Public Records Request	Current	6	7			
Recruitment/Selection Folders	Current	4	5			
Timesheets, overtime reports, daily worksheets	Current	6	7			
Workers compensation records (quarterly report)	Current		Permanently			

**Department: Operations**

Description of Record	Retention of Original Record			Electronic Media Actions		Remarks
	In Office	In Archives (years)	Total Period (years)	Scan Version?	Scan Media Retention	
Inventory, Equipment	Current	2	3			
Water Quality/Bacteriological results	Current	9	10			

**Department: Safety**

Description of Record	Retention of Original Record			Electronic Media Actions		Remarks
	In Office	In Archives (years)	Total Period (years)	Scan Version?	Scan Media Retention	
Accident reports, vehicular (if no injury involved)	Current	2	3			
Bacteriological Analysis test (compliance records include location, date, method and results; corrections, analysis of bacterial content)	Current	5	6			
Chemical Analysis (Compliance records include location, date, method used and results; corrections, analysis of chemical content)	Current	10	11			
Daily vehicle inspection reports	90 days		90 days			
Fire Hydrant log	Current	4	5			
Quality (Compliance documentation including sampling data, analysis, reports, surveys, documents, evaluation, schedules, valves, etc.)	Current	12	13			
Safety Training rosters	Current	5	6			
Training records for AC pipe	Current	5	6			

**Department: Treatment plant**

Description of Record	Retention of Original Record			Electronic Media Actions		Remarks
	In Office	In Archives (years)	Total Period (years)	Scan Version?	Scan Media Retention	
Backflow test reports	Current	2	3			
Leak reports	Current		Permanently			





**CERTIFICATE OF DESTRUCTION**

Department Name:			Total # of Boxes:	
Date:	Office Address: 806 Palm Canyon Drive, Borrego Springs, Ca 92004		Telephone: 760-767-5806	
Box #	Date of Destruction	Description of Records The contents of each box should be listed separately	Inclusive Dates	Method of destruction (Shredding, Demagnetizing, Overwriting)
Records destroyed by:			Witnessed by:	



# **BORREGO WATER DISTRICT**

## ***INTRODUCTION***

The 2009/2010 San Diego County Grand Jury (Grand Jury) received a complaint alleging violations by the Borrego Water District (District) Board of Directors (Board). Specifically, the Board violated the provisions of California Government Code Sections 54950-54963, known as the Ralph M. Brown Act (Brown Act) which governs the rules for public meetings by government entities. The allegation was that for one regular and one special meeting, both conducted on December 17, 2008, there was insufficient notice given of the intent to vote on health care benefits for the members of the Board, their spouses and their domestic partners. Furthermore it is alleged that the requirements for the timely posting of agendas were not met; and, that unanimous, collective concurrence by the Board Members was developed prior to the meeting on accepting and implementing the health care benefits.

As a result of these allegations, the Grand Jury conducted an investigation to determine if there were grounds for the complaint. If Brown Act violations were affirmed, the complaint would then be referred to the San Diego County District Attorney's office.

## ***BACKGROUND***

The Borrego Valley is seventy square miles of unincorporated, privately owned properties in the northeast corner of San Diego County. Currently, the only source of water available for agricultural and District use in the Borrego Valley is the groundwater aquifer that lies beneath it.

The aquifer is shared by the District's commercial and residential customers, and local farmers who legally access it through private wells. A concern among District users is that the farmers are major users of the water, and that the aquifer may be exhausted. This could require importing water at a high cost.

The District is a local public agency whose responsibility is to acquire, plan, construct, maintain, improve, and operate the necessary works for the production, storage, transmission, and distribution of water. Presently the District serves 2,015 customers. It was originally formed in 1961, and, over time, developed into five internal Improvement Districts. The water rates in each Improvement District vary due to the differing circumstances under which it was annexed, facility requirements, and usage costs. Costs within each Improvement District are paid by its rate-payers; they are not apportioned to other Improvement Districts. Services provided grew to include not only groundwater management services (pumping, treatment, storage, distribution, and conservation), but also eye-gnat control, sewer, flood control, trash removal, and maintenance of a local golf course. A five member Board of Directors governs the Borrego Water District. The Board hires a General Manager by contract to direct the District's operations.

The Brown Act governs public meetings for local governmental bodies, with the objective of facilitating public participation in local governmental decisions and curbing misuse of the democratic process through secret legislation by public bodies, as follows:

- The public may comment on agenda items before or during consideration by a legislative body. Time must be set aside for the public to comment on any other matters (non-agenda public comment) under the body's jurisdiction.
- A majority of the members of a legislative body shall not, through direct or indirect communications, discuss, deliberate, or take any action on any business item outside of an authorized meeting.
- Any audio or video recording of an open and public meeting may be destroyed after 30 days.
- The agenda of any *regular* meeting shall be posted at least 72 hours prior to the meeting, and will contain a brief general description of each item of business to be transacted or discussed at the meeting. The agenda for a *special* meeting shall be posted at least 24 hours prior to the meeting.

### ***INVESTIGATION***

During the investigation the Grand Jury determined that three of the Board members had prior knowledge of the health care benefit agenda item. This was determined not to constitute a Brown Act violation since one of the three had proposed instituting the health care benefit to the General Manager, and the two other Board members were on the Budget & Finance Committee who reviewed the proposed benefit in order to make a recommendation to the full Board. The other two Board members were found to have no knowledge of the item prior to its inclusion on the agendas for the Board meetings of December 17, 2008.

The agenda for the regular meeting listed as Item E under Current Business Matters:

“Consideration of the Board to collectively participate in the BWD Medical/Dental/Vision insurance plans for term of office”.

The agenda for the special meeting listed as Item B under Current Business Matters:

“Consideration of the Board to adopt an attachment to policy NO. 83-2 to extend Medical/Dental/Vision/Life benefits to domestic partners of eligible employees/directors who register a domestic partnership”.

Review of minutes from meetings held in the months immediately before and after the December 2008 meetings contained the phrase “Consideration of...” under Current Business Items where a vote was taken. Some more recent minutes have enlarged the phrase to include “Consideration and adoption of...” or “Review and Consideration for approval....”

Interviews indicated that the paper copies of the agendas were posted in a timely manner, and there was no evidence to indicate the agendas were not posted properly.

During the investigation, additional possible violations or irregularities were brought forth. These included:

- whether extending health care benefits to the Board is a proper expense;
- restricting public input and discussion at meetings;
- possible conflict of interest;
- increasing costs of legal services;
- handling of the District reserve funds;
- length of time meeting recordings are maintained; and,
- long term use of the same auditing firm.

The Grand Jury's investigation included:

- interviewing members of the Board, District management, and concerned residents in the District;
- attending a Board meeting;
- auditing the District finances, conducted by the San Diego County Office of Audits & Advisory Services to address the allegations of fiscal irregularities; and,
- researching California Water Code, District policies and procedures, District legal expenses, and open meeting regulations.

There was concern about a conflict of interest regarding employees and administration of some District contracts. The investigation found no present conflicts of interest between District personnel and contractors. Apparent but unproved conflicts that existed prior to 2007 no longer exist.

It was questioned whether the granting of health care benefits to the Board was a legitimate use of District funds. Board Policy No 83-2 provided for the Board to implement coverage, although it had not been implemented previously. The Association of California Water Agencies (ACWA) Health Benefits Authority Contribution and Eligibility Guidelines require that, if the Board elects to have coverage, that the Class coverage shall be the same as for employees, and that all Board members must be included. A 2009 ACWA survey determined that about 50% of the California Water agencies offer medical benefits to Directors.

District legal expenses increased from approximately \$47,000 in Fiscal Year (FY) 2005-06 to \$220,000 in FY 2007-08. The Grand Jury identified 19 reasons for these increases, including:

- There is increased reliance on legal advice because the District has become more proactive in addressing water issues and started taking on more projects.

- In FY 2006-07, the District pursued the establishment of a special assessment district to address the aquifer overdraft situation. That effort ultimately did not receive the required voter approval.
- The number of Board meetings was doubled every month, with General Counsel's attendance required at all Board meetings.
- Management of the District during the intermittent 2007 hospitalization and death of the former General Manager in September 2007 required additional General Counsel support. The Board President functioned as Chief Executive Officer during the absence of the General Manager until a new General Manager was hired in February 2008. The Chief Executive Officer relied heavily on General Counsel during this period.
- The new General Manager was not familiar with California State laws and regulations when he assumed office.
- The handling of bond issues, including the refinancing of Community Facilities District (Mello Roos) bonds in 2007 required additional legal services.
- The increasing legal requirements involved with acquisition/merger with the Borrego Springs Park Community Services District.
- Adoption of a new Board policy that requires General Counsel review of all document disclosure requests prior to production.

The Grand Jury had concerns about the amount and handling of the District reserve funds since they were unrestricted. The investigation showed that the funds are allocated by the District budget to specific capital projects and programs. Additionally, the District fund amount was the fourth lowest out of five of water districts selected by the Grand Jury for comparison, and is consistent with the retention of funds as unrestricted by the compared water districts.

District water rates were also compared to five other water district's rates and determined to be the lowest of the six districts.

In July 1996, the Borrego Water District formed the Community Facilities District (CFD). There were \$11 million in Special Tax Bonds (CFD No. 1995-1) issued against the Rams Hill area (Improvement District 1), that refinanced the existing debt and refunded prior bonds. In June 2007, the CFD issued new Special Tax bonds (CFD No. 2007-1) to pay off the 1995 bonds and refinance the remaining debt. The bonds are special obligations of the CFD, payable solely from net taxes collected in Rams Hill. They are not obligations of the District. The 2007 bonds defaulted. As of January 2010, the delinquency rate was 87.8%, or just over \$300,000.

The California Fair Political Practices Act and the District's Conflict of Interest Code require that the District's consultants file Statements of Economic of Interest (Form 700) disclosure forms unless the General Manager determines in writing that a particular consultant "is hired to perform a range of duties that are limited in scope and thus is not required to comply with the disclosure requirements". It was found that none of the District's consultants had filed a Form 700 since 2007 and the General Manager's written determination was not made until January 2010.

Members of the Grand Jury journeyed to Borrego Springs and attended a regular meeting of the Board. The intent of witnessing a Board meeting was to determine the interactions between the Board and the public attendees. The Jurors observed that during discussion of agenda items, there was an open exchange between Board members and public attendees. In fact, the public often spent more time in discussion than the Board members. No instances of restrictions on public discussion were noted. The limit of three minutes per speaker on non-agenda public comment was consistent with the practice of other government agencies, such as the San Diego County Board of Supervisors, San Diego Association of Governments, and the San Diego City Council.

## ***FACTS AND FINDINGS***

### **Brown Act Violations**

***Fact:*** Failing to post a meeting agenda 72 hours in advance of a regular meeting and 24 hours in advance of a special meeting constitutes a violation of the Brown Act.

***Fact:*** Posting an agenda not adequate to provide an accurate description of every agenda item constitutes a violation of the Brown Act.

***Fact:*** Discussing, deliberating, or taking action on any business item outside of an authorized meeting by a quorum of a legislative body constitutes a violation of the Brown Act.

***Finding 01:*** The Grand Jury did not find any evidence that the agendas were posted late or inadequately worded.

***Finding 02:*** The phrase starting with "Consideration of..." in the two agenda items was consistent with other Current Business Items where a vote was taken

***Finding 03:*** The Grand Jury determined that, given the circumstances, three of the Board members having prior knowledge of the Health Care Benefit agenda item did not constitute collective concurrence or a Brown Act violation.

### **Medical Benefits**

***Fact:*** About 50% of the California Water agencies offer medical benefits to Directors.

***Fact:*** The total monthly premium for health care benefits for all Directors and their dependents was \$5,472.58 in December 2009 which amounts to a \$65,671 annualized cost.

***Finding 04:*** The adoption of health care benefits for members of the Board is a legitimate business expense.

## **Legal Expenses**

**Fact:** Legal expenses increased from approximately \$47,000 in FY 2005-06 to \$220,000 in FY 2007-08.

**Finding 05:** The 364% increase in legal expenses was adequately explained.

## **Conflict of Interest**

**Fact:** There was a concern that there could be (or could have been) conflicts of interest on the part of some District employees and some District contractors.

**Fact:** The State Fair Political Practices Act requires consultants to government agencies to file a Statement of Economic Interests (Form 700), unless the agency's chief executive determines that such filing is not required.

**Finding 06:** No current conflict of interest situations were found.

**Finding 07:** None of the District's consultants have filed a Form 700 since 2007 and the General Manager's written determination was not made until January 2010.

## **Public Input**

**Fact:** The ability for the public to testify on both agenda and non-agenda items at an open meeting of a governmental body is required under the Brown Act.

**Finding 08:** No restriction on public discussion of agenda items was found.

**Finding 09:** The limit of three minutes per speaker on non-agenda public comment was found to be consistent with the practice of other governmental agencies, such as the San Diego County Board of Supervisors, San Diego Association of Governments, and the San Diego City Council.

## **Reserve Funds**

**Fact:** A Grand Jury audit reviewed and analyzed the Borrego Water District's (District's) audited financial statements from FY 2004-05 through FY 2008-09 and made comparisons with several other water districts.

**Fact:** The District currently has unrestricted total reserves of \$5,385,891.

**Finding 10:** All the reserves of the compared water districts are unrestricted, and the District's amount of reserve funds ranked fourth out of the five districts compared.

## **Audio Recordings**

**Fact:** Audio recordings of all public meetings used to be held for five years. This policy was changed at the Board meeting of February 13, 2008, when audio recordings retention