

# MEETING SUMMARY – SEPTEMBER 10, 2014

## BORREGO WATER COALITION

Wednesday, September 10, 2014, 9 am to 3 pm

### 1. Welcome and Introductions

A member opened the meeting with welcome and introductions. Dorian Fougères, Facilitator, Center for Collaborative Policy, reviewed the agenda, ground rules, companion documents, and the following meeting goals:

1. Advance solicitation of legal counsel.
2. Advance framework for financing of administration and implementation.
3. Build consensus on essential policy recommendations.
4. Clarify immediate next steps for developing remaining policy recommendations.

Mr. Fougères noted that the Finance Work Group met during August to continue work on the finance recommendations. This document will be discussed later in the meeting.

### 2. State Legislative Update

Mr. Fougères invited the Coalition members to discuss pending legislation on groundwater, and whether any adjustment to Coalition efforts is needed.

- The legislation is unclear in regard to water rights. Will new legislation only affect water rights in an overdraft situation? How will this affect portions of recharge?
  - Mr. Jim Bennett, San Diego County, noted the County is still working to understand the requirements and nuances of the new legislation.
- The political boundary for the basin is much larger than the geographic boundary for Borrego Water District. Where does the Coalition's process end with regard to the basin, and how does the District want to work with the larger basin down the road?
  - The County has the responsibility to areas outside of the District's boundaries. The Park may also potentially become involved.
  - Also in regard to basin boundaries, the Coalition used to refer to the aquifer as the "basin" based on bulletin 118 from 1974. In 2003, the basin boundaries were split for other purposes, and they will be redefined again as part of this process.
    - These discussions are happening now. In the bill itself, there is language that indicates that petitions for revisions of basin boundaries may be submitted.

**ACTION ITEM:** District to talk with their legal counsel regarding petitioning DWR to split the basin into two, then host a follow-up call with the County and Coalition

- Would Borrego be negatively impacted if other districts decided not to address the overdraft?
  - No. A system is in place such that if parts of the basin are actively working on efforts to address the overdraft and meet the law, those areas will be exempt from possible future fees.
  
- What is the risk ranking for Borrego, and what are the associated deadlines for the risk level?
  - Risk categories are defined by the California Statewide Groundwater Elevation Monitoring (CASGEM) ranking policy.
  - Borrego is currently identified as a medium risk basin due to low production. However, there is a sub-category where a basin may be identified as being in “critical overdraft” and can then be subject to the requirements and actions for a high-risk basin.
  - The date for completion of a plan by a medium risk basin is 2022; a high-risk basin is 2017.
  - Although the Department of Water Resources (DWR) has begun work on updates to the groundwater management plan, the Coalition is still required to meet a deadline of June 1, 2016 to finalize a plan.
  
- Is there any component of the legislation where water rights would be usurped given conditions of overdraft?
  - Ultimately extraction fees and water limitations can be imposed, and the terms of the ground water management plan can be enforced.
  
- Are overdrafts occurring in the basin, or the aquifer? Or are they the same?
  - The work has been concentrated in the Borrego Springs area proper, out to Ram’s Hill and the Texas Dip area. The basin is currently being modeled as three separate aquifers by USGS.

### **3. Working With The County**

The following updates are in reference to the letter submitted to the County in July, and the subsequent meeting several members had with the County on September 8<sup>th</sup>.

- Coalition members emphasized two important points in the meeting: 1) the need for increased flexibility with the County in terms of granting water credits, and 2) the County’s future land use planning should take into close consideration the revised groundwater management plan.
- Mr. Bennett commented that a moratorium on new water-intensive development would be an arduous process.
- In addition, there is a need for ongoing follow-up and coordination of leadership between the County and the District.

- Also, the issue of the Department of Environmental Health drilling new wells still needs to be addressed.

**ACTION ITEM:** District to draft follow-up letter to County reflecting passage of state legislation, for detailed review by County Work Group and high-level review by County

**ACTION ITEM:** District to draft letter to County Department of Environmental Health regarding need for coordinated action, for review by County Work Group.

**ACTION ITEM:** County to advise District on proper contact at County Department of Environmental Health for letter.

## 5. Financing of Administration and Implementation

Members of the Finance Work Group highlighted the following points from the memorandum:

- Three possible opportunities to fallow agricultural land for the purpose of bringing the aquifer back into balance were identified:
  1. Public Bond
  2. Private purchase
  3. Donations to Anza Borrego Foundation
- Out of roughly 6,000 acres of agriculture in the Valley, approximately 3,725 acres are irrigated agricultural lands.
- One question that stills needs answering is, What is the projected private demand for water?
- The conversion of 2 water credits to 1 EDU with an annual consumption of 0.5 AFY is by itself a 75% reduction in water consumption.
- Golf courses would need to purchase approximately 30% of the water credits to maintain their current rates of irrigation.
- Estimates do not account for direct costs associated with fallowing lands.
- A strategy of diversification could be the most effective route.
- Legal counsel with experience and expertise in setting up bonds should be consulted.

Additional discussion with members followed:

- Any purchase of water credits can be seen as a benefit, as the net effect is a major reduction in water consumption.
- A concern was raised regarding the scenario of a farmer who has already paid off his land then abandoning his property to avoid paying the extra \$20 per acre per year.
  - This issue has been raised and solutions are being explored.
- One member noted that the financial estimates associated with agriculture should perhaps be based off an average of 5 years.

- The theme of turning Borrego into a destination community was reiterated.
- A comment was made that \$10,000 is not an unreasonable fee to hook up a new house to the District's water system.
- One member spoke informally with an investment banker and indirectly a bond counsel.
  - The banker's perspective is that a bond is a feasible alternative, though raised some considerations.
  - If a solid plan is developed, the credibility of the County can also be used to back a bond measure.
  - If a guarantee on payback of investment is provided by the County, then backers would be more comfortable. Credit risks are a concern, and this drives the costs of bond insurance.

Additional comments regarding the financial advisor were made:

- Law firms the Coalition may choose to retain should be able to identify financial advisors.
- The bond advisors will be responsible for obtaining the expert appraisal on land and water credit values.

**ACTION ITEM:** District to share Dudek credit study when available.

**ACTION ITEM:** Member to ask a professional farm appraiser whether obtaining a ballpark estimate of average farmland in Borrego is possible, and for a general methodology for appraisal.

**ACTION ITEM:** Facilitator to recirculate example appraisal methodology provided by member in March.

**ACTION ITEM:** Finance Work Group to revise document to be a concept memo (i.e., remove estimated numbers and focus on intended outcomes), for subsequent use with legal counsel.

**ACTION ITEM:** District to share information from financial advisor if advisor is retained.

## 6. Water Reduction Plan

- After some brief discussion, there was general agreement that the document should be taken in the direction of an abridged piece with appendices, or possibly the development of both a discussion document and a policy document.
- Members discussed the work they are interested in doing over the next three months and over the next year:
  - Energy should be focused on the reduction and financing plan to implement the policy document.

- The current policy document will be refined to a shorter 2-5 page policy recommendations document. The caucuses will then review this new draft.

**ACTION ITEM: Policy Recommendations Work Group** to circulate concise revised document by COB Friday September 19, for subsequent review by **Caucuses** no later than COB Thursday, October 2.

## 7. Legal Counsel Solicitation

The Legal Counsel Work Group developed a request for proposals by legal counsels, and collected referrals for firms knowledgeable and experienced in the subject matters.

- General criteria for legal counsel selection included:
  - Expertise in water bonds, Prop 218, and water rights
  - Ability to be unbiased and neutral
  - Ability to be productive and supportive
  - Comparable fee
  - Aptitude for creativity/collaboration
  - An understanding of what the Coalition intends to achieve as a group
- The Coalition will be soliciting advice from legal counsel on:
  - Future governance structure of the Coalition
  - Bond measures
  - Fees and appraisals
- Members discussed various approaches to paying for legal counsel fees.

**ACTION ITEM: Legal Counsel Work Group** to revise legal counsel scope of work as appropriate based on passage of state legislation.

**ACTION ITEM: Members** to check whether their agencies/organizations can offer any good faith financial support to help cover the cost of legal counsel.

**ACTION ITEM: Member** to inquire about neighborhood reinvestment money.

- The facilitator noted that obtaining legal counsel was identified by the Coalition as a priority in June, and therefore recommended that the Legal Counsel Work Group be given the authority by the Coalition to decide upon legal counsel before the October meeting.

**AGREEMENT:** Members agreed that they could live with either Best, Best, and Krieger or Rutan and Tucker if selected by the Legal Counsel Work Group to represent the Coalition.

**ACTION ITEM: Legal Counsel Work Group** to interview Rutan & Tucker and Best, Best, and Krieger.

**ACTION ITEM:** District Attorney and AAWARE to try and recommend mutually agreeable legal counsel.

**ACTION ITEM:** Facilitator to request candid evaluation of Center’s experience working with Rutan & Tucker.

## 8. Standing Items and General Business

### STANDING ITEMS / GENERAL BUSINESS

- There are no updates on the District’s Ground Water Management Plan process, as they have not met since July.
- There are no updates regarding press and media.
- Joe Tatusko will be elected to the District’s Board in December and he has requested to observe Coalition meetings.
  - This could result in a Brown Act violation. District has followed-up with Mr. Tatusko.

**ACTION ITEM:** Facilitator to follow-up with Joe Tatusko regarding request to observe Coalition meetings.

## 9. Review of Action Items and Next Steps

Mr. Fougères reviewed the Action Items from the day’s meeting and reminded the Coalition of the two upcoming BWC meeting dates.

**ACTION ITEM:** Martha Deichler to double-check room reservation for upcoming meetings.

## 10. Attendance

Borrego Water District

Lyle Brecht, Board Member  
Beth Hart, Board Member  
Jerry Rolwing, General Manager

Agriculture

David Bauer, Borrego Farms  
Dennis Jensen, Oasis Ranch  
Jim Seley, Seley Ranch  
Ryan Wilson, Borrego Farms

Recreation

Bill Berkley, Ram Hill Golf Course  
Jim Moxham, Borrego Springs Resort (alternate)  
Jim Wermers, De Anza Country Club

	Jack McGrory, La Casa del Zorro Resort and Spa
Watershed & Desert Ecosystem	Kathy Dice, Anza-Borrego State Park Ralph Singer, Anza Borrego Foundation
Commerce & Business	Linda Haddock, Borrego Springs Chamber of Commerce
Community & Tourism	Martha Deichler, Borrego Springs Unified School District Jim Wilson, Christmas Circle Community Park
DWR Southern Region Office	Tim Ross, Senior Engineering Geologist
County of San Diego	Jim Bennett, Planning & Development Services
University of California, Irvine	Emily Brooks, Doctoral Student Willa Sumer, Doctoral Student
Center for Collaborative Policy	Dorian Fougères, Senior Mediator Meagan Wylie, Assistant Facilitator