

**REGULAR MEETING OF CITY COUNCIL
JUNE 7, 2011 - 1:30 P.M.**

PRESENT: Jeff Brain Mayor
Robert Vinyard Council Member
Marvin Dickson Council Member
Charles Gillingham Council Member

ABSENT: Leon DeWeese Council Member

STAFF: Eddie Edwards City Manager
Danny Richards E.O.C. Director
Stella E. Sauls City Secretary
Scott Radach Director of Finance
Kenneth Petr Director, Planning & Zoning
Larry Byrd Code Enforcement Officer
Jimmy Adams Police Chief
Bruce Roberts Captain, Police Department
Ted Dodd Director, Public Works
Ralph Earles Assistant Director, Public Works

VISITORS: Tim Hall Grace Fellowship Church
Judy Mihm
Larry Anderson
Magdaleno Munoz
Heather McKie
Jerry Moon
Meryl Barnett
Robert Marrufo
Twila Stine
Gene Stine
Elyssa Smith

NEWS MEDIA: Michelle Berry Borger News Herald

QUESTIONS AND COMMENTS FROM CITIZENS: Citizens who have indicated their desire to speak to the City Council will be heard at this time. In compliance with the Texas Open Meetings Act, unless the subject matter is on the agenda, City Council members are prevented from acting on the subject and may respond only with statements of factual information or existing city policy; however, City Council members may request city staff to place the subject

matter on a future agenda. Citizens are limited to three (3) minutes for their presentation to the City Council.

No comments heard.

MINUTES APPROVED: Following review of the minutes of the regular meeting of May 17, 2011 and the special meeting of May 23, 2011 motion was made by Council Member Dickson, seconded by Council Member Gillingham, to approve the minutes as submitted. The motion carried by the following vote:

Ayes: All members present voted aye.
Nays: None.

PAYMENT OF EXPENDITURES APPROVED: The expenditures for the last half of May were submitted for the consideration of the Council. Following discussion, motion was made by Council Member Vinyard, seconded by Council Member Dickson, to approve payment of the expenditures for the last half of May as submitted. The motion carried by the following vote:

Ayes: All members present voted aye.
Nays: None.

ANNUAL FINANCIAL STATEMENT RECEIVED AND APPROVED: Larry Anderson of J.W. Anderson and Associates, submitted an independent auditors report on the governmental activities, business-type activities, and aggregate remaining fund information for the year ending September 30, 2010. The report indicates that the City of Borger's financial statements are free of material misstatement and fairly represent the City of Borger's financial position as of September 30, 2010. Mr. Anderson made no recommendations to change internal controls or procedures. Following discussion, motion was made by Council Member Dickson, seconded by Council Member Vinyard, to receive and approve the Annual Financial Statement and Independent Auditor's Report for the year ending September 30, 2010 as submitted. The motion carried by the following vote:

Ayes: All members present voted aye.
Nays: None.

RESOLUTION R-006-11 APPROVED AUTHORIZING THE CITY OF BORGER'S PARTICIPATION IN THE CANADIAN RIVER MUNICIPAL WATER AUTHORITY'S SUBORDINATE LIEN CONTRACT REVENUE BONDS, SERIES 2011: City Manager Eddie Edwards explained that this is the City of Borger's share of CRMWA's purchase of MESA's water rights. Following discussion, motion was made by Council Member Vinyard, seconded by Council Member Dickson, to approve Resolution R-006-11, authorizing the City of Borger's participation in the Canadian River Municipal Water Authority's Subordinate Lien Contract Revenue Bonds, Series 2011 and the approval of Amendment #5 to the City of Borger's Conjunctive Use Groundwater Supply Agreement with the Canadian River Municipal Water Authority as submitted. The motion carried by the following vote:

Ayes: All members present voted aye.
Nays: None.

Resolution R-006-11 reads as follows:

RESOLUTION R-006-11

A RESOLUTION BY THE CITY OF BORGER, TEXAS, AUTHORIZING PARTICIPATION IN THE AMOUNT OF PROJECT CONSTRUCTION COSTS FOR THE CANADIAN RIVER MUNICIPAL WATER AUTHORITY AND THE APPROVAL OF AN AMENDMENT TO THE CITY'S CONJUNCTIVE USE GROUNDWATER SUPPLY AGREEMENT WITH THE CANADIAN RIVER MUNICIPAL WATER AUTHORITY

WHEREAS, the City of Borger, Texas (the "City") has entered into that certain Agreement for the Purchase and Acquisition of Conjunctive Use Groundwater Supply (the "Agreement") entered into as of May 15, 1996, as amended, with the Canadian River Municipal Water Authority (the "Authority"); and,

WHEREAS, the Authority has entered similar agreements with each of the other cities that are members of the Authority (the "Member Cities"); and,

WHEREAS, the Authority issued and has outstanding its Canadian River Municipal Water Authority Contract Revenue Bonds, Series 2005 (Conjunctive Use Groundwater Supply Project); Canadian River Municipal Water Authority Contract Revenue Refunding Bonds, Series 2005 (Conjunctive Use Groundwater Supply Project); Canadian River Municipal Water Authority Contract Revenue Bonds, Series 2006 (Conjunctive Use Groundwater Supply Project); Canadian River Municipal Water Authority Contract Revenue Bonds, Series 2009 (Conjunctive Use Groundwater Supply Project); and Canadian River Municipal Water Authority Contract Revenue Refunding Bonds, Series 2010 (Conjunctive Use Groundwater Supply Project); and,

WHEREAS, the Agreement requires certain notice requirements before the Authority may issue Additional Bonds, as defined in the Agreement; and,

WHEREAS, the Authority has given notice, as required under the Agreement, that it needs to issue an amount not to exceed \$94,275,000 in Additional Bonds for the acquisition of Additional Water Rights for the Conjunctive Use Groundwater Supply Project (the "Project"); and,

WHEREAS, the additional amount needed in Project Construction Costs, exclusive of Financing Costs, is \$93,000,000; and,

WHEREAS, to reduce the amount of bonds to be issued, the City agrees to the Authority's issuance of bonds as Subordinate Lien Bonds to eliminate the need of a reserve fund; and,

WHEREAS, the City agrees that the Additional Water Rights should be acquired, and a total par amount for the Canadian River Municipal Water Authority Subordinate Lien Contract Revenue Bonds, Series 2011 (Conjunctive Use Groundwater Supply Project) should be issued for such purpose in a principal amount not to exceed \$94,275,000 (the "Series 2011 Bonds"); and,

WHEREAS, the City agrees that the Authority may issue the Series 2011 Bonds on or after July 15, 2011.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BORGER, TEXAS:

SECTION 1.

That the City agrees that the proposed total amount of Project Construction Costs for the acquisition of Additional Water Rights, exclusive of Financing Costs, should not exceed \$93,000,000, and a total par amount for the Canadian River Municipal Water Authority Subordinate Lien Contract Revenue Bonds, Series 2011 (Conjunctive Use Groundwater Supply Project) should be issued for such purpose in a principal amount not to exceed \$94,275,000, with the Authority contributing the amount necessary for the funding of the debt service reserve fund.

SECTION 2.

That the City has received notice and waives the timing requirement of Section 4.1 of the Agreement and agrees that the Authority may issue the Series 2011 Bonds on or after July 15, 2011.

SECTION 3.

That Amendment No. 5 to the Agreement for the Purchase and Acquisition of Conjunctive Use Groundwater Supply is hereby approved.

SECTION 4.

That the City Secretary be and is hereby authorized to deliver certified copies of this Resolution and minutes pertaining to its adoption and Amendment No. 5 to the Agreement for the Purchase and Acquisition of Conjunctive Use Groundwater Supply to the Secretary of the Canadian River Municipal Water Authority in such numbers as may be requested for said Authority's records and proceedings.

PASSED, APPROVED, AND ADOPTED, on this the 7th day of June, 2011, at a regular meeting of the City Council of the City of Borger, Texas which meeting was held in compliance with the Open Meetings Act, Tex Gov't Code, §551.001, et.seq. at which meeting a quorum was present and voting.

RESOLUTION R-007-11, DENYING SPS' APPLICATION TO RENEW ITS "INTERRUPTIBLE CREDIT OPTION" AND "SAVERS SWITCH" TARIFFS

APPROVED: City Manager Eddie Edwards explained how the two (2) tariffs work in association with the industry and citizens of Borger. Following discussion, motion was made by Council Member Gillingham, seconded by Council Member Vinyard, to approve Resolution R-007-11, denying SPS' application to renew its "Interruptible Credit Option" and Savers Switch" tariffs. The motion carried by the following vote:

- Ayes: All members present voted aye.
- Nays: None.

Resolution R-007-11 reads as follows:

RESOLUTION R-007-11

A RESOLUTION BY THE CITY OF BORGER, TEXAS ("CITY") DENYING SOUTHWESTERN PUBLIC SERVICE COMPANY'S ("SPS") PROPOSED TARIFF SHEETS RELATED TO CERTAIN AMENDMENTS TO SPS'

INTERRUPTIBLE-SERVICE TARIFFS SUBMITTED ON OR ABOUT MAY 17, 2011; AUTHORIZING INTERVENTION IN PROCEEDINGS RELATED TO SPS' PROPOSED TARIFFS; REQUIRING THE REIMBURSEMENT OF EXPENSES ASSOCIATED WITH THE REVIEW OF SPS' TARIFFS; DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION WAS PASSED COMPLIED WITH THE TEXAS OPEN MEETINGS ACT; MAKING SUCH OTHER FINDINGS AND PROVISIONS RELATED TO THE SUBJECT; AND DECLARING AN EFFECTIVE DATE.

WHEREAS, on or about May 17, 2011, Southwestern Public Service Company ("SPS") submitted to the City SPS' *Application for Approval to Renew Interruptible Credit Option and Saver's Switch Tariffs;*" and,

WHEREAS, SPS proposes an effective date of January 1, 2012 with an expiration date of December 31, 2014 for its proposed tariffs; and,

WHEREAS, the City pursuant to its authority granted local regulatory authorities under Chapters 33 and 36 of the Public Utility Regulatory Act as well as other provisions of the Act, has original jurisdiction over SPS' rates, operations, and services within the municipality, including the authority to review SPS' proposed Tariffs for reasonableness; and,

WHEREAS, a coalition of cities known as the Alliance of Xcel Municipalities ("AXM") has been organized to review the reasonableness of rates and services provided by SPS, a subsidiary of Xcel Energy, and the City in the past has participated in the AXM and hereby continues its participation in the AXM; and,

WHEREAS, SPS' rate request consists of a material amount of documentation, including testimony, exhibits, schedules and proposed tariffs, all of a highly complex nature; and,

WHEREAS, the City is interested in facilitating implementation of reasonable means that may forestall the need to build and/or purchase additional generating capacity and allow its citizens the opportunity to subscribe to the optional services proposed by SPS; and,

WHEREAS, the City will need a reasonable amount of time to review the merits of SPS' proposed Tariffs; and ,

WHEREAS, in this instance, a thorough and more expeditious review of the methodology used to calculate certain credits attendant to SPS' Tariffs and other aspects of SPS' proposed Tariffs is better accomplished in a consolidated fashion, which can best be accomplished by denial of SPS' Application;

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BORGER, TEXAS THAT:

Section 1. The findings set out in the preamble are in all things approved and incorporated herein as if fully set forth.

Section 2. SPS' request for approval of its proposed amendments to its "Interruptible Credit Option" tariff and its "Saver's Switch" tariffs are hereby **DENIED**.

Section 3. The City is a participant in a coalition of cities known as the Alliance of Xcel Municipalities ("AXM") and authorizes intervention in proceedings related to SPS' Tariffs before the Public Utility Commission of Texas and related proceedings in courts of law; and,

Section 4. SPS shall reimburse within 30 days after submission, the City's reasonable costs associated with the City's activities related to this rate review or to related proceedings involving SPS before the City, the Public Utility Commission of Texas, or any court of law.

Section 5. Subject to the right to terminate employment at any time, the City authorizes the law firm of Herrera & Boyle, PLLC to act as special counsel with regard to rate proceedings involving SPS before the City, the Public Utility Commission of Texas, or any court of law.

Section 6. A copy of this resolution shall be sent to Mr. James Bagley, Director, Regulatory Administration, Xcel Energy, 600 S. Tyler, Suite 2400, Amarillo, Texas 79101, and to Mr. Marcus Norris, City Attorney, City of Amarillo, P.O. Box 1971, Amarillo, Texas 79105-1971.

Section 7. The meeting at which this Resolution was approved was in all things conducted in strict compliance with the Texas Open Meetings Act, Texas Government Code, Chapter 551.

Section 8. This Resolution shall become effective from and after its passage.

PASSED, APPROVED, AND ADOPTED, on this the 7th day of June, 2011, at a regular meeting of the City Council of the City of Borger, Texas which meeting was held in compliance with the Open Meetings Act, Tex Gov't Code, §551.001, et.seq. at which meeting a quorum was present and voting.

RESOLUTION R-008-11, REVIEWING THE CITY'S CURRENT INVESTMENT POLICY APPROVED: City Manager Eddie Edwards explained that no changes have been made to the City's Investment Policy itself. There was however, a change to the signature section removing retired Director of Planning and Zoning Larry Mullenix. Following discussion, motion was made by Council Member Vinyard, seconded by Council Member Dickson, to approve Resolution R-008-11, reviewing the City's current Investment Policy pursuant to the Public Funds Investment Act and authorizing representatives to act on the City's behalf in matters pertaining to the City's public funds. The motion carried by the following vote:

Ayes: All members present voted aye.

Nays: None.

Resolution R-008-11 reads as follows:

RESOLUTION R-008-11

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BORGER, TEXAS, REVIEWING THE CITY OF BORGER'S INVESTMENT POLICY PURSUANT TO THE PUBLIC FUNDS INVESTMENT ACT; AND DESIGNATING AUTHORIZED REPRESENTATIVES TO ACT ON BEHALF OF THE CITY IN ALL MATTERS PERTAINING TO THE CITY'S PUBLIC FUNDS

WHEREAS, the Public Funds Investment Act (Texas Government Code, Chapter 2256) requires that a municipality annually review its investment policy with respect to the investment of public funds; and,

WHEREAS, City staff has reviewed the City of Borger's ("City") current Investment Policy dated April 2010 ("Policy") and recommends that no changes be made to said Policy; and,

WHEREAS, the City Council of the City of Borger, Texas, having reviewed said Policy, concurs with staff's recommendation and finds that it is in the public interest to continue said Policy as hereinafter attached; and,

WHEREAS, the City Council of the City of Borger, Texas, hereby designates the hereinafter mentioned individuals to act on behalf of the City in matters pertaining to the City's public funds.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BORGER, TEXAS:

Section 1

That, the findings set out in the preamble are in all things hereby approved.

Section 2

That, the Investment Policy dated April 2010 continues to be the approved Policy of the City of Borger.

Section 3

That, the individuals, whose signatures appear in this Resolution, are Authorized Representatives of the City and are each hereby authorized as designated hereinafter to take actions deemed necessary and appropriate with the City's public funds.

The following listing of City staff is hereby approved as Authorized Representatives to open, close, deposit, withdraw, transfer, and perform any other legal or necessary action whether by paper or electronic methods for Obligations of, or Obligations Guaranteed by Governmental Entities; Certificates of Deposit and Share Certificates; Repurchase Agreements; Bankers Acceptances; Commercial Paper; Mutual Funds; Investment Pools; Checking Accounts; Lease Purchase and or Installment Loan Accounts:

Eddie E. Edwards
City Manager
806-273-0954

Authorized Signature

Scott M. Radach
Director of Finance
806-273-0912

Authorized Signature

The following listing of City staff is hereby approved as Authorized Representatives with the limited ability to be signatories of written checks on the City's Checking Accounts:

James W. Harder
Director of Utilities
806-273-0906

Authorized Signature

Stella Sauls
City Secretary
806-273-0902

Authorized Signature

The following listing of City staff is hereby approved as Authorized Representatives with the limited ability of electronic access to the City's Checking Accounts for the purpose of uploading EFTs, Drafts, Direct Deposits; and/or the transfer of funds between accounts:

Rhonda Partain
Administrative Assistant
806-273-0903

Authorized Signature

Kristi Powell
Administrative Assistant
806-273-0921

Authorized Signature

Section 4

That, an Authorized Representative may be deleted by a written instrument signed by two Authorized Representatives provided that the deleted Authorized Representative is assigned job duties that no longer require access to the City's public funds, or is no longer employed by the City.

Section 5

That, this Resolution and its authorization shall be effective immediately upon its passage and shall continue in full force and effect until amended, revoked, or superseded by the City Council of the City of Borger, Texas; and until the participating institution receives a copy of any such amendment or revocation.

This Resolution supersedes all prior Authorized Representative designations.

PASSED, APPROVED, AND ADOPTED, on this the 7th day of June, 2011, at a regular meeting of the City Council of the City of Borger, Texas which meeting was held in compliance with the Open Meetings Act, Tex Gov't Code, §551.001, et.seq. at which meeting a quorum was present and voting.

RECOMMENDATION FROM BUILDING STANDARDS COMMISSION MODIFIED - 180-DAY EXTENSION GRANTED: Director of Planning and Zoning Kenneth Petr explained the history of the property located at 128 Cottonwood (Lot 8, Block 1, Philview II Addition) and told the Council there was a buyer for said property. Council asked potential buyer, Magdalena Munoz, questions about bringing the property up to code. Following discussion, motion was made by Council Member Vinyard, seconded by Council Member Dickson, to approve an Order to further modify the recommendation of the Building Standards Commission and contingent

upon the sale of the property to grant a 180-day extension from the date of sale or July 5, 2011 whichever occurs first; require the new owners to obtain any necessary permit(s) within (10) days from the date the purchase is completed; and complete all repairs within the allotted extension. The motion carried by the following vote:

Ayes: All members present voted aye.

Nays: None.

RECOMMENDATIONS FROM THE BUILDING STANDARDS COMMISSION

APPROVED: Code Enforcement Officer of Planning and Zoning Larry Byrd explained to the Council, after proper notice and hearings, the Building Standards Commission of the City of Borger has determined and declared the following structures substandard and cannot reasonably be repaired and has recommended demolition thereof as provided in the Substandard Building Ordinance.

The properties in question are located at the following sites:

- a. 211 W. Coolidge, Lot 17-18, Block 12, Isom Addition
- b. 214 W. Coolidge, Lot 33-34, Block 11, Isom Addition
- c. 215 W. Coolidge, Lot 19-21, Block 12, Isom Addition
- d. 319 W. Wilson, Lot 6, Block 2, Isom Addition
- e. 106 Chaparral, Lot 13, Block 1, Philview II Addition
- f. 1418 N. Main, Lot S/PT of 4, Block 1, Johnson Heights Addition

Larry Byrd explained to the Council that there were property owners present who wanted to speak about the condition of their property and the potential to sale property. Mr. Jerry Moon owner of 211 W. Coolidge, (Lot 17-18, Block 12, Isom Addition) and 215 W. Coolidge, (Lot 19-21, Block 12, Isom Addition) told the Council that he had a potential buyer for the property located at 215 W. Coolidge and would like an extension to complete the sale; he also stated to the Council that he wants to pay to have 211 W. Coolidge demolished.

Following discussion, motion was made by Council Member Vinyard, seconded by Council Member Gillingham, to take no action on 211 W. Coolidge, (Lot 17-18, Block 12 Isom Addition) and grant a 90-day extension on 215 W. Coolidge (Lot 19-21, Block 12, Isom Addition). The motion carried by the following vote:

Ayes: All members present voted aye.

Nays: None.

Mr. Robert Marrufo, District Manager for Allsup's Stores, requested a 90-day extension for the property located at 1418 N. Main, (Lot S/PT of 4, Block 1, Johnson Heights Addition). Mr. Marrufo explained to the Council that the building was being used for storage and he would need some time to move the equipment being stored there.

Following discussion, motion was made by Council Member Vinyard, seconded by Council Member Gilligham, to grant a 90-day extension for 1418 N. Main, (Lot S/PT of 4, Block 1, Johnson Heights Addition) from demolition. The motion carried by the following vote:

Ayes: All members present voted aye.

Nays: None.

Larry Byrd asked the Council to uphold the recommendation from the Building Stands Commission to demolish the properties located at 319 W. Wilson, (Lot 6, Block 2, Isom Addition), 106 Chaparral, (Lot 13, Block 1, Philview II Addition), 214 W. Coolidge, (Lot 33-34, Block 11, Isom Addition).

Following discussion, motion was made by Council Member Vinyard, seconded by Council Member Dickson, to approve the recommendation submitted by the Building Standards Commission to demolish the following structures:

319 W. Wilson, (Lot 6, Block 2, Isom Addition)

106 Chaparral, (Lot 13, Block 1, Philview II Addition)

214 W. Coolidge, (Lot 33-34, Block 11, Isom Addition)

The motion carried by the following vote:

Ayes: All members present voted aye.

Nays: None.

MEETING ADJOURNED: There being no further business, motion was made by Council Member Dickson, seconded by Council Member Gillingham. Motion carried by the following vote:

Ayes: All members present voted aye.

Nays: None.

Mayor

ATTEST:

City Secretary