

EMIGRATION IMPROVEMENT DISTRICT

BOARD OF TRUSTEES REGULAR MEETING

THURSDAY, OCTOBER 9, 2014

EMIGRATION CANYON FIRE STATION  
5025 EMIGRATION CANYON ROAD  
SALT LAKE CITY, UTAH

Board Members in Attendance: Mike Hughes – Chair, David Bradford-telephonically, Mark Stevens,

Ex Officio: Fred Smolka—General Manager, Eric Hawkes—Assistant Manager, Joe Smolka—Project Manager, Don Barnett—Barnett Intermountain Consulting, Jeremy Cook—Legal Counsel, Craig Neeley—Aqua Engineering

Chair Hughes called the meeting to order at 7:00 p.m.

**1. Consent agenda approval**

MOTION: David Bradford made a motion to approve the minutes of the September 11, 2014, Board of Trustees meeting as written. Mark Stevens seconded the motion.

VOTE: Unanimous in favor of the motion.

**2. Financial considerations**

Fred Smolka reviewed the financial report, account balances, receivables, and impact fee balances. He noted that the quarter has just ended, and at the November 13 meeting he will have a report of all the income and expenses.

**3. Request for waiver of fee**

Jamie White provided a copy of his letter to the Board of Trustees and reviewed it for the Board. Based on the claims in the letter, he asserted that he owes no fees to the EID and that he was lied to about the impact fees. He demanded that the EID stop trying to collect fees from him until a connection is made to his lot and stop its bullying behavior. He claimed that he speaks for his neighbors as well as himself.

Chair Hughes stated that the EID has not misrepresented anything or lied to Mr. White, and it is likely that Mr. White may not understand the EID's policies and what has happened since Mr. White signed his standby fee contract. He stated that he has heard Mr. White's position, but the Trustees do not agree with it. He would be willing to address each of Mr. White's concerns, but he signed a contract, and the fees give him equity in the system. Mr. White owes those fees and would lose that equity if he refuses to pay. He explained that the fees were discussed openly in public hearings, and Mr. White had the opportunity to voice his concerns and did not do so.

Mr. White argued that the agreement states that property owners who are unwilling to pay the standby fee will be required to pay the entire amount of accrued fees plus interest at the time of connection to the system in the future, and he is unwilling to pay the standby fee. Jeremy Cook stated that Mr. White's interpretation is wrong, because that statement refers to the previous sentence which states that a \$25 per month surcharge will be payable over the 30-year period, and the \$25 standby fee will be paid by developed properties. It does not mean he can back out of his commitment. If, for some reason, he is unwilling to pay and the EID does not enforce that commitment, he will be charged additional interest at the time of connection if he chooses to connect, but that does not give him the right to breach the agreement he signed. The fact that Mr. White paid the fee for a number of years points to the fact that he understood the agreement, and he believed Mr. White is looking at language to try to get out of it. Mr. Smolka noted that those who signed the agreement had three options, and the statement about those unwilling to pay the standby fee refers to the option for those who chose not to sign up for standby at the time and decided not to pay any standby fees at all. When Mr. White signed the agreement, he agreed to pay the standby fees.

Chair Hughes addressed Mr. White's assertion that the EID is bullying people. He explained that they all live in the Canyon together, and the fees are imposed on the Board Members and everyone else to make the Canyon a better place. People have a choice to live in the Canyon, and when they do, they have a responsibility to pay for the services and taxes that apply to them, and everyone benefits from the services they pay for. Mr. White does not believe it is plausible that there will be a fire in the canyon and is not willing to pay the hydrant fee, but Chair Hughes stated that he has lived through a fire in the Canyon, and he is not willing to put people in the position of not having fire protection when they can do something about it by having hydrants. The Board determined how to make the Canyon better by addressing the fire hazard, and they went through the public process to do that.

Mr. White stated that he has sat in an EID meeting and heard unanimous consensus from the public that no one wanted the fire hydrants and the fees. Chair Hughes replied that is not true. Mr. White stated that the EID does not represent him or his neighbors or anyone he knows in the Canyon. Chair Hughes stated that Mr. White may come to one meeting and hear from 50 people who are upset about something, but what he does not see is the other 1,500 other people who call the Board Members on the phone and voice their support of what is being done. When people go to the polls to vote for Board Members, they have the ability to express themselves in a way that counts rather than just throwing out accusations. If Mr. White thinks what the Board does is wrong, he should show up at the meetings and educate himself or vote out a Board Member and run for a position on the Board himself, but right now this Board is doing the work and taking the abuse. Mr. White claimed that the public was not notified that there was an opening on the Board until after the filing deadline. Chair Hughes stated that the meeting minutes will prove that is not true. Chair Hughes stated that he understands that Mr. White is mad, but he disagrees with his position, and the facts are not in his favor. He invited Mr. White to participate in the process, because that is how to fix things, not come in after the fact and tell people they did everything wrong.

#### **4. Policy review**

Eric Hawkes recalled that they reviewed several policies at the last meeting, and they need to be finalized so they can approve a resolution to adopt them. The first one relates to the water right amount to be turned in to the District of .75 acre feet. Mr. Smolka recalled that the State determined that some lots needed less than .75 acre feet, and the District has been accepting that adjudicated amount. Chair Hughes requested that they address the other two policies first so they can discuss this policy in greater depth.

Mr. Hawkes addressed a potential policy regarding unbuildable lots. He recalled that when the District set up the fire hydrants, they tried to identify lots that would be buildable, and hydrant fees were assessed to lots that were considered buildable. The question is whether an unbuildable lot should be subject to a hydrant fee. He noted that a number of very small lots in the Canyon are too small to be built on. If a person owns a lot, the fire hydrants are there to protect it, and the question is whether all the lot owners should all contribute to that. Mr. Smolka reported that two people have approached him who talked to the County and were told that it is economically questionable as to whether they can build on their lots. He did not believe they should be charged a hydrant fee. Board Member Stevens asked how many lots may be in that category. Mr. Smolka estimated that there might be 1,000 of them. Board Member Stevens believed there is nothing to protect on those lots. Chair Hughes disagreed and stated that they are protecting the property which may be adjacent to a lot that has a structure on it.

Chair Hughes asked if it might be possible to have a different class of property owner. Mr. Cook stated that he understood that someone from the EID made a determination about whether lots were buildable or not, but there were no criteria for making that determination. If someone can establish that the EID's classification of their lot was incorrect, they could ask to have their lot put into the other classification. Another question is whether the EID wants to change what they have done in the past because they feel they may have done it wrong. Chair Hughes asked if the EID would be involved in a taking if they determine that a lot is unbuildable. Mr. Cook replied that they would not, because the EID would not be determining that nothing can be built on a lot; they would just be determining that, for their purposes, they will not charge a certain fee. Don Barnett asked if a person with multiple 25-foot adjacent lots would be considered to have a buildable property. Board Member Bradford stated that he believed it would be a big mistake for the District to try to define a buildable lot. He believed it would be legitimate for them to make adjustments when a process has been undertaken to officially define a property as unbuildable, but he did not believe they should put themselves in the position of making an independent determination. Mr. Cook explained that the EID would simply be deciding not to charge a fee if they are unclear about whether a lot could be built on, but they do not have the authority to make a determination about whether it is buildable. They are not determining that they will never provide water service to the lot if the County determines in the future that it is buildable.

Chair Hughes felt they would be on a slippery slope if they do not clean up the policy. He suggested that contiguous lots either need to be combined or not charged, and they can determine how they wish to come into the system later. If the County will allow people to build on a .35-

acre lot in certain circumstances, the EID should adopt the same minimum threshold. Mr. Barnett suggested that the Board study this issue and look carefully at the pros and cons. From an equity standpoint, it would not make sense that someone who combined their lots and built a house on it is charged the hydrant fee, but someone next door who owns multiple small lots and has not combined them is not charged the hydrant fee. They need to look at the equity issue and benefit that accrues to everyone who owns property in the Canyon. Mr. Cook noted that what may be considered unbuildable today could be determined in the future to be buildable as circumstances change. He commented that they could send a notice to all the lot owners who currently do not pay a hydrant fee and notify them that, if their lot becomes buildable in the future, they will be charged that time plus a penalty for not paying. They can declare now and start paying, or they could pay in the future. However, that may cause people to say that the District is allowing the property owners to make a determination of whether they should pay or not, even when their lot may clearly be buildable. Mr. Cook noted that, even though they charge a hydrant fee, it is not really as much for fire protection as it is for the benefit of a system-wide water system that benefits their property. Every property in the Canyon benefits by having the water system in place, even if they never connect, because it increases property values.

Mr. Barnett expressed concern about making an arbitrary decision about whether they think a lot is buildable. He asked if they could go to the County records to see if lots are classified in a certain way and use that classification so they have a basis for making a determination and also set up an appeal process. Joe Smolka suggested that the Board address this on a case-by-case basis as people come in and plead their case to prove why they may not be able to build on their lot. Fred Smolka suggested that they address this in a special meeting which needs to be scheduled for another item, and that would give them time to gather more information. Board Member Stevens asked Mr. Cook to address the legal issues and suggested that he write a letter to Jamie White stating the Board's legal position with regard to his contract. Mr. Barnett noted that equity issues also need to be addressed. Mr. Cook explained that there is a legal question with regard to Mr. White, and he believes the contract is sufficient to support the EID's point. There is also a policy issue, and if they agree to let Mr. White stop paying his standby fees, there is a high likelihood that many others will want to quit paying their standby fees. That would affect the District's financial position and ability to pay its loans. He believed the District is being as fair as possible. If people stop paying their standby fees, the District will have to raise fees for those who are on the system, and he believed it is fair to require those who signed an agreement to pay standby fees to continue to pay them. The Board Members asked Mr. Cook to prepare a letter to Mr. White regarding the standby fees.

Mr. Hawkes asked if the standby fee would cease once the loan is paid off. Chair Hughes replied that it would not, because those who pay standby fee are buying equity into the water system to have it available when they are ready to connect. After further discussion of the standby fee and impact and connection fees, Chair Hughes stated that they need to clean up the language about how the fees work and put together a policy for discussion at the special meeting.

With regard to the Phase 4a septic system issue, Mr. Hawkes reported that the inspection was completed, and he issued new invoices to all the parties involved. For those who had already

paid the original billing, they were notified that they would receive a credit on their next bill. He stated that the issue of whether future repairs should be paid by the property owners connected to the septic system or whether they should charge only for routine maintenance, hopefully to prevent future repairs. Chair Hughes recalled that everyone knew what they agreed to before the system was installed, and the District put in a tremendous amount of time and effort to install that system, only to have one participant thumb his nose at the District for \$12. He found this whole topic to be distasteful and ridiculous. There will be maintenance in the future, and putting away \$12 or \$15 a year now to have some money to deal with that later is not unreasonable.

Mr. Cook stated that the agreement is for maintenance fees, and it depends on how that is interpreted. The amount of time Mr. Smolka and Mr. Hawkes spend setting up people to do maintenance on the system is worth much more than \$12 or \$15 per property each year. He believed the \$75 or \$75 with the escalation increase is completely reasonable. He agreed that the \$75 plus escalation is the cap, and anything beyond that will, unfortunately, fall on the District. He thought they had left the meeting agreeing that they would not change their position on the \$75. Board Member Stevens recalled that the property owner believed he should not have to pay anything, and charging him for the actual cost of the maintenance was a compromise. Chair Hughes requested that Mr. Smolka look into an insurance program for the septic system.

#### **5. Report on TMDL meeting with State and County**

Mr. Smolka reported that he and Mr. Hawkes went to the meeting and gave a good presentation. The State and County seem to be bent on having the EID do something, and the EID will be the lead on this issue and have to meet their objectives in some areas. He would like to go over the details at a special work session. Mr. Hawkes explained that it appears that the State is now willing to talk about grant money to help with a project.

#### **6. Rocky Mountain Power “Off-Peak” program**

Mr. Hawkes explained that Rocky Mountain Power has a program to discount what they charge if the District utilizes the bulk of its power during off-peak hours. He discussed this with a Rocky Mountain Power representative, who explained that this program applies to municipalities and businesses. Rocky Mountain will install a meter that logs the amount of time spent off-peak and on-peak, which requires a one-year commitment. Utilizing the bulk of the District’s power during off-peak hours could result in a savings of between \$.12 per kWh and \$.03 per kWh and would result in a 70% savings in usage. Mr. Hawkes spoke with Scott White, who indicated that they could change the telemetry programming to allow it to run on a time basis. He estimated that the savings over a 6- to 9-month period would cover the cost to upgrade the telemetry. He also reported that Rocky Mountain has been estimating the District’s meter readings and has overbilled the District by three times, in the amount of about \$2,000. Board Member Bradford asked if the amount of savings depends on the time of year. Mr. Hawkes replied that the savings drops to between \$.09 and \$.02 in the winter months. Board Member Bradford asked if it is feasible to do the bulk of their pumping at night given their pumping patterns over the past few

years. Mr. Hawkes replied that it should be, as they would start each day with the tanks full, and during the summertime they may need to turn on a pump to replenish the tank during the day.

MOTION: Mark Stevens made a motion to participate in the Rocky Mountain Power Off-Peak program. Mike Hughes seconded the motion.

VOTE: Unanimous in favor of the motion.

## **7. Well status report**

Craig Neeley reported that the Upper Freeze Creek Well is ready to run. There are some induced currents, and currently there is not an easy way to deal with that, because the pump is too deep and there is too much weight to use a dielectric coupler, which will cause some wear and tear on the equipment over time. There is a temporary fix, but he does not want to do it yet because it might interfere with the warranty issues with the VFD. They need to get the well running to show that they can run successfully with the soft starter, which would point them in the direction of a problem with the VFD. Once they operate for several months and everything is fine, they can talk about a short-term fix for the inductive current issue. Long-term, the next time they pull the pump, they can put in a separate ground wire and strap it to the discharge column opposite the 3-phase power to reduce the induced current or run it to a sacrificial lead. He reported that he met with Hills Construction to go through all the issues, and they have finally agreed to remove the VFD and filter and have it tested. The general contractor is interested in getting this taken care of, because he wants to transfer the financial responsibility for the cost of the push-pull and motor to his subcontractors. He believed long-term they could count on this well to produce if the pump and motor are reliable. Board Member Bradford thanked Mr. Neeley for following this through to its conclusion.

Mr. Hawkes reported that Brigham Fork well is currently pumping 41 gpm. Usage has dropped off drastically, so the other wells have not turned on in 15 days. The Well 2 level is 117 feet, and Well 1 is at 110 feet. Board Member Stevens asked when they will work on the Brigham Fork well problem. Mr. Barnett replied that it is too late in the season to address that now, and they should address it as early in the spring as possible so they can hopefully get it resolved before the summer months. He believed gravel is still coming into the well, and the fact that the pumping level has dropped seems to indicate that.

## **8. Water system report**

Mr. Barnett reviewed the water monitoring report and noted that there was notably less water usage this year, and per capita usage has dropped even more dramatically. Board Member Stevens noted that they had unseasonal rains this summer, so he did not think the 2014 results portend any significant change for the future. Mr. Barnett noted that it also means the District has less revenue to operate on, but it shows that people were responsive when they were asked to turn off their sprinklers. He suggested that they leave off the total usage before 2009 in

determining the average use, because a large number of connections were added to the system at that time, and it does not give an accurate average if they include the data prior to 2009.

With regard to water rights trade-ins, Mr. Barnett explained that they need to determine who has deeded in their water rights, who has not, and how much they deeded before they can decide what to do with the water rights. Some areas create confusion, and one is when someone has .75 acre feet of water but wants to keep their well and use EID water indoors. The question is whether they should deed .75 to the District or hold back a portion to apply to their well. He believed they should collect the entire .75 and include the property owner's well as one of the District's points of diversion. Another issue is what to do in a situation where someone had a small cabin home and was only using the water indoors, and the State determined that they needed a smaller amount of water. When they connect to the system and have a lesser amount of water shares, the question is whether the District should accept that lesser amount as the full amount or if they should pay the difference to bring them up to .75 acre feet. He noted that some people have actually paid that difference. If they choose to accept the smaller amount, they may want to look at the history and see if all they had was the smaller amount, or if they had more and profited by selling off their remaining water right. Board Member Stevens believed that was a good reason to require the entire .75 up front. Chair Hughes expressed concern that they might create a market for water rights to make up the difference that they would not be able to defend against. Mr. Cook asked if they want to require someone to buy the additional water right from the District. Mr. Barnett recalled that the Board determined when the District decided to accept .75 acre feet that they would not accept for trade-in water rights that are floated on the market, and the water right must be appurtenant to the property. He recommended that they develop a very clear and consistent policy that the Board can stand by. Chair Hughes commented that it is becoming expensive for the District to keep having to deal with this, and they need to resolve it and put it behind them.

The Board Members agreed to meet in a work session on Monday, October 20, at 6:00 p.m. at Fred Smolka's house to discuss this and the other issues discussed earlier in greater detail.

## **9. Utility billing software**

Mr. Hawkes reported that he reviewed 10 software programs and narrowed them down to 3. He reviewed the features of the 3 systems and explained that any of them would be an improvement over what the District uses now. He explained that they integrate all the information into one central location, and they can access everything related to each account on the system. They can also tailor the billing to any kind of structure they need. They will generate up to 2,500 different reports and can customize invoices to include notes to individuals or everyone on the system. He reviewed some differences between the systems and explained that one feature he particularly likes will allow customers to gain access to their own information, including their account history, payment history, water usage, etc., and update their information. He also likes the on-line payment feature, with the fee for the transaction being processed as a convenience fee to the customer. When the District does an audit, they can access the whole system with a password that does not allow them to change any of the data. He noted that the program integrates with

Quicken so they can transfer the data. They could also include automated meter reading. He reviewed other features of the other systems and the training and start-up costs for each system. He estimated that the current cost of invoicing is about \$3 to \$4 per bill. He believed it could be reduced to the \$2 range, depending on the efficiency of the process, which would result in savings of a few hundred dollars every time they bill. He discussed other benefits of using new billing software. Chair Hughes confirmed with Mr. Hawkes that he believed he could have the new system on line by the beginning of the year or shortly thereafter.

MOTION: David Bradford made a motion to proceed with purchase of the new billing software. Mark Stevens seconded the motion.

VOTE: Unanimous in favor of the motion.

**10. Any items requested by the visiting public**

There were no items requested by the visiting public.

The regular meeting of the Emigration Improvement District adjourned at 10:15 p.m.

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Minutes Approved