EMIGRATION IMPROVEMENT DISTRICT

BOARD OF TRUSTEES REGULAR MEETING

THURSDAY, AUGUST 21, 2014

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

Board Members in Attendance: Mark Stevens – Vice Chair, David Bradford

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

Excused: Chair Mike Hughes

In the absence of Chair Hughes, Vice Chair Stevens assumed the chair and called the meeting to order at 7:05 p.m.

1. Consent agenda approval

MOTION: David Bradford made a motion to approve the minutes of the July 17, 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 account balances and reported that the District's cash position on August 7 was $209,288.26. Receivables as of August 7 were $91,316.00 plus impact fees and other items. He noted that the Drinking Water Board and older Water Resources payments were made on June 30, and a payment of $70,000 will be due on September 1 for the new bond. He reported that property taxes assessed by Salt Lake County in the amount of about $200,000 will be received in November.

3. Oaks Phase 4a septic system fees

Mr. Hawkes recalled that the Board discussed this item at the May Board meeting, and it relates to the six lots in the Well 2 source protection area. A common septic system was developed, and responsibility for maintenance was transferred to the District. The operating contract states that the District can charge the property owners the annual operating costs associated with the septic system, which includes an annual inspection. He noted that the District has included a small administrative cost as well.

David Bennion read from the contract that the EID may charge an annual service fee to each lot owner connected to the system in an amount necessary to recover the actual annual operating costs of the system, but the service charge shall not exceed $75 per year. He stated that last year he received a bill for $250 for his share of the system, which violates the $75 cap, and he was also charged a District administrative fee, which he did not believe was an operating cost. He

paid the bill under protest because Mr. Smolka told him that the District had not charged for the inspection fees it had incurred and they had accumulated for a few years, so he was billing more than $75. He believed the reason for the $75 cap was so he would not be surprised by receiving a bill for more than $75 in any given year, and receiving a $250 bill was not consistent with the agreement. Not long ago he received another bill for $75 and asked to see the backup of how much the inspection actually cost and for previous years as well, and Mr. Hawkes told him those were not the actual costs but that they charge $75 in anticipation of future years when the costs will be higher. However, that is not what the contract says. It says in any given year he is to pay the actual costs with a cap of $75. When he asked to see the actual costs for this year, he was told that the inspection has not been done yet and that the District was charging the $75 in anticipation of doing the inspection.

Mr. Bennion also questioned whether inspections of the system are operating costs, because without the inspections, the system would still operate. He maintained that inspecting the system is not a cost of operating it. He believed the septic system is a benefit to every water user in the Canyon and should be paid for by everyone to protect the well. He recalled that the well protection zone was only 300 feet when he purchased his lot. It was later changed to 1,500 feet, which put everyone in his cul-de-sac in the well protection zone, and they could not build in that zone with a septic system. They had to put in a communal septic system and pipe to a drainfield, with a pump vault, two pumps, and a backup generator, which cost about $10,000. During the time he has lived in his home, he has replaced three pumps at a cost of about $3,000 each. He incurs significant expense that benefits everyone, and yet he has to carry the cost of one-sixth of the cost of inspecting the system. He questioned the District administration fee, which does not seem to be consistent with the agreement, an inspection fee that was over $75 in a year, inspection fees that have not yet been incurred, and paying $75 a year when $75 in operating expenses were not incurred so the District can build up money if they need it in the future.

Mr. Smolka explained that Mr. Bennion signed an agreement when the system was installed agreeing to pay up to $75 per year. He acknowledged that he made a mistake and had to bill four years at once. He recalled that Mr. Bennion objected to the District charging an administrative fee last year, and the District waived it. He explained that the inspection is required by the State, and it was stated in the agreement that would be done each year. If the inspections are not done, the State will not allow them to continue to operate the septic system. With regard to whom this benefits, if these homes were not in the well protection zone, there would be no costs, so the fees do not benefit the rest of the Canyon; they only benefit these lots so they can have septic services. He recalled that The Boyer Company installed the system, so the property owners did not have to pay that expense, and then Boyer turned it over to the District to run.

Mr. Barnett explained that, as the District hydrologist, he was responsible for expanding the well protection zone. When the District took over the system, the source protection zones were deficient and did not adequately protect the drinking water for people in the Canyon. He understood that Mr. Bennion received a platted lot that was wrong, because identification of the source protection zone was inadequate. Had the developer done what was appropriate, he would not have been able to plat those lots or he would have had to place restrictions on them. Mr. Bennion argued that the system benefits everyone in the Canyon, and the costs are disproportionately borne by those who live in his area to insure that the well is safe and that the

water is good. He also argued that the inspection is not an operating cost but just a State law that the District did not want to pay, so they are making the property owners pay for it. He also had not received a response to the District charging more money than the inspection costs.

Mr. Hawkes reported that the first inspection was $300, the second and third were $325 each, and the fourth was $350. This year they will have to find someone else to do the inspections, because the people who were doing it no longer provide that service. Mr. Bennion noted that none of those numbers add up to $75 per property owner. Mr. Smolka emphasized that, if they did not do the inspections, they could not operate the system, and this is a cost of operation. He discussed the additional administrative time required to get the inspections done and report them to the State. He also explained that no one else on the water system enjoys any benefit from this septic system; it is all for the people on the septic system. Mr. Bennion responded that the agreement does not say the property owners have to pay $75 per year. It says they will pay the actual operating costs with a cap of $75, and there has never been a year that the cost was $75. Mr. Cook noted that the agreement also says the cap will increase by not to exceed 5% each year starting five years after the date of the agreement, which was 2003, so the cap is now higher than $75. Mr. Bennion reiterated that the District is only supposed to charge the actual cost, and if the cost is $50 per property, the District should not charge $75. Mr. Cook noted that the District personnel also spend time administering the operation of the system, which should be factored into the operating costs. Mr. Bennion disagreed that those are costs of operating the system. He continued to argue that the septic system benefits everyone in the Canyon because it protects the well. He stated that the property owners involved did not want the septic system; it was imposed on them at significant expense. He believes the inspections simply protect the well, which is a benefit to everyone, so everyone should share in the cost.

Board Member Bradford commented that part of the issue seems to be that there is insufficient transparency about what goes into the bill to the property owners. Mr. Bennion asked that the District not charge an administrative fee, because the contract does not contemplate charging administrative fees. Board Member Bradford asked if Mr. Bennion would consider the inspection to be an operating cost since the system is not able to operate without that inspection. He explained that the inspection may not be required for the physical operation of the system, but it is required for its legal operation. If a function is required for the system to operate, he believed that should legitimately be considered an operating cost.

Vice Chair Stevens recommended that they consider the actual inspection cost to be the operating cost and have the District cover the administrative cost. He suggested that, each year after the inspection is done, the bill from the contractor be copied and included with a bill from the District dividing the cost between the six property owners. He understood that, if a major repair was needed, the property owners' portion of that cost would be capped at the $75. He asked if Mr. Bennion is asking for a look back to previous bills. Mr. Bennion replied that he is not asking the District for what he was overcharged in the past, but he is asking them to consider the inspection fee to be a value to the well and the entire District so they can have clean water and charge those inspection fees to everyone on the water system. Mr. Cook disagreed with Mr. Bennion's position and stated that the inspection is an annual operating cost of the septic system. Clearly the property owners reviewed and signed the agreement and knew when they entered into the agreement that they were responsible for up to $75 in system operating costs. From a

legal standpoint, he did not see how the inspections could not be considered an annual operating cost, because that was clearly contemplated in the agreement. He believed Vice Chair Stevens' compromise of not charging for the District's administrative costs was appropriate.

Board Member Bradford asked if the proposed compromise would be acceptable to Mr. Bennion and the other owners. Mr. Bennion replied that he does not represent any of the other owners, and he has already stated his preference that the inspection be considered a benefit to everyone and have everyone who would benefit share in the cost. Board Member Bradford responded that the benefit to the six property owners is that they do what they committed to do contractually to insure that the system is not polluted by the sewage coming from their properties. Everyone benefits from having clean water, but the reason the six property owners benefit is that they obligated themselves to engage in this system to divert their sewage away from the well to reduce the potential for contamination. If they do not do the inspection, the septic system cannot operate. He asked if there is a compromise other than not paying anything that Mr. Bennion would consider to be acceptable. Mr. Bennion replied that, if it is the District's position that he is contractually bound to pay operating costs, the District also needs to be contractually bound to not charge him costs that are not operating costs, like administrative fees that are subjective costs put on by the District, not charge him $75 when the actual inspection cost is not $75, and not charge him more than $75 in any given year like last year. If he gets an invoice for an actual inspection that occurred that is divided by six, he will pay it.

Board Member Bradford did not believe the Board was in a position to take action without Chair Hughes present. He suggested that they make a final proposal after holding an executive session.

4. Policy changes/review

Mr. Smolka reviewed the current policy of having people turn in .75 acre feet of water when they join the water system. Mr. Barnett explained that, if people had less than .75 acre feet, they would pay the difference based on a cost of $8,000 per acre foot. Some people received an adjudication from the State for less than .75 acre feet, and the District honored that adjudication. Some people along the main Canyon road wanted to keep their wells for irrigation and get their culinary water from the EID, so they were allowed to turn in .45 acre feet to cover their culinary use and use their wells to irrigate. An issue has come up that some of those people may now be taking all of their water from the EID system. He proposed that anyone who now wants to hook up to the system will turn in .75 acre feet or what was adjudicated with the State, and they can irrigate using their well if they wish to and operate on the District's water right. Board Member Bradford asked if the District would have to show those private wells as points of diversion. Mr. Barnett replied that would be done through a temporary change application. Even though the wells would operate under the District's water right, the District would not assume responsibility for maintenance of the wells or plugging or abandoning them. Mr. Cook confirmed that identifying a point of diversion for a water right does not obligate the District, and they can identify points of diversion in places where they do not own the property. Board Member Bradford asked if that would make it more difficult for residents of the Spring Glen Subdivision to join the system. Mr. Smolka responded that they have more water rights than they need for the entire subdivision. Mr. Barnett explained that the District does not really need the water rights, but the purpose of asking them to be turned in is to collect the paper water in the Canyon

so people cannot profiteer from it. Mr. Smolka added that they also wanted to make it fair to the people who were already on the system. He asked if they should go back and try to get the additional right from those who previously turned in only .45 acre feet. Board Member Bradford stated that he considers this to be a property right, and he was not sure they could go back and claim additional property from someone with whom the District has already reached an agreement. Mr. Cook stated that, if they can establish that someone is no longer using their well, they could go back to them, because they would be using more water than what was originally agreed to for irrigating their property. Mr. Smolka suggested that they grandfather those with whom they already have agreements.

Mr. Smolka discussed a few lots on which nothing can be built under the current zoning or where someone purchased a lot to keep anyone from building on it in order to protect their lot. He suggested that the District look at those on a case-by-case basis, and if the lot is not buildable, not charge standby fees or hydrant fees on those lots. Board Member Bradford asked on what basis the EID would determine that the lot is unbuildable. Mr. Smolka replied that he could call the County to find out if it is economically unfeasible to build on the lot. Board Member Bradford stated that is a very weak argument for making that kind of decision. He believed they need a very careful definition of unbuildable, otherwise the District will be seen as arbitrary and capricious in their determination. Mr. Cook suggested that they could put the burden on the property owner to dispute why they think their lot may not be developable. They could also put an open space easement on the lot to guarantee that it would remain open space. Board Member Bradford agreed with that solution. Mr. Smolka noted that the District is a 501(c)3 organization, and people could donate their land to the District, with the District holding those lots with no development on them. Joe Smolka noted that the County will also allow property owners to combine adjacent lots, which is another option.

Mr. Smolka explained that some people who have two lots asked to put in a second connection on the adjacent property and water part of their property using that connection to keep down the accelerated rates for water usage. In the past, the District has not required property owners to actually install the second connection, just pay the impact fee for the second lot, and total water usage is divided between the two lots. He asked if they should continue to do that. He explained that he was approached by a property owner with two lots and the water rights who would like to put in another connection and hook part of her water system to it so all her usage would not be on one connection. Based on their current policy, she would have to pay the impact fee to put in a second connection. Mr. Cook suggested that they have her pay the impact fee and treat her like the others who have their usage divided between two lots to be consistent. Board Member Bradford asked if the District has a written policy to address that. Vice Chair Stevens requested that Mr. Smolka prepare a written policy for the Board to approve. It was suggested that they limit this to two lots only. After further discussion, the Board Members suggested that they discuss this matter further before deciding on a policy.

5. Report on certified delinquent notices and water turn-off notices

Mr. Hawkes reported that the deadline for filing the certified delinquency notices is September 5 and noted that there was some question about the $75 administrative fee associated with that. After contacting the State Auditor's Office, he found that the collection fee can be no more than

$20. He recalled that the District adopted a policy in July 2014 setting a $75 administrative fee, and he is waiting to hear back from the State Auditor's Office regarding that. He also reported that everyone was able to get caught up on their water fees, so they did not have to shut off service to anyone.

6. UFC flush/drainage ditch

Mr. Hawkes reported that MC Contractors worked on the ditch, and it should now drain properly. He commented that they went out of their way to take care of it, and some of the repair was probably outside their warranty, but they included it in the warranty work.

7. Well status report

Mr. Neeley stated that he thinks the motor burned up again in the Upper Freeze Creek well last Friday. Everyone worked hard to get Brigham Fork running and cut back so they could operate it at about 60 to 65 gpm. He contacted drilling companies, and Dewey Peterson was able to get there on Monday to pull the pump, which should be out tomorrow afternoon. Mr. Neeley stated that the problem could only be the motor or the cable, and he has learned that this VFD supplier has burned up several motors in the last couple of months, so he believes the problem is with the VFD supplier. They have arranged for the VFD supplier to put in a temporary soft starter instead of the VFD. There is a question about the turnaround time on the motor, and there is a motor in stock for $15,000 they could get in place probably by the end of next week. If the Board is interested in having a backup motor and they believe getting water again in a week is worth $15,000, they could use the motor that is in stock.

Mr. Smolka expressed concern that, if they purchase another motor, it may let the supplier off the hook on their warranty. He suggested that they purchase the additional motor now, and then have the supplier either rebuild or provide a new motor which the District would use as a backup. Mr. Neeley assured Mr. Smolka that buying a new motor would not negate the warranty on the existing motor. He noted that Rocky Mountain Power has offered to put a monitor on their line to be sure there are no power issues.

Mr. Barnett reported that Well 2 is now pumping at below 500 feet, and Brigham Fork is not producing gravel right now. He, Mr. Smolka, Mr. Hawkes, and Larry Hall spent some time a couple of weeks ago cleaning gravel out of the Brigham Fork well. Mr. Hall has installed a butterfly valve to back-pressure the well, but they are not able to pump it at its full pumping rate. Mr. Hawkes reported that Brigham Fork is on a manual set-up, and if it shuts down, it is a big process to get it going again.

Vice Chair Stevens asked if they need to make the decision now, or if they could wait a couple of weeks to buy the new pump. Board Member Bradford explained that they would lose Mr. Peterson's mobilization to the well. He believed it would make sense to get a back-up pump now, and he would consider that to be a $15,000 insurance policy.

MOTION: David Bradford made a motion to purchase a new motor for the Upper Freeze Creek well as soon as possible. Mark Stevens seconded the motion.

VOTE: Unanimous in favor of the motion.

Vice Chair Stevens suggested that the District put a sign at the bottom of the Canyon reminding people to put their sprinkler systems on rain delay when they have rainy weather.

8. Water system report

Mr. Barnett reported that the Upper Freeze Creek Well carried the District's needs through July. Well 1 has given its useful life for the summer. The per-connection usage numbers do not look right, and he is trying to sort through whether there might be meter issues with the new well, because the number seems too low. Total water usage is below the average for July, and the per-connection numbers are considerably lower.

9. 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 8:50 p.m.

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Minutes Approved