

EMIGRATION IMPROVEMENT DISTRICT  
BOARD OF TRUSTEES REGULAR MEETING

THURSDAY, NOVEMBER 20, 2014

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

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

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

Chair Hughes 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 October 9, 2014, and October 20, 2014, Board of Trustees meetings as written. Mike Hughes seconded the motion.

VOTE: Unanimous in favor of the motion. Mark Stevens was not present for the vote.

**2. Request for “Appeal of Fees”**

Lisa Fitzgerald stated that she wrote an appeal letter for the Spring Glen community regarding the fire hydrant fee. She recalled that they recently hired an attorney to correspond with the District, and then the District came out with the appeal process, and she is here to appeal. She understood from Spring Glen’s lawyer and the statute that the District is allowed to impose fees, but they must be reasonable to the benefit of the service provided. Since Spring Glen already has complete fire protection, they do not believe the benefit from the EID hydrants is the same as the benefit other people in Emigration Canyon receive who previously had no fire protection. If the fee is based on benefit, it should not be the same for the Spring Glen users. She stated that last year one of the people from the fire department did an annual inspection on their fire system. She asked which fire hydrants they would hook up to, and they selected the Spring Glen hydrants because that is the fire hydrant model they prefer. The representative from the fire department also thought the Spring Glen water flow and pressure was more than sufficient to fight a home fire and stated that initially they also use the water in the truck. Since the Spring Glen residents already had fire hydrants, their insurance rates will not go down, as they already reflect that they have full fire protection, and that is not a benefit to their community. She noted that the EID indicated in their letter that the hydrants would be annually maintained and inspected by the fire department, but when they came to inspect the Spring Glen hydrants, they said they had never inspected hydrants in their community and did not know they existed or that the EID is in their community. She believed State statute says the EID is required to charge no more than the costs required to provide the benefit, but the EID letter of June 1, 2013, states that the hydrant fee will yield the additional 12% of the money needed for debt service, which indicates that the fee is to

cover the debt service and is not based on the benefit they receive. In one letter the EID states that they want contributions from community members who are not currently contributing to the EID, but she pays \$182 in taxes each year that go to the EID, so they are contributing to the infrastructure to maintain the community as a whole.

Chair Hughes assured Ms. Fitzgerald that the Board has reviewed her letter and talked to the County, the State, and the Fire Marshall. He asked Mr. Hawkes to share the information he had researched. Mr. Hawkes reported that he contacted Stuart Gray, representative for Unified Fire for this area, who indicated that the International Fire Code minimum standard for a house fire is 1,500 gpm for 2 hours at 20 psi, which equates to 180,000 gallons in two hours. He believed the Spring Glen community has a 60,000-gallon reservoir, and their pump would pump about 35 gpm. In the event of a fire, they would have about 35 minutes of water assuming the tank is full. He also spoke with Michael Conn, Fire Chief at the Emigration Canyon station, who stated that they would choose the hydrant with the most water. Mr. Gray stated that they would probably hook to the hydrant that is closest if they did not know which hydrant has more water. Chief Conn explained that their engine holds 750 gallons, but their hoses put out 350 gpm, so the engine would only have the capacity to fight a fire for a couple of minutes. Chief Conn told him that his firefighters are also trained to fight forest fires and would be the first line of defense in a forest fire, and then the Forest Service would be the next ones to respond.

Chair Hughes stated that he does not believe Spring Glen has been diminished in any way by having their own water system, because they get the full benefit of the EID water system. The value to them is being able to put out a fire as opposed to putting out half a fire with one-third the water needed. The District's research indicates that Spring Glen does not have the protection it thought it had, and the EID put in that protection purposely because it was not available. The EID has done its research with the engineer who designed the system, the fire authorities, and the Code and is very comfortable with its position. He believed when Spring Glen gets all the facts, there will be no debate about what the EID provides. He explained that the EID made these decisions with solid engineering, planning, and forethought, that they understand the value the hydrants provide to the Canyon residents, and they are willing to back that position with hard facts. If the Spring Glen residents have other facts they would like the EID to consider, they are welcome to bring them to the Board.

Ms. Fitzgerald continued to argue that the fees were imposed based on the need to pay the debt service, not on the value to the community as required by State statute. Their attorneys requested that information in December or January and have not yet received it. Mr. Cook confirmed that the District has responded to all the requests made by Spring Glen's attorney.

Mr. Smolka explained that the District uses its engineers to inspect the hydrants, and they flow test them at least once a year. He explained that the Fire Department does not like to do flow tests. Mr. Hawkes explained that Aqua Environmental does the hydrant tests each year, and he could confirm through their records which hydrants have been tested. He also noted that, when people are ready to build on their property, they are required to submit a fire flow test to Unified

Fire and the County, and the District has a record of those tests. Ms. Fitzgerald requested a record of the tests of the hydrants in her neighborhood.

Fire Chief Michael Conn stated that annually they like to get their hands on every hydrant in the district. They open up every hydrant to be sure water comes up at least to the bonnet, but they do only flow hydrants in certain circumstances. They inspect to be sure there are no obstructions around the hydrant and that the hydrant is not damaged. Whenever they go on a fire call, they always hook to a hydrant, regardless of the type of fire. In the Spring Glen area there was some confusion because of the two hydrants, and they decided to hook to the best maintained hydrants. They were told that one set of hydrants had more water behind them, and they would rather have more than enough than just enough, because they flow a tremendous amount of water, even on a small fire. For a house fire, they could be there for hours, and with water constantly flowing. They could use 200 gpm, and it goes up from there. They usually use two medium lines at 250 gpm each and another hose that flows 350 gpm. If they have to protect structures or other things on either side, they may use two more 350 gpm lines.

Ms. Fitzgerald stated that last October she asked someone from the fire station to check on their hydrants, and she was told they don't normally check fire hydrants and do not have any records. They indicated they had never driven their truck into her neighborhood and were surprised to see six hydrants. She asked which hydrant they would hook up to and was told they would choose the Spring Glen hydrants based on the hydrant model. They also said they had never tested any of the hydrants. Chief Conn explained that they have to keep records on the hydrants they inspect as part of the ISO rating for insurance. Ms. Fitzgerald asked to see the records. Chief Conn confirmed that they inspect hydrants on an annual basis, and it is all documented and sent to the main office. In the four years or so since he was assigned to this station they have done hydrant inspections and business inspections. He explained that crews come and go, and one platoon has not had a regular supervisor for much of the time. They get people to come in on an as-needed basis for one shift only, and they may not know the history of the water supply in the Canyon. When they do get someone at the station who will spend time here on a regular basis, they are careful to explain all water supplies in the Canyon and what they know about them. He did not understand how the conversation went with Ms. Fitzgerald, but when he addresses the water supply, knowing the EID supply is much larger, he has informed his crews that the EID hydrants will be better. They were the newer hydrants, but the last time he went through the Spring Glen neighborhood, it appears that Spring Glen has painted its hydrants. He explained that some firefighters have their favorite hydrant brands, just like they prefer a certain brand of car, but they can get water out of any hydrant. He explained that they move a tremendous amount of water in a short period of time, and it is not just the amount of water behind it, but how quickly the water can get into and out of the hydrant, which is referred to as static pressure and flow pressure. They know certain hydrants work better than others when they go to different areas of the canyon, and he confirmed that they know where all the hydrants are.

Chair Hughes offered to get the information to Ms. Fitzgerald that she requested and invited her to return with any other information or concerns her community might have. He explained that the EID checked all the facts and the law related to Ms. Fitzgerald's concerns and is very

comfortable with its position. Jamie White argued that this issue should be subject to arbitration by a disinterested third party. Mr. Cook explained that is not how the process is set up in the statute. The EID Board is the appeal board, and there is no other appeal board. The next appeal if they disagree is to go to District Court as their next appeal right.

Chair Hughes commented that everyone likes things to fit their individual circumstances, but the reality is that this is a community system, just like the road is a community road. Everyone pays for it, and it is part of being a community. People have to make decisions for the greater good. Fire protection was important enough that the Board felt they needed to do something about it, and all of their decisions are weighed by the greater good, not by “my house and my \$15.” They put hydrants in the Spring Glen area because the Spring Glen system could not meet the fire standards and because they have neighbors who are at risk. Ms. Fitzgerald argued that they were not asked or informed that their system was insufficient. The EID Board made the decision about the Spring Glen system, and that may be where the discontent lies.

Kennard Machol stated that he wants to talk about the standby fees and referred to a stipulation in the application agreement that says property owners unwilling to pay the standby fee will be required to pay the total amount of accrued fees plus interest at the time of connection to the system in the future. Because of that reason and a few others, he wanted to invoke this clause, which according to his lawyer is unequivocal and clearly stated and not open to other interpretations. Mr. Cook recalled that Mr. White made that argument at the last meeting, and after looking at the agreement further, he believed the language must be considered as it relates to the purpose of the agreement, which was to guarantee to the State that the EID had enough people paying the standby fee to meet their loan obligations. He agreed there may be some ambiguity in the language, but his reading of the language is that it was to guarantee the property owners who signed up for this that other property owners would not receive the benefit of being allowed to hook up without paying that fee and that the District would not allow other people to benefit in a way that was detrimental to those who did sign up. Mr. Machol stated that it is shameful that the District is forcing citizens to hire attorneys to get them to perform what is clearly stated in the agreement or acquiesce to the District’s bullying. If the District wishes they had written it differently and wishes it meant something else, that does not mean that it means something else. Mr. Cook stated that he understands Mr. Machol has a difference of opinion as to what the language says, and it is up to the Board, given that difference of opinion, to determine what course of action they want to take.

Jamie White claimed that Mr. Smolka withheld the change in policy and that anyone new would not have to go on standby. Chair Hughes explained that when the District started to put the water pipe in the road, it realized that across the road were several other utilities and a fiber optic line and that each time they had to put a line in to the properties across the road, they would have to tear out huge hunks of the road at tremendous additional expense. The Board made a policy change at that point and decided to stub the water to all the lots at that time, because it would cost a significant amount to do it later, and it would make no sense to tear up the road every time they made another connection and stop traffic every time. The policy changed because the economics changed, and the economics changed because of what was happening on the ground.

He believed the Board made the right decision, and they have not had to tear up the road again. Mr. White provided a letter from an attorney stating that the language in the agreement is clear and unambiguous, and he requested that the standby fees be removed from his taxes. He would pay the accrued fees plus interest when he connects to the system. Chair Hughes offered to discuss this with the other Trustees and have Mr. Cook respond to Mr. White's attorney.

Sam Plumb, representing Suzanne Plumb, noted that she received an excess water surcharge fee of \$1,400, which was reduced by the District to \$750 for a leak credit. He provided historic meter readings for Suzanne's property and noted that there are no exact dates showing when the meters were read. He discussed the July water usage of 102,000 gallons which bumped the bill up to the surcharge fee. He acknowledged that is a lot of water, but his parents do not inhabit the house. His mother may do some laundry, bathe, and water some plants with a hose, but the sprinkler system is turned off the vast majority of the time. He referred to the water usage during the few years prior to 2013, when they watered the property heavily. He noted that in 2013 the meter was replaced and they did not water heavily, but the July usage was 152,000 gallons. According to his calculations, they would have to run the sprinklers three times a day for two hours to incur that type of usage, which is physically impossible. He claimed that the sprinkling system was completely unplugged after 2013, and there was a huge spike in July again this year. He stated that Mr. Hawkes told his mother that the meter was read on August 5, and the next month, the usage went down to 2,700 gallons and then 7,400 gallons with no change in behavior. In July the readings show a huge spike in usage, but the months before and after are nowhere near that usage. Chair Hughes corrected Mr. Plumb that the usage the following month was actually 26,000 gallons, not 2,600 gallons. Mr. Plumb stated that it is not possible for them to have used 102,000 gallons. In looking at prior usage, every month is low, and then in two years the July usage jumps to over 100,000 gallons. He expressed concern about the flux in time that the meters are read, the lack of proof as to when the meter was read, and that he had to wait four months to get on the agenda. Now his mother's property will have a surcharge placed on it because of a surcharge that should not have been applied to it in the first place.

Mr. Hawkes explained that he notified Ms. Plumb of the high water usage. He read the meter on August 4 and computed the usage, then went back on August 5 to verify the reading because the usage was high. Joe Smolka confirmed that the meter was replaced in June 2013 because the meter had stopped reading. Mr. Cook noted that the June 2013 reading was 46,710, and the July reading was 152,000. Mr. Plumb asked if they used historical usage to calculate the July meter reading because the meter had not been running for several months. The following month there was less than 10,000 gallons, and the following month was less than 1,000 gallons, which does not make sense. If the District does not have documentation of when the meter was read, he has no documentation to go to his mother and ask her to change her behavior and get her sprinklers checked. He stated that even four or five days difference in reading the meter could mean having to pay punitive usage fees.

Mr. Hawkes stated that Ms. Plumb contacted him, and he met her at her house and checked the meter. It had been 14 days since he had read the meter, and at that point she had used another 25,000 gallons in 14 days. He asked if he could go through her sprinkler system, and she agreed.

Every time he has been there, the meter is not spinning, so this is not a slow or continual leak, which usually means it is the sprinkling system when it is running or something that is on autofill. He went through the sprinkler system, and not only is it an inefficient system that puts down a lot of water in a very short time, but he also found some significant leaks, and that was what he based the leak credit on. He explained that the leak credit is based on historical usage for that month, and he went back as far as 2006. The usage during that month since 2006 still averages 87,000 gallons. He noted that in July 2010 the usage was 154,000 gallons, in July 2012 it was 131,000, and in July 2007 it was 100,000.

Mr. Plumb maintained that, given the problem that seems to happen and the lack of any concrete evidence of when and how the meter was read, it is difficult to believe Ms. Plumb owes any punitive usage fees, and they cannot be justified. Mr. Hawkes reiterated that the leak credit is based on historical usage, and in this case, the property has used a lot of water consistently every July. Mr. Plumb stated that historical usage means nothing to him if it is just a number on a piece of paper without anything to back it up. Mr. Cook noted that this is not a case where historically the property has used only a small amount of water and suddenly the reading this year is much higher. The usage has consistently been over 100,000 gallons every year. Mr. Plumb stated that there is no way for the District to charge a punitive fee when there is no accountability on their part as to when and how the meter was read. Mr. Hawkes explained that they could give Mr. Plumb the dates and have the actual meter read sheets. Mr. Cook explained that, even if they pro-rate the usage based on reading the meter a few days later than normal, the usage would still be 80,000 plus. If this were a one-time thing, there might be an argument that a massive leak may have occurred during the few days' delay in reading the meter, but it is clear that there has consistently been high usage during this period. Mr. Plumb argued that the District cannot legally charge a punitive fee if the meter is read even one day after the first of the month. Mr. Cook explained that no water company in the State reads its meters on exactly the same day each month. Mr. Plumb claimed that it is illegal to not read the meters on a 30-day billing cycle. In addition, they cannot charge punitive fees when they have no documentation to back it up. He stated that there is no way to deal with this in a way that works for everyone.

Mr. Hawkes explained that Mr. Plumb's GRAMA request was for the meter readings only, so he went through the meter reading sheets and wrote down the meter readings, which fulfilled Mr. Plumb's request. If Mr. Plumb wants additional information, the District has all the meter reading sheets with details as to when the meters were read.

Mr. Plumb stated that he will not allow his mother to pay this bill. If the District is going to punish someone with money, they need to be on top of it and read the meters exactly on the same day each month.

Chair Hughes stated that he will discuss this with the other Trustees.

### **3. Financial considerations**

Mr. Smolka reviewed the financial report and accounts receivable, noting that the current balance of all accounts is \$203,000. He also reviewed the loan balances and payment dates.

Mr. Hawkes reviewed the third quarter financial report. He also provided and discussed the 2015 proposed budget, the 2014 adopted budget, and estimated actual budget for 2014. He anticipated that tax revenues this year will be similar to last year. Water revenue has decreased by about 25% each year since 2012, which indicates that people are responding to conservation requests. Board Member Bradford asked if the five new connections anticipated for next year are enough to offset the 25% decrease in water revenue. Mr. Hawkes replied that he does not know. He explained that the 25% reduction is based on meter readings, not what was delivered from the wells. Mr. Barnett questioned whether there might be some loss somewhere. Mr. Cook questioned whether some people might be bypassing their meters. Board Member Bradford noted that the drop is 25% over a two-year period, not 25% a year. The drop from 2013 to 2014 was minimal, and almost the entire reduction was between 2012 and 2013. Board Member Bradford noted that there is a big difference between the estimated actual impact fees for 2014 and the proposed impact fees for 2015. Mr. Smolka explained that, at the December meeting when they come back with the estimated actual budget for 2014, the numbers will be much closer to the actual amounts. Mr. Hawkes reviewed the other estimated income and expenditures in the 2014 budget and the 2015 proposed budget.

Chair Hughes asked when the proposed budget would be available to the public. Mr. Hawkes replied that it must be available at least seven days before the hearing. Mr. Cook advised them to make any needed corrections and post the proposed budget online as soon as possible.

MOTION: David Bradford made a motion to accept the proposed budget for 2015 with any needed corrections and changes as discussed. Mark Stevens seconded the motion.

VOTE: Unanimous in favor of the motion.

#### **4. Zions Bank check scanner for deposits**

Mr. Hawkes reported that he and Mr. Smolka visited with Zions Bank about a scanner that may help them get checks deposited more quickly. It will reduce the time for access to funds from the deposits. It will also provide a scanned copy of the checks and calculate the deposits. Mr. Smolka explained that they have been copying every check that comes in for years, and this will eliminate that time and cost. Mr. Hawkes stated that the fee associated with the scanner is \$20 per month and 5 cents per transaction. Board Member Bradford requested that they ask Zions Bank to waive the fees for the scanner. The Board Members stated that they had no issue with getting the scanner.

#### **5. Report on audits**

Mr. Hawkes reported that the external audit was done on October 23, and all the information has been provided to them. It should be completed by the end of the month.

Mr. Hawkes reported that Board Member Stevens completed the internal audit. Board Member Stevens thanked Mr. Smolka and Mr. Hawkes for their help with the audit.

**6. Report on Rocky Mountain Power “off-peak” program**

Mr. Hawkes reported that Rocky Mountain Power changed the meter on Well 2, but they have not yet changed the Upper Freeze Creek meter. They have been operating the last few weeks during the off-peak hours and are beginning to figure out how to make it work.

**7. Water system report**

Mr. Barnett reported that water usage last month was a little under 2 million gallons, which is down from an average over the last five years of 2.6 million gallons.

**8. Well status report**

Mr. Hawkes stated that they have been operating the Upper Freeze Creek Well on the soft start since last month’s meeting, and everything seems to be working well. Mr. Neeley explained that the motor supplier has warrantied the second motor. They are still working through the motor failure, and it will take a little time to work that out. The cost of second push-pull is still up in the air. He has not done anything regarding the conductivity in the ground, and they will run as they are for a couple of months until the warranty period is up. Right now they need consistent run time and consistent operation. He did not want to have to the pull the pump again to deal with the conductivity without having another reason to pull it. The warranty period for Hills Construction is up at the end of December, and if there are other issues they need to take care of with them, they need to write them down and give that information to Hills.

**9. TMDL septic system project**

Mr. Hawkes stated that they have a meeting with the Division of Water Quality on December 4 at 1:00 at their offices. On December 1 they will meet with the Health Department and the Division of Water Quality to pick some sites along the stream to do their testing for the project. One thing required to apply for the grant is a projection of a 20-year expansion project. Chair Hughes noted that they will need to spend some money on engineering to get that information.

**10. Utility billing software progress report**

Mr. Hawkes reported that they have started with the software process. They have the base accounts entered and will add the meter readings. He also hoped to incorporate the financial impact fees and historical data and have that close to finalized by the next meeting.

**11. Any items requested by visiting public**



There were no items from the visiting public.

**Closed Session**

MOTION: Board Member Bradford made a motion to convene in closed session for the purpose of discussing litigation. Mike Hughes seconded the motion.

VOTE: Unanimous in favor of the motion.

The Board of Trustees met in closed session to discuss litigation from 10:15 p.m. to 11:30 p.m. Those present included the Board of Trustees, Fred Smolka, Eric Hawkes, Jeremy Cook, Don Barnett, and Karen McLaws.

MOTION: Board Member Bradford made a motion to dismiss from closed session and to adjourn the meeting. Mike Hughes seconded the motion.

VOTE: Unanimous in favor of the motion.

The regular meeting of the Emigration Improvement District adjourned at 11:30 p.m.

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Minutes Approved