

EMIGRATION IMPROVEMENT DISTRICT

BOARD OF TRUSTEES REGULAR MEETING

THURSDAY, OCTOBER 15, 2015

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

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

Ex Officio: Eric Hawkes—Manager, Jeremy Cook—Legal Counsel, Joe Smolka—Project Manager

Chair Hughes called the meeting to order at 8:30 p.m.

1. Consent approval – Minutes for September 17, 2015

MOTION: Mark Stevens made a motion to approve the minutes of the September 17, 2015, Board of Trustees meeting as written. David Bradford seconded the motion.

VOTE: Unanimous in favor the motion.

2. Financial considerations and report

Mr. Hawkes reviewed the account balances and receivables. He reported that all State loans for this year have been paid, and the next payments will be due in June and September 2016. He noted that the financial report includes the operating income and expenses year to date. He explained that the District has reached the budgeted amount for utilities for the year, and that item will require a budget amendment at the next Board meeting.

3. Utah Association of Special Districts Conference November 4-6

Mr. Hawkes reported that Board Members Bradford and Hughes have signed up to attend the conference. He explained that a representative from the District has the opportunity to vote on initiatives that may be of interest to the District, but the Board will need to designate a representative for that purpose. Board Member Bradford agreed to be the designated representative, with Chair Hughes to serve as alternate.

MOTION: Mark Stevens made a motion to appoint David Bradford as the designated representative to the Utah Association of Special Districts and to appoint Mike Hughes as alternate representative. David Bradford seconded the motion.

VOTE: Unanimous in favor of the motion.

4. 2015 elections information and update

Mr. Hawkes stated that all registered voters should have received their ballots in the mail, and voters should contact Salt Lake County if they have not received a ballot. He explained that Salt

Lake County will continue to issue ballots for newly registered voters on a weekly basis and then on a daily basis the last week prior to the election. Fred Smolka commented that he understands the County will replace a ballot if it has been lost, but the voter should contact the County as soon as possible for a replacement.

Steve Hook asked if the results of the election would be available on election night or by the next day. Mr. Hawkes replied that, if the vote is not close, that information will be released on November 3, but the official certification of the election will not occur until two weeks later.

5. Cross connection

Mr. Hawkes recalled that one requirement from the sanitary survey was that the District implement a cross connection management and public awareness program. The public awareness information is on the website and was included in the newsletter. He will also work on putting together a flier. The remainder of the sanitary survey requirements should be completed before the end of November. Chair Hughes asked Mr. Hawkes to prepare a list of people who may have the potential for a cross connection problem for the November meeting.

6. Any items requested by visiting public

Steve Hook stated that the term “stakeholder” has been used with the flurry of information that has come out prior to the election. He asked for clarification of that term and stated that he understands Canyon residents are not shareholders in the EID. If the lawsuit were successful to the tune of \$2 million, he asked how that would affect EID customers. Mr. Cook replied that, assuming there were a \$2 million judgment against the EID, the District would have time to pay it. The customers would not be on the hook individually like a shareholder would be, but the District would be and would have to find a way to pay it. He stated that some representations have been made that there would be a settlement with the District, but he has no idea what that would be. If the District settles a case and has to pay money, all the customers of the District would have to pay that through their rates or some other means, because there is no other way for the District to generate money to pay for a settlement or judgment. Board Member Stevens stated that Mr. Tracy indicated in a meeting last week that he would settle the lawsuit with the EID and continue to sue individuals, but any amount that would be settled with the EID would have to be paid from the District’s water user fees or tax money. He stated that one of the most disturbing things about the lawsuit is that it really sues the citizens in the Canyon. Mr. Hook noted that the District’s financial report shows a cash balance of only \$200,000, and the EID’s other assets are pipe and tanks and real property. Mr. Cook explained that any judgment against the District would come from a significant rate increase to District customers. Kathy Christensen recalled that Mr. Tracy indicated he would take the land the EID owns in payment. Fred Smolka explained that the three parcels the EID owns have Utah Open Lands easements on them, so they can only be used for open space. Mr. Cook noted that land is important to the District as source protection areas. He stated that a future board could try to sell that land and deed it to Mr. Tracy so he could try to develop it, but that is unlikely. Board Member Stevens asked if the State would be involved in a decision to settle or if it would be by a vote of the

Board of Trustees. Mr. Cook explained that it would take a majority vote of the Board of Trustees and would have to be approved by the Department of Justice and the court.

Mr. Hook asked if Mr. Cook is aware of any entity that has a policy of settling litigation. Mr. Cook explained that public entities settle litigation all the time to avoid risk, but he has never seen a stated policy to settle litigation. Mr. Hook asked if Mr. Cook has ever seen shareholders involved in a vote to decide whether to settle litigation. Mr. Cook replied that he has not, and he has never seen a public entity go to a referendum to settle litigation. He believed it was absurd for someone to state that there would be a referendum of Canyon residents to settle litigation and was not sure it is even possible to do that.

Brian Usher noted that the amount the District is spending on legal fees is not a small amount and asked if the EID could foresee a situation in which they would settle the lawsuit so it would go away. Chair Hughes stated that he does not foresee this Board settling the lawsuit. He believes the claims are ridiculous and defensible and did not believe the Federal Government will pick up the case. Board Member Stevens commented that, if Mr. Tracy wanted to settle for \$10, they might consider it, but the District is not in a position to give away the public's money to someone who is not basing his accusations on facts. Mr. Usher stated that he would not support settling the lawsuit. Bob Staggers stated that he has not talked to anyone who is interested in settling, and people agree it is absurd.

Mr. Hook asked if the Board of Trustees is writing checks to the independent contractors to help them with this litigation. He stated that is a serious allegation people are making, and he would like to give the Board an opportunity to explain that. Mr. Cook replied that they are not. Mr. Hook confirmed with Mr. Cook that the EID has spent only that which they would spend on behalf of the EID if there were no other parties to the lawsuit. Mr. Cook explained that, legally, the District is required to defend the Trustees, but not the independent contractors. The only contractors his firm represents are Mr. Hawkes and Fred Smolka, but Mr. Smolka was a Trustee at the time of the initial loan, so he is entitled to some defense. He stated unequivocally that the EID has not spent anything extra to defend them than it has had to spend to defend the District, and if it got to the point that his firm had to file a motion specifically on their behalf, they would have to pay for it. He believes it is reasonable to defend them if it does not cost any more to defend them than it does to defend the District. The District also has not spent any additional money to defend the Trustees, because everything spent to date has been to defend the EID. Board Member Bradford commented that those allegations are the same as the allegations in the lawsuit, completely without merit.

Mr. Usher stated that he asked Trevor Irons about the lawsuit and what his intentions were, and he said they just want to settle the EID part. Mr. Usher was in the meeting last month where the Board answered where the money was coming from, but Mr. Irons is telling people that the Board is paying for the legal defenses of the contractors. Mr. Hook noted that some of the terms are being used interchangeably, but an independent contractor is not the same as a Trustee or management. Mr. Cook clarified that there is other misinformation, because people are saying the District does not have any employees, which is true. However, under the statute governing

the Trustees' right to have the District defend them, the definition of employees includes Trustees of the District. For IRS purposes, the District does not have any employees, but for purposes of the statute, the Trustees are defined as employees. Otherwise, everyone who does work for the District is an independent contractor for tax purposes. As far as the District is concerned, they will look at getting the District out of the lawsuit with a motion to dismiss, which will get everyone out of the case with no separate motions on behalf of any of the individuals named. If any of the individuals named wanted a motion filed separately on their behalf, they would have to pay for it.

Ms. Christensen stated that she feels Mr. Tracy filed the lawsuit to try to get money out of the District, even though the allegations are baseless, which is unfair, since the District and ultimately the residents have had to pay to defend this lawsuit rather than maintaining the water system. She would like to be able to get that money back from Mr. Tracy. Mr. Cook explained that they will try to get the District out of this lawsuit as quickly and with as little expense as possible. After that, they will look at trying to collect attorney's fees, but that is difficult to do, and they will have to assess the cost/benefit to the District of pursuing attorney's fees.

Mr. Stagers asked if the Board had considered expanding the Board to five members and asked how the District is actually governed. Mr. Cook stated that he would have to look at the original bylaws and how the District was initially set up. The County created the District in the 1960's through a resolution, and he would find that. He explained that the District is governed under that original governing ordinance and by the State Local District Act. Mr. Stagers was interested in having a five-member board, because he believed they could get a better cross-section of the community. If the Township is dissolved and they go to five districts in the Canyon, perhaps each district could have a representative on the EID Board. Chair Hughes explained that the District has a lot on its plate right now, but they will look into that. He offered to get Mr. Stagers a copy of the District's operating policies.

Fred Smolka commented that the Trustees have been accused of using District funds to send out letters regarding their candidacy. The Trustees confirmed that each paid for their own mailing. Joe Smolka noted that each of them used the same mailing company and used that company's bulk rate number, which may have added to the confusion.

Mark Stevens referred to a letter sent to the residents by Mr. Tracy stating that the Trustees are being paid \$414 per hour. He clarified that they receive \$414 per month for their time spent on behalf of the District. Some could argue that is too much, but the Trustees certainly do not receive over \$400 per hour. Mr. Stagers suggested that the Trustees keep a log of the time they spend on behalf of the District so people would realize how much time they actually put in on their behalf. He did not believe people understand how much time the Board puts in.

Mr. Hook stated that things are being said surrounding the election that, if the election goes a certain way, the Manager and independent contractors will be fired. He asked how the independent contractors feel about what is going on and what they are being put through. He asked if they could ever be replaced if they are let go. Chair Hughes stated that the contractors

realize how serious this is, but if a new board decides to fire everyone and there is a break in a water line in the middle of the night, they will have no resources to turn to. He does not think they have even thought that through, and it is a crazy idea. Mr. Hook stated that he did not see any incentive for current contractors to go through a transition to hand off information to new contractors, and there would be tremendous start-up costs for new contractors to come on board. He asked if that has been addressed. Board Member Bradford replied that this Board cannot prepare for stupid actions successive trustees might choose to take. The Trustees believe it would be ill advised for them to come in with no experience at running a water company and no institutional knowledge and then fire everyone who knows anything about the Canyon and how things operate. That would be the height of irresponsibility and stupidity. Chair Hughes explained that this is a complicated system to run. This is not a job someone can pick up in a couple of weeks, and they cannot hire someone new and expect them to operate the system. It takes a year or more to learn how to run the system, and the biggest mistake some of the candidates are making is that they do not realize what they are really taking on.

Mr. Staggers asked if there are provisions for removing Trustees from office. Mr. Cook replied that there is a provision under State constitutional law for removing trustees for malfeasance, but that is typically the only way to remove a trustee. He confirmed that would be adjudicated by a court. Board Member Stevens observed that this District could descend into a morass of legal action. Mr. Staggers expressed concern that the water system could collapse if certain people are elected and do what they have said they will do. Mr. Cook explained that an extremely high bar must be met to remove someone from office. Board Member Bradford noted that the District has spent years building relationships with the State organizations that provide funding, and operating the District in a way that would cause the State to lose trust in the District would be a serious problem and most regrettable, because the District will continue to need State funding in the future. Mr. Hook observed that the trust the District has built with the State includes the District's contractors.

Board Member Bradford commented that there is not much point in pondering hypotheticals about what might happen. They do not know what the outcome of the election will be or what the intention of certain candidates might be. Once they are in office, they may do something completely different from what they say. The fact that a couple of candidates are clearly involved with Mr. Tracy and his organization and that both they and Mr. Tracy have talked about settling the lawsuit with the District gives a good idea of how complicit they are in efforts to take resources out of the District.

Robert Avery referred to the budget and confirmed with the Board that the tax revenues will come in at the end of the year. He felt it was commendable that the maintenance and repairs item was so far below budget and asked if that is because the system has not needed it. He hoped it was not because money has not been spent on maintenance and repair because it was needed to defend the lawsuit. Mr. Hawkes responded that they have been very successful at having only minimal maintenance and repairs this year, and he hopes that will hold through the winter. He explained that, when they prepared the budget, they included funds to repair the Brigham Fork Well, and they have not spent that money this year. The well is usable on a

compromised basis but is not operating at the ideal level. Mr. Hook asked if the District will break even on a cash basis this year. Chair Hughes replied that he believed it would be close.

Joe Smolka asked for the Board's thoughts on the Brigham Fork Well. Chair Hughes described how the well was constructed and several things they believe may be causing problems with the well. It is still a great well, and they are able to get a lot of water out of it by pumping it on a more limited basis than before. He explained that they budgeted this year for exploratory work to find out exactly what the problem is, and they have postponed that. The District now has \$50,000 in legal fees that were unexpected, so the Board decided to use that money for legal fees to keep the budget in balance. They want to determine what is causing the problem with the well, but they do not have to do that immediately, and they can still operate the well as it is now.

7. Closed session – pending and imminent litigation

MOTION: David Bradford made a motion to convene in closed session to discuss pending and imminent litigation. Mark Stevens seconded the motion.

VOTE: Unanimous in favor of the motion.

The Board of Trustees met in closed session from 9:25 p.m. to 9:55 p.m. to discuss pending and imminent litigation.

MOTION: David Bradford made a motion to dismiss from closed session and to adjourn the regular meeting. Mark Stevens seconded the motion.

VOTE: Unanimous in favor of the motion.

The regular meeting of the Emigration Improvement District adjourned at 9:55 p.m.