



## SMSSD Board Meeting Minutes

Held September 12<sup>th</sup>, 2024, 6:00pm

Anchor Address: 22345 North 12720 East, Lot C-49, Fairview, UT 84629

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## SMSSD Board Meeting Minutes

Board Members in attendance on Zoom: Craig Godwin (J154), Don Hunter (J133,J134), Trent Andersen (Section E lots), Beca Mark (GC46), and Ferris Taylor (K35)

Staff: Roy Fox (C49, C50), Water Superintendent and SMSSD Treasurer

SMSSD Customers on Zoom (some with spouses or others): Beca Mark (Host – GC46), J. Craig Smith (Smith Hartvigsen – SMSSD Legal Counsel), iPhone (?), Gary Knudsen (GC31), Jacki (?), Jake Blaney (C13), Kevin Hoskins (?), Richard Scutt (C58), Sidney’s iPhone (? – maybe M77), Terrie Richins (G22, G23), Terry Behunin (K18, K18, K20), Trent Taylor (D46, D47), Johnny Barnes (K7, K8, K9, K10)

The meeting was called to order at 6:00 PM by Board Chair Craig Godwin with a welcome to the SMSSD Board members and SMSSD customers on Zoom and a “thank you” for joining.

Invocation: Ferris Taylor

## Meeting Agenda in Bold

### **1. Approval of last SMSSD Board meeting minutes from 8-14-2024**

- a. All had received the draft of the minutes and were asked if there were any changes or corrections.
- b. Two recommended changes were made Jay Springer, SMSSD’s Legal Counsel
  - i. In Section 3(b), delete the words that Smith Hartvigsen is “SMSSD’s law firm” and clarify that Smith Hartvigsen, PLLC, is SMSSD’s Legal Counsel
  - ii. In Section 3(C)(ii), remove “and cannot” as it defines Utah Code.
  - iii. Jay’s email on the minutes and the Bylaws recommended paring down statements about the Utah Code. The Code stands by itself, so it can be

quoted, but he cautioned that SMSSD shy away from anything that might be construed as an attempt to interpret the Utah Code.

- iv. Jay also confirmed that the Bylaw changes made after the last meeting, per the August 14th, 2024 minutes, were within the scope of permitted changes, do not conflict with Utah State law, and generally were made for clarification rather than modifying or changing any policies or actions.
- c. The motion to approve the August 14, 2024, Board minutes, with the changes, was made by Beca Mark, seconded by Don Hunter, and approved by the Board.
- d. The SMSSD BOD Minutes of August 14, 2024, stand Approved and will be posted.

## **2. SMSSD Bylaws Review and Approval**

- a. Chair Craig Godwin shared background to give perspective on the Bylaws project
  - i. In April Kevin Daniels, the Sanpete County Attorney, gave SMSSD an assignment to create a document entitled Bylaws to help the County and others to have all information on SMSSD in one document.
  - ii. He asked SMSSD to make sure that everything is in the Bylaws representing everything that has transpired, document what is current, and to have in one place what was superseded and what had been approved to this point.
  - iii. This has been underway since the SMSSD Executive Meeting in April, so there is a lot of information, many things have been looked at, and talked about, as noted in prior Board minutes. In the August in-person public meeting, lots of questions were asked and answered, both by the Board and by Jay Springer, SMSSD's legal counsel, to further reference Utah Code.
  - iv. Legal counsel has advised the SMSSD Board on Bylaws from the beginning.
  - v. In the August 14<sup>th</sup> meeting, a motion was made and approved to share the draft Bylaws with SMSSD customers and SMR members for feedback and request any documents, references, or regulations that were missing.
  - vi. The Bylaws for review tonight (September 16, 2024) by the Board include the changes discussed on August 14<sup>th</sup>, the feedback received, and additional reviews and discussions with Smith Hartvigsen, to assure that the Bylaws are legally and statutorily sound and comply with legal counsel.
  - vii. Finally, as stated last month, SSDs are not required to have Bylaws, but this is a request by Sanpete County for the County and customers to have SMSSD internal operating procedures and policies that tell how SMSSD does things, shows the SMSSD Board how to handle everything, and to be an internal guide for all interested parties.

- b. Trent Andersen shared that a hot topic for the SMR Board and some members is still the boundaries of the SMSSD. It doesn't look like that language has been changed and that SMSSD is still looking at possible expansion of the District outside of the boundaries of the Resort. Not attorneys, but the SMR Board thought is that the language conflicts with the contract with SMSSD when they (SMR) gave SMSSD their water rights.
- i. Craig Godwin reminded the Board that this was discussed last month, and the August 14<sup>th</sup> minutes were changed because of legal counsel. Verbiage in the Bylaws the SMR Board wants would be in opposition to State law.
  - ii. Criag Smith was asked to speak and provided extensive insight.
    1. If desired, SMSSD doesn't even have to address the boundary question, as it is controlled by State Law. If you adopt Bylaws saying you are never going to change your boundaries, you can't enforce it because controlling State Laws says you can.
    2. Craig Smith pointed out that SMSSD already serves owners outside of SMR boundaries and the SMSSD historical boundaries have dedicated water rights which SMSSD operates. Therefore, nothing will be taken away from any of the existing SMSSD customers with the Bylaws. The current water rights are tied to the current service areas, which is typical for municipalities as well as SSDs in Utah. Any new area will build their own infrastructure and brings their own water rights.
    3. He shared that the option is to let whatever happens outside current boundaries happen and not consider it. Often trying to control boundaries can backfire, as people figure out other ways to get water because economics tells them to do it. You can spend time and money in battles with your neighbors as to whether there are problems with the water rights if they use too much or if your wells are not producing. You end up with adversaries around you who put in their own wells and start pumping water. Then you have to go to court to try to prove they are taking your water. Sometimes it is better to have your neighbors be "inside the tent other than outside the tent."
    4. Smith Hartvigsen, as SMSSD's legal counsel, can't make that judgment call, but Craig Smith shared examples where battles took place where it could have been better to absorb them and have them

be part of the District. There are just different ways to deal with the boundaries question, but it is a judgment call for the SMSSD Board.

- iii. Jake Blaney in chat challenged one of Craig Smith's examples by saying that we are not trying to become Park City. The growth of the area doesn't justify the language in the Bylaws. It is still Jake's belief that SMSSD was created solely to create, maintain, and support a water system in Skyline Mountain Resort, per the Water Rights Deed. He said State law gives guidelines that can be adhered to as a baseline and that SMSSD can observe a higher standard of rules with more restrictions in place. Also, if SMSSD doesn't have guidance on something not written in the documents, the State has a guideline that can be adhered to in place of the absence of the item.
  - iv. Beca Mark concurred with legal counsel and asked why we would put something in the Bylaws that would be against State Law. That just makes no sense.
  - v. Craig Godwin stated that SMSSD has operated with policies and procedures and abided by Utah Code and the State Auditors Little Manual for Special Service Districts, including the consideration of boundary changes. The Bylaw discussions have confirmed Utah Code and has also given the SMSSD Board members input on what would be best stated in the Bylaws.
- c. Trent Andersen also asked why these are "Amended and Restated Bylaws." Are we telling our customers that we've never had bylaws, and these are new... or are we telling customers that we are changing old bylaws? Are there existing bylaws, as one of the big concerns at our last meeting was the language that these Bylaws are being created, redrafted, or amended, and supersede all other documents.
- i. Criag Godwin responded that to our knowledge there were never bylaws created. As the longest serving SMSSD Board member Craig said he knows of no bylaws because SMSSD operates under policies and procedures.
    - 1. Craig pointed out that everything in the Bylaws is what SMSSD has been doing for many years. He doesn't think there is anything in the Bylaws that is different than what we have been operating on for years, so the information in the Bylaws isn't brand new.
    - 2. Even though the State does not require Special Service Districts to have Bylaws, Kevin Daniels and the Sanpete County Commissioners have asked that Bylaws be created. Words with reference to "updating by-laws" have been used by County Commissioners and

others in the past. Their reference was to updating policies, procedures, processes, rules, or regulations, all of which SMSSD has had and has updated when approved by the SMSSD Board.

3. The language for the title of the Bylaws was strongly recommended by legal counsel and is needed to state that the Bylaws represent all that SMSSD has been doing as updated since it was formed in 1998.
- ii. Jake Blaney in chat stated that Craig Godwin has said SMSSD has Bylaws. To quote Jake, it “was in the March 19<sup>th</sup> 2024 in the audio recording it starts at 1:49:00 where Criag says we have bylaws. The Commissioners’ motion was to table appointment of board members until bylaws were produced at min 1:53:00.”
  - iii. Ferris Taylor responded that he was in that meeting, as Jake said in chat, but Criag Godwin said he didn’t know if he could “produce” them because he and Roy had searched and searched and had not found any document that said bylaws were there.
    1. Ferris pointed out that the March 19, 2024, County Commissioners minutes are included in the Bylaws and state “Mr. Godwin does not know if he can produce the by-laws at this time. The discussion continues regarding the board member recommendations from both boards. Commissioner Bartholomew states he feels the by-laws need to be produced for the SMR to review as well as Kevin Daniels and to table the action until that time. Roy Fox will do his best to locate the documents specifying the board member selection. Motion is made by Commissioner Collard to table the appointment of the two board members ” It was noted that those Board appointments were made on April 16, 2024, without bylaws being found.
    2. Ferris Taylor added that the Bylaws are not modifying State Law nor overriding County Commissioner decisions or minutes that have been recorded in the past or changing any of the organizing documents.
    3. As for superseding language, the Water License Agreement was signed in 2012, and the Water System Operating Agreement was signed in 2013 in negotiations to get the SMR Subdivision approved. The language is in the Operating Agreement that states it “supersedes, terminates, and/or consolidates all prior agreements and negotiations concerning the matters addressed herein.”

4. Those originating documents and others, which are appendices to the Bylaws, were absolutely required by the State and the County as conditions in order to get SMR approved as a subdivision and to get SMR properties deeded. Up until late 2014, there was no deeded property ownership. SMSSD has asked since April for the SMR Board or any customers or SMR members to provide any documents or information that needed to be included in these Bylaws.
- d. Trent Andersen also asked for clarification from the last Board meeting concerning SMR having an evaluation of the Birch Creek Irrigation Company Water Shares done. The SMR Board has some “grave concerns” about the Special Service District needing or wanting that information or if that is still the direction. Is SMSSD intending and trying to claim right to the SMR’s irrigation shares?
    - i. After much discussion between Trent Andersen, Ferris Taylor, who raised the suggestion in the last meeting, and others, it was clarified that in order to get the SMR subdivision approved as having “sufficient water to meet state standards,” more than the SMSSD deeded 222.85 acre-feet of Water Rights were required. SMR’s 55.5 (or 58.5) acre-feet of Water Shares were included to meet State Standards. SMSSD had an “Evaluation of Water Rights” done to assure proven beneficial use protection out through 2059.
      - a. Trent Andersen asked that in approving these minutes, this statement be added - “I do not and did not say the irrigation shares that SMR controls are not and were not considered in the approval process of the deeds. I have not seen any records of that and we use all of those shares.”
      - b. These minutes were approved with the added statement.
    - ii. Where a hot topic is building permits based on water rights and shares, it is to the benefit of SMR’s members to do a similar evaluation of SMR’s Birch Creek Irrigation Company water shares. There was no intent for SMSSD to claim right to those irrigation shares as they are managed by Birch Creek.
    - iii. When pressed, it had been mentioned by Kim Hansen that some notice had been received that beneficial use of water needed to be “”proven within a few years. As SMSSD knows the 222.85 Water Rights are protected, it would be important, as an SMR member, to be assured that the Birch Creek Irrigation Water Shares have proven beneficial use and are also protected. That desire is as an SMR property owner, not as an SMSSD Board member.

- iv. Trent Andersen concluded by saying he was just trying to relay the concerns about these bylaws and the language in there where he is sitting in the hot seat trying to balance the issues between the two boards. The SMR Board has some big concerns about these Bylaws.
  1. He said he had the answer on the “amended” language – there have never been bylaws before.
  2. And there are big concerns about the language that these bylaws terminate and supersede other documents, which seems to be something to be very careful of.
  3. Trent wanted to make sure that he is “relaying the concerns of the SMR Board and some of the members as my duties as the liaison.”
- e. Craig Godwin asked if there were any additional Board questions on the Bylaws. He acknowledged that Beca did not see any other comments or hands raised in chat. He stated that the SMSSD Board needed to decide if they were going to move forward with these Bylaws because SMSSD promised the County Attorney who looked him in the face at the meeting SMSSD was in and said “Go forward and get these Bylaws Passed.”
  - i. Beca Mark made a motion that the Board approve the “Amended and Restated Bylaws of Skyline Mountain Special Service District dated September 12, 2024.”
  - ii. Don Hunter seconded the motion.
  - iii. Craig Godwin called for a voice vote by each SMSSD Board Member:
    1. Ferris Taylor – Yes
    2. Don Hunter – Yes
    3. Beca Mark – Yes
    4. Craig Godwin – Yes
    5. Trent Andersen – Abstained. He stated he “thinks some of the SMR Board members and members are just uncomfortable with some of the language. But I’m sure you have enough to pass it, and we can move forward.”
3. Craig Godwin expressed appreciation for the discussions among the Board and with SMSSD customers, especially over the last couple of months to get this step completed.
  - a. He will get a copy of the Bylaws as they are written and approved to the County Attorney and will be inviting him, as was done with the Draft of the Bylaws back on August 18<sup>th</sup>, and to make any comments, or any changes, or any suggestions.
4. Impact Fee Letter from Smith Hartvigsen

- a. Craig Godwin read a letter from Smith Hartvigsen, as SMSSD Legal Counsel, that was requested in previous SMSSD Board meetings by Trent Andersen. It is a Statement of Clarification on Fees of the Skyline Mountain Special Service District with specific statements with respect to the Impact Fee Resolution language.
- b. See the link on [www.smssdutah.com](http://www.smssdutah.com) for the Letter.
- c. Trent Andersen asked for a copy of the chart that is included in the letter, which is directly from the SMSSD Impact Fee Study. That chart and the letter will be emailed to all SMSSD Board members and will be available on the SMSSD website.

#### **5. Update on Water System**

- a. Craig Godwin stated that today (September 12, 2024) was a good day as the contractors poured the concrete walls on the Thad's Peak storage tank and will be pouring the lid next week. The tank should actually be in place in 10 days or a little more. Then all the plumbing and all the other work will be taking place between the tank and the new fill station.
- b. So, the Thad's Peak project is nearing completion, and we should be in good shape to get it installed before we get to winter weather.
- c. Roy Fox stated that about half the piping in, so it is moving forward rapidly.
- d. The Thad's Peak project will be a great asset, not only to those that are using water up there, but also due to the fact that we'll have a 30,000-gallon tank to be able to put water into brush trucks and other means to fight fires on the mountain or any other place that water is needed for fighting fires.

#### **6. Request for Approval of Booster Pump and Motor - New vs. Rebuild**

- a. Roy updated that the new Booster Pump and Motor has been installed but it took 2 months for it to be delivered. It had been requested in a previous SMSSD meeting that SMSSD rebuild the old pump to have a pump onsite as a backup.
- b. The cost to rebuild the old pump is \$9,267.40.
- c. The cost of a new pump is \$10,979.40
- d. Roy is recommending that SMSSD buy the new pump, given comparable cost, the risks of a rebuild, and the existence of a warranty on a new pump.
- e. Don Hunter agreed. In doing a rebuild, they typically are not changing out a lot of the components. You are going to have a lot of used components and are going to have to start buying and changing 3 or 4 components on the rebuild. You will end up being very close to the price of a new pump. There are always some other things that could go wrong that would be covered by a new pump warranty.
- f. Don recommended the new pump, but suggested, and Roy agreed, that SMSSD keep the core as there are going to be usable parts on that core.



- g. Trent Andersen made a motion that the Board approve the purchase of a new booster pump in the amount of \$10,979.40. The motion was seconded by Ferris Taylor and the SMSSD Board approved the motion unanimously.

**7. SMSSD Board Action Items from Previous Meeting on August 14, 2024 for Follow up:**

- a. Roy Fox to resend Trent Andersen the matching of SMR billing with SMSSD billing
  - i. That information was emailed. As a State Agency, specific customer information is not to be shared outside of the SMSSD Board.
- b. Craig Godwin to send the Draft of SMSSD Bylaws to County Attorney, Kevin Daniels
  - i. As noted earlier, a draft of the Bylaws was sent to the County Attorney on August 18, 2024, and receipt was acknowledged by Kevin Daniels.
- c. Finalize Draft of SMSSD Bylaws from meeting for web-blast to customers for feedback
  - i. A SMSSD web-blast went to all customers on August 16, 2024, with a link to the Draft of the Bylaws and instructions on how to provide feedback.
- d. SMR to also send an eblast to SMR members to provide feedback on Draft of Bylaws.
  - i. Trent Andersen stated that Jake Blaney sent out an SMR eblast.
  - ii. Jake also sent out an eblast on this SMSSD Board Meeting on the Bylaws.
  - iii. Trent's comments were that 15 days wasn't much time for feedback. The SMR Board position was that it would have been nice to run it by an attorney to add some good input. He stated that he had "given you (the SMSSD Board) the concerns that we (the SMR Board) really had with that little report earlier, so just not to get back into it."
  - iv. Ferris commented that SMSSD did receive a letter from the SMR Board, but there were no documents or references to things to add to the Bylaws. The SMR Board letter was reviewed by legal counsel and the advice was that SMSSD had provided the opportunity for feedback and should consider what was received. As the SMSSD Board has discussed, if the suggestions don't fit with State law, they won't be incorporated into the final Bylaws.
- e. SMR Board to provide promised resolution language for County Commissioners
  - i. Trent Andersen asked for more information on the resolution and whether it was the Impact Fee Resolution or on building permits to water shares?
  - ii. Craig Godwin explained that the resolution was on what had been agreed to in the March 5<sup>th</sup> combined meeting of both boards, which was primarily with respect to building permits and water shares.

- iii. Craig emphasized that SMSSD needs to get the SMR Board's input so SMSSD can get it on to the Kevin Daniels for County Commissioner consideration.
- iv. Trent asked that a new copy of the resolution be sent to him so that it is at the top of his email for SMR Board review.
- f. Craig Godwin to follow up with Craig Smith on any clarifications on Impact Fee language with respect to Habitable Structure and/or when fees are imposed
  - i. In Craig's follow-up call, a letter was requested, and the full content of the response from Smith Hartvigsen was shared in this Board Meeting.
- g. Request that Trent Andersen and SMR Board provide an "Evaluation of Birch Creek Irrigation Company Water Shares held by SMR" similar to the Water Rights Report
  - i. This has already been discussed in this meeting, clarified, and confirmed.
- h. Trent Andersen and the SMR team to add to SMR Construction Approval Form appropriate language on Impact Fee and SMSSD Will-Serve letters to the County.
  - i. Trent asked for clarification on the request.
  - ii. Craig explained that the request was that property owners know when they are requesting approval for SMR construction plans that they know they will need a "will-serve" letter from SMSSD and have paid their impact fee before SMR sends them off to get a building permit from Sanpete County.
  - iii. Language was provided in the August 14<sup>th</sup> meeting to include the SMSSD requirements in the Construction Form (see the Board minutes), so SMR members will realize they have SMSSD Impact Fee requirements.
  - iv. Trent expressed that SMR will need to make sure that members realize it is not for a shed, a building, or a garage. It is only for a habitable building.
  - v. SMR will see if they need two different HOA approval forms so people "don't lose their marbles." In addition, Trent thinks the County put that on their application so that people know ahead of time the items they will need before they try to submit plans.
  - vi. Whichever way, Craig Godwin said SMSSD is trying to avoid the same thing as SMSSD knows how frustrated customers can be when they show up at the County, and they are told they can't get a building permit because they don't have an SMSSD "will-serve" letter.
  - vii. Having something on the Construction Form eliminates that because they will know right up front they have to comply and get a letter from SMSSD.
- i. Complete any Outstanding Training including the Open and Public Meeting Act

- i. Craig mentioned that the training helps all Board members know the Open and Public Meeting processes and is part of the SMSSD Annual State Audit, so we don't want to get dinged for any of our Board being delinquent.
- ii. It is believed that all required training has now been completed, as Trent confirmed he completed his Open and Public Meeting training and Don Hunter, the SMSSD Records Officer, confirmed he has completed his annual Government Records Access and Management Act (GRAMA) training.
- iii. Another check on training and form filing should be made before year-end to be sure everything is complete for 2024 and in place on time for 2024.

#### **8. Report from SMSSD-SMR Liaison**

- a. Trent Andersen said he gave the SMR Board Liaison report earlier through the Bylaws discussion so his report was addressed there.
- b. Trent shared that SMR just had their Board Meeting Tuesday and in their work session he reached out if anyone had any items for the liaison. It was basically the Birch Creek water shares. They wanted to determine what the intent was there. So, all concerns from the SMR Board have been shared and discussed.
- c. Trent asked that the Resolution for the County Commissioners be re-sent to him.

#### **9. New/Old Business**

- a. Roy Fox updated the Board that two new sub-accounts (that are CDs) have been set up to accumulate funds in interest bearing accounts for the debt service of the State Drinking Water Board Bond and for SMSSD capital facilities.
- b. It was discussed that these CDs make sure money is set aside and protected.
- c. Craig Godwin added that these are requirements for the financing of the restructured State Bond and for SMSSD capital projects. These new CD accounts will be part of the SMSSD State Audit every year to assure the money is in those accounts and the accounts are earning interest – at this point 4.4% interest.
- d. This requirement is applied to every municipality and every SSD that borrows money through the State Drinking Water Board or received capital funds and is required in order to assure the Service Districts remain solvent.
- e. Roy also asked, where this has been a virtual Board meeting, if the Board wanted him to print the packet of materials that have been discussed or if the Board wants to access the documents and/or print them off the SMSSD Website.
- f. Trent Andersen asked Roy to email the packet to him, so it is just easier. Roy said he can but it may take him a few days to put the electronic packet together.
- g. To close, Craig Godwin asked those customers who have been attending via Zoom if there were any hands up for comments before we conclude.

- h. Jake Blaney stated that he had made his comment to Ferris in chat. His comment was that it was stated that there were no bylaws before and then in that County Commissioners Meeting Craig Godwin stated that there were bylaws, and then the Commissioners told him to produce them. Jake just wanted to make it clear for the record that when we were discussing the Amended and Restated section, that is what generated that particular comment. Jake feels that the County Commissioners minutes do not reflect the recording, but that is okay. It is in the recording and the Commissioner's motion is clear in his mind.
- i. The discussion has been noted in the minutes and it was expressed that "Let's move forward."

#### **10. Executive Meeting – Not needed**

Craig Godwin thanked everyone for their attendance and their contributions and closed by saying "We will press forward to get the project on the Mountain and the other things discussed and decided completed. Thank you all for being here." He requested a motion to adjourn.

**The SMSSD Board Meeting Motion to Adjourn** was made by Don Hunter, seconded by Beca Mark and approved by the Board at 7:20 PM.

Next SMSSD Meeting: TBD, but probably in a month or so for Thad's Peak Project Update and other agenda items.