

The Regular Meeting of the
Brian Head Town Council
Acting as the Governing Body of the
Brian Head Special Service District
Town Hall - 56 North Highway 143
Brian Head, UT 84719
MONDAY, FEBRUARY 26, 2018 @ 1:00 PM

AGENDA

- A. CALL TO ORDER**
- B. PLEDGE OF ALLEGIANCE**
- C. DISCLOSURES**
- D. PRESENTATION OF LETTER FROM GOVERNOR HERBERT TO H.C. "DUTCH" DEUTSHCLANDER FOR YEARS OF SERVICE – Mayor Calloway; PLAQUE FOR COUNCIL MEMBER WILSON – Mayor Calloway; CERTIFICATES FOR 2017 BRIANHEAD FIRE – Chief Dan Benson**
- E. PUBLIC INPUT/ REPORTS (Limited to three (3) minutes) Non-Agenda Items**
- F. APPROVAL OF THE MINUTES:**
 - 1. February 12, 2018 Town Council Minutes.
 - 2. February 12, 2018 Town Council Closed Session Minutes
- G. AGENDA ITEMS:**
 - 1. MAYOR PRO TEM RESOLUTION.** Nancy Leigh, Town Clerk. The Council will consider a resolution appointing a Mayor Pro Tem to serve in the absence of the Mayor.
 - 2. 2017 MUNICIPAL WASTEWATER PLANNING PROGRAM RESOLUTION.** Shane Williamson, Public Works Director. The Council will consider a resolution adopting the 2017 Municipal Wastewater Planning Program.

SPECIAL SERVICE DISTRICT

- 1. RESOLUTION AUTHORIZING A WATER LEASE AGREEMENT.** Nancy Leigh, District Clerk. The Board will consider a resolution authorizing a water lease agreement with Robert Brothers Dairy for the 2018 irrigation season.

H. ADJOURNMENT

Date: February 22, 2018

Available to Board Members as per Resolution No. 347 authorizes public bodies, including the Town, to establish written procedures governing the calling and holding of electronic meetings at which one or more members of the Council may participate by means of a telephonic or telecommunications conference. In compliance with the Americans with Disabilities Act, persons needing auxiliary communications aids and services for this meeting should call Brian Head Town Hall @ (435) 677-2029 at least three days in advance of the meeting.

CERTIFICATE OF POSTING

I hereby certify that I have posted copies of this agenda in three public and conspicuous places within the Town Limits of Brian Head; to wit, Town Hall, Post Office and The Mall on this 22nd day of February 2018 and have posted such copy on the Utah Meeting Notice Website and have caused a copy of this notice to be delivered to the Daily Spectrum, a newspaper of general circulation.

Nancy Leigh, Town Clerk





STAFF REPORT TO THE TOWN COUNCIL

SUBJECT: Mayor Pro Tem Resolution
AUTHOR: Nancy Leigh, Town Clerk
DEPARTMENT: Administration
DATE: February 26, 2017
TYPE OF ITEM: Legislative Action

SUMMARY:

The Council will appoint a Mayor Pro Tem to serve in the absence of the Mayor by resolution.

BACKGROUND:

In January 2016, the Council appointed then Council Member Calloway as Mayor Pro Tem to serve in the absence of Mayor Deuschlander. With the 2017 election, Mayor Calloway became Mayor and this position became vacant.

ANALYSIS:

With the change in the Mayor seat, the Council will need to decide on who will act as Mayor Pro Tem in the absence of the Mayor. There is no term to this position; it is until the Council adopts another resolution changing the Mayor Pro Tem.

Mayor Pro Tem would be responsible to chair the meetings if the Mayor is unable to attend the meeting. They would serve during the Mayor's absence, disability or refusal to act.

FINANCIAL IMPLICATIONS:

N/A

BOARD/COMMISSION RECOMMENDATION:

N/A

STAFF RECOMMENDATION:

Staff does not have a recommendation for this item.

PROPOSED MOTION:

I move to adopt resolution No. 468, a resolution appointing _____ as Mayor pro tem to serve in the absence of the Mayor.

ATTACHMENTS:

A – Mayor Pro Tem Resolution



BRIAN HEAD TOWN

RESOLUTION NO. _____

**A RESOLUTION OF THE GOVERNING BODY OF BRIAN HEAD TOWN
APPOINTING A MAYOR PRO TEM.**

WHEREAS, the Town Council has determined it to be in the best interests of the Town to appoint a Mayor pro tem to serve during the Mayor’s absence, disability or refusal to act; and

WHEREAS, the Town Council has met in regular session to consider this selection.

NOW, THEREFORE, BE IT RESOLVED, by the governing body of Brian Head Town as follows:

The Brian Head Town Council does hereby consents to the appointment of Council Member _____ to the office of Mayor Pro Tem, until a successor is appointed.

This resolution shall take effect immediately upon passage.

This Resolution was made, voted upon and passed by Brian Head Town Council at its meeting on the _____ of February 2018 by the following vote of its members:

Town Council Vote:

| | | |
|-------------------------------|----------|----------|
| Mayor Clayton Calloway | Aye_____ | Nay_____ |
| Council Member Lynn Mulder | Aye_____ | Nay_____ |
| Council Member Larry Freeberg | Aye_____ | Nay_____ |
| Council Member Reece Wilson | Aye_____ | Nay_____ |
| Council Member Shad Hunter | Aye_____ | Nay_____ |

Dated this _____ day of February 2018

BRIAN HEAD TOWN

Attest:

Clayton Calloway, Mayor

Nancy Leigh, Town Clerk



STAFF REPORT TO THE TOWN COUNCIL

SUBJECT: 2017 Municipal Wastewater Planning Program (MWPP)
AUTHOR: Shane Williamson
DEPARTMENT: Public Works
DATE: February 26, 2018
TYPE OF ITEM: Legislative Action

SUMMARY:

The Council will consider a resolution adopting the Town's 2017 MWPP Annual Report.

BACKGROUND:

At the end of each year, the Division of Water Quality distributes the MWPP survey to over 200 municipalities and districts. These utilities compile the necessary financial, operations, performance, and compliance information requested and report their completed surveys to their governing council or board for adoption by resolution, and then submit the report to the Utah Department of Environmental Quality (DEQ).

ANALYSIS:

The MWPP uses an annual survey (attached) to assist owners of municipal sewerage systems and wastewater treatment works in evaluating and summarizing the technical, operational, and financial conditions of and requirements for these facilities. The purpose of MWPP is to help communities understand these business operations better and to help identify and resolve potential problem areas before they become serious and costly. The report is due by April 16, 2018, so we are far ahead of the deadline.

The DEQ uses the results from the MWPP in its permitting and assistance programs, including:

- Utah Sewer Management Program Annual Report
- Utah Wastewater Operator Certification Program
- Wastewater Financial Assistance Program
- Water Quality Board Financial Sustainability Assessments
- Financial Needs Report to EPA and Congress

As can be noted in the attached survey/report, Brian Head Town's Wastewater System is in acceptable condition in terms of its technical, operational, and financial attributes. However, this report and accompanying resolution approval are critical in the Town being qualified to receive financial assistance (grants, loans, etc....) from DEQ.

FINANCIAL IMPLICATIONS:

N/A

BOARD/COMMISSION RECOMMENDATION:

N/A

STAFF RECOMMENDATION:

Staff recommends that Council adopt the attached resolution approving Brian Head Town's 2017 MWPP Report.

PROPOSED MOTION:

I move to adopt resolution number 469 approving Brian Head Town's 2017 Municipal Wastewater Planning Program Report as presented.

ATTACHMENTS:

A – Resolution

B –2017 MWPP Report



BRIAN HEAD TOWN

RESOLUTION NO. _____

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF BRIAN HEAD, UTAH, APPROVING THE BRIAN HEAD MUNICIPAL WASTEWATER PLANNING PROGRAM FOR 2017.

WHEREAS, the Utah Department of Environmental Quality requires each municipality in the State of Utah to identify a wastewater planning program report annually; and

WHEREAS, In an effort to help communities understand the business operations better and to help identify and resolve potential problem areas before they become serious and costly, a Municipal Wastewater Planning Program is identified; and

WHEREAS, Brian Head Town has reviewed and updated the town's Sanitary Sewer Management Plan; and

WHEREAS, the Brian Head Town Council determines it is in the best interest for the health, safety and welfare of its citizen to adopt this resolution approving the Brian Head Wastewater Planning Program for 2017.

NOW THEREFORE BE IT RESOLVED by the Town Council of Brian Head, Iron County, State of Utah, that the attached Municipal Wastewater Planning Program Report for 2017 has been reviewed and Brian Head Town has taken all appropriate actions necessary to maintain effluent requirements contained in the UPDES Permit (if applicable).

APPROVED BY THE TOWN COUNCIL OF BRIAN HEAD, UTAH, ON THIS _____ DAY OF FEBRUARY 2018 BY THE FOLLOWING VOTE:

Vote:

| | | |
|-------------------------------|----------|----------|
| Mayor Clayton Calloway | Aye_____ | Nay_____ |
| Council Member Shad Hunter | Aye_____ | Nay_____ |
| Council Member Larry Freeberg | Aye_____ | Nay_____ |
| Council Member Lynn Mulder | Aye_____ | Nay_____ |
| Council Member Reece Wilson | Aye_____ | Nay_____ |

Brian Head Town

Attest:

Clayton Calloway, Mayor

Nancy Leigh, Town Clerk

(SEAL)



Municipal Wastewater Planning Program (MWPP) Annual Report 2017

Please Select the Appropriate Facility from the Dropdown Menu

| | |
|-----------------------------------|---|
| Facility Name: | BRIAN HEAD |
| Facility Class and Grade | COLLECTION I - - |
| Owner Name: | Brian Head Town |
| Name and Title of Contact Person: | Shane Williamson Public Works Director |
| Phone: | (435)677-2029 |
| E-mail: | scwilliamson@bhtown.utah.gov |

SUBMIT BY APRIL 16, 2018

Electronic Submittal:
<https://deq.utah.gov/ProgramsServices/services/submissions/index.htm>

NOTE: This questionnaire has been compiled for your benefit to assist you in evaluating the technical and financial needs of your wastewater systems. If you received financial assistance from the Water Quality Board, annual submittal of this report is a condition of that assistance. Please answer questions as accurately as possible to give you the best evaluation of your facility. If you need assistance please call Beth or Judy, Utah Division of Water Quality: (801) 536-4300.

Definitions

I. Definitions: The following terms and definitions will help you complete the worksheets and questionnaire:

- ¹**Asset Management** – Any combination of management tools applied to physical assets of the sewer system with the objective of providing the required level of service in the most cost-effective manner. It incorporates asset lifecycle management tools, including depreciation, with the accountant's cost allocation process.
- ²**Capital Facility Plan** – An engineering report detailing the planning procedures including a comprehensive analysis to establish the need, scope, basis, viability and implementation schedule of proposed sewer system projects.
- ³**Capital Improvements** - Addition of a permanent structural change or the restoration of a property that renews or improves its value, increases its useful life, or adapts it to new uses.
- ⁴**Capital Improvement Reserve Fund** - A fund or account established for capital improvement projects.
- ⁵**Debt Service** – A payment of interest and principal, usually due annually, made in repayment of a loan or bond obligation.
- ⁶**Debt Service Reserve Fund** - A fund or account established for use in making up deficiencies in bond repayment funds.
- ⁷**Equivalent Residential Connection (ERC)** - A unit of wastewater that incurs the same cost for operations and maintenance as the average volume of domestic waste discharged from a single family residence in the sewer system service area
- ⁸**Impact Fee** – A fee established by ordinance to be imposed on new development for payment of capital costs associated with providing public services to the new development.
- ⁹**Operation and Maintenance Costs** - The total annual cost for management, operations and maintenance of sewer systems including labor and benefits, general and administrative overhead, materials, supplies, utilities, fuel, tools, etc. These costs do not include capital improvements costs or debt service. Repair and replacement costs for fixed assets may be included.
- ¹⁰**Plan of Operations** – A plan summarizing the operational and financial requirements that the sewer system must meet to achieve its goals and purpose. The minimum requirements are established I UAC R137-3-1.8
- ¹¹**Rate Study** – A study that establishes the user charge(s) of a sewer system based on the required level of service and its cost.
- ¹²**Repair and Replacement Costs** - The annual cost to renew or replace fixed assets of the sewer system. Fixed assets are generally land, buildings and equipment. These are often major major costs not included in operations and maintenance budgets.
- ¹³**Repair and Replacement Sinking Fund** - A fund or account established for renewal or replacement of fixed assets.
- ¹⁴**Sewer Revenues** - Income from user charges and other fees or taxes collected to pay the cost of sewer systems.
- ¹⁵**Sewer System** - The collective of sewerage systems and treatment works operated by the public utility or sponsor.
- ¹⁶**User Charge** - A fee established by ordinance and used to pay the cost of sewer systems. Different fees may be established for one or more classes of users. For purposes of this survey, user charge means the annual average fee charges per sewer connection.

Instructions

Save this file to your local computer. The digital MWPP form is built in Microsoft excel. Please contact Beth or Judy if you cannot find your facility name or having trouble downloading your digital MWPP form. You will need to fill all the yellow boxes with the appropriate information. Several of the questions are Yes/No questions that require you to select the yellow cell and then click the small arrow drop down button to be able to select the appropriate answer. You may move through the worksheet by simply pressing tab to move from box to box. Hitting Enter within the form may cause you to skip over questions. Please be sure to verify that all yellow boxes have been filled with the appropriate information. Begin filling out the form by selecting the name of your facility from the dropdown menu. Please be sure to select the correct facility from the dropdown menu. DWQ will only accept one form from each facility. Once you have entered all the appropriate information in all the yellow boxes the MWPP form is complete and you are ready to submit the completed MWPP package back to DWQ. Please be sure to save your completed form. Please do not submit your form until you have the date the MWPP was presented to your Board or Council completed. You may not submit a second form with the date at a later time. DWQ will only accept one form from each facility. If you experience any trouble or have any questions please contact DWQ Engineering Section Staff.

Financial Evaluation Section

Form completed by:

Shane C Williamson

May Receive Continuing Education /units (CEUs)

Complete the following table:

BRIAN HEAD

| Part I: OPERATION AND MAINTENANCE | |
|---|-----------|
| Question | Answer |
| | Amount |
| What was the User Charge ¹⁶ for 2017? | \$ 418.10 |
| | Yes/No |
| Are property taxes or other assessments applied to the sewer systems ¹⁵ ? | No |
| Are sewer revenues ¹⁴ sufficient to cover operations & maintenance costs ⁹ , and repair & replacement costs ¹² (OM&R) <u>at this time ?</u> | Yes |
| Are projected sewer revenues sufficient to cover OM&R costs for the <u>next five years ?</u> | Yes |
| Does the sewer system have sufficient staff to provide proper OM&R? | Yes |
| Has a repair and replacement sinking fund ¹³ been established for the sewer system? | Yes |
| Is the repair & replacement sinking fund sufficient to meet anticipated needs? | Yes |

Complete the following table:

BRIAN HEAD

| Part II: CAPITAL IMPROVEMENTS | |
|--|--------|
| Question | Answer |
| | YES/NO |
| Are sewer revenues sufficient to cover all costs of current capital improvements ³ projects? | Yes |
| Has a Capital Improvements Reserve Fund ⁴ been established to provide for anticipated capital improvement projects? | Yes |
| Are projected Capital Improvements Reserve Funds sufficient for the <u>next five years ?</u> | Yes |
| Are projected Capital Improvements Reserve Funds sufficient for the <u>next ten years ?</u> | Yes |
| Are projected Capital Improvements Reserve Funds sufficient for the <u>next twenty years ?</u> | No |

Complete the following table:

BRIAN HEAD

| Part III: GENERAL QUESTIONS | |
|---|--------|
| Question | Answer |
| | YES/NO |
| Are sewer revenues maintained in a dedicated purpose enterprise/district account? | Yes |

| | |
|--|-----|
| Are you collecting 95% or more of your anticipated sewer revenue? | Yes |
| Are Debt Service Reserve Fund ⁶ requirements being met? | Yes |
| Do you have a written emergency response plan for sewer systems? | Yes |
| Do you have a written safety plan for sewer systems? | Yes |

Complete the following table:

BRIAN HEAD

| Part IV: FISCAL SUSTAINABILITY REVIEW | |
|---|---------------|
| Question | Answer |
| | YES/NO |
| Have you completed a Rate Study ¹¹ within the last five years? | No |
| Do you charge Impact fees ⁸ ? | Yes |
| Have you completed an Impact Fee Study in accordance with UCA 11-36a-3 within the last five years? | Yes |
| Do you maintain a Plan of Operations ¹⁰ ? | Yes |
| Have you updated your Capital Facility Plan ² within the last five years? | Yes |
| Do you use an Asset Management ¹ system for your sewer systems? | No |
| Do you know the total replacement cost of your sewer system capital assets? | Yes |
| Do you fund sewer system capital improvements annually with sewer revenues at 2% or more of the total replacement cost? | Yes |
| Please enter the date that this MWPP package was presented to your Board or Council | 2/26/2018 |

Provide your best estimate of the following costs:

| Part IV: PROJECTED NEEDS | | | | |
|---|-------------|-------------|-------------|-------------|
| | 2018 | 2019 | 2020 | 2021 |
| Cost of projected capital improvements | \$548,000 | \$171,200 | \$171,200 | \$203,502 |
| | 2022 | 2023 | | |
| | \$203,502 | \$203,502 | | |

FINANCIAL EVALUATION SECTION END

Collection System Section

Form completed by:

Shane C Williamson

May Receive Continuing Education /units (CEUs)

Complete the following table:

BRIAN HEAD

| Part I: SYSTEM AGE | |
|--|--------|
| Question | Answer |
| What year was your collection system first constructed (approximately)? | 1974 |
| What year was the the oldest part of your collection system constructed, replaced, or renewed? | 2004 |

Complete the following table:

BRIAN HEAD

| Part II: DISCHARGES | |
|--|--------|
| Question | Answer |
| | Number |
| How many days last year was there a sewage bypass, overflow or basement flooding in the system due to rain or snowmelt? | 0 |
| How many days last year was there a sewage bypass, overflow or basement flooding due to equipment failure (except plugged laterals)? | 0 |

The Utah Sewer Management Program defines two classes of sanitary sewer overflows (SSOs):

Class 1 - a Significant SSO means a SSO or backup that is not caused by a private lateral

- (a) affects more than five private structures;
- (b) affects one or more public, commercial or industrial structure(s);
- (c) may result in a public health risk to the general public;
- (d) has a spill volume that exceeds 5,000 gallons, excluding those in single private structures; or
- (e) discharges to Waters of the state.

Class 2 - a Non-Significant SSO means a SSO or backup that is not caused by a private lateral

Below include the number of SSOs that occurred in year: 2017

| | |
|---|---|
| Number of Class 1 SSOs in Calendar year | 0 |
| Number of Class 2 SSOs in Calendar year | 0 |

Please indicate what caused the SSO(s) in the previous question.

| |
|-----|
| n/a |
|-----|

Please specify whether the SSOs were caused by contract or tributary community, etc.

| |
|-----|
| n/a |
|-----|

Complete the following table:

BRIAN HEAD

Part III: NEW DEVELOPMENT

| Question | Answer |
|---|--------|
| | Yes/No |
| Did an industry or other development enter the community or expand production in the past two years, such that flow or wastewater loadings to the sewerage system increased by 10% or more? | No |
| Are new developments (industrial, commercial, or residential) anticipated in the next 2 - 3 years that will increase flow or BOD ₅ loadings to the sewerage system by 25% or more? | No |
| Number of new residential sewer connections added in the last year | 4 |
| Number of new commercial/industrial connections in the last year | 0 |
| Equivalent residential connections ⁷ served | 1,310 |

Complete the following table:

BRIAN HEAD

Part IV: OPERATOR CERTIFICATION

| Question | Answer |
|---|--------|
| How many collection system operators do you employ? | 5 |
| Approximate population served | 1500 |

State of Utah Administrative Rules requires all public system operators considered to be in Direct-Responsible-Charge (DRC) to be appropriately certified at lease at the Facility's Grade.

What is the current grade of the collection system DRC operator(s)?

| | |
|------------------|---------|
| Thomas Gurr | I |
| Shane Williamson | I |
| Chris Leigh | III |
| [Names] | [Grade] |
| [Names] | [Grade] |
| [Names] | [Grade] |

Facility Class & Grade

| | |
|-------------------|----------|
| COLLECTION | I |
| - | - |

List all other collection operators in your system by their certification.

Note: Enter all names even if the list isn't visible within the cell.

| | |
|---------------|-------------------------------|
| Not Certified | Kaset Hatch, Rex Rose |
| Small Lagoons | [Names] |
| Collection I | Shane Williamson, Thomas Gurr |

| | | |
|----------------|-------------|---------------|
| Collection II | [Names] | |
| Collection III | Chris Leigh | |
| Collection IV | [Names] | |
| | | Yes/No |

| | |
|---|-----|
| Is/are your DRC operator(s) currently certified at the appropriate grade for this facility? | Yes |
|---|-----|

Complete the following table: **BRIAN HEAD**

Part V: FACILITY MAINTENANCE

| Question | Answer |
|---|--------|
| | Yes/No |
| Have you implemented a preventative maintenance program for your collection system? | Yes |
| Have you updated the collection system operations and maintenance manual within the past 5 years? | No |

Complete the following table: **BRIAN HEAD**

Part VI: SSMP EVALUATION

| Question | Answer |
|---|--------|
| | Yes/No |
| Has your system completed a Sewer System Management Plan (SSMP)? | Yes |
| Has the completed SSMP been public noticed? | Yes |
| Date of Public Notice | 9/2/03 |
| Has the SSMP been adopted by the permittee's governing body at a public meeting? | Yes |
| During the annual assessment of the SSMP, were any adjustments needed based on the performance of the plan? | No |

If yes, what components of the plan were changed (i.e. line cleaning, CCTV inspections, manhole inspections and/or SSO events)?

n/a

| | |
|---|---------------|
| | Yes/No |
| During 2017, was any part of the SSMP audited as part of the five year audit? | No |

If yes, what part of the SSMP was audited and were changes made to the SSMP as a result of the audit?

n/a

| Yes/No | |
|---|-----|
| Have you completed a System Evaluation and Capacity Assurance Plan (SECAP) as defined by the Utah Sewer Management Program? | Yes |
| | |

Complete the following table:

This section should be completed with the system operators.

BRIAN HEAD

Part VII: NARRATIVE EVALUATION

Question

Describe the physical condition of the sewerage system: (lift stations, etc. included)

The Brian Head Sewer System currently operates in good condition, with a few item needing attention. However, all item needing attnetion on planned in the upcoming capital projects or maintenance activities. We operate with no lift stations, currently, and our collection system receives annual inspection and cleaning.

What sewerage system capital improvements³ does the utility need to implement in the next 10 years?

Village Way Sewer Line Replacement, Vasels Road Sewer Line Replace, Manhole Repair and Replace (20 %), Parowan Canyon Trunk Line Upgrade

What sewerage system problems, other than plugging, have you had over the last year?

The system has functioned well over the past year with no concenteringin issues to report.

Is your utility currently preparing or updating its capital facility plan²?

Brian Head Town reviews and updates its capital facilities plan for all utilities and infrastructure on an annual basis.

Select Answer

Does the municipality/district pay for the continuing education expenses of operators?

100% covered

Is there a written policy regarding continuing education and training for wastewater operators?

Currently, Brian Head Town does not have a formal, written policy.

Any additional comments?

COLLECTION SYSTEM SECTION END



STAFF REPORT TO THE SPECIAL SERVICE DISTRICT BOARD

SUBJECT: Resolution Authorizing Water Lease Agreement with
Robert Brothers Dairy for 2018 Irrigation Season

AUTHOR: Nancy Leigh, Town Clerk

DEPARTMENT: Administration

DATE: February 26, 2018

TYPE OF ITEM: Legislative Action

SUMMARY:

The Council acting as the governing board of the Special Service District (The Board) will consider a resolution SSD-022, a resolution authorizing the Special Service District (SSD) to lease water to Robert Brothers Dairy for the 2018 irrigation season.

BACKGROUND:

In 2009 the SSD purchased 400-acre feet of water in the Parowan valley and entered into an inter-local agreement to allow the town to use the water for municipal purposes. In 2011 there was an amendment to the inter-local agreement between the town and SSD in which the town would need to identify a beneficial use of the water rights or the SSD could lease the water rights.

In 2013 an agreement between the SSD, the town, Parowan City and Parowan Irrigation and Reservoir Company was signed in which a portion of these water rights were used in the Bristlecone Pond project to satisfy a provision that allows for additional water flow into the Parowan main creek in the late irrigation season period. This left 243.08-acre feet of water the SSD can lease if it desires.

The SSD noticed a request for bids for leasing of the 243.08-acre feet of water for the 2018 irrigation season and received one bid from Robert Brothers Dairy who has been leasing the water since 2011. The SSD has entered into several water lease agreements with Robert Brothers Dairy and the agreement being presented to Council is the same agreement as in the past with updated information such as the acre feet of water and dates.

ANALYSIS:

The agreement allows for the SSD to advertise the leasing of its water rights annually and Robert Brothers Dairy has the first right of refusal if any other bids are submitted. Since the SSD has been leasing water, there has been one other individual who submitted a bid for the water in which Mr. Roberts met the amount required to use the water rights for that irrigation season which runs from April through October.

The water lease agreement also states the SSD can open the lease for bids for 2019 and 2020 irrigation seasons and if no other bids are received, the SSD can negotiate the terms of the lease for that irrigation season. Mr. Roberts has been consistent in submitting his bid for the lease of the water annually and has already submitted a bid of \$4,800 for the 2018 irrigation season.

If the Board approves the water lease agreement with Roberts Brothers Dairy, it will be the responsibility of Mr. Roberts to pay for the temporary change application costs along with the annual assessments on the water rights the town receives. This is approximately \$450 for both the assessments and temporary change application.

FINANCIAL IMPLICATIONS:

If the Board adopts the resolution and authorizes the Chair to sign the water lease agreement, the town will receive \$4,800 for the lease which is applied to the water fund and the town would save the annual assessment for the water rights which is typically \$225, since Mr. Roberts is obligated to reimburse our assessment costs.

BOARD/COMMISSION RECOMMENDATION:

N/A

STAFF RECOMMENDATION:

Staff recommends the Board adopt the proposed resolution as presented and authorize the Chair to sign the water lease agreement with Robert Brothers Dairy as presented.

PROPOSED MOTION:

I moved to adopt Resolution No SSD-022, a resolution authorizing a water lease agreement with Robert Brothers Dairy and authorize the Chair to sign the agreement as presented.

ATTACHMENTS:

- A – Resolution authorizing a water rights agreement
- B – Water rights agreement with Robert Brothers Dairy

BRIAN HEAD SPECIAL SERVICE DISTRICT, UTAH

February 26, 2018

RESOLUTION _____

A RESOLUTION AUTHORIZING A WATER RIGHTS LEASE AGREEMENT WITH ROBERTS BROTHERS DAIRY.

A. WHEREAS the Town of Brian Head (the “**Town**”) and the Brian Head Special Service District, Utah (the “**District**”) previously entered into an interlocal cooperation agreement titled Amended and Restated Water Rights Lease and dated September 22, 2009 (the “**2009 Lease Agreement**”) whereby the District leases certain water rights that it owns (the “**Water Rights**”) to the Town in exchange for payment of money to finance the purchase of those Water Rights.

B. WHEREAS the Town and District amended the 2009 Lease Agreement to allow District to lease the Water Rights or a portion of the Water Rights if Town does not intend to use them during a certain irrigation season.

C. WHEREAS the Town does not intend to beneficially use the portion of the Water Rights identified as water right number 75-2019 (“**WR 75-2019**”) during the 2018 irrigation season, and Roberts Brothers Dairy (“**Lessee**”) desires to enter into a water rights lease agreement with the District to use WR 75-2019 supplementally for irrigation purposes with other water rights owned by the Lessee for the 2018 irrigation season.

E. WHEREAS the Governing Body of the District has determined that entering into a Water Rights Lease agreement with the Lessee in substantially the form attached as Exhibit A (the “**Water Rights Lease Agreement**”) is in compliance with the 2009 Lease Agreement, as amended, and will benefit and serve the purposes of the District.

NOW THEREFORE, BE IT RESOLVED by the Governing Body of the Brian Head Special Service District, Utah as follows:

Section 1. The Water Rights Lease Agreement with the Lessee promotes the purposes for which the District has been established.

Section 2. The Water Rights Lease Agreement in substantially the form presented to this meeting and attached hereto as Exhibit A is in all respects approved, authorized and confirmed. The appropriate officials of the District are authorized to approve the final terms and to execute the Water Rights Lease Agreement on behalf of the District in the form and with substantially the same content as set forth in Exhibit A.

Section 3. The Governing Body directs the District Secretary to cause to be prepared

and published one time in the Spectrum a notice of agreement in substantially the form attached as Exhibit B. The District Secretary is directed to make a copy of this Resolution and a copy of the Water Right Lease Agreement available for review at the Secretary's office during regular business hours for 30 days after the publication of the notice of agreement. During that 30-day period, any person in interest may contest the legality of this Resolution or the Water Right Lease Agreement. After that 30-day period has passed, no one may contest this Resolution or the Water Right Lease Agreement for any cause whatsoever.

Section 4. All regulations, orders and resolutions of the District or parts thereof inconsistent herewith are hereby repealed to the extent only of such inconsistency.

Section 5. The Secretary is directed to complete the attached Record of Proceedings.

Section 6. This Resolution shall become effective immediately upon adoption.

ADOPTED, APPROVED, and ORDERED by majority vote at a duly called meeting of the Governing Body of the Brian Head Special Service District, Utah this February 26, 2018.

**BRIAN HEAD SPECIAL SERVICE
DISTRICT, UTAH**

By: _____
Clayton Calloway, Chair

ATTEST:

Nancy Leigh, District Secretary

(S E A L)

RECORD OF PROCEEDINGS

February 28, 2018

The Governing Body of the District met in public session at its regular meeting place in the Town of Brian Head, Utah, at 1:00 p.m., or as soon thereafter as feasible, on February 26, 2018, with the following members present:

| | |
|------------------|--------|
| Clayton Calloway | Chair |
| Larry Freeberg | Member |
| Lynn Mulder | Member |
| Shad Hunter | Member |
| Reece Wilson | Member |

Also present:

| | |
|-------------|--------------------|
| Nancy Leigh | District Secretary |
| Bret Howser | District Manager |

Absent: None

After the meeting had been duly called to order and the minutes of the preceding meeting read and approved, and after other matters not pertinent to this resolution had been discussed, the Secretary presented to the Town Council a Certificate of Compliance With Open Meeting Law with respect to this February 26, 2018 meeting, a copy of which is attached.

Board Member _____ then introduced and moved the adoption of the foregoing resolution, which motion was seconded by Board Member _____ and the motion was passed as follow:

AYE:

NAY:

ABSTAIN:

CERTIFICATE OF SECRETARY

I, Nancy Leigh, the duly qualified and acting Secretary of the District, certify according to the records of the District in my official possession that the foregoing constitutes a true and correct copy of the minutes of the meeting of the Governing Body held on February 26, 2018, including a resolution adopted at that meeting as the minutes and resolution are officially of record in my possession.

IN WITNESS WHEREOF, I have subscribed my official signature and impressed the official seal of the District this February 26, 2018.

Nancy Leigh, District Secretary

(S E A L)

CERTIFICATE OF COMPLIANCE WITH OPEN MEETING LAW

I, Nancy Leigh, the Secretary of the District, certify, according to the records of the District in my official possession, and upon my own knowledge and belief, that in accordance with the requirements of Section 52-4-202, Utah Code Annotated, 1953, as amended, I gave not less than 24 hours public notice of the agenda, date, time, and place of the February 26, 2018, public meeting held by the Governing Body as follows:

(a) By causing a Meeting Notice, in the form attached, to be posted at the District's principal offices at least 24 hours prior to the convening of the meeting, the Meeting Notice having continuously remained so posted and available for public inspection until the completion of the meeting; and

(b) By causing a copy of the Meeting Notice to be delivered to a newspaper of general circulation within the District at least 24 hours prior to the convening of the meeting.

(c) By causing a copy of the Meeting Notice to be posted on the Utah Public Notice Website at least 24 hours prior to the convening of the meeting.

DATED this February 26, 2018.

Nancy Leigh, District Secretary

(S E A L)

[Attach Meeting Notice]

DRAFT

EXHIBIT A

WATER RIGHTS LEASE AGREEMENT

EXHIBIT B

NOTICE OF AGREEMENTS

On February 26, 2018, the Governing Body of the Brian Head Special Service District, Utah (the “District”) adopted a resolution (the “Resolution”) authorizing the District to enter into a Water Rights Lease Agreement for the 2018 irrigation season (the “2018 Lease”). Other than the lease of those water rights, the 2018 Lease does not affect the property rights of the District, and the 2018 Lease does not impose any obligations on the District other than the obligations related to the lease of the water rights. The term of the 2018 Lease term will be the 2018 irrigation season.

Copies of the Resolution and the 2018 Lease are and will be available for review at the Town Clerk’s office located at 56 N. Hwy. 143 in Brian Head, Utah during regular business hours from 9:00 a.m. to 4:30 p.m. Monday-Friday for 30 days after the publication of this notice. During that 30-day period, any person in interest may contest the legality of the Resolution or the 2018 Lease. After that 30-day period has passed, no one may contest the Resolution or the 2018 Lease for any cause whatsoever.

DATED March 28, 2017

 /s/ Nancy Leigh
District Secretary/Town Clerk

WATER RIGHTS LEASE AGREEMENT

THIS AGREEMENT is entered this _____ day of February 2018, by and between Brian Head Special Service District (“**Lessor**”) and Don Roberts dba Roberts Brothers Dairy (“**Lessee**”).

RECITALS

A. Lessor is the actual and record owner of water right number 75-2019 (the “**Water Right**”), approved for use of 243.08 acre-feet of water per year for irrigation use.

B. Lessee desires to use the Water Right for irrigation purposes with other water rights owned by the Lessee for the 2018 irrigation season.

C. Lessor and Lessee will file a temporary change application to temporarily change the approved points of diversion and place of use of the Water Right necessary to allow use by Lessee for the 2018 irrigation season.

D. Lessee desires to lease the Water Right from Lessor upon the terms and conditions set forth in this Agreement.

AGREEMENT

1. Lease Agreement. Lessor hereby leases the Water Right to Lessee to use up to 243.08 acre-feet of water with other water rights owned or held by Lessee for irrigation use during the 2018 irrigation season. The water leased under this Agreement shall be diverted from one or more of Lessee’s underground wells and used on Lessee’s property, as more particularly described in temporary change application no. t41848 filed with the Utah Division of Water Rights and a substantially similar temporary change application yet to be filed.

2. Lease Payments. As the lease payment, the Lessee will pay Lessor a one-time, up-front rent payment equal to \$4,800, which shall be paid before Lessee may divert any water under the Water Right. In addition to the lease payment described above, Lessee shall also pay the filing fee associated with the temporary change application and reimburse Lessor for any Water Distribution Assessment associated with the Water Right for the 2018 irrigation season.

3. Lease Term; Right of First Refusal. Unless sooner terminated by mutual agreement of the parties or pursuant to paragraph 9 below, this Agreement shall continue in full force and effect for the 2018 irrigation season only. If Lessor elects to lease the Water Right for the 2019 and/or 2020 irrigation seasons, Lessor shall open the lease for bids and shall immediately notify Lessee in writing of the winning bid for such lease. Lessee shall have the right of first refusal to match the winning bid to lease the Water Right for that season. Lessee shall exercise its right of first refusal in writing within ten (10) business days of the date of such written notice to Lessee. The Parties will then proceed to finalize and gain all necessary approvals for the new lease agreement. This right of first refusal shall survive the expiration of

this Lease for a period of two years. If Lessor elects to lease the Water Right or a portion thereof during 2018 or 2019 but no bids are received, Lessor and Lessee may negotiate the terms of a lease for such irrigation season.

4. Diverting Works. All water diverted and used by Lessee shall be diverted from Lessee's groundwater wells described in temporary change application t41848 and the corresponding 2018 temporary change application, and Lessee shall have the sole obligation and responsibility to develop, maintain, and operate, at its sole cost, the groundwater wells and water works to divert and use the water leased hereunder. Lessor shall have no responsibility or obligation for developing, maintaining, operating, or paying for any diversion and water works necessary for Lessee to divert and use the water under this Lease, and Lessor shall have no obligation to deliver water to Lessee.

5. Indemnification. Lessee agrees to indemnify, defend, and hold the Lessor harmless from any and all liability, claims, demands, judgments, actions, and proceedings arising out of Lessee's taking and subsequent use of water pursuant to this Lease.

6. Termination. Lessee's failure to pay the lease payment and costs described in paragraph 2 when due shall constitute a default. Upon such default, the Lessor shall provide Lessee with a written notice of default explaining the nature of the claimed default. Service of the notice shall be deemed complete upon the date of depositing the same, registered or certified mail, return receipt requested, postage prepaid, in the United States Post Office, and addressed to Lessee at its last known address. If Lessee does not cure a default within ten (10) business days of the date of service of the notice of default, then Lessor shall have the right to terminate this Agreement, and Lessee shall be liable to Lessor for any payments or costs due but unpaid.

7. Attorney's Fees. In any action arising out of an alleged breach of this Agreement, the prevailing party shall be entitled to its costs and reasonable attorney's fees.

8. Assignment. This Agreement may only be assigned with written consent of the other Party. Such written consent shall not be unreasonably withheld by either party.

9. Notice. All notices shall be in writing by personal service, by mail, or by facsimile transmission, and shall be deemed to have been given as follows: on the date of personal service; on the date of post mark if by regular mail; on the date of the transmission if by facsimile transmission. For purposes of this Agreement, notice shall be addressed to the parties at the following addresses, facsimile numbers, and/or telephone numbers:

Lessor:
Brian Head Special Service District
56 N. Hwy 143
P.O. Box 190068
Brian Head, UT 84719
Fax: (435) 677-3661
Telephone: (435) 677-2029

Lessee:
Roberts Brothers Dairy
Don Roberts
P.O. Box 1780
Beaver, UT 84713-1780
Telephone: (435) 691-4231

Any party may change its address for notice under this Agreement by giving written notice to the other party in accordance with the provisions of this paragraph.

10. No Waiver. Any party's failure to enforce any provision of the Agreement shall not constitute a waiver of the right to enforce such provision. The provisions may be waived only in writing signed by the party intended to be benefited by the provisions and a waiver by a party of a breach hereunder by the other party shall not be construed as a waiver of any succeeding breach of the same or other provisions.

11. Drafting Party. This document has been and shall be deemed to be a product of joint drafting by the parties and there shall be no presumption otherwise.

12. Captions. The captions and headings in this Agreement are for convenience only and shall not be considered in construing any provision contained in this Agreement.

13. Entire Agreement. This Agreement and the documents referred to herein constitute the entire agreement between Lessor and Lessee. All negotiations, representations, warranties, and other agreements between the parties and related to the Water Right are merged herein.

14. Governing Law. This Agreement shall be subject to and governed by the laws of the State of Utah.

DATED AND EFFECTIVE as of this _____ day of February 2018.

Lessor:
Brian Head Special Service District

Clayton Calloway, *Chair*

Attest:

Nancy Leigh, *District Secretary*

Lessee:
Roberts Brothers Dairy

Don Roberts