

# STATE RECORDS COMMITTEE MEETING

Location: Courtyard Meeting Room, 346 S. Rio Grande Str., SLC, UT 84101

Date: April 9, 2015

Time: 9:00 a.m. to 11:30 a.m.

## **Committee Members Present:**

(Absent) Patricia Smith-Mansfield, Chair, Governor's Designee  
Marie Cornwall, Citizen Representative  
Tom Haraldsen, Media Representative  
Blaine Breshears, Elected Official Representative  
Doug Misner, History Designee  
Holly Richardson, Citizen Representative  
David Fleming, *Chair Pro Tem*, Private Sector Records Manager

## **Legal Counsel:**

Paul Tonks, Attorney General's Office  
Nicole Alder, Paralegal, Attorney General's Office

## **Executive Secretary:**

Nova Dubovik, Utah State Archives

## **Telephonic Attendance:**

Harshad Desai, Petitioner  
Barry Huntington, Garfield County Attorney

## **Others Present:**

Rosemary Cundiff, Ombudsman  
Thomas Dudley Beck, Petitioner  
Walker Bird, San Juan County Attorney  
Kelly Pehrson, San Juan County Commissioner  
Kendra Yates, State Archives  
Lorianne Ouder Kirk, State Archives  
Cameron Marlsen, State Archives  
Rebekkah Shaw, State Archives

**Agenda:**

- Two Hearings Scheduled
- Approval of Retention Schedules
- Approval of Minutes
- Report on Appeals Received
- Report on Cases in District Court
- Other Business

**I. Call to Order:**

The meeting was called to order at 9:02 a.m. by the Chair *pro tem*, Mr. David Fleming.

The Chair *pro tem* introduced the parties for the hearing: Mr. Harshad Desai, Petitioner, and Barry Huntington, representing Attorney for Panguitch City, Utah. The Chair *pro tem* explained the hearing procedures to the parties.

**II. Hearing: Harshad P. Desai vs. Panguitch City, Utah**

**Opening-Petitioner**

Mr. Desai is a small business owner in Panguitch City, Utah. He explained that Panguitch City has an ordinance that requires commercial businesses to apply and receive a permit from the city. He is requesting a list of vendors for the 2013-2014 annual Panguitch Balloon Festival who were screened and selected, to include those that were non-selected. In addition he seeks the copies of vendor permits and licenses, and minutes that pertain to any follow-up meetings after June 24, 2014, between Panguitch Main Street Committee ("Main Street") and the Panguitch City council members. The petitioner believes the records he seeks are public and the city should maintain them because it is a commercial activity and all vendors have to apply for a permit through the city.

**Opening-Respondent**

Mr. Huntington explains the vendor list is not maintained by Panguitch City because it is maintained by Main Street, a private non-profit entity, commonly known as a 501(c)(3) charitable organization. The vendors approach Main Street to work out who is going to sell what merchandise at the Balloon Festival. Panguitch City is not involved with the process and it does not maintain records. Mr. Desai has had issues with the director of Main Street, Cheryl Church, and has been asked to stay away by her attorney. The main problem is that Mr. Desai is trying to obtain the vendor list through Panguitch City, which does not maintain it, because he cannot get it from a nonprofit organization that is not a governmental entity. Mr. Huntington restates that Panguitch City does not have the record Mr. Desai is requesting because it is maintained by Main Street, and he is unable to communicate with the non-profit entity because of an order by the director's attorney to stay away.

**Testimony-Petitioner**

Mr. Desai explains the Panguitch City ordinance and the process to which a commercial business must apply and purchase a permit to operate within the city limits. The permits

are public records that Panguitch City should maintain. He wants to access the information for his business and marketing strategy. The vendors who are screened out are the ones he is most interested in contacting and working out a business partnership. Panguitch City has requirements for commercial activity within the city limits and it has records, and if it does not it should.

Mr. Desai refers to the June 24, 2015, Panguitch City Council Meeting minutes, noting there is too much activity going on outside the council meeting and no follow-up information. The councilmembers are communicating outside the public meeting forum about the Balloon Festival and there are no records to let anyone know what members are discussing or to whom. There should be records of these meetings so everyone knows the follow-up decisions and information.

The Records Committee outlined Mr. Desai's GRAMA requests. Ms. Marie Cornwall listed the three main GRAMA requests: vendor list, the policy description on the vendor screening process, and a record of any city councilmember follow-up that is referenced in the June 24, 2014, minutes. Mr. Desai agrees with the three requests, and in addition asked the Committee to address and rule on all five individual requests he presented to understand the decision of the Records Committee.

#### **Testimony-Respondent**

Mr. Huntington stated that Panguitch City does not grant the vendor licenses they go through Main Street, and the non-profit entity decides who is approved and not approved based on how many vendors are applying. The city has nothing to do with the screening process. There may be a city councilmember on the Main Street board but it is separate from the Panguitch City Council. If there is a record about the vendors the organization maintains it not Panguitch City. Mr. Desai cannot get the record from Panguitch Main Street because of prior harassment of the director and since has been directed to stay away by her attorney. If Mr. Desai wants the record he will have to figure out how to get around the director because Panguitch City does not maintain the record.

Mr. Huntington explains that when a city council member meets with the Main Street director, it is not a meeting under Utah law. If one person meets with another person there are no minutes of that communication and there does not have to be if there is not a quorum and no agenda. Mr. Desai feels if a city councilmember talks to somebody there should be a record of it. Bottom line, if there is a record then Main Street maintains it. The organization is a nonprofit entity not a governmental entity. Panguitch City does not maintain the record and it does not have to. Mr. Desai is asking the wrong entity for a record.

Mr. Fleming asks if Mr. Huntington can speak to Mr. Desai's implication that there is a requirement that the vendors be licensed, and is there a requirement that a non-profit entity be licensed. Mr. Huntington responds that he is not aware of what goes on with Panguitch Main Street Committee, the vendors do not get permits from the city they get it from Main Street Committee. The vendors go to the Main Street board members and they decide who will be permitted to sell merchandise during the Balloon Festival. Main Street

has the vendor list and the permits for the vendors. Panguitch City does not maintain any of the records Mr. Desai is requesting.

A Records Committee member asked if the vendors have to get a permit from the city. Mr. Huntington stated no, because it is a one or two day event and is considered temporary. Plus, it is more like permission than a permit because Main Street does not want four vendors selling the same merchandise. There is also no permit from the city to the Main Street Committee to conduct the event. The organization is a nonprofit volunteer group that is provided with some funds from the city to help with the event, but the city does not control what the organization does. The repercussion to Main Street is, if the event does not go as it should the city will not provide money the following year.

### **Closing-Petitioner**

Mr. Desai summarized his testimony that there is a city requirement for commercial vendors to apply for permits. It does not matter if the vendor is temporary or permanent. Mr. Desai explains that he has a motel and would like to rent his property for vendors set up their booths and he should have the right to contact the vendors because it is his property. He wants the list of vendors to contact so he can compete with other businesses. As for the June 24, 2014, minutes there is more activity that went on after the council meeting and he wants to know what happened, what decisions were made behind closed doors. It is noted in the minutes that the councilmember was going to research the bylaws of the Main Street Committee for a policy on the issue of property owner's right to do business directly with vendors. Mr. Desai wants to know the outcome of the direction of the findings.

### **Closing-Respondent**

Mr. Huntington, restates the bottom line if there is a vendor list then Panguitch Main Street Committee maintains it. Panguitch City does not have it or maintains that record. Mr. Desai is asking the wrong entity, he needs to ask the Main Street director, Cheryl Church, for the records he seeks. The Main Street Committee is not a governmental entity so whether they will provide the record is unknown.

The issue of the minutes is explained, Ms. Church, a volunteer, was going to step down as the Main Street director. A city councilmember intended to speak with her and ask her not to quit. Mr. Huntington believes she did not quit because she still remains the director however, the councilmember talking to Ms. Church was not a public meeting. There was no quorum, no agenda, and no vote taken and it does not meet Utah Code 52-4-103, Open Meeting Act. When Mr. Desai submits a GRAMA request and Panguitch City has the record it responds by providing him a copy, in this instance he is asking the wrong entity. Panguitch City does not have to create a record that does not exist in accordance to Utah Code § 63G-2-201(8)(a)(i).

### **Deliberation**

The Committee discussed the Open Meetings Act, Utah Code 52-4-103, and what is considered a meeting under the law. The other part of the discussion focused on a non-

existing record in accordance to Utah Code § 62G-2-201(8)(a)(i) and that a governmental entity is not required to create a record.

Ms. Cornwall adds that Mr. Desai wanted each request addressed by the Committee. She explained that GRAMA requests #3, #4, and #5 deal with the Open Meetings Act, Utah Code § 52-4-103, and there is no records. GRAMA request #2, there is no city process because it is handled by the 501(c)(3) nonprofit organization, and GRAMA request #1 there is no list of vendors because it also handled by a nonprofit organization.

**Motion-** A motion was made by Ms. Richardson deny the request for records based on Utah Code § 63G-2-201(8)(a)(i) and the Open Meetings Act, Utah Code 52-4-103(6). No record exists and there is no requirement for the governmental entity to create a record. The motion was seconded by Mr. Breshears. The motion passed unanimously 6-0.

The Chair *pro tem* introduced the parties for the next hearing: Thomas Dudley Beck, Petitioner, and Mr. Walter Bird, San Juan Deputy County Attorney, representing on behalf of Mr. Kelly Pehrson the San Juan County Administrator and the Bluff Water Works Special Service District (BWWSSD). The Chair *pro tem* explained the hearing procedures to the parties.

### **III. Hearing: Thomas Dudley Beck vs. BWWSSD**

#### **Opening-Petitioner**

Mr. Beck has been a resident of Bluff, Utah since 2003. He explained the appeal is about a GRAMA request denial for the water usage data from the BWWSSD. BWWSSD was created by San Juan County Commission, and prior to 2005 the Bluff Water Works was a committee of the Bluff Service Area (BSA), the governing body of Bluff, Utah. The BSA was also created by San Juan County Commission. He agrees with Mr. Bird's Statements of Facts that outline the response times for his requests as well as the fact that BWWSSD submitted a Utah Water Data Form for 2006. Mr. Beck requested that the water use data be given to him in the Water Data Form format for the years 2007-2014 since that was how the BWWSSD had completed it in previous years. However, he is not really concerned with the format but simply with the water use data for the years requested.

Mr. Beck refers to documents he submitted to the Committee labeled I and II, that shows that the BWWSSD does have the water use data, which he has been seeking, but in a different format than in 2006. He would be satisfied to have the water use data provided in the format shown in documents labeled I and II.

#### **Opening-Respondent**

Mr. Bird explains that BWWSSD was created in 2006 by San Juan County Commission, is partially true. For a special service district to be created there needs to be a petition signed by property owners who are entitled to vote in elections. Approximately 25% of the community has to petition for that change to be made. In previous years the BSA had been managing the water with the committee on the side to manage the water specifically. The residents were not happy with that system so they voted to have a petition to have a special service district created. For legal purposes the motion is taken to

the County Commission to approve but it really comes from the residents who voted for the change. In 2006 the BWSSD was created.

The position of the BWSSD, is it received in November 2014 a GRAMA request from Mr. Beck and BWSSD viewed the request quite narrowly. Mr. Bird refers the Records Committee to the forms Mr. Beck asked BWSSD to complete and return with the water use data form as required by law. BWSSD viewed this request as a very narrow and specifically that it takes the forms Mr. Beck provided and fill them out; however the forms he provided were not forms BWSSD is required by law to fill out. In 2008 the water right was changed from the BWSSD to BSA. Each form provided by Mr. Beck clearly shows that the entity required to provide the water data requested is the water rights owner-the San Juan County Service Area #1 (BSA), located in Bluff, Utah. The BSA, by law, is legally required to fill out the forms not BWSSD.

The BWSSD denied the GRAMA request because it was a narrow request to fill out the forms Mr. Beck provided and it clearly states in GRAMA a governmental entity is not required to create a record.

#### **Testimony-Petitioner**

Mr. Beck responds to Mr. Bird's opening statement about the creation of the special service district. Bluff, Utah is a small town and when this change took place Mr. Beck was new to the community. He explained that he and his wife signed the petition in 2005 to create the special service district. They signed the petition based on misinformation given to them at the time by members of the community who wanted the transfer to happen. The minutes of the BSA discussed how there would be cooperation between the two entities, and based on the meeting the BSA passed a resolution to separate from the Water Board and let it manage the water. That was the intent at the time. It had nothing to do with water rights. As a result the management entity, of the town's culinary water, has to have water use data. There are meters, there are monthly bills, and a computer system that maintains use records. BWSSD has refused repeatedly to give the water use data in any form when requested by the Bluff Service Area Board.

On June 30, 2015, it is Mr. Beck's understanding, that the extension that has been granted to the service area from the Utah Division of Water Rights, will expire. The extension will need to be resubmitted and in order to resubmit a request the BSA has to present water use data for the years Mr. Beck requested. There is an impasse between the two boards the BWSSD has refused to share the information. This is a district that is supposed to be providing a service to his community.

Mr. Haraldsen asked if Mr. Beck would be satisfied with the data but presented in a different format than the one Mr. Beck submitted to BWSSD to fill out. Mr. Beck agrees that the format is not important it is the water use data he seeks. He further explained the circumstances to finding out there was water use data online and in a different format after he submitted the GRAMA request. A member of the Bluff Service Area Board was aware of the GRAMA request Mr. Beck submitted and was curious about a contract the Water Board had made for an arsenic treatment plant in the

community. He found a copy of the contract online and read through it. He looked in the appendices and discovered the water use data for 2008-2010, which had been submitted to the construction company in order for them to design the arsenic treatment plant. The data is there but in a different format. Mr. Beck was unaware until the board member told him it was on the computer, that is why he thought it was supposed to be in the format the Utah Division of Water Rights provided. He restated BWSSD has the data and it is on a computer.

Mr. Fleming clarifies that BWSSD has the data and requested Mr. Beck to show evidence as to the computer generated document displaying the water use data. Mr. Beck referred Mr. Fleming to the Well Pumping Data records marked I and II.

### **Testimony-Respondent**

Mr. Bird stated he has not seen the Well Pumping Data records, but it is obvious that Mr. Beck now has a partial response to the GRAMA request. He continues that several of the denials for Mr. Beck's request were because he wanted a hearing before the San Juan County Commission. The document requested is not governed by GRAMA under its ordinance, so technically it is not a San Juan County document. Hence the appeal to the State Records Committee.

Mr. Bird explained that the BSA has never made a formal GRAMA request to the BWSSD requesting the data, and BSA is the legal entity to provide the information. Mr. Beck was correct the BSA at one point, in 2006 when the BWSSD was created, did agree to sign over the water right and at that time it was decided to allow the BWSSD to manage the system. Then in 2008 the water right was switched over. So the community is in this precarious situation where there is a managing entity that controls the water, but do not have the water right, and it is not required to fill out the forms that the state requires. The BSA has the water right and it gets the forms from the Utah Division of Water Rights to fill out but they do not control the system. BWSSD position on this matter is it took a very narrow view of what Mr. Beck's request that he wanted the specific data forms provided filled out, and BWSSD does not have to because it would be creating a record.

Mr. Fleming asked who controls the system from the data standpoint. Which entity controls the mechanism for getting the water use data? The response from Mr. Bird is that the BWSSD controls the system, delivers the water, bills for the water use, and manages the system. BWSSD would have capability of obtaining the water use data.

Based on the facts provided by the petitioner and respondent there is a requirement from the state to report the water use data and it has not been reported. The state is looking to the BSA for that information because it owns the water rights. In 2008 BSA obtained the water rights from BWSSD, and it is now the governmental entity the state looks to for the data. Unfortunately, BSA cannot provide the data because BWSSD controls the system. BSA has not requested the data from BWSSD, instead private citizens are requesting the data to help members of the BSA Board get the information it needs to fill out the state forms.

The Committee members question counsel for guidance on how a special service district is governed and who will be responsive to the Committee's order. It is explained that Mr. Bird is representing BWSSD, on behalf of San Juan County. Further discussion among the committee members about the evidence that the data does exist based on the construction company having the water use data online. It is also discussed that the data is a public record and BWSSD should be responsive to the request regardless of the format it is provided in. Mr. Bird is questioned if there is a reason why the data cannot be provided by the BWSSD in the format it generates reports. The answer is no.

Mr. Kelly Pehrson is sworn in.

Mr. Kelly comments on why the GRAMA request for water use data is not coming from BSA but from a private citizen to the BWSSD. The Committee members respond that it is a public record and a private citizen can submit a GRAMA request for the record. The problem is the interpretation of the law and certain requirements, but Mr. Beck has clearly stated the format of the data is not important. The real focus is whether the record exists or does it not exist, and it clearly exists and format is not a concern.

#### **Closing-Petitioner**

Mr. Beck explained he served as a chairman on the BSA from 2005-2011. In September 2014, three new BSA board members were appointed in less than a year. The three new board members voted to transfer the water rights from the BSA to the BWSSD. This caused quite an uproar in the community and a petition circulated. This new petition stated it did not want the water rights transferred to the BWSSD. The new board members, who voted for the transfer, had not received any training on GRAMA or how to conduct public meetings. It was not until after the vote did the new board members receive training. Mr. Beck decided, as a citizen, to get the information and give it to the board members, and the Utah Division of Water Rights, and then let the issue of the water rights get settled. If the community wants to bring this issue up about who gets the water rights it can be presented in an open forum.

He refutes Mr. Bird's testimony that the water rights were ever transferred from the BWSSD to the BSA. There is a long history, it goes back to 1975 when the state gave the Water Users Association a million dollars or more to build a bunch of wells. The state has held the loan since 1975 until it was paid off. When the County created the BSA in 1992, an independent governing body one of whom responsibilities was culinary water, the state then transferred those water rights to the governing body, the BSA.

#### **Closing-Respondent**

Mr. Bird, rebuttals Mr. Beck's presumption about the transfer of water rights. He believes BSA actively went out to transfer the water rights. The Counsel rests its argument that BWSSD was presented with a narrow request and denied it on that basis. There was no indication in any of Mr. Beck's subsequent filings that he would be satisfied with a broad water use data format. It was always the understanding that Mr. Beck wanted BWSSD to fill out the specific forms provided in the GRAMA request. Hence the argument under

GRAMA the governmental entity is not required to create a record, alter a record, and compile a record. The BWSSD denied on those points.

### **Deliberation**

**Motion-** A motion was made by Mr. Misner that the BWSSD does have a database that contains the public usage data that is responsive to Mr. Becks request that is in a broader format that what was originally requested, which BWSSD has indicated it can provide. The motion was seconded by Ms. Cornwall. The motion passed unanimously, 6-0.

### **5-Minute Break**

#### **IV. Approval of March 19, 2015, Minutes:**

Mr. Fleming announced that the approval of the minutes will have to be deferred until May 14, 2015, because there is not a quorum from the last meeting to approve.

#### **V. Approval of Retention Schedules:**

##### **State Agencies:**

Ms. Lorianne Ouderkirk presented two series for the Health Department, Bureau of Emergency Medical Services, and Center for Health Data and Informatics, Office of Vital Records and Statistics.

28642-Medical registries-retain 100 years.

**Motion-**A motion was made by Mr. Fleming and seconded by Mr. Breshears to approve the proposed retention schedule. A vote was unanimous, 6-0.

28666-Acknowledgement of paternity registry-retain 3 years.

Ms. Ouderkirk explains that the acknowledgement of paternity registry allows a man to register if he thinks his partner might be pregnant or is pregnant, and to be notified if any adoption proceedings take place. Once he is notified there is a time period in which he response to the notification or he forfeits his rights to the baby. Most adoption proceedings, on average, occur within a three year time period. This is a new series.

Committee discussed that a three year retention schedule might not be enough time to maintain the record. They also requested a representative of the Office of Vital Records and Statistics to appear and explain the justification of the short retention schedule and clarify how the registry works in notifying the biological father. The Committee tabled the discussion until the next regular scheduled meeting, May 14, 2015.

##### **Utah State General Records Retention Schedule:**

Ms. Rebekkah Shaw presented two series for County Clerks Records and two series for Administrative Records.

(Item 14-43) Burial Records (County Clerk Records)

(Item 14-44) Cemetery "management "Records (County Clerk Records)

**Motion**-A motion was made by Mr. Fleming to approve Item 14-43 as written and to approve Item 14-44 as written with a suggested change to the title to make it Cemetery Management Records. The motion was seconded by Ms. Cornwall to approve the proposed retention schedule. A vote was unanimous, 6-0.

(Item 1-74) Legal Counsel Records (Administrative Records)-Ms. Shaw was called by the Attorney General's Office on Monday to defer for further review.

(Item 1-73) Transitory Tracking Records (Administrative Records)

**Motion**-A motion was made by Mr. Fleming to remove language "movement of people". No second.

**Motion**-A substitute motion was made by Ms. Richardson and seconded by Mr. Fleming to approve the proposed retention schedule, as presented. A vote was unanimous, 6-0.

#### **VI. Report on March and April Appeals:**

The executive secretary briefed the following appeals:

**-Daniel Rivera vs. Attorney General's Office:** incomplete notice of appeal to the SRC. Missing the governmental entities denial and original request.

**-Richard Garcia vs. UDC:** incomplete notice of appeal to the SRC. Missing governmental entity and chief administrative officer denials, and original request.

**-Karl Losee vs. UDC:** incomplete notice of appeal to the SRC. Missing governmental entity and original request.

**-Patrick Sullivan vs. University of Utah:** incomplete notice of appeal to the SRC. Missing governmental entity and chief administrative officer denial, and original request.

**-Mr. Robert Baker vs. UDC:** request for a fourth reconsideration for a hearing on the matter that UDC's interpretation of U.C. 63G-2-201(8)(a)(v)(A) was never appealed or legally challenged before the State Records Committee. The original hearing was denied January 5, 2015 by Chair and second committee member because the subject of the appeal had been found by the Committee in a previous hearing involving the same governmental entity (Decisions and Orders 14-12 & 12-23). The Committee unanimously supported to uphold the January 5, 2015, decision to deny a hearing. R35-2-2(6)(7). The SRC will not respond to Mr. Baker's April 2, 2015, fourth motion for reconsideration. No such motion exists for reconsideration once a case is denied. SRC jurisdiction is statutory that once a case is denied the petitioner has 30 days to appeal to District Court.

**-Gollaher vs DCFS:** appeal withdrawn due to court conflict.

**-Isaac Lemus vs. Department of Human Services:** was postponed by petitioner because it is in mediation, rescheduled for May 14, 2015.

**-Paul Amann vs. Department of Human Resource Management:** the Continuance is scheduled for May 14, 2015. Committee members who heard the appeal need to schedule a time to come in and review the *in camera* documents before the hearing.

**-Swen Heimberg vs. POST:** Mr. Heimberg is appealing the denial of investigative files and requesting a fee waiver. Hearing scheduled for May 14, 2015.

**-Robert Augason vs. University of Utah:** Mr. Augason's hearing is scheduled for June 11, 2015.

At this time there are three potential hearings scheduled for May 14, 2015 (see the attached documents on the Utah Public Notice Website, [SRC Meeting Handouts April 9, 2015.pdf](#)).

#### **VII. Report on Cases in District Court:**

Mr. Tonks briefed committee members about the cases in District Court.

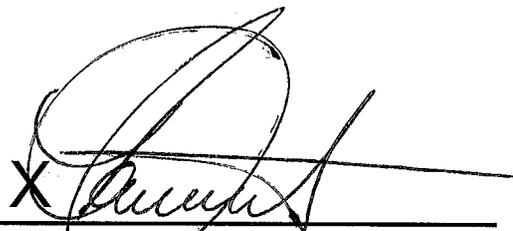
**Attorney General's Office vs. Schroeder** the oral argument was heard by the Utah Supreme Court on April 1, 2015 and the case has been officially submitted to the court for decision. Mr. Tonks believes, based on the questions asked, that the court might go back to the original decision from the Committee (see the attached documents on the Utah Public Notice Website; [SRC Meeting Handouts April 9, 2015.pdf](#)).

#### **VIII. Other Business:**

The next meeting is scheduled for May 14, 2015. The executive secretary queried if there will be a quorum present for the next meeting. Ms. Richardson has a speaking engagement on May 14, 2015, and needs Amann vs. DHRM Continuance to be the first hearing scheduled. Ms. Richardson will also be absent on July 9, 2015.

The April 9, 2015, State Records Committee meeting adjourned at 11:30 a.m.

**This is a true and correct copy of the April 9, 2015, SRC meeting minutes, which were approved on May 14, 2015. An audio recording of this meeting is available on the Utah Public Notice Website at <http://www.archives.state.ut.us/public-notice.html>.**



Nova Dubovik  
Executive Secretary