

# MOUNTAIN REGIONAL

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## 2014 Impact Fee Enactment Timeline, Notices, and Resolutions

2014-01-16 Draft – removing water service fee changes



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# **1. BACKGROUND AND INTRODUCTION**

This single document includes the timeline to be followed by Mountain Regional in adopting new impact fees as well as the various notices and resolutions necessary throughout the process. Note that The simplified timeline provided gives more notice—both as to time and distribution—than is required by the statutes, but compliance is much simplified. Also, this document assumes that the Mountain Regional Administrative Control Board will adopt a resolution recommending the proposed Impact Fee Resolution to the Summit County Council.

**2. [SIMPLIFIED] MOUNTAIN REGIONAL  
IMPACT FEE TIMELINE**

**SIMPLIFIED IMPACT FEE TIMELINE**  
**(ASSUMING EVERYTHING READY BEFOREHAND)**

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(note: this is the shotgun approach, doing more than required and earlier than required by the statutes for the sake of simplicity)

IFFP – Impact Fee Facilities Plan  
IFFPS – Impact Fee Facilities Plan Summary  
IFA – Impact Fee Analysis  
IFAS – Impact Fee Analysis Summary  
IFR – Impact Fee Resolution

**Before preparing IFFP and IFA:** Post notice of intent to prepare IFFP and IFA to the Utah Public Notice Website, including a map or description of area. (Posted to Public Notice Website on 3/27/2013)

**Before Jan. 22, 2014:** Provide notice of hearing. Hearing will be to adopt both the IFFP and IFR. Post notice of hearing as follows:

- At the district office
- On the district website
- At each public library within the district
- In the local newspaper
- On the Utah public notice website
- In at least 3 public places (total, counting other places already posted)

**Before Jan. 22, 2014:** Make everything publicly available (IFFP, IFFPS, IFA, IFAS, IFR). Make available at the following locations:

- At the district office
- On the district website
- At each public library within the district
- (and at whatever additional public places where the notice was posted, just to be safe)

**Feb. 5, 2014:** Hold public hearing and adopt (1) IFFP and (2) IFR. IFFP must be adopted first (even when both are done on the same day).

**May 6, 2014:** IFR becomes effective.

**3. NOTICE OF INTENT TO PREPARE IFFP AND  
IFA**

COMPLETE

**(for Utah public notice website [www.utah.gov/pmn](http://www.utah.gov/pmn))**

**NOTICE OF INTENT TO PREPARE IMPACT FEE FACILITIES PLAN AND IMPACT FEE ANALYSIS**  
Mountain Regional Water Special Service District ("MRW"), a political subdivision of the State of Utah, located in Summit County, Utah, intends to prepare and/or amend an Impact Fee Facilities Plan and an Impact Fee Analysis for culinary water. Pursuant to the requirements of Utah Code Ann. §§ 11-36a-501 and -503, MRW hereby gives public notice of its intent to prepare such Impact Fee Facilities Plan and Impact Fee Analysis. The geographical area covered by the proposed Impact Fee Facilities Plan and Impact Fee Analysis is the entirety of MRW. For additional information or special accommodation please call (435) 940-1916. Dated: \_\_\_\_\_, 2013.

**Notes:**

This is notice of just the *intent* to prepare the Impact Fee Facilities Plan and Impact Fee Analysis, thus no mention of a hearing.

**4. NOTICE OF HEARING TO ADOPT  
FACILITIES PLAN AND ENACT IMPACT  
FEES**

***(for newspaper publication and for Utah public notice website: [www.utah.gov/pmn](http://www.utah.gov/pmn))***

**NOTICE OF INTENT TO ADOPT AN IMPACT FEE FACILITIES PLAN AND ENACT MODIFIED IMPACT FEES**

Mountain Regional Water Special Service District (“MRW”), a political subdivision of the State of Utah, located in Summit County, Utah, intends to adopt an Impact Fee Facilities Plan for culinary water, and enact new and/or modified Impact Fees for culinary water. Pursuant to the requirements of Utah Code Ann. §§ 11-36a-502 and -504 and §17B-1-111, MRW hereby gives public notice of its intent to adopt such Impact Fee Facilities Plan, and Impact Fees. A public hearing is scheduled for February 5<sup>th</sup>, 2014, at 6:00 p.m. at the \_\_\_\_\_ located at \_\_\_\_\_ . The proposed Impact Fee Resolution, Impact Fee Facilities Plan, Impact Fee Analysis, and summaries of the Impact Fee Facilities Plan and Impact Fee Analysis are available for inspection at the MRW office, on the MRW website at [www.mtregional.org](http://www.mtregional.org), and at each public library within the MRW boundaries. For additional information or special accommodation please call (435) 940-1916. Dated: January 19<sup>th</sup>, 2014.

**Notes:**

Notice needs to be given no later than 14 days before the final hearing.

This is notice of the public hearing at which the Impact Fees will be adopted (and also at which the Impact Fee Facilities Plan will be adopted).

This notice needs to be posted at the MRW office, in the newspaper, on the Utah Public Notice Website, at each public library within the MRW boundaries AND at least three public places within the district (if not covered by the previous requirements).

## **5. SUGGESTED AGENDA LANGUAGE**

**For the agenda of the Summit County Council:**

1. Convene as the Governing Board of the Mountain Regional Water Special Service District

*<address business of the Mountain Regional Water Special Service District>*

2. Reconvene meeting of the Summit County Council

**For the agenda of the County Council, acting as the Governing Board of the Mountain Regional Water Special Service District:**

1. Public Hearing: Period for public comment on the proposed Impact Fees, including the Impact Fee Facilities Plan and summary, the Impact Fee Analysis and summary, the draft resolutions, or any other matters related to the proposed impact fees.

2. Discussion and possible motion on Resolution No. \_\_\_\_\_: Resolution adopting the Impact Fee Facilities Plan

3. Discussion and possible motion on Resolution No. \_\_\_\_\_: Resolution adopting the Impact Fee Analysis and adopting new Impact Fees

**6. RESOLUTION ADOPTING IMPACT FEE  
FACILITIES PLAN**

*(DRAFT)*

**MOUNTAIN REGIONAL WATER SPECIAL SERVICE DISTRICT**

**RESOLUTION NO. \_\_\_\_\_**

**RESOLUTION ADOPTING  
IMPACT FEE FACILITIES PLAN**

**February 5, 2014**

**A RESOLUTION OF THE COUNTY COUNCIL OF SUMMIT COUNTY, UTAH, ACTING  
AS THE GOVERNING BOARD OF THE MOUNTAIN REGIONAL WATER SPECIAL  
SERVICE DISTRICT ADOPTING AN IMPACT FEE FACILITIES PLAN**

**WHEREAS**, Mountain Regional Water Special Service District (the “**District**”) is a public subdivision of the State of Utah, authorized and organized under the provisions of Utah law; and

**WHEREAS**, the District is authorized pursuant to the Impact Fee Act, Utah Code Ann. § 11-36-101 et seq. to adopt and impose impact fees as a condition of development approval; and

**WHEREAS**, the District provided written notice of its intent to prepare an Impact Fee Facilities Plan pursuant to Utah Code Ann. §§ 11-36a-501; and

**WHEREAS**, the District has caused an Impact Fee Facilities Plan (the “**Facilities Plan**”) to be prepared by \_\_\_\_\_, a copy of which is attached hereto as **Exhibit A** and incorporated herein by reference; and

**WHEREAS**, \_\_\_\_\_ has certified its work under Utah Code Ann. § 11-36-306; and

**WHEREAS**, the District provided notice prior to adopting the Facilities Plan in satisfaction of Utah Code Ann. § 11-36a-502; and

**WHEREAS**, the District desires to adopt the Facilities Plan in satisfaction of the requirements of Utah Code Ann. § 11-36a-401.

**NOW, THEREFORE, BE IT RESOLVED** by the County Council of Summit County, acting as the Governing Board of the Mountain Regional Water Special Service District, that the Facilities Plan is hereby adopted.

**NOW, THEREFORE**, be it ordained by the County Council of Summit County, Utah, as **APPROVED AND ADOPTED** this 5<sup>th</sup> day of February, 2014.

SUMMIT COUNTY COUNCIL  
SUMMIT COUNTY, UTAH

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Chairperson

ATTEST:

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County Recorder

(SEAL)

## **Exhibit A: Impact Fee Facilities Plan**

**7. MOUNTAIN REGIONAL IMPACT FEE  
RESOLUTION**

*(DRAFT)*

**MOUNTAIN REGIONAL WATER SPECIAL SERVICE DISTRICT**

**RESOLUTION NO. \_\_\_\_\_**

**IMPACT FEE RESOLUTION**

**February 5<sup>th</sup>, 2014**

**A RESOLUTION OF THE COUNTY COUNCIL OF SUMMIT COUNTY, UTAH, ACTING AS THE GOVERNING BODY OF THE MOUNTAIN REGIONAL WATER SPECIAL SERVICE DISTRICT ADOPTING AN IMPACT FEE ANALYSIS AND IMPOSING WATER SYSTEM IMPACT FEES, PROVIDING FOR THE CALCULATION AND COLLECTION OF SUCH FEES, PROVIDING FOR APPEAL, ACCOUNTING, AND SEVERABILITY OF THE SAME, AND OTHER RELATED MATTERS**

**WHEREAS**, Mountain Regional Water Special Service District (the “**District**”) is a public subdivision of the State of Utah, authorized and organized under the provisions of Utah law; and

**WHEREAS**, the District is authorized pursuant to the Impact Fee Act, Utah Code Ann. § 11-36-101 et seq. to adopt and impose impact fees as a condition of development approval; and

**WHEREAS**, the District provided written notice of its intent to prepare an Impact Fee Facilities Plan pursuant to Utah Code Ann. §§ 11-36a-501; and

**WHEREAS**, the District has caused an Impact Fee Facilities Plan (the “**Facilities Plan**”) to be prepared by \_\_\_\_\_, a copy of which is attached hereto as **Exhibit A** and incorporated herein by reference; and

**WHEREAS**, \_\_\_\_\_ has certified its work under Utah Code Ann. § 11-36-306; and

**WHEREAS**, the District provided notice prior to adopting the Facilities Plan; and

**WHEREAS**, the District adopted the Facilities Plan; and

**WHEREAS**, the District has caused a water system Impact Fee Analysis (the “**Impact Fee Analysis**”); to be prepared by \_\_\_\_\_, a copy of which is attached hereto as **Exhibit B** and incorporated herein by reference; and

**WHEREAS**, \_\_\_\_\_ has certified its work under Utah Code Ann. § 11-36-306; and

**WHEREAS**, the District made this Impact Fee Resolution (the “**Resolution**”) available to the public on \_\_\_\_\_, 2014; and

**WHEREAS**, the District posted notice of the public hearing with respect to the proposed Resolution in at least three public places within the District on \_\_\_\_\_, 2014; and

**WHEREAS**, the District published notice of such public hearing in the \_\_\_\_\_, a newspaper of general circulation in the District, on \_\_\_\_\_, 2014; and

**WHEREAS**, the District, having previously made this Resolution available to the public, posted notice of its intent to adopt this Resolution on the Utah Public Notice Website on \_\_\_\_\_, 2014; and

**WHEREAS**, on \_\_\_\_\_, 2014 a copy of the Impact Fee Analysis, together with a summary (the “**Summary**”) designed to be understood by a lay person, was made available to the public through posting on the District website; and

**WHEREAS**, copies of the Impact Fee Analysis and Summary were placed in the \_\_\_\_\_ public library; and

**WHEREAS**, the Administrative Control Board of the District (the “**Board**”) recommended adoption of the Resolution; and

**WHEREAS**, the Summit County Council (the “**Council**”) held a public hearing on February 5<sup>th</sup>, 2014 regarding the Impact Fee Analysis and Resolution; and

**WHEREAS**, after careful consideration and review of the comments at the public hearing, the Council has determined that it is in the best interest of the health, safety, and welfare of the inhabitants of the District.

**NOW, THEREFORE, BE IT RESOLVED** by the County Council of Summit County, acting as the Governing Board of the Mountain Regional Water Special Service District, as follows:

## **SECTION 1: FINDINGS.**

The Council finds and determines as follows:

1.1. All required notices have been given and public hearings conducted as required by the Impact Fee Act with respect to the Impact Fee Analysis and this Resolution.

1.2. Growth and development activities in the District will create additional demands on its water system. The capital facility improvement requirements which are

analyzed in the Facilities Plan and the Impact Fee Analysis are the direct result of additional facility needs caused by future development activities. The persons responsible for growth and development activities should pay a proportionate share of the costs of the water system needed to serve the growth and development activity.

1.3. Impact fees are necessary to achieve an equitable allocation of the costs borne in the past and to be borne in the future, in comparison with the benefits already received and yet to be received.

1.4. In enacting and approving the Impact Fee Analysis and this Resolution, the Council has taken into consideration, and in certain situations will consider on a case-by-case basis in the future, the future capital facilities and water needs of the District, the capital financial needs of the District which are the result of the District's future facilities needs, the distribution of the burden of costs to different properties within the District based on the use of water and water facilities of the District by such properties, the financial contribution of those properties and other properties similarly situated in the District at the time of computation of the required fee and prior to the enactment of this Resolution, all revenue sources available to the District, and the impact on future water facilities that will be required by growth and new development activities in the District.

1.5. The provisions of this Resolution shall be liberally construed in order to carry out the purpose and intent of the County Council in establishing a program of impact fees in compliance with the Utah Impact Fees Act.

## **SECTION 2: DEFINITIONS.**

2.1. Except as provided below, words and phrases that are defined in the Impact Fee Act shall have the same meaning in this Resolution.

2.2. "Board" means the Administrative Control Board of the Mountain Regional Water Special Service District.

2.3. "Council" means the County Council of Summit County, Utah.

2.4. "District" means the Mountain Regional Water Special Service District.

2.5. "Facilities Plan" means the plan prepared for the District as required by Utah Code Ann. § 11-36a-301.

2.6. "Impact Fee Analysis" means the analysis prepared for the District as required by Utah Code Ann. § 11-36a-303.

2.7. "Project Improvements" does not mean system improvements.

2.8. "Request for Information" means a written request submitted to the District for information regarding the impact fee.

2.9. "Resolution" means this Impact Fee Resolution.

2.10. "Service Area" means all areas within the District. A map of the District boundaries is attached hereto as **Exhibit C**.

2.11. "Summary" means the summary of the Impact Fee Analysis.

### **SECTION 3: ADOPTION OF IMPACT FEES.**

3.1. Impact Fee Analysis. The County Council hereby approves and adopts the Impact Fee Analysis attached as **Exhibit B**.

3.2. Project Improvements Required. Developers shall install the necessary project improvements as a condition to (a) connection to the District's current or future water system and (b) delivery of water from the District.

3.3. Impact Fees. Impact fees are hereby imposed in the Service Area as a condition of any development activity that impacts public facilities in order to mitigate the impact of such development on public facilities. Impact fees shall be paid in cash to the District at the time of the building permit application to Summit County, and it is the policy of Summit County that no building permit shall be issued unless and until the impact fees required by this Resolution have been paid in full.

3.4. Impact Fee Schedule. The impact fees imposed are as set forth in the Impact Fee Schedule attached hereto as **Exhibit D** and incorporated herein by reference. Unless the District is otherwise bound by a contractual requirement or the impact fees have been prepaid according to a prior agreement with the District, the impact fee shall be determined from the impact fee schedule in effect at the time of payment.

3.5. Adjustments. The Council may adjust the impact fee imposed on a particular project or development at the time the impact fee is charged as necessary:

- (a) to respond to unusual circumstances in specific cases;
- (b) to respond to a request for a prompt and individualized impact fee review for the development activity of an agency of the State of Utah, a school district, or charter school;
- (c) to respond to a request for a prompt and individualized impact fee review for an offset or credit for a public facility for which an impact fee has been or will be collected;
- (d) to ensure that impact fees are imposed fairly; or
- (e) based upon studies and data submitted by the developer.

3.6. Credits and Reimbursements.

- (a) A developer may be allowed a credit against or proportionate reimbursement of impact fees if the developer:
  - (i) dedicates land for a system improvement;
  - (ii) builds and dedicates some or all of a system improvement; or
  - (c) dedicates a public facility that the District and the developer agree will reduce the need for a system improvement.
- (b) A credit against impact fees shall be granted for any dedication of land for, improvement to, or new construction of, any system improvements provided by the developer if the facilities:
  - (i) are system improvements, or
  - (ii) are dedicated to the public and offset the need for an identified system improvement.

3.7. Waiver for Public Purpose. The **Council** may, on a project-by-project basis, authorize exemptions or adjustments to the impact fee in effect for those projects the Council determines to be of such benefit to the community as a whole to justify the exemption or adjustment. Such projects may include low income housing.

3.8. Additional Fees and Costs. The impact fees imposed hereby are separate from and in addition to user fees and other charges lawfully imposed by the District for new development, such as engineering and inspection fees, building permit fees, review fees, hookup fees, connection fees, fees for project improvements, and other fees and costs that may not be included as itemized component parts of any impact fee.

#### **SECTION 4: IMPACT FEE ACCOUNTING.**

4.1. Impact Fee Accounts. The District shall establish a separate interest-bearing ledger account for each type of public facility for which an impact fee is collected and deposit impact fee receipts in the appropriate ledger account. Interest earned on each such account shall be retained in that account.

4.2. Reporting. At the end of each fiscal year, the District shall prepare a report on each impact fee ledger account established as required herein generally showing the source and amount of all monies collected, earned, and received by the account and each expenditure from the account. The report shall also identify impact fee funds by the year in which they were received, the project from which the funds were collected, the capital projects for which the funds were budgeted, and the projected schedule for expenditure. The report shall be in a format approved by the

State Auditor, certified by the District chief financial officer, and transmitted to the State Auditor annually.

4.3. Impact Fee Expenditures. The District may expend impact fees only for system improvements for the specific public facility type for which the fee was collected.

4.4. Time of Expenditure. Impact fees collected are to be expended, dedicated or encumbered for a permissible use within six years of receipt by the District, unless the Council directs otherwise. For purposes of this calculation, first funds received shall be deemed to be the first funds expended.

4.5. Extension of Time. The District may hold previously dedicated or unencumbered fees for longer than six years if it identifies in writing, before the expiration of the six year period, (i) an extraordinary and compelling reason why the fees should be held longer than six years; and (ii) an absolute date by which the fees will be expended.

4.6. Refunds. the District shall refund any impact fees paid by a developer, plus interest actually earned, when (i) the developer does not proceed with the development activity and has filed a written request for a refund; (ii) the fees have not been spent or encumbered; and (iii) no impact has resulted.

## **SECTION 5: APPEAL PROCEDURES.**

5.1. Application. The appeal procedures set forth herein apply both to challenges to the legality of impact fees of the District and to the interpretation and/or application of those fees.

5.2. Exhaustion of Administrative Remedies Required. Any person or entity residing in or owning property within the Service Area, and any organization, association, corporation, or other entity representing the interests of persons or entities owning property within the Service Area, may file a declaratory judgment action in district court challenging the validity of an impact fee after having first exhausted administrative remedies as provided in this Section 5.

5.3. Request for Information Concerning the Fee. Any person or entity required to pay or who has paid an impact fee under this Resolution may file a written request for information concerning the fee (the "**Request for Information**") with the District. The District will provide the person or entity with the District's Impact Fee Analysis and other relevant information relating to the impact fee within fourteen (14) days after receipt of the written Request for Information.

5.4. Appeal to the District before Payment of the Impact Fee. Any affected or potentially affected person or entity who wishes to challenge an impact fee under this Resolution prior to payment thereof shall file a written Request for Information

concerning the fee and proceed under the District's appeal procedures as set forth in Section 7.6 herein.

5.5. Appeal to the District after Payment of the Impact Fee; Statute of Limitations for Failure to File.

- (a) Any person or entity that has paid an impact fee under this Resolution and wishes to challenge the impact fee shall file a notice of appeal with the County Recorder that contains
  - (i) the appellant's name, mailing address and daytime phone number;
  - (ii) a copy of the written Request for Information and a brief summary of the grounds for appeal; and
  - (iii) the relief sought.
- (b) The notice of appeal shall be filed as provided below:
  - (i) if the appellant is challenging compliance with the notice requirements of Title 11, Chapter 36 of the Utah Code Annotated (the Impact Fee Act) with respect to the imposition of the impact fee, the notice of appeal must be filed within thirty (30) days after payment of the impact fee;
  - (ii) if the appellant is challenging compliance with other, non-notice, procedural requirements of Title 11, Chapter 36 of the Utah Code Annotated (the Impact Fee Act) with respect to the imposition of the impact fee, the notice of appeal must be filed within one hundred and eighty (180) days after payment of the impact fee; and
  - (iii) if the appellant is challenging the impact fee, the notice of appeal must be filed within one year after payment of the impact fee.

5.6. Appeals to the District. Any developer, landowner or affected party desiring to challenge the legality of any impact fee under this Resolution shall appeal directly to the District by filing a notice of appeal with the County Recorder either prior to payment of the impact fee but within thirty (30) days of the decision or action to which the appeal relates or after payment of the impact fee and within the applicable time period set forth in Section 5.5 herein. If a notice of appeal is not filed with the County Recorder within the applicable time period set forth above, the person or entity is barred from proceeding with an administrative appeal to the District.

5.7. Hearing. An informal hearing will be held not sooner than five (5) days nor more than twenty-five (25) days after the written notice of appeal is filed. The Council shall sit as the hearing officer.

5.8. Decision. After the conclusion of the informal hearing, the hearing officer shall affirm, reverse, or take action with respect to the challenge or appeal as appropriate. The decision of the hearing officer will be issued within thirty (30) days after the date the written notice of appeal was filed. In light of the statutorily mandated time restriction, the District shall not be required to provide more than three (3) working days' prior notice of the time, date, and location of the informal hearing and the inconvenience of the hearing to the challenging party shall not serve as a basis of appeal of the District's final determination.

5.9. Denial Due to Passage of Time. Should the District, for any reason, fail to issue a final decision on a written challenge to an impact fee, its calculation or application, within thirty (30) days after the filing of the notice of appeal, the challenge shall be deemed to have been denied and any affected party to the proceedings may seek appropriate judicial relief from such denial.

5.10. Judicial Review. Any party to the administrative action who is adversely affected by the District's final decision may petition the district court for a review of the decision within thirty (30) days of the hearing officer's final decision. After having been served with a copy of the pleadings initiating the court review, the District shall submit to the court the record of the proceedings before the District, including minutes, and if available, a true and correct transcript of any proceedings.

## **SECTION 6: SEVERABILITY.**

If any section, subsection, paragraph, clause, or phrase of this Resolution shall be declared invalid for any reason, such decision shall not affect the remaining provisions of this Resolution, which shall remain in full force and effect, and for this purpose, the provisions of this Resolution are declared to be severable. In the event any section, subsection, paragraph, clause, or phrase of this Resolution conflicts with the Utah Impact Fee Act, the relevant provision of the Utah Impact Fee Act shall control.

## **SECTION 7: EXHIBITS.**

All exhibits to this Resolution are hereby incorporated herein by reference and are made a part hereof as though fully set forth herein.

**SECTION 8: EFFECTIVENESS.**

This Resolution shall become effective ninety (90) days after the adoption of this Resolution.

**NOW, THEREFORE**, be it ordained by the County Council of Summit County, Utah, as **APPROVED AND ADOPTED** this 5<sup>th</sup> day of February, 2014.

SUMMIT COUNTY COUNCIL  
SUMMIT COUNTY, UTAH

\_\_\_\_\_  
Chairperson

ATTEST:

\_\_\_\_\_  
County Recorder

(SEAL)

## **Exhibit A: Impact Fee Facilities Plan**

## **Exhibit B: Impact Fee Analysis**

## **Exhibit C: District Map**

## **Exhibit D: Impact Fee Schedule**