To: Summit County Council

From: Rena Jordan, Executive Director, Snyderville Basin Special Recreation District
David Kottler, Board Chair, Snyderville Basin Special Recreation District

Date: October 23, 2014

Re: Snyderville Basin Special Recreation District $25,000,000 Open Space, Recreation and Trails Bond

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The Snyderville Basin Special Recreation District has continued to present and provide factual information about Proposition 1, which is to authorize the issuance of bonds for an amount not to exceed $25,000,000 for the purpose of financing all or a portion of the costs of acquiring property for and constructing recreational facilities, acquiring recreational open space, constructing trail and trail-related improvements. We have continued to describe the breakdown of the intended use to be specifically: $15,000,000 for recreational open space, $5,500,000 for the final phase of the Fieldhouse, $2,500,000 to help fund an ice arena expansion and $2,000,000 to add to the trails improvement funds.

Specifically, the District has also mailed to every household in the Snyderville Basin a complete Voter Information Pamphlet that describes in further detail the Proposition. The District participated in the Candidates forum and made a short presentation on the facts of the Bond and also the District has made the same presentations at community HOA meetings that it has been invited to.

Additionally there has been an independent community organization that raised funds to promote the bond through its own flyer, yard sign and informational meetings. The community has expressed support for the Proposition in letters to the editor of the Park Record, and a supportive Editorial was recently published in the Park Record. The independent community organization has also hosted radio conversations on KPCW to promote passage of the bond proposition.

Publications in the Park Record have been made by the County Clerk's office as required, with the exception of one technical legal notice which was not completed on October 11th. However, the legal notices will have run 4 times instead of the required 3, and the notices have also appeared on the Utah State website, Basin Recreation Website and the Summit County Website. Because of this technical error the District has sought legal counsel to determine if it remains appropriate to continue forward with the bond election. After reviewing the attached legal memorandum from the County Attorney's Office and discussing the issue with the District's Bond counsel, Ballard Spahr, it is the District's recommendation to continue to move forward with the bond proposition.

All indications are that there is broad community support for the $25,000,000 Open Space, Recreation and Trails Bond, and there has been no organized opposition that the Snyderville Basin Special Recreation District is aware of.

In consideration of all of the above, the Snyderville Basin Special Recreation District recommends to the County Council in advance of this final Public Hearing for the bond, that it continue to support and recommend the bond proposition.

COUNTY ATTORNEY
DAVID R. BRICKEY

CRIMINAL DIVISION

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DONNA JEAN BLONQUIST
LEGAL SECRETARY

LEGAL MEMORANDUM

To: **Kent Jones, County Clerk**
Rena Jordan, Executive Director, Snyderville Basin Special Recreation District

From: **David L. Thomas, Chief Civil Deputy**

Date: **October 23, 2014**

Re: **Recreation Bond Election**

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1. In accordance with UCA §11-14-202(1)(a), the Notice of Election set forth in Summit County Resolution 2014-21 (July 30, 2014) (the "Election Notice") was to be published "once a week during three consecutive weeks . . . the first publication occurring not less than 21 nor more than 35 days before the election." Consequently the Election Notice was scheduled to be published in *The Park Record* on October 11th, 18th and 25th . Due to an inadvertent error, the first published Election Notice did not occur until October 22nd. The Election Notice will be published on October 22nd, 25th, and 29th, as well as on November 1st in *The Park Record*.

2. Having missed the October 11th publication deadline, the Election Notice will only be published for two consecutive weeks instead of the required three. In light of these facts, you requested a legal opinion as to the validity of proceeding forward with the bond election.

3. In State v. Salt Lake City, 99 P. 255 (Utah 1908) the Utah Supreme Court held that with respect to a special bond election, "substantial compliance" with the statute is sufficient to validate the election. Although an old case, its discussion of the issue is still valid. In that case, a special election on a water bond was challenged because the petitioners asserted that the election notice was deficient in that it did not contain the "time and place" of the election. The Court ruled

> "as to the sufficiency of the notice. Upon this question the courts are not in entire accord. There are a few decisions which hold that the statute providing for notice of an election must be strictly complied with, or the election held thereunder will be void. Other courts hold that such statutes are directory merely, and in case it is made to appear that the voters had actual notice of the election, or that they attended the polls and participated in the election in such numbers as important elections are usually attended by the voters, the election will be held valid, unless it be made to appear affirmatively that voters in sufficient numbers remained away from the polls for want of a proper notice to change the result of the election. We think, however, that the weight of authority is to the effect that a notice of the time and place of the election ordinarily essential, and that the statute prescribing a notice must be substantially complied with in order to hold a valid election. . . . We are rather impressed with the doctrine that, at least so far as concerns special elections, the notice is a matter of substance, and that unless there is a *substantial compliance* with the statute in this regard the election ordinarily cannot be held valid. Upon the question involved it should not be overlooked that the statutory notice performs a double function: (1) As giving constructive notice to the voter binding upon him whether he has actual notice or not; and (2) to impart actual notice to him so that he may participate in the election. In order, therefore, to be binding constructive notice, the statute should be complied with, to the extent, at least, that it may fairly and reasonably be said that the purpose thereof has been carried into effect. This sometimes may be done without a literal compliance with the statute."

In that case, the Supreme Court ultimately found that the fact the polling places were not listed in the election notice was insufficient justification for voiding the bond election.

4. While no other Utah cases discuss "substantial compliance" within the context of a bond election, the case of Long v. City of Olympia, 431 P.2d 729, 732-733 (Wash 1967) may be instructive. In discussing the election notice pertaining to an annexation, the Washington Supreme Court held that

> "[i]n the instant case, the proof showed that, in addition to the official published notices, much publicity occurred through radio and news accounts, and that handbills and literature were distributed among the electors. Thus, as we said in *Davies v. Krueger, 36 Wash.2d 649, 653, 219 P.2d 969, 971 (1950)*: It is the rule in this state that the statutory requirement of giving official notice, even of a special election such as this, is in a measure directory in the sense that the requirement need only be substantially complied with where there is a large measure of general unofficial information concerning a coming election reaching the public through the newspapers, other printed circulated matter, and discussions at public gatherings."

In that case, the Court found the election valid even though the statutory notice was given a couple of days late.

5. Finally, there is the case of Neal v. Board of Supervisors, 53 NW2d 147, 150 (Iowa 1952). There, the appellants contended that the election notice was not published for the required time prior to the election. The Iowa Supreme Court stated

> "[t]he purpose of giving the notice is to inform the voters of the election and the proposition to be voted upon in sufficient time to enable them to consider the issues and decide how to vote. There is a distinct difference in whether the action assailing the election is brought prior to, or subsequent to, the holding of the same. We have held that the statutory directions as to time and manner of giving notice of an election are mandatory and will be strictly upheld where the action is brought prior thereto. If, however, the action is brought after the election has been held, a substantial compliance with the statue is sufficient. A reason for this is that there has intervened an expression of the sovereign will, and where such will is fairly expressed it becomes the duty of the courts to sustain such expression where it can be done by a liberal construction of the laws relating thereto."

6. In sum, the current state of the law in Utah is that "substantial compliance" is all that is required to validate the election process. However, while Utah Courts have ruled that failure to list the polling places will not invalidate an election, it has not ruled on whether "substantial compliance" is satisfied when the Election Notice is late.

7. While not binding precedent, I believe Long to be persuasive; namely, where there is sufficient unofficial notice of the election, the tardiness of the official election notice may be cured.

8. Neal is also persuasive. If the contest of the election does not come until after November 4th, the fact that the sovereign will has been exercised may give added weight to the argument that such is not to be overturned unless actual prejudice can be shown (people who would have voted, but did not because of failure to get three weeks notice instead of two).

9. Obviously, if the 40 day contest period in UCA §§11-14-208; 20A-4-403(3) passes without a complaint being filed in Third District Court, the issue is moot.

10. In conclusion, my legal analysis shows that there are rational legal arguments ("Substantial Compliance") consistent with Utah law that sustain an election where the Notice of Election is published late. However, there are no Utah cases on point which specifically address tardy legal notices. State was not about a tardy legal notice and such a factual change in the predicate of that case, may have altered the decision, as the majority of the Court did view the publication of notice as jurisdictional. While other states have applied the substantial compliance test to find that tardy legal notices are not fatal to an election, Utah has not had that fact pattern.

11. This opinion was forwarded to Randall Larsen of Ballard Sphar, who is acting as bond counsel on this matter, for his legal review. Mr. Larsen concurred in this opinion stating, "[t]here is a rational argument for substantial compliance, and in the event that a challenge is brought after the 40-day contestability period, that argument would become much stronger. Also, while all bond elections are "special elections," this bond election is concurrent with the general election."