



Emigration Canyon
Home Owners
Salt Lake City, Utah
801-669-9825

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Kent L. Jones, State Engineer
Utah Division of Water Rights
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April 20, 2017

Dear Mr. Jones,

Emigration Improvement District (“**EID**” AKA “**ECID**”) extracts water from the Emigration Canyon Aquifer via large-diameter commercial wells including the “**Brigham Fork**” and “**Upper Freeze Creek Wells**” under the sole legal authority of temporary change applications filed intermittently¹ with your office (“**water right 57-7796**”).²

As you are aware, on September 26, 2014 federal legal action under the False Claims Act (“**FCA**”) was commenced against EID trustees, managers, advisory committee members, and multiple Utah state officials for an alleged \$6.3 million fraudulent scheme to consolidate senior water rights held in Emigration Canyon (“**Canyon**”) for the benefit of massive land development (see Salt Tribune article “We Don’t Need Your Water” attached as **Exhibit A**).

Please note the following for the record:

- As of April 2015, your office approved **233** domestic-unit connections,^{3,4} while EID trustees publically purported to service **273** homes in the Canyon (see Riley Report attached as **Exhibit E** and EID “fact sheet” attached as **Exhibit F**);⁵
- By its own account, EID is providing water service to **forty (40)** domestic units unreported and unapproved by the Utah Department of Water Rights;

¹ Between June 2, 2006 (**t31547**) and October 24, 2011 (**t37769**) EID failed to file any temporary change application despite the fact that the former application lapsed on April 3, 2008.

² EID currently operates only two other large-diameter commercial wells “**Boyer Well #1**” (AKA “Freeze Creek Well #1”, AKA “FCW#1”, AKA “Well #1”) and “**Boyer Well #2**” (AKA “Freeze Creek Well #2”, AKA “FCW#2”, AKA “Well #2”) under permanent change applications **a12710b** (57-8865 – underground point-of-diversion No. 4) and **a17521** (57-7796 – underground point-of-diversion No. 9) respectively.

³ It is questionable how your office approved **188** domestic units for 94.04 acre feet under **a12710b** when EID requires Canyon residents to relinquish or lease **0.75 acre feet** for indoor and exterior service when connecting to its water system (see 2002 Water Conservation and Management Plan attached as **Exhibit B**; see also 2013 Water Conservation and Management Plan attached as **Exhibit C**).

⁴ While the **Boyer Company & Mount Olivet Cemetery Association** (“**Mt. Olivet**”) obtained approval from your office for the construction of **658** new homes in the Canyon under the original permanent change application **a12710** (57-69)(Memorandum Decision unavailable), this filing was formally withdrawn on December 17, 1997 by Mt. Olivet for reasons currently unknown (see **Exhibit D**).

⁵ With **677** US Postal mailboxes as of May 2014, EID reports to provide water service to only **34%** of the Canyon homes (in direct contradiction to EID’s statement of “coverage of populated areas” as noted in **Exhibit F**), while all **1,527** non-exempt parcels are taxed by EID at the highest rate allowed by law since 2007 (up until public disclosure of the FCA litigation on June 18, 2015).

- On October 26, 2016, temporary change application **t41129** (57-7796) lapsed;⁶
- Despite the fact that EID did not file another temporary change application until November 22, 2016, your office approved the allotment of **97.75 acre-feet** under t42153 (57-7796) for unspecified “year-round municipal purposes within the service area of Emigration Improvement District” on February 13, 2017 (*see Exhibit G*);^{7,8}
- In direct violation of the Memorandum Decisions of your office under **t31547**, **t41129** and **t42153** (*see Exhibits G, H and I*) EID failed to properly meter water discharge from the Brigham Fork Well since April 3, 2007, failed to observe any of its five (5) monitoring wells, and failed to update water lease contracts with your office (*see voice recording of the EID trustee meeting from August 18, 2016 available upon request*);
- As such, EID’s legal right to operate the Brigham Fork and Upper Freeze Creek Wells thereby terminated as well as its legal authority to grant water service under the following lease contracts previously approved by your office under numerous temporary change applications filed since 1988:
 - Indoor and exterior water service for the private residence of EID Trustee **David Bradford** (1230 S SKYCREST LN)⁹ via an underground well first reported under t91-57-23 and last reported under t38934 and **Catherine F. Gillmor** (155 S SKYCREST LN)¹⁰ via an underground well first reported under t18199 and last reported under t38934;
 - Indoor and exterior water service for EID Advisory Committee Member/Emigration Metro-Township Council Candidate **Steve Hook** (1113 N BURNT FORK RD),¹¹ **William M. Cutting Jr.** (1121 N BURNT FORK RD)¹² and **John A. Silverman** (1112 N BURNT FORK RD)¹³ via an underground well first reported as “existing” under t88-57-22 and last reported as “abandoned” under the name “Cutling [*sic*]/Silverman/Hook” under t42153;
 - Indoor water service for Emigration Metro-Township Council Member/Emigration Canyon Planning Commissioner/Emigration General Plan Steering Committee and former Emigration Advisory Committee Member **David Brems** (119 N YOUNG OAK RD),¹⁴ via an underground well first reported under t91-57-29 and last reported under the name “Andy Wallace etal [*sic*]” under t42153;

⁶ One month after t41129 lapsed, EID filed t42153 on November 22, 2016.

⁷ Your office failed to publish either change application as it had previously done for t40100 (approved prior to the filing of the *lis pendens* on August 20, 2015).

⁸ The Memorandum Decision failed to specify to the nature of use and how each domestic unit was to be calculated.

⁹ Currently connected to the EID water system for indoor water use.

¹⁰ Currently connected to the EID water system for indoor and exterior water use.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

- Indoor and exterior water service for former Emigration Canyon Community Council Co-Chairman and Emigration General Plan Steering Committee Member **Steve Borst** (1295 N KILLYONS LN),¹⁵ via an underground well first reported under t92-59-48 and last reported under the name “Gesteland” under t38934;
 - Indoor water service for former Emigration Canyon Planning Commissioner **John Morris** (5082 E QUAD RD),¹⁶ via an underground well first reported under t91-57-29 and last reported under “Andy Wallace etal” under t42153;
 - Exterior water service for a private pond at the residence of EID Advisory Committee Chairman and President of the Emigration Oaks Property Owners Association (“*Emigration Oaks*”)^{17,18} **R. Steve Creamer** (6451 E BRIGHAM FORK CIR)¹⁹ via an underground well first reported under t29104 and last reported under the name “Steve Cramer [*sic*]” under t42153;
- Although EID reported that it had leased EID Chairman Creamer **four (4)** domestic-unit connections in order to secure federally-backed financing intended for “*Economically Disadvantaged Communities*,”²⁰ no water lease has been reported to your office for indoor water service at EID Chairman Creamer’s aforementioned **\$4.2 million** dollar palatial estate²¹ (*see* Assessor’s Report attached as **Exhibit N**) and no water right is currently registered to the property owner of record “R. Steve Creamer”;
 - Although EID issued a water letter for the construction of the private residence of former EID Trustee Chairman/General Manager/Election Specialist/Emigration Advisory Committee member and current EID Treasurer as well as Emigration Township Planning Commission Chairman and “independent contractor” of the “Management Enterprises Company” **Fred A. Smolka** (5010 E TRAILS END WY)²² to include EID Election Judge/Secretary/Emigration General Plan Steering Committee Member **Marilyn Smolka**, as of June 18, 2015, the aforementioned failed to relinquish 0.75 acre feet prior to connecting to the EID water system (*see* **Exhibits B** and **C**), no water lease has been reported to your office, and the “Fred & Marilyn Smolka Loving Trust” has retained the use of 1.7 acre feet under 57-7933;

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ The Federal Complaint alleges that the Emigration Oaks water system was initially constructed in the Canyon by **Kem Gardner** of the **Boyer Company** (“*EID Predecessor*”) under the authority of a12710 (57-69)(*see* footnote 4; *see also* Desert News article “Sticky Canyon Annexation Plan Nursed Back to Health” from August 17, 1984 attached as **Exhibit J**) and then dumped on the shoulders of Canyon property owners when EID “acquired” the entirely defunct water system of the “Bel Air of Salt Lake City” (*see* **Exhibit K**) in 1998 (*see* 2013 Water Conservation and Management Plan attached as **Exhibit C**) thereby rehabilitating it with the assistance of federally-backed funds (*see e.g.* Election Campaign email from EID Trustee **Stevens** from September 16, 2015 attached as **Exhibit L**; *see also* contradictory advertising statement of Boyer Company attached as **Exhibit M**).

¹⁸ By July 23, 2006, Boyer sold all 223 Emigration Oaks lots as “buildable” (*see* **Exhibit K**).

¹⁹ Currently connected to the EID water system.

²⁰ EID also reported to have leased former Emigration Advisory Committee Member **Walter J. Plumb III** of **City Development Inc.** three (3) domestic-unit connections (addresses currently unknown) also to secure the aforementioned federally-backed funds.

²¹ The addresses of the remaining three (3) domestic-unit connections are currently unknown.

²² Currently connected to the EID water system for indoor and exterior water use

- The current EID Trustee Chairman and former Emigration Canyon Community Council Member **Michael Scott Hughes** publically purports that his residence is serviced by a private underground well (5754 EMIGRATION CANYON RD); however, no such water lease has been reported to your office, a water right is not registered under the property owner of record “Christine J. Hughes” and no point-of-diversion is recorded within 150 feet of the property address;
- Although EID or its Predecessor issued a water letter for the construction of the private residence of EID Trustee Co-Chairman **Mark Stevens** (5335 E PIONEER FORK RD),²³ no such water lease has been reported to your office and no water right is currently registered to the property owners of record “Mark H. and Marilyn W. Stevens”;
- Although EID or its Predecessor issued a water letter for the construction of the private residence of former EID Trustee/Emigration Township Planning Commissioner and current EID Engineering Committee Chairman **Lynn Hales** (684 N FREEZE CREEK CIR),²⁴ to include former Emigration Canyon Community Council Member **Mary Hales**, no such water lease has been reported to your office and no water right is currently registered to the property owners of record “Lynn B. and Mary Hales”;
- The residence of EID General Manager/Financial Manager/Election Specialist and “independent contractor” of the “Simplify Company” **Eric Hawkes** and Emigration Metro-Township Council Member **Jennifer Hawkes** (271 N MARGARETHE LN) is purported to be serviced by a private underground well with a water right leased from EID (*see* audio recording available upon request), however, no such water lease has been reported to your office and no water right is currently registered to the property owners of record “Eric L. and Jennifer Hawkes”;
- The point-of-use under permanent change applications for EID water shares a12710b (57-8865), a17521 (57-7796) and a18651 (57-7479) does not allow for water delivery in the area of the Canyon known as “**Smoky Lane**” despite the fact that EID currently provides water service to the prior residence of **Fred A. Smolka** (4990 E TRAILS END WY)²⁵;
- The point-of-use under the aforementioned water shares also does not allow for water delivery in the area of the Canyon known as Spring Glen (AKA “**Skycrest**”) despite the fact that EID provides water service to the private residence of EID Trustee **David Bradford** (*see above*) and **TJ Winger** (120 S SKYCREST LN);²⁶
- EID financial records report that the private residence of EID Operations Manager, Advisory Committee Member/Emigration Metro-Township Council Member and former Emigration Canyon Community Council Member **Joseph Smolka** (46 S SMOKEY LN)²⁷ connected to the EID water system sometime in 2008, however, Mr. Joseph Smolka failed to relinquish 0.75 acre feet to EID upon connection (*see id.*), and retained the use of 0.53 acre feet under a15801 (57-7270);

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

- Although EID or its Predecessor issued a water letter for the construction of the private residence of Emigration Canyon Planning Commissioner **David Bennion** (931 N TWIN CREEK CIR)²⁸ no such water lease has been reported to your office and no water right is currently registered to the property owners of record “David M. and Rebecca P. Bennion”;
- Although EID or its Predecessor issued a water letter for the construction of the private residence of current EID Advisory Committee Member and Emigration Canyon Planning Commissioner **Brent Tippetts** (343 N PIONEER RIDGE RD),²⁹ no such water lease has been reported to your office and no water right is currently registered to the property owners of record “Brent R. and Julie A. Tippetts”;
- Although EID or its Predecessor issued a water letter for the construction of the private residence of EID Advisory Committee Member/Election Judge/Emigration Oaks General Manager and Emigration Canyon Planning Commission Alternate Member **Jack Christensen** (6162 E LAST CAMP CIR)³⁰ to include EID Advisory Committee Member/Emigration Metro-Township Council Member and Emigration Oaks Board Member **Kathy Christensen**, no such water lease has been reported to your office and no water right is currently registered to “John A. and Kathryn C. Christensen”;
- EID financial records report that the private residence of former Emigration Canyon Community Council and Emigration General Plan Steering Committee Member **Pat Struhs** (1035 PINECREST CANYON RD)³¹ connected to the EID water system in 2005, however, “Patrick L. and Sharon S. Struhs” failed to convey of 0.45 acre feet to EID upon connection (*see id.*) and retained use of 1.60 acre feet under a18279a (57-10168);
- Although EID or its Predecessor issued a water letter for the construction of the private residence of Emigration Township Planning Commission Vice Chairman **Andrew Gallegos** (336 N MIDDLE OAK LN),³² no such water lease has been reported to your office and no water right is currently registered to the property owners of record “Andrew L. and Joan M. Gallegos”;
- EID financial records report that the private residence of former Emigration Canyon Community Council Committee Member **Hilary J. Silberman** (5820 EMIGRATION CANYON RD)³³ connected to the EID water system sometime in 2014, however, the “Hilary J. Silberman Revocable Trust” failed to convey of 0.75 acre feet to EID upon connection (*see id.*) and retained use of 0.0034 cfs under (57-3448);
- Although EID or its Predecessor issued a water letter for the construction of the private residence of EID Trustee Candidate and Emigration Metro-Township Council Candidate **Bob Staggers** (5949 E PIONEER FORK RD),³⁴ no such water lease has been reported to your office and no water right is currently registered to the property owners of record “Robert L. and Nancy L. Staggers”;

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ Currently connected to the EID water system for indoor water use.

³² Currently connected to the EID water system for indoor and exterior water use.

³³ *Id.*

³⁴ *Id.*

- EID financial records report that the private residence of former Emigration Canyon Community Council Chairman/Emigration Township Planning Commissioner/Emigration General Plan Steering Committee and Emigration Advisory Committee Member **Andrew McNeil** (1156 N KILLYONS LN)³⁵ connected to the EID water system sometime in 2003, however, Mr. McNeil failed to relinquish 0.75 acre feet to EID upon connection (*see id.*) and retained use of 0.97 acre feet under a21525 (57-8121) and 57-2310; and lastly,
- Although EID issued a water letter for the construction of the private residence of former EID Operations Manager and former Emigration Canyon Community Council Member **Jeffery Bierman** (1134 N KILLYONS LN)³⁶ to include EID Election Judge **Deborah Bierman**, no such water lease has been reported to your office, as of June 18, 2015, the aforementioned failed to relinquish 0.75 acre feet prior to connecting to the EID water system (*see id.*), and no water right is registered to the property owners of record; “Jeffery C. and Deborah A. Bierman”.

In addition to EID trustees and managers allowing themselves, personal associates and public officials free and/or unreported access to the Canyon’s Aquifer, we believe that your office may be also complicit in the scheme to fraudulently consolidate senior water rights held in the Canyon to the substantial detriment of the fragile Canyon ecosystem.

Please also note the following for the record:

- In the “**1966 Master's Thesis**” completed by later EID hydrologist **Jack Barnett**, Mr. Jack Barnett predicted “*almost certain*” detrimental impact to existing wells possessing senior water rights if vast quantities of water from the Canyon Aquifer were pumped via large-diameter commercial wells such as the Brigham Fork and Upper Freeze Creek Wells (including Boyer Wells #1 and #2) and therefore expressly recommended that “[d]evelopment...*should be limited to small-diameter domestic wells if influence on existing rights is to be avoided* (emphasis added)(*see* 1966 Master’s Thesis available the University of Utah Department of Geology and emigrationwater.org);
- On December 1, 1982, EID began a program to fraudulently retire senior water rights held in the Canyon when its attorney **Gerald H. Kinghorn** circulated a letter entitled “IMPORTANT NOTICE REGARDING YOUR WATER RIGHTS!” whereby for the “benefit of existing residents” private well owners could exchange “the most recent water rights” for the “most senior or oldest water rights [owned by EID]” (*see* letter signed by Attorney Kinghorn attached as **Exhibit O**);
- Contrary to the aforementioned, On December 16, 1983, your predecessor Dee C. Hansen *approved* Boyer Company & Mt. Olivet’s application a12710 (57-69) for **658 new domestic units** in the Emigration Oaks development (application filed 3/9/1983), but however one month later, *rejected* the same application for **658 new domestic units** under a12711 (57-2526)³⁷ based expressly on the *danger of impairing* senior water shares in the Canyon (application filed 3/9/1983)(*see* **Exhibits P, Q** and footnote 4);

³⁵ *Id.*

³⁶ *Id.*

³⁷ The ECHO Association assumes that the Canyon hydrology did not change within the period of one month.

- As a result of Jack Barnett’s research and scientific conclusions under the 1966 Master’s Thesis and EID “water-right exchange program” advertised by Attorney Kinghorn, on March 16, 1988 EID through **Don A. Barnett** of Barnett Intermountain Water Consulting (“**BIWC**”) began retiring senior water rights held by Canyon residents under temporary change applications (57-7796);
- Review of all temporary change applications submitted to your office since 1988 reveals a pattern of fraudulent and grossly inaccurate reporting (*see* “46 Leased EID Water Rights For Individual Private Wells” attached as **Exhibit R**);
- When the Brigham Fork and Upper Freeze Creek Wells were subsequently developed with the assistance of federally-backed funds in 2003 and 2013 respectively, EID ignored **thirty-four (34)** other possible well sites previously approved by your office under permanent change applications **a12710b** (57-8865), **a18651** (57-7479) and **a17521**^{38,39} (57-7796);⁴⁰
- As the point-of-diversion of both the Brigham Fork and Upper Freeze Creek Wells was not identified under permanent change application **a17521** (57-7796 – priority date 08/03/1993) nor **a18651** (57-7479 – priority date 2/27/2013) nor **a12710b** (57-8865 – priority date 1/30/2014), but rather under *temporary change applications*, all water rights in the Canyon are senior to these underground water sources (*see* **Exhibit E**);
- Contrary to EID’s explicit representations under temporary change applications t31547, t41129 and t42153, **nine (9)** of the **twenty-six (26)** private wells with “leased” EID water rights are not located within EID’s service area to include Canyon resident **Cynthia Furse** (2295 PINECREST CANYON RD)(*see* **Exhibits G, H, I and R**);
- EID continues to pump millions of gallons from the Canyon Aquifer via the Brigham Fork and Upper Freeze Creek Wells and has more than doubled water extraction and productive capacity over the past sixteen (16) years at the cost of existing Canyon property owners (*see* “Emigration Improvement District Monthly Water Usage” chart as presented by EID management on August 18, 2016 attached as **Exhibit V**);⁴¹

³⁸ On December 31, 1996, your office approved a17521 despite the fact that a17521 had “replaced” permanent change application **a6538** (57-7796), which EID had withdrawn after **fifty-one (51)** Canyon residents including Mt. Olivet objected to the movement of 649 acre feet from the base of the Canyon to higher elevations within the Canyon for the undisputed purpose of massive large-scale development (*see* Mt. Olivet protest attached as **Exhibit S**) and your office had *expressly rejected two (2)* out of the **three (3)** well sites proposed therein due to the danger of quantity impairment of senior water shares (*see* Memorandum Decision attached as **Exhibit T**).

³⁹ Although Mt. Olivet initially cited the 1966 Master’s Thesis in its *protest* against EID’s permanent change application a6538 (*see* **Exhibit S**), it later *joined* Boyer Company’s application for Reinstatement and Extension of Time (*see* **Exhibit U**)(permanent change application a12710 was later withdrawn as noted in footnote 4) and then *failed to protest* any of the numerous change applications filed for Boyer Well # 2 (a17521), the Brigham Fork Well (t26672 – t42153) and the Upper Freeze Creek Well (t40100 – t42153) despite both the anticipated and factual detrimental effect on the Canyon stream and Mt. Olivet’s own surface water rights located at the base of the Canyon.

⁴⁰ This supports the allegation of the Federal Complaint that both the Brigham Fork and Upper Freeze Creek Wells were placed on property purchased by EID Chairman **R. Steve Creamer** from **Walter J. Plumb III** of **City Development Inc.** immediately prior thereto.

⁴¹ The Federal Complaint alleges that both the Brigham Fork and the Upper Freeze Creek Wells were intended solely to meet the future demands of circa **one-thousand (1,000)** new homes yet to be constructed on property belonging to land developers including EID Chairman **R. Steve Creamer** in direct violation of the federal Safe Drinking Water Act and the FCA.

- The amount of water pumped from any one of the **forty-six (46)** private wells with leased water rights from EID is both unmeasured and unknown (*see Exhibit U*);
- In November 2015, *actual quantity impairment* caused by EID extraction of water under temporary and permanent change applications was reported directly to your office by multiple Canyon well owners possessing senior water rights (*see* emails of Canyon residents available upon request) as well as published on the front page of the Salt Lake Tribune (*see Exhibit A*);
- Questions regarding the priority of EID's water shares and quantity impairment by concerned Canyon well owners were simply *referred back* to **Don A. Barnett** and **Fred A. Smolka** by the Utah Department of Water Rights under your leadership (*see* emails of Canyon residents available upon request);⁴²
- In the 1966 Master's Thesis, Mr. Jack Barnett also noted that the Canyon's Aquifer was in direct communication with the Canyon Stream;
- On April 3, 2007, historically low stream levels were expressly noted in the Memorandum Decision of your office under **t31547** but for reasons unknown omitted from the Memorandum Decisions of **t41129** and **t42153** (*see Exhibits G, H and I*);
- Eight years later on April 30 2015, independent review of the Canyon's hydrology by David E. Hansen Ph.D., P.E. revealed that the Canyon Stream has not maintained adequate flow in **eight (8)** of the past **fourteen (14)** years in violation of EID's own Water Conservation and Management Plans (*see Exhibits W, B, and C*);
- Contrary to Dr. Hansen findings and the aforementioned observation of your office under t31547, EID Trustee Chairman **Hughes** continues to maintain that EID had "made every effort" to "*increase stream flow*" (emphasis added)(*see* Election Campaign Letter Hughes attached as **Exhibit X**);
- In direct contradiction to EID's own Water Conservation and Management Plans, during the June 18, 2015 trustee meeting, EID Trustee Chairman **Hughes** insisted that the substantially diminished flow of the Canyon stream was "*not EID's problem*" and concerned Canyon residents should "*take that up with the [Utah state] legislature*" (*see* voice recording available upon request);
- While the 2002 and 2013 Water Conservation and Management Plans limited total Canyon build-out to **700 domestic units** (*see Exhibit B and C*), Dr. Hansen determined that the Canyon's hydrology cannot support the current homes without impacting the habitat of the Bonneville Cutthroat Trout (*see Exhibit W*);
- Recently, the Federal Energy Regulatory Commission rejected a proposed 109-foot-high dam on the Bear River in southeastern Idaho in order to preserve the habitat of the aforementioned federally protected species (*see Exhibit Y*);

⁴² Change applications and extension requests are submitted to the Utah State Division of Water Rights for EID by **Don A. Barnett** and **Fred A. Smolka**.

- The 1966 Master’s Thesis provides sufficient explanation why EID violated express provisions of its own Water Conservation and Management Plans when it failed to measure any one of its **five (5)** monitoring wells during the development of the Brigham Fork and Upper Freeze Creek Wells (*see Exhibits B and C*; *see also* voice recording EID trustee meeting from August 20, 2015 available upon request);⁴³
- The total Canyon build-out limit of 700 domestic units established under EID’s own Water Conservation and Management Plans (*see Exhibit B and C*) as well as the limit of 725 domestic units established in the 1999 Emigration Township General Plan (“**1999 General Plan**”)(*see* excerpt attached as **Exhibit Z**) was entirely omitted in the 2012 Emigration Township General Plan (*see* excerpt attached as **Exhibit AA**) despite the fact that **Fred A. Smolka, Michael Scott Hughes, Lynn Hales, Mary Hales, Joe Smolka, David Brems, Andy McNeil, Hilary J. Silberman, John Morris and Walter Plumb III** formulated the 1999 General Plan (*see id.*);
- EID management failed to record the adoption and contents of the Water Management and Conservation Plans as well as the 1999 General Plan in its organizational meeting minutes despite the fact that it was debated at length during several public meetings (*see* interview former EID Trustee Bowen available upon request);
- With **677** domestic units currently built in the Canyon to date (*see* footnote 5), financial records reveal that EID management promised future water service to yet another **93 vacant lots** under so-called “**standby agreements**” in direct violation of the **700 domestic-unit limit** established under its own Water Conservation and Management Plans (*see Exhibits B and C*) and the 725 limit under the 1999 General Plan (*see Exhibit Z*; *see also* EID financial records available upon request);⁴⁴
- Contrary to its own Water Conservation and Management Plans as well as the 1999 General Plan, on August 20, 2015, EID through **Don A. Barnett** voiced no objection to the construction of an additional **five-thousand (5,000)** homes due to the fact that Barnett “knew no limit [as to the number of homes the Canyon’s hydrology could support]” (*see* voice recording EID trustee meeting available upon request);
- The last known meeting of the “EID Advisory Committee” chaired by land developer **R. Steve Creamer** occurred in **closed session** on December 17, 2015; (*see* White email available upon request);⁴⁵

⁴³ EID reported in its 2002 and 2013 Water Conservation Plans that it “*regularly* measures water levels [of its five (5) monitoring wells]” (emphasis added)(*see Exhibits B and C*) even though did not begin taking measurements until October 2016 (*see* voice recordings 2016 EID trustee meetings available upon request).

⁴⁴ Because EID trustees **Hughes, Stevens** and **Bradford** have refused to release political opponents from particular standby agreements (*see* reference to Canyon resident White in **Exhibit X**), but have released other canyon residents from standby obligations without recording such decision in the organizational meeting minutes, (*see* email Hawkes attached as **Exhibit BB**), it is impossible to know exactly how many future homes EID is legally obligated to allow connection to its water system.

⁴⁵ During the July 21, 2016 trustee meeting, EID trustees and managers refused to disclose the identity of the EID Advisory Committee members meeting immediately after the public session (*see* voice recording available upon request).

- In violation of its own Water Conservation Plans as well as the 1999 General Plan, EID issued new water letters for the construction of several new private residences at 965 N TWIN CREEK CIR^{46,47} (“*Twin Creek*”), 429 N OLD OAK RD⁴⁸ (“*Old Oak*”), 18 S DIANE HOLLOW WY^{49,50} (“*Diane Hollow*”), and 6002 E PIONEER RIDGE CIR⁵¹ (“*Pioneer Ridge*”) but failed to report additional domestic connections and/or water leases to your office;
- Contrary to the Water Conservation and Management Plans and 1999 General Plan, on August 20, 2015, “independent contractor” **Fred A. Smolka** of the “Management Enterprises Company” falsely reported that “zoning regulations” limited Canyon build-out to **750** domestic units because there is “not land available [for new building]”⁵² (see **Exhibit CC**; see also ownership of Canyon property by the Boyer Company noted in **Exhibit J**; see also total number of parcels noted in footnote 5);
- Contrary to the Water Conservation and Management Plans and 1999 General Plan, as well as the election slogans of Fred A. Smolka, on December 28, 2007, EID acquired *an additional 52.56 acre feet* to meet the “reasonable future requirements” of **69** new homes yet to be constructed in the Canyon under a18651 (57-7479)(see **Exhibits DD** and **EE**);
- On November 7, 2013 you approved EID’s extension request for permanent change application a18651 (57-7479) for “69 domestic units”, despite the fact that your predecessor had limited the original application to the inside domestic needs of **two (2)** “*part-time families*” (emphasis added)(see **Exhibits FF** and **GG**);
- EID trustees and managers continue to flout any questions concerning quantity impairment of private wells possessing senior water rights as accurately predicted in the 1966 Master’s Thesis and officially refused to place the issue on the May 5, 2016 EID trustee meeting agenda for public discussion (see ECHO email attached as **Exhibit HH**);
- Despite the fact that EID has amassed over **\$6.3 million** dollars of federally-backed debt to provide water service to only **160** additional Canyon homes since November 14, 2002,⁵³ in the 2013 Water Conservation and Management Plan, EID trustees “expected that an additional source or sources will need to be added” to the **four (4)** large-diameter commercial wells constructed contrary to the 1966 Master’s Thesis (see **Exhibit C**);

⁴⁶ Construction of the private residence commenced in February 2017.

⁴⁷ Currently connected to the EID water system.

⁴⁸ *Id.*

⁴⁹ Construction completed sometime in 2016 and is currently listed for sale at \$699,900.00 (MLS# 1429102)

⁵⁰ *Id.*

⁵¹ Construction of the private residence commenced in February 2017.

⁵² As of January 2017, zoning authority is now in the hand of the Emigration Metro Township Council Members **Jennifer Hawkes, Joe Smolka, Kathy Christensen, David Brems** and **Rick Raile**.

⁵³ EID reported in its 2002 Water Conservation and Management Plan that it was providing water service to only **113** residential units located entirely in Emigration Oaks (see **Exhibit B**), and in its 2013 Water Conservation and Management Plan, EID reported that of the **223** Emigration Oaks parcels, only **50** remained vacant (see **Exhibit C**). Therefore, by its own account, sixty (60) of the 160 homes added to the EID water system since November 14, 2002 were newly constructed in Emigration Oaks and only circa 100 Canyon homes outside of Emigration Oaks actually abandoned private wells and joined the EID water system instead of the **232** connections required under the conditions of the federally-backed loans intended for “*Economically Disadvantaged Communities*.”

- In direct contradiction to EID’s own Water Conservation and Management Plans and 1999 General Plan, during the March 12, 2015 trustee meeting, EID management revealed a formula whereby EID would collect increased impact fees from an additional **517** new homes “yet to be constructed” in the Canyon (*see* voice recording available upon request);
- To date, EID continues to falsely maintain that Don A. Barnett of BIWC has “carefully managed those [EID’s] *very senior rights*” (emphasis added)(*see* Election Campaign Letter **Hughes** and **Bradford** attached as **Exhibit JJ**) “*date[ing] back to 1872*” (emphasis added)(*see* **Eric Hawkes** quote in **Exhibit A**) despite the fact that Hughes, Bradford and Eric Hawkes were informed by you personally that permanent change application a12710b had lapsed thereby reducing the March 9, 1983 priority date of Boyer Well #1 to January 30, 2014 (*see* letter Utah Department of Water Rights attached as **Exhibit KK**);^{54,55,56}
- Despite the fact that only the Emigration Oaks development had been built directly on an area expressly prone to wildfire fatalities (*see* excerpt “Microsimulation of Neighborhood Evacuations in the Urban – Wildland Interface” attached as **Exhibit MM**), in June 2013, EID began charging eight-six (86) private-well owners in the Main Canyon a “**fire-hydrant rental fee**” (*see* **Exhibits L, X, CC and JJ**);
- Contrary to the campaign slogans of EID Trustee Stevens, Hughes, Bradford as well as “independent contractor” Fred A. Smolka (*see id.*), the current Chairman of the EID Engineer Committee **Lynn Hales** reported that the fire hydrants of the EID water system “*would do nothing* to stop a major wildfire” (emphasis added)(*see* Salt Lake Tribune article “Money Up in Smoke – Wildfires That Threaten Homes Near the Edges of Forests Burn Through Federal Firefighting Budget” attached as **Exhibit NN**);
- EID management has threatened Canyon residents with “*criminal action*”⁵⁷ should they fail to abandon their private wells and connect to the water system expressly rejected in the 1966 Master’s Thesis as a non-viable option based upon physical properties of the Canyon (*see* video recording available upon request);
- On December 29, 2010, EID management reported to your office that Canyon residents “*will convert* from a system of individual family wells to the canyon water system...as they are able to afford expansion” (emphasis added)(*see* EID extension request for permanent change application a17521 attached as **Exhibit OO**);

⁵⁴ On December 31, 2012, you personally also informed EID management that permanent change application **a18651** (57-7479) had also lapsed thereby reducing the 2/28/1995 priority date of Boyer Well #1 for two (2) “part-time families” to 2/27/2013 (*see* **Exhibit LL**).

⁵⁵ Boyer Well #2 has a priority date of August 3, 1993 (a17521) and can hardly be described as “very senior” to most all other water rights held in the Canyon (*see* **Exhibit E**).

⁵⁶ Initial review of EID filing for a17521 (57-7796) reveal that Boyer Well #2 it may have been drilled and is currently operated under an invalid permanent change application.

⁵⁷ When asked during a trustee meeting in 2014 why EID was forcing **eight (8)** Canyon residents to abandon private wells and connect to the EID water system based on purported “contractual obligations” from over 25 years prior thereto, EID Trustee **Bradford** responded that EID “*needed to get its books straight*” (*see* voice recording available upon request).

- Six years later, you personally rejected a temporary change application of Canyon resident White to change the point-of-diversion of **0.45 acre feet** a few yards from its previous source because the applicant⁵⁸ “had failed to submit additional information to *give a reason to believe the change would not impair existing rights* [i.e., EID’s water share 57-7796]” (emphasis added)(see Memorandum Decision of t41707 attached as **Exhibit PP**);
- One-and-a-half months later, your office *approved* EID application t42153 (57-7796) for the movement of **97.75 acre feet** from a surface water source located eight (8) miles away at the lowest elevation of the Canyon for unspecified “municipal purposes” because it was your determination that the temporary change application “could be approved *without adversely affecting existing rights*” – (emphasis added)(see **Exhibit G**);
- The aforementioned determination was contrary numerous complaints to your office by Canyon residents, Salt Lake Tribune front-page article whereby quantity impairment was specifically reported (see **Exhibit A**) and the 1966 Master’s Thesis (see *above*);
- To date, the website of the Utah Division of Water Rights under your leadership falsely records a priority date of “1872” despite the fact that EID has filed temporary change applications with your office since 1988 changing, the purpose of use, the point-of-use and the point-of-diversion (see **Exhibit QQ**);
- In violation of Administrative Rule R655-3-7, on November 18, 2015 you personally approved the conveyance of 0.45 acre feet (see **Exhibit RR**) even though **Fred A. Smolka** appeared on behalf of both the guarantee as “EID Treasurer” as well as the guarantor of the “Fred A. and Marilyn M. Smolka Loving Trust” (see **Exhibit SS**);⁵⁹
- During numerous public meetings, EID trustees and managers have constantly informed concerned Canyon residents that water rights in the Canyon “*have no value*”, and EID has “*destroyed the value* [of individual water shares]” due to the “*very senior water shares*” held and controlled by EID (see voice recordings available upon request);
- Upon inquiry by a concerned Canyon resident concerning EID’s new Upper Freeze Creek well drying up existing wells in May 2013, **Fred A. Smolka** reported that it “was *nothing to worry about*” because EID was “not able to detect any decrease in water flow after the new wells [i.e., Brigham Fork and Upper Freeze Creek Wells] were in place” because “[t]he new well is a little over a mile from your home and is *in a different strata of rock* than your well” and in any case, “[t]he wells close to the main road seem to be holding up alright...[but] *if someone has trouble with their well they have an alternative readily available*” (emphasis added)(see email attached as **Exhibit UU**); and lastly,

⁵⁸ In 2013, EID management informed Canyon resident Kennard that the previous owner (i.e., Sherman or Manning) had leased a water right from EID in 1994 and Kennard was therefore “contractually obligated” to connect to the EID water system by September 2016 (see EID demand letter available upon request) despite the fact that EID had reported Canyon resident White as the lessee of the water right since 2014 (see **Exhibit U**).

⁵⁹ Fred A. Smolka is certainly aware of the administrative rule of water-right conveyance as well as the value of individual water shares as demonstrated in the fact that one year prior thereto, **Don A. Barnett** reported the conveyance from **Fred A. Smolka** and **Marilyn M. Smolka** to the “Fred A. Smolka and Maryln M. Smolka Loving Trust” (see **Exhibit TT**).

- While simultaneously forcing Canyon taxpayers to pay the legal costs of defending themselves as well as their “independent contractors” **Eric Hawkes** and **Fred A. Smolka** in the federal action (*see* EID statement concerning having “no employees” noted in **Exhibit F** and Fred A. Smolka statement concerning “our motion” noted in **Exhibit CC**),⁶⁰ EID under the leadership of **Michael Scott Hughes, Mark Stevens, David Bradford, R. Steve Creamer, Lynn Hales, Joseph Smolka, Steve Hook, Brent Tippets, Jack Christensen** and **Kathy Christensen** currently charges all other Smoky Lane and Skycrest Lane residents NOT CONNECTED to the EID water system a “water user fee”.^{61,62,63}

Based upon the aforementioned, the ECHO Association hereby demands the immediate closure of the Brigham Fork and Upper Freeze Creek Wells to include termination of water service to the aforementioned twenty-seven (27) domestic units as well as Twin Creek, Old Oak, Diane Hollow and Pioneer Ridge structures without delay.

Connections to the EID water system are to be physically severed, while all water extraction equipment (i.e., water pumps and expansion/storage tanks) are to be removed from the aforementioned underground water sources.

ECHO expressly retains the right to protest the **ninety-seven (97)** unreported domestic units,⁶⁴ which EID illegally allowed to connect to its water-distribution system.

⁶⁰ EID Trustee Chairman **Hughes** falsely reported in the Campaign Letter from September 28, 2015 that Canyon taxpayers were burdened with only the legal costs of EID trustees and not the legal costs of its “independent contractors” Eric Hawkes and Fred A. Smolka (*see* **Exhibit X**). Similar false statements and inaccuracies by EID Chairman **Hughes** were also recorded in the federal case *In Re Hughes* (*see* **Exhibit VV**). Upon direct questioning by the undersigned during the EID trustee meeting on September 22, 2016, EID Trustee Chairman Hughes expressly denied the ruling of the US Bankruptcy Court that he had attempted to defraud his creditors (*see* audio recording available upon request).

⁶¹ This fee was originally assessed in June 2013 as a “**fire-hydrant rental fee**” after EID placed three fire hydrant within several feet of the fire hydrants belonging to the Spring Glen Water Company sometime in 2008.

⁶² Contrary to a valid GRAMA request filed by Canyon resident White on December 17, 2015, EID management refuses to release financial records showing proper payments for water leases received from EID trustees, managers and advisory committee members (*see* White GRAMA request available upon request).

⁶³ In 2015, EID certified **forty-six (46)** Canyon homes under Salt Lake County’s “Certified Delinquent Program” in order to collect EID’s “**fire hydrant rental fees**” (later changed to “**water availability fee**” and more recently to a “**water user fee**”) through property tax liens and foreclosure sales (*see e.g.* Hughes’ statement concerning EID Trustee candidate White recorded in **Exhibit X**). For those Canyon homeowners with mortgage escrow accounts, payments to EID followed without the homeowner’s consent and at times contrary to the homeowner’s express wishes.

⁶⁴ Properly calculated at 0.75 acre feet per domestic unit for indoor and exterior water service, the 94.04 acre feet of water share 57-8865 allows only for **125** water connections. As **twenty-seven (27)** families are reported under various other water shares owned by EID (*see* **Exhibit E**) – excluding the aforementioned **twenty-four (24)** units belonging to the public officials/candidates currently connected to the EID system as outlined above – **ninety-seven (97)** of the purported **273 connections** are unreported and thus subject to termination of water service by the Utah Division of Water Rights under your leadership.

The ECHO Association also reserves the right to protest all change applications including extension requests relating to the Canyon Aquifer henceforth filed and/or approved by your office.

At this time, ECHO refrains from taking legal action against any other Canyon resident not directly affiliated with EID as well as the EID's continued operation of Boyer Wells #1 and #2.

As the Brigham Fork Well is not currently in use due to iron-bacterial contamination (*see Exhibit V*; *see also* voice recording of the EID trustee meeting from August 18, 2016 available upon request) while the Upper Freeze Creek Well only "provides *additional redundancy*"^{65,66} (emphasis added)(*see* Election Campaign Letter **Bradford** attached as **Exhibit WW**) or even "*much needed redundancy*" (emphasis added)(*see* Election Campaign Letter **Hughes** attached as **Exhibit X**), by its own account, EID will have the technical capacity to provide water service to the **249** remaining homes purported to be connected to its distribution system.^{67,68}

Should your office fail to act before May 17, 2017, the ECHO Association will seek judicial order to lock and seal all EID water extraction and water-storage facilities in order to adequately safeguard the habitat of the Bonneville Cutthroat Trout as well as the circa four-hundred (400) homes possessing undisputed senior water shares in the Canyon.⁶⁹

As director of the Utah State Division of Water Rights, your action and/or inaction in this matter will be noted for the record and may lead to substantial civil fines and penalties under the FCA to include the recovery of all reasonable attorney fees and costs permitted under state and/or federal statute.^{70,71}

⁶⁵ "Redundancy" was also the explanation given by EID management for the **\$1.84 million** dollar development of the Brigham Fork Well (*see* interview former EID Trustee Bowen available upon request).

⁶⁶ The cost to the Canyon property owners for "additional redundancy" of the Upper Freeze Creek Well constructed on top of the "redundancy" of the Brigham Fork Well was cited by EID management to exceed **\$2 million** dollars (*see* voice recording of EID Trustee Meeting from March 2015 available upon request).

⁶⁷ In the 2002 Water Conservation and Management Plan, EID reported that Boyer Wells #1 and #2 were alone sufficient to provide water service to **223** Emigration Oaks homes (*see Exhibit B*). Without a sworn affidavit to the contrary, the ECHO Association assumes that this statement made the United States Government is correct.

⁶⁸ In the front-page article published in the Salt Lake Tribune, EID management reported that it was currently capable of providing water service to all **253** additional property owners who had executed so-called "stand-by contracts" on top of the **273** homes already purported to be connected to its water system (*see Exhibit A*).

⁶⁹ On March 9, 2017, federal judge Jill N. Parish lifted the *lis pendens* previously placed on water share 57-7796 and assessed the ECHO Association a fine of \$29,936 thereby necessitating the present action.

⁷⁰ With the assistance of multiple Utah state officials (*see* ECHO email to Walter Baker of the Utah Division of Water Quality attached as **Exhibit HH** and Hughes Election Campaign Letter attached as **Exhibit X**), EID trustees, managers, and advisory committee members have spent over **\$12 million** of public funds (*see* EID Extension Request attached as **Exhibit OO**) constructing the exact water system expressly rejected under the 1966 Master's Thesis in what has alleged to be the longest and most lucrative water grabs in the history of the state of Utah (*see Exhibit A*).

⁷¹ The pending federal action is intended to recover treble damages *inter alia* at the cost of the named and yet to be named Defendants.

Your immediate response is both necessary and mandated under Utah state law.

Kind Regards,

A handwritten signature in black ink, appearing to read 'Mark Tracy', written in a cursive style.

Mark Christopher Tracy
- ECHO President