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Emigration Improvement District

Official Newsletter

The Trustees of the Emigration Improvement District present this draft for your information and comments.

Emigration Improvement District Water Management Policy
June, 1996

1. Emigration Improvement District

The Emigration Improvement District ("District") is a water and sewer improvement district created the Salt Lake County Commission under state law governing such entities. The District's Trustees are elected by registered voters residing within the legal boundaries of the District which includes the entire Emigration Creek drainage, ridge line to ridge line. The District's functions are supported by property taxes and water user fees paid by property owners and users within the District's boundaries.

2. Responsibilities of the District - Management of Emigration Canyon Water Resources

The District was originally organized with both water and sewer responsibilities; but historically the District's activities have been devoted primarily to the management of the water resource owned by the District. This water resource , Water Use Claim 57-7796, is fully adjudicated with an 1872 priority date and represents 699 acre-feet.

Under Utah law the District's Trustees are charged with managing this publicly-owned water resource equitably and with diligence and prudence. It is the responsibility of the Trustees to manage the District's water resources so that this water is put to beneficial use in a way which will ensure, to the maximum practical extent, that the limited Emigration Canyon water resource from which the District's water rights originate is protected, preserved and perpetuated.

3. Purpose of this Policy

a. This policy is adopted by the District to promote and provide for prudent and sustainable use of Emigration Canyon water resources, including the District's water rights, fair and equitable allocation of the Districts water rights and prudent and responsible management of all assets and resources of the District.

b. This policy is intended to govern the management of the District's water rights consistent with public health, safety and general welfare in accordance with all applicable rules, regulations, laws, findings, plans, ordinances and judicial rulings of Salt Lake County, the State of Utah and the United States of America. Agencies and entities with which the District intends to coordinate and cooperate, to the extent possible, include the following:

i. SALT LAKE COUNTY: Salt Lake County Commission, Assessor, Attorney, County Health Department, Elections

ii. SALT LAKE CITY: Fire Department, Mayor's Office, Police Department, Public Utilities Department

iii. STATE OF UTAH: Utah State Auditor, Emergency Management, Environmental Quality Department (Drinking Water Division), Fire Marshal, Highways Department, Natural Resources Department (Geological Survey, Parks and Recreation, Water Resources, Water Rights, State Engineer, Wildlife Resources)

iv. UNITED STATES OF AMERICA: Forest Service, Army Corps of Engineers, Environmental Protection Agency, Bureau of Land Management (Interagency Fire Control, Geological Survey, Water Resources Division), Bureau of Reclamation (Utah Reclamation Mitigation and Conservation Commission).

c. This policy is adopted to establish sound and rational guidelines for temporal and geographic distribution of water allocations under the District's water rights consistent with sustainable quantity and quality of water from Emigration Canyon water resources taking into account effects on quantity and quality of water resources imposed by the semi-arid climate of Utah, and biological, geological, and hydrological factors present in Emigration Canyon.

d. This policy is adopted to ensure, to the extent possible within the District's legitimate authority and sphere of influence, that the total amount of water drawn from Emigration Canyon under the District's water rights and other water rights in Emigration Canyon is within the actual limits of sustainable water supply, according to the best evidence and professional judgment available as to the amount of sustainable water supply, said best evidence and judgment being prudently employed toward the objectives of protecting water quality and sustaining water supply in perpetuity.

e. This policy is adopted to ensure, to the extent possible within the District's legitimate authority and influence, that new allocations of water from Emigration Canyon water resources do not interfere with quantity or quality of water for use by

existing users.

f. This policy is adopted to provide for fair and equitable monetary return to the District in exchange for the District's provision of publicly-owned water resources to public or private users; such water resources being known to have significant monetary value in the semi-arid climate of Utah.

g. This policy is adopted to protect and defend the District's water rights, including the historical priority thereof, under the laws of the State of Utah and the United States of America. This policy is further adopted to eliminate, to the extent possible within the District's legitimate authority and influence, all illegal, inappropriate, or abusive uses of the limited Emigration Canyon water resource from which the District's water resources are drawn.

The foregoing notwithstanding, this policy is further adopted to provide water users who have, prior to 1988, inadvertently or unknowingly undertaken illegal use of Emigration Canyon water resources with a limited time opportunity to correct such inadvertent, or unknowing illegal use prior to legal or enforcement action.

4. Basis of this Policy

In developing this policy the Trustees have taken into account the following items of information, professional judgment and expertise, planning, and policies, rules, regulations, ordinances and laws promulgated by applicable agencies of government

a. Previous District policies:

i. Water Right Issuance Allocation, January, 1985

ii. Policy for Allocation of Leases of Water Rights August, 1, 1991

iii. Draft Canyon Water System and Resource Management Policy, 1995

iv. Canyon-wide Water System Proposal, 1995

b. U.S.G.S. Seepage Study, 1955

c. University of Utah Master's Thesis, Jack Barnett, 1965.

d. Templeton, Linke & Alsop Study, 1970

e. U. S. Clean Water Act, 1977

f. Salt Lake County Master Plan for Emigration Canyon, 1985.

g. Salt Lake County Hillside Ordinance, 1988.

h. Canyon-wide Water System Master Plan, Horrocks and Corrollo, Engineers, 1995

i. Barnett Intermountain, Professional Interpretation of Emigration Canyon Water Resource Availability based on the District's water monitoring program 1991-1996.

5. Policy

a. It is the policy of the District, to the maximum extent possible, to achieve beneficial use of its water rights by the approximately 417 homes served by Emigration Canyon water sources existing in the District as of the effective date of this policy. It is the policy of the District that all applicants who desire use of the District's water resources will be treated fairly and equitably within the District's established policy guidelines.

i. The District will offer a free program by which owners of the approximate 417 existing homes will be able to exchange their current water rights for water leases under the District's senior water right which has an 1872 priority date. This programs will contain provisions to accomplish such exchanges which are consistent with the purposes of this policy. This exchange program will contain contractual provisions allowing water users to re-acquire their original water rights and will regard the water user's exchanged water and water under the lease provided by the District as being of equal value. There will be no charge to anyone for joining this exchange program.

ii. There are approximately 30 current Emigration water users without water rights. If their use of water predates 1988 the District will offer leases to correct such usage. The District will provide such leases to water users who can demonstrate that they would have met the State Engineer's requirements for granting water rights in 1988. Water users known by the District to be without legal water rights will be contacted by the District and encouraged to utilize the District's program.

Water users qualifying for this program will be permitted to acquire a lease from the District for $750 plus payment of expenses attendant to establishing the lease. This program will expire on June 30, 1997. After June 30, 1997 regardless of whether previous illegal use was unknowing or inadvertent, all parties who previously would have qualified for this program will, from such time forward be required to either acquire water rights, or District water leases at full price, or face enforcement action by the District against further illegal use.

iii. The District will offer a program by which water users with water use prior to 1988 and in possession of valid and legal water rights which are less than 0.75 acre-foot per year will be able to enter into a water right lease with the District to increase their legal usage rights up to 0.75 acre-foot per year. Water users holding water rights less than

0.75 acre-foot per year will be notified by the District of this program and the opportunity to increase their legal usage rights. Water users qualifying for this program will be permitted to acquire a lease from the District pro-rated on $750 for .75 acre feet plus payment of expenses attendant to establishing the lease.

This program will expire on June 30, 1997. After June 30, 1997, regardless of whether prior excess use of water was unknowing or inadvertent, water users who would have qualified for this program will be required to either acquire additional water rights, or District water leases at full price, or face enforcement action by the District against further illegal use.

b. It is the policy of the District to make no allocations of its water which would lead to more than 700 homes in the Canyon using Emigration Canyon water resources. In conjunction with this policy provision, there are several related policies of the District:

i. It is the policy of the District that, until such time as there is sound evidence of adequate sustainable water resources to do so, there will be no more than 185 future allocations of its water rights to domestic use within Emigration Canyon. The 185 figure is reached by subtracting the 417 current homes and the 98 approved lots with water rights, on property in the Emigration Oaks subdivision, from the 700 maximum sustainable homes.

ii. It is the policy of the District, from the effective date of this policy forward, to subtract one potential allocation from the 185 remaining allocations for every new house built in the canyon which is served with Canyon water resources -regardless of the source of the water right used to support such homes.

iii. It is the policy of the District that any excess water rights left under control of the District after the 700 home limit has been reached will be kept in beneficial use as required by law in seasonal, contingent uses, which are subject to actual quantity of water available.

iv. In conjunction with this policy the District will urge Salt Lake County to deny building permits and new lot approvals in Emigration Canyon in excess of 700 homes which rely on Emigration Canyon water resources, taking the entire Emigration Canyon drainage into account and including all historically-platted lots within the Canyon, the Emigration Master Plan, the Salt Lake County Hillside ordinance and all other pertinent land-use, public health, and planning and zoning factors.

v. It is the policy of the District to seriously, objectively and fairly consider all proposals for use of its water resources. Large, potentially high-impact projects may be given special priority allocations in the event that proposals for such projects conform with and support the District's overall body of policy, protect and preserve the water resources of Emigration Canyon; and in the judgment of the Trustees, provide the best sustainable use of the District's water within the 700 home limit.

c. Based upon policies of the State Engineer, the Salt Lake County Fire Department, Salt Lake County zoning ordinances, and upon findings and recommendations of the District's hydrology experts, it is the policy of the District's to allocate to each home site using the District's water, the right to utilize water in the amount of three fourths of one acre-foot per year (0.75 AF/yr.). This amount is intended to provide 0.45 acre-foot per year for indoor use according to guidelines established by the State Engineer and the Drinking Water Board, and 0.30 acre-foot per year for outdoor use not to exceed 3,174 square feet. The outdoor use water is intended to provide irrigation of ornamental or food plants and for the maintenance of low combustibility planted areas surrounding homes as required by the Salt Lake County Fire Department. The 0.30 acre-foot also provides for planting to achieve compliance with home site erosion control ordinances of Salt Lake County for Emigration Canyon. On a case-by-case basis, the District will consider allocation of more, or less, outdoor use water per home site upon presentation of evidence justifying the requested allocation.

d. It is the policy of the District to make no allocations of its water to projects which, in the light of the best evidence available to the District, pose threats to the purity and quality of water resources within the District, whether surface or below ground.

i. In conjunction with this policy the District will urge Salt Lake County to deny building permits and new lot approvals to any project which poses a threat to purity and quality of water resources within the District. The District will further urge Salt Lake County to require that all relevant showings and requirements needed to protect water quality and purity are met fully in advance of granting development rights in Emigration Canyon.

e. It is the policy of the District to make no allocations of its water which would, according to the best evidence available to the District, lead in the future to an inability to sustain minimum stream flows in Emigration Creek as a federally-protected non-degradation watercourse. For purposes of this policy minimum stream flow is defined as a flow of not less than 115 gallons per minute measured at the Burr Fork weir location, and at least 150 gallons per minute near Camp Kostopulos.

f. It is the policy of the District to prevent illegal diversions of water from Emigration Creek. Such illegal diversions have the effects of: 1) diminishing stream flow, 2) interfering with recharge of downstream subsurface resources, and 3) interfering with the District's ability to deliver on downstream contracts for the District's water. The District has received numerous reports over a significant period of time of such illegal diversions from Emigration Creek. Parties found to be making illegal diversions or withdrawals from Emigration Creek may, from the effective date of this policy, face enforcement action from the District to prevent further illegal use.

g. It is the policy of the District to enforce and protect the integrity of its water right and the District will seek, in conjunction with the State Engineer and the courts, if necessary, to prevent illegal use of Emigration Canyon water resources. In conjunction with this policy, it is axiomatic that the District will not cooperate with parties who use Emigration Canyon water without full legal rights to do so. This includes those who use water without a legal water right allocation, those who knowingly over-use their existing water allocations, and those who knowingly facilitate such over-use by subsequent owners. If long-term

use without rights, or long-term over-use, or repeated illegal stream withdrawals (collectively: "Purposeful and Systematic Theft of Water Resources") should occur, then the actual sustainable water resource of the Canyon may well be exceeded even before 700 homes are built.

i. In conjunction with this policy the District will urge Salt Lake County to deny building permits and new lot approvals to any party holding water rights of less than 0.75 acre-foot of water per home site.

ii. The District will urge Salt Lake County to deny building permits and new lot approvals to any party holding water rights which are less than fully approved for domestic use.

h. It is the policy of the District to give priority to small increments of new construction within the 700 home limit. This policy allows the District to continue gathering data, to build knowledge of the hydrology and the impact of growing water use upon it, with lowered risk of making allocations which in the future may prove to exceed the actual sustainable water resource of the Canyon.

i. With regard to water allocations for new construction, it is the policy of the District to give first priority to small, low-impact projects within the 700 home limit. Small, low impact projects are defined herein as single lot residential developments.

ii. It is the policy of the District that for new construction, the second priority will be given to medium water resource impact projects which are defined for purposes of this policy, as residential family housing developments of two to five residences.

iii. It is the policy of the District that all new construction developments of six, or more, residences and all commercial and government projects will be regarded as high water resource impact projects and will receive third priority for water allocations.

i. It is the policy of the District to make no allocations of its water resources to new construction projects which are not fully disclosed. In order to plan and allocate rationally, the District (and, presumably, all other planning agencies) must know the final build-out intended by any landowner or group of landowners acting in concert.

j. It is the policy of the District to give priority to projects which contain provisions for retirement of excess acreage beyond the stated and platted build-out into land conservation trusts, US Forest Service exchanges, or by other means. By such retirements of acreage future pressure to over-use Canyon water resources may be ameliorated. These land retirements also protect groundwater recharge areas and watershed from pollution and thus help protect the public health.

k. Water right leases granted by the District will contain the following general provisions:

i. Unless otherwise specifically agreed on a case-by-case basis, or under a master lease for multiple home developments, the lease will stipulate that construction will begin within six months from the date of assignment. If, after six months, construction has not begun the lease will terminate.

ii. The prospective lessee will bear the responsibility of showing to the satisfaction of the District that all necessary development requirements have been fully met.

iii. All expenses attendant to establishment of the lease will be paid in full by prospective lessees as they are incurred and in all cases prior to issuance of the lease.

iv. Lease applications must be pursued with reasonable diligence. If the lease agreement is not completed within deadlines established by the Trustees the lease application will terminate and all fees paid by the applicant forfeited.

v. The lease fee will be paid in full prior to issuance of the lease unless other arrangements have been made with the District. Failure to pay will be reason for termination of the lease application, regardless of any expenses incurred by the applicant either directly with the District, or in conjunction with the applicant's project.

vi. Each new lessee must install and maintain a totaling meter at the well head as required by the State Engineer. Access for reading of meter will be required only at reasonable times and under reasonable conditions.

vii. Construction and use of a well using a District water lease will be in compliance with state, county, and local law and requirements.

l. Lease Fees

It is the policy of the District to charge lease fees for water right leases under the District's water right in amounts which are reasonable in consideration of market forces and which provide fair return to the District as a public entity in consideration of the increase in land development values attendant to provision of water to otherwise arid land. Lease fees may be adjusted from time to time by the Board of Trustees, keeping in mind market forces and their duty as elected officials and as public fiduciaries managing a significant public asset.

i. Lease Fees for Single Residential Developments

It is the policy of the District, until such time as adjusted by resolution of the Board of Trustees, to charge a fee of $6,000.00 for each water lease granted to each residential unit. Under the District's rights said lease will confer the right to utilize 0.75 acre-foot of water for a single residence.