

Scot A. Boyd (9503)
scot.boyd@chrisjen.com
Stephen D. Kelson (8458)
stephen.kelson@chrisjen.com
Bryson R. Brown (14146)
bryson.brown@chrisjen.com
Christensen and Jensen, P.C.
257 East 200 South, Suite 1100
Salt Lake City, Utah 84111
Attorneys for Relator

**IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE DISTRICT OF UTAH**

UNITED STATES OF AMERICA
Ex. rel. Mark Christopher Tracy,

Plaintiff,

vs.

EMIGRATION IMPROVEMENT
DISTRICT ET AL.

Defendants.

**DECLARATION OF
WILLIAM R. BOWEN**

Case No.: 2:14-cv-00701

Judge: Jill Parrish

Pursuant to 28 U.S.C. § 1746, William R. Bowen, states as follows:

1. I William R. Bowen, am over the age of 18, have personal knowledge of the facts contained in this Declaration. I would, if called, testify as to these facts:
2. I was a Trustee for Emigration Improvement District ("EID") from 1996-2005 and was actively involved with EID before 1996.
3. I have personal knowledge of the inner workings of the EID water district.
4. I have been communicating with Mark Tracy, helping him by verifying facts, since I heard about this matter in a Salt Lake Tribune Article in 2015.

5. As an EID trustee, I attended board meetings and took part in discussions regarding the EID's requirements to obtain federal funding. As a board, the EID trustees discussed that, as a condition of getting federal funds, EID had to have sufficient water rights to operate the water system.

6. EID had more water rights on paper than existing physical water in Emigration Canyon.

7. I was present in public meetings when the trustees of EID discussed and were advised by EID's attorney, Gerald Kinghorn and the district hydrologist, that because of a change in the point of diversion EID lost its priority in water rights over other water rights in the Emigration Canyon, and did not have sufficient priority water rights to obtain federal funding.

8. As a trustee of EID I knew, and I discussed with the EID trustees in board meetings, that EID did not have a senior priority to water rights because of the change in the point of diversion.

9. I personally went to the University of Utah Library and reviewed what has been referred to in the Complaint as the Barnett Thesis.

10. I took the Barnett Thesis to an EID board meeting, and as a board, we discussed the Barnett Thesis's contents and conclusions on numerous occasions, including the conclusions that large-diameter wells in Emigration Canyon likely would lead to impairment of senior water rights.

11. I was present when EID trustees were informed at EID board meetings that large-diameter wells would reduce the Emigration Canyon aquifer and dewater smaller wells.

12. As an EID trustee, I was present when the EID trustees discussed the decision to drill monitoring wells and the completion of drilling monitor wells. I do not recall ever seeing any of the monitoring results.

13. As an EID trustee, I knew about and was present at EID board meetings where we discussed, that, as a condition of obtaining the federal funds, EID was not to use the system to provide water to facilitate new development.

14. I have personal knowledge, as an EID trustee, as a member of the EID board, and from discussions with EID board members at the time, that EID used the federal funds to build a water system to rescue Boyer's development which lacked the water rights necessary to provide water to the homes that were already built.

15. While one of the trustees, Lynn Hale, argued for the economies of scale for building the 1,000,000 gallon Wildflower Reservoir, I argued throughout the process that this was facilitating new development and was contrary to federal law and contrary to the purpose and requirements of the federal funds.

16. Lynn Hales and Fred Smolka, another EID trustee, argued aggressively to the Emigration Oaks homeowners that the need for the huge reservoir was for wildfire protection. However, the EID trustees were advised by the Fire Marshall that the fixed water storage was not effective for canyon wildfires.

17. Despite his assertions to the contrary, I believed then and believe now that Steve Creamer intended to use his land for future development.


18. As a member of the EID board, I was present when the EID trustees agreed to a trade with Mr. Creamer regarding the land for the reservoir. He gave EID the land, and the EID trustees gave him free water rights for 3 homes.

19. One reason that the reservoir was placed on Mr. Creamer's land was because it made delivery of water to the Emigration Oaks development easier.

20. EID's trustees knew, based on multiple discussions in EID board meetings, that as a condition of getting federal funds, EID had to comply with NEPA and other regulations.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

EXECUTED this 9th day of July, 2018.



William R. Bowen