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August 3, 2022

VIA ELECTRONIC MAIL

Teresa Wilhelmsen, Utah State Engineer
Utah Division of Water Rights
1594 W. North Temple, Suite 220
Salt Lake City, UT 84114-6300
Email: waterrights@utah.gov

**Re: Request for Reconsideration - Permanent Change Application “a48752” (57-8033)
Submitted by Courtney H. Crombie and Michael J. Jimenez**

Dear Ms. Wilhelmsen:

Pursuant to Utah Code Ann. § 63G-4-302(1)(a), the Emigration Canyon Home Owners Association (“**The ECHO-Association**”) hereby submits the following Request for Reconsideration regarding the Order of the Utah State Engineer dated July 14, 2022, granting permanent changes to water right claim 57-8033 allowing for continued water use from an 8-inch, 127 foot well constructed under unpublished change application “a14831” and as an unapproved pointed-of-diversion under “a48752.”

As you are aware, The Utah State Engineer (the "State Engineer") is required to comply with the mandatory provisions of Utah Code Ann. 73-3-8 in assessing permanent change applications.

For each application, Utah Code Ann. 73-3 8 requires the State Engineer to evaluate: (1) whether there is unappropriated water in the proposed source; (2) whether the proposed water will impair existing rights and interfere with more beneficial use of the water; (3) whether the proposed plan is physically and economically feasible; (4) whether the plan will prove to be detrimental to public health, welfare and safety; (5) whether the applicant has shown that it has the financial ability to complete the proposed work; (6) whether the applications are for the purpose of speculation or monopoly; and (7) whether the applications are filed in good faith.

The applicant has the burden of producing evidence sufficient to support a reasonable belief that the change applications can be made in compliance with all statutory requirements before the State Engineer may approve the application.

Utah Code Ann. 73-3-8 states:

(b) If the state engineer, because of information in the state engineer's possession obtained either by the state engineer's own investigation or otherwise, has reason to believe that an application will interfere with the water's more beneficial use . . . domestic or culinary, ..., or will unreasonably affect public recreation or the natural stream environment, or will prove detrimental to the public welfare, the state engineer shall withhold approval or rejection of the application until the state engineer has investigated the matter.

(c) If an application does not meet the requirements of this section, it shall be rejected.

In the present case, there is no “proposed plan” within the meaning of the above provisions, as the underground point-of-diversion was constructed in June 1989 without public notice, has been in illegal operation for the past 33 years, is not allowed under the current change application, and impairment of surface water right 57-8947 owned by the ECHO-Association has already been documented to your office.

Please note the following for the record:

- In 1966, your office determined that the construction and use of large-diameter commercial wells in the Canyon would impair superior rights “with almost certainty” and closed the entire area to new water use applications in 1968 (*see* Master’s Thesis entitled “Groundwater Hydrology of Emigration Canyon available at the website administered by The ECHO-Association at https://echo-association.com/?page_id=220);
- In testimony presented to your office on December 15, 1995, Don A. Barnett, former area engineer for the Canyon expressly testified that the same large-diameter large diameter well constructed in June 1989 would interfere with surface water flow of the Emigration Creek “*for decades, 25, 50, 75 years*” (emphasis added)(*see* audio recording and illustrative diagrams presented to the Utah State Engineer at the website administered by The ECHO-Association at https://echo-association.com/?page_id=2204);
- On December 18, 2019, in oral testimony before your office, hydrologist expert Dr. Hansen testified that the Canyon is currently overbuilt and future development of the Canyon unwarranted (*see* audio-video recording entitled “Dr. Hansen Testimony” available at the website administered by The ECHO-Association at https://echo-association.com/?page_id=7408);
- In June 2020, The ECHO-Association documented massive fissures and ground subsidence in the Freeze Creek drainage believed to be caused by groundwater mining of the Freeze Creek Aquifer (*see* arial recording entitled “Ground Collapse and Fissures in Emigration Oaks PUD” available at the website administered by

The ECHO-Association at https://echo-association.com/?page_id=3310) and lastly,

- As predicted, on June 24, 2021, the Canyon stream suffered total depletion less than 2 miles east from Utah’s Hogle Zoo as reported by the Salt Lake Tribune and has recently suffered total impairment less than 1/2 mile west of the aforementioned property (*see* Salt Lake Tribune article entitled “Why is Emigration Creek – an Historic Waterway – Dry?” available at the website administered by The ECHO-Association at https://echo-association.com/?page_id=405).
- Your memorandum decision and order only allows construction of a **4-inch** underground well, although the Applicants’ predecessor in interest constructed an **8-inch** underground well in June 1989 while the Applicants has improperly used the water source with your knowledge since that date. *See* Well Drillers’ Report, attached as **Exhibit A**.
- As you are aware, the record further shows that over forty (40) private-well owners have report quantity and quality impairment to your office since 1988, and the undersigned has commenced federal civil rights litigation against operators of similar large-diameter commercial wells in Emigration Canyon under the color of state authority. (*Tracy v. Simplifi Company et al.* No. 22-4032 (10th Circuit, Reply Brief, July 25, 2022)).

Until which time that Applicants have fulfilled their burden of producing evidence sufficient to support a reasonable belief that the “proposed” change application (*i.e.*, continued use of an unapproved point-of-diversion already constructed) can be made in compliance with all statutory requirements, the State Engineer must disapprove the application under Utah Code Ann. § 73-8-3(c).

Please feel free to contact me regarding any questions.

Kind Regards,

MARK CHRISTOPHER TRACY DBA
EMIGRATION CANYON HOME OWNERS
ASSOCIATION

/s/ Mark Christopher Tracy
Mark Christopher Tracy

EXHIBIT A

