



echo-association.com

February 16, 2023

VIA HAND DELIVERY

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

PROTEST FEE PAID

CK#553/\$15.00

23-00807 GH

**Re: Protest of Extension of Time Request for Permanent Change Application
“a18651” (57-7479) Submitted by Emigration Improvement District**

Dear Ms. Wilhelmsen:

The Emigration Canyon Home Owners Association (“*The ECHO-Association*”) hereby submits the following protest to the Request for Extension of Time for Permanent Change Application “a18151” (57-7479) for the purported use of 69 equivalent domestic units submitted by Emigration Improvement District (“EID”) through Don Barnett of Barnett Intermountain Water Consulting (“*EID Hydrologist Barnett*” and “*BIWS*” respectively).

Please note the following for the record:

- The ECHO-Association is owner of surface water right 57-8947 and is therefore entitled to file protest as per Utah Code Ann § 73-3-12(2)(f);
- Contrary to the representations made to your office by EID Hydrologist Barnett, permanent change application “a18151” (57-7479) is not approved for 69 domestic units, but is limited to two (2) part-time families following the protest and hearing before the Utah State Engineer on December 15, 1995, by both Salt Lake City Corporation and EID through BIWC (*see* Memorandum Decision of the Utah State Engineer, attached as **Exhibit A**);
- During the oral hearing before the Utah State Engineer on December 15, 1995, EID through EID hydrologist Jack A. Barnett† testified that water use under this permanent change application would impair surface water flow to the Emigration Canyon stream “for decades...25, 50, 75 years” (*see* audio recording and illustrative diagrams submitted to the Utah State Engineer by EID at the website administered by The ECHO Association at https://echo-association.com/?page_id=2204, published on August 22, 2018 at 10:15 AM, also available at the website administered by the Utah Division of Natural Resources <https://waterrights.utah.gov/docImport/0572/05728695.mp3>, at 00:05).

RECEIVED

FEB 16 2023

WATER RIGHTS
SALT LAKE

GH

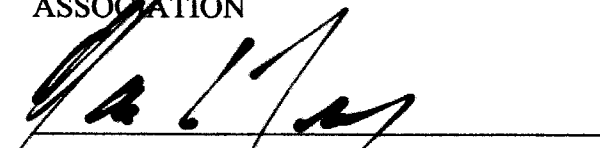
- Contrary to EID's extension request, on December 15, 1995, EID Hydrologist Barnett reported that Freeze Creek No. 1 (aka Boyer Well No. 1) was approved and operated under permanent change application a12710b (57-8865) and is thus not an approved point-of-diversion under this permanent change application (*see* Request for Extension of Time, signed by EID General Manager Eric Hawkes of the Simplifi Company, dated January 17, 2019, attached as **Exhibit B**; *see also* testimony of EID Hydrologist Don Barnett to the Utah State Engineer, available at the website administered by Utah Division of Natural Resources <https://waterrights.utah.gov/docImport/0572/05728694.mp3> at 11:05).
- As you are aware, the record shows that over forty (40) private-well owners have reported quantity and quality impairment including *total depletion of the Emigration Canyon Stream* less than two (2) miles from Utah's Hogle Zoo in September 2018 as accurately predicted almost 3 decade ago by EID Hydrologist Barnett in protest of this same permanent change application. *See* Brian Maffly, *Why is Emigration Creek — a Historic Utah Waterway — Dry? Blame Runs from Climate Change to Drought to Development to Water-Sucking Wells*, Salt Lake Tribune, September 18, 2018, available at <https://www.sltrib.com/news/environment/2018/09/08/why-is-emigration-creek/>; *see also* Reply Brief, *Tracy v. Simplifi Company et al.* (10th Cir. No. 22-4032, filed July 25, 2022).
- Water mismanagement in the State of Utah is now a matter of national concern (*see e.g.*, compiled media reports by HBO, CNN, High Country News, and The Washington Post, available at the website administered by The ECHO-Association at https://echo-association.com/?page_id=405).

Until which time that EID and/or EID Hydrologist Barnett corrects inaccurate information recorded in the extension request, and clarifies contradictory testimony previously provided to your office, the application for extension of time must be rejected as per Utah Code Ann. § 73-3-12 (2)(b)(ii) in connection with subsection (d).

Please feel free to contact me regarding any questions.

Kind Regards,

MARK CHRISTOPHER TRACY DBA
EMIGRATION CANYON HOME OWNERS
ASSOCIATION



• Mark Christopher Tracy

cc: **Laura Briefer**
Salt Lake Department of Public Utilities
1530 South West Temple
Salt Lake City, Utah 84115

EXHIBIT A

MEMORANDUM DECISION
CHANGE APPLICATION NUMBER
57-7479 ()
PAGE -2-

The State Engineer has reviewed the file on Water Right Number 57-7479, the change application, protests and testimony. He has noted that on March 9, 1990, the Court affirmed the irrigation component of the water right. Extent of beneficial use after this date is unclear: spokespersons for the applicants attested to substantial use; Craig Smay and representatives for EID proclaim to have seen no evidence of diversion and use of water for a period of time exceeding five years. The only evidence that this right has been perpetuated is testimony that the water has been utilized for dust suppression and revegetation. This right will have to be limited to the amount utilized for those uses, which in the estimation of the State Engineer is 1.0 acre-foot of water. The uses will have to be limited to the inside domestic needs for two part-time families and the irrigation of 0.025 acre.

It is, therefore, **ORDERED** and Change Application Number 57-7479 (a18651) is hereby **APPROVED** subject to prior rights and the following conditions:

1. The applicants shall install a permanent totalizing meter on the well to measure all of the water produced from it in order to ensure water use does not exceed water entitlement; furthermore, the applicants shall maintain at least monthly records of all water diverted from the well and these records and the meter shall be made available to a representative of the State Engineer at any reasonable time.
2. This change application is limited to the diversion of 1.0 acre-foot of water annually for the inside domestic needs of two part-time families and irrigation of 0.025 acre of land.

This Decision is subject to the provisions of Rule R655-6-17 of the Division of Water Rights and to Sections 63-46b-13 and 73-3-14 of the Utah Code Annotated, 1953, which provide for filing either a Request for Reconsideration with the State Engineer or an appeal with the appropriate District Court. A Request for Reconsideration must be filed with the State Engineer within 20 days of the date of this Decision. However, a Request for Reconsideration is not a prerequisite to filing a court appeal. A court appeal must be filed within 30 days after the date of this Decision, or if a Request for Reconsideration has been filed, within 30 days after the date the Request for Reconsideration is denied. A Request for Reconsideration is considered denied when no action is taken 20 days after the Request is filed.

Dated this 18th day of December, 1998.

MEMORANDUM DECISION
CHANGE APPLICATION NUMBER
57-7479 ()
PAGE -3-


Robert L. Morgan, P.E., State Engineer

RLM:JER:ja

Mailed a copy of the foregoing Memorandum Decision this 18th day of December, 1995, to:

The Boyer Company
127 South 500 East Suite 310
Salt Lake City, UT 84102-1906

City Development Inc.
c/o The Boyer Company
127 South 500 East Suite 310
Salt Lake City, UT 84102-1906

Emigration Improvement District
c/o Gerald H. Kinghorn, Attorney
185 South State Street, Suite 700
Salt Lake City, UT 84111

Craig Smay
505 East 200 South
Salt Lake City, UT 84102

Salt Lake City Corporation
Department of Public Utilities
c/o LeRoy Hooton, Jr.
1530 South West Temple
Salt Lake City, UT 84115

BY:

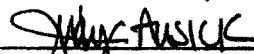

Judy Ausick

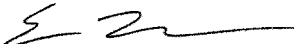
EXHIBIT B

**AFTER FOURTEEN YEARS
REQUEST FOR EXTENSION OF TIME TO FILE PROOF OF BENEFICIAL USE
STATE OF UTAH**

Fee Amount: \$150

CHANGE NO.	a12710b (57-8865)
APPLICANT:	Emigration Improvement District PO Box 58945 Salt Lake City, UT 84158-0945
Provide all information requested below:	
Construction completed to date:	see attachment
Work completed since last extension:	see attachment
Reasons why the project has not been completed:	see attachment
Estimated time for completion of project:	10 years

Pursuant to Section 73-3-12, Utah Code Annotated 1953 (as amended), request is made for EXTENSION OF TIME to file proof of beneficial use. I assert that to the best of my knowledge all information provided herein is true and complete. By signing this form, I assert that I am the applicant or I have been granted authority to make this request on behalf of the applicant.

	1-17-19	801-243-5741
APPLICANT or REPRESENTATIVE (signature)	Date	Telephone Number (Optional)
ERIC HAWKES	MANAGER	
APPLICANT or REPRESENTATIVE (print)	REPRESENTATIVE'S TITLE	

FOR OFFICE USE ONLY		RECEIVED JAN 18 2019
\$150 FEE REC'D. <u>Amx 528753</u> BY <u>LP</u>	RECEIPT NO. <u>19-00255</u>	COMPUTER <u>WATER RIGHTS SALT LAKE</u>
PROOF DUE DATE: <u>December 31, 2018</u>	14 YEAR PERIOD ENDED: December 16, 1997	
LAPSED <u>1-18</u> <u>20</u> <u>19</u>	50 YEAR PERIOD ENDS: December 16, 2033	
REMARKS:		

Return to: DIVISION OF WATER RIGHTS*1594 West North Temple, Suite 220, Salt Lake City, UT 84116*(801)538-7240

SCANNED LP



SCANNED DC

Attachment to:
Request for Extension of Time

Change Application: **a12710b (57-8865)**

Filed by:
EMIGRATION IMPROVEMENT DISTRICT

The Emigration Improvement District is a public water supplier created in 1968 to supply water to the residents in Emigration Canyon. It holds several water rights, including this one, to meet the reasonable future requirements of its residents. In 1994 the District acquired the Freeze Creek Water Company which among other things owned this water right. In 2004 the District expanded the system and added another 60 connections. In 2007 it again expanded the system to provide for another 208 connections. There are presently just over 300 connections on the system and this number is increasing by between 5 – 10 connections per year.

Construction completed to date:

Two of the wells contemplated by this change application have been drilled and are presently in use by the District (Freeze Creek Well #1 and Well #2). The District has expended significant funds in maintaining and operating these wells as well as other components in the District's water system.

Work completed since the last extension:

In 2018_ the District pulled and replaced the pump on Freeze Creek Well #1 at a cost of approximately \$ 8450.00_____.

Reasons why the project has not been completed:

The holding of this water right and change application by the Emigration Improvement District, a public water supplier, constitutes due diligence. Nevertheless, the District is using this water right pursuant to this approved change application and will continue to do so. Construction of projects in Emigration Canyon is very expensive due to relatively long distances between connections and other factors such as narrow access and rock outcrops. Additionally, connection to the system is relatively slow and therefore, demand for additional source development is also slow. As demand requires, the District will seek and develop additional sources pursuant to this change application or other water rights held by the District. Therefore, the District requests that the State Engineer approve a ten-year extension of time as it further expands and develops its system.

SCANNED LP

SCANNED DC