
In the Utah Court of Appeals

EMIGRATION CANYON HOME OWNERS ASSOCIATION, an unincorporated association of nine water-right protestants

Petitioner / Appellant,

v.

KENT L. JONES, Utah State Engineer and EMIGRATION IMPROVEMENT DISTRICT, a Utah Special Service District

Respondents / Appellees.

PUBLIC

No. 20200295-CA

Reply Brief of Appellant

Appeal from Order Granting Motion to Dismiss Petition for *de novo* Judicial Review of Approved Permanent Changes to Water Rights by the Utah State Engineer Permitting Continued Groundwater Mining in Emigration Canyon, entered in the Third Judicial District, Salt Lake County Division, the Honorable Su Chon Presiding

No. 190901675

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Oral Argument Requested

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INTRODUCTION

Pursuant to Utah R. App. P. 24(b), Appellant Emigration Canyon Homeowners Association (“The ECHO-Association”), an unincorporated association of nine senior perfected water right owners and protestants in Emigration Canyon (the “Canyon”), hereby submits the following reply to the response briefs filed by Appellees Emigration Improvement District (“EID” and “EID Appellee Br.” respectively) and Utah State Engineer Kent L. Jones (“State Engineer Jones” and “Jones Appellee Br.” respectively) (collectively “Utah Water Managers”).

SUMMARY OF ISSUES PRESENTED BY UTAH WATER MANAGERS

Contrary to its own argument before the district court [R823-5], and the findings of fact and conclusion of law adopted by this Court [Add. A], EID through legal counsel Jeremy R. Cook (“EID Attorney Cook”)^{1, 2} now claims that The ECHO-Association” is a dba entity of Mark Christopher Tracy (“Mr. Tracy”) and thus only Mr. Tracy is a party to

¹ This Court declined to disqualify Utah Attorney Cook and the Salt Lake City law firm Cohne Kinghorn P.C. from the instant appellate proceedings despite Utah Attorney Cook’s continued involvement in the fraudulent consolidation of senior perfected water rights in the Canyon to include active concealment of lead contamination of the EID drinking water system directly at issue in this appeal. *See* Status Report of Transcript Request and Mot. to Disqualify Opposing Counsel, June 8, 2020; Order, Utah Ct. App., June 29, 2020.

² Utah Attorney Cook continues to misrepresent to this Court that EID “owns two of the most senior water rights in Emigration Canyon” [EID Appellee Br. 1] while simultaneously falsely representing to senior water right owners that the permanent change applications germane to the instant appeal were filed “due to a change of policy by the State Engineer’s Office” [R108] to prevent hinder timely protest and water litigation. *See Mark Christopher Tracy v. Simplifi et al.*, No. 22-4032 (10th Cir. filed April 22, 2022); *United States ex rel. Tracy v. Emigration Improvement District et al.*, Nos. 21-4059 & 21-4143 (10th Cir. filed May 3, 2021, 2021 & Nov. 18, 2021).

the current proceedings.³ However, EID Attorney Cook further argues, The ECHO-Association, as an unincorporated association of nine senior perfected water right owners and protestants collectively appearing before State Engineer Jones [and not Mr. Tracy as an individual] may not own or transfer title to real property in Utah, and thus lacks legal standing under the purported authority of *Crane v. Crane*, 683 P.2d 1062 (Utah 1984).⁴ Lastly, EID Attorney Cook insists that “as neither ECHO [as an unincorporated association] nor Mr. Tracy [as an individual] claimed to own any real property or water rights in Emigration Canyon” prior to February 11, 2019, neither Mr. Tracy nor The ECHO-Association has legal standing necessary to evoke the jurisdiction of the Utah state district court.^{5, 6}

Conversely, State Engineer Jones argues that groundwater mining, lead contamination of culinary drinking water, and total impairment of a federally protected waterway in Emigration Canyon are not matters of “significant enough public interest”⁷ and are issues of “general grievances against EID and decades old State Engineer decisions.”⁸

³ EID Appellee Br. iii.

⁴ *Id.* at 14.

⁵ *Id.* at 1; *see also* Jones Appellee Br. 18-21.

⁶ The Pet. for de novo judicial review [R001-039] was filed in Utah Third District Court on February 25, 2019. Utah Water Managers cite no authority that The ECHO-Association must prove legal standing during informal administrative proceeding and/or prior to commencement of legal action following a Utah R. Civ. P. 12(b)(6) motion to dismiss. *See e.g., Badger v. Brooklyn Canal Company*, 966 P.2d 844 (Utah 1998)(an issue for de novo judicial review must only be raise to the “level of consciousness” of the Utah State Engineer to permit de novo judicial review).

⁷ Jones Appellee Br. 45.

⁸ *Id.* at 13.

These arguments merit little discussion.

State Water Managers ignore the standard of review of a motion to dismiss under Utah R. Civ. P. 12(b)(6), postulate alternative facts and baseless speculation while disregarding the detailed allegations of both the Protest and Petition, miscite long-standing and binding authority of this Court, misapprehend the difference between equitable vs. legal title as related to legal standing as resolved by the United States Supreme Court, misconstrue the legal capacity of an unincorporated association to sue under a common name pursuant to Utah R. of Civ. 17(d), and mischaracterize State Engineer Jones' approval of ongoing irreparable and catastrophic effects of aquifer depletion and corresponding contamination of drinking water.

SUMMARY OF ARGUMENT

Based upon the detailed allegations of the Protest and two Protest Addenda [R086-483], the Petition for de novo judicial review [R001-039], and the uncontested orders of both the district court [Appellant Br. at Add. A] and this Court [*Id.* at Add. B] ruling that The ECHO-Association is an unincorporated association of nine senior water right owners collectively appearing before State Engineer Jones, The ECHO-Association has traditional legal standing to evoke the jurisdiction of a Utah court for de novo judicial review of a decision and order of State Engineer Jones permitting (i) ongoing fraudulent retirement of senior perfected water rights in Emigration Canyon (the "Canyon"); (ii) continuous groundwater mining of the Canyon's Twin Creek Aquifer via large-diameter commercial wells previously constructed and operated under temporary change applications since October 2002; (iii) sustained operation of underground water sources expressly rejected by

Utah Water Managers’ own experts; and lastly, (iv) future construction of over 500 additional domestic units in the Canyon despite documented surface and underground water depletion to include lead contamination of the EID drinking-water system since February 1994.

Moreover, given that the catastrophic effects of aquifer depletion and corresponding culinary drinking-water contamination in the Canyon is now a matter of public record,⁹ The ECHO-Association also has legal standing under the public policy exception articulated by the Utah Supreme Court in *Utah Chapter of the Sierra Club v. Utah Air Quality Bd*, 2006 UT 74.

ARGUMENT

I. Alternative Facts and Baseless Speculation Asserted by Utah Water Managers.

Along with the incorrect appellate case number, improper service to a false email address of Mr. Tracy and not the legal counsel of record for The ECHO-Association,¹⁰ and in an apparent attempt to reverse Utah R. Civ. P. 12(b)(6) pleading standards, EID Attorney Cook asserts that EID “owns multiple water rights, including a portion of two of the most

⁹ See audio and video recording entitled, “Aerial and Ground Recording of the Emigration Oaks PUD (YouTube)” available at the website administered by The ECHO-Association at https://echo-association.com/?page_id=3310 lasted edited on October 10, 2021, at 04:31 PM; see also illustrative tables, graphs and maps entitled “Lead Contamination Table – EID Water Sources and Customers” available at the website administered by The ECHO-Association at https://echo-association.com/?page_id=4950 last edited on January 20, 2022, at 10:30 PM.

¹⁰ EID Appellee Br. cover page, 17.

senior water rights in Emigration Canyon”¹¹ and “at the time of filing the ECHO Protest,¹² neither ECHO nor Mr. Tracy claimed to own any real property or water rights in Emigration Canyon, and thus did not have any water rights that could have been impaired as a result of the Change Applications [approved by State Engineer Jones].”¹³

Moreover, EID Attorney Cook further speculates that “[o]n February 11, 2019, in an apparent attempt to obtain standing to file the Petition, ECHO acquired water right no. 57-8947 (a16183) from an individual named Nelson R. Mather” however “it is undisputed that Mr. Mather had not filed a protest in the informal adjudicative proceeding before the State Engineer, and ECHO did not claim in its protest that it was the owner of water right no. 57-8947.” Lastly, because “Mr. Mather did not file protest with the State Engineer... then a subsequent owner, such as ECHO, cannot have exhausted its administrative remedies relative the Water Right” (emphasis in original).¹⁴

State Engineer Jones conversely postulates that EID “has water rights established prior to 1903” and “since 1996 [EID] has had the right to use up to 33 cfs or 649.99 acre feet from 19 surface water sources and from 22 wells.”^{15, 16} Furthermore, “ECHO’s protest did not allege that Mr. Tracy or ECHO owned any water rights that EID’s Change

¹¹ *Id.* at 1.

¹² The ECHO-Association filed protest on October 17, 2018 [R001-236] and two protest addenda on January 7 [R237-460] and January 22, 2019 [R461-83] respectively.

¹³ EID Appellee Br. 1.

¹⁴ *Id.* Br. 9.

¹⁵ Jones Appellee Br. 3.

¹⁶ While EID concedes that it “corrected” and “updated” previously approved points-of diversion and proposed five additional underground water sources [EID Appellee Br. 1], State Engineer Jones insists that EID permanent change application did not change “nature of use” or the “place of use” [Jones Appellee Br. 6].

Applications would impair”¹⁷ and “[t]he only particularized claim ECHO makes in its petition for review is the alleged impairment of a water right that ECHO did not own during the administrative proceedings.”¹⁸

As such, State Engineer Jones concludes that “[t]he only person who potentially could have alleged an injury was the then-owner of that right [Mr. Mather], but he did not participate in the proceedings at all. ECHO’s acquisition of that owner’s allegedly impaired water right on the eve this litigation [sic] does not now enable ECHO to pass through the statutory barriers to de novo review.”¹⁹

Considering the standard of review of a Utah R. Civ. P. 12(b)(6) motion to dismiss, the clear and detailed allegations of both the Protests filed with State Engineer Jones and the Pet. for de novo Judicial Review, this Court should ignore baseless speculation, and the alterative facts purported by Utah Water Managers.

A. Standard of Review of a Utah R. Civ. P. 12(b)(6) Motion to Dismiss.

A motion to dismiss per Utah R. Civ. P. 12(b)(6), “admits the facts alleged in the complaint but challenges the plaintiff’s right to relief based on those facts.” *Oakwood Village LLC v. Albertsons, Inc.*, 2004 UT 101, (quoting *St. Benedict’s Dev. Co. v. St. Benedict’s Hosp.*, 811 P.2d 194, 196 (Utah 1991)).

To fulfill the requirement of legal standing, this Court requires that a water right protestant must allege “actual *or potential injury*” resulting from the State Engineer’s

¹⁷ Jones Appellee Br. 5.

¹⁸ *Id.* at 9; *see also* EID Appellee Br. 9.

¹⁹ Jones Appellee Br. 2, 9.

decision²⁰ (emphasis added) (*Utah Alunite Corp. v. Jones*, 2016 UT App 11, ¶7 (quoting *Washington County Water Conservancy Dist. v. Morgan*, 2003 UT 58, ¶ 14)), whereby an issue need only to be raised to the “level of consciousness” of the State Engineer during informal administrative proceedings. *Badger v. Brooklyn Canal Company*, 966 P.2d 844, 847 (Utah 1998).

Moreover, the applicant for permanent changes to unperfected water rights carries the burden of proof to support a reasonable belief: (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.²¹

If an application does not meet these requirements, it “shall be rejected.”²²

B. Detailed and Binding Factual Allegations of the Protests and Petition.

The Complaint alleges that (i) on August 11, 1923, under Civil Decree 25890, the Utah Third District Court, adjudicated 2/3 of the surface water flow of the Emigration Canyon stream as belonging to James E. Hogle, the Mount Olivet Cemetery Association

²⁰ The State Engineer decisions were issued on January 16, 2019 [R044-54] and January 25, 2019 [R055-64] respectively.

²¹ Utah Code Ann. §§ 73-3-3(5) and 78-3-8.

²² Utah Code Ann. § 78-3-8(1)(c).

and the Gordon Company with a total average flow adjudicated at **5.43 cubic feet** per second (“cfs”) (“Mt. Olivet Decree”) [R010, ¶27]; (ii) the remaining 1/3 was claimed at that time by the Emigration Dam and Ditch Company (approximately **1.8 cfs**), which was not a party to the proceedings (“Dam & Ditch Water Right”) [*id.* at ¶27]; (iii) on August 25, 1954, the Emigration Dam and Ditch Company deeded all its vested water rights to the Utah State Road Commission [*id.* at ¶29]; (iv) in turn, on January 24, 1971, the State Road Commission executed a Quit Claim Deed to the Utah State Division of Parks and Recreation “consisting of sufficient water from the Emigration Canyon Creek ... not to exceed a flow of **10.00 cfs.**” [*id.* at ¶30]; (v) the State Road Commission's Quit Claim Deed inexplicably deeded four times more than the entire water share adjudicated in the Mt. Olivet Decree; [*id.* at ¶31]; (vi) on November 17, 1975, for unknown reasons, the Utah State Road Commission executed a Quit Claim Deed to EID “not to exceed **2.0 cfs**” although it had already deeded its entire water rights to the Utah State Division of Parks and Recreation [*id.* at ¶32]; (v) EID currently claims **33.0 cfs** of surface water flow under the duplicitous Dam & Ditch Water Right in the present action [*id.* at ¶32]; (vi) a hydrology report completed by the State Engineer in 1968 expressly warned against the construction of large-diameter commercial wells in the “Canyon” and predicted the impairment of senior water rights “with almost certainty” [R011-12, ¶34(a)]; (vii) on December 15, 1982, in order to avoid almost certain water litigation, EID began fraudulently retiring senior perfected water rights in the Canyon through the predecessor in interest to EID’s current legal counsel Cohne Kinghorn P.C. (“Kinghorn”) and Barnett Intermountain Water

Consultants (“BIWC”) [R012-3, ¶37; R014-5, ¶46];²³ (viii) on December 15, 1995, EID though Kinghorn and BIWC testified to the Utah State Engineer that the construction of the exact same large-diameter commercial wells germane to this appeal would impair the Canyon Stream "for decades — 25, 50, 75 years” due to the interruption of groundwater movement supporting transmission of surface water to Utah’s Hogle Zoo and the Mount Olivet Cemetery as adjudicated under the Mt. Olivet Decree [R028-9, ¶126]; (ix) in July 2000, EID’s own hydrologist concluded that the operation of two large-diameter commercial wells had resulted in groundwater mining of the Canyon’s Twin Creek Aquifer and warned against the construction of additional water sources in the area [R016, ¶57]; (x) contrary to its own expert hydrology reports, EID constructed two additional large-diameter commercial wells in 2003 and 2013 on property belonging to private land developer and EID Advisory Committee Chairman R. Steve Creamer (“Brigham Fork Well” and “Upper Freeze Creek Well” respectively) under the known duplicitous Dam & Ditch Water Right via temporary change applications, which do not vest and expire automatically [R011, ¶¶ 29-33; R017, ¶60; R19, ¶70] (xi) in order to avoid certain water litigation, between June 2, 2006 (t31547) and October 24, 2011(t37769), EID failed to file any temporary change application with the State Engineer's Office but continue to extract millions of gallons from the Canyon’s Twin Creek Aquifer contrary to its own expert hydrology reports [R018, ¶ 64]; (xii) in order to avoid almost certain water litigation, State Engineer Jones approved temporary change applications 57-7796 (t42153)(2015) and 57-

²³ Gerald Kinghorn, is the predecessor in interest to EID’s current legal counsel Cohne Kinghorn P.C.

7796 (t41129)(2016) without public notice or hearing [R021, ¶86]; (xiii) in September 2018, the Emigration Canyon Stream suffered total depletion for the first time in recorded history as predicted by Utah Water Managers' own experts thereby impairing surface water right 57-8947 and multiple senior water right holders [R023 ¶¶94-5; R024, ¶103]; (ixx) on September 27, 2018, Mr. Mather assigned equitable title to surface water right 57-8947 to The ECHO-Association [R004, ¶4; R569, ¶8; R575, ¶3]; (xx) prior to expiration of EID last temporary change application, The ECHO-Association and 38 senior water right holders including Mr. Mather through Mr. Mather's son-in-law Dinko Duheric [R007, ¶8(gg)] filed timely protest against EID's permanent change applications [R086-394; R397-460]; (xxi) during the protest period, State Engineer Jones through Ross Hansen actively discouraged a Canyon resident from filing protest stating that "the issue has already been decided" [R037, ¶171(g)]; (xxii) during the protest hearing before State Engineer Jones, nine senior water right holders entered collective appearance via The ECHO-Association [R1040]; (xxiii) during the protest hearing, EID through BIWC and Utah Attorney Cook willfully withheld and misrepresented the aforementioned hydrological studies and misrepresented that the place-of-use of all four underground water sources "was previously approved" [R071]; and lastly (xxiv) The ECHO-Association recorded a deed for the transfer of legal title of perfected senior water right 57-8947 with Salt lake County prior to filing petition for de novo judicial review of the decision and order of State Engineer Jones [R529-33].

II. Improper Citation of Binding Legal Authority.

State Engineer Jones argues that “[t]o raise an issue to the State Engineer, parties *must bring injuries to their vested water right*” under the purported authority of *Badger v. Brooklyn Canal Co.*, 966 P.2d 844, 847 (Utah 1998).

This interpretation is incorrect. As note above, this Court requires that a water right protestant must allege “actual *or potential injury*” resulting from the State Engineer's decision (emphasis added). *Utah Alunite Corp. v. Jones*, 2016 UT App 11, ¶7 (quoting *Washington County*, 2003 UT 58 at ¶ 14

Utah Water Managers further maintains that “because protests were filed by the actual water right owners individually, an appeal to the District Court based on the protest of the individual water rights owners would have also had to be filed in the name of the individual water right owners, not ECHO.”²⁴

This contention is likewise refuted by Utah R. Civ. P. 17(d) whereby “when two or more persons associated in any business either as a joint-stock company, a partnership *or other association*, not a corporation, transact such business under a common name, whether it comprises the names of such associates or not, they may sue or be sued by such common name.”

As the district court ruled that The ECHO-Association is an unincorporated association of nine, senior water right protestants [R1040], these individuals may sue by

²⁴ EID Appellees Br. at 14.

such a common name and are thus have legal standing to petition the district court for de novo judicial review.

III. Misinterpretation of Equitable v. Legal Title as Related to Legal Standing.

Next, Utah Water Managers argue that “[o]n September 10, 2018, and continuing through February 11, 2019, Water Right 57-8947 was owned by Mr. Mather.”²⁵

EID and State Engineer Jones reach this conclusion based upon the fact that only document publicly recorded for this transaction between The ECHO-Association and Mr. Mather was notarized on February 11, 2019, and therefore, inexplicably, no other document or record could have been possibly created by the parties prior to this date.

Assuming arguendo that Mr. Mather retained legal title to water right 57-8947 until delivery of the quit claim deed on February 11, 2019, the assignment of equitable title was attested to the district court by the sole contracting parties [R567-72; R574-6] and is itself sufficient to establish legal standing as recognized by the United States Supreme Court.

For example, in *Sprint Communications Co. v. APCC SERVICES*, 554 US 269 (2008), the United States Supreme Court expressly affirmed that where assignment is at issue, courts—both before and after the founding—have always permitted the party with legal title alone to bring suit” and there is a “historical tradition of suits by assignees” thereby expressly recognized legal standing of the later.

²⁵ EID Appellee Br. 9.

As both Mr. Tracy and Mr. Mather attested to the transfer of equitable title to The ECHO-Association on September 27, 2018, The ECHO-Association has legal standing to file petition for de novo judicial review with the district court.

Furthermore, as Mr. Mather through Mr. Mather's son-in-law Dinko Duheric [R007, ¶8(gg)] protested the permanent change applications during the informal administrative hearing before State Engineer Jones, The ECHO-Association also assumed Mr. Mather's position with the transfer of legal title on February 11, 2019, prior to filing the present legal action on February 25, 2019.

IV. Misapprehension of the Legal Capacity of an Unincorporated Association to Sue Under a Common Name.

Utah Water Managers next argue that "it is uncontested that an unincorporated association cannot hold or transfer title to property in Utah" under the purported authority of *Crane v. Crane*, 683 P.2d 1062, 1067 (UT 1984) citing *6 Am.Jur.2d Associations and Clubs* § 13 (1963); Annot., 15 A.L.R.2d 1451 (1951).

EID and State Engineer Jones however inexplicably overlook the very next sentence of the Utah Supreme Court's ruling:

But this rule does not preclude all consideration of the effect of the activities of an association on the common property ownership of the members of the association.

For example, it has been held that a conveyance to an unincorporated association made up of an ascertainable membership will be given effect as a conveyance to the members as individuals. Utah law seems to contemplate this result, since Utah R.Civ.P. 17(d) provides that when two or more persons transact any business under a common name as an association "any judgment obtained against the defendant in such case shall bind the joint property of all the associates in the same manner as if all had been named defendants and had been sued upon their joint liability.

Id. (citing *County of Trinity v. Rourke*, 275 Cal. App.2d 628, 79 Cal. Rptr. 902 (1969); *Comstock v. Dewey*, 323 Mass. 583, 83 N.E.2d 257 (1949); *Bradley v. O'Hare*, 11 A.D.2d 15, 202 N.Y.S.2d 141 (1960) (Breitel, J.); *Venus Lodge No. 62 v. Acme Benevolent Association*, 231 N.C. 522, 58 S.E.2d 109, 15 A.L.R.2d 1446 (1950); *Rhode Island Association for the Blind v. Nugent*, 99 R.I. 187, 206 A.2d 527 (1965); 7 C.J.S. Associations § 35 (1980).

As both equitable and legal and title was transferred to ascertainable members, The ECHO-Association also has legal standing in the present case under Utah R. Civ. P. 17(d) to sue under a common name.

V. Mischaracterization of the Protest and Petition for De Novo Judicial Review as “General Concerns” and “Common Grievances.”

Lastly, EID purports “there is absolutely no evidence that the change application could possibly impact *every private well* in Emigration Canyon”²⁶ while State Engineer Jones argues that groundwater mining and aquifer depletion in the State of Utah is “not so unique and of such great public importance to that it ought to be decided in furtherance of the public interest” (emphasis added).²⁷

Given that the catastrophic and irreparable effects of ground water mining and corresponding drinking-water contamination are a matter of public record in California,

²⁶ EID Appellee Br. 11.

²⁷ *Id.* at 2.

Arizona, Nevada, Texas, Nebraska,²⁸ Cedar Valley, Utah, USA²⁹ and Alicante, Spain,³⁰ this argument does not merit further discussion.

CONCLUSION

As an unincorporated association of nine senior water right holders and protestants, The ECHO-Association has legal standing to commence de novo judicial review of the State Engineer's approval of permanent changes to 649 acre feet of surface water rights of the duplicitous Dam & Ditch Water Right under permanent change applications a44045 (57-7796) and segregated water claim a44046 (57-10711) proposed by EID.

Moreover, as groundwater mining of Canyon aquifers and lead contamination of drinking water is an important public interest issue addressed in the protests and petition for de novo judicial review and is supported by substantiated facts of the court record, the Court should also find that The ECHO-Association has legal standing under the public policy exception.

For the foregoing reasons, The ECHO-Association respectfully requests that this Court vacate the district court's dismissal and remand for further proceedings.

²⁸ See e.g., Gordon Sloggett and Clifford Dickason, *Ground-Water Mining in the United States*, U.S. Department of Agriculture, Agricultural Economic Report No. 555 (August 1986).

²⁹ See e.g., Tyler Knudsen, Paul Inkenbrandt, William Lund, Mike Lowe, and Steve Bowman, *Investigation of Land Subsidence and Earth Fissures in Cedar Valley, Iron County Utah*, Utah Geological Survey, Special Study 150 (2014).

³⁰ See e.g., Pulido-Bosch, I. Morell, J.M. Andreu, *Hydrogeochemical Effects of Groundwater Mining of the Sierra de Crevillente Aquifer (Alicante, Spain)*, *Environmental Geology* 26:232-9 (1995).

Respectfully submitted this 2nd day of May 2022.

STAVROS LAW P.C.

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CERTIFICATE OF COMPLIANCE

In compliance with the type-volume limitation of Utah R. App. P. 24(g)(1), I, Andres Fox, certify that this brief contains **3,929 words**, excluding the table of contents, table of authorities, addenda, certificates of compliance and service.

In compliance with the typeface requirements of Utah R. App. P. 27(b), I also certify that this brief has been prepared in a proportionally spaced font using Microsoft Word v.16.52 in Times New Roman font, 13-point.

I also certify that this brief contains no non-public information in compliance with the non-public information requirements of Utah R. App. P. 21(h).

/s/ Andrew Fox _____
Andrew Fox

CERTIFICATE OF SERVICE

I, Andrew Fox, hereby certify that on the 2nd day of May 2022, a true and correct copy of the foregoing Brief of Appellant was sent via electronic mail as per Utah R. of App. P. 26(b) to the following counsel of record. Two paper copies will be provided upon request.

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**Addendum A
to Appellant's Reply Brief**

**Emigration Canyon Home Owners Association v. Kent L. Jones *et al.*
Trail Case No. 190901675
Appeal Case No. 20200295-CA**

Order

**Utah Court of Appeals
September 23, 2021**

The Order of the Court is stated below:

Dated: September 23, 2021
02:35:29 PM

At the direction of:
/s/ JUDGE M CHRISTIANSEN FORSTER

by
/s/ Lisa A. Collins
Clerk of Court



IN THE UTAH COURT OF APPEALS

Emigration Canyon Home Owners
Association,
Appellant,
v.
Kent Jones and Emigration
Improvement District,
Appellees.

ORDER

Case No. 20200295-CA

Trial Court Case No. 190901675

On July 16, 2020, this court temporarily remanded the case to the district court to determine whether the Emigration Canyon Home Owners Association (ECHO) is an unincorporated association that must be represented by legal counsel licensed in Utah in this appeal. By its order dated June 11, 2021, the district court determined that ECHO is an unincorporated association under Utah law and is required to have an attorney represent ECHO in these matters. The brief filed on September 15, 2021, was not filed by an attorney licensed in Utah, as required by the district courts order following proceedings on temporary remand from this court.

IT IS HEREBY ORDERED that within twenty (20) days from the date of this order, Emigration Canyon Home Owners Association, must retain an attorney to appear on its behalf. Failure to retain counsel will result in dismissal of the appeal. Appellants brief filed on September 15, 2021, is not accepted for filing and is lodged pending compliance with this order and further order of this court.

End of Order - Signature at the Top of the First Page