

Executive Summary of Allegations - Third Amended Complaint

United State of America ex. rel. Mark Christopher Tracy v. Emigration Improvement District et. al.
(Federal District Court, District of Utah, Case No. 2:14-cv-00701)

The Third Amended Complaint alleges the following:

In 1966 **Jack Barnett** completed the only unbiased scholastic work concerning the availability of water resources necessary for new building development in Emigration Canyon, Utah. After extensive research and analysis, Barnett concluded that Canyon's hydrology was conducive only to small, individual wells serving single households and predicted that large-diameter, commercial wells for multiple dwellings would not be productive, or if productive, would dry up existing wells possessing superior water rights "with almost certainty"¹

Contrary to Barnett's dire warning, **The Boyer Company L.C.** under Kem Gardner and **City Development Inc.** under Walter J. Plumb III installed two large-diameter commercial wells within 1/2 mile of each other and a grossly undersized storage tank selling **224** parcels of the luxurious Emigration Oaks PUD development as "buildable" despite the fact that it had constructed water infrastructure sufficient for only **68** homes. Having built a water system for only 30% of the development with water rights sufficient for only **125** domestic units, in June 1998, Boyer and City Development "gifted" the entire Oaks water system to Emigration Improvement District, "Utah special service district" ("**EID**") controlled by three publically-elected "trustees", thereby allowing expansion of phases 4A, 6 and 6A of the Oaks development thereby securing an estimated \$47 million dollar in private profit.²

With an intimate understanding of the situation, Energy Solutions CEO **R. Steve Creamer**, EID Trustees **Fred A. Smolka**, **Michael Scott Hughes**, and **Lynn Hales** recognized a unique chance for private profit of their own.

In possession of water rights sufficient for over **1,000** new residential units, EID, with little or no oversight³ controlled entirely by **Smolka**, **Hughes** and **Hales**,⁴ would obtain federally-backed funds to construct a massively oversized water system on property simultaneously purchased and exclusively controlled by land-developer

¹ Under Utah water-right laws, an individual may bring legal action to the prohibit infringement of a perfected water right established at an earlier date (*i.e.*, "superior water share"). At present, **28** homeowners have reported a substantial decrease in the productive capacity of their private wells since EID commenced operation of the Brigham Fork and Upper Freeze Creek Wells.

² Similar luxurious private urban developments were also constructed in lower Pinecrest Canyon ("**Burr Fork**") and Young Oaks, which likewise proved deficient. In order to secure federally-backed funds intended for "Economically Disadvantaged Communities," the Burr Fork and Young Oaks water systems were also "gifted" to EID.

³ See "Last Week Tonight with John Oliver" March 6, 2016 (<https://www.youtube.com/watch?v=3saU5racsGE>).

⁴ Mark Stevens, Brent Tippetts, Joseph Smolka and Eric Hawkes later joined EID as trustees or managers.

Creamer. Not only would Canyon property owners be required to pick up the bill for the construction of the exact same “public water system” expressly refuted by Barnett, but the defendants would also force their own exorbitant “administrative fees and costs”⁵ on taxpayers while simultaneously outfitting Mr. Creamer’s land with the water-delivery infrastructure needed for massive new building development.

In short, the defendants devised a scheme to *pay themselves large amounts of public money to make exponentially more private profit with virtually no financial risk*. The plan was executed as follows:

- Firstly, EID Defendants secured a **\$2.4 million** federally-backed loan intended solely for “Economically Disadvantaged Communities” to construct a 1-million gallon reservoir and yet another two large-diameter commercial wells and distribution lines approved under the federally mandated Environmental Assessment Report (“**EAR**”);
- Despite recommendations from the Utah State plan review engineer Dr. Onysko, EID Defendants “refused” to consider a cost savings of **\$500,000.00** by constructing an appropriately sized reservoir and then *secured another \$2.8 million* placing grossly undersized water-supply lines in the Main Canyon as approved under the EAR. In order to fraudulently induce private well owners to relinquish senior water shares, EID misrepresented, and continues to misrepresent, that its water rights were the “most superior rights held in the Canyon”;
- Due to “unforeseen cost-overruns” EID *secured yet another \$1.6 million* dollars for the construction of the second large-diameter well approved under the EAR because EID’s three other wells “needed a rest.” Having amassed over **\$6.3 million** in federally-backed loans, EID Defendants began charging **86** private well owners a “fire-hydrant rental fee” to pay for the exact system EID’s own hydrologist had predicted would dry up;
- To date, EID Defendants has spent *still yet another \$110,000.00* of taxpayer funds to defend their actions in federal court with entirely procedural arguments that the civil action brought on behalf of the United States was not filed on time (“statute of limitations”) or is otherwise technically deficient (“failure to state a claim”) refusing to publically discuss any of the material allegations as outlined above.⁶

In summary, not only have the defendants secured private profit by spending over **\$14 million** of taxpayer funds to construct a massively oversized “public water system” on property owned and exclusively controlled by land-developer Creamer, but EID Defendants are also forcing Canyon residents and property owners to pick up the legal bill for what is alleged to be the longest and most lucrative water grabs in the history of the state of Utah.

⁵ EID financial records reveal that “EID General Manager/Treasurer/Election Specialist” Fred A. Smolka paid himself over **\$500,000.00**, while immediate family members received payments in excess of **\$150,000.00**.

⁶ Mr. Creamer’s response to these allegations? The former CEO of Energy Solutions is simply a “private landowner” and “not a member of EID” despite the fact that Mr. Creamer and his sons Ryan and Tyson were paid public funds by EID, Mr. Creamer personally supervised excavation work, dumped asphalt and construction waste on the site and is currently “EID Advisory Committee Chairman” having last met in closed session on December 17, 2015.